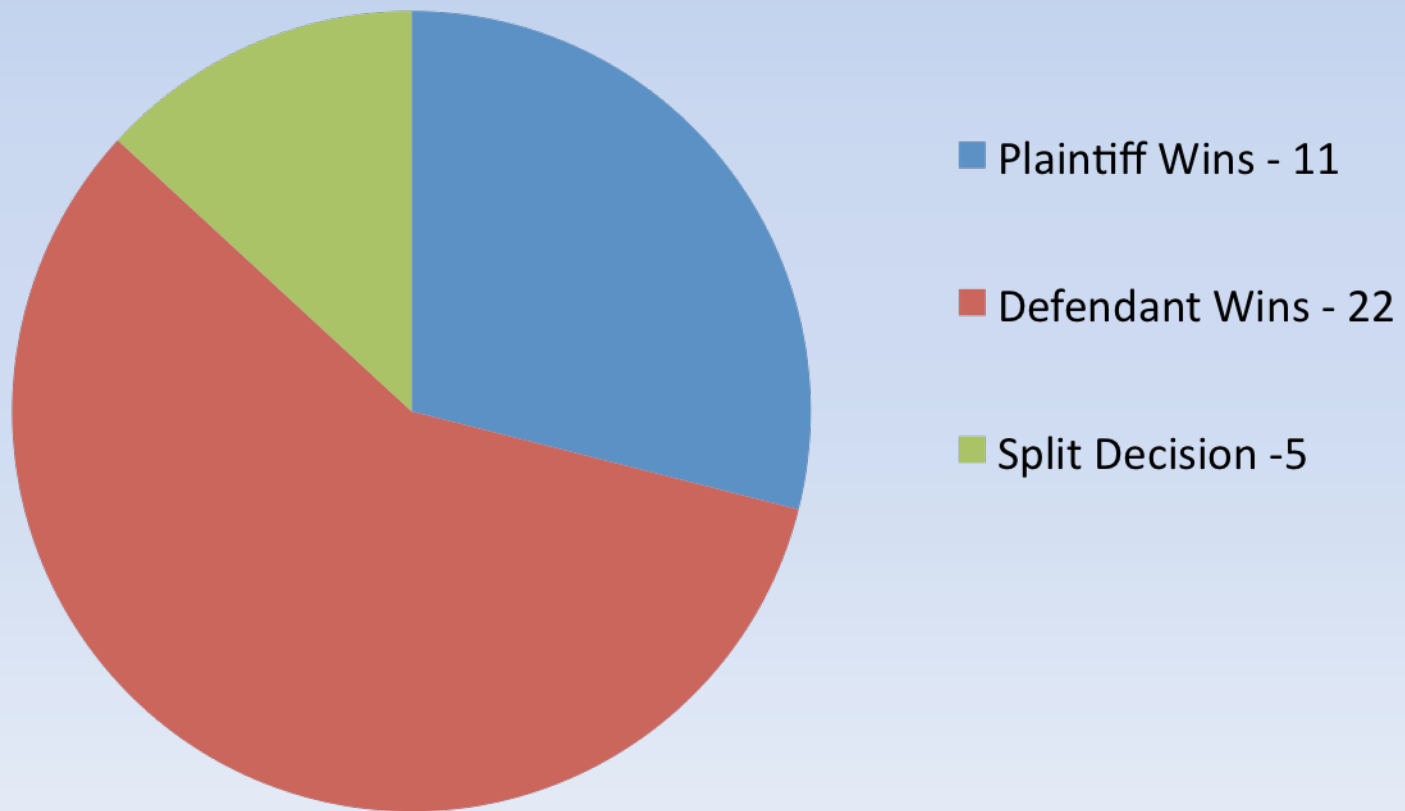


Credentialing Case Law Trends—Who's Winning, Who's Losing, and Why.

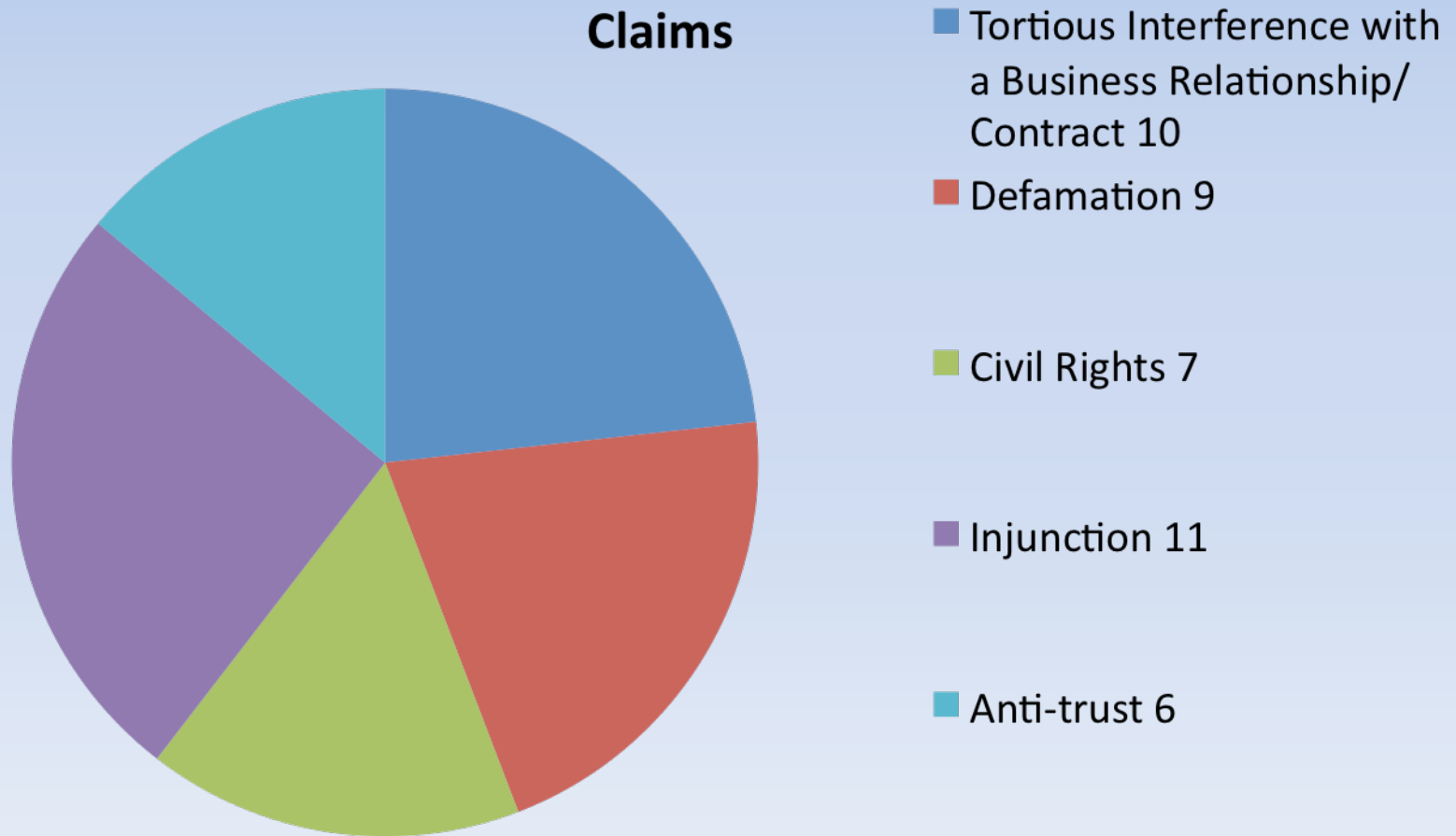
By: Timothy B. Adelman,
Robert J. Cochran, &
Jonathan Zachary Cohen

Who's Winning

Overview

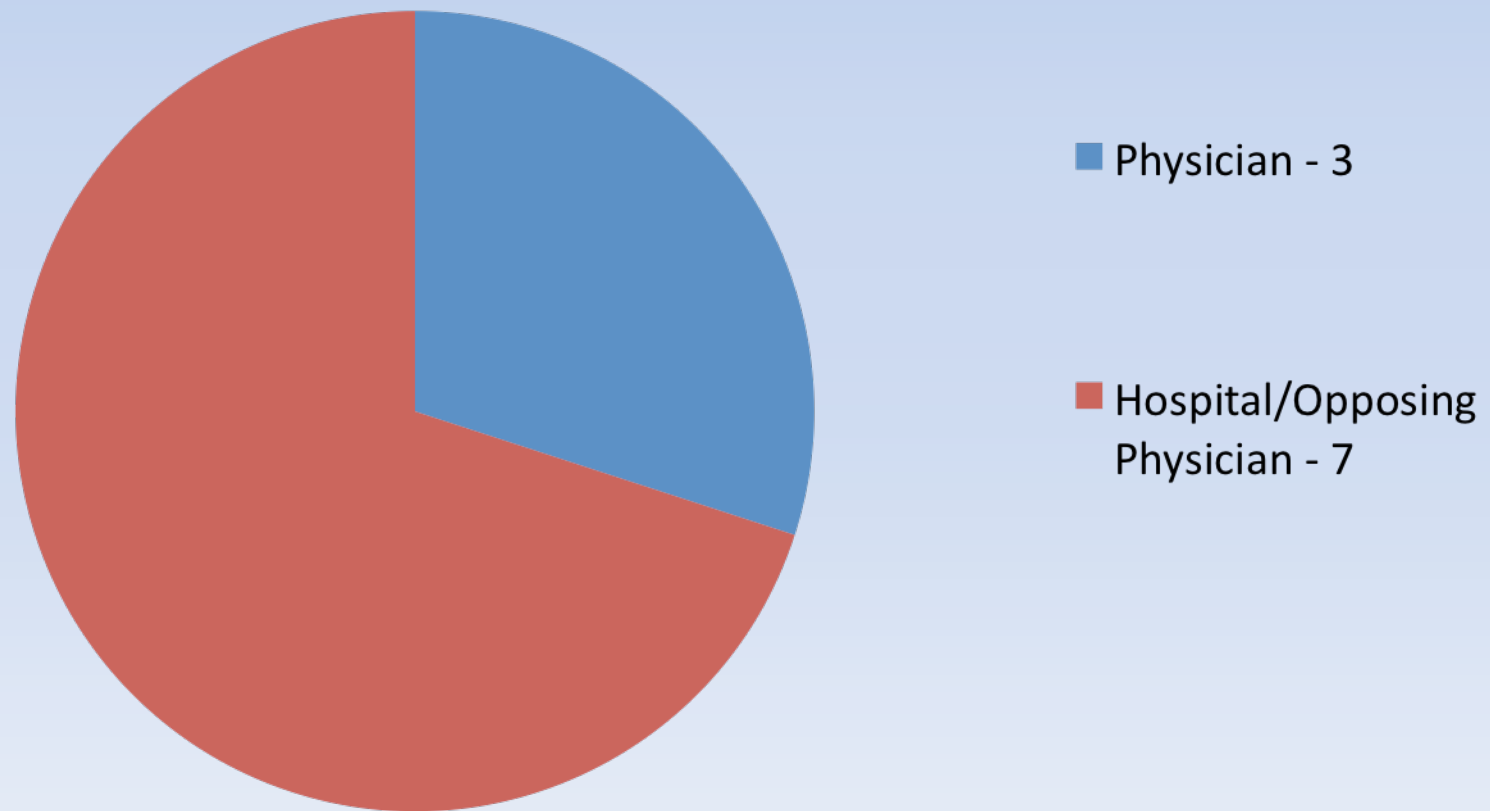


What Claims are Being Filed



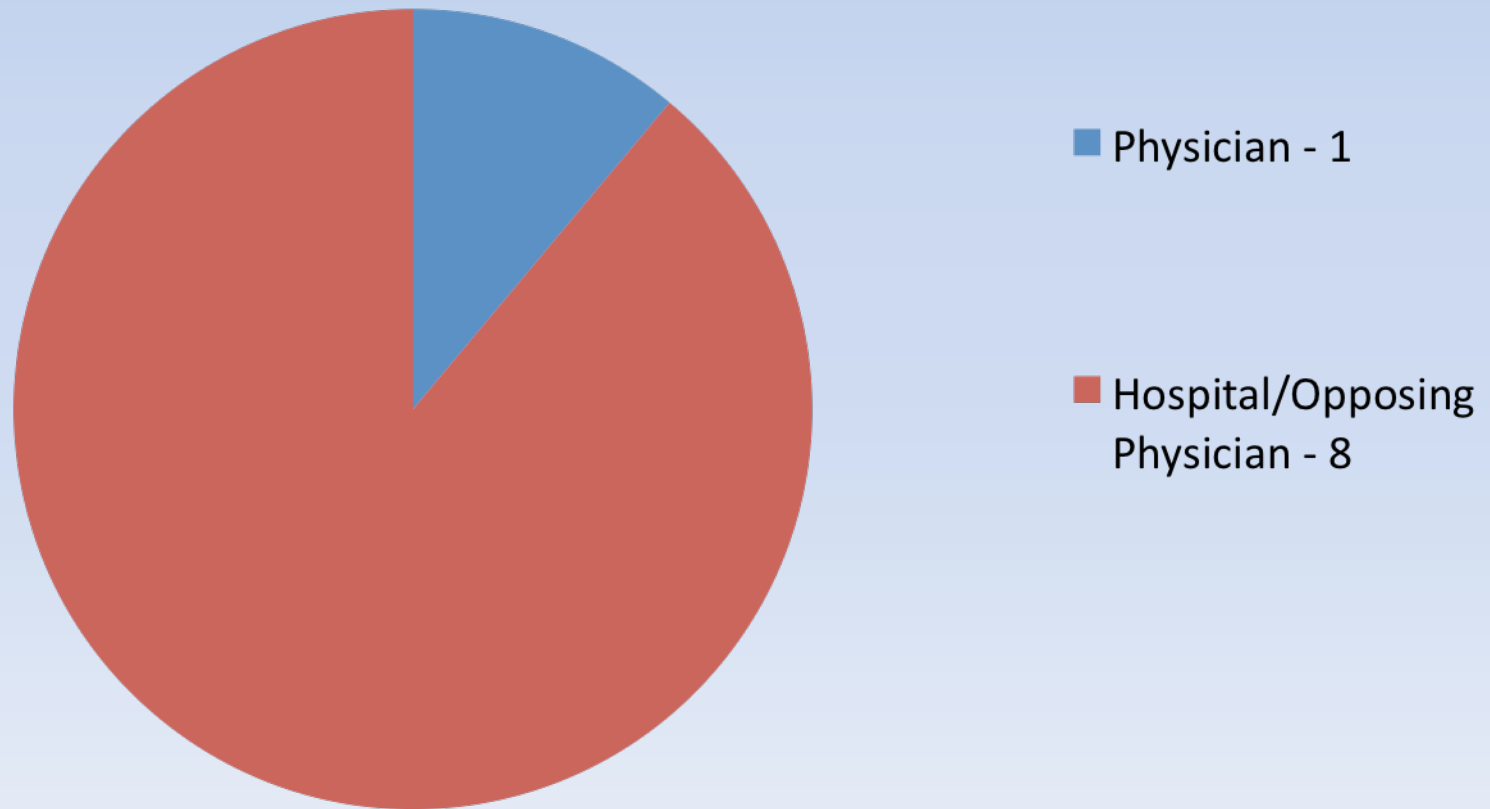
Tortious Interference with a Business Relationship/Contract

Who Won?



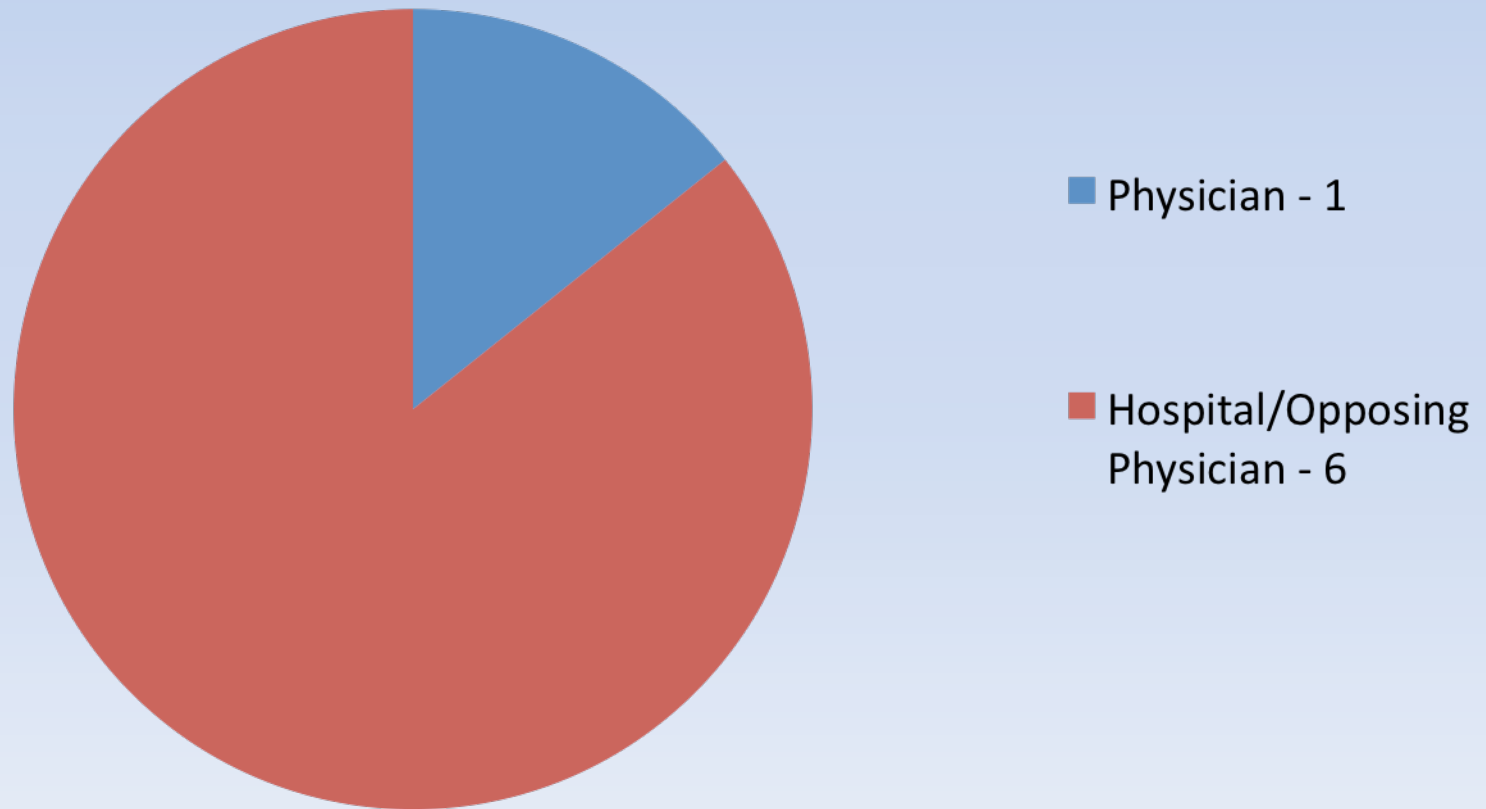
Defamation

Who Won?



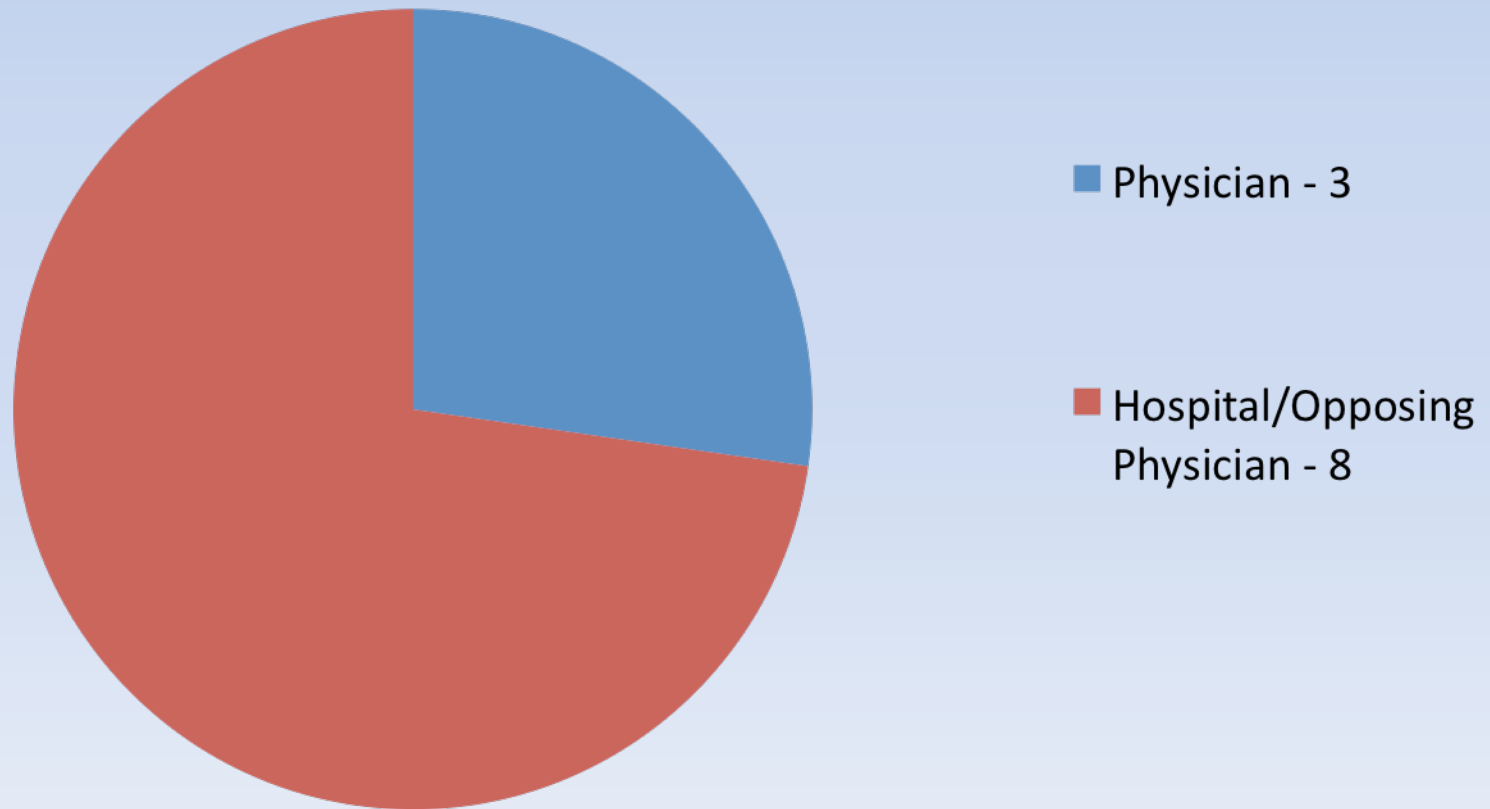
Civil Rights

Who won?



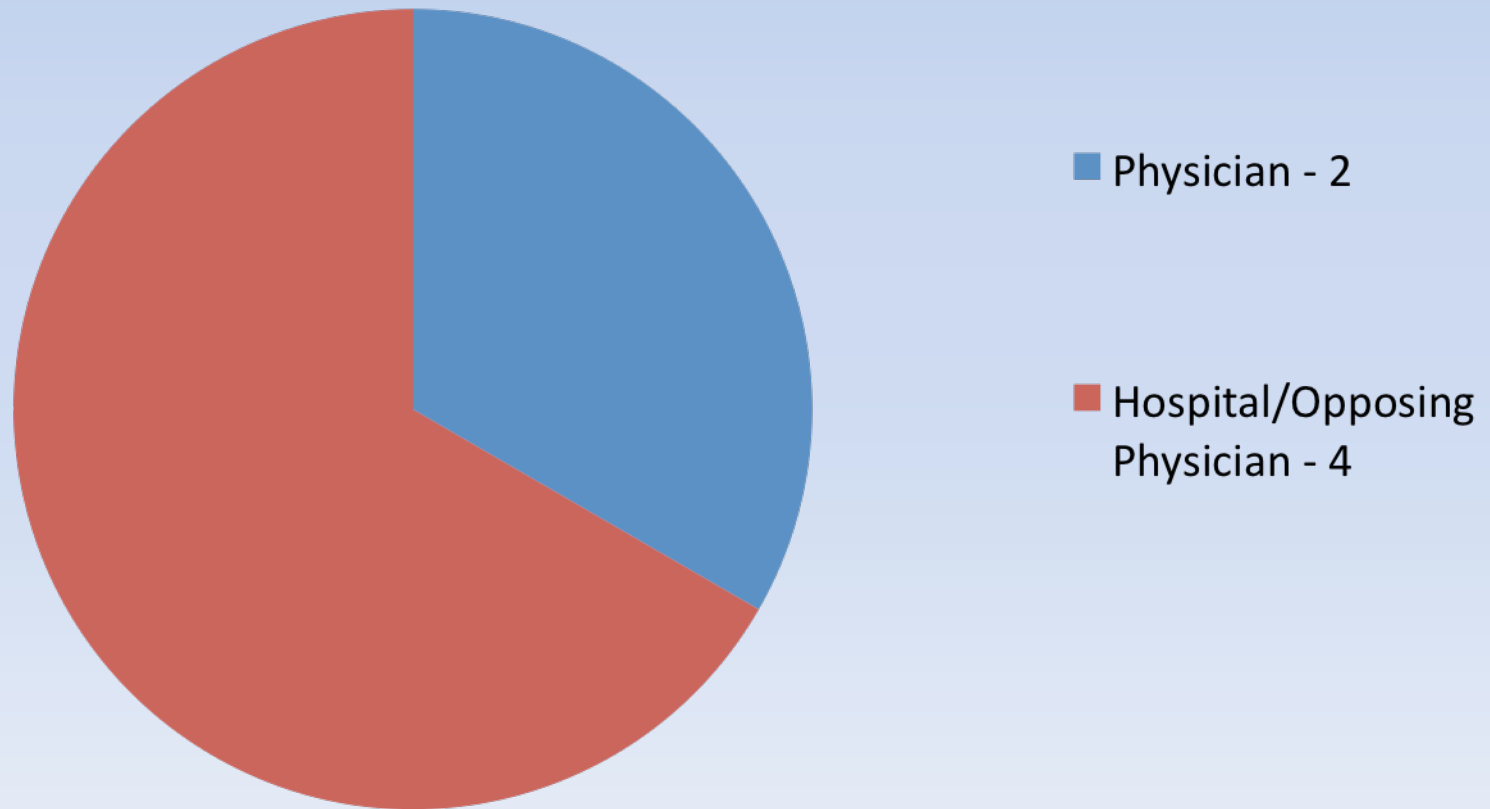
Injunction

Who Won?



Anti-Trust

Who Won?



Some Trends...

- Conflict of Interest - A number of the fact patterns involved conflict of interest matters, i.e. physician on peer review or credentials committee was also a competitor of subject physician.
- Deviation from Bylaws, i.e. use of ad hoc committees, improper notice of action, lack of a hearing.
- HCQIA Immunity not applicable in civil right actions, not an independent cause of action, not an absolute privilege.

Negligent Credentialing

- **Megrelishvili et. al. v. Our Lady of Mercy Medical Center, 291 A.D.2d 18; 739 N.Y.S.2d 2 (NY 2002)**
- Physician was a member of the medical staff. He was supposed to reapply for medical staff membership but did not. At the same time he also allowed his malpractice insurance to lapse. Plaintiff claimed hospital should have terminated privileges when the doctor did not reapply. Had the physician been terminated, surgery would not have occurred. Had physician been forced to reapply, hospital would have been aware of lack of insurance. Court allowed plaintiff to pursue this claim and depose hospital personnel on issues of reapplication process.

Negligent Credentialing

- **Frigo v. Silver Cross Hospital and Medical Center, 377 Ill.App.3d 43, 876 N.E.2d 697 (2007)**
- The court recognized negligent credentialing as a cause of action. To prove negligent credentialing, the plaintiff must prove
 - The hospital failed to meet the standard of reasonable care in the granting of medical staff privileges. Hospitals are required to exercise reasonable care in the granting of medical staff privileges. “Reasonable care” means that degree of care, skill, and judgment usually exercised under like or similar circumstances by the average hospital. Expert testimony is required to prove the applicable standard of care and whether that standard was violated.
 - Second, the plaintiff must prove that the physician who was negligently credentialed breached the applicable standard of care and that the negligent granting of medical staff privileges was a proximate cause of the plaintiff’s injuries.

Bylaw Compliance

- **Egan v. St. Anthony's Medical Center, Case # SC88493 (Sup. Ct. Missouri 2/5/08) (Suspension of Privileges)**
- Physician was suspended and requested a hearing. Physician claims hearing was not properly conducted in accordance with Bylaws. Physician sued to enforce compliance with Bylaws. Court held that it would not review the underlying credentials action but could force the Hospital to comply with its bylaws. The Court based part of its holding on the fact that a state statute required a hospital to have bylaws. Therefore, the court could enforce compliance with those bylaws.

Timothy B. Adelman – Adelman, Sheff & Smith
tadelman@HospitalLaw.com

Robert Cochran - Schottenstein Zox & Dunn
rcochran@szd.com

Jonathan Cohen – Post Schell
jcohen@postschell.com