

## Inside This Issue

### Special Section: ADR

See Index and Cover Page 7

**JAMS – The International Resolution Experts** Interview: Robert B. Davidson  
JAMS – THE RESOLUTION EXPERTS

#### Participants:

EISNER LLP; JOHN E. OSBORN P.C.;  
JORDEN BURT LLP; LEADER & BERKON  
LLP; LOWENSTEIN SANDLER P.C.\*; WEIL,  
GOTSHAL & MANGES LLP\*. Details and  
other participants listed on Page 7.

### Special Section: General Counsel As Persuasive Counselors – Part II

See Index and Cover Page 25

#### Measuring Up To The Challenges

Interview: Charles R. Lotter JC PENNEY  
COMPANY, INC. (Retired)

#### Participants:

JONES DAY\*; MCKENNA LONG &  
ALDRIDGE LLP\*; THOMPSON & KNIGHT  
LLP; YOUNG CONAWAY STARGATT &  
TAYLOR, LLP. Details and other partici-  
pants listed on Page 25.

### Special Report: Pro Bono

See Index and Cover Page 51

#### JP Morgan Chase: Inspired Partnership With MFY – And More

Mark Segall JP MORGAN CHASE

#### Participants:

AKIN GUMP STRAUSS HAUER & FELD  
LLP\*; DAVIS & GILBERT LLP\*; HOLLAND  
& KNIGHT LLP\*; JONES DAY\*; KING &  
SPALDING LLP\*; PROSKAUER ROSE LLP\*;  
WEIL, GOTSHAL & MANGES LLP\*; WILEY  
REIN LLP\*; WOLFBLOCK\*. Details and  
other participants listed on Page 51.

## Featured Topics

### Investigations & Audits

#### Keys To A Successful Investigation

Interview: Timothy Harkness KRAMER  
LEVIN LLP\* Page 16

#### Congressional Investigations: An Emerging Battlefield For Corporations

Stanley A. Twardy Jr. and Michael G.  
Considine DAY PITNEY LLP\* Page 17

#### Investigations & Audits – Eeny, Meeny, Miny Moe? Peter Kiernan EVERSHEDES

LLP Page 18

#### Proactive Solutions For FCPA Investigations And Compliance

Interview: Jeffrey Harfenist, Joseph Jaffe  
and Frank Rudewicz UHY ADVISORS  
FLVS, INC. Page 19

#### The Vital Role Of The Forensic Accountant In Investigations Interview:

Brian Loughman ERNST & YOUNG LLP  
Page 20

Please turn to page 3

\* Supporting Law Firms

ADR (P. 7) • Persuasive Counselors (P. 25) • Pro Bono (P. 51)

# The Metropolitan Corporate Counsel®

Northeast Edition

www.metrocorpccounsel.com

Volume 15, No. 8

© 2007 The Metropolitan Corporate Counsel, Inc.

\$10 per copy

August 2007

## Healthcare ADR Comes Of Age: Arbitration And Other ADR Methods Meet The Distinct Challenges Raised By Healthcare Disputes

*The Editor interviews Keith Maurer,  
Director of Healthcare and Insurance  
ADR Services, National Arbitration  
Forum.*

**Editor: Mr. Maurer, can you give us  
some background information on the  
National Arbitration Forum?**

**Maurer:** The FORUM has become an international leader in developing and delivering the most efficient and effective alternative dispute resolution (ADR) systems and services. As a provider of arbitration, mediation and other alternatives to lawsuits that save time and money, the FORUM has established an impressive track record, administering large programs (like the New Jersey No-Fault Personal Injury Protection program) and handling thousands of cases where parties have contracted for arbitration.

Today, the FORUM is headquartered in Minneapolis, Minnesota and has offices located in New Jersey and Los Angeles. FORUM services and expert neutral arbitrators and mediators are available across the nation.

**Editor: In general, what is the value of  
ADR as applied to healthcare disputes?**

**Maurer:** ADR, and arbitration in particular, provides parties with a low cost and efficient alternative to expensive and prolonged litigation. Lowering the cost of resolving healthcare disputes produces several very desirable outcomes.

First, it increases access to justice for patients, employees and smaller medical practices. Trial attorneys know firsthand the delays and expense often associated with court litigation and simply cannot accept cases where the amount in controversy does not justify the time that will be required to resolve the case in court. ADR changes that calculus such that parties with smaller value claims can access a



Keith Maurer

forum in which to get their dispute resolved.

Second, ADR drives down healthcare costs. When disputes go to court they enter a system that is notoriously slow, adversarial and expensive, and leads directly to escalating premiums and runaway legal costs. Dispute resolution costs are exactly the type of administrative burden that we should be looking to drive out of our healthcare system.

Finally, arbitration's flexible and tailored procedures allow parties to select an expert decision maker who is comfortable with applicable laws, standards,

and practices. This increases the outcome predictability, which can, in turn increase the probability of settlement. Decision maker expertise also further increases dispute resolution speed and efficiency.

**Editor: What kinds of healthcare disputes are good candidates to be resolved using ADR methods?**

**Maurer:** ADR has a strong track record of success with all of the major types of disputes that arise in the healthcare

Please turn to page 50

**Hold the Dates:**

**Seminars On Global Compliance**

**New Jersey, October 17 • New York City, October 18**

see page 5

## Keith Maurer

*Continued from page 1*

context, including medical malpractice, negligence, billing, insurance, employment, contractual disputes, and others. It is important to understand that arbitration agreements and arbitration rules that adhere to best practices make available all remedies that would be available had the parties taken their dispute to court.

In fact, the FORUM goes one step further and requires its arbitrators to decide cases according to the applicable substantive law. The goal is to provide parties with the same outcome they would have received in court, but provide it more quickly and less expensively in arbitration. Application of substantive law also adds an element of predictability and rationality, because the parties know which standards will be applied to their arguments and to the ultimate decision and award.

**Editor: What impact has arbitration had on the growing trend of consumer-centered, "patient friendly" healthcare billing?**

**Maurer:** Changes to America's healthcare system have placed more responsibility on patients for paying their own medical bills. And as patients take on more financial responsibility for their healthcare, disputes between patients and providers – especially billing disputes – are inevitable.

In this context, healthcare providers in particular find themselves in a delicate position: desiring to pursue unpaid balances without sacrificing their reputations as nurturing, trustworthy caregivers. Providers who follow adversarial collection methods and lawsuits jeopardize not only their public image, but also future revenue and patient relationships.

Arbitration serves as a much more patient-friendly alternative, because it provides patients with access to a system that is much easier to navigate and understand for the lay person. Arbitration's simplified procedural rules mean that parties will not get tripped up by formal pleading requirements or obscure rules of evidence, for example. The most onerous elements of the litigation system simply do not exist in arbitration, and that enables arbitration to complement "patient friendly" billing initiatives quite well.

**Editor: What is the best way for parties to ensure that any disputes will be channeled to arbitration instead of litigation?**

**Maurer:** The most effective way for parties to make sure that disputes will be mediated or arbitrated, rather than litigated, is by agreeing to do so at the outset of their relationship through patient admission documents and contracts, before disputes arise. A number of commentators have noted that it is very unlikely that parties will agree to use ADR after a dispute arises. At that stage, one party or the other will perceive that litigation offers some advantage, an advantage they will not choose to relinquish by agreeing to ADR. Moreover, the relationship between the parties may already be strained as a result of the dispute itself, making it less likely that they would agree to ADR.

Fortunately, properly drafted pre-dispute agreements to arbitrate are over-

whelmingly endorsed by reviewing courts. And drafting arbitration agreements is made simpler when the parties agree to invoke a well established set of arbitration rules that serves to fill in numerous procedural details that the parties would otherwise need to create from scratch in their contract. The FORUM provides an arbitration agreement drafting guide on our website and this provides a good starting point for parties considering arbitration.

**Editor: What are your thoughts on the recent bill in Congress aimed at promoting the idea of specialized "health courts"?**

**Maurer:** We applaud the impulse behind proposals such as these. Healthcare disputes clearly present particular challenges in terms of complexity and time sensitivity. However, parties do not have to wait for the federal government or state governments to create specialized programs tailored to the demands of healthcare disputes. Existing federal and state laws encourage parties to agree to arbitrate disputes and require courts to enforce well constructed arbitration agreements. With a little bit of guidance, parties and their counsel can draft an arbitration provision that will provide all of the benefits that they might see in a future "health court" forum and more.

**Editor: What are some of the most important considerations for parties drafting healthcare arbitration agreements to keep in mind?**

**Maurer:** Let me give you a short list of important considerations that should provide a good starting point.

**Mutuality.** All contracting parties should be agreeing to resolve any resulting disputes using arbitration. This is especially important if one of the parties is an individual patient or employee.

**Low costs.** Arbitration fees and costs, especially those borne by an individual patient or employee should be kept as low as possible.

**All remedies.** All remedies available in court should also be available in arbitration. This includes statutory remedies and equitable/injunctive relief.

**Full information.** All arbitration agreements should be readily available for patient or employee review and, where helpful, supplementary documentation further explaining arbitration should be made available.

**Reputable administrator.** Professional administrators provide legally-tested arbitration rules and clear procedures to ensure that parties spend their time contesting the substance of their dispute, rather than procedural matters.

**Flexible hearings.** Smaller disputes are often best handled through "document hearings" where neither party physically attends a hearing. More complex disputes may require extensive in-person evidentiary hearings.

**Follow the law.** Parties should require that their arbitrators use the applicable law to decide cases to ensure consistency and avoid compromise awards.

**Expert arbitrators.** Parties may choose an arbitrator with specific experience resolving healthcare billing disputes.

**Invoke the FAA.** Invoking the Federal Arbitration Act promotes uniform enforcement of the agreement across jurisdictions.

**Editor: Given the benefits of arbitration for healthcare disputes, are there any healthcare disputes that should not be arbitrated?**

**Maurer:** Arbitration is appropriate for the vast majority of disputes. However, part of the efficiency benefit of arbitration is that appellate review is less searching than it is for judicial decisions. With that in mind, parties facing "bet the company" or other extremely high-stakes disputes may want to maximize their opportunities for appeal regardless of the cost and delay. Alternatively, they could take the dispute before an expert arbitrator or panel of arbitrator and contract for "second-level" appellate arbitration before a second expert panel. Arbitration's inherent procedural flexibility makes options like this possible.

**Editor: What are the hallmarks of the National Arbitration Forum's particular approach to administering arbitrations?**

**Maurer:** First on the list is the fact that FORUM arbitration awards are decisions that are based on the substantive law that governs the underlying transaction or relationship rather than some subjective conception of fairness. The FORUM Arbitra-

tion *Code of Procedure* expressly limits the power of arbitrators such that they are required to apply the law in deciding cases. Concerns that parties may have about compromise or "split the baby" awards should be allayed by this feature of the FORUM's arbitration rules.

Next is the administrative efficiency that the FORUM is able to achieve. This efficiency is produced by our best practices arbitration rules and our innovative technology such as a proprietary case management application and high speed scanning that enables paperless operations. Administrative efficiency drives down costs and eliminates mistakes and errors by enabling systematic procedural auditing and error checking.

When it comes to resolving disputes, time is quite literally money. Efficient administration prevents unnecessary delays and gets cases resolved much more quickly and less expensively. This permits healthcare entities to spend their time and resources providing care and services instead of contesting claims.

Last, but not least, is the quality of our panel of healthcare neutrals. The FORUM is affiliated with over 1,600 expert neutrals from across the United States and provides parties with a panel of healthcare arbitrators and mediators with deep experience resolving these disputes.

## Partners Notes

### ONSITE3 Announces Enhancement Of Its Electronic Evidence Platform

ONSITE3™ has announced the addition of voice-to-text conversion capabilities to its Electronic Evidence Enterprise (E3) Platform for fast Electronic Discovery processing. In addition to this new voice-to-text conversion feature, text transcripts and original media files can also be hosted within ONSITE3's eView™ document review platform in order to facilitate effective and efficient document review of voice-over-IP based voicemail messages.

"With the increasing use of voice-over-IP technology in corporate communications, legal professionals are being called upon more often to conduct review of audio files as part of the evidence review process," said Mark Hawn, chief executive officer, ONSITE3. "Traditional audio review is an incredibly time intensive task that, with ONSITE3's new voice-to-text conversion technology, can be significantly decreased."

In addition to the conversion of many types of audio files, ONSITE3's new technology can also convert audio tracks from most types of video files into electronic text format, and ONSITE3 can further pro-

vide paper to electronic conversion services through its in-house optical character recognition (OCR) scanning technology.

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ONSITE3™ and Deepdive™ Technologies, a leading provider of automated electronic data discovery solutions, have announced a technology partnership in which ONSITE3's Consulting Practice Group will leverage Deepdive's patent-pending Auto-Discovery® technology for the comprehensive assessment of active data residing within a client's network systems. Offered under ONSITE3's new Data Cataloging Service, participating clients can receive detailed analysis, maps, and reports designed to facilitate their understanding of the location and types of electronically stored information on active network systems, including "loose" documents that may be found in various workgroups and domains, computers, and Windows file-shares.

For more information about ONSITE3's Data Cataloging Service or other discovery and technology consulting services, visit [www.ONSITE3.com](http://www.ONSITE3.com).

### Norris McLaughlin Hires Director Of Recruiting

Norris McLaughlin & Marcus, P.A. has announced that Bridget D. Asplund has joined the firm as director of recruiting.

Ms. Asplund previously worked at Haley Stuart LLC where she was responsible for the recruitment of attorneys at top law firms and corporations.

At Norris McLaughlin, Ms. Asplund will oversee all recruiting functions, including the hiring of professional staff (attorneys and paralegals); administration of the summer associate program; creation and implementation of integration, reten-

tion and development programs; coordination of performance evaluations, and recruiting-related budgeting and marketing.

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Norris McLaughlin member Edward G. Sponzilli will serve on the newly-established Supreme Court Bench\*Bar\*Media Committee. This Committee was formed to keep the public informed about the courts in general, as well as about particular court cases through accurate reporting and the underlying mutual cooperation essential to that.

*Please email the interviewee at [kmaurer@adrforum.com](mailto:kmaurer@adrforum.com) with questions about this interview.*