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TORT LAW

Can lawyers hold doctors accountable for wasting our time?

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Marcel Strigberger.

I'm mad as hell, and I'm not waiting any longer! Those were the sentiments expressed by a lawyer colleague of mine, Franklin, after his doctor kept him waiting for over two hours. "I should send him a bill for my wasted time," he said.

I'm sure many of us have heard this one before. But I doubt anyone has ever sent a bill to a physician for time lost sitting around the waiting room. What would happen if, say, a lawyer tried it? Why not? The law is no stranger to landmark iconic cases, such as *Miranda* rights upon arrest or *Donoghue v. Stevenson*, the iconic negligence icebreaker case where a manufacturer of ginger beer was held liable to a pub customer who found a decomposed snail in her opaque beverage. The British courts awarded

her damages in addition to just saying "Yech!"

I think we would all like to see a lawyer bringing forth a lawsuit against a doctor, with the judge's decision looking something like this:

Impatient J.:

This is an action for damages by Melvin Alvin, lawyer, against Dr. Arthur

Coopersmith, dermatologist. The plaintiff alleges that he visited the offices of the good doctor to deal with a boil which sprung up on his neck. He says the appointment was scheduled for 10:30 a.m. on the 23rd of June last, but that he was not seen by the doctor until 12:45 p.m. He notes that the defendant doctor met him for about five minutes, during which he prescribed some ointment. The plaintiff pleads that he should not have been kept waiting more than two hours, for him “time is money,” and accordingly, the next day he sent the doctor a bill for \$1,000 representing two hours of his billable time.

I will note that at the commencement of this trial, the defendant asked that I recuse myself from hearing this case if I had ever been kept waiting by a doctor and did not like it. I denied the motion on the basis that although doctors have consistently wasted hours of my life keeping me waiting unnecessarily like an idiot in their crowded unpleasant waiting rooms, overcrowded with patients obsessed with their cellphones, it never really bothered me. After all, I am a judge of the law. I am totally objective. Yes.

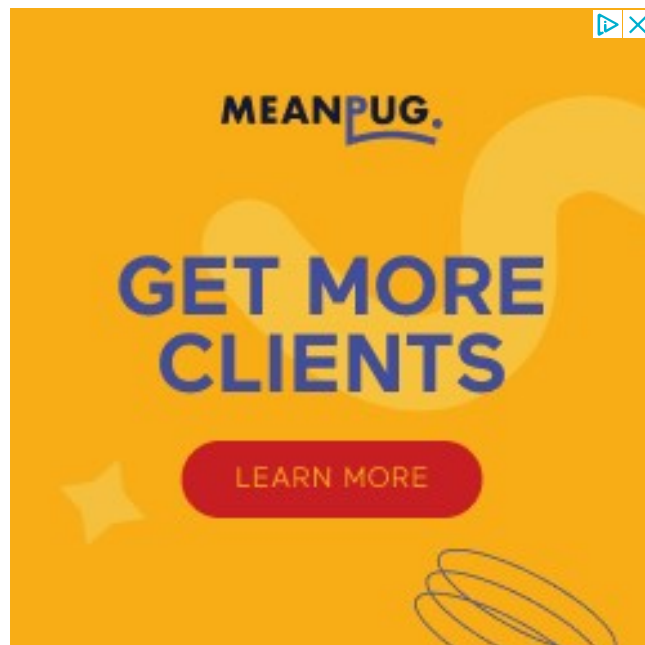
FACTS:

The good lawyer plaintiff Alvin, to whom I shall refer as Melvin, testified that he intended to spend the morning in question preparing for a divorce trial. He expected to be seen as scheduled at 10:30 by the defendant doctor Coopersmith, to whom I shall refer as the defendant. Melvin notes that he even called the defendant’s office before arriving to assess any possible waiting time and spoke to the receptionist, one Gladys, who said, “The doctor is busy seeing many patients. He will see you this morning. Ha ha! Most important, don’t forget your health insurance information ...”

ANALYSIS

Melvin argues several points of law justifying his claim. His first point is that the defendant is liable for forcible confinement. True, the good lawyer could have picked up and left, but that boil on his neck was too irritating and he had no choice but to hang in there in that overcrowded unpleasant waiting room until he was seen by the defendant, who was totally inconsiderate of his patients’ time. I find there was a clear case of forcible confinement here.

Melvin also argues that the defendant is liable for intentionally causing alarm and distress. He testified that around 10:54 he was getting agitated waiting, and he asked Gladys to ask the defendant how much longer he would have to wait before being seen. He notes that Gladys replied, in the style of Charles Dickens’ Madame Defarge, “Nobody interrupts the doctor. Ha ha.” She then went back to her knitting.



In addition, the poor plaintiff Melvin pleads liability in negligence. He claims that there was a duty of care owing by the defendant doctor to his patients to make them feel good, not traumatized. He refers to some well-established case law noting that physicians have for centuries systemically kept patients waiting. He cites the iconic keep-waiting case going back to the days of Chaucer, *The Man of Law v. the Doctor*, 31 C.C.C. (Court of Crazy Cases) p 113. This was an action started by a lawyer, one William of Yorke, who during a pilgrimage to Canterbury came down with a fever. He consulted his fellow pilgrim the doctor, and he was kept waiting for five hours before being seen. The trial judge, one Lord Gerald, noted, “Five hours? That’s way too long to be seen and treated with leeches. The good lawyer should not have had to wait more than minutes before seeing a leach. A plague on the defendant.”

Another case cited was *Robin of Loxley v. Sherwood Forest and Associates*, 29 N.N.R. (Not Nottingham Reports) p 311, where the plaintiff successfully sued a group of physicians for showing up three hours late when making a house call to Robin Hood and his merry men. The judge, Little Arnold J., awarded Robin Hood a sum of 280 shillings, representing what he could have earned during this down time, stealing from the rich and giving to the poor.

This court finds Melvin had made out a case against the defendant on all of his arguments.

DAMAGES

The evidence was that his claim for damages for time lost was clearly foreseeable. After waiting about 15 minutes, the plaintiff Melvin told Gladys, “Hey, my billable time is \$500 per hour ... just letting you know. I’ll be back in a couple of minutes after I get a cup of coffee from Starbucks. My meter is running.”

I find this evidence credible and foreseeable.

DISPOSITION

There will be judgment for the plaintiff as claimed, including legal costs. This award is to be paid forthwith. No waiting.

I can't say we shall see a court decision like this for a while. We may have to wait a bit.

*Marcel Strigberger, after 40-plus years of practicing civil litigation in the Toronto area, closed his law office and decided to continue his humor writing and speaking passions. His latest book is *First, Let's Kill the Lawyer Jokes: An Attorney's Irreverent Serious Look at the Legal Universe* (https://www.amazon.com/dp/B0DFHJGX1R?ref=cm_sw_r_cp_ud_dp_JNBV4X3RA8XVQ845YECR&ref_=cm_sw_r_cp_ud_dp_JNBV4X3RA8XVQ845YECR&social_share=cm_sw_r_cp_ud_dp_JNBV4X3RA8XVQ845YECR&starsLeft=1). Visit [Marcelshumour.com](https://www.marcelshumour.com) and follow him at [@Marcelshumour](https://twitter.com/Marcelshumour) on X, formerly known as Twitter.*

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