



Case study: Jury finds for hospital after nursing agency refuses to indemnify settlement

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Authors:

[Barry D. Hunter](#)

Problem

Appalachian Regional Healthcare (ARH) retained the services of an agency which provided temporary staffing nurses to its Whitesburg facility. As part of its staffing contract, the nursing agency agreed to indemnify ARH against damages arising from the negligence of the nurses it supplied. However, when ARH was sued in a major lawsuit brought in Letcher Circuit Court claiming that a Letcher County resident had been paralyzed as a result of one of the agency nurse's negligence (specifically, failing to immobilize the patient after he had presented with a spinal injury), the agency refused to pay for ARH's defense costs or for the amounts it paid to settle the claims.

The nursing agency defended its refusals by claiming, alternatively, that (1) it was an ARH nurse — and not an agency nurse — that treated the patient, and (2) even if it was the nursing agency nurse that treated the injured patient, ARH shouldn't have settled the claim because the nurse wasn't negligent, nor did her conduct cause the patient's injury.

Solution

After its settlement with the injured patient, ARH asked Frost Brown Todd (FBT) to pursue its indemnity claim against the nursing agency. FBT's trial team, led by Barry Hunter, sued the nursing agency in federal court in Pikeville, Kentucky, seeking recovery of the defense costs and the settlement payment for the Letcher County lawsuit. As an initial matter, FBT needed to overcome the nursing agency's defense that ARH could only pursue its indemnity claim if it could show that ARH was actually liable to the injured patient for his injuries. FBT challenged this defense through a motion for declaratory relief, arguing that ARH could pursue its indemnity claim merely by showing that it was reasonable to have settled with the injured patient — not that it ultimately would have

been held liable in the Letcher County case.

The Court sided with FBT's position, finding in a preliminary ruling prior to discovery that ARH would be entitled to indemnity if it could prove that the agency nurse transported the patient, that she was negligent in doing so, and that it was reasonable for ARH to settle with the injured patient. At trial, FBT established, through eyewitness testimony, that it was the agency nurse who treated the patient; it established, through medical expert testimony, that the nurse's conduct was negligent; and it established, through legal expert testimony, that the settlement was reasonable. Thus, the jury found on all issues for ARH.

Client Benefit

ARH was awarded the full amount of its costs for defending the Letcher County case (\$875,000), the full amount of its settlement costs (\$2,000,000), and the full amount of its pre-judgment interest (\$475,000).

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