

State of the Union – 2014

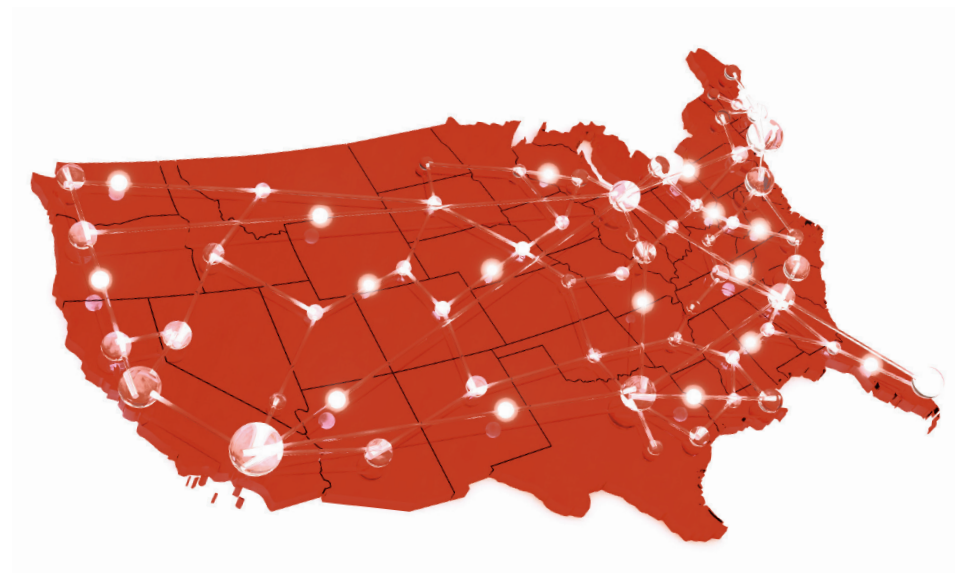
Earlier this year we spoke with 3 leading personal injury attorneys to get a look at what's ahead for 2014 in the fields of pharmaceutical, nursing home, and securities litigation.

Pharmaceutical Litigation

In 2014, pharmaceutical litigation will be an area where plaintiffs' attorneys will need to become unified in the fight to keep the doors of the courtroom open to all, according to New York trial attorney Richard D. Meadow of The Lanier Law Firm. Meadow predicts that it will be harder to defend the victims of corporate malfeasance with the Supreme Court granting immunity to generic drug manufacturers, which account for over 80-90% of prescriptions.

"The plaintiff bar has to be ever more diligent, creative, and persistent to protect an unknowing public. The strategy of a global resolution to litigations after hard-fought battles, including discovery, privilege, confidentiality, and others, seems to be affecting the way plaintiffs approach cases," Meadow said.

"We need to be mindful of the cost of litigation in terms of manpower, time, and expense," Meadow continued. While big pharma companies have almost unlimited manpower and financial resources, plaintiffs are forced to take part in MDLs (multidistrict litigations) in order to combine resources. "What's more, many times defense counsel will object to an MDL in order to have individual plaintiffs take them on in various state courts where they can bleed them dry," Meadow said.



Nursing Home Litigation

Nursing home litigation will remain all-pervasive in 2014 despite countless laws put into place to protect elders and dependent adults. This will be driven by assisted living and skilled nursing facilities continuing to place profits over the health and safety of their residents and leaving them at risk for abuse and untimely death.

Attorney Peter J. McNulty, from the McNulty Law Firm in Los Angeles, predicts that the increase in medical needs of aging boomers coupled with the introduction of the Affordable Care Act will substantially increase Medicare and Medicaid's role in providing medical services to boomers as well as young and middle-aged people.

"As Medicare and Medicaid have a right to reimbursement for 'injury-related services' when a person or their heirs file a lawsuit for medical negligence, elder abuse, etc., Medicare and Medicaid

will be keeping their eyes on the lawsuit's settlement or judgment, and will be seeking to recover more than ever before. This will affect both an attorney's willingness to proceed with a case as well as the plaintiff's net recovery," McNulty said.

McNulty also predicts that victims of nursing home abuse will have longer to wait for justice, as the Centers for Medicare and Medicaid Services is extremely intransigent when it comes to negotiating a fair lien compromise.

Securities Litigation

Attorney Richard Fosher, Partner at Oakes & Fosher, LLC, in St. Louis, has the inside track on developing trends in the world of securities litigation.

"Unless human nature makes an abrupt change, there will always be a percentage of brokers who violate the duty to place

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Co-counsel SPOTlight

Beasley Allen, Montgomery, AL

Few firms have made national headlines as often as Montgomery, Alabama based Beasley Allen. As one of the leading national consumer litigation firms, they have a long history of newsworthy cases. From the largest verdict in U.S. history against an oil company (\$11.9 billion – ExxonMobil Corp.) to the largest pharmaceutical settlement in U.S. history (\$4.85 billion – Merck & Co.'s Vioxx®), the lawyers at Beasley Allen have proven their leadership qualities time and time again.

Founded in 1979 by Jere Locke Beasley, the firm started with one lawyer, one secretary, and no clients. Thirty-five years, 75 lawyers, 200 support staff, and thousands of clients later, the firm is now known as Beasley, Allen, Crow, Methvin, Portis & Miles, PC.

The firm has a diverse nationwide practice and represents plaintiffs and claimants in the areas of business litigation, personal injury and product liability, medical devices and drugs, fraud, employment, and environmental law.

Sokolove is proud of its almost 15-year relationship with Beasley Allen, having worked with the firm on a number of campaigns, dating back to Vioxx, and most recently Lipitor®. "Partnering with a firm like Beasley Allen is a no brainer — you always know that your mutual clients are in good hands and will receive the best possible legal representation," Mike Skoler, Sokolove Law CEO, said.

Vioxx® is a registered trademark of Merck & Co., Inc., and Lipitor® is a registered trademark of Pfizer, Inc.



"We value our long working relationship with Sokolove Law. We are impressed by their dedication to helping all people obtain vital legal help and equal access to justice."

— TOM METHVIN, Managing Shareholder

Contributing Editor

Nursing Home Regulations at Risk

Federal regulations that guarantee quality of care and quality of life to nursing home residents are in jeopardy. These regulations, implementing the Nursing Home Reform Law ("OBRA '87"), are essential to trial lawyers in nursing home litigation because violations (in accordance with the law) can be alleged and pled as evidence of negligence.

Presently, the Centers for Medicare and Medicaid Services (CMS) is revising the regulations, called Requirements of Participation (RoPs), in an effort to make the rules "current" and promote resident-centered care, improve quality, and reduce burdens.

Pursuant to two executive orders, federal agencies were asked to make their regulatory programs more effective or less burdensome, while prioritizing initiatives that will produce significant quantifiable monetary savings or reductions in paperwork burdens.

Advocates for nursing home residents are concerned that these revisions will weaken regulations, as evidenced by the revised hospital Conditions of Participation (CoPs). CMS claimed that the hospital CoPs were "modernized" while saving money, but an advocate review found that the changes involved deletion of federal standards and a reliance on state law. If nursing home RoPs follow suit, protections and standards brought about by the Nursing Home Reform Law would be eliminated.

*By Robyn Grant
Director of Public Policy and Advocacy
National Consumer Voice for Quality Long-Term
Care*

Whenever regulations are opened up, they are vulnerable to significant and potentially harmful changes. Previous actions by past administrations and Congress have attempted to reduce survey and certification requirements and even eliminate the regulations. It's not unrealistic to fear that important hard-won protections could be in jeopardy. It's also premature to revise the rules that are in place when so many important nursing home provisions from the Affordable Care Act have still not been implemented.

A vigorous effort to save and improve these federal regulations is being mounted. The National Consumer Voice for Quality Long-Term Care and the American Association for Justice have submitted comments as part of the pre-rule making process and have communicated with top CMS officials. If the proposed rule undermines resident rights and protections, all those who represent and care about the interests of nursing home residents, including plaintiffs' attorneys, will need to rally in their defense.

Robyn Grant is the director of Public Policy and Advocacy at the National Consumer Voice for Quality Long-Term Care in Washington, DC. For more information, contact Robyn Grant at rgrant@theconsumervoice.org.



Campaign Highlight

Traumatic Brain Injury: An Engaged Target Audience Yields Results

One of our recent marketing campaigns targeted to victims of traumatic brain injuries and their families provided both public awareness and promising cases to our co-counsel firms.

According to the Centers for Disease Control (CDC), an estimated 1.4 million Americans suffer traumatic brain injuries each year. It is estimated that medical expenses and lost wages due to these injuries total over \$60 billion annually.

Our early efforts to reach this target have included TV commercials, pay-per-click (PPC) online advertising, and search engine optimization (SEO). Sokolove Law is currently the most prominent firm pursuing traumatic brain injury



leads with such a large-scale marketing campaign, which is helping us build a strong brand presence for this case type.

For SEO, organic search traffic is steadily increasing month over month. This increase can be partially attributed to our use of a relevant vanity URL, HelpForBrainInjuries.com, which is called out in our TV ads. We are finding that our site visitors stay longer than most – typically more than nine minutes per session.

Not all traumatic brain injuries are covered by health insurance. Providers make their decisions on what they'll cover based on how each victim is injured. We believe that this factor creates a big incentive for traumatic brain injury victims and their loved ones to call us for help.

Operations Update

Service Operations Set the Bar High

New Technologies Made a Positive Impact

In 2013, our Service Operations department handled hundreds of thousands of calls. In addition to our incredible agents, whose call quality scores averaged 92% (exceeding our goal of 90%), the following improvements were key to our success:

- SMS and chat became standard service options, creating a better user experience and faster processing of potential referrals.
- We adopted new technologies in both our training and quality monitoring programs, enabling us to do more with the same amount of resources.

Return Rates Stayed Consistent

Our overall packet return rate remained consistent with previous years at close to 70%, of which 80% were returned within 30 days.

- We sent over 12,000 client sign-up packets to potential asbestos, pharmaceutical, and medical device clients.
- We continue to see a better return rate with the utilization of electronic signatures and have plans to expand this service in 2014.

Pharma Campaigns Were Robust

- Some of the largest volume campaigns we managed in 2013 were for GranuFlo®, Lipitor®, and Risperdal®.
- With medical devices, we continued to handle a variety of hip replacement devices and transvaginal mesh implants, as well as the Mirena® IUD.

Our Co-counsel Portal Was Improved

We've tried to make providing updates easier for you via the co-counsel portal and thank those who have consistently participated over the past year as well as those who have provided updates via other methods. If you are interested in using the Sokolove Law Co-counsel Portal, contact your Quality Assurance Manager.

Coming in 2014

Within the first half of 2014, our transition from our current CRM to Salesforce will be complete. We'll be introducing new operational capabilities that will improve our service levels and increase our lead-to-signed client conversion rates. Some of these include:

- **Active Response** – A web submission monitoring service that will enable near real-time contact attempts on web form submissions.
- **DocuSign Integration** – An electronic signature service that will sync data to and from Salesforce, eliminating manual steps and enabling us to expand this service.

Mirena® IUD is a registered trademark of Bayer Healthcare Pharmaceuticals.

GranuFlo® is a registered trademark of Fresenius Medical Care.

Lipitor® is a registered trademark of Pfizer, Inc.

Risperdal® is a registered trademark of Johnson & Johnson.



SETTLEMENT	CASE TYPE	CO-COUNSEL FIRM
\$74,844,762	Mesothelioma and Other Asbestos-related Diseases	Multiple Co-counsel Firms
\$4,150,000	Cerebral Palsy	Blume Goldfaden Berkowitz Donnelly Fried & Forte PC, Chatham, NJ
\$950,000	Cerebral Palsy	Donahue & Horrow LLP, El Segundo, CA
\$500,000	Nursing Home	Christian & Davis, LLC, Greenville, SC
\$500,000	Erb's Palsy	Mahoney Law, PLLC, Boise, ID
\$354,583	Stockbroker Fraud	Oakes & Fosher, LLC, St. Louis, MO
\$290,279	Stockbroker Fraud	Oakes & Fosher, LLC, St. Louis, MO
\$260,000	Workers' Compensation	Law Office of Steven P. Brendemuehl, Natick, MA
\$201,968	Stockbroker Fraud	Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA, Pensacola, FL
\$200,000	Nursing Home	Slater & Zurz, LLP, Akron, OH

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the interests of the customer first," Fosher said.

Stockbrokers inevitably struggle with the inherent conflict associated with their profession: putting the interests of the customer first, while also generating commissions and fees through products they sell to that customer. According to Fosher, we will continue to see securities arbitration claims increase as stockbrokers will keep violating this "customer first" principle.

"This includes excessively trading a customer's account (churning), or recommending securities products (such as certain variable annuities or private placements), which provide large commissions when the products do not actually fit the customer's needs," Fosher said.

Customer claims where brokers urge their customers to invest in private placements involving highly illiquid, potentially leveraged, and high-risk real estate will also increase. "Brokers don't always inform customers of the potential downside in these products. Many brokerage firm customers have incurred serious losses in this area, causing regulators to discipline brokerage firms for pushing such products – especially where the firms were involved in the underwriting," Fosher said.

Look for the next "State of the Union – 2014" article in our summer issue. We'll report on birth injury, medical malpractice, and medical device litigation from the perspective of leaders in those areas.

under investigation

Sokolove Law is currently investigating potential litigation and case generation opportunities for injuries or losses arising from the following:

► Invokana®

We are currently investigating a potential link between the use of Invokana (canagliflozin), a type 2 diabetes drug approved by the FDA in March 2013, and an increased risk of cardiovascular adverse events and stroke. Recently, Public Citizen, which opposed approval of Invokana, said patients should not use the drug as it poses serious risks that outweigh its benefits.

Invokana® is a registered trademark of Janssen Pharmaceuticals, Inc.

► Onglyza®

This type 2 diabetes drug has been linked to cardiovascular events. The FDA is currently investigating a possible association between the use of saxagliptin (Onglyza and Kombiglyze™ XR, a saxagliptin-metformin combo) and heart failure following a study which reported an increased rate of hospitalization for heart failure with use of the drug.

Onglyza® and Kombiglyze™ XR are registered trademarks of Bristol-Myers Squibb Company.

letters to the editor

If you have an opinion on one of our articles, we'd love to hear it. We welcome letters to the editor and will print one letter per issue. We prefer typed letters of 200 words or less; some letters may require editing. Please include your name, firm, city, and state. Send to: Sokolove Success, c/o Sokolove Law, LLC, 93 Worcester St., Suite 101, Wellesley, MA 02481

