

QUARTERLY COVERAGE

SPRING 2013

WEST VIRGINIA
mutual
Insurance Company

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Letter from the Chairman



The West Virginia Mutual Insurance Company has been a stalwart for state physicians in many ways since our inception on July 1, 2004. With regard to both the legislative and judicial arenas, no other medical liability insurance company has stood up for the healthcare community, and all West Virginia physicians and healthcare facilities have been the beneficiaries of our strong

actions and leadership. We were the only malpractice insurer to submit amicus briefs in a number of worrisome state Supreme Court cases which had the potential to undo our hard-fought and hard-won medical liability civil justice reforms, most notably the ultimately unsuccessful non-economic damages cap challenge in the Eastern Panhandle in 2011. No surprise, but no other insurer steps up to the plate on your behalf. We are also the only such company to regularly interact with West Virginia lawmakers in our heretofore very successful efforts to protect our tort reforms and promote pro-business change in West Virginia that helps job creation and a better state economy. Again, no surprise, but no other insurer steps up to the plate on your behalf.

The Mutual is known nationally and internationally to be an exceptionally strong company financially and this culminated in a rating of A- (Excellent) on our initial attempt by the A. M. Best Company, the preeminent insurance company rating agency. Its owners (those of us who are fortunate to be insured by it) have benefited mightily by its very prudent fiscal management. Indeed, since our inception, premiums have been reduced by an amazing 25% to 50% depending on specialty. Incredibly, the Mutual has returned a total of \$230 million to its policyholders since inception, thereby significantly reducing its

insureds' overhead costs. This, in turn, has allowed us to continue to practice in West Virginia. Most importantly, keeping physicians here and reversing their significant exodus prior to tort reform has dramatically improved the public health in our great state.

The West Virginia Mutual Insurance Company's Mission is, and will continue to be, to "provide professional liability insurance to West Virginia physicians on a sound and enduring basis." In light of the long list of ill-advised "discount" medical liability insurance companies going under in our state in the past, coupled with the large stockholder-owned companies beating a hasty retreat from West Virginia when the going got tough (and it will again soon), ask yourself who will still be standing tall for West Virginia physicians? It is clear: no one else will step up to the plate.

We are: *Physicians Insuring Physicians.*

R. Austin Ballacq, MD

What you need to know about House Bill 4486

Jeff Wakefield • Flaherty Sensabaugh Bonasso, PLLC

Jeff Wakefield is a member of Flaherty Sensabaugh Bonasso, PLLC. He concentrates his practice in the areas of insurance coverage, professional liability and commercial litigation. He also has extensive appellate experience, having appeared frequently before the West Virginia Supreme Court of Appeals and the United States Circuit Court of Appeals for the Fourth Circuit. A 1981 graduate of West Virginia University College of Law, where he was a member of the Order of Coif, the West Virginia Law Review and the winner of the Baker Cup Moot Court Competition, he has been recognized in West Virginia Super Lawyers and Best Lawyers in America.

During the last legislative session, a bill was proposed which would have imposed onerous requirements on all liability insurers in West Virginia to provide to claimants, pre-suit, information about the existence of liability insurance. Specifically, HB 4486 was originally introduced on February 9, 2012, and would have required every liability insurer in West Virginia to provide, within thirty (30) days of a written request from a claimant, a statement under oath, from a corporate officer or the insurer's claims manager or superintendent, setting forth the following information:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which the insurer reasonably believes would be available to the insurer at the time of the filing of the statement;
- A copy of the policy.

The bill further required any insured, or his or her insurance agent, to disclose the name and coverage of each known insurer upon written request of a claimant or a claimant's attorney and to forward the request for information to all affected insurers. Finally, the bill imposed upon insurers an obligation to immediately amend any prior disclosure upon discovery of facts calling for an amendment.

The problems with the bill were numerous and, more importantly, it threatened to eliminate some of the hard-fought gains made by physicians, insurers and the WVSMIA in eliminating third-party lawsuits for unfair claims settlement practices. Those problems included:

- The bill was burdensome as it required an officer or claims manager or superintendent to provide the statement;
- The bill required the statement be under oath which would have created a perfect opportunity for a claimant's attorney to allege false swearing later if any information was inaccurate;
- The obligations imposed upon insurers would have been difficult to satisfy or, at a minimum, would have created opportunities for claimant's counsel to allege violations of the statute and perhaps bring a civil action. For example, the bill required identification of any policy or coverage defense which the insurer reasonably believed was available. It also required amendments of statements immediately upon discovery of facts calling for an amendment. This could easily have led to litigation over whether a carrier reasonably believed policy or coverage defenses were available or whether the circumstances had changed to require amendment of the disclosure.

Fortunately, strong resistance to HB 4486 as originally proposed was mounted by many parties. The Mutual, through the efforts of Tamara Lively-Huffman, played an integral

role in lobbying legislators about the problems with the bill. Ultimately, the statute that was passed, West Virginia Code § 33-6F-2, imposes disclosure obligations only with respect to claims asserted against an insurance policy insuring a motor vehicle. The statute also eliminates any requirement to provide policy or coverage defenses reasonably believed to exist. It also does not require production of an entire insurance policy. The most important aspect of the statute, however, is a provision which, while imposing a penalty of \$500 against any insurer which fails to comply with the section, makes it clear that the penalty is the sole and exclusive remedy for any noncompliance. Thus, the statute can't be used as a means to bring a civil action for damages.

Limiting the obligation to provide pre-suit insurance information to only claims arising under automobile liability policies and insuring that any failure to provide the required disclosure leads only to the imposition of a monetary penalty were significant victories. It reduced or eliminated the burden which might have been imposed upon insurers, including medical professional liability insurers, with resulting savings to insureds in West Virginia.



Why the Mutual is one of the best choices for you.

D. C. Offutt, Jr. • Offutt Nord Burchett, PLLC

Offutt Nord Burchett, PLLC, is celebrating its twentieth year of excellence in advocacy in defending the interests and professional reputations of healthcare providers throughout West Virginia, Kentucky and Ohio. Mr. Offutt, who has tried over sixty medical malpractice cases to jury verdict, has been selected by his peers to be listed as a Best Lawyer in America, Medical Malpractice Defense and as a West Virginia Super Lawyers, Medical Malpractice Defense, and was honored to be recently named as Best Lawyers' 2013 West Virginia Personal Injury Litigation – Defendants "Lawyer of the Year." Mr. Offutt is also a founding member of the American Academy of Medical Malpractice Lawyers.

Some of us buy insurance based on economics, opting for the least costly coverage without giving much consideration to other important factors that we should take into account in making this decision. In the case of physicians, the selection of an insurance carrier to provide medical malpractice coverage is an extremely important decision that can have an impact on the physician's professional career, either positively or negatively, for many years to come.

In defending physicians accused of medical malpractice for over thirty years, I have had the opportunity to work with most of the insurance companies who offer this coverage in our region, including West Virginia Mutual Insurance Company, or as it is commonly called, the Mutual. I have found the Mutual to be unique in its claim handling practice; particularly, in how the company interacts with an insured physician who has been named as a defendant in a malpractice lawsuit and the defense attorney retained to defend the physician.

Insurance companies, like people, have different personalities and differing claim handling philosophies. For many large, multi-line carriers, the claim handling process is structured primarily to enable the company to make a simple economic decision concerning whether to settle or defend a claim. These companies impose extremely detailed claim handling and reporting requirements on defense counsel. Information in the form of written reports passes from the defense attorney to the designated claim handler, containing comprehensive discussions of the claim, the nature of the injury, available defenses, and the chances for a successful defense or the risk of an adverse verdict. Rarely, if ever, is the insured physician involved in this

process, and many times the physician never personally meets or even talks with the claims professional who is making critical decisions about the physician's defense. The ultimate decision regarding settlement rests with a claims supervisor or claims committee far removed from the litigation process. These companies tolerate little risk and decisions to settle are heavily weighted on the severity of the damages and the potential size of an adverse verdict, even in cases where the physician clearly did not commit malpractice. Consequently, a physician, who met the standard of care in every aspect of his or her treatment of the plaintiff, may wind up with a settlement on his or her record.

Some of the smaller, specialized insurance carriers are willing to tolerate more risk and proceed to trial even when acknowledging that a trial, win or lose, may result in an overall economic loss. These companies rest their decisions regarding settlement or trial almost entirely on a favorable assessment of liability, rather than considering all of the relevant factors; most importantly, the potential for a large adverse verdict against the insured physician. The incentive for these companies is the ability to market themselves as vigorous defenders of their insureds against the opportunistic plaintiff's bar. While this aggressive approach certainly appeals to most physicians (and understandably so), a blanket "take-no-prisoners" approach to malpractice cases may not be in an individual insured's best interests. At worst, such companies erroneously insist on taking cases to trial that should be settled, ignoring the real risk to the insured physician of an adverse verdict in excess of the policy's limits. The end result of these misguided decisions can be quite damaging to the physician, putting the physician's personal assets at risk and

subjecting the physician to embarrassing and damaging publicity. Reports of a large verdict against a hometown physician in the local newspaper can do considerably more to harm the physician's reputation than a reasonable settlement that is reported to the State Boards of Medicine or Osteopathy and the National Practitioners Data Bank.

The Mutual does not fall into either of these categories. As a mutual insurance company owned by its physician policyholders, the Mutual does not follow a cookie cutter approach to claim handling. Each covered claim is viewed on its own facts and is managed in a manner that best serves the interests of the insured physician. The claims professionals within the Mutual have years of experience handling complex medical malpractice claims in West Virginia. They are thoroughly familiar with local courts and judges. They know the prevailing sentiments of local juries. They educate themselves—identifying counties and communities that are protective of local healthcare professionals, or that tend to be philosophically more plaintiff-oriented, or that are inclined to award large money damages in the event of a plaintiff's verdict. In addition, the claims professionals work closely with each insured physician and defense counsel to identify early those cases best suited to settlement negotiations versus those in which the care is entirely supportable and should be aggressively defended. It has been my experience that the recommendations of defense counsel are given due consideration by decision makers within the company and play a major role in determining how a case will be defended. Likewise, the personal interests and concerns of the insured physician are given careful consideration in all phases of

Why the Mutual continued to page 4

Why the Mutual continued from page 3

the litigation process. This is not always the case with other insurance companies.

Thus, the next time you have to make a decision concerning what company will provide your professional insurance coverage, you should consider more than just the dollars and cents. You should ask these questions: If a claim is made against you, how will the claim be handled? How aggressively will the case be defended? How knowledgeable are the company's claims handling professionals about litigation in West Virginia? Are they local or based in some large city in a distant

state? How closely will they work with you and your defense attorney in making critical decisions about your case? And, perhaps most importantly, how seriously will your desires and concerns be considered when that decision is made?

Take some time to investigate these issues. Talk to your local insurance broker. Find out how other physicians who have been insured by the company have been treated when a claim has been asserted against them. Find out if the company is a newcomer to West Virginia which may not stay long in the market, or one that is based here and is committed to providing coverage to the

State's physicians for the foreseeable future. Ask about the knowledge and experience of the company's claims handling professionals. I think that you will find that the Mutual is one of the best options for your insurance needs. I certainly know from my perspective as an attorney who is regularly retained to defend physicians, when I am called upon by the Mutual to represent a physician in a medical malpractice lawsuit, I will have the full cooperation and support of the claims personnel in defending that claim. I also know that the physician's interests will be given the utmost consideration throughout the life of the claim.

Prescription Drug Abuse Remains A Significant Issue for Practitioners

Ben Bailey and Christopher Morris • Bailey & Glasser, LLP

Bailey & Glasser, LLP, is a leading law firm based in Charleston, West Virginia, and with offices around the United States. Ben Bailey and Christopher Morris, along with their partners, litigate the most challenging and consequential issues facing their clients, including white collar criminal defense, complex commercial disputes, and medical malpractice claims.

For the past few years, prescription drug abuse has been a growing problem in West Virginia, resulting in the medical community facing increased scrutiny by law enforcement agencies and the general public. News stories regarding "pill mills" and interstate prescription drug trafficking have been common. Federal and state government and law enforcement agencies have begun multiple initiatives to combat prescription drug abuse, including the Prescription Monitoring Program, the designation of portions of West Virginia as part of the Appalachian High Intensity Drug Trafficking Area, and the creation of additional multijurisdictional task forces.

Your Mutual has responded to the public's and its members' concerns by offering

regional education around the state in 2012 on issues relating to effective strategies for treating patients' pain while avoiding potential legal complications. In addition to providing perspectives from its own staff, the Mutual engaged leading practitioners in the field to speak, including white collar criminal defense lawyers Ben Bailey and Christopher Morris, both of Bailey & Glasser in Charleston, and pharmacist Dr. Michael O'Neil, formerly of the Pharmacy School at the University of Charleston. Faculty members educated practitioners regarding the law enforcement perspective and offered helpful legal tips. Speakers also offered members a number of helpful strategies for avoiding potential legal problems arising from pain management for patients, including:

- effective charting of both pain scores and activities of daily living to determine efficacy;
- meaningful contracts with pain patients;
- proper exit strategies when pain is not being effectively managed; and
- appropriate use of the Prescription Monitoring Program.

By offering this education, these speakers, and their suggested strategies, the Mutual has endeavored to offer its members timely and useful information for the management of their practices. Please contact the Mutual should you have any suggestions regarding topics for future presentations.



Why take the risk?

With all of the uncertainty in the healthcare industry, your Mutual always strives to protect your best interests.

WVMIC Significant Premium Relief

2006 includes 5% rate reduction and 10% risk management credit

2007 includes 15% rate reduction and 10% risk management credit

2008 & 2009 includes a 5% renewal credit and 10% risk management credit

2010 & 2011 includes a 12% renewal credit and 10% risk management credit

2012 includes 5% rate reduction, 12% renewal credit and 10% risk management credit

2013 includes 15% renewal credit and 12% risk management credit

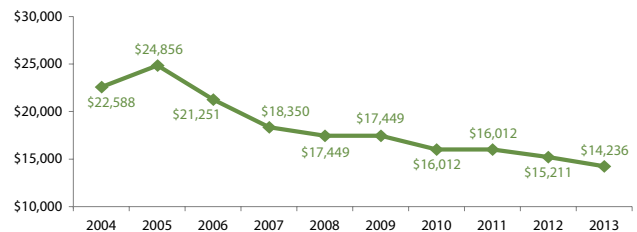
Obstetrician Premium



Surgeon Premium



Family Practice Premium



How to Request Risk Management Services Online:

- 1** Go to: www.wvmic.com
- 2** Click on: Physicians
- 3** Click on: To schedule a site visit -or- register for a seminar
- 4** Click on: Complete Risk Management Service Request form

Physicians can earn premium credits by participating in various programs, including free on-line CME courses, electronic health technology, on-site visits, loss control seminars and our flagship program, C.A.R.E.®. These programs enable you to earn both CME and premium credits.



500 Virginia Street, East
Suite 1200
Charleston, WV 25301

(304) 343-3000
(304) 342-0985 fax
(888) 998-7642

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A.M. Best Company Reaffirms West Virginia Mutual Insurance Company's A- (Excellent) Rating



The Mutual has had its A- (Excellent) rating by A. M. Best Company reaffirmed. For more than 100 years, A. M. Best, the world's largest insurance rating agency, has provided independent reviews of insurance companies' financial strength and solvency. This rating is assigned to companies that have, in A. M. Best's analysis, an excellent ability to meet their ongoing obligations to policyholders.

These positive rating factors primarily are derived from the Mutual's strict underwriting discipline, conservative loss reserve position and knowledge of West Virginia.

The company's success is a by-product of the state's favorable tort reform environment (including caps on non-economic damages).

"The physicians in the State of West Virginia can be very proud of the success their physician-owned Mutual has achieved. The company has succeeded where, in the past, national out-of-state carriers have not. The A.M. Best Company rating of A- (Excellent) received by the Mutual places it among the most financially secure insurance carriers in the United States," said R. Austin Wallace, M.D., Chairman, President and CEO.

The Mutual is the only member-owned medical professional liability insurance company operating in West Virginia. The physician board members of the Mutual play an active role in the management of the company and have been involved since the company's beginning.