

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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FROM THE WEEK OF JULY 14 - 18, 2003

THEY CAME. THEY SAW. THEY LEFT.

The second week of Special Session C began with the Senate Judiciary Committee's hearings on the medical-liability crisis, the actual existence of which some senators clearly question. Witnesses were invited to testify under oath, an invitation that was cloaked in the threat of a subpoena if voluntary attendance was not forthcoming. Some declined the invitation to testify. Nevertheless, instead of responding with subpoenas to compel testimony, committee staff quietly circulated a list of names of persons who were "unable to testify" — although, eerily, most of these persons were sitting right there in the audience watching other people testify — under oath.

The hearings, which dragged on for two days, were billed as a fact-finding mission. In reality, the effect of the hearings was to put the supporters of medical-liability reform on trial. For the most part, the committee members subjected reform advocates to a pointed — and sometimes antagonistic — examination. In other words, there were plenty of prosecutors but no judge or defense counsel. Kafka would have been proud. Put another way, it was a good ploy for the anti-reform forces, as it shifted the momentum in their direction.

Nothing much happened in the House except for the ongoing negotiations carried on by Representatives Allan Bense (R-Panama City) and Dudley Goodlette (R-Naples) under the leadership on House Speaker Johnnie Byrd (R-Plant City). When the week began, negotiations with their Senate counterparts, Rod Smith (D-Gainesville) and Tom Lee (R-Brandon), seemed to be in the final stages. When the week ended, however, and high hopes were dashed and we were left to wonder if, perhaps, we might still be writing about this issue when the 2004 Regular Session begins next March.

The ongoing feud between the governor's office and the Senate continued to escalate with the release of an e-mail by a reform supporter that quoted Governor Jeb Bush as urging business leaders to withhold campaign support from recalcitrant senators. Shortly after the message was sent out, a copy of it was reportedly delivered to the Academy of Florida Trial Lawyers, who gleefully drenched the Capitol with copies. It was a perceived insult added to the perceived injury of a prior e-mail sent out late last week by the governor's deputy chief of staff, which suggested that Governor Bush would recruit GOP primary opponents against certain Republican senators who opposed reform.

The often outspoken Senator Nancy Argenziano (R-Crystal River) waded into the fray by comparing House Republicans to a suicidal cult. She was later quoted as saying, “With all due respect to my governor — and I want to make that clear — we have people fighting for freedom from tyranny. Even though he’s in my party, he is not King Jeb the First.”

Sooner or later we’re sure that Senate President Jim King (R-Jacksonville) will reprise the famous warning issued by the legendary Senate leader Dempsey Barron to his fellow Democrat, Governor Reubin Askew: “Stay the hell out of my Senate.”

Unfortunately the emergency of a bitter intra-party political squabble is superseding the question of medical-liability reform.

The Judiciary Committee hearings seemed harden the resistance of senators in the anti-reform faction, while the wrangles with the governor apparently stiffened the spines of senators who were willing to negotiate.

On Wednesday afternoon, when negotiations still seemed to be working, the governor extended the special session past its deadline of midnight that night to 7:00 p.m. July 21. Immediately thereafter, Senator King scheduled a media briefing and announced that he was releasing the outline of a new Senate reform proposal. It is unclear how much the proposal mirrors the agreements that had already been reached by the House and Senate negotiators, although Senator King later revealed that he overrode some of his Senate team’s objections over the design of certain provisions in the new proposal.

When Senate President Jim King (R-Jacksonville) announced the terms of a new senate proposal Wednesday evening, it was apparent that negotiators had made some significant progress but a final deal is not yet in the offing.

The intractable substantive question remains, “How high do we set the level of the cap on non-economic damages?” The negotiators seem to have agreed on a framework to replace the concept of a one-size-fits-all hard cap. Under the new scheme, defendants would be grouped into three categories, or silos in the House lexicon. Within each category there would be a per-claimant cap and an aggregate cap. Under the House plan the maximum non-economic damage cap arising from a single incident of medical malpractice, regardless of the number of plaintiffs or defendants, would be \$2 million; in the Senate it would be \$4 million.

Please go to <http://www.fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief54.htm>
to read the July 17 Daily Brief, which explains the Senate cap

Please go to <http://www.fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief51.htm>
to read the July 14 Daily Brief, which explains the House cap

Please go to <http://www.aif.com/taxmedia.htm>
to view comments by Art Simon, AIF’s Senior Vice President for Governmental Affairs

Where we stand with respect to a final resolution of this issue remains murky. On the credit side of the ledger stands the professionalism of and mutual respect among the House and Senate negotiators. Representatives Bense and Goodlette have joined with Senators Smith and Lee to calmly and coolly investigate possible avenues for compromise. Along the way they have demonstrated their openness to the opinions and reasoning of the different groups involved in the issue.

Yesterday that attitude bore fruit for the business community. Both the House and the Senate bills had included provisions for a state-sponsored insurance entity that would compete with private medical-liability insurance carriers. The provisions were designed to increase competition in and restore stability to the market but AIF and others successfully convinced the negotiators that the plan would not achieve its intended goal. On Thursday we received word that the state-sponsored insurance fund would no longer be a part of either chamber's legislation. We applaud Senators Smith and Lee, and Representatives Goodlette and Bense, for their willingness to listen. Senator King and Speaker Byrd also deserve the business community's thanks for providing the necessary leadership to take this issue off the table.

Governor Bush and the House are studying the latest Senate proposal. The Senate plan, with its \$500,000 per-claimant non-economic damage cap for doctors will meet muster with neither the House, the Governor, nor the Florida Medical Association. Senator King has expressed doubts that he can deliver the 21 votes necessary to pass his proposal as it now exists, much less if he were to lower the cap for doctors to the \$250,000 level the other side wants.

While damage caps remain the high profile issue, there are other issues that have yet to be resolved, most notably bad-faith reforms.

We can say with 99-percent certainty that nothing will happen on Monday, the last day of Special Session C. The best prediction right now? Look for Special Session D to commence on August 5.

- For more information on all of the important legislative information concerning the business community, go to our "members only" Florida Business Network web site at <http://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.