



One Minute Memo™

Tenth Circuit Finds Legal Theories to Challenge Hospital Staffing Decisions

A federal court, the Tenth Circuit Court of Appeals, which includes the states of Colorado, Kansas, Oklahoma, New Mexico, Utah, and Wyoming, recently issued a decision to allow a class action suit to proceed against Hospital Corporation of America (“HCA”). The case, *Spires v. Hospital Corporation of America*, 2008 WL 2152402 (10th Cir. May 23, 2008), is based on state law theories for alleged understaffing.

The plaintiffs brought state law claims in federal court based on diversity jurisdiction under the Class Action Fairness Act. The plaintiffs, who represent their deceased next of kin, seek to represent a class of patients who were in the defendant’s hospitals on days when the hospitals allegedly were understaffed. Their complaint alleges that the defendant used a computer software program designed to schedule too few staff members as a cost saving measure. The case was brought under the Kansas Consumer Protection Act (KCPA), as well as under the theories of common law negligence and unjust enrichment. The lawsuit names only HCA, not the hospitals at which the care was provided to the plaintiffs’ relatives.

The District Court, sitting in Kansas, dismissed the complaint, concluding that challenges to the level of medical staffing were not covered by the KCPA and

that medical staffing issues could only be challenged as medical malpractice. The negligence and unjust enrichment claims were dismissed by the District Court because it concluded that the plaintiffs had not alleged that HCA had violated any duty owing to the plaintiffs or benefited from any wrongful conduct. The Tenth Circuit Court of Appeals disagreed and reversed, except as to the unjust enrichment claim.

The KCPA, like many state law statutes governing deceptive business practices, prohibits a supplier from engaging “in any unconscionable act or practice in connection with a consumer transaction.” The Tenth Circuit noted that state consumer protection statutes do not generally provide a cause of action for medical malpractice; however, the Kansas Supreme Court held in 2007 that the statute was broad enough to cover medical malpractice claims. The Kansas legislature then amended the KCPA to exclude medical malpractice claims from its coverage. In other words, the legislature overruled the Kansas Supreme Court’s decision. The Tenth Circuit held that the events at issue had occurred before the KCPA had been amended. Because the Amendment was not retroactive, the plaintiffs stated a claim under KCPA.

More troubling for hospital systems is the Tenth Circuit's treatment of the negligence tort claim. The Tenth Circuit held that because HCA developed the computer software staffing program, HCA had direct liability for any deterioration in medical care attributable to low staffing. The Court, however, found that the "contours of the plaintiffs' negligence claim and the scope of the duty owed by HCA" to the patients in its hospitals was unclear. Thus, it remanded the case to the District Court to decide these issues. In a glimmer of hope to HCA, the Tenth Circuit noted that if HCA did not exercise a level of control "beyond the ordinary involvement of a parent corporation in the affairs of its subsidiaries, it is doubtful Kansas law would support the claim."

State law consumer protection statutes vary widely, so it is not possible to predict whether the Tenth Circuit's holding will have broad application in jurisdictions outside of Kansas under those kinds of statutes. Every state, however, recognizes negligence claims, and the standards for establishing negligence tend to be very similar. This case serves as a reminder that plaintiffs' attorneys are continuing to seek creative theories of liability tied to staffing issues. Additionally, the theory represents a powerful tool for those unions attempting to organize health care workers. Health care institutions should carefully examine their staffing policies, and any other policy that impacts patient care, to make sure they are not vulnerable to this theory of liability.

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