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Yankwitt LLP Successfully Settles Long-Pending Litigation Against Volunteer Directors Through Compelling Advocacy and Aggressive Negotiations

Situation

Yankwitt LLP was retained on the eve of trial to represent five former volunteer directors of a not-for-profit senior home in an adversary proceeding arising out of the senior home's bankruptcy. The directors had been sued in federal court on behalf of the senior home and 79 of its former residents for alleged breach of fiduciary duty, negligent misrepresentation, and violation of statutory disclosure laws. The plaintiff was seeking \$65 million in damages from the individual directors and other defendants personally. The claims asserted against the volunteer directors were unprecedented and exposed them to significant personal liability. By the time Yankwitt LLP was retained as independent counsel, the case had been pending for several years, discovery and motion practice had been completed, all prior efforts to settle or mediate had been unsuccessful, and the case was scheduled for a jury trial.

Approach

Our team immediately dug into the years of discovery material to prepare our defense for trial. Combined with a fresh analytical perspective on the legal claims, the efforts revealed the directors had several strong legal defenses that had not previously been argued to the court. We, therefore, sought the court's permission to file late summary judgment papers seeking dismissal of the case in its entirety. After reading our compelling submission and before the court could rule on our request, the plaintiff's interest in a global settlement and mediation was rekindled.

The Yankwitt LLP team prepared for the mediation, presented persuasive arguments in a pre-mediation statement, and commenced the mediation with a presentation to the plaintiff that demonstrated our mastery of the facts and law, and that highlighted the strengths of the director's defenses and significant weaknesses in the plaintiff's claims. For the 16-hour mediation that followed, Yankwitt LLP attorneys, who had been entrusted by the multi-law firm defense team to lead the mediation on behalf of all the defendants, aggressively negotiated with the plaintiff and pursued a settlement that would protect our clients and the other defendants.

Result

Yankwitt LLP successfully negotiated a global settlement of \$8 million and full releases for the directors – without a single penny

being paid by them personally. The settlement was approved by the presiding bankruptcy judge and the long-pending litigation against the directors was dismissed.

The case was *Sean Southard as Plan Administrator v. Mary Frances Barrett et al.*, No. 20-cv-290.