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People Who Pass On AIDS Virus May be Sued

By ADAM LIPTAK

People infected with the virus that causes AIDS may sue the sexual partner who transmitted the virus to them even if the partner did not do so knowingly, the California Supreme Court ruled yesterday.

Bridget B. and John B., as they are known in court papers, started dating in 1998 and married in July 2000. Bridget said that John told her he was healthy and monogamous and that he urged her to have unprotected sex with him. In October 2000, though, she tested positive for H.I.V., the virus that causes AIDS, as did he.

Bridget later learned, her lawsuit says, that John had had sex with men before and during their marriage. She seeks compensation for what she says was John's infliction of emotional distress and fraud.

In his own court papers, John responded that he had tested negative for H.I.V. in August 2000 and that in fact Bridget had infected him.

The immediate issue before the court was how much information about John's sexual history he had to turn over in the litigation. To answer that question, though, the majority ruled, it had to determine what Bridget had to prove to win her case.

John conceded that he would be liable if he had affirmatively known, by means of an AIDS test or medical diagnosis, that he was infected when he had sex with Bridget. But he argued that the information Bridget sought could at best show that he had reason to know he was infected and that such so-called constructive knowledge should not be enough to give rise to liability.

Courts in other states have allowed lawsuits for the negligent transmission of sexual diseases based on both actual and constructive knowledge, but they have only rarely confronted the question in the context of H.I.V.

The California court imposed a relatively broad standard yesterday, allowing suits based on constructive knowledge.

"The burden of a duty of care on defendants who know or have reason to know of their H.I.V. infection is minimal, and the consequences for the community would be salutary," Justice Marvin R. Baxter wrote for the four-justice majority.

A fifth justice issued a mixed opinion, and two dissented.

Katharine K. Baker, a law professor at Chicago-Kent College of Law and the co-author of a law review article on the legal consequences of reckless sex, said the majority had struck roughly the right balance.

"It suggests," Ms. Baker said of the ruling, "that you are responsible for understanding the ramifications of your past sexual activities and must also be responsible in current sexual activity."

Eric S. Multhaup, John's lawyer, said he welcomed some aspects of the decision that limited information his client had to turn over. But Mr. Multhaup said he was mystified by the ruling on the responsibilities of people who may have reason to know they are infected.

"The court did not define what a person is supposed to do with any clarity or specificity," he said. "It's not going to help the people of California in knowing how to go about their social lives."

The justices in the majority said allowing suits based on both actual and constructive knowledge created the right incentives. Otherwise, Justice Baxter wrote, people might avoid being tested to make sure they could not be sued by their partners.

Justice Carlos R. Moreno, in dissent, scoffed at that argument, saying it was hard to believe someone would take liability into account in deciding whether to get tested.

The ruling "potentially licenses invasions into the sexual privacy of all sexually active Californians and may even invite abuse of the judicial process," Justice Moreno said. "One can easily foresee a spate of 'shakedown' or vengeance lawsuits brought by plaintiffs whose motivation is not so much to discover how they contracted H.I.V. as to force lucrative settlements or embarrass a former sexual partner by exposing that person's sexual history."