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MESSAGE FROM SECTION CHAIR
D. JAY DAVIS, JR.

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Winter Meeting Recap

We extend a heartfelt thank you to all of the members that attended this year's Winter Meeting in San Diego. A wonderful time was had by all, and it was fun to catch up with committee members.

Our section partnered with the Professional Liability Section in presenting a program titled "Arbitrating Professional Liability and Healthcare Cases: Welcome to the Wild West." We are grateful for the support of Gena Sluga, Esq. who served as the moderator, Cynthia Castro, Vice President of the RUSI Group, Inc., and Jay Davis who served as panelists at the meeting.

There is a great paper on arbitration in the meeting materials if you are interested in the details of arbitration, how to get there, and what you do when you are going to a hearing.

DON'T FORGET:

Our next Healthcare Section business call is set for May 30th @ 1:30 PM, EST. A call in number will be provided.

What a Great Tribute!

The FDCC has formally announced the formation of a scholarship for diverse law students. The Barb Currie Diversity Scholarship named in honor of the late wife of Ned Currie and also honors all those spouses and significant others who do so much to support the work of the Federation of Defense & Corporate Counsel.

This scholarship will be awarded to a deserving second-year law student. It will enable him or her to obtain financial assistance in their law school endeavor and, at the same time, provide the recipient an opportunity to clerk for an FDCC law firm. Hope you will consider supporting this great scholarship!

[So what do our section members really want from this section?](#)

At the San Diego meeting we conducted an informal poll of the members in attendance. As part of the meeting we asked the folks to tell us what they wanted out of the section. Here is what we learned. The Professional Liability and Healthcare Sections have a lot of overlap in terms of members based on this sample with 21/29 responders representing doctors. The overwhelming majority prefer to communicate with section members via email as opposed to LinkedIn or Twitter.

The two sections were in agreement that morning meetings and happy hour meetings were the best way to communicate during meetings.

Survey Results

	<u>PL Section Only</u>	<u>HC Section</u>	<u>Both Sections</u>	<u>Totals</u>	
Who do you represent:					
	Architects/Engineers (2)	Doctors (14)	Hospitals (2)	Doctors	30 Members
	Agents (4)	Doctors (9)	Attorneys (2)	Lawyers	5 Members
	Doctors (1)	LTC Facilities (4)	Doctors (6)	Hospitals	5 Members
	Lawyers (3)	Hospitals (3)		Agents	4 Members
	Accountants (1)			A&E	2 Members
				Accountants	1 Member
When to meet at meetings:				<u>Totals:</u>	
	Breakfast (8)	Lunch (3)	Breakfast (2)	Breakfast Meetings	16
	Happy Hour (2)	Happy Hour (5)	Happy Hour (2)	Happy Hours	9
	Lunch (1)	Breakfast (4)		Lunch Meetings	4
How can we communicate:				<u>Totals:</u>	
	Email (6)	Email (7)	Phone (1)	E-mail	14
	LinkedIn (2)	LinkedIn (3)	Email group (1)	LinkedIn	5
	Twitter (1)	Twitter (1)	Text (1))	Twitter	2
				Phone	1

MARK YOUR CALENDARS

Annual Meeting 2016

Quebec

July 23, 2016—July 30, 2016



It's not too early to start thinking about the FDCC's annual meeting, which will be held in stunning La Malbaie, Quebec.

Our section presentation will focus on defending and litigating False Claims Act and Quit Tam cases. If you have experience in this area of law and would like to participate, let us know!

Please contact Vice-Chair Jim Hoover with any suggestions regarding the program, potential speakers, or other questions. This is a great opportunity to get involved!



NEW MEMBER PROFILE

Robert C. Lockwood, Esq.

Willmer & Lee, P.A.

Huntsville, AL

Robert Lockwood is a shareholder with Wilmer & Lee, P.A. in Huntsville, Alabama. He tries cases in all state and federal courts, as well as administrative hearings at all levels of government. Robert has been recognized as an Alabama SuperLawyer since 2011, and he holds an AV rating from Martindale-Hubbell.

Robert is a former law clerk to United States District Court Judge C. Lynwood Smith, Jr. In addition to an active litigation practice, Robert represents numerous physicians, medical practices, and other health care entities. He provides those clients with advice and assistance regarding corporate and compliance issues. Alabama's Certificate of Need process can be very detailed, and Robert assists his clients with their rights and responsibilities in that process.

Outside the practice of law, Robert is involved both professionally and civically. He is a member of the Alabama Board of Bar Examiners and the Alabama Access to Justice Commission. Robert is a Fellow of the Alabama Law Foundation and he is a graduate of the Alabama State Bar's Leadership Forum. He currently serves as President of the Huntsville Rotary Club -- one of the 50 Largest Clubs in Rotary International. Robert is a former President of the Huntsville-Madison County Bar Association and the Board of the Madison County Volunteer Lawyer Program.

Robert and his wife, Julie, attend Huntsville First United Methodist Church, where he has served on the Board of Trustees. They have two sons, Carter and Richard. Carter is a Freshman at the University of Alabama and Richard is a Sophomore at Huntsville High School.

Please join us in welcoming Robert to the FDCC ranks. He can be reached at rlockwood@wilmerlee.com.

CASELAW UPDATE:

Second Circuit Strikes Down HHS Regulation Limiting Hospital's Ability to be Designated "Urban" for One Purpose and "Rural" for Another

The Second Circuit Court of Appeals recently was tasked with determining whether a regulation issued by the Secretary of the Department of Health and Human Services (HHS) violated the Medicare Act and Administrative Procedure Act. *Lawrence Memorial Hospital v. Sylvia Burwell, et al* involved an acute care hospital located in New London, Connecticut. Under the Medicare Act, a hospital's classification as "urban" or "rural" can affect the amount of reimbursement the hospital receives for providing medical services, as well as the hospital's access to certain medical programs. Pursuant to an intricate classification process, Section 401 of the Medicare Act allows hospitals to be classified as urban for some purposes and rural for others. Further, another provision of Section 401 creates a process by which the Medicare Classification Review Board (MGCRB) can re-designate hospitals to a different "area" from that to which they have been otherwise designated, in order to receive a different wage reimbursement rate. For practical purposes, the result is that a hospital can be classified as "rural" in order to obtain certain benefits while also allowing the hospital to apply to be re-designated as "urban" for wage reimbursement purposes. Despite the Medicare Statute's allowance for re-classification, the Secretary of Health and Human Services issued a rule in 2000 which provided that a hospital that has been reclassified from urban to rural under the above-mentioned subsection may not thereafter receive an additional reclassification by the MGCRB as urban.

Based upon its geographic location, Plaintiff Hospital was originally designated as part of the larger Norwich-New London, Connecticut "urban" area under the Medicare Act. Hospital later sought to be reclassified as a rural hospital to obtain favorable drug pricing. The Centers for Medicare and Medicaid Services (CMS) granted the request. Two months later Hospital applied to the MGCRB, this time seeking reclassification to the Nassau-Suffolk, New York "urban area" for wage reimbursement purposes, as the urban area had a higher wage index. Because the reclassification would likely violate the Secretary's 2000 rule, Plaintiff Hospital filed an action in district court seeking to enjoin the defendants from applying the Secretary's rule to the hospital's application. The injunction was denied. Hospital then filed an amended complaint asserting that the reclassification rule violated the Medicare Act and the Administrative Procedures Act. The district court disagreed with Hospital and held that the rule was a reasonable agency interpretation of an ambiguous Medicare provision.

The Second Circuit reversed, holding that the plain language of Section 401 and the MGCRB provision directed the Department of Health and Human Services to consider applications from hospitals granted rural status no differently than it treats any other rural hospitals. In doing so, the Court explained that the statute was clear and non-discretionary; accordingly, HHS's unilateral "reclassification" declaration was deemed invalid and the case was remanded.

Read the full opinion here: <http://goo.gl/w19MvR>

Healthcare in the News



Downton Abbey and Hospital Consolidation

The final season of PBS's wildly popular 1920's period piece, *Downton Abbey*, just finished up its season finale. This season explored a plot line sure to appeal to health lawyers and policy wonks alike: hospital mergers and consolidation. American Public Media's "Marketplace" website reviewed the show and thoughtfully analyzed it in light of the recent trend toward hospital mergers and takeovers. Take a look and listen at: <http://goo.gl/2iA8fC>

Pulling Back the Curtain on Palliative Care

The New York Times recently examined the rise of palliative care and why patients initially can be reluctant to receive it. Read it here: <http://nyti.ms/1PXl6dk>.



CMS Proposes Rule Reducing Drug Payments and Requiring the Use of "Value-Based" Purchasing Tools

The Centers for Medicare and Medicaid Services recently proposed a rule discussing the implementation of a new Medicare payment model regarding the Part B Drug Payment Model. Under the proposed Rule, CMS is proposing that the Part B Drug Payment model be a "two-phase model" designed to test whether alternative drug payment designs will lead to a reduction in Medicare spending while simultaneously preserving/enhancing the quality of care provided to Medicare beneficiaries. Comments in response to the proposed rule are due by May 9, 2016. Read the details here: <https://www.gpo.gov/fdsys/pkg/FR-2016-03-11/pdf/2016-05459.pdf>