RODNEY HOLLOMAN	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
v.	:	TRIAL DIVISION
	:	
DAVID MARCONI & CHARLES NOCELLA, Defendants	:	NOVEMBER TERM, 1998
	:	
	:	NO. 4011
RICHARD G. OLARSCH,D.O. et al. Additional Defendants	:	**CONTROL NO. 030927**

OPINION REGARDING ORDER GRANTING PARTIAL SUMMARY JUDGMENT FOR DEFENDANTS MARCONI AND NOCELLA PRECLUDING CLAIMS REGARDING CELLULITIS AND ITS TREATMENT AND GRANTING SUMMARY JUDGMENT FOR DEFENDANT OLARSCH

Following an auto accident, Rodney Holloman came under the treatment of Dr. Richard G. Olarsch, D.O. At some point in Dr. Olarsch’s treatment for the auto accident, it is alleged that Holloman developed cellulitis and suffered a burn while being treated by Dr. Olarsch for the cellulitis.

It appears that in the automobile accident case, there was a verdict for the defendant drivers. I have not had any contact with the case since denying plaintiff's Motion to Reconsider my Order (1) granting partial summary judgment for defendants David Marconi and Charles Nocella regarding the development of cellulitis following the auto accident; and (2) granting summary judgment for additional defendant Richard G. Olarsch, D.O. for causing a burn while treating the cellulitis. It seems that if the defendant drivers were found not negligent, the Motion I decided becomes moot. However, I will address the reasons for my ruling.

To cut through the procedural morass, Dr. Olarsch claimed that whether or not he committed malpractice in treating the

cellulitis, there is no evidence that the cellulitis came from the auto accident rather than arising from some other cause.

The original defendants in the lawsuit are David Marconi and Charles Nocella, the driver and owner of the car involved in the accident with Holloman. They also claim that the cellulitis has nothing to do with the accident and, in effect, are asking that if Dr. Olarsch is let out of this case, that Plaintiff be precluded from going against *them* for the cellulitis and its consequences.

It would not be hard for an expert for plaintiff to say that cellulitis resulted from either the accident itself or from some treatment for the injuries from the accident. However, the time has passed for expert reports, and nothing submitted thus far says that.

Plaintiff alleges that the fact that Dr. Olarsch billed the insurance company, presumably for no-fault benefits, for treatment for the cellulitis is enough to establish liability against Dr. Olarsch. This is a stretch, and I do not believe it is enough to get to a jury. The billing form was not even signed by Dr. Olarsch but just rubber stamped with Dr. Olarsch's name. There is no testimony that Dr. Olarsch had the ability to opine whether cellulitis can or cannot come from an accident or treatment for an accident. Very frankly, having looked at the papers submitted, I do not have the slightest idea whether there is any relationship between the accident, the treatment for the accident and the cellulitis. The bill for treatment rendered is

not enough. If I have to guess, so would the trier of fact, and accordingly, there is not enough to go to the jury on this issue.

Of course, the Plaintiff could have sued Dr. Olarsch in a separate malpractice action for improperly treating the cellulitis. However, he did not and the two-year statute of limitations for a medical malpractice action has run.

Things may be backwards here, since the original defendants Marconi and Nocella probably should have filed a motion to preclude the plaintiff from pursuing damages against them for the cellulitis and its consequences. However, that in effect is what is being asked of the court now by both the original defendants Marconi and Nocella and the additional defendant, Dr. Olarsch. The bottom line is that since there is no evidence that the cellulitis resulted from the accident or its treatment, Plaintiff cannot recover for that condition against the original defendants Marconi and Nocella in the automobile accident case. He also has missed the statute of limitations for a medical malpractice action and cannot recover from Dr. Olarsch.

This leaves additional Defendant Dr. Nicholas Diamond. His answer to Plaintiffs' New Matter raised in response to Dr. Olarsch’s Summary Judgment Motion does not require Court action. Presumably, Dr. Diamond could be successful on a motion for summary judgment since he was only involved with the cellulitis, but we will cross that bridge if it is approached. Since Plaintiff is now precluded from presenting any evidence in the auto case of the cellulitis and of any alleged malpractice in

treating it, one would think creative lawyers could find a way to get Dr. Diamond out of the trial of the auto case.

I must comment that the presentation of this matter by all counsel did not leave the Court with an easy job in figuring out what was going on.

Nothing has happened since July, 2000. The order of June 12, 2000, and the order denying reconsideration of July 13, 2000, were properly rendered. There is no testimony that the cellulitis was related to the auto accident, and no suit filed within the statute claiming medical malpractice.

BY THE COURT,

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R. B. KLEIN, J.

DATE: December 19, 2000