ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE DAILY BRIEF
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FROM JULY 14, 2003

The Senate Judiciary Committee carried out its threat today to take testimony under oath about the medical-liability-insurance crisis. The meeting, which began at 1:00 and concluded at 5:00, featured extensive questioning of witnesses. Bob White, president of the state's largest provider of medical-malpractice coverage, came in for the most intense grilling, which lasted for almost an hour and a half. As a result, the committee only made its way through about half of the list of invited speakers and will wrap up its work on Tuesday.

The meeting was billed as a neutral, fact-finding session. In truth, however, some senators are acting more like advocates for trial lawyers, who are intent on challenging the constitutionality of any statutory cap on non-economic damages. Nevertheless, the hearing will have little or no impact on substantive provisions of the final bill, which, as always, will be a product of give-and-take in the course of House-Senate negotiations.

By all accounts, the malpractice issue is in the final stages of negotiation. According to inside sources, a cap on non-economic damages remains the sticking point. However, a compromise plan may include three defendant categories (called silos) as contemplated by the Senate bill, and a single-claimant cap of $250,000 for doctors as provided for in the House bill. Multiple claimants would increase the exposure of a single doctor (or all doctors) to a maximum aggregate of $500,000. In the second silo, a higher single-claimant cap (maybe $350,000 to $500,000) with a maximum aggregate liability of $750,000 to $1 million for all claimants is likely for hospitals. The third silo would cover HMOs and perhaps others with liability limits comparable to doctors (in the first silo.) Under this scenario, the maximum possible payout for non-economic damages by all defendants to all claimants arising from a single incident of medical malpractice could amount to $2 million, even though the "base cap" (single claimant/single doctor-defendant) is only $250,000. Obviously, these limits are somewhat more generous than a "hard cap" of $250,000 that was initially proposed by the governor and the House. Nevertheless, doctors would still benefit, and hospitals, which are heavily insured, deep-pocket, target defendants, would benefit a lot. HMO's too!

"Double dipping" (i.e., tapping limits in two separate silos) would be barred in situations where one defendant is vicariously liable for the negligence of others. Moreover, as a practical matter, joint-and-several liability would have to be abolished in all medical-malpractice actions. This too is under active consideration. Also, language governing the right of set-off arising from pretrial settlements with some (but not all) defendants needs to be carefully crafted.

Although the bill will include some reform of Florida's bad-faith insurance law, the bill will not be as strong as the governor originally proposed. Consequently, we expect that the final bill will include a mandatory rate *filing* rather than a mandatory rate *rollback* (which was tied into strong bad faith reform).

We do not anticipate any grant of sovereign immunity to emergency room personnel in the final bill. Key negotiators are no doubt concerned about the constitutionality of any such provision and they are optimistic that other provisions in the final bill — most notably the cap on non-economic damages — will have a salutary effect.

Another important issue that remains unresolved is the question of whether the state should create a government-sponsored insurance entity. AIF does not favor this approach.

If there is any breakthrough in negotiations during the next 24 hours, Special Session C may be extended past its Wednesday midnight deadline — so that lawmakers can conclude this troublesome task on or before next Monday. If not, we will return again next week for Special Session D.

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