

COURT WATCH

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

October 9, 2007

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 infection control negligence falls within the parameters of the Medical Professional Liability Act?

Riggs v. West Virginia University Hospitals was reported in the January 4, 2007 and March 25, 2007 Court Watch editions. On October 23, 2007, the West Virginia Supreme Court of Appeals will hear the parties' arguments as to the plaintiffs' allegations that infection control negligence does not fall within the Medical Professional Liability Act ("MPLA").

In briefs recently submitted to the West Virginia Supreme Court of Appeals, the plaintiffs argue that the provisions of the MPLA, including its statutory \$1 million cap, do not apply to infection control services at the hospital. Plaintiffs reason that infection control is an administrative function of a hospital and is not involved in patient care. In light of the West Virginia Supreme Court of Appeals decision in *Phillips v. Larry's Drive-In Pharmacy*, in which the Court held that pharmacies are not governed by the MPLA, plaintiffs contend that infection control should not be governed by the MPLA because, like pharmacies, infection control is not "hands-on" with patients.¹

Defendant argues that the MPLA should apply to infection control services because throughout the case, the plaintiffs referred to their claims as "medical malpractice" claims, which are governed by the MPLA. In addition, the defendant argues that the MPLA covers all medical professional liability actions brought against health care providers, such as a hospital, for services rendered to a patient. Defendant claims that infection control is a service rendered to a patient, and, therefore, infection control should be included under the MPLA.

In addition to briefs submitted to the West Virginia Supreme Court of Appeals by the plaintiffs and the defendant, the West Virginia Hospital Association, West Virginia State Medical Association, and West Virginia Mutual Insurance Company all submitted *amicus curiae* briefs in support of the defendant's argument.² The West Virginia Association for Justice submitted an *amicus curiae* brief in support of the plaintiffs' position.

Additional Court Watch updates will be provided as this case develops.

¹ *Phillips v. Larry's Drive-in Pharmacy* was reported on in the July 2, 2007 edition of Court Watch.

² The amici West Virginia State Medical Association and West Virginia Hospital Association filed a joint brief authored by Michele Grinberg, Esq. and Dustin Dillard, Esq. of Flaherty, Sensabaugh and Bonasso, PLLC.