

2009-10



David O'Keefe

Letter from the President

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As lawyers we can have a dramatic impact on the lives of our clients. This is particularly true in the practice of professional liability defense, which over the years, has been a large part of our firm's focus. When doctors, lawyers, or other professionals are sued for malpractice or some other alleged breach of fiduciary duty, they stand to lose not just dollars, but often they confront a loss of confidence, damage to their professional reputation, and even the potential loss of their abilities to continue in the unrestricted practice of their professions.

In anticipation of Bonne, Bridges, Mueller, O'Keefe & Nichols' approaching its 50th anniversary, the firm can look back with considerable pride for having developed one of the most active, enduring and respected civil litigation defense practices in Southern California.

A number of our attorneys have been honored by admission into the most prestigious trial lawyer organizations in the country and several individuals within the firm are consistently recognized for excellence in practice and leadership by their peers, professional associations and by the media.

But these awards and recognitions pale in comparison to the satisfaction derived from the successful service the firm has provided to its many dedicated, conscientious and hard-working clients when confronted with allegations of substandard or unprofessional conduct. In more than 90 percent of our cases that proceed to jury verdict, the firm's efforts have resulted the client's total exoneration. Those cases that are not tried to a conclusion almost always result in highly favorable settlements or negotiated agreements.

Our practice has been particularly rewarding not merely because of the results we have obtained and the appreciation we have received from clients, but also because of the impact many of our trials have had upon all who participated in same, including trial judges, expert witnesses and on occasion, even upon members of the jury.

By way of example, I recently concluded a three and a half week trial in downtown Los Angeles in a highly challenging and somewhat of a problematic case to defend. Fortunately, I had an excellent jury panel which was able to overcome considerable sympathy for a severely brain injured and disabled plaintiff and after having heard the evidence, returned what I believed to have been an appropriate defense verdict. Following the verdict, I received a very gratifying e-mail from one of the jurors which read in part as follows:

"As a juror in your most recent matter, I wanted to let you know how much I enjoyed participating in this case. I know the majority of individuals called to jury duty think it tedious, but I was captivated on a daily basis and found it to be a most interesting and educational experience.

After the trial, I had the chance to let you know how impressed I was with the skills I saw in the courtroom. I really enjoyed watching the case, and I appreciated how you made complicated information crystal-clear on a consistent basis. I made sure to attend the trial with an open mind and to consider all evidence as it was presented to the jury...

In fact, I have found this experience so compelling that I am considering a career change ... my participation in the case just might have elicited a transformation in my life that I could not have predicted. Changing professions as an adult is daunting, but I know it is something that I must carefully consider ... I never would have anticipated jury duty to have affected me this way."

These comments reinforce my understanding and appreciation for the impact that we trial lawyers can have upon the public and reinforces the tremendous satisfaction that can be derived from a civil trial practice. I sincerely hope that each of the young associates who receive training within our office will become accomplished trial lawyers with the opportunity to experience similar opportunities and challenges during long and rewarding careers.

Best wishes to you all for the New Year and much success in the years to come.

David J. O'Keefe, President and Managing Shareholder

Healthcare Litigation 2010:

A New Decade Launches New Challenges

Wondering how state budget cuts affect your pending matters? Will new Medicare enforcement actions change your settlement strategy? And how will the national healthcare debate influence medical malpractice juries?

These issues are at the top of Bonne Bridges' 2010 watch list. We asked several Shareholders – Raymond McMahon, Patricia Egan Daehnke, Brian Hoffman and Margaret “Peggy” Holm – to weigh in on these and other challenges facing clients in the new year.

Medicare and Structured Settlements

In the summer of 2009, the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) became effective. This measure imposes new reporting requirements and lien protection obligations on primary insurers. The Act also ushers in renewed and heightened enforcement of Medicare's right of recovery from both plaintiffs and defendants.

There are several consequences of these invigorated enforcement actions, observes McMahon. “Many of the courts may be unaware of the changes. Medicare lacks a well-established mechanism for assessing future damages and that will become a hindrance to timely case resolution and the settlement process.”

An additional complication, according to Daehnke, is the uncertainty that Medicare's difficult-to-define set aside structure injects into cases.

“In both California and Nevada, you cannot introduce Medicare payments as a collateral source at trial because the federal government has a right to reimbursement when a Medicare recipient recovers damages from a third party tortfeasor. This is well established and generally understood. Despite this awareness, many plaintiffs' counsel grew accustomed to and indeed

relied upon the rather lackadaisical enforcement of these “super liens” Now, however, many plaintiff lawyers are aware of the increased enforcement efforts but are unfamiliar with the requirements of the new regulations. I believe this lack of familiarity creates insecurity in plaintiffs' counsel in negotiations, increases the amount of settlement demands and the perceived value of cases, and escalates our clients' potential exposure should the plaintiff's counsel fail to reimburse the federal government,” explains Daehnke. The most fearsome rule change now holds all parties in the case liable if they ignore reimbursement obligations. The plaintiff, the defendant, defendant's insurance company, and attorneys on both sides can be held liable for double damages if the government must sue to collect.

Increased Hospital Liability Exposure in 2010

The threat of triple liability exposure for hospitals under the theory of ostensible agency, a renewed concern in 2009, is increasingly on our radar.

The court's application of the state appellate decision, *Mejia v. Community Hospital of San Bernardino* (2002) 99 Cal.App.4th 1448, is shifting the landscape for our hospital clients and other medical facilities. “The courts are now unwilling to dismiss ostensible agency claims – it's getting impossible to dispose of these claims on summary judgment,” says Daehnke. This trend certainly keeps thing interesting among codefendants.

Her colleague, Shareholder Hoffman, shares her concern, noting that *Mejia* is changing the relationships between

Vangi Johnson

has become a Certified Specialist in Appellate Law



Certification as an appellate law specialist is rigorously vetted and one of the most respected designations in the legal profession. With this recognition, Ms. Johnson further expands the depth of our Appellate Law group's representation of clients at all levels of litigation — from pre-trial advisement and record establishment to verdict protection.

For additional information about Vangi and the Appellate Department, please visit our web site at www.bonnebridges.com.

*The State Bar of California Board of Legal Specialization

hospitals and independent contractors, and altering his strategies for defending cases. In the aftermath of *Mejia*, there is an increased possibility of a defendant settling out in a case. To prepare for that likelihood, he's extending the range of supportive experts he normally would draw upon in a matter.

The Economy and Healthcare Reform

More than \$393 million in budget cuts were made in California's trial courts in 2009.

That's translated into court closures and consequent delays in calendaring and resolving cases, which is a major cause of concern for Shareholder Holm. She is discussing the reality of "slow downs" with clients. In addition, she is watching for possible changes to MICRA and is curious as to how the national debate on healthcare reform and rationing of services will influence jury pools.

Reasons to Be Cheerful

Yet, even against a cautionary economic backdrop and major uncertainties, our Shareholders retain a positive perspective.

Breakthroughs in medical technology have Hoffman quite hopeful – he welcomes their potential to streamline medical practices and depreciate the costs of sophisticated diagnostic care. Technology's power to expand her knowledge resources and professional effectiveness beyond geographic limitations is a phenomenon that Daehnke eagerly anticipates.

Certainly the promise of high-tech advances is exciting. Yet there's also room for some old-fashioned and sound advice, as offered by McMahon. His counsel to healthcare providers for the year ahead is,

"Practice smartly. Be more vigilant. And be optimistic because things do work out most of the time."



Behind the Verdict: Peggy Holm's Sound of Trial Victory

It's tough to top the satisfaction that comes from hearing a jury deliver a favorable verdict.

But for Shareholder Margaret "Peggy" Holm, there's something nearly as thrilling – it's the sound of relief in her client's voice after hearing the good news.

"With so much at stake during a trial, clients are stressed and anxious, often putting on a brave face to make it through," says Peggy, who is manager of Bonne Bridges'

Orange County office. "After clients learn the verdict, I often hear an outpouring of relief in their voices, and frequently tears of joy too. It's gratifying to be the person who has helped."

A Winning Year

There have been numerous opportunities in 2009 for Peggy to deliver good news to clients. Her defense-verdict winning streak in tough-demand cases continues at a healthy pace as she builds upon more than 150 career trial victories.

A recent proud addition to Peggy's courtroom achievements includes recognition as one of the Daily Journal's "Top 100 Women Litigators in California for 2009."

"I am so appreciative of these honors and especially pleased to have concluded serious cases in a satisfactory way," she says.

One particularly memorable moment occurred in a recent complex trial where Peggy defended a regional center for the mentally and physically disabled in a case claiming dependent-adult abuse. There had been years of settlement offers rejected by a sympathetic, severely mentally-challenged plaintiff, so Peggy's optimism was tempered. Yet even before winning the 11-1 defense verdict, her clients thanked her for believing in them.

The victorious verdict was undeniably wonderful. But so was what took place afterward according to Peggy.

The entire jury, even the alternates, didn't make the typically hasty departure from court. Instead, they remained there for hours, speaking with Peggy and sharing their positive experiences of jury service and their thoughts on her client advocacy. The jurors were effusive in appreciating her empathetic treatment of the plaintiff while balancing the appropriate level of toughness at trial.

Making the Legal System Work

Peggy welcomes feedback from a wide range of sources. She's even received thank-you and holiday cards from jurors who have seen her in action. Judges frequently invite their interns and clerks to watch her cross examinations and closing arguments, which she values as a vote of confidence and respect from the bench.

In Peggy's view, "when you have jurors and clients in the judicial process who walk away from it saying it was worth it, you've done the entire legal system some good."

g i v i n g b a c k

At Bonne Bridges, we recognize that our obligations extend not only to our clients but to our communities as well. The firm and its lawyers and staff give generously of their time, financial support, expertise and leadership skills in order to give back to the communities in which we live and work. Areas of Bonne Bridges' commitment to the community include, but are not limited to:

AIDS Lifecycle

Canyon Acres & Laurel House

Cedars-Sinai Medical Center/

Rheumatic Diseases Research Center

Clark County Bar Association

Cystic Fibrosis Foundation

Don Bosco Technical Institute

Healthy Smiles for Kids

Los Angeles County Bar Association

Los Angeles Ronald McDonald House

Loyola High School

Loyola Marymount Law School

Marymount High School

Orange County Bar Association

Public Interest Law Fund

The Lesbian & Gay Lawyers Association
of Los Angeles

UCLA School of Law/

USC Keck School of Medicine

Venice Family Clinic

Verbum Dei High School



*Bonne Bridges Team, L.A. Ronald McDonald House,
Happy Meal Dinner Program*

h o n o r i n g

All of the hard work and dedication from the employees at Bonne Bridges is very much appreciated. A special "Thank you" goes to the following outstanding employees celebrating anniversaries with Bonne Bridges.

35 years

Joel Douglas

Shareholder, LA

30 years

Judy O'Neil

Secretary, LA

20 years

Vivian Chin

Administration, LA

Evelyn Frayre

Records, LA

15 years

Mitzie Dobson

Shareholder, LA

10 years

Vangi Johnson

Shareholder, LA

5 years

Carolyn Doran

Attorney, LA

Linda Rurangirwa

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2009-10 YEAR-IN-REVIEW

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