

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Guidant Corp. Implantable
Defibrillators Products Liability Litigation

MDL No. 1708
(DWF/AJB)

This Document Relates to All Actions

APPENDIX B TO
PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS THE MASTER COMPLAINT
CLAIMS OF DEVICE RECIPIENT PLAINTIFFS

Appendix B

Exemplar States In Which Emotional Distress Damage Claims Do Not Require Physical Injury

<u>State</u>	<u>Rule</u>
Alaska	“[W]henever a defendant stands in a contractual or fiduciary relationship with the plaintiff and the nature of this relationship imposes on the defendant a duty to refrain from conduct that would foreseeably result in emotional harm to the plaintiff, the plaintiff need not establish a physical injury in order to recover for the negligent infliction of emotional distress.” <i>Chizmar v. Mackie</i> , 896 P.2d 196, 203 -204 (Alaska 1995) (permitting recovery against physician for negligently reporting that plaintiff was infected with HIV when she was not).
California	A plaintiff may recover emotional distress damages in an ordinary negligence action without any showing of physical injury. <i>E.g., Molién v. Kaiser Foundation Hospitals</i> , 27 Cal.3d 916, 167 Cal. Rptr. 831, 616 P.2d 813 (1980) (allowing recovery of pure emotional distress damages as a result of negligently reporting that plaintiff’s wife had syphilis).
Illinois	A direct victim of a defendant’s negligence need only allege the usual elements of negligence – duty, breach and damages – and can recover for emotional distress without alleging or proving any physical injury <i>Corgan v. Muehling</i> , 574 N.E.2d 602, 609 (Ill. 1991) (no physical injury required for malpractice case arising out of therapist’s act of having sexual relations with patient).
Iowa	No physical injury required in order to recover emotional distress damages “where the nature of the relationship between the parties is such that there arises a duty to exercise ordinary care to avoid causing emotional harm.” <i>Oswald v. LeGrand</i> , 453 N.W.2d 634, 639 (Iowa 1990) (stillbirth).
Louisiana	“A plaintiff can recover for unintentional or negligent infliction of emotional distress unaccompanied by physical injury” even though “an independent tort of negligent infliction of emotional distress is not recognized.” <i>Succession of Harvey v. Dietzen</i> , 716 So.2d 911, 916, (La. App. 4 Cir. 1998) (reversing summary judgment on negligent infliction of emotional distress claim arising out of mishandling of an estate).

<u>State</u>	<u>Rule</u>
Maine	<p>“[E]motional distress alone may constitute compensable damage. . . .”</p> <p><i>Devine v. Roche Biomedical Laboratories, Inc.</i>, 637 A.2d 441, 447 (Me. 1994) (citing <i>Gammon v. Osteopathic Hospital of Maine</i>, 534 A.2d 1282 (Me.1987) (allowing recovery for emotional distress alone, arising from a hospital’s negligence in giving the plaintiff a bag containing a human leg along with a decedent’s personal effects (the leg was not the decedent’s)).</p>
North Carolina	<p>A plaintiff “has suffered severe emotional distress as a proximate result of the defendant's negligence, the plaintiff need not allege or prove any physical impact, physical injury, or physical manifestation of emotional distress in order to recover on a claim for negligent infliction of emotional distress.”</p> <p><i>Johnson v. Ruark Obstetrics and Gynecology Associates, P.A.</i>, 395 S.E.2d 85, 97 (N.C. 1990) (allowing recovery of emotional distress damages for death of a fetus).</p>
Texas	<p>“Where emotional distress is a recognized element of damages for breach of a legal duty, the claimant may recover without demonstrating a physical manifestation of the emotional distress.” <i>Boyles v. Kerr</i>, 855 S.W.2d 593, 598 (Tex. 1993). <i>See also Orkin Exterminating Co. v Williamson</i>, 785 SW2d 905 (Tex. App. 1990) (emotional distress damages available for negligent exposure to toxins).</p>