



The Road to Justice Starts Here...

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Malpractice - Accidents - Insurance Disputes

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Ollie North interviews American hero Charles Curley

Ben Glass got word this summer that his uncle, Charles Curley of Richmond, Virginia, would be interviewed by Colonel North for his TV show, "War Stories." "Uncle Charles" was on the beach in Normandy on D-day. Colonel North wanted to know all about the training the soldiers had received before the invasion. This show aired on Fox TV News in September, but you may be able to catch it in a rerun.



Debunking the malpractice myth one state at a time

As you know, each issue we try to expose the malpractice myths that permeate the rhetoric of the tort reformers. Remember, whenever you hear the phrase "tort reform," what you are listening to is an effort to limit your rights under the law. We are all for reform of the court system. Frivolous lawsuits and frivolous defenses unnecessarily clog the courts. We have yet to see a "tort reform" proposal that seeks to punish those doctors and insurance companies (and their lawyers) for hiding documents, creating fictitious "defenses," and for unnecessarily delaying cases.

This month we report on a recent look and analysis of the largest medical malpractice insurer for the District of Columbia: NCRIC. An independent group analyzed the performance of NCRIC based on the annual statements and filings it filed with the District of Columbia Department of Insurance and the United States Securities and Exchange Commission.

For years we have been hearing that there is a malpractice crisis in the District of Columbia and the insurance companies are losing money. Remember that the District of Columbia has no caps on medical malpractice claims, so, theoretically, it would be a jurisdiction most at risk for a "crisis." Instead, the report found...

- Between 2000 and 2004, NCRIC increased its premiums charged physicians by 51 percent, even though its total paid claims to malpractice victims in D.C. declined by 9 percent and its average claim in D.C. declined by 28 percent.
- In 2004, its D.C. business was substantially more profitable than its Virginia or Maryland business. This is ironic in that its profits are "supposed" to be higher in states such as Maryland and Virginia, which have medical malpractice caps.
- Under District of Columbia law, the insurance company can raise its rates at will.
- The D.C. Department of Insurance has never exercised its authority to disapprove the rates being charged to doctors, and the Department has no authority to order refunds to doctors who have paid excessive malpractice rates.
- While its medical malpractice insurance line has been profitable, NCRIC has lost money in other business ventures outside of insurance.

The most ironic finding in the report is that NCRIC's biggest loss ever resulted from a case it

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Debunking the malpractice myth...

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filed against Columbia Hospital for Women. NCRIC claimed that the hospital had not paid its malpractice premiums, and the hospital countersued and charged that NCRIC had charged unlawfully high malpractice rates and had interfered with the operations of Columbia Hospital for Women by encouraging its doctors to practice elsewhere. The jury awarded the hospital \$18.2 million, which was more than NCRIC had ever paid in any one year for malpractice lawsuits.

This report only reinforces what we suggest at our main Web site, www.BenGlassLaw.com, and at our very popular and controversial www.Tort-Reform.com. Here's the real question: *Is there any doctor out there who is willing to stand up and say to his or her own insurance company, "Show me the numbers"?* We have not found one who is willing to do anything other than blame the lawyers.

Another shameless bribe from Ben Glass

We are continually on the lookout for interesting articles and stories to keep this the most popular and widely read law office newsletter in the country. If you see something, pass it on. If you have a comment or question that you would like to address to us in the form of a "letter to the editor," then please send it in. If you are the first one to let us know about a particular story and we use that story or print that letter, we will pay you \$25 or donate \$50 to your favorite charity.

Connecticut malpractice insurance rate increase tied to illegal rebates

For years, Women's Health Connecticut, a company that provided management services to more than 140 doctors, had been one of the most outspoken supporters of caps on medical malpractice claims. The company claimed that malpractice lawsuits were responsible for driving up insurance premiums.

Guess what this company, which was supposed to be showing doctors how to run more efficient offices, was doing? According to an agreement reached with the Connecticut Attorney General's office, this company admitted that it was secretly paid rebates by a Virginia-based insurance broker. In other words, while malpractice premiums rose and doctors were being squeezed, the insurance broker secretly paid back money to the management company (which kept the money for themselves) that was advising the doctors to buy the insurance.

There is not one bit of evidence to prove that medical malpractice insurance rates are tied to medical malpractice verdicts or settlements. Instead, virtually every day, we see evidence of an insurance company being caught red-handed lying to the American public. Two insurance company executives from Virginia were recently sentenced to long prison terms for their acts that destroyed Virginia's largest malpractice insurer. What is frustrating to me is how many politicians are willing to continue to repeat the lie. All credit for exposing the lie goes to courageous trial lawyers and state attorney generals who are willing to take on the herculean task of digging deep into the insurance company files.

\$253 million verdict against Merck raises questions

Many of our readers questioned the August verdict against Merck and Company for wrongful death allegedly caused by the painkilling drug, Vioxx. A Texas jury found Merck and Company liable for the death of Robert Ernst and awarded his widow \$253.5 million. As longtime readers know, we preach that one must find out what really happened at trial before commenting. Here are some facts that you may not have read about in the local press:

- The \$229 million punitive damages award will be reduced to \$1.6 million under Texas law.
 - Merck made approximately \$1.6 billion in worldwide sales from Vioxx every six hours and 40 minutes the drug was on the market.
 - Internal Merck documents proved at trial that the company was aware of the problems with Vioxx as early as 1997. Despite their knowledge of these problems, Merck aggressively marketed the drug, making billions off of the new blockbuster.
 - Evidence at trial showed that Merck produced a game called "dodgeball" to teach pharmaceutical representatives how to avoid answering tough questions about the new blockbuster drug. If doctors were not deterred by this tactic, internal documents at trial showed that Merck worked to discredit these doctors.
 - In the last five years, Merck has spent over \$30 million lobbying the United States Congress. If Merck's efforts lobbying Congress had been successful, it would be virtually off the hook today.
 - The jury's award was not pulled out of thin air, but was their calculation of the amount of money that Merck made while it delayed notifying patients of the problems it knew with the drug.
- It will be interesting to see how this case ultimately turns out. We will report back as this case winds its way through the appellate courts.

We interrupt the business of the practice of law for this very important message

As many of you know, my wife Sandi and I adopted our sixth child, Kevin, from China two years ago. Having seen firsthand the tragedy of China's social policies, Sandi and I have teamed up with the **Philip Hayden Foundation** to help provide for some of the needs of Chinese orphans still waiting for their "forever" families.

The Philip Hayden Foundation is a U.S. charitable organization dedicated to helping China's orphaned and special-needs children primarily through the building of children's villages on mainland China. This amazing organization takes in at-risk and special-needs orphans like Kevin, place them in homelike environments, love them, provide for much-needed medical care, including surgery, and work to find them permanent homes.

The children's villages are currently in desperate need of coats and winter clothing for the children they care for.

You can give a gift that will touch the heart of the recipient and really make a difference in the life of a child. For a minimum donation of \$10, you'll receive a personalized, handmade card to give as a gift, and a child will receive a coat or other needed winter clothing. (She won't tell you, but each of these cards is handmade by Sandi—our dining room now looks like a Hallmark factory!)

We've found these to be perfect for holiday gifts for teachers, who already have a heart for children and probably too many apple trinkets. Or to celebrate the birth of a child into a loving family, the office gift exchange, etc. Guaranteed to get a heartfelt thank-you! To see the wonderful, life-changing work that Philip Hayden Foundation does, visit www.philiphayden.org.

Thanks for considering giving a gift of hope to a child in need!

Sample cards and text



This holiday season, winter clothing has been donated in your name to clothe an orphan in China. Your donation will warm an orphan living in one of Philip Hayden Foundation's children's villages.

PHF is a U.S. charitable organization dedicated to helping China's orphaned and special-needs children primarily through the establishment of children's villages, where they take in at-risk and special-needs orphans, love them, provide them surgeries, and work to find them forever families.

THANK YOU for giving a gift of hope to a child in need, a gift that changes their life and yours!

TOGETHER, WE CAN MAKE A DIFFERENCE!

www.philiphayden.org

Warm wishes for a blessed holiday season!



Super-quick Response Gift Card Order Form that will keep a child warm and put you at the top of the "Wow, that was the best gift I ever got" list

Please send me gift card(s) for the following occasions:

	<i>Indicate Quantity and Card Color</i>			
_____ Birthday	___ Red	___ Green	___ Gold	___ White
_____ Birth of a child	___ Red	___ Green	___ Gold	___ White
_____ Adoption of a child	___ Red	___ Green	___ Gold	___ White
_____ Baptism	___ Red	___ Green	___ Gold	___ White
_____ Teacher appreciation	___ Red	___ Green	___ Gold	___ White
_____ Holiday (generic holiday message)	___ Red	___ Green	___ Gold	___ White
_____ Christmas	___ Red	___ Green	___ Gold	___ White
_____ Hanukkah	___ Red	___ Green	___ Gold	___ White
_____ Other (specify)	___ Red	___ Green	___ Gold	___ White

Include a personalized message if desired _____

Please send my card(s) to me at this address: _____

Or send to the recipient at this address: _____

(be sure to include a personal message if _____
sending directly to the recipient) _____

E-mail or phone # in case I have a question: _____

TOTAL ENCLOSED \$ _____ FOR (#) _____ CARDS
(Minimum donation \$10 per card)

Checks should be made payable to "The Philip Hayden Foundation" with "winter clothing" in the memo line. All gift-card donations are tax-deductible.

Send check payable to THE PHILIP HAYDEN FOUNDATION and this order form to:

Sandra Glass, c/o Benjamin W. Glass, III & Associates, P.C., 3915 Old Lee Highway, Suite 22-B, Fairfax, VA 22030

A CHILD THANKS YOU

Sandi will start working on your cards today if you fax this form to Ben's office at
703-783-0686

You Are Giving the Gift of Hope!
TOGETHER, WE CAN MAKE A DIFFERENCE!



In September, Ben Glass chaired the Virginia Trial Lawyers Association's Solo and Small Firm Conference. This event brought lawyers from all over the region to Charlottesville for two days of teaching and networking with other small-firm attorneys. Mr. Glass, who is pictured here with North Carolina attorney Don Marcari, gave a keynote lecture on lawyer advertising ethics. (For more information, visit www.TheTruthAboutLawyerAdvertising.com.)

Virginia Supreme court nixes recovery for injury to favorite pet

A longstanding general rule of the law is that an injury to an animal, even a beloved pet, does not give rise to a lawsuit for anything more than the "value" of the animal. The Supreme Court of Virginia recently reaffirmed this long-held principle in a case in which both the plaintiff and her dog were injured in an automobile accident.



The issue was whether the driver of the car could recover for her own emotional distress, knowing that her dog had been injured. The court reversed a verdict in favor of the dog's owner and said that there could be no such recovery.

In an interesting footnote to the case, the court allowed "Sushi" to attend the trial on condition that it did not growl or show any hostility towards the insurance company lawyer.

Another crazy lawsuit

As much as we defend the right of individuals to file a lawsuit, our readers know that we condemn cases that are plainly frivolous. Frivolous cases have no place in the courtroom and, indeed, hamper true justice because they clog court calendars.

A Los Angeles man is apparently suing an on-line dating service after being shunned by another subscriber. Soheil Dahood paid for a subscription to its JDate.com, which built itself as "the world's largest Jewish singles community." JDate guaranteed that he would find "high-quality, successful Jewish personals without wasting precious time."

Dahood sued JDate, claiming that the Web site was "defective" because he was exposed to "serious psychological injury" when his overtures towards another member were rejected.

We could not confirm whether there was actually a lawyer who filed this case or whether Dahood filed it on his own. If a lawyer filed it, he or she is not helping the system at all.

**Before you
hire a lawyer**

**Before you
talk to the
insurance
company**

**Before you
make a
mistake in
your claim**



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You must be honest with your insurance company

Two recent cases that we reviewed in our office caused us to remind our readers that when applying for any type of insurance, they must be brutally honest with the application. In both cases, families were left without life insurance after it was discovered that the decedent had misrepresented past medical history on the application. Please remember that, while this may help you obtain the insurance initially, insurance companies perform an investigation in every case and, if they find that you have made a material misrepresentation on the application, they will deny the claim. In both cases, small children were left without life insurance coverage.

Remember, too, that being honest does not mean that you will not be able to get the insurance. Certain medical conditions may be excluded and certain additional time limits may apply, but anything is better than leaving a spouse and children with no coverage at all.

Disability insurance claims

According to the Health Insurance Association of America, one in three of us between the ages of 35 and 65 is likely to suffer a disabling incident lasting at least 90 days sometime during our careers. What disabling events can put a career off track? Problem pregnancies, broken arms, and anxiety conditions, to name just a few.

Because most employer-issued disability insurance policies provide only a percentage of salary and put caps on benefits, many people purchase private disability insurance policies to fill the income gap.

If you have been denied disability insurance benefits, contact attorney **Juliet Purll** in our office.

Norfolk Federal Court case results in \$200,000 settlement

A pharmacy's error has resulted in a \$200,000 settlement for a Norfolk man. The plaintiff was a 61-year-old man generally in a state of good health. He developed a blood clot in his leg, and his doctor prescribed Coumadin in the amount of 10 mg per day. Coumadin is a blood thinner. The pharmacy's instructions to the patient were to take two and one-half times the prescribed dosage. Two days later, the gentleman suffered a massive rectal hemorrhage and was hospitalized. The hemorrhage recurred two additional times, resulting in more hospitalization. He incurred about \$18,000 in medical bills and lost wages in the amount of \$4,000. A settlement was reached before trial.