



In re: Hahnemann University Hospital (Del. Bankrupt. Ct. and Dist. Of Del.)

Topics Covered: Medical Malpractice Liability Insurance

Outcome: Very Favorable

Issue

The issue in this appeal is whether physicians who were employed at a hospital that filed bankruptcy were entitled to have the bankruptcy estate pay for their medical malpractice insurance tail coverage.

AMA Interest

The AMA seeks to be the unified voice of the medical profession.

Case Summary

Pennsylvania physicians, as a condition of licensure, must have adequate insurance medical liability insurance, including coverage for prior occurrences.

Hahnemann University Hospital, formerly a prominent academic hospital in Philadelphia, filed for bankruptcy protection in the United States Bankruptcy Court for the District of Delaware on June 30, 2019. Prior to the bankruptcy, Hahnemann was training several hundred residents and fellows. Within two months of the bankruptcy filing, Hahnemann had discharged most of its employees, including the residents/fellows, stopped accepting new patients, and transferred its current patients to other area hospitals. All of the residents/fellows accepted graduate medical education positions at other hospitals. Most, but not all, of these other hospitals are located in the Philadelphia area.

Also prior to the bankruptcy filing, Hahnemann had provided claims-based malpractice insurance coverage to its residents. This was notwithstanding a contractual obligation from Hahnemann to the residents/fellows to provide occurrence coverage. The Hahnemann policy was to expire on January 10, 2020, although it was extended further during the course of the litigation.

Shortly after its bankruptcy filing, Hahnemann contracted to sell its residency slots to Thomas Jefferson University Hospitals, a consortium of Philadelphia-area teaching hospitals. Under this sale agreement, the purchaser was to provide tail insurance coverage for the former Hahnemann residents/fellows.

Hahnemann sought approval for the sale from the bankruptcy judge, but the United States Department of Health and Human Services objected to the sale. The main objection was that the residency/fellowship slots were not Hahnemann's to sell. Rather, HHS asserted that it paid over \$100,000 per year for each resident/fellow, from Congressionally appropriated funds. Per

HHS regulations, it claimed, the residency/fellowship slots reverted to HHS when Hahnemann went bankrupt. HHS would then decide if, when, and how it would allocate those slots among potentially suitable teaching hospitals—which would not necessarily be located in the Philadelphia area. Despite the HHS objections, the judge approved the sale.

HHS appealed the sale order to the United States District Court in Delaware, which then stayed the sale approval order.

Litigation Center Involvement

The Litigation Center initially filed an *amicus* brief in the bankruptcy court, along with the Pennsylvania Medical Society and the Philadelphia County Medical Society, to support the PAHSPPP physicians' objection to the asset sale.

While the appeal was pending, the Litigation Center secured counsel for an ad hoc committee of residents and fellows who sought relief from the bankruptcy court for payment of their tail coverage. The parties reached a settlement, which included payment of the tail coverage for the impacted residents and fellows.

United States Bankruptcy Court for the District of Delaware brief