

December 2014

All Healthcare Practice Section Members:

Merry Christmas and Happy Holidays from the Healthcare Practice Section. I hope everyone is well and that you have geared down to enjoy a few days with family. With things gearing down, I wanted to touch base with the section and update you on some things going on with the FDCC and your section.

(1) The Winter Meeting is in Marco Island, Florida from March 2-8, 2014. **Registration is now open for the meeting.** I strongly encourage you to sign up today and make your hotel reservations. Please come for all or part of the week if you can. Our section has teamed with Premises Liability and will present a program on the liability for criminal acts of employees and third parties. Presenters will be Sean Martin of Carr Allison in Chattanooga, Reed Bates of Starnes Davis Florie LLP in Birmingham (current IADC Healthcare Chair) and Michael McMyne, in-house with IFG Companies. From a healthcare perspective, the program will focus on issues in hospitals and long-term care facilities. With the aging population, there are new issues we have not encountered before or are seeing in increased numbers. Criminal acts not only by third parties but by employees, and resident on resident acts in the long term care setting have created new issues. What are the legal and regulatory implications of resident on resident theft, assault and sexual assault? Reed will address not only the liability issues but also touch on the regulatory issues you must be mindful of in advising a client when a criminal act occurs. Michael McMyne will address these issues from the insurer's perspective. This program should be interesting and educational for those attending.

(2) The Annual Meeting is at the Greenbriar in West Virginia from July 27 - August 2, 2014. We are working with Drug and Medical Device, Life Health and Disability, Reinsurance, and Premises Liability to put together a program in a TED Talks format on the impact of the Affordable Care Act. Topics we are going to cover are:

1. Status of implementation of the ACA at the federal level (Drug Device)
2. Status of implementation at the state level (Life Health Disability)
3. Impact on Medical Devices, FDA issues, etc. (Drug Device)
4. Status of the employer mandate and employee issues (Healthcare)
5. The impact of the ACA on litigation; damages, Medicare set-asides, etc. (Premises)
6. TBD (Reinsurance)

(3) We are going to have a Section conference call on Friday, January 24, 2013 at 9 am PST, 10 am MST, 11 am CST, 12 noon EST. This is a business meeting to discuss any issues you would like to see addressed, suggestions on the Section and getting ready for Marco Island. The call should not last long, probably no more than 15-30 minutes. I'll send out an agenda as we get closer and welcome any suggestions if there is anything any of you may want on the agenda. For now, please block out some time to participate in the call, if you're able. If you know you cannot participate, please let me know. If a large number cannot participate, we can set a different date/time. I will get a call-in number circulated after the first of the year.

(4) Please be on the lookout for new members to both the FDCC and our section. If you have recommendations for new FDCC members, please let me know and we will start the ball rolling. We need to nominate qualified people and want our section to get credit if we make the nomination. In looking at new members, we want to focus on states and cities where there are not a large number of FDCC members and law firms in markets with few FDCC members so that we broaden our footprint and exposure. **In making nominations, I would also stress the need for diversity.** **We also want to stress in-house counsel for nominations.** As it relates to our section, please continue to encourage other FDCC members to join our practice section. We want to continue to increase our numbers.

(5) A reminder that we should also be thinking about the 2014/15 programs in Banff (Andy Downs, program chair) & Puerto Rico (Mike Glascott, program chair).

(6) And finally, a few quick legal hits:

In Tennessee, UT Medical Group Inc. was hit with a \$33.5 million malpractice verdict in Memphis this summer. The case involved an alleged delayed cesarean section resulting cerebral palsy. Post-trial the judge reduced the award to \$32.5 million. UTMG has now stated that it may have to seek Chapter 11 protection. As many of you may know, Memphis is a dangerous venue and this verdict reenforces that.

In Alex Rodriguez's medical malpractice suit against Yankees' team physician Christopher Ahmad, the physician has moved to change venue from the Bronx to New York County. Rodriguez's attorney asserts the case should be heard in The Bronx because it's the home of the Yankees, and where Ahmad conducted a good amount of his daily work with the Yankees. Rodriguez alleges in his lawsuit Dr. Ahmad missed a "superior labral tear at the left hip" after giving A-Rod an MRI exam when he was suffering from hip pain during the 2012 American League Division Series. Both sides await a ruling from the judge.

The Kansas Medical Society will propose legislation in 2014 to raise the state's \$250,000 limit on non-economic damages awarded in medical malpractice cases to \$300,000 over a 5 year period. The proposal is being made in response to a Kansas Supreme Court decision last year that upheld the cap but warned that "the legislature's failure" to increase it for more than 20 years was "troubling" and could increase the likelihood that subsequent challenges could be successful. The Kansas Association for Justice, which represents the state's trial lawyers, opposes the legislation and maintains its position that the cap is unconstitutional.

Scott

