

## **COURT WATCH**

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

June 7, 2007

*Estate of Fout-Iser v. Rhee*

Appeal from the Circuit Court of Mineral County to the West Virginia Supreme Court of Appeals

**TOPIC: Whether the Circuit Court properly granted summary judgment<sup>1</sup> to the defendant radiologist based on the plaintiffs' failure to produce adequate expert testimony regarding the standard of care?**

*Estate of Fout-Iser v. Rhee* was originally reported on in the April 2, 2007 edition of Court Watch. In *Estate of Fout-Iser*, the plaintiffs brought a medical negligence action against the defendant radiologist alleging that the defendant radiologist failed to follow the standard of care by not providing the radiology technician guidance in performing a pelvic ultrasound on the plaintiff. The Circuit Court of Mineral County found that the plaintiffs did not present any expert testimony regarding the standard of care or causation and granted summary judgment to the defendant. The plaintiffs appealed the Circuit Court's decision.

On May 21, 2007, the West Virginia Supreme Court of Appeals rendered its decision. The Supreme Court reviewed the deposition testimony of the plaintiffs' experts. After its examination of the experts' testimony, the Supreme Court found that the experts had testified regarding the standard of care and causation. While the Circuit Court had found that the expert testimony was not enough to create a factual issue, the Supreme Court concluded that the plaintiffs had presented expert testimony that could cause a jury to determine that the defendant had deviated from the standard of care. Therefore, the West Virginia Supreme Court of Appeals reversed the Circuit Court's decision and remanded the case for further proceedings.

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