

WEST VIRGINIA MEDICAL INSURANCE AGENCY

"Meeting the insurance needs of physicians"

WVMIA Newsletter

"A report of insurance activity especially designed for our clients"

SUMMER 2011

CAP Case Decision: AFFIRMED!

STEVE BROWN
Agency Manager
Ext. 22
Cell: 304.542.0257

DAVE MUELLER
Physician Services
Specialist
Ext. 29
Cell: 304.767.0027

ROBIN SADDORIS
Account Manager
Ext. 17

EVAN JENKINS
WVSMA
Executive Director
Licensed Agent
Ext. 15

4307 MacCorkle Ave., SE
PO Box 4106
Charleston, WV 25364

304-925-0342

800-257-4747

304-925-3166 Fax



On June 22nd, the news spread throughout the physician community that the WV Supreme Court of Appeals had upheld the Legislature's medical liability reform of 2003 (passed) by affirming on a 4 to 1 vote, that the CAP is constitutional.

This is great news for all of health care in the state. Patients will not see the quality of or access to healthcare decline due to physicians leaving the state or not wanting to locate here as we saw in early 2000 thru 2003 and physicians will see a stable insurance market continue in West Virginia as they have seen over the past 7 years.

With this in mind the Agency felt we should pass along some personal thoughts about the CAP case that may have not made your headlines or been discussed much with you. The following opinions are those of the West Virginia Medical Insurance Agency's manager Steve Brown.

Medical Liability CAPS Are Constitutional

You have read the results of the Supreme Court's decision, but do you understand the decision?

Some editorial comments on the issue seem to question the solidarity of the members of the West Virginia State Supreme Court or Appeals' decision to affirm the medical malpractice "caps," it is our opinion that the Court was very clear on all the issues addressed in their decision. Note the following issues and the Court's opinion:

(1) Right to Trial by Jury:

Because the Court had previously ruled on this topic (when considering the \$1 million cap), the Court now states "the fact the cap has been lowered has no impact on our previous analysis as it

pertains to the constitutional right to trial by jury".

(2) Separation of Powers:

"Again the Legislature's decision to reduce the cap has no impact on our prior analysis of this issue (included when considering the \$1 million cap). We reasoned that if the Legislature can, without violating separation of powers principals, establish statutes of limitation, establish statutes of repose, create presumptions, create new courses of action and abolish old ones, then it also can limit non-economic damages without violating the separation of powers doctrine."

(3) Equal Protection on Special Legislation:

"Upon review, we find that the Legislature could have reasonably conceived to be true the facts which the amendments to the Act, including the cap on non-economic damages were based. The Legislature could have rationally believed that decreasing the cap on non-economic damages would reduce rising medical malpractice premiums and, in turn, prevent physicians from leaving the State, thereby increasing the quality of, and access to, health care for West Virginia residents." "..... it is not our prerogative to substitute our judgment for that of the Legislature, so long as the classification is rational and bears a reasonable relationship to a proper governmental purpose. Further, even though the cap now... is significantly less than the original \$1,000,000 amount, we cannot say that it is on its face arbitrary or conspicuous."

(4) Certain Remedy:

"Here, the impact of the statute at issue is limited to a narrow classification with non-economic damages, exceeding \$250,000. Furthermore, the Legislature has not imposed an absolute bar to recovery of non-economic damages. Instead, the Legislature has not imposed a limitation to the amount of recovery in order to effectuate the purpose of the

(Cont'd on page 2)



Act.... Because the Legislative reasons for the amendment to the Act are valid, there is no violation of the certain remedy provision.....”

We believe the strength of the language utilized by the Court bodes very well for the future of health care in the State of West Virginia.

For a complete copy of the Court’s decision, visit the WVSMA website at www.wvsma.com or call Steve Brown, Agency Manager, at 304-925-0342 ext 22 (1-800-257-4747 ext 22). Smart phone users—scan the code to the right to access the complete decision. If you need an “app” to do that...try reader applications such as Qrafter, Lynkee Reader, I-nigma Reader or Kaywa Reader.



Unsung Heroes in the CAP Case:

With the decision now rendered by the West Virginia Supreme Court of Appeals, we acknowledge a few “unsung” heroes in this case. Without their efforts, this result would not have been possible. They are:

(1) **Dr. Sayeed Ahmed:** Dr. Ahmed was the defendant physician in this case and as such, endured a great deal of personal emotions related to the case itself and the media attention it commanded. “Thank you Dr. Ahmed for hanging tough in this case and for being willing to allow this result to occur.”

(2) **Circuit Judge Gray Silver, III:** The Honorable Judge Silver had the conviction to apply the “cap” to the jury’s verdict in this case when it was originally heard at the circuit court level, thus creating the necessity of a Supreme Court appeal in order to determine the appropriateness of the local judge’s finding and the “cap” itself.

(3) **ProAssurance:** ProAssurance previously operated as Medical Assurance of West Virginia and Woodbrook Casualty Insurance. As the carrier for Dr. Ahmed, ProAssurance followed this case to resolution at the State Supreme Court level. “We believe the West Virginia Tort Reforms have been an instrumental first



step in promoting a medical/legal climate which enhances the physician/patient relationship and promotes a wider availability of quality health care in the State” said W. Stancil Starnes, the Chairman and CEO of ProAssurance after the cap case decision. ProAssurance, like the West Virginia Mutual Insurance Company, commenced doing business as a physician owned company and has always stressed the significance of quality health care. ProAssurance, also is known for its dedication to a vigorous defense of claims in which there was no negligence.

ML Lawsuit Filings Update:

Enclosed with this newsletter is an updated report on Medical Liability Lawsuits filed in WV. Included in this report are the months of May and June. The average for 6 months of 2011 is 19.7 lawsuits per month, which is a significant increase in average over the past several years. This, of course, doesn’t take into account any affects of the Supreme Court affirmation of the CAP on non-economic damages. Should you have questions, please call Steve Brown, agency manager, at 1-800-257-4747, ext. 22 (locally 304-925-0342, ext. 22).

2012 ELECTION

New Candidates for Supreme Court

The second candidate has announced for election to the WV Supreme Court of Appeals. Mingo County attorney Letitia “Tish”

Chafin launched her campaign on Thursday, June 29th, in Charleston. She has never run for political office. She is the wife of State Senator H. Truman Chafin, the only State Senator to vote against Medical Liability Reform in 2003.

The third announced candidate for the WV Supreme Court of Appeals is Allen Loughry, a clerk for the court currently and an author. Loughry will run as an independent. Loughry is the author of 2006 book titled “Don’t Buy Another Vote, I Won’t Pay for a Landslide: The Sordid and Continuing History of Political Corruption in West Virginia.”

The first candidate to announce was current Justice Robin Davis, as reported in our Spring 2011 newsletter.



Our agency is growing to meet your needs. Our product li

- Medical Professional Liability
- Workers’ Compensation
- Businessowners
- GROUP Health, Life, Vision, Dental, Disability
- INDIVIDUAL Life, Health, Disability, Vision, Dental
- Surety Bonds (ERISA)

Physicians Strengthen West Virginia's Economy

In a recently prepared report, the AMA has provided to the WVSMA a copy of a report "The Economic Impact of Office-Based Physicians in West Virginia" based on data collected for 2009. The report indicates that WV office-based physicians support 19,855 jobs in WV, (5.6 jobs per office-based physician), generate \$3.9 billion in sales revenue, \$2.4 billion in wages & benefits and \$139.8 million in state and local tax revenue.

For a complete copy of the report to share with legislators or local political leaders, visit the WVSMA web-site at www.wvsma.com or call Steve Brown, agency manager, at 1-800-257-4747 ext 22 (locally 304-925-0342 ext 22) or by e-mail at steve@wvsma.com. A copy of the basic summary of the report is enclosed with this newsletter.

West Virginia Medical Insurance Agency Meeting

The meeting of the clients, prospective clients, and friends of the WVMIA will take place on August 26, 2011, at 10:00 a.m. in Eisenhower C at The Greenbrier during the WVSMA Healthcare Summit.

Discussion items this year will include: an update on West Virginia Mutual Insurance Company activities and introduction of new programs by the WVMIA: a retirement program provided by The Hartford and preferred carrier relationship with Union Central for disability income protection.

Retirement Program Workshop

"Take Charge, Not Cover":

Unique Retirement Plan designs and how they can help.



Join The Hartford and the West Virginia Medical Insurance Agency as John Diehl, Vice President for Strategic Business Development for The Hartford presents an interactive session to teach attendees about what types of qualified retirement plans exist today, how a properly structured plan may help mitigate concerns about taxes, more regulatory oversight and increasing business expenses, not to mention the common desire to protect your wealth in retirement, and where you may be able to maximize your investments – immediately.

This presentation will be held on August 27, 2011, at 2:00 p.m. in Eisenhower C, The Greenbrier, at the WVSMA Healthcare Summit. Call Steve Brown, agency manager, at 304-925-0342 ext 22 (1-800-257-4747 ext 22) if you plan to attend (see invitation included).

Disability Insurance: Preferred Carrier Relationship:

15% Premium Discount for WVSMA Members

Effective August 1, 2011, the West Virginia Medical Insurance Agency will be offering exclusively a 15% premium discounted disability insurance program made available through a preferred carrier agreement between the WVSMA and Union Central.



Union Central Life Insurance Company is a UNIFI Company that offers high quality, competitively priced DI insurance to West Virginia physicians.

Mailings and e-mail blasts will soon be coming to you with details about our plans or you may contact Steve Brown, agency manager, West Virginia Medical Insurance Agency at 304-925-0342 ext 22 (1-800-257-4747 ext 22).

Retirement Plan Programs Offered Through The Hartford/WVSMA Relationship

The West Virginia Medical Insurance Agency exclusively offers to members of the WVSMA retirement plans with expense cost savings. Effective August 1, 2011, the WVMIA has exclusive rights to a 401K program provided by The Hartford; it will allow members of the WVSMA to receive expense savings for accessing The Hartford's 401K program through the WVMIA.

Kevin Shamblin of The Hartford will be available to the Agency to meet with physicians, office managers, or others responsible for retirement planning to present details about The Hartford and the Hartford plan. The costs associated with managing the plan will be reduced when The Hartford plan is purchased through the WVMIA.

ne includes the following:

- Retirement Plans (401K)
- Personal Umbrella
- Kidnap & Ransom
- Directors & Officers

Our Partners are Carriers You Can Depend On!

- West Virginia Mutual Insurance Company
- The Hartford
- RLI
- BrickStreet Mutual Insurance Company
- Union Central Life Insurance Company
- Philadelphia Insurance Company

Mutual News



Wallace

An article in the Charleston Daily Mail on July 6, 2011, confirmed that David Rader, currently president and chief executive officer of the West Virginia Mutual Insurance Company, is retiring effective January 1, 2012 and will be replaced by current Mutual Board Chairman, R. Austin Wallace, MD.

Rader has been in his current position since the Mutual began operations on July 1, 2004. His successor, Dr. Wallace, has been a member of the Mutual Board since its formation. Dr. Wallace is a practicing ENT in Charleston and is a past president of the West Virginia State Medical Association. Rader will be an assistant to Dr. Wallace through 2012 and says "I'll bow out at the end of 2012." More news on this transition in future issues.

Acting Insurance Commissioner



Riley

On June 21, 2011, Governor Earl Ray Tomblin announced that Michael D. Riley will serve as Acting Insurance Commissioner effective July 1, 2011 when Jane L. Cline's retirement as Commissioner became effective.

Riley, a Marshall graduate with a Masters of Business Administration and an undergraduate degree of Business Administration in finance, first joined the Offices of the Insurance Commissioner in 2011 as an Administrative Services Manager and rose to become Assistant Commissioner of Regulation. During this time, Riley also served as project manager for the privatization of the State's workers' compensation system.

Our congratulations to the new acting commissioner: Michael D. Riley.

WVSMA to Offer Certified Medical Coder (CMC) Class

The WVSMA, through its exclusive partnership with Practice Management Institute (PMI), is offering the first Certified Medical Coder (CMC) class in WV in September 2011. See the brochure about the class in the group of enclosures with this newsletter.

WEST VIRGINIA MEDICAL INSURANCE AGENCY *"Meeting the insurance needs of physicians"*

A specialized insurance agency dedicated to meeting the insurance needs of physicians.

- MEDICAL PROFESSIONAL LIABILITY
- WORKERS' COMPENSATION
- BUSINESS OWNERS (BOP)
- INDIVIDUAL LIFE/DISABILITY
- EMPLOYEE GROUP BENEFITS

FORMED BY PHYSICIANS FOR PHYSICIANS

4307 MacCorkle Ave., SE
Charleston, WV 25304
1-800-257-4747
304-925-0342
304-925-3166 (fax)



Steve Brown, agency manager, Evan Jenkins, executive director of the West Virginia State Medical Association, and Dave Mueller, physician services specialist, are ready to meet with you to discuss your insurance issues.