

COURT WATCH

FROM THE OFFICES OF FLAHERTY, SENSABAUGH, & BONASSO, P.L.L.C.

January 4, 2007

Riggs v. WVUH

Petition for appeal from the circuit court of Monongalia County to the West Virginia Supreme Court of Appeals

TOPIC: Whether infection control negligence falls within the parameters of the MPLA and the constitutionality of the cap on non-economic damages established in 1986.

In March 2001, plaintiffs sued West Virginia University Hospitals, Inc., (“WVUH”) and the University of West Virginia Board of Trustees (“BOT”) asserting claims of medical malpractice arising out of a 1995 knee surgery and a resulting infection, which was diagnosed four years later. Plaintiffs claimed infection control practices were sub-standard at the Hospital in 1995. Defendants answered that the patient had no signs of infection until after a second surgery four years later at a different hospital. The case was tried in early fall 2006. The jury awarded economic damages in the amount of \$84,989.39 for past medical expenses and *ten million dollars* for non-economic damages. The BOT settled with Plaintiffs prior to trial. Thereafter, Judge Robert B. Stone entered judgment in favor of the Plaintiffs in the amount of \$84,989.39 for past medical expenses and reduced the non-economic damages to *one million dollars* in accord with the cap established in 1986.

Plaintiffs recently filed a petition for appeal with the West Virginia Supreme Court of Appeals. Their petition alleges two errors: 1. allegations of infection control negligence do not fall within the MPLA rules (and therefore there is no cap on non-economic damages); and 2. the one million dollar cap is unconstitutional. The Hospital filed a cross appeal alleging insufficient evidence at trial to support the jury’s verdict.

WVSMA and WVHA jointly filed an *amicus* brief in support of the Hospital’s positions that 1. infection control is part of a patient’s health care in a hospital setting; and, therefore, the MPLA applies; and 2. the cap has been upheld by the Supreme Court on two prior occasions and is constitutional.

The Supreme Court has not yet decided whether it will accept the petition. We will update you when we hear whether the Court wants to take the issues or refuse the petition for appeal.
