Rhode Island Bar Journal

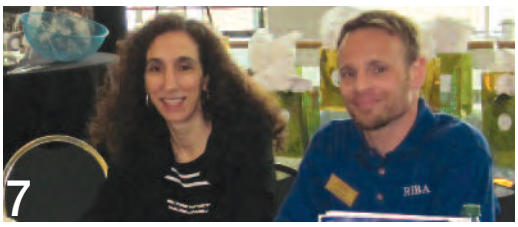
Rhode Island Bar Association Volume 60. Number 2. **September/October 2011**

CRMC and the Coastal Zone Management Act

Express Consent by Registration

Patient Safety Organizations

Book Review: *Delay, Deny, Defend: Why Insurance Companies Don't Pay And What You Can Do About It*



Articles

Features

CORRECTION

Due to a transcription error, Attorney Patricia Coyne-Fague, Chief Legal Counsel for the Rhode Island Department of Corrections, was inadvertently omitted from the list of volunteer attorneys who generously volunteered their time and efforts for the 2011 Rhode Island Law Day Classroom programs. The Bar thanks Patricia and all the volunteer lawyers and judges who make Rhode Island Law Day so successful.

RHODE ISLAND Bar Association 1898

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Front Cover Photograph
Pawtucket City Hall, by Brian McDonald

Rising to the Challenge: Helping Others and Ourselves

William J. Delaney, Esq.
President
Rhode Island Bar Association

In these difficult economic times, our ability to help those in need and our own members becomes ever more important. Fortunately, our Bar Association has programs in place, and in the pipeline, providing the means to do both.

In these difficult economic times, the Bar Association's ability to help those in need and our own members becomes ever more important. Fortunately, our Bar has programs in place, and in the pipeline, providing the means to accomplish both.

The Bar's Public Service Programs offer unparalleled opportunities for Bar members to offer their legal assistance to those who need it the most. And, while doing so, our newer members gain experience and insight in practice areas as they proceed in their career paths.

The Bar's Volunteer Lawyer Program (VLP), Reduced Fee Programs, and US Armed Forces Legal Services Project, all serve as beacons of light and hope. Offering *pro bono* legal services to qualified low-income Rhode Islanders, the elderly, and those serving in our military service, VLP members have provided and continue to provide thousands of Rhode Islanders with sorely-needed legal assistance. Beyond this, through its mentor component, VLP offers excellent opportunities for our newer members to gain valuable real-life, case practice with the counsel and assistance of our more experienced members. This provides everyone taking advantage of the programs with a 'win-win' situation only available through our Bar!

Our Lawyer Referral Service (LRS) offers excellent opportunities for members, new and seasoned alike, to build their practices through referred potential clients, pre-screened by our professional and helpful Public Services staff. Providing individuals with up to a half hour, free consultation, LRS allows lawyers and clients alike to determine their suitability and to work out a mutually-agreeable fee structure.

We are currently developing an Online Attorney Information Resource Center, aimed at providing all Bar members with timely and direct volunteer Bar members' assistance with practice-related questions. While still in the planning stages, once this service is up and running, it will be available, through the Members Only section of the Bar's web site, to all Bar members. This unique program will provide all members of the Bar, but particularly newer members, with a list of volunteer attorneys, knowledgeable in different areas of the law, who are willing to answer questions based on their professional knowledge and experience. On a related note, the economy has forced even the largest Rhode Island law firms (and, for that matter, throughout the country in general) to delay, postpone, or stagger the hiring of recently admitted attorneys. Unfortunately for those attorneys, student loan repayment programs will not completely defer those obligations. As a result, professional assistance has become even more important. Stay tuned for further developments in this exciting project!

Our Bar's interesting and informative *Rhode Island Bar Journal* is an excellent means by which Bar members of all levels of experience and from all areas of practice may share their valuable experience and knowledge with their colleagues and to enhance their professional reputations. Featuring a fascinating and eclectic mix of scholarly articles, law-related book reviews, attorney profiles, and much more, our *Bar Journal* offers all our members a chance to shine within the profession, and, in some instances, where original *Bar Journal* pieces have been picked up by the news media, to gain an even larger audience!

Our Bar also offers two excellent programs where Bar members offer direct assistance to their colleagues. Our Lawyers Helping Lawyers (LHL) Committee provides confidential and free help, assessment and referral for personal challenges through the Bar's contract with Resource International Employee Assistance Services and LHL Committee members. And, the Bar's SOLACE program communications are through voluntary participation in an email-based network where members may ask for help or volunteer to assist others with medical or other matters.

Finally, our Bar's twenty-six committees are outstanding resources, offering members opportunities to discuss current and important issues concerning a wide range of practice areas and Bar services. These committees are excellent venues for new members to get acquainted with and learn from Rhode Island's foremost practitioners. And, if you haven't done so already, this is the perfect time to take the plunge and join the committees that will help you the most!

Our Bar is doing its part to help those in need and our members. I urge you to go to the Bar's website at **www.ribar.com** or contact the Bar to learn more about the opportunities available and become involved in one or all of them today! ❖

The Rhode Island Bar Foundation

Founded in 1958, the Rhode Island Bar Foundation is the non-profit philanthropic arm of the state's legal profession. Its mission is to foster and maintain the honor and integrity of the legal profession and to study, improve, and facilitate the administration of justice.

The Foundation receives support from members of the bar, other Foundations, and from honorary and memorial contributions. The Foundation invites you to join in meeting the challenges ahead by contributing to the Foundation's Tribute Program. The Foundation's Tribute Program honors the memory, accomplishments, or special occasion of an attorney, a friend, a loved one, his or her spouse, or another family member. Those wishing to honor a colleague, friend, or family member may do so by filling out the form and mailing it, with their contribution, to the Rhode Island Bar Foundation, 115 Cedar Street, Providence, RI 02903. You may also request a form by contacting the Rhode Island Bar Foundation at 401-421-6541. All gifts will be acknowledged to the family.

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RHODE ISLAND BAR JOURNAL

Editorial Statement

The Rhode Island Bar Journal is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* is a paid, subscription magazine published bi-monthly, six times annually and sent to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,000 individuals. Covering issues of relevance and providing updates on events, programs and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements and facts in signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in editorials represent the views of at least two-thirds of the Editorial Board, and they are not the official view of the Rhode Island Bar Association. Letters to the Editors are welcome.

Article Selection Criteria

- The *Rhode Island Bar Journal* gives primary preference to original articles, written expressly for first publication in the *Bar Journal*, by members of the Rhode Island Bar Association. The *Bar Journal* does not accept unsolicited articles from individuals who are not members of the Rhode Island Bar Association. Articles previously appearing in other publications are not accepted.
- All submitted articles are subject to the Journal's editors' approval, and they reserve the right to edit or reject any articles and article titles submitted for publication.
- Selection for publication is based on the article's relevance to our readers, determined by content and timeliness. Articles appealing to the widest range of interests are particularly appreciated. However, commentaries dealing with more specific areas of law are given equally serious consideration.
- Preferred format includes: a clearly presented statement of purpose and/or thesis in the introduction; supporting evidence or arguments in the body; and a summary conclusion.
- Citations conform to the Uniform System of Citation
- Maximum article size is approximately 3,500 words. However, shorter articles are preferred.
- While authors may be asked to edit articles themselves, the editors reserve the right to edit pieces for legal size, presentation and grammar.
- Articles are accepted for review on a rolling basis. Meeting the criteria noted above does not guarantee publication. Articles are selected and published at the discretion of the editors.
- Submissions are preferred in a Microsoft Word format emailed as an attachment or on disc. Hard copy is acceptable, but not recommended.
- Authors are asked to include an identification of their current legal position and a photograph, (headshot) preferably in a jpg file of, at least, 350 d.p.i., with their article submission.

Direct inquiries and send articles and author's photographs for publication consideration to:
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Rhode Island's Coastal Resources Management Program and the Coastal Zone Management Act's Federal Consistency Program

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"…the CZMA does offer states an opportunity to challenge either activities directly undertaken by the federal government, or activities by non-federal parties allowed by the federal government pursuant to federally-issued permits.

Introduction

Fittingly for the Ocean State, Rhode Island has a comprehensive, extensive and robust coastal resources management program, developed under the umbrella of the federal Coastal Zone Management Act[1] (CZMA).

By virtue of Rhode Island's participation under the federal Coastal Zone Management Program, Rhode Island benefits from certain protections unique to participating coastal states, principally the ability, under what is referred to as the federal consistency program, to exercise something of a veto over activities, proposed to be conducted under federally-issued permits, if such activities would be inconsistent with the enforceable policies of Rhode Island's coastal resources management program.

That power can be extremely important, particularly where the proposed activities, pursuant to federal permitting authority, involve the siting of potentially hazardous facilities which could impact a state's coastal environment. The siting of potentially hazardous facilities can occur under a number of permitting regimens, given that such facilities are often large and complex and require numerous municipal, state and federal approvals.

This power is not, however, unlimited. Because the rights given states under the CZMA apply not just to non-federal entities seeking federal permits but also to actions proposed to be undertaken by a federal agency, to some extent, the power to challenge such federal actions involves a degree of surrender of federal supremacy and authority and is therefore limited. Additionally, there may be matters which are deemed important to national security, and it is therefore necessary to protect those matters from state challenge.

That said, the CZMA does offer states an opportunity to challenge either activities directly undertaken by the federal government, or activities by non-federal parties allowed by the federal government pursuant to federally-issued permits. If a coastal state makes a determination that the activity is not consistent with its coastal management program, the activity by non-federal actors can be prohibited, unless this decision is overridden by the Secretary of Commerce.

This matter was drawn into sharp focus for Rhode Islanders by the proposed location by Weavers Cove Energy LLC of a liquefied natural gas facility, originally proposed for Fall River, Massachusetts, and the ship transport of liquefied natural gas (LNG) up Mount Hope Bay in and through Rhode Island and Massachusetts coastal waters. The project was controversial in both Rhode Island and Massachusetts and was the subject of a federal consistency review filing before the Rhode Island Coastal Resources Management Council. The federal consistency proceeding resulted in litigation more specifically discussed below. (By way of disclosure, this author represented Weaver's Cove Energy, LLC in its federal consistency review filing with the Rhode Island Coastal Resources Management Council.)

The federal consistency program remains a viable protection for states, although the strength of its protection has perhaps been misunderstood, given that the statutory provisions can be highly nuanced, as even some federal regulators privately concede.

This article briefly summarizes the protections of the CZMA's federal consistency program for states, and indicates how Rhode Island may be particularly well qualified to benefit under this program in the future.

An understanding of the scope of this power to protect coastal states' environments under the CZMA must, necessarily, begin with a brief overview of the Coastal Zone Management Act and its regulations.

The Coastal Zone Management Act

Congress enacted the Coastal Zone Management Act of 1972 facilitating states' management of natural resources in the coastal zone, particularly in light of increased pressures from coastal development. Participation under the CZMA is voluntary rather than mandatory. If a state wishes to participate, it develops a management program for its coastal resources, which must be compliant with the federal regulations.[2] In Rhode Island, that program is called the Rhode

Island Coastal Resources Management Program (RICRMP), implemented by the Rhode Island Coastal Resources Management Council (CRMC). The RICRMP, and related regulations and plans, may be found in full on the CRMC website at www.crmc.ri.gov.

The CZMA is administered by the federal National Oceanic and Atmospheric Administration (NOAA), with individual state programs administered by NOAA's Office of Ocean and Coastal Resource Management.

Currently, 34 of the 35 eligible states, territories and commonwealths qualify for participation in the program based upon their coastal status, with Illinois, the most recent, and last, coastal state to decide to develop a program, having filed its application with NOAA for program approval. All states participating and developing a coastal management program, must submit this program for review and approval by NOAA.

Such coastal management programs are generally comprehensive and usually complex, and Rhode Island's program is certainly no exception. A typical plan includes: regulated uses under the program; boundaries as to the state's coastal zone; detailed regulations as to what is permissible and impermissible; and standards for the enforcement of such regulations.

The Federal Consistency Program

NOAA's Ocean and Coastal Resource Management website describes the federal consistency provision as "a major incentive for states to join the national coastal management program and… a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation with federal agencies." That is certainly true since the federal government relinquishes a degree of control to participating states, even proposed activities by the federal government itself.

The federal consistency review process applies to both direct and indirect federal actions. Direct federal actions are those undertaken by a federal agency itself, or by a contractor for a federal agency. Indirect federal actions are those undertaken by a non-federal actor pursuant to federally-issued permits or licenses. For example, federal development projects within coastal zones are automatically subject to review under the federal consistency program.[3]

More specifically, the federal consis-

tency program establishes an "effects test," pursuant to which direct and indirect federal actions, in or outside the coastal zone, affecting any land or water use or natural resource of the state's coastal zone must be consistent with the state's coastal management program's enforceable policies. With effects tests, there are no established geographic boundaries established or categorical exemptions limiting tests.[4] However, as discussed below, certain discretionary exemptions are available.

In determining effects tests, the effect must be on "enforceable policies" of the state's coastal management program, as approved by NOAA.[5]

The test is nuanced, depending on whether the activity is undertaken directly by the federal government, or indirect federal activity by way of federal permits or licenses sought by non-federal actors. When the activity at issue is directly undertaken by the federal government, those federal activities must be consistent "to the maximum extent practicable" with the state program.[6]

As indicated, this distinction between federal and non-federal actors is nuanced, and an understanding of the distinction is as much dependent on an understanding of what is not stated in the statute and regulations as an understanding of what is expressly set forth. Based on my understanding of the statute and regulations, and a discussion with a NOAA official with responsibility for the federal consistency program, I describe the distinction as follows.

If the federal agency determines it cannot be fully consistent with the state program, it must make a finding based on a prohibition of federal law, whether express or implied, effectively preventing it from attaining fully consistent status.[7] Should a state, in its federal consistency review, attempt to impose conditions that would *not* be justified by the administrative record, the federal agency could claim it was prohibited consistent with federal law. In this regard, however, a federal agency is expressly prevented from relying on a lack of funding as a justification to avoid consistency with the maximum extent practicable with the state program.[8]

Inviting further confusion, when direct federal action is involved under the federal consistency review process, a federal agency can effectively have two different

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At the 2011 Annual Meeting, Public Services Involvement Committee Chair Christine J. Engustian, Esq. and VLP Coordinator John H. Ellis were among the Bar members and staff registering volunteer attorneys who accepted cases and received donated business gift certificates for their pro bono service.

standards determining if that action is consistent to the maximum extent practicable. First, the standard may be simply interpreted that the activity is consistent to the maximum extent practicable if it is fully consistent with the state's enforceable policies, since this is a CZMA express standard. Secondly, that standard may be interpreted that the agency is consistent to the maximum extent practicable because, even though the activity is not fully consistent with an enforceable state policy, the activity is consistent with federal law.

If a federal agency determines its proposed activity is consistent to the maximum extent practicable, it may pursue the activity, even if the State objects that the activity is inconsistent with enforceable state policies under the CZMA.[9] The federal agency would provide the state with a statement that the activity at issue is consistent to the maximum extent practicable with the state program.

When a federal agency is the actor, it must make a determination whether the proposed activity has coastal effects, and, if it concludes it does, it must provide a consistency determination to the affected state at least 90 days before final approval, subject to the ability of the state at issue and the federal agency to negotiate a different timeline.[10] In the event a state objects to federal agency activity as inconsistent with its coastal management program, as indicated above, the agency is free to proceed with the activity if the agency provides a written statement that its activity is consistent with the state's program.[11]

In the event of serious disagreement between a state and a federal agency, mediation is available before the Secretary of Commerce as a means to resolve the dispute.[12]

Activity by a non-federal actor is also subject to federal consistency review if it has reasonably foreseeable coastal effects.[13] If the activities at issue are indirect federal activities, meaning a non-federal applicant performing work pursuant to a federal permit, the activities must be *fully consistent* with the state program.[14]

Any such non-federal actor must provide the State with a consistency certification, as well as additional necessary data and information pertaining to such activity. Within 30 days of the receipt of such information, the state must notify the applicant whether or not the information is complete. Within six months of the date of such submission, the state must make a determination whether the activity is consistent with state program or object that such activity is inconsistent with the program. In Rhode Island, the issuance of a state permit known as an Assent, issued by the CRMC, is evidence of the state's determination of federal consistency.

Failure of the state to either make a consistency determination or object to the activity as inconsistent within six months of the submission of an application is deemed to constitute a determination the activity is consistent with the state program.[15]

A state's determination of inconsistency with its coastal program is subject to review, *sua sponte* by, or appeal to, the Secretary of Commerce. This review may be initiated by the Secretary, and the appeal may be brought by the applicant to override the state determination of

inconsistency. The review by the Secretary is a *de novo* review, and the Secretary may make a finding either that the activity is consistent with the objectives of the coastal zone management act or that the activity is necessary in the interests of national security. The Federal agency involved and the state, both have the opportunity to provide detailed comments to the Secretary prior to a decision.[16]

The importance of the Secretary's review is that if a state finds an activity is not consistent with its coastal program, the *non-federal actor* cannot receive a permit for such activity from the federal agency unless the state's decision of inconsistency is overridden by the Secretary.[17]

In the event of disagreement by a state under the federal consistency program as to actions undertaken either by the federal government itself or by a non-federal action pursuant to a federal license or permit, a lawsuit may be brought by the state if the activity at issue is inconsistent with the enforceable policies of its coastal management program. Please note that if a state sues a federal agency, if the court finds for the state, the Secretary may make a written request to the President to exempt from state program compliance those elements of the federal activity found to be in the paramount interests of the United States.[18]

States and municipalities applying for federal funds for activities affecting the coastal zone must also follow federal consistency procedure, requiring either a determination of consistency to receive such funds, or a state determination of inconsistency overridden by the Secretary of Commerce.[19]

The federal consistency program is a process for review and not a rewrite of, or override of, other federal statutes and regulations. The federal agencies and those seeking federal permits or licenses must continue to comply with the other requirements imposed by various acts and statutes, including environmental laws.

In summary, while the CZMA does provide protections to states and localities (in cooperation with their relevant state agency), in the event of the proposed siting of potentially dangerous facilities, those protections have more teeth when the activity is proposed by a non-federal actor, such as a private company seeking federal permits or licenses for a project. Regarding federal agencies, unlike non-federal actors, they can continue with the activity even if the state determines it is inconsistent with its enforceable coastal policies, leaving the state only the option of litigation if mediation with the Secretary of Commerce is unsuccessful. Non-federal actors, on the other hand, cannot receive issuance of their federal permits absent a favorably consistency determination by the state, unless the Secretary of Commerce and/or a court of final jurisdiction decides in their favor.

Weaver's Cove Energy, LLC and Federal Consistency in Rhode Island

An example of the federal consistency review process in Rhode Island is the Weaver's Cove energy project which originally proposed the siting of an LNG facility in Fall River, Massachusetts, and required the transport by ship of LNG up Mount Hope Bay in and through Rhode Island and Massachusetts coastal waters.

The project was significant, proposing an LNG terminal with the capacity to

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Express Consent by Registration: A Personal Jurisdiction Reminder

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Trained to focus upon the complex, we often overlook the simpler, the more obvious. Consider the jurisprudential web of personal jurisdiction.

Trained to focus upon the complex, we often overlook the simpler, the more obvious. Consider the jurisprudential web of personal jurisdiction. One noted jurist, borrowing from Winston Churchill, likened it to "a riddle wrapped in a mystery inside an enigma."[1] Personal jurisdiction immediately brings to mind such oft-repeated expressions as minimum contacts, purposeful availment, or traditional notions of fair play and substantial justice. All, of course, derive from the due-process minimum-contacts test developed in the 1945 United States Supreme Court decision **International Shoe v. Washington** and its progeny, a line of cases engrained into each lawyer's consciousness in the first year of law school and internally juggled from thereafter. In brief, the test involves a mixed question of law and fact to determine whether the aggregate of an out-of-state defendant's "conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."[2]

Often forgotten, however, (if indeed it was taught at all) is a separate, much less intricate, though much more controversial, method of establishing personal jurisdiction over a foreign corporate defendant: that such a corporation may be subject to the general personal jurisdiction of a given forum simply when it has registered to do business and/or registered an agent for service of process there in compliance with the state's statutory requirements – even where that registration is the corporation's only contact with the forum.

This doctrine, best designated as express consent by registration, shares a common ancestor to the minimum-contacts jurisprudence, but developed along a parallel, much less celebrated, evolution. Neither theory depends upon the other, nor does one necessarily exclude the other. A favorable result under either premise, of course, provides the plaintiff with the same prize: the ability to hale a foreign corporation into his or her preferred jurisdiction. Yet the question of express consent by registration, if it can be answered in the affirmative, obviates at least the need to travel down the more complicated avenue of a minimum-contacts analysis. In the advice of their clients, therefore, it is important for plaintiff's counsel and corporate counsel alike to be reminded of the possibility of express consent by registration.

As with all questions of personal jurisdiction, consent is the primary issue. Indeed, a defendant cannot be subjected to a forum's jurisdiction unless a court can cognize some constitutionally sufficient present or previous effort on the part of that defendant to *be* there. First, consider physical presence in the forum. When crossing into a given state, a person has subjected himself or herself to that jurisdiction's laws and may, while venturing within its borders, properly be served with suit and brought before its courts.[3] Or, consider the minimum-contacts test. If a foreign corporation, while not physically present in a given state, does so often interact there its forum contacts are deemed so "continuous, purposeful, and systematic" that constitutional principles of due process permit that forum's courts to *imply* the corporation's consent to personal jurisdiction.[4] It is therefore important to distinguish the minimum-contacts test as a tool by which a court may impose personal jurisdiction over an otherwise non-consenting defendant. It is necessary only when a foreign corporation's consent to jurisdiction must be implied. Thus, it is best designated as implied consent by minimum contacts, as distinct from express consent by registration.

An additional situation, this express consent by registration, concerns us here. When a foreign corporation has no physical presence in the forum, nor are its contacts so continuous, purposeful, and systematic as to be subject to personal jurisdiction in accordance with either of the methods discussed above, instead, it has expressly consented to the forum's courts by registering to do business there (regardless of whether it has exercised that license) and/or appointed an agent for service of process in the forum.

Though it has for so long been overshadowed by the ubiquitous minimum-contacts jurisprudence, the tenet of express consent by registration is the elder of the two. Its first appearance at the U.S. Supreme Court level was

in the 1917 decision, **Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.**, authored by Justice Oliver Wendell Holmes.[5] The Court held that a foreign corporation's license to do business in the forum state and appointment of resident agent there, in compliance with the forum's statutory guidelines, volunteered that corporation to the state's jurisdiction in litigation unrelated to the forum.[6]

The theory was later embraced by the Restatement (Second) Conflict of Laws § 44, the commentary to which explains that:

> When a foreign corporation authorizes an agent or public official to accept service of process in actions brought against it, the corporation consents to the exercise by the state of judicial jurisdiction over it as to all causes of action to which the authority of the agent or official extends. This consent is effective even though no other basis exists for the exercise of personal jurisdiction over the corporation.[7]

The key difference between express consent by registration and implied consent by minimum contacts is that, unlike the latter relying upon a finding of fictional consent, the consent in the former situation is perspicuous and real. To consider any additional contacts the defendant may have made with the forum is a superfluous exercise. The defendant has expressly availed itself to the *in personam* jurisdiction of the forum. As one court held on the issue, "due process is satisfied by express consent, since express consent constitutes a waiver of all other personal jurisdiction requirements."[8] Or, as another court more emphatically noted, to include a minimum-contacts requirement in an express consent by registration situation would "fly in the face of **Pennsylvania Fire Ins. Co.** and its progeny and conflate the concepts of express consent and presence or implied consent by minimum contacts."[9]

Express consent by registration is not, however, without controversy and in some jurisdictions outright rejection. For instance, the U.S. Court of Appeals for the Fifth Circuit held that the notion that "mere service upon a corporate agent automatically confers *general jurisdiction* displays a fundamental misconception of corporate jurisdictional principles. This concept is directly contrary to the historical rationale of **International Shoe** and

subsequent Supreme Court decisions."[10] The U.S. District Court for the Southern District of Texas likewise held that subjecting a foreign corporation to a state's jurisdiction based only upon its registering to do business or registering an agent of service of process there would be a denial of due process.[11] In short, that this single contact could be an express waiver of due process rights, negating the need to analyze the aggregate of a corporation's other contacts with the forum under a separate but more familiar test, simply wasn't accepted.

Nevertheless, while extirpated in some jurisdictions, the doctrine of express consent by registration survives unhindered in others, coexisting alongside its more commonplace cousin. For example, the U.S. Court of Appeals for the Eighth Circuit held that appointment of an agent for service of process under the forum state's registration statute "is a valid basis of personal jurisdiction, and resort to minimum-contacts or due-process analysis to justify the jurisdiction is unnecessary."[12] The court further elaborated that "[o]ne of the most solidly established ways of giving such consent [to personal jurisdiction] is to designate an agent for service of process within the State" and that it is perhaps so often forgotten "because it is of such long standing as to be taken for granted."[13] Similarly, the United States District Court for the Southern District of New York denied a defendant's motion to dismiss for lack of personal jurisdiction, noting "New York's long-held view that the designation of an agent for service of process is not merely a mechanism for transmitting process but a 'real consent' to jurisdiction."[14]

Locally, the Rhode Island Supreme Court has not yet had occasion to decide whether a foreign corporation's registration pursuant to statute correlates into that corporation's express consent to the *in personam* jurisdiction of Rhode Island courts. The U.S. Court of Appeals for the First Circuit, however, in **Holloway v. Wright & Morrissey, Inc.**, a 1984 opinion authored by former U.S. Supreme Court Justice Potter Stewart, sitting by designation in retirement, had indeed applied the doctrine of express consent by registration, holding that "[i]t is well-settled that a corporation that authorizes an agent to receive service of process in compliance with the requirements of a state statute, consents to the exercise of personal juris-

diction in any action that is within the scope of the agent's authority."[15]

For those of us within the borders of the First Circuit, the example provided by **Holloway** is significant. There, the Court held that a New Hampshire court's exercise of personal jurisdiction over the defendant, a Vermont corporation that had registered to do business and appointed an agent to receive service of process in New Hampshire pursuant to that state's statutory requirements, was proper because, through that statutory compliance, the defendant had "consented to the exercise of jurisdiction over it."[16] As such, the Court determined that it "need not" concern itself with a due-process, minimum-contacts query.[17] Notably, the Court relied upon **Pennsylvania Fire Insurance Co.** and the Restatement (Second) Conflict of Laws § 44 in support of its holding.[18]

Having determined that the defendant consented to personal jurisdiction in New Hampshire, the Court next considered whether the cause of action was within the scope of the agent's authority.[19] Turning to the New Hampshire statute for service of process on foreign corporations (which, incidentally, is substantially similar to the corresponding Rhode Island statute), the Court noted that it permitted service upon the agent "any process, notice or demand required or permitted by law…."[20] The Court therefore held that because "a summons and a complaint in a tort action are documents that may be served on a corporation in accordance with the law, the service in this case falls within the terms of the statute."[21] The cause of action having been within the bounds of the defendant's consent, an exercise of personal jurisdiction was proper.

Curiously, however, at the end of its decision the **Holloway**, the Court added that it "need not … reach the question whether [the New Hampshire statute for service of process on a foreign corporation] would authorize a suit on a cause of action that has no relationship to the state of New Hampshire" because it determined that "the litigation is unquestionably related to that state."[22] The plaintiff had entered into an employment contract with the defendant in New Hampshire and, because the plaintiff was a New Hampshire resident, a court in "that state had an interest in insuring that he [had] a forum in which to seek

relief."[23] Thus, the Court held, "at least where litigation is causally connected to the defendant's acts" in the forum state, and where the forum "has an interest in the litigation … it follows that [the defendant] authorized its agent to receive service of process in a case of this nature, and thereby consented to jurisdiction in this case."[24]

It seems, however, that the **Holloway** court's potential conditioning of consent upon the litigation's connection to the forum muddies the purity of the doctrine of express consent by registration established in the authorities that the Court relied upon in the first place. Neither **Pennsylvania Fire Insurance Co.** nor the Restatement (Second) Conflict of Laws § 44 require a connection to the forum state beyond the defendant's express registration. Nevertheless, there is no doubt that, in the First Circuit, a door has been opened for at least the possibility of a unique commingling of both express consent by registration and implied consent by minimum contacts.

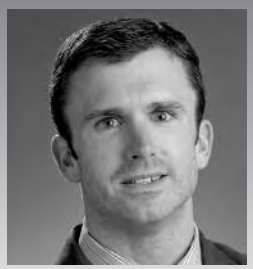
Subsequent First Circuit decisions represent missed chances to have this question answered, in no small part because the plaintiff failed to press the issue of consent altogether. Notably, in **Sandstrom v. Chemlawn Corp.**, the First Circuit, in a footnote, added that while the issue of express consent by registration was argued below (and denied), the plaintiff had "not resurrected this thesis in his appellate briefs."[25] The Court therefore employed the doctrine of implied consent by minimum contacts and dismissed the action.[26] Again, in the recent case of **Cossaboon v. Maine Medical Center**, it appears the plaintiff failed to consider express consent. The Court conducted only a minimum-contacts analysis, despite the fact that the defendant, a Maine hospital, was registered to do business in the New Hampshire forum.[27]

As in these examples, when, in a jurisdiction that has not outright rejected express consent by registration, a decision mentions the defendant's statutory registration, but the analysis continues on to a discussion of minimum contacts, the result is a questionable if unconscious failure to simplify the matter. It is of course in the plaintiff's interest to present the issue.

The seeds planted at the end of

continued on page 36

Lunch with Legends:
Trailblazers, Trendsetters and Treasures of the Rhode Island Bar



Matthew R. Plain, Esq. **Elizabeth R. Merritt, Esq.**
Taylor Duane Barton & Gilman, LLP, Providence

We had lunch with Joe Kelly to gain insight into one of the longest, and arguably one of the most successful legal careers of any active member of the Rhode Island Bar. Upon graduating from LaSalle Academy in 1943, Joe Kelly served in the Navy during World War II. When he returned from service, he enrolled in Providence College. After a couple of years at Providence College (and after a friend had told him that lawyers get the summer off when the courts are closed), he studied law at Northeastern.

Joseph A. Kelly, Esq.

Mr. Kelly entered practice in 1951 and continues to practice today. His passion for the practice is palpable. He's quick witted, with an engaging smile and a guileless interest in people. He describes lawyers as being "a little bit cracked," but admits he likes being around them. He's had a myriad of colorful experiences. He told us that once, he, along with fellow lawyer, Ray LaFazia, obtained a verdict against a backhoe manufacturer with inadequate insurance, bought the company and sued its insurer for coverage. They ultimately settled the case. Excerpts from our conversation with the legend follow:

What's your most memorable experience from practicing law? I remember one time this [other lawyer] gave me a case, and it had to go to trial right away…I tried [it] for about six or seven days, and then the case settled. I went back to the office, and I sat down and I said, 'I have no idea why that case settled. I have no idea if it's a good settlement. I have no idea why I settled it. I have no idea if my client is happy. The only thing I know is that I settled because I wanted to get the hell out of the courtroom.' But I said to myself, 'From this day forward, ain't no son of a bitch gonna run me out of the courtroom. They can step on me, they can insult me, they can laugh at me, they can hold me up to ridicule, but they ain't gonna run me outta the courtroom.' And they ain't never done it since!

Who's been your toughest opponent? [Leonard] Decof has always been a tough opponent.

You've had the opportunity to mentor lots of different lawyers over the years. Who stands out? Jack Mahoney. Every time we tried a case, he'd say, "gimme a witness, gimme a witness, gimme a witness." So one day I said, "Ok take the next witness." It was before Judge Lagueux, who was tough to be in front of for young lawyers. [Mahoney] asks the question. "Objection!" Lagueux: "Sustained!" So Mahoney reframed it. "Objection!" "Sustained!" He went on for about ten or fifteen minutes until he came over to me and said "What am I doing wrong?" I said, "Come down a bit." So he puts his head down, and I said, "Now lemme tell you something. I have no goddamn idea what you're doing wrong or right. What I would do if I were you, I would ask another question. Now go to it!" Lagueux is watching us as we're going through all of this. So he goes and he asks another question. "Objection!" "Overruled!" Mahoney says, "What happened there?" I said, "He thinks I put you on the right track!"

What challenges do you foresee for newer members of the bar? The inability of young lawyers to get jury trials under their belt. There used to be an old saying, that you don't get your sea legs until you've had 25 jury trials. And back in the '50s, you could get 25 jury trials in a couple of years.

What advice would you give to new lawyers? If you like it, you don't want to do anything else. If you don't like it, then you should get out. It'll drive you bonkers.

Now you've been doing this just about 60 years. Would you do it all over again if you had the chance? Oh yeah.

Would you do anything differently? Nope.

If your legal experiences are not yet as rich as Mr. Kelly's, don't worry because, as Mr. Kelly told us "The sun shines on a different dog's ass everyday!"

Editor's Note: Lunch with Legends is a new, *Rhode Island Bar Journal* series celebrating the legal profession and the careers of successful lawyers. Inspired by Napoleon Hill's 1928 publication, The Laws of Success, Lunch with Legends authors Matt Plain and Elizabeth Merritt explore the fundamental beliefs and foundational habits of successful and long-standing Rhode Island Bar members. Over lunch, the Legends share their war stories, lessons learned, memorable moments, and inventive and creative legal arguments and strategies. This article's subject, Joseph A. Kelly, received the Rhode Island Bar Association's 1999 Ralph P. Semonoff Award for Professionalism and it's 2009 Joseph T. Houlihan Lifetime Mentor Award.

BOOK REVIEW

Delay, Deny, Defend: Why Insurance Companies Don't Pay And What You Can Do About It

by Jay M. Feinman, Esq.

Michael R. Bottaro, Esq.
The Bottaro Law Firm,
Cranston

"Insurance doesn't work when the insurance company fails to honor the terms of the policy and its promise of security through the strategy that has become known as 'delay, deny, defend.'"[1]

The subject is insurance law, and, more specifically, dramatic changes in insurance claims handling occurring over the past two decades. This book has become an instant classic and is becoming required reading for all lawyers, consumer advocates, and insurance industry insiders. Author Jay M. Feinman is a law professor at Rutgers University School of Law where he teaches contracts, torts, and insurance law. As an attorney who has spent the last decade learning personal injury and other insurance law, I could not put this book down.

Feinman does his best to approach modern day insurance claims handling from an objective, factual perspective. After all, the concept of insurance is beneficial to society, as others have noted:

> Insurance helps society by reimbursing people and businesses for covered losses, encouraging accident prevention, providing funds for investment, enabling people to borrow money, and reducing anxiety.[2]

Insurance policies are contracts. "The essential function of a claim department is to fulfill the insurance company's promise, as set forth in the insurance policy."[3] When the claim department complies with the insurance contract, insurers "pay what they owe, promptly, and without muss or fuss."[4] But, as Feinman's title suggests, insurers have made dramatic changes in their claims departments over the past two decades attempting to affect established legal principles between insurer and insured and third party claimants. By placing insurer profits over established legal principles concerning claims handling, Feinman suggests these changes have drastically hurt the American insurance consumer.

To understand this changed landscape, Feinman reaches back to the American colonial roots of insurance. He colorfully describes the oldest U.S. insurance company, the Philadelphia Contributorship for the Insurance of Houses from Loss by Fire. In 1752, a group of volunteer firefighters led by Benjamin Franklin started the company as a way to spread the, then common, risk of house fires amongst its members. Thus, the risk of loss from fire was transferred from the individual to the contributorship, a private entity owned by individual homeowners. This mutual relationship was founded on the purpose of raising funds from its members to use to provide common services to all members.[5]

As time passed, other insurance companies were formed as for profit entities. Like other shareholder companies, these companies were owned by external shareholders primarily interested in maximizing profit. The largest automobile insurer of modern day, Allstate, began as an adjunct of the Sears Catalogue when, in the 1930's, an insurance broker suggested to his bridge partner, Sears CEO Robert E. Wood, that selling insurance through direct mail with the catalogue would be low-cost and highly profitable.[6]

Insurance companies earn profits by investing their client's premium payments. Factors that affect an insurance company's bottom line include investment performance, the number and amount of claims paid out, and medical costs. By the late 1980s and early 1990s, Feinman explains how adverse conditions in each of these factors caused a decline in insurance company profitability.[7] These conditions set the stage for an unprecedented, radical transformation in claims handling.

To me, the value of this book is the manner in which Feinman examines this transformation. At the center of this story is the venerable, powerful consulting firm McKinsey & Company, "trusted adviser to the world's leading businesses, governments, and institutions."[8]

The insurance company Allstate hired McKinsey to help improve its profitability. Feinman explains how McKinsey de-emphasized fundamental principles of insurance law (namely, that consumers buy insurance to provide peace of mind and security when disaster strikes), McKinsey characterized the claims process as a potential "profit center."[9] McKinsey defined claim payments as "overpayments" and as a "leakage" of cash that, if retained, would serve to enhance an insurance company's profit margins. In reading about McKinsey's focus on profits, I could not help but observe that its work appears in direct conflict with the time-

honored principle that, provided there is coverage, "the claim representative should focus his or her energies on serving the insured."[10]

In *Delay, Deny, Defend*, Feinman describes "how the insurance industry delays processing of claims, denies payment of legitimate claims, and defends its actions in court, even in cases where prompt payment of the claim would be the correct and legal course of action."[11] According to Fineman, McKinsey's goal was to completely change the claims handling game by implementing a systems-based approach that works particularly well to improve profits on the volume of small to mid-sized claims.[12] Instead of measuring "severities" (the average paid on claims), this new system focuses on paying less money out to the largest group of claims including, but not limited to, the everyday auto accident injury claim. The systems here are driven by information technology allegedly developed to put a value on claims. And Feinman goes into great detail about two of the most notorious computer systems encountered by personal injury lawyers: Colossus (bodily injury); and Xactimate (property damage).

At this point, you might say, so what? Isn't uniformity in the tort system a desirable goal? Or, as stated by Feinman,"If Colossus was colossal and Xactimate exact, they would benefit insurance companies and claimants alike."[13] However, Colossus and its ilk are limited by what information is fed into the program and by how the insurer tunes the program. Simply stated, insurers' use of these computer-based models may be rigged, as exposed by class action litigation in which policyholders alleged that Colossus was improperly used by Farmers Insurance (one of several lawsuits that have made such allegations) to systematically undervalue their first-party claims.[14] The resulting February 2005 settlement was valued at $30 to $40 million, plus attorneys' fees.[15] In short, the whole point of implementing these systems was not to fairly adjust claims, but to maximize profit by *unfairly* adjusting claims!

Under this new system, claims adjusters and defense counsel are mostly peripheral pawns. In the old days, a claims adjuster was "an attractive job that allowed initiative," focusing on independent fact-finding.[16] Insurers measured their adjusters by reviewing their "pend-

ings" (number of claims processed) and "expenses" (costs of processing claims). But, under the new system, insurers discouraged such independence and discretion. Rote uniformity in applying the computer system became paramount.

McKinsey changed the auto accident claims evaluation to: 1) the proportion of claims closed without making a payment; and, 2) the average costs of payments made.[17] Today, almost all insurance companies measure each adjuster's "average paid per claim."[18] Litigation against insurers discovered that insurers use these metrics to provide bonuses (incentives), promotions, and pay increases.[19] McKinsey termed this practice "performance based compensating."[20] Adjusters' incentives would be small, but more frequent, because it was established that frequent reinforcement was more important than the reward size.[21]

Auto insurers have a captive customer base. Americans spend over $160 *billion* per year on auto insurance coverage statutorily required by all 50 states.[22] And with good reason, as virtually all states have recognized the important public policy of protecting those injured in auto accidents. But, under the McKinsey approach, consumer protection takes a backseat to maximizing insurers' profits. As another example of this perversion, McKinsey coined the phrase "segmentation" in reference to auto claims handling. Under this wicked, but admittedly effective, strategy, McKinsey advocated separating bodily injury claims between those claimants who have an attorney versus those who do not.[23] "If a claimant comes in without a lawyer, Allstate adjusters would make systematic efforts to make sure that he never gets one."[24] Common techniques, I often hear employed in Rhode Island, include getting an unrepresented claimant to focus on obtaining quick compensation for their property damage in an effort to similarly quickly resolve the bodily injury claim before the claimant hires a lawyer and/or realizes the full extent or value of their bodily injury claim. Another popular technique is for an adjuster to warn the claimant about the cost of hiring an attorney.[25] The argument goes like this: "Why hire an attorney? He/She is only going to take 1/3 of the value of your claim?" Such an argument would be

continued on page 38

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All dates and times are subject to change.

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Employee Rights In the Obama Era
National Labor Relations Board | U.S. Department of Labor 38th Annual Robert Fuchs Labor Law Conference Co-sponsored with Suffolk University Law School
Boston
1:00 pm – 5:30 p.m.
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Food For Thought – Don't Wreck the Ship
RI Law Center, Providence
12:45 pm – 1:45 pm
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Tribute: Hon. Edward V. Healey, Jr.

Hon. Laureen D'Ambra
Associate Justice, Rhode Island Family Court

Family Court practitioners lost a giant in the legal field with the recent passing of The Honorable Edward V. Healey, Jr. He was not only a scholar, but also served as a mentor and role model in the legal profession and was nationally renowned in the Family Law arena. In 1960, at the young age of 38, he was appointed to the Juvenile Court. In 1961, he was one of the Founding Fathers of the Rhode Island Family Court, assisting in drafting legislation that created the new court.

As a nationally established child advocate, he received many accolades and rewards for his work in child welfare and juvenile justice. Judge Healey considered the protection of children and ensuring the best interest of the child as the ultimate role and purpose of the Family Court.

Although he retired in 1988, after nearly 30 years as a judge on the Family Court, he is warmly remembered by most of us who appeared before him. As a young attorney starting my career in 1980 as DCYF Legal Counsel, Judge Healey never failed to teach me something new every time I appeared before him. On the bench, Judge Healey was always very serious. I did not realize he had a great sense of humor until later in my career. Many of us have tales to tell about our cases before Judge Healey.

I recall best how he liked to play Santa Claus during the holidays. Unlike many Santas, he did not wear a red suit and give out gifts. Rather, he wore a black robe and handed out decrees and orders, allowing abused children to be adopted. When many of us hoped to be spending the holiday recess catching up on last minute holiday preparations, Judge Healey summoned us all to work. If there were termination of parental rights cases pending, they would be heard during the court recess until every last one was decided or resolved. No exceptions! At first I assumed he was a scrooge who did not like the season of giving and preferred working when the court was closed. I learned quickly that he was truly a good hearted and kind gentleman who hoped to help many abused children find loving families during the holiday season.

One of my most embarrassing courtroom moments was before Judge Healey. It was a warm day in the new Garrahy Judicial Complex when I had a very long bench conference with Judge Healey and several other attorneys. I did not dare ask to sit when I could feel myself getting light headed. The next moment I recall I was flat on the courtroom floor. I was told Judge Healey kept on going while I was escorted out. Everyone then knew I was pregnant with my first child, Christine. Nothing stopped Judge Healey from moving forward and getting cases resolved.

Judge Healey decided many important cases later upheld by our State Supreme Court. In fact, I doubt he was ever overturned. Many of his decisions were cutting edge legal issues that put RI on the map.

In Re James A. is such a case.[1] It was the first time the appellate court reviewed the issue of in-camera testimony in child sexual abuse cases in the Family Court. Judge Healey established the process and legal procedure upheld by the Rhode Island Supreme Court. Many judges use this same protocol regularly in conducting in-camera interviews of children.

Judge Healey worked to develop legislative initiatives that have positively impacted children. Hearsay Legislation was introduced in the State Senate at the urging of Judge Healey. Rhode Island was one of the first states to adopt legislation that allowed abused children in Family Court to have their hearsay statements admitted into evidence, as long as the statements were made to someone they turned to for trust and advice.[2] He helped to establish statutory criteria for parental termination cases, including provisions when there is "cruel and abusive treatment of any child."[3] This Rhode Island statutory criterion was incorporated by Congress into the landmark Adoption and Safe Families Act of 1997.[4]

Judge Healey's efforts went beyond judicial decisions and legislative drafting. The Whitmarsh Program was created in the 1970's when Judge Healey contacted Brother John McHale regarding the need for homes for young troubled boys who had no options other than juvenile incarceration. They collaborated and worked with policy makers to create and fund group homes for young men. This program greatly expanded over the years and continues to successfully serve hundreds of children and youth in the State's care.

The life of one person can make a tremendous difference. Judge Healey was an extraordinary gentleman who touched the lives of many in many ways. His dedicated work on behalf of children and families continues to impact future generations. Judge Healey wore his Save the Children necktie with distinction, and he is remembered as a leader in the legal community, an advocate for children, and a legend in the courtroom. At his wake and funeral, his sons and son-in-law wore similar ties in his honor. His role as a proud father to his nine children and a father figure to so many others serves as his legacy.

ENDNOTES

1 ***In Re James A.**, 505 A.2d 1386 (1986).*

2 *R.I. Gen. Laws § 14-1-69.*

3 *R.I. Gen. Laws § 15-7-7.*

4 *This law mandates certain circumstances in which child welfare workers are not required to make reasonable efforts to reunify an abusive parent with a child.* ❖

SOLACE

Helping Bar Members in Times of Need

SOLACE, an acronym for Support of Lawyers, All Concern Encouraged, is a new Rhode Island Bar Association program allowing Bar members to reach out, in a meaningful and compassionate way, to their colleagues. SOLACE communications are through voluntary participation in an email-based network through which Bar members may ask for help, or volunteer to assist others, with medical or other matters.

Issues addressed through SOLACE may range from a need for information about, and assistance with, major medical problems, to recovery from an office fire and from the need for temporary professional space, to help for an out-of-state family member.

The program is quite simple, but the effects are significant. Bar members notify the Bar Association when they need help, or learn of another Bar member with a need, or if they have something to share or donate. Requests for, or offers of, help are screened and then directed through the SOLACE volunteer email network where members may then respond. On a related note, members using SOLACE may request, and be assured of, anonymity for any requests for, or offers of, help.

To sign-up for SOLACE, please go to the Bar's website at **www.ribar.com**, login to the **Members Only** section, scroll down the menu, click on the **SOLACE Program Sign-Up**, and follow the prompts. Signing up includes your name and email address on the Bar's SOLACE network. As our network grows, there will be increased opportunities to help and be helped by your colleagues. And, the SOLACE email list also keeps you informed of what Rhode Island Bar Association members are doing for each other in times of need. These communications provide a reminder that if you have a need, help is only an email away.

Patient Safety Organizations: Challenges and Rewards for Health Care Industry

Michael A. Murphy, Esq.
Practices in Rhode Island and Massachusetts.

…a brief overview of the legal challenges and industry benefits of Patient Safety Organizations to aid health care providers and attorneys navigating the legal implications of legislation compliance.

Patient Safety Organizations (PSOs) have been the subject of much discussion since the enactment of the Patient Safety and Quality Improvement Act (PSQIA) in 2009. The goals of the PSQIA are to improve the safety and quality of health care, promote learning about the risks and harms in the delivery of health care and improve patient safety by encouraging voluntary and confidential reporting of adverse events that can ultimately be shared amongst providers for their mutual benefit. This article provides a brief overview of the legal challenges and industry benefits of PSOs to aid health care providers and attorneys navigating the legal implications of legislation compliance.

What are Patient Safety Organizations?

PSOs are organizations designed to collect, aggregate and analyze confidential information reported by health care providers. With responsibility placed on health care providers to voluntarily comply with the legislation, many health care professionals and attorneys alike are seeking answers about PSOs from both a practical and a legal standpoint.

Which types of organizations are allowed to form a PSO?

Organizations eligible to become PSOs include: public or private entities; profit or non-profit entities; and provider entities, such as hospital chains, that establish special component organizations that can seek PSO status. Certain organizations, however, are not eligible to become a PSO, including health insurance issuers, regulatory entities and agencies to which healthcare providers are required to report data by law or regulation.

An entity seeking initial listing by the U.S. Department of Health and Human Services (HHS) as a PSO must certify compliance with fifteen statutory requirements, as well as three additional statutory criteria that component organizations must attest they meet.

PSO Privacy and Confidentiality

The PSQIA provides federal privilege and confidentiality protections to information that is reported to or developed by a PSO. The PSQIA significantly limits the use of this information in criminal, civil and administrative proceedings. Subject to several well-delineated exceptions, the PSQIA ensures that providers will not be penalized for the free exchange of information.

The PSQIA also requires providers to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) when making permissible disclosures of Patient Safety Work Product (PSWP) that includes protected information. Civil monetary penalties can reach up to $11,000 per violation for knowingly or recklessly divulging PSWP.

Challenges for health care providers

The PSQIA has been in effect for nearly two years, yet participation continues to move unhurriedly. One major milestone since the enactment of the PSQIA was the passage of the Patient Protection and Affordable Care Act (PPACA) signed into law by President Obama in March 2010. Unfortunately, the PPACA does little to encourage the growth of PSOs, as it does not provide incentive for the PSO creation, nor does it provide for federal funding. This is a significant setback when one considers that the cost to start a PSO is estimated at between $100,000 and $200,000, excluding the continued cost of operation.

Apart from financial constraints, providers must be willing to dedicate the time to designate responsibility to someone within their organization for understanding the PSQIA and the regulations implementing the law. Further, providers need to dedicate the time to establish and document policies and procedures relating to the organization's Patient Safety Evaluation System (PSES) (the process that manages the collection and analysis of information for reporting to a PSO), as well as define and document what constitutes PSWP. Most importantly, providers need to promote an environment that rewards the widespread internal reporting of adverse events and errors.

Are PSOs effective?

In January 2010, the U.S. Government

Accountability Office (GAO) issued a report to Congress on the effectiveness of the PSQIA. In essence, the GAO indicated it was premature to comment on the effectiveness of PSOs. The GAO noted that sixty-five PSOs were listed as of July 2009. However, at that time, few of the PSOs selected for interviews had entered into contracts to work with providers or had begun to collect patient data.

The GAO further stated that it could not assess whether, and to what extent, the PSQIA has been effective in encouraging providers to voluntarily report data on patient safety events and to facilitate the development and adoption of improvements in patient safety. One promising bit of information is the GAO believes if the entities that have created PSOs remain on schedule, the Network of Patient Safety Databases (NPSD) could begin receiving patient safety data from hospitals by February 2011.

Conclusion

The Patient Safety Act is a monumental stride towards further improving patient safety and the quality of care and treatment to patients. Congress has provided an opportunity to otherwise ambivalent healthcare providers to report, study, analyze and maintain patient information that would otherwise be kept guarded for fear of legal discovery, in an effort to further improve the quality of care in the United States. However, there is more that could be done to encourage the implementation of PSOs. A lack of federal funding, legal precedent and an incentive-based system, as well as a large commitment of time and resources, has likely provided an element of uncertainty to the long-term success of PSOs. According to the GAO, however, many PSOs are still in the early stages and it may be too early to gauge their success.

SOURCES:

Patient Safety Act, "HHS Is in the Process of Implementing the Act, so its Effectiveness Cannot Yet Be Evaluated, United States Government Accountability Office, Report to Congressional Committees, January 2010, http://www.gao.gov/new.items/d10281.pdf

The Physician's Guide to Patient Safety Organizations, American Medical Association, 2009, http://www.ama-assn.org/ama1/pub/upload/mm/370/patient-safety-organizations.pdf ❖

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Aspiring authors and previous contributors are encouraged to **contact the *Rhode Island Bar Journal*'s Editor Frederick Massie by telephone: (401) 421-5740 or email: fmassie@ribar.com.**

RI's Coastal Resources

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provide 800 milion cubic feet per day of natural gas, or an estimated 15% of New England's peak daytime natural gas requirements in 2010.[20]

The plan was controversial, generating opposition from citizens' groups and politicians alike in both Rhode Island and Massachusetts. Concerns included the LNG tankers would be subject to explosion, either as a result of terrorism or accident, with resulting carnage not just to recreational boat traffic on the Bay, but also to coastal communities.

The permitting activity in Rhode Island was focused on Weaver's Cove's necessity to obtain a dredging permit to allow dredging in the federal navigational channel in Mount Hope Bay. Under the Coastal Resources Management Council's federal consistency regulations, Weaver's Cove was required to submit a federal consistency determination, as well as an application for an Assent to dredge in the federal navigational channel.

Within 30 days of submission of Weaver's Cove's application, CRMC advised Weaver's that before reviewing its application, CRMC required the engineering plans, submitted with the stamp of a Massachusetts engineer, be resubmitted with the stamp of a Rhode Island engineer. CRMC required further information about the dredge material disposal site. (In its initial submission to CRMC, Weaver's Cove indicated the dredge material would be disposed of at its proposed Fall River facility, outside the jurisdiction of CRMC.) Following that request, within the 30-day period following submission of its application, Weaver's Cove supplied engineering plans stamped by a Rhode Island engineer, advising CRMC that the Rhode Island coastal management program did not require submission of information about out-of-state dredge disposal.[21]

More than 30 days following submission of its initial application, CRMC advised Weaver's Cove in writing that its application was incomplete and could not be processed because it lacked a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act.[22] That CRMC communication made no reference to requiring further information on the disposal site for the dredge spoils.[23]

CRMC did not take action on the federal consistency certification within six months of submittal of the application, stating the application was incomplete and that Weaver's Cove was advised of this within 30 days of submission of its application. Accordingly, CRMC did not consider the application, deeming it incomplete.

Weaver's Cove sued in Federal District Court. As to the federal consistency claims, the Court found that Weaver's Cove had provided all necessary data and information and the Court held that CRMC failed to render a determination on the consistency application within six months of filing, as required by statute, and the consistency application was therefore deemed approved. The Court also found that CRMC's requirement of Weaver's Cove obtaining a state Assent for the dredging was preempted by the Natural Gas Act.

CRMC appealed this decision to the U.S. Court of Appeals for the First Circuit, which upheld the lower court decision.[24]

Since this litigation, in the face of continuing opposition to the proposed LNG Project, Weaver's Cove Energy, LLC has announced cancellation of the proposed project.

Rhode Island's Advantage Under the Federal Consistency Program

While Rhode Island's effort to challenge the Weaver's Cove project under the federal consistency program was not successful from the State regulatory perspective, that spoke less to substantive deficiencies in the federal consistency program itself or in Rhode Island's coastal resources management program and more to procedural issues under the federal consistency program. Namely, what was primarily at issue in the court challenge was the question of whether or not the Weaver's Cove Energy, LLC had submitted a completed application in accordance with the requirements of the federal consistency program sufficient to begin the running of the time deadlines by which a state regulator's decision was required.

Without specific reference to the Weaver's Cove litigation, from a substantive perspective, it appears Rhode Island has positioned itself well to benefit from the protections of the federal consistency program.

In Rhode Island, the coastal resources

management program governs a broad range of activities along the coast and inland, including along tidal rivers. Regulated activities include construction activities within 200 feet of the inland edge of the coastal feature, the construction, maintenance and repair of docks and piers, the alteration of coastal wetlands, dredging, and the alteration of vegetation within 200 feet of the inland edge of the coastal feature.

Not only does CRMC's jurisdiction under the RICRMP encompass properties located on the coast and properties located in the vicinity of the coast, CRMC's jurisdiction under the Rhode Island Coastal Resources Management Program also extends to properties that appear to be away from the coast, including in downtown settings.

For example, construction projects in downtown Providence can implicate CRMC jurisdiction. This is because CRMC has jurisdiction over activities within 200 feet of the inland edge of a coastal feature, and coastal features include the banks of a tidal river. In downtown Providence, and in other urban areas near the Bay or the Providence River, certain rivers are tidal, and, therefore, give rise to CRMC jurisdiction and the need for permits for construction activities, as well as certain maintenance and repair activities.[25]

Also, CRMC jurisdiction extends to areas that are not even within sight of the coast and may be miles from the coastline. Under CRMC's enabling statute, it has jurisdiction over the design, location, construction, alteration and operation of specific activities or land uses when related to a water area under the Council's jurisdiction, no matter where the land area is located in Rhode Island. Activities subject to this expansive jurisdiction include: power-generating facilities over forty megawatts; desalination plants; chemical or petroleum processing, transfer or storage; mineral extraction; sewage treatment and disposal; and solid waste disposal facilities.[26]

The point to appreciate is that a state's coastal resources management program can be broad indeed and the broader the program, the more potential ability for the state to challenge, and perhaps thwart, direct or indirect federal activities under the CZMA, through its federal consistency program.

A dramatic potential example of this is the recent adoption by the CRMC of

a bold and extensive Ocean Special Area Management Plan (Ocean SAMP) covering nearly 1,500 square miles of ocean area and including not just Rhode Island state waters, but also federal waters abutting state waters of Massachusetts, Connecticut and New York. Relying on marine spatial planning techniques, CRMC and university researchers and scientists spent two years and approximately $8 million on extensive studies and characterizations of various ocean environments to designate areas for specific functions, including alternative energy uses, and, specifically, wind energy, as well as areas meriting special protection. Rhode Island's Ocean SAMP was formally adopted by CRMC on October 19, 2010 for Rhode Island waters. It required and received NOAA approval as a programmatic change to Rhode Island's Coastal Resources Management Program. When fully implemented, this Ocean SAMP will constitute a type of ocean zoning.

Since the Ocean SAMP covers more than state waters, it also requires a separate federal approval to effectively make policies of the Ocean SAMP enforceable policies of Rhode Island's coastal management program, qualifying for the benefits of federal consistency review under the CZMA. CRMC has noted it would be requesting "a geographic boundary expansion to its federal consistency boundary by documenting in advance that certain licenses, permits, leases, etc. will have a foreseeable affect on the state's coastal zone."[27] Such federal approval, which the state said it hopes to receive by autumn 2011, would extend the influence of Rhode Island over federal waters in the Ocean SAMP area and significantly increase the ability of Rhode Island to protect its coastal environment under the federal consistency program.

Accordingly, Rhode Island's broad and robust coastal resources management program positions it favorably for bringing challenges in the future under the federal consistency program to protect the State's coastal environment where appropriate.

ENDNOTES

1 *16 U.S.C. § 1451* ***et. seq.***
2 ***See*** *16 U.S.C. § 1455 (d).*
3 *16 U.S.C. § 1456 (c) (2).*
4 *16 U.S.C. § 1456.*
5 *16 U.S.C. § 1456.*
6 *16 U.S.C. § 1456 (c) (1) (A).*
7 *15 CFR 930.32 (a) (1) A NOAA-provided exam-*

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ple of an implied prohibition is a situation where the agency is required to make findings and apply certain criteria in its decision-making process which form the basis for a record of decision.

8 *15 CFR 930.32(a) (3).*
9 *16 U.S.C. § (c) (1), (2).*
10 *16 U.S.C. § 1456 (c) (1) (C).*
11 *16 U.S.C. § 1456 (c) (1) (2).*
12 *16 U.S.C § 1456(b).*
13 *U.S.C. § 1456 (c) (3) (A) and (B).*
14 *16 U.S.C. § 1456 (c) (3) (A).*
15 *16 U.S.C. § 1456 (c) (3) (A) and (B).*
16 *16 U.S.C. § 1456 (c) (3) (A).*
17 *16 U.S.C. § 1456 (c) (3) (A) and (B).*
18 *16 U.S.C. § 1456 (c) (1) (B).*
19 *16 U.S.C. § 1456 (d).*
20 ***See Weaver's Cove Energy, LLC. v. Rhode Island Coastal Resources Management Council et al.**, 583 F. Supp. 2d 259, 262 (D.R.I. 2008).*
21 ***Id.** at 264.*
22 *33 U.S.C. §§ 1251* ***et seq.***
23 ***Id.** at 264-5.*
24 ***Weaver's Cove Energy, LLC v. Rhode Island Coastal Resources Management Council, et. al.**, 2009 U.S. App. Lexis 23491 (1st Cir. Oct. 26, 2009).*
25 *R.I. Gen. Laws § 46-23-6 (iii).*
26 *R.I. Gen. Laws § 46-23-6(2) (iii).*
27 *CRMC Press Release, October 19, 2010.* ❖

Express Consent

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Holloway – the unresolved issue of whether express consent by registration is possible only when the suit itself has some connection to the forum – sprouted in a recent decision of the United States District Court for the District of Rhode Island: **Harrington v. C.H. Nickerson & Company, Inc.**[28] There, the Court concluded that **Holloway's** "linchpin" was the unanswered question concerning connection to the forum, and the Court proceeded to answer that question in the affirmative?[29] Because the defendant in Harrington was a Connecticut corporation, and the plaintiff a Rhode Islander whose injury occurred in Massachusetts, the Court held that there was no "causal connection" between Rhode Island and the litigation?[30] In addition, the Court determined that there was no indication from the defendant or the Rhode Island Legislature that corporate registration equated an express consent to the state's personal jurisdiction?[31] A due-process analysis of whether the defendant had exercised otherwise sufficient minimum contacts with the forum therefore was necessary.[32] Because the defendant had insufficient contacts with Rhode Island, the Court was required to dismiss the action for want of personal jurisdiction.[33]

But, in the end, the possibility of express consent by registration (or the risk of it, for corporate defendants) still persists. For those of us practicing in Rhode Island, our state Supreme Court has not yet considered this issue and the First Circuit, while it will apply the doctrine,[34] has still to address whether it must be conditioned upon some greater connection between the litigation and forum. For a plaintiff, it is surely best to determine first whether a putative foreign corporate defendant has registered in compliance with a forum's statutory requirements. At least before endeavoring upon the more rigorous task of compiling a favorable list of its other in-state contacts. It just might be the simple resolution to an often complex barrier.

ENDNOTES

1 ***Donatelli v. National Hockey League****, 893 F.2d 459, 462 (1st Cir. 1990) (Selya, J.).*

2 ***World-Wide Volkswagen Corp. v. Woodson****, 444 U.S. 286, 297 (1980).*

3 ***Burnham v. Superior Court****, 495 U.S. 604 (1990).*

4 ***Helicopteros Nacionales de Columbia v. Hall**, 466 U.S. 408, 414-15 (1984).*
5 *243 U.S. 93 (1917).*
6 ***Id.** at 95-96.*
7 *1 Restatement (Second) Conflict of Laws § 44 cmt. a.*
8 ***Sternberg v. O'Neil**, 550 A.2d 1105, 1112 (Del. 1987) (citing **Burger King Corp. v. Rudzewicz**, 471 U.S. 462, 472 (1985)).*
9 ***Bohreer v. Erie Insurance Exchange**, 165 P.3d 186, 194 (Ariz. App. Ct. 2007).*
10 ***Siemer v. Learjet Acquisition Corp.**, 966 F.2d 179, 183 (5th Cir. 1992).*
11 ***Leonard v. USA Petroleum Corp.**, 829 F. Supp. 882, 888-89 (S.D. Tex. 1993).*
12 ***Knowlton v. Allied Van Lines, Inc.**, 900 F.2d 1196, 1200 (8th Cir. 1990).*
13 ***Id.** at 1199-1200.*
14 ***The Rockefeller University v. Ligand Pharmaceuticals Inc.**, 581 F. Supp. 2d 461, 466-67 (S.D.N.Y. 2008).*
15 *739 F.2d 695, 697 (1st Cir. 1984).*
16 ***Id.** at 696-97.*
17 ***Id.** at 697.*
18 ***Id.** The **Holloway** court also relied upon **Neirbo C. v. Bethlehem Shipbuilding Corp., Ltd.**, 308 U.S. 165, 170-71 (1939).*
19 ***Id.** at 697.*
20 ***Id.***
21 ***Id.***
22 ***Id.** at 699.*
23 ***Id.***
24 ***Id.***
25 *904 F.2d 83, 89 n.6 (1st Cir. 1990).*
26 ***Id.** at 88-90.*
27 *600 F.3d 25 (1st Cir. 2010).*
28 *2010 U.S. Dist. LEXIS 88535 (D.R.I. 2010).*
29 ***Id.** at * 7-8.*
30 ***Id.** at * 8-9.*
31 ***Id.** at * 8.*
32 ***Id.** at * 11-12.*
33 ***Id.** at * 15-16.*
34 *In addition to **Holloway**, the First Circuit, in **Martel v. Stafford**, 992 F.2d 1244, 1248 (1st Cir. 1993), citing to both **Pennsylvania Fire Ins. Co.** and **Holloway**, reasserted that the "basic premise is sound: a party may consent to a court's in person-am jurisdiction before the commencement of an action." **Martel**, however, did not involve the issue of whether a foreign corporation was registered in the forum.* ❖

LGBT Committee Meeting and Free CLE September 22nd

The Rhode Island Bar Association's Lesbian, Gay, Bisexual and Transgender (LGBT) Issues and the Law Committee invites all interested Bar members to attend their first Committee meeting on September 22, 2011. The meeting includes a free, in-house, Continuing Legal Education (CLE) workshop (1 CLE credit including .5 ethics credits) addressing the top 10 things to think about when representing LGBT Clients. The CLE panel of experts includes Susan Gershkoff, Susan Perkins, Michael Evora, Martha Holt, one more surprise speaker, and moderated by Barbara Margolis. The Committee meeting is at DownCity Foods, on 50 Weybosset Street in Providence, beginning at 4:30 pm, with the CLE beginning at 5:00 pm. The Committee invites Bar members to stay and mingle with other attendees after the CLE. Some appetizers will be provided with a cash bar. To register, please contact Barbara Margolis, via email, at: bmargolis@courts.ri.gov

Delay, Deny, Defend

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compelling if the insurer offered the claimant the claim's true value.

If the insurer cannot persuade the claimant to accept less money, the next step is for the insurer to prepare for a streamlined cost-effective, defense litigation. As with its claims handling refinement, McKinsey advocated insurers further increase profits by cutting defense counsel costs.[26]

Under the old system, local claims offices typically hired outside local defense and negotiated hourly rates based on the defense lawyers' expertise and the local legal market.[27] In 1999, Allstate began a practice of requiring law firms to bid on defending many routine cases. Insurers began to closely audit and minutely review and question defense counsel's bills.[28] Lawyers began to defend smaller cases for flat fees, and insurers also began to essentially franchise their defense work to one or two defense firms per market.[29] So what? Arguably, insurance defense counsel in such arrangements become more reliant on the volume of work coming from the insurer to the detriment of their fiduciary duties to their actual client, the policyholder. Second, the policy holder is arguably further damaged by paying a premium for a policy that promises the insurer's "duty to defend" which, in actuality, does not always deliver a true, zealous advocate looking out for the policyholder's best interests.

Under the new approach, Feinman calls defense counsel "superadjusters," simply the next tool in the insurer's toolbox to minimize claims payout and maximize profits.[30] Whereas past generations of insurance defense lawyers were permitted control, flexibility, and autonomy over their cases, this generation is hamstrung by a system of lower pay, stricter reporting requirements, and decreasing ability to dictate settlement terms.

Feinman also delves into the controversial use of independent medical examiners, paper reviews of medical records, biomechanical engineers to explain away injuries in low impact auto cases, and similar changes made to handling homeowner policy claims. Notably, McKinsey long ago realized that profits could be extracted out of minor impact soft tissue (MIST) cases. Feinman summarizes the medical and legal history of these claims and explains how McKinsey conducted a campaign to deny that such impacts could cause injury, avoid compromise settlements, and exhibit an increased willingness to try such cases to jury verdict.[31] Some insurers' strategy has become to low-ball even the clearest case of liability to exploit "the economics of the practice of law."[32] The contingent fee agreement, increased cost, and time of trial often make such cases less appealing to both the lawyer and the claimant.

I also enjoyed other sections of this book, including a detailed description of the Hurricane Katrina insurance litigation (the Katrina story is a different version of the same story told throughout the book: the insurer's economic incentives to break their promises to policyholders and delay, deny, and defend.). One former insurance commissioner terms the trend in homeowners' insur-

ance as one of "privatizing profit, socializing risk." That is, to take maximum profits, home insurers take fewer risks, thereby shifting risk to the general public. Homeowners must seek (often limited) coverage through the National Flood Insurance Program or state pools of insurance.[33]

Feinman concludes with direct advice to all of us, the consumers of insurance. "No matter what kind of warm, fuzzy feeling you get from your insurer's television commercials, the insurance company is not your friend."[34] He provides advice to consumers searching to do business with reputable companies, including one direct quote from the Consumer Federation of America to "avoid Allstate if at all possible."[35]

The paradox here is that while insurance is perhaps the most regulated business, the current systems of regulation have not stopped the abuses described in the book. While Feinman identifies needed changes in the regulations, given the insurance industry's immense lobbying power, we never see such change. Perhaps the best we can do as lawyers is to continue to expose the dichotomy of the insurance industry's business model and its conflict with long established legal principles.

ENDNOTES

1 *Jay M. Feinman, Delay Deny Defend: Why Insurance Companies Don't Pay And What You Can Do About It 4 (2010).*
2 *Barry D. Smith and Eric A. Wiening, How Insurance Works, 7 (2nd ed. 1994).*
3 *James J. Markham et al., The Claims Environment 5 (1993).*
4 *Feinman, **supra** at 67.*
5 ***Id.** at 14.*
6 ***Id.** at 47.*
7 ***Id.** at 56.*
8 *http://www.mckinsey.com/en/About_us.aspx (site visited June 30, 2011).*
9 ***Id.** at 56.*
10 *James J. Markham et al., supra at 18.*
11 *http://blogbusinessworld.blogspot.com/2010/04/delay-deny-defend-by-jay-m-feinman-book.html (site visited June 29, 2011).*
12 ***Id.** at 62-63.*
13 ***Id.** at 73.*
14 ***Id.** at 115.*
15 ***Id.***
16 ***Id.** at 68.*
17 ***Id.** at 73.*
18 ***Id.***
19 ***Id.** at 74.*
20 ***Id.***
21 ***Id.** at 75.*
22 ***Id.** at 86.*
23 ***Id.** at 87.*
24 ***Id.** at 87.*
25 ***Id.** at 91.*
26 ***Id.** at 81.*
27 ***Id.***
28 ***Id.***
29 ***Id.** at 82.*
30 ***Id.** at 83.*
31 ***Id.** at 96.*
32 ***Id.** at 98 in part, based on their prediction that many plaintiff lawyers would not take these cases to trial.*
33 ***Id.** at 149.*
34 ***Id.** at 190.*
35 ***Id.** at 191.* ❖

Lawyers on the Move

Julie A. Bruno, Esq. relocated her law office to 615 Jefferson Blvd., Suite A204, Warwick, RI 02886.
401-921-5200 julie@brunolawri.com

Joel S. Chase, Esq. relocated the **Law Offices of Joel S. Chase** to 300 Metro Center Boulevard, Suite 150A, Warwick, RI 02886.
401-739-9900 joel@jchaselaw.com

Denise E. Choquette, Esq. is now Vice President of Gilbane Building Company.

Eric D. Correira, Esq. is now a partner in the law firm **Correira & Correira**, 127 Dorrance Street Providence RI 02903.
401-454-5040 eric@cilaw.com

James D. Cullen, Esq. has joined the law firm of **Roberts, Carroll, Feldstein & Peirce, Inc.** as an Associate, 10 Weybosset Street, 8th Floor, Providence, RI 02903.
401-521-7000 jcullen@rcfp.com www.rcfp.com

William J. Delaney, Esq. and **Richard A. DeMerchant, Esq.** have merged their law firm with **Kevin D. Heitke, Esq.** creating the new firm of **Delaney DeMerchant & Heitke, LLC**, 91 Friendship Street, Suite One, Providence, RI 02903 and 35 East Avenue, Harrisville, RI 02830.
Providence: 401-454-8000 Harrisville: 401-567-0219

Nicole B. DiLibero, Esq. announces the opening of **N. DiLibero Law, LLC**, 536 Atwells Avenue, Providence, RI 02909.
401-490-4801 nbd@ndiliberolaw.com
www.ndiliberolaw.com

Hon. Maureen McKenna Goldberg, Associate Justice of the **Rhode Island Supreme Court**, was honored as Bay View Academy's 2011 Outstanding Alumna of the Year.

Sherry A. Goldin, Esq. announced the opening of her new firm, **Goldin & Associates, Inc.**, 10 Weybosset Street, 8th Floor, Providence, RI 02903.
401-861-7400 sg@sagoldin.com

Seth H. Handy, Esq. announces the opening of his law office **Handy Law, LLC**, 42 Weybosset Street, Providence, RI 02903.
401-626-4839 seth@handylawllc.com

William M. Kolb, Esq. moved the **Law Offices of William M. Kolb, LLC** to One Richmond Square, Suite 148E, Providence, RI 02906.
401-714-0622 bill@kolblaw.com

Dianne L. Leyden, Esq. is now Deputy Chief of Legal Services at the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, 14 Harrington Road, Room 134, Cranston, RI 02920.
401-462-1255 Dianne.Leyden@bhddh.ri.gov

Thomas W. Madonna, Esq. completed his second and final term as President of the Suffolk University Law School Alumni Board of Directors.

John N. Mansella, Esq. announces the opening of his law office at 1150 Park Avenue, Cranston, RI 02910.
401-437-6750 john@mansellalaw.com

Joseph R. Marion, III, Esq., of **Adler Pollock & Sheehan**, was named to the Board of Governors for the Catholic Foundation of Rhode Island.

John J. McConnell, Jr., Esq., of **Motley Rice**, was confirmed by the U.S. Senate as U.S. District Judge in the **U.S. District Court for the District of Rhode Island**.

Benjamin A. Mesiti, Esq. opened **Benjamin A. Mesiti & Associates, LLC**, 986 Hartford Avenue, Johnston, RI 02919.
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Craig V. Montecalvo, Esq. opened the **Law Office of Craig V. Montecalvo, Esq.**, 55 Pine Street, 2nd Floor, Providence, RI 02903.
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Jerilyn Fahey Muccio, Esq., a Westerly High School teacher, was one of four Westerly High teachers who received the League of Women Voters of South Kingstown/Narragansett 2011 Susan B. Wilson Civic Education Merit Award Grand Prize. Past Bar President Lise M. Iwon, Esq., was one of three Award judges.

Robert D. Oster, Esq. notes his law firm name is now **Oster Law Offices**, PO Box 22003, Lincoln, RI 02865.
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Stephen J. Queenan, Esq. has joined the law firm of **Roberts, Carroll, Feldstein & Peirce, Inc.** as an Associate, 10 Weybosset Street, 8th Floor, Providence, RI 02903.
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Vincent F. Ragosta, Jr. Esq. has relocated his law office to Center Place, 50 Park Row West, Suite 109, Providence, RI 02903.
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Joseph J. Ranone, Esq. is now located at 615 Jefferson Blvd., Warwick, RI 02888.
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Allan M. Shine, Esq., Richard J. Land, Esq. and **Diane Finkle, Esq.** are pleased to announce that their law firm name is now **Winograd Shine Land & Finkle, P.C.**, 123 Dyer Street, Providence, RI 02903.
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Lawyers on the Move
continued

Joseph B. White, Esq. has joined the law firm of **Robinson & Cole LLP** as a Partner, One Financial Plaza, Suite 1430, Providence, RI 02903.
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David W. Zizik, Esq., of **Zizik, Powers, O'Connell, Spaulding & Lamontagne, P.C.**, 40 Westminster Street, Suite 201, Providence, RI 02903, was elected 2011-2012 Vice President of the Association of Defense Trial Attorneys.
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For a free listing, please send information to: Frederick D. Massie, Rhode Island Bar Journal Managing Editor, via email at: fmassie@ribar.com, or by postal mail to his attention at: Lawyers on the Move, Rhode Island Bar Journal, 115 Cedar Street, Providence, RI 02903.

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Counting to Ten Really Does Work

Deep Breaths: Slow racing thoughts and relax knotted muscles by breathing deeply and slowly. Put one hand on your stomach. Breathe in deeply counting to five, hold your breath for a count of five, breath out for a count of five and repeat ten times. Breathe in through your nose and exhale through your mouth.

(Brought to you by the members of the Rhode Island Bar Association's Lawyers Helping Lawyers Committee)

Please contact us for strictly confidential, free, peer and professional assistance for your personal challenges.

We are here to help you.

Rhode Island Bar Association members and their families may receive confidential and free help, information, assessment and referral for personal challenges through the Bar's contract with Resource International Employee Assistance Services (RIEAS) and through the members of the Bar Association's Lawyers Helping Lawyers Committee. To discuss your concerns, or those you may have about a colleague, you may contact a Lawyers Helping Lawyers Committee member, or go directly to professionals at RIEAS who provide confidential consultation for a wide range of personal concerns including but not limited to: balancing work and family, depression, anxiety, domestic violence, childcare, eldercare, grief, career satisfaction, alcohol and substance abuse, and problem gambling.

When contacting Resource International Employee Assistance Services, please identify yourself as a Rhode Island Bar Association member. A RIEAS Consultant will briefly discuss your concerns to determine if your situation needs immediate attention. If not, initial appointments are made within 24 to 48 hours at a location convenient to you. Please contact RIEAS by telephone: 401-732-9444 or toll-free: 1-800-445-1195.

Lawyers Helping Lawyers Committee members choose this volunteer assignment because they understand the issues and want to help you find answers and appropriate courses of action. Committee members listen to your concerns, share their experiences, and offer advice and support.

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Ms. Judith G. Hoffman, LICSW, CEAP, RIEAS	732-9444 or 800-445-1195

Lawyers Helping Lawyers Committee Members Protect Your Privacy

In Memoriam

Robert Justin Dumouchel, Esq.

Robert Justin Dumouchel, 68, of East Greenwich, passed away on July 19, 2011. A lifelong Rhode Islander, Mr. Dumouchel was born in Woonsocket, the son of the late Alfred and Ann Roach Dumouchel. He leaves behind his wife, Mary Beth Dereniuk Dumouchel, of nearly forty years. Bob graduated from Mount Saint Charles Academy and from the College of the Holy Cross with a B.A. in English. Bob spent one year with the Jesuit Foreign Missions teaching at Baghdad College in Iraq. He graduated from the Georgetown University Law Center and served for four years as a lieutenant in the U.S. Navy Judge Advocate General Corp. He was a partner at the law firm of Higgins & Slattery in Providence for almost forty years. Bob was active in many organizations in Rhode Island. He was a member of the Rhode Island and American Bar Associations and a corporator for the East Greenwich Free Library. He was a communicant at Our Lady of Mercy and had served as a Parish Council member. He served on the Mount Saint Charles School Board. Rhode Island encompassed his life, enjoying biking on the East Bay Bike Path and kayaking in the Bay. He coached soccer and baseball in East Greenwich town leagues, and skied with his family in Vermont as a member of the Newport Ski Club In addition to his wife, Bob leaves behind three children: Claire Shield and her husband, Daniel of Mansfield, Mass.; Dr. Justin Dumouchel and his wife, Dr. Caroline Lin of San Diego, Cal.; and Katherine Dumouchel, of Washington, D.C.

Louis V. Jackvony, III, Esq.

Louis V. Jackvony, III, 64, of Victory Highway, Glendale, RI passed away on July 28, 2011. He was the husband of Karen Morrissette Jackvony. Born in Providence, he was a son of Louis V. Jackvony, Jr. of North Providence and Ada M. Chiaverini Jackvony of North Providence. Mr. Jackvony practiced law with his father at their law firm Jackvony and Jackvony Attorneys at Law in North Providence. He was the North Smithfield Town Solicitor. Louis graduated from Villanova University and Suffolk University Law School. Louis was a member of the RI Mobile in Manufactured Homes Commission and the RI Real Estate Appraisals board. Mr. Jackvony founded RI Title Services Ltd. He also was licensed as a real estate broker and was president of Olde Towne Realty Inc., founder of Eastern Title and Closing Services Inc. of Merritt Island, FL , and was a Florida licensed title agent. He was the father of Peter Jackvony of Woonsocket, Lynne Melo of Cranston and Kylie Gould of Glendale. Pop of Gianna Melo and brother of Linda Cortellesso of Exeter.

Hon. Bruce Sundlun

Bruce Sundlun, 91, of Jamestown, passed away on July 21, 2011. He was a graduate of Williams College and received his law degree from Harvard University. He served as Rhode Island Governor from 1991 to 1995, guiding the state through its banking and credit union crisis and helping lead the expansion of T.F. Green Airport. Before becoming Governor, Mr. Sundlun served as an Assistant U.S. Attorney from 1949 to 1951 and as special assistant to the U.S. Attorney General. He also served as president of the Outlet Company and as president of the Executive Jet Corporation For his service as a pilot in World War II, where his airplane was shot down over Nazi-occupied Belgium, he was awarded the Purple Heart, the Distinguished Flying Cross, the Air Medal with oak leaf cluster, and the Chevalier of the Légion d'honneur from France. Former Governor Sundlun taught two political science courses at the University of Rhode Island.

Please contact the Rhode Island Bar Association if a member you know passes away. We ask you to accompany your notification with an obituary notice for the Rhode Island Bar Journal. Please send member obituaries to the attention of Frederick D. Massie, Rhode Island Bar Journal Managing Editor, 115 Cedar Street, Providence, Rhode Island 02903. Email: fmassie@ribar.com, facsimile: 401-421-2703, telephone: 401-421-5740.

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