

COURT WATCH

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Riggs v. West Virginia University Hospitals, Inc., Appeal No. 33335

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

TOPIC: Whether claims of infection control negligence fall within the parameters of the Medical Professional Liability Act?

Riggs v. West Virginia University Hospitals was last reported on in the October 9, 2007 edition of Court Watch. On November 20, 2007, the West Virginia Supreme Court of Appeals issued its opinion in this case. In *Riggs*, the plaintiffs claimed that in 1995, the defendant hospital was experiencing a bacterial outbreak in its operating rooms and surgical intensive care unit. Plaintiffs argued that Ms. Riggs contracted a bacterial infection during knee surgery, which went undiagnosed for four years. After the plaintiffs received a \$10 million jury verdict, the Circuit Court lowered the verdict to \$1 million to comply with the statutory cap set-forth in the Medical Professional Liability Act (“MPLA”) for non-economic damages.

On appeal, the plaintiffs argued to the Supreme Court that the Circuit Court’s reduction of the jury’s \$10 million verdict was inappropriate, claiming that their infection control claims were governed by premises liability law. The defendant argued that the reduction was proper because the plaintiffs’ claims were medical negligence claims, which are governed by the MPLA. The WVSMA and WVHA filed a joint amici curiae brief in support of WVUH’s position that infection control is health care within the scope of the MPLA.

The West Virginia Supreme Court of Appeals held that the Circuit Court properly reduced the verdict to comply with the statutory \$1 million cap set-forth in the MPLA. The Supreme Court found that, throughout the course of the litigation, the plaintiffs asserted numerous times that their case was a “medical professional negligence” case. The Court reasoned that the plaintiffs could not argue, post-trial, that their claims were not governed by the MPLA because the doctrine of judicial estoppel¹ prohibited the plaintiffs from doing so.

Notably, the Supreme Court declined to rule on whether infection control negligence falls within the parameters of the MPLA. Since the Court decided the case based on other reasons, the claim advanced by plaintiffs that infection control is somehow outside the scope of the MPLA remains.

¹ “Judicial estoppel” is “estoppel that prevents a party from contradicting previous declarations made during the same or later proceeding if the change in position would adversely affect the proceeding or constitute a fraud on the court.” *Black’s Law Dictionary*, 571 (7th ed. 1999).