

March 30, 2011

Sex Torts: Just Desserts?

Thousands of Americans contract sexually transmitted disease every year. It seems that many view them simply as the cost of doing business. Most victims of STD's do little or nothing to seek any kind of justice or compensation for what can result in death in some cases and in many more a lifetime of suffering, medical treatment and medical costs.

There are others that take a more proactive approach like the recent California case of *Behr v. Redmond*. The female plaintiff in that case won a verdict of \$6,753,600 which included \$2.75 million in punitive damages.

The case was appealed disputing the jury's high award of damages. and the compensatory damage award of \$4,003,600 was found to be excessive due to the lack of relationship between the award for future medical damages and the actual future medical damages established at trial. However, the punitive damage award was upheld in its entirety.

Behr's complaint alleged battery, intentional infliction of emotional distress, negligence, negligent infliction of emotional distress, fraud by concealment, and fraud by misrepresentation. Essentially, Behr alleged that Redmond had sex with her knowing that he had herpes. Interestingly, Redmond did after several months into the relationship admit having herpes and the two continued to have sex. However, it was established that Redmond assured Behr that she could not catch the disease while it was dormant. These latter assurances served the basis for the fraudulent misrepresentations claims.

The caveat emptor (buyer beware) approach to the victim of STD's is in the distant past. Sex torts are now treated much like any other tort with principles of negligence, recklessness, fraud, battery and so on. Likewise they are equally compensable.

Some courts have even taken on a paternalistic posture recognizing the severe risks to society of STD's particularly in light of the AIDS epidemic. It seems that juries are like-minded in their disdain for irresponsible, reckless and dangerous sexual practices that endanger the health and safety of unknowing victims. This is made evident by some very large verdicts coming down in these cases, much like the one in *Behr v. Redmond*.

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