



Pennsylvania Professional Liability Joint Underwriting Association v. Governor of Pennsylvania, 2018 U.S. Dist. LEXIS 212542 (M.D. Pa. 2018)

Topics Covered: Taxation of Physicians

Outcome: Very Unfavorable

Issue

The issue in this case was whether Act 41 of 2018, P.L. 273, No. 41 (“Act 41”), which directs the Governor of Pennsylvania, with assistance from the General Assembly, to replace the board of a non-profit medical malpractice insurance fund and transfer the insurance fund’s assets to the state department of insurance, is constitutional.

AMA Interest

The AMA opposes the imposition of a selective revenue tax on physicians.

Case Summary

The Pennsylvania Professional Liability Joint Underwriting Association (“the Fund”) is a non-profit medical malpractice insurance fund that offers medical professional liability insurance for health care professionals in Pennsylvania. The Fund was established by in the legislature to facilitate health care providers’ access to liability insurance. Under current Pennsylvania law, the Fund is supervised by the state department of insurance, but the power to govern the Fund is vested in its board of directors. The Fund’s current surplus exceeds \$260 million.

Since 2016, the Pennsylvania General Assembly has passed three successive laws seeking to dissolve the Fund or otherwise transfer its assets to the state department of insurance. The Fund sued in federal court to enjoin these laws. In May of 2018, the court held that the Fund’s assets were private property. Thus, appropriation of the Fund’s assets under the earlier statutes would unconstitutionally appropriate private property without just compensation. This decision was appealed to the Third Circuit Court of Appeals.

One month later, in June of 2018, the Legislature passed Act 41, which again declared the Fund to be an “instrumentality” of the Commonwealth. Act 41 also allows the Governor and the General Assembly to replace and appoint new members of the board of directors and assume control of the Fund’s operations. Once again, the Fund sued to enjoin the law from taking effect.

On a motion for summary judgment, the United States District Court for the Middle District of Pennsylvania found that the Fund is a private entity. It further found that Act 41, if implemented,

would be an unconstitutional government taking of private property. Based on the Takings Clause of the Fifth Amendment, it entered summary judgment for the Fund.

Litigation Center Involvement

The Litigation Center and the Pennsylvania Medical Society filed a trial court *amicus* brief to support the Fund's motion for summary judgment.

United States District Court brief