



Federal Court Rules Medical Malpractice Claims Against Department of Defense Tolled By Servicemembers' Civil Relief Act

On October 31, 2023, the Honorable Rudolph Contreras, District Judge for the United States District Court for the District of Columbia, denied the government's motion to dismiss in *Larumbe v. Secretary of Defense*, holding that medical malpractice claims against the Department of Defense ("DoD") are tolled by the Servicemembers' Civil Relief Act (50 U.S.C. § 3936). The Court's ruling marks a significant victory not only for the plaintiffs in this action, but for all those who seek to hold the DoD accountable for medical malpractice under 10 U.S.C. § 2733a.

In January of 2019, Maria Martinez, who was on active duty in the United States Army, became concerned about her health and requested a medical screening for breast cancer. An oncologist evaluated Martinez. Based on Martinez's family history, possession of the BRCA2 gene mutation, and physical symptoms, the oncologist recommended that Martinez's primary care physician perform a diagnostic MRI to determine whether Martinez had breast cancer. Martinez's primary care physician, however, incorrectly ordered a screening, rather than a diagnostic, MRI. Because of this negligent clerical error, DoD's health insurance denied Martinez the screening MRI on three separate occasions. Each time, Martinez was told she did not meet the criteria for a screening MRI. Inexcusably, Martinez's primary care physician also failed to order any different type of procedure to determine whether Martinez had breast cancer. Ten months after Martinez first requested breast cancer testing, she was admitted to an emergency room with shortness of breath. Finally, a doctor gave Martinez a diagnostic examination, including a biopsy, which confirmed that Martinez had breast cancer. By this stage, though, there was nothing that could be done – Martinez's breast cancer had become so advanced that it was incurable. Tragically, and as a direct result of incompetent medical treatment she received from DoD providers, Martinez died at the age of 26 in December of 2021.

A month before her death and while still serving in the military, Martinez filed a claim for medical malpractice with the DoD. The Department of Army Tort Claims Division denied Martinez's claim, asserting that her claim was untimely filed. After her death, Eduardo Larumbe and Christopher Fernando Montas Correa —Martinez's father and husband, respectively – appealed the denial to the Defense Health Agency's Military Malpractice Claim Appeals Board, which affirmed the denial, again based on untimeliness. Plaintiffs then sued under the Administrative Procedure Act (5 U.S.C. § 701 *et seq.*), requesting that the District Court set aside as unlawful the DoD's denial of Martinez's medical malpractice claim under 10 U.S.C. § 2733a.

The government moved to dismiss the case, arguing first that 10 U.S.C. § 2735 bars judicial review of the plaintiffs' medical malpractice claim, and second that the plaintiffs' claim was not timely filed, because 10 U.S.C. § 2733a requires actions to be filed within two years of accrual.

The Court denied the government's motion to dismiss, rejecting both of the government's arguments. First, the Court determined that while 10 U.S.C. § 2735 does bar judicial review in certain instances, that bar of judicial review does not extend to instances where a plaintiff's due process rights have been violated. The Court held that in the present case, the plaintiffs had asserted



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a violation of their due process rights, because the government failed to consider the tolling of the statute of limitations for Martinez's medical malpractice claim, as required by the Servicemembers' Civil Relief Act. For this reason, the Court also rejected the government's second argument, and held that the tolling provisions of the Servicemembers' Civil Relief Act apply to military medical malpractice claims brought under 10 U.S.C. § 2773a. Because Martinez was serving in the military at all times relevant to the litigation, the Servicemembers' Civil Relief Act tolled the statute of limitations, and her claim was timely filed.

Although this is a major victory for Eduardo Larumbe and Christopher Fernando Montas Correa, the fight is not over. The firm is proud to represent these men and carry Maria Martinez's legacy of service. We will not rest until justice is done.

If you or a friend or loved one in the service has experienced medical malpractice at the hands of DoD medical providers, the Servicemembers' Civil Relief Act can help ensure that your claim is timely filed and that you receive the relief you deserve.

For more information, please contact:

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