



Arkansas Association of Defense Counsel

October 24, 2016

FIRST QUARTER REPORT NEWSLETTER

Though not quite a full quarter into my term as President of the AADC, in lieu of our regular Monday Newsletter this week I wanted to take the opportunity to provide our members with an update as to the current status of the AADC and news, in general, that might be (hopefully) of some use to you. Please indulge me for a moment and read on.

First, the re-vamp of our website is proceeding slowly, but is proceeding. The new general format for it has been designed and we hope to have it in place and ready for your (easier) use by the new year.

Jason Hendren, our DRI Representative recently attended the DRI Southwest Regional Meeting held at LaFonda in Santa Fe, New Mexico. A picture of he and the other attendees is at the end of this Newsletter. You will hear more about the meeting, and how DRI can assist you in your practice, from Jason (hopefully) in the next few weeks in a future Monday Newsletter. If you are not already a member of DRI, I would strongly encourage you to become one. When you first joined the AADC, you received a year's free membership. Some, I know, did not realize that expired after the first year and needed to be renewed. Please check and assure your membership with DRI is current. Its monthly magazine "For the Defense," has informative, relevant articles about the very areas in which we daily practice. DRI also has continuing legal education seminars in some fantastic sites like Boston, New York, San Francisco and Chicago. Make a long weekend out of one and take your spouse and/or kids to see the sites.

I know several of you have already signed up and/or reserved rooms for our annual meeting next Summer. Thanks so much! That's fantastic that so many are already so excited about next year and, I think, a testament to the success of recent year's meetings. I can't wait to see you all there. Dan, Cole and I recently spent a weekend hiking/biking/camping/star-gazing on Petit Jean Mountain (we stayed at the Mather Lodge) and it

was an amazing time. If you've never been, don't wait for the meeting next year to check it out - visit yourselves, or at least take a look online. I've included at the end of this Newsletter a recent article with photographs I found in a Central Arkansas Family magazine concerning the area and some fun things to do there. As you can see, there is fun for all ages.

Our membership continues to grow and I appreciate those who have (and hopefully will continue to) spread the good word about the AADC and encourage their friends and partners to join. In that regard, we've added several new members since the annual meeting in July and are up significantly in members from this time last year. As Scott Strauss always said, "We are stronger together!" I truly believe that. Keep up the good work!

A great number of you have submitted Newsletters to me, that I promise I will get out in the weeks to come. Others have promised to submit more. I thank all who have already, or will in the future, submit them. I would encourage all to do so or, at least encourage your law clerks and/or young associates to do so. It is an easy way for them to get their names out there and others to see their good work product. Not to mention, it educates us all and keeps us abreast of the current law/recent decisions from the Bench. I need several more to finish out this year, not to mention the next 7 months of 2017 before Rebecca Hattabaugh takes over as President, so please keep them coming! Thanks.

Next, while some of you may already be aware of this (thank you to my partner Keith McPherson for alerting me), CMS issued an Alert on September 29, 2016, announcing it will maintain its \$1000 safe harbor threshold for physical trauma based liability insurance settlements (including self-insurance) for the 2016 fiscal year. This means, when a client resolves a liability insurance claim involving a Medicare beneficiary and the gross award does not exceed \$1000, there is no Section 111 reporting requirement and Medicare will not pursue a

recovery in that case. Note, this safe harbor does NOT apply to claims based on exposure, ingestion or implantation and no safe harbor currently does apply to those types of cases. CMS also announced a \$750 safe harbor threshold for no-fault (PIP coverage) and workers' compensation settlements where Ongoing Responsibility for Medicals (ORM) no longer exists. A link to the full Alert should one be so inclined as to read it is here: www.cms.gov/Medicare/alert.

On another matter, I know some (though not all) of you read the Court Bulletin summaries and/or the Slip Opinions released each week on new decisions of the Arkansas Appellate Courts. For those who do not, some interesting decisions have been handed down in the past few weeks. If you do any type of trust or other probate work, you might take a look at the decision in *Peck v Peck*, 2016 Ark.App. 423 Court of Appeals (9/21/16), reversing Judge Fox's Order dismissing an Amended Complaint and remanding it for him to consider the Motion to Dismiss in conjunction with the allegations of the Amended Complaint that the Trustee breached her fiduciary duties to the beneficiaries of the trust and not assume simply because her standing as the Trustee was challenged the beneficiaries forfeited entitlement to any further inheritance and, thus, lacked standing to proceed in the suit. This is an ongoing, inter-familial, battle that has waged on for several years in multiple cases and as of yet, has had no real resolution.

Further, there have been some surprising jury awards lately of which some may not be aware and which may affect valuation of your cases in the future with those Plaintiffs' attorneys and/or in those venues. Specifically, Todd Griffin obtained a verdict in Jefferson County on September 27, 2016, of \$166,467.68 for a client with only \$8,207.68 in medical bills (predominately chiropractic in nature) and \$1260 in lost wages. \$15,000 was awarded for the nature, extent and duration of the (nonpermanent injury) and \$142,000 in pain and suffering. My understanding is this was not anticipated and even Judge Wyatt acted surprised by the amount of the verdict. I know most of us have long considered Jefferson County to be a fairly reasonable venue. Hopefully this verdict does not represent a shift away from that.

Less surprising given the venue, though still higher than one would expect, was another recent verdict out of Phillips County in which Louis Etoch and David Hodges obtained a unanimous verdict of

\$750,000 (after asking for \$925,000) against Playpower for a Caucasian, female, second grader who fell off some playground equipment, fracturing her arm. Interestingly, there was only \$62,000 in medical bills, no permanent injury and future medical bills, mental anguish and pain and suffering was excluded. The case was defended by Robert Moore from Heaton & Moore of Memphis, Tennessee. Per Etoch, "it was a clean trial, with all rulings in Defendant's favor." I understand Kimberly Young of the Friday Firm has entered an appearance for the appeal. She may be able to shed some light on the verdict once she receives and reviews the trial transcript.

Speaking of Phillips County, being from there I get asked a lot about the make-up of its Bench. For those of you who practice in the First Judicial District, the following is how it currently stands and how will look in the future:

Division 1 - Judge Chalk Mitchell will finish his appointed term December 21, 2016, and Dion Wilson will begin is 6 year term 1/1/17;

Division 2 - Judge Richard Proctor will continue his current 6 year term until the end of 2018;

Division 3 - Judge Chris Moreledge will continue his current 6 year term through the end of 2020;

Division 4 - Judge Kathleen Bell will finish her current 6 year term at the end of this year. Judge Chalk Mitchell will begin his 6 year term in 2017 (after finishing his current Governor appointed position in Division 1 following the death of Judge LT Simes last year); and,

Division 5 - Judge Ann Hudson will continue her current 6 year term through the end of 2018.

That's all for now. If any one of you have other news concerning specific venues, recent verdicts (good or bad) or other tidbits you think would be of interest to our members, please forward to me and I'll get out to all. Thank you all!

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We Are Better Together: Support The AADC

Membership Applications available at
<http://www.arkansasdefensecounsel.net/application.php> Please share
 this with friends and colleagues.

■■■■■ AFFILIATES IN ACTION

DRI's Southwest Leaders Convene in Santa Fe

The DRI Southwest Regional Meeting was held on August 12-13, 2016, at LaFonda on the Plaza in Santa Fe, New Mexico. Bryan C. Garcia, Southwest Regional Director, presided over the meeting and John Parker Sweeney, DRI Immediate Past President was in attendance. The meeting was attended by representatives from the SLDOs in Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

The meeting began with dinner on Friday night at La Casa Sena, a local and visitor's favorite for over 30 years. On Saturday morning, Mr. Garcia welcomed the attendees and DRI Immediate Past President John Parker Sweeney gave the DRI update. DRI National Director Dan K. Worthington then presented on the DRI's Center for Law and Public Policy and DRI Past President Burton J. Johnson gave his "Words of Wisdom" address. DRI Central Region Director Edward P. Perdue spoke on the topic "Channeling Your Inner Napoleon," and the leaders of each state provided their SLDO updates.

In closing, Mr. Garcia discussed tentative plans for the 2017 regional meeting and the possibility of holding the meeting jointly with the Central and North Central regions.



road trip

MORRILTON

October is the perfect month to get out and enjoy one of Arkansas's most beautiful state parks. There is plenty to see and do in and around Petit Jean State Park, from horseback riding to exploring museums, waterfalls, petting zoos and more.



GRAB A BIG BURGER
 The whole family will love the 100-bushel Dribble Inn Restaurant. The menu includes classic like burgers, hot dogs, sandwiches, barbecue, refresh and plate dinners. Kids will love the extra large burger. Check out our daily dinner. Grab a fried pizza your way out. 8411 Oak St. 501-984-2594



DRIVE BACK IN TIME
 Kids will love seeing more than 50 antique vehicles ranging from a 1914 Oldsmobile French Frisco to a 1967 Ford. So drive on the 14 acres of downtown site, the tranquility of vehicles goes as far as 1956, so expect lots of "woah" and "ahh" from both kids and adults. 8 Jones Lane, D.C. 7237-5127, museum@petitjean.com



THE OUTDOOR PLAY AREA
 ONLY AT PETIT JEAN STATE PARK. VISITORS CENTER & VISITOR CENTER



WHERE TO STAY
 There is plenty of overnight options in the state park. Mather Lodge is the only lodge built in Arkansas by the Civilian Conservation Corps. It sits up high, so call well in advance to book a room. Amenities include a beautiful restaurant and outdoor swimming pool. For more info, check out the yurt, cabins and campgrounds. 1-800-764-2462, petitjeanstatepark.com



MEET THE ANIMALS
 Let and stroke the farm animals at the pet and stable. It's an educational pig pen with a playground, picnic area, rides for the little ones and horseback. 110 Jones Lane, 501-206-7237, petitjean.com

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