



VENABLE HEALTH CARE E-LERT

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COURT UPHOLDS INSURER INSOLVENCY PROTECTION

As medical malpractice insurance issues continue to dominate the health news, the recent decision of a Maryland court (Frederick Memorial Hospital vs. Property & Casualty Insurance Guaranty Corporation) offers insight for hospitals faced with defending suits when their insurer goes under.

When the plaintiff hospital's insurer, PHICO, went into receivership in Pennsylvania in early 2002 (insurance companies cannot go into bankruptcy, and instead go into a receivership managed by the state), the hospital was left without any source of funds to either pay defense costs or any eventual liability awards. The State of Maryland had created a fund -- the Property & Casualty Insurance Guaranty Corporation - to prevent financial loss to Maryland residents who are claimants or policyholders of an insolvent insurance company. Despite the State's intent that this fund serve as an insurer of last resort in such situations, the fund refused to cover the claims. Ignoring the State's assertions of a time bar, the court ordered the fund to cover the claims and to pay defense costs for the claims in question, resulting in a clean win for the hospital. However, timing is always an issue, and the laws of the jurisdiction in which the insurer is domiciled may lead to a different result in a different liquidation. This case involved an occurrence based policy, which increased the problem of lost past coverage.

The case demonstrates that the potential for insurer insolvencies is one more factor that must be taken into account in developing insurance strategies. For additional information, please contact Peter Parvis at 410-244-7644, ppparvis@venable.com or Steve Marshall 410-244-7407, semarshall@venable.com.

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