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Re: Davis v. St. Francis Hospital, et. al.
C.A. No. 00C-06-045-JRJ
*On Plaintiffs' Motion in Limine to Exclude Evidence of Annuity
Payments Made Pursuant to a Military Pension - **GRANTED.***

Dear Counsel:

It has been some time since counsel argued plaintiffs' motion in limine regarding the admissibility of the annuity payments received by Mrs. Davis upon Mr. Davis' death. I apologize for the delay in issuing my opinion. I have reviewed the transcript of the December 5, 2001 hearing and the case law cited by the parties. As counsel pointed out, there is not much guidance afforded by the case law on the issue of whether annuity payments stemming from a military pension constitute a

“public collateral source” under 18 *Del. C.* § 6862.¹ As plaintiffs point out, Mr. Davis exercised his option to voluntarily reduce the amount of his monthly military pension payments to provide annuity payments for Mrs. Davis upon his death. For the reasons set forth below, I find that the annuity payments received by Ms. Davis are not a “public collateral source” under 18 *Del. C.* § 6862.

If Mr. Davis had been employed by a “private” employer, as opposed to the United States Army, and had he exercised the same option, that is, voluntarily reducing the amount of his pension payments in order to provide financial security for his spouse upon his death, there would be no question that the annuity payments received by Mrs. Davis are not a “public collateral source.” The plaintiffs should not be penalized under 18 *Del. C.* § 6862 because Mr. Davis chose to work for the United States Army as opposed to a non-governmental, “private” employer. That result would be contrary to public policy, and the Court does not believe that this is a result intended by the Legislature in enacting 18 *Del. C.* § 6862. Mr. Davis’ military pension and the annuity that stems from it are not “public” collateral sources, like Social Security or Medicaid.² Social Security and Medicaid are needs-based, and persons who collect these benefits receive, in essence, “socially

¹18 *Del. C.* § 6862 provides, in pertinent part: In any medical negligence action... there may be introduced, and if introduced, the trier of facts shall consider evidence of... [a]ny and all facts available as to any public collateral source of compensation....” The purpose of this statute is to prevent the collection of a loss from a collateral public source and then the collection for the same loss from the party being sued. *Nanticoke Memorial Hosp., Inc. v. Uhde*, 498 A.2d 1071, 1075 (Del. 1985).

²See *Nanticoke Memorial Hosp., Inc. v. Uhde*, 498 A.2d 1071, 1075 (Del. 1985) (Holding Social Security is a “collateral public source”); *Monroe v. Bose*, 1999 WL 33117217 at *3 (“It is clear that Medicaid is a public source of benefits.”).

provided insurance.”³ Mr. Davis’ military pension and the resulting annuity are not socially provided insurance. Mr. Davis worked to earn his pension. Mrs. Davis is only entitled to the annuity payments because her husband worked a sufficient number of years so that his pension would vest. Moreover, Ms. Davis is only entitled to the annuity payments because her husband voluntarily reduced the amount of his monthly pension payments. The fact that his employer was the United States Army and not a “private” employer does not bring his pension or the resulting annuity within the ambit of a “public” collateral source as defined in 18 *Del. C.* § 6862. Unlike with Medicaid or Social Security, members of the general public are not entitled to apply for, or receive, the military pension benefit Mr. Davis received or the annuity payments his widow receives as a result of that pension. Consequently, plaintiffs’ motion to exclude reference to the annuity payments received by Mrs. Davis as a result of her husband’s 28 plus years in the service of the United States Army is **GRANTED.**

IT SO ORDERED.

Jan R. Jurden, Judge

³*Developments in the Law - Toxic Waste Litigation*, 99 Harv. L. Rev. 1631, 1649 (1986).