NORMAN, HANSON & DETROY, LLC

newsletter

Current developments in Maine law

Fall 2009

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Medicare and the New Reporting Statute: What now?

BY JONATHAN W. BROGAN

As most everyone is aware, as of July 1, 2009, an amendment to the Medicare secondary payment statute became law. Insurers are required to meet ongoing guidelines to check the Medicare beneficiary status of all claims on an ongoing basis. The law requires quarterly reporting of all claims involving Medicare beneficiaries. The law also requires reporting settlements, judgments, and awards of other payments on all claims involving Medicare beneficiaries, whether or not future medicals are foreclosed.

There is a blizzard of acronyms that are used in the brave new world of Medicare reporting. Those acronyms include RRE (Responsible Reporting Entity); ORM (Ongoing Responsibility for Medicals); DOI (Date of Incident); TPOC (Total Payment Obligation to Claimant); and CMS (Centers for Medicare and Medicaid services). I have included just these few even though there are many more. Those of you dealing with reporting know that calling it a blizzard of acronyms is not hyperbole, it's more like a tsunami.

The idea behind the new secondary payment statute is to shift the burden from Medicare as a primary payer to RREs for medical payments that are made in cases where another entity is primarily responsible. Basically the legislation was passed to keep Medicare from making conditional payments in the future, to ensure that Medicare is informed of all settlements so that their interest is "adequately considered" and that Medicare can discover any unresolved conditional payments and seek immediate recovery.

Medicare had the right to repayment for any conditional payments made in the past. The idea behind the new law was to ensure that Medicare was made aware of primary payers as early as possible and that Medicare's interests were protected and information was provided to Medicare about payments or potential payments through electronic reporting. RREs are defined, in part, as insurers, self-insured employers, self-insurance pools with full authority to resolve and pay claims and state and federal agencies with full authority to resolve and pay claims. RREs are required to complete a registration process with the COBSW (coordination of benefits contract or secure website).

The law requires that all reporting be electronic and that the collection of data be sent on a quarterly basis with one file from each RRE ID. Primary payers must check the Medicare beneficiary status on all claims on an ongoing basis. It continues to require the reporting of settlements, judgments, awards or other payments on all claims involving Medicare beneficiaries.

JONATHAN W. BROGAN

INSIDE

Initial registration of RREs took place from May 1, 2009 to September 30, 2009. Most, if not all, RREs have completed this process and now a testing of the data interface is scheduled to take place between January 1, 2010 and March 31, 2010. The dates for the testing of the data interface were assigned during the initial registration. A first live report is scheduled to take place between April 1, 2010 and June 30, 2010 based on dates assigned during registration. That first reporting requires retroactive reporting back to July 1, 2009.

What does all of this mean? It means that Medicare has required that RREs establish an electronic reporting system that reports when Medicare beneficiaries are pursuing claims and protects Medicare's interests, primarily, once a claim is made.

There are two aspects to consider when protecting Medicare's interest is implicated. First, and typically, Medicare makes conditional payments on behalf of the claimant. In those situations, a primary payer is liable and Medicare has a lien.

The next issue is future payments. Medicare wants to protect the fund against making future payments that are the responsibility of a primary payer. In the workers' compensation arena, these issues have been dealt with for years. In the liability context, Medicare initial payments have been repaid but the issue of future payments has never been addressed in the ordinary course of settling liability claims.

At this point in time, that issue is still not resolved. CMS has not set up a system for a liability Medicare set-aside. There is nothing in the new legislation that requires a Medicare set-aside, but the legislation is comprehensive enough that CMS can make an argument that Medicare set asides are required for cases that necessarily will involve future payments by Medicare for medical services that are related to the liability insurer's settlement, judgment or award. In fact, an amendment to the CMS Secondary Payer Manual recently included, for the first time, Liability and No Fault Liability.

As I first wrote in an article for this *Newsletter* in the Fall 2008 issue, we are all entering into a brave new world. Much of the hard work has already been done. All of you have been required to establish guidelines and criteria within your claims processes to identify and report Medicare recipients electronically. I know from speaking to many insurers that this process has been laborious, time consuming and expensive. All of the insurance clients that I have spoken to have approached the new law diligently and responsibly and have the resources necessary to meet Medicare's new electronic reporting requirements.

Everyone now understands it is important to check the Medicare status on all claims every quarter. Everyone understands that conditional payments made for Medicare recipients must be resolved at the time of the settlement, judgment or award. However, at least in the liability context, there is no clarity as to what is required for future medical payments that may be made after final settlement. Responsible plaintiffs' attorneys are in the same predicament as responsible insurers. They have a responsibility to their clients to ensure that their future Medicare payments are protected, and that they meet any obligations imposed by CMS.

At this point, CMS has not imposed Medicare set-asides for "run of the mill" liability cases. Although not dispositive, there is no evidence that CMS is requiring Medicare set asides in "run of the mill" liability cases. Parenthetically the lack of set-aside requirements, so far, is anecdotal evidence of nothing and does not mean that they will not be required in the future. CMS continues to update its guidelines on at least a quarterly basis, so stay tuned.

As I wrote before in the Fall 2008 *Newsletter* article, the requirement of set-asides for future payments in ordinary liability cases remain a mystery and CMS has not done anything to resolve that mystery to date. It is important and incumbent upon all RREs to continue to meet the mandatory insurance reporting requirements and to ensure that conditional payments are resolved at the time of settlement or judgment. All of us need to continue to monitor CMS's guidelines and updates to determine if CMS adopts a more aggressive future payment stance in liability cases.

Nothing is more difficult for insurers settling cases than uncertainty. The current state of the law not only promotes uncertainty but guarantees it. Hopefully, as all of the reporting requirements are put on line and everyone becomes more familiar with the system, clarity will appear. Until then, decisions will have to be made on a case-by-case basis regarding the settlement and CMS's involvement and satisfaction weighing the risks involved and the nature and extent of potential future medical expenses. □

NORMAN, HANSON & DETROY, LLC

newsletter

is published quarterly to inform you of recent developments in the law, particularly Maine law, and to address current topics of discussion in your daily business. These articles should not be construed as legal advice for a specific case. If you wish a copy of a court decision or statute mentioned in this issue, please e-mail, write or telephone us.

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Workers' Compensation and the Practitioner's Report: The Potential for Misunderstanding

By: Stephen W. Moriarty

The form WCB M-1, better known as the Practitioner's Report, is universally used in workers' compensation proceedings and provides healthcare providers with an opportunity to describe an injury and its consequences in a condensed and abbreviated fashion. Of particular significance of the form are those pre-printed sections which enable a healthcare provider to express an opinion on causation, indicate the existence of work capacity, and define the nature of the restrictions. Recent depositions of several physicians have disclosed both a misunderstanding of the purpose of the form and a failure to appreciate the legal consequences of the way in which the form may be completed.

Practitioner's Reports are frequently offered as exhibits by both parties and in some cases they may accompany narrative reports from the health care providers describing an office examination in greater detail. In cases in which medical causation is at issue, a hearing officer would be fully justified in finding for an employee in a case in which the "work related" box has been checked by a provider. Similarly, a hearing officer can award benefits for total incapacity if the form indicates that a claimant has no work capacity. Obviously, inappropriate or inaccurate completion of the form ultimately might lead a hearing officer to an incorrect conclusion.

In one case involving disputed causation, a physician checked the "work-related" box on two successive M-1s and yet acknowledged in his testimony that he simply did not know whether an earlier injury continued to play a role in the condition for which the employee sought treatment several years later. The physician indicated that the patient's belief of a continuing causal relationship was one factor that he considered, together with the medical *possibility* of a relationship. However, he readily acknowledged that he did not know whether the original injury was causally responsible for the presenting complaints.

In another case a physician initially saw a claimant for an orthopedic condition, but explicitly stated in his narrative report that he could not state the cause of the problem. In fact, in his first M-1 the physician checked the box marked "is not yet identified as to cause". However, in subsequent M-1s the physician checked the box marked "work-related". When questioned about this apparent inconsistency, the physician stated that he assumed that in the meantime the compensability of the injury had been established or accepted by the Workers' Compensation system and that the work-relatedness of the condition was no longer an issue. When advised that causation was still in dispute, the physician testified that he did <u>not</u> intend to express a different medical conclusion or opinion by having checked the "work-related" box several times after having initially stated that he could not determine the cause of the problem. In fact, he testified that he could not give an opinion on causation to any degree of probability.

In a final case a physician acknowledged having indicated no work capacity on several M-1s, despite his professional opinion that the claimant did in fact have work capacity with restrictions. When asked to explain his reasons for having done so, the physician described a prevalent situation in his office in which patients routinely dispute the existence or extent of work capacity. As a result, it had become customary to indicate "no work capacity" as a means of avoiding multiple and prolonged conflicts with patients.

Each of these examples reflects a failure to appreciate that the abbreviated notations expressed on an M-1 can be (and often are) accepted as considered medical opinions by hearing officers on the vitally important issues of causation and work capacity. This is not to suggest that M-1 forms are routinely filled out incorrectly by health care providers. However, when an opinion given on an M-1 appears to be inconsistent with the other medical evidence of record or appears incompatible with the same physician's opinion as expressed in narrative reports, a deposition is strongly recommended in order to elicit the physician's actual opinions on the issues in controversy. Patient-management considerations or assumptions about the legal status of a pending claim are never a proper basis for expressing medical or disability opinion on an M-1. □

Workers' Compensation: Law Court and Superior Court Decisions

By Stephen W. Moriarty

STEPHEN W. MORIARTY

2006 PI Threshold Invalid

As all readers are aware, every other year the Board is required to establish a new PI threshold for determining which partial incapacity cases will be unlimited and which will be subject to durational limits. Section 213 provides that the Board must retain an independent actuary who shall conduct a review "based upon actuarially sound data and methodology" to arrive at a threshold to 25% of all cases for which partial entitlement will be unlimited from the remaining 75% of all cases which will be subject to the Board's durational limit. Currently, the durational limit has been established at 520 weeks. In the past the Board has invoked its rule-making authority to establish the percentage threshold.

In analyzing the data for the threshold to take effect as of 1/1/06, the Board's actuary initially recommended a figure of 12.5% and excluded from consideration all cases involving 0% PI. However, the actuary then included in his calculations 183 cases with a PI rating of 0%, and arrived at a revised PI threshold of 11.8%. The Board adopted a rule establishing this figure as the PI threshold effective 1/1/06. See WCB Rules, Ch. 2, §1(4).

Three plaintiffs, including the Maine State Chamber of Commerce, the Workers' Compensation Coordinating Council, and the Maine Council of Self Insurers challenged the legitimacy of the Board rule in a declaratory judgment action brought in the Kennebec County Superior Court. The plaintiffs argued that only cases with actual permanent impairment (i.e., with an assessment above 0%) should be considered in arriving at the threshold. The Board argued that it was actuarially reasonable to include cases with 0% PI, on the grounds that many such cases involve claims of permanent injury, even though there may not be any permanent impairment. In rejecting the argument of the Board, Justice Jabar ruled that including cases with 0% PI produces a threshold which is "artificially lowered" and that cases without an actual level of measured impairment should not have been taken into consideration. The Court found that the Board's rule was both arbitrary and capricious, and the rule establishing the 2006 PI threshold was invalidated.

At this point, therefore, there is still no PI threshold for injuries occurring on or after 1/1/06. The Board has voted not to appeal this decision to the Maine Supreme Judicial court.

Fees Charged for Facilities

Last year the Court held in *Fernald v. Shaw's Supermarkets, Inc.*, 2008 ME 81, 946 A.2d 395 that by virtue of the Board's failure to have adopted a fee schedule as required to cover medical facility charges, an employer is required to pay the usual and customary amounts charged by a medical provider for the services in question. The Court recently expanded the scope of its ruling to benefit medical service providers where an injury is covered by the alternative but concurrent workers' compensation statutory schemes

For workers' compensation purposes Bath Iron Works is covered by both the Maine Workers' Compensation Act and Federal Longshore and Harbor Workers' Compensation Act. In *St. Mary's Regional Medical Center v. Bath Iron Works*, 2009 ME 92 (August 18, 2009) two workers sustained compensable personal injuries and sought and obtained disability benefits under the Longshore Act. Both individuals also were treated for their injuries at St. Mary's, and BIW paid for the cost of treatment pursuant to the Longshore fee schedule. The amounts paid were less than the customary and usual fees charged by St. Mary's for the services provided, and St. Mary's filed Petitions for Payment with the Workers' Compensation Board directly against BIW seeking payment in full for the services rendered, with an offset for the amounts previously paid. Finding that concurrent jurisdiction existed between the two statutory schemes, the presiding hearing officer found nothing to prevent a provider from proceeding under one statute where a claimant had sought benefits under the alternative statute. Accordingly, the Petitions for Payment were granted, and the Court accepted the case for appellate review.

On appeal, the Court reiterated its long-held position that a maritime worker need not make a binding election between the two statutory benefit schemes and that injured workers are "free to apply for benefits under either system". Provided that double recoveries are avoided, the Court reasoned, claimants may initially seek benefits under one system and then pursue more generous recoveries under the alternative system. As the Court held, "an employee receiving benefits for a work-related injury may, when eligible, access both Acts to recover the most generous level of benefits for the identified injury".

However, this appeal focused upon medical expense entitlement where the claimants themselves did not pursue the

more generous fees allowed by the Maine Act. The Court held that § 206(12) of the Act allowed a health care provider to proceed on its own to seek payment of services under the Maine Act, regardless of what steps (if any) an injured worker might have taken. In effect, the Court found that a provider stands in the shoes of an employee and may bring the same claims for payment that an employee himself or herself could have brought. The Court rejected the suggestion that concurrent jurisdiction exists solely for the benefit of injured workers, and held that the concept applies to their health care providers as well. Accordingly, the Court affirmed the decision of the hearing officer and held that in the absence of a Board-adopted fee schedule for providers, St. Mary's was free to pursue a claim to recover its usual and customary charges, with an offset for the expenses previously paid.

Discrimination

Several years ago the Court held in *Jandreau v. Shaw's Supermarkets, Inc.*, 2003 ME 134, 837 A.2d 142 that the employer did not discriminate against the claimant by terminating her employment six months following an occupational injury in accordance with an established personnel policy. In that case the claimant had been unable to return to work in any capacity and the Court held that the Act did not "require an employer to keep an employee on the books indefinitely when the employee can no longer meet requirements of a job." The Court found no prohibited act of discrimination and reversed a hearing officer's decision in the claimant's favor.

In a more recent case, the Court reinforced its rationale in *Jandreau*. In *Lavoie v. Re-Harvest, Inc.*, 2009 ME 50, 973 A.2d 760, the claimant worked for a modest-sized employer which did not have a written policy in place regarding termination in the event of an ability to return to work. The employee sustained an occupational injury but was unable to return to either his regular position or to light duty, and was terminated less than four weeks following the injury. Benefits for total incapacity were initiated voluntarily. Although the employee ultimately returned to work for a different employer

Norman, Hanson & DeTroy, LLC Celebrates 20th Anniversary of the Fall of the Berlin Wall and Recognizes the Contributions of Former President George H. W. Bush

NH&D, in cooperation with the German Consulate General Boston, the University of New England and the World Affairs Council of Maine, co-sponsored a special event on October 2, 2009 at the George and Barbara Bush Center at the University of New England to celebrate the 20th Anniversary of the Fall of the Berlin Wall and to pay tribute to former President and Maine resident, George Herbert Walker Bush. Many speakers, including Adrian Kendall, German Consul General Friedrich Loehr, Congressman Michael Michaud, UNE President Danielle Ripich, as well as representatives from Senator Olympia Snowe's and Senator Susan Collins's offices joined together to pay tribute to former President Bush's great statesmanship as well as to the contributions of U.S. service men and women to the preservation of peace and freedom in Europe during the Cold War years. A major goal of the event, which was attended by almost 200 people from across Maine and New England, was to educate our younger Maine students and future leaders as to the significance of the Berlin Wall and the precious nature of our freedoms. Adrian also presented the University of New England's Bush Center with a large fragment of the Berlin Wall for inclusion in the permanent exhibit as a reminder to all future visitors of the significance of America's role in German reunification.

President George H.W. Bush and Adrian P. Kendall, Esq.

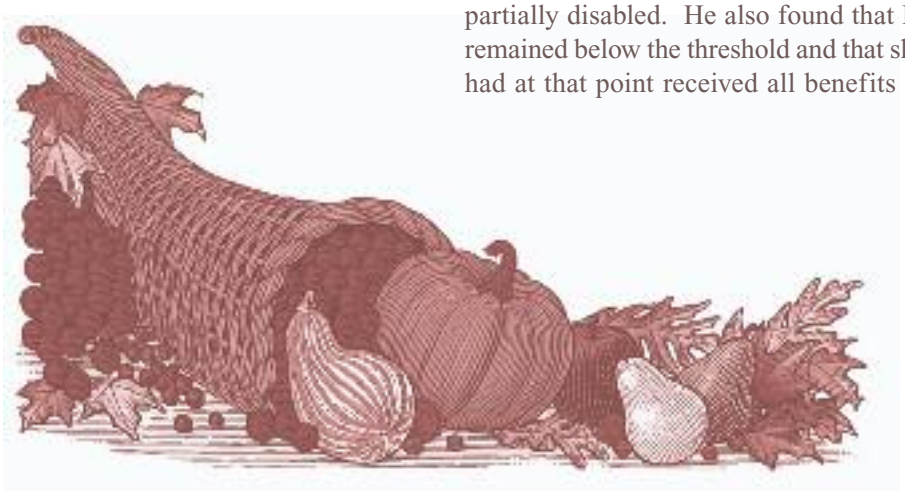
Although President Bush was unable to attend the event in person due to health issues, Adrian Kendall and Consul General Loehr were invited to meet with President Bush at Walkers Point the following Monday and presented him with a book about the Berlin Wall, which included a personal inscription by German Ambassador Klaus Scharioth. □

earning as much or more than he had before the injury, he filed a Petition to Remedy Discrimination claiming that he had been terminated in violation of § 353. The presiding hearing officer granted the petition, finding that the employer had no written policy regarding termination and that it was unknown at the time of termination how long he would remain out of work.

In reversing this decision, the Court initially noted that neither the Act nor the Board Rules require a written termination policy. The Court held that the primary purpose of the Act was to compensate individuals for loss of earning capacity, and that an employer was required to act promptly in responding to a claim. However, the Court observed as follows:

> It simply cannot be the law that an employer necessarily commits discrimination whenever the employer terminates an employee whose injuries prevent him from working. . . . The purpose has never been to guarantee continued employment status to an employee who cannot work.

While acknowledging that only a short period of time elapsed between the injury and the time of termination, the Court found no act of discrimination where the evidence failed to show that the employee's health was likely to improve in the near future. An employer is not required to maintain employment status for any specified minimum period of time when an injured worker has no current capability of returning to work. Finding that the employer had fully complied with its obligations under the Act, the Court held that the employer had not committed any discriminatory act. This decision reassures employers that they may terminate injured workers without fear of discrimination claims when its operational needs must be met and where there is no indication when an injured worker may be capable of returning to work.



Durational Limits for Partial

In a unanimous decision, the Law Court has ruled that a final Decree approving termination of payment of partial benefits based upon the expiration of the durational limit is not necessarily final after all. The issue arose in the context of a Board-approved extension of benefits with a retroactive effective date. The facts can be summarized briefly as follows.

In *Beaudoin v. Tambrands, Inc.*, 2009 ME 65, 974 A.2d 898, the claimant had been injured in 2000 when the PI threshold was 11.8% and when the durational limit of benefits for partial incapacity was capped at 364 weeks. The employer voluntarily initiated payment of benefits for partial incapacity and eventually filed a 21 day notice advising of the termination of benefits as the durational limit approached. The employee responded by filing a Petition for Review, claiming that her level of incapacity had increased to total, thus extending her entitlement indefinitely. By Decree dated October 3, 2007, the presiding hearing officer found that the level of incapacity had not increased and that the employee remained partially disabled. He also found that PI remained below the threshold and that she had at that point received all benefits to which she was entitled. Accordingly, payment of benefits for partial ceased. The employee filed a Motion for Findings of Fact, and in a supplemental decision dated November 29, 2007 the initial decision was unchanged. No appeal was taken from these decisions.

Several days later the Board amended its rules by adding Ch. 2, §2(7) which extended the durational limit by an additional 52 weeks effective January 1, 2007. Shortly afterward, the claimant filed a Petition for Review and claimed that she was entitled to receive an additional 52 weeks of benefits as the rule amendment was retroactive to a point at which she was still entitled to receive benefits. The petition was granted by the hearing officer and an additional 52 weeks of benefits was awarded.

The employer appealed to the Law Court and argued that the hearing officer erroneously reopened a final Decree by ordering payment of additional benefits. In rejecting the employer's argument, the Court held that the employee had a statutory right to receive partial benefits for a specified period of time, and that because that right had not expired as of the effective date of the Board rule, the hearing officer's award of additional benefits was neither arbitrary nor without rational foundation, even though the employee did not seek the additional benefits until a final Decree had been entered. It should be noted, however, that if the claimant's entitlement to partial had expired *before* the effective date of the Board's rule change, she would not have been entitled to additional benefits. In *Abbott v. S.A.D. #53*, 2000 ME 201, 762 A.2d 546, the Court ruled that if entitlement to benefits to partial incapacity expires before a Board-approved extension of the period, an individual is not entitled to receive benefits for the extended period.

In summary, a retroactive extension of benefits will apply to individuals who were still entitled to receive compensation as of the effective date of the retroactive extension. □

NHD Attorneys Listed in "Best Lawyers"

Norman, Hanson & DeTroy is proud to announce that thirteen of its attorneys have been named to the 2010 Edition of Best Lawyers®, the oldest and most respected peer-review publication in the legal profession. First published in 1983, Best Lawyers is based on an exhausted annual peer-review survey. For the new U.S. edition, more than 24,126 leading attorneys cast more than 2.8 million votes on the legal abilities of other lawyers in the same and related specialties. Because of the rigorous and transparent methodology used by Best Lawyers, and because attorneys are not required or allowed to pay a fee to be listed, inclusion in Best Lawyers is considered to be a singular honor. Corporate Counsel Magazine has called Best Lawyers "the most respected referral list of attorneys in practice".

We congratulate the following attorneys for having achieved this designation.

Robert W. Bower, Jr.
Workers' Compensation Law

Jonathan W. Brogan
Personal Injury Litigation

Peter J. DeTroy
Alternative Dispute Resolution
Bet-the-Company Litigation
Commercial Litigation
Criminal Defense: Non-White-Collar
Criminal Defense: White-Collar
Personal Injury Litigation

Paul F. Driscoll
Real Estate Law

Mark E. Dunlap
Insurance Law

John W. Geismar
Tax Law

Stephen Hessert
Workers' Compensation Law

Mark G. Lavoie
Medical Malpractice Law

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Thomas S. Marjerison
Personal Injury Litigation

Stephen W. Moriarty
Workers' Compensation Law

James D. Poliquin
Appellate Law
Commercial Litigation
Insurance Law
Personal Injury Litigation

Roderick R. Rovzar
Corporate Law
Real Estate Law

John R. Veilleux
Insurance Law

John T. Kidder, III inducted as 71st President of the NAIIA

On May 14, 2009, at its annual conference in Tucson, Arizona, Jack Kidder was sworn in as President of the National Association of Independent Insurance Adjusters, becoming the only person from Maine ever to have been elected to that office.

(left to right) Scott Kidder, Lance E. Walker and Mark G. Lavoie

Mark Lavoie and Lance Walker were honored to be in Tucson to help Jack and his family celebrate this singular distinction.

Jack's induction as President truly was a family affair. Jack's grandchildren bravely offered words of congratulations during one of the week's events in front of more than 400 attendees. Jack's son and Vice President of Colonial Adjustment, Scott Kidder, administered the oath of office before a large audience of family, friends and colleagues from around the country.

With humble beginnings Colonial Adjustment was founded at Jack's home on Colonial Acres in 1974, and today is New England's largest independent adjustment firm, boasting four offices in Maine and one office in North Conway, New Hampshire. If a business is cast in the image of its creator, it is little wonder that Colonial Adjustment has enjoyed such astronomic success. Jack is a consummate professional who brings to his work equal measures of diligence, humility and good humor.

Barbara and Jack Kidder

In a life full of achievement, this most recent honor is well deserved and comes as little surprise to all of us who know Jack. Congratulations, Jack, from all of us here at NHD. □

Natural Resources Council of Maine Recognizes Russell B. Pierce, Esq.

One of the State's leading environmental organizations, the Natural Resources Council of Maine, has presented Russell Pierce with a 2009 Environmental Award. The award is presented each year to individuals who have taken leadership roles in advancing an environmental cause in Maine. Through the award to Russ, the Natural Resources Council of Maine also acknowledges the extraordinary support of Norman, Hanson & DeTroy in the pro bono representation of NRCM throughout the Maine Land Use Regulation Commission proceedings on Plum Creek's real estate development application in the Moosehead Lake region.

The Maine LURC proceeding was the largest of its kind ever in the State of Maine. From the years leading up to the 4-week evidentiary hearing, to the highly contested hearing itself, Russ represented NRCM as a joint intervenor with Maine Audubon, mounting formidable opposition to the scope and intensity of Plum Creek's proposed development plans in this treasured area within Maine's North Woods.

The award citation reads: "NRCM was ably represented throughout every step of this long, exhausting process by the law firm of Norman, Hanson and DeTroy. . . . And the human being who did all that work on behalf of the firm was our attorney and fearless leader, Russ Pierce."

The hearing involved scores of expert witnesses, on topics as diverse as forestry practices, wildlife biology, recreational and scenic impact studies, water quality, land use standards, traffic impact science, and tourism industry economics. "Russ's capacity to absorb, evaluate, respond to and recall thousands of pages of testimony was stellar," said NRCM. "Between reviewing the day's testimony, every day, and preparing for the next day, it was practically a 24-hour-a-day job, day in and day out. Stress was plentiful, and the opportunity for enflamed tempers was great, but Russ never lost his cool. No matter how outrageous the process got, Russ met each challenge with intelligence and equilibrium. Faced with an army of lawyers working for Plum Creek, Russ maintained his calm demeanor at all times."

Russ and NRCM were instrumental in compelling the Commission to require Plum Creek's massive revision of proposed Conservation Easements (currently, the largest connected conservation easement ever undertaken in Maine, at nearly 400,000 acres), and forced critical amendments to the plan, scaling back development on remote ponds and other environmentally sensitive areas. The hearing was simultaneously broadcast over the internet, while often nearly a hundred people were in attendance during key cross-examinations.

The conservation issues at stake were of both state-wide and national significance – and remain so. Maine's North Woods is the largest expanse of undeveloped forest left in the eastern United States. The Commission's final decision on Plum Creek's 30-year development plan was issued last week. In its findings, the Commission noted that, by the time the evidentiary hearing had ended, Plum Creek had conceded – in recognition of the case presented by NRCM and others – that the plan still had deficiencies requiring denial at that time. Post-hearing, LURC consultants rewrote Plum Creek's own plan, with an eye toward ultimate approval of a dramatically scaled-back version. The successful outcomes of the pro bono efforts of Russ and the firm include the significant relocation of development and strengthened conservation easements to ensure true and enforceable conservation values where the easements are in place. While aspects of the proceeding still continue – nothing has been built yet, no permits have been issued – the 2009 Environmental Award acknowledges the key achievements that have been won to date. □

(left to right) NRCM Executive Director Brownie Carson, NRCM Board of Directors President Eleanor Kinney, Russell B. Pierce, Peter J. DeTroy

Briefs/Kudos

The Maine Chapter of the American Board of Trial Advocates will for the first time honor and recognize a practicing attorney and a member of Maine's judiciary in memory of the late Harrison L. Richardson, a prominent Portland trial attorney who passed away earlier this year. **PETER DeTROY** has been selected to receive the award in recognition for his achievements as a trial lawyer and mediator and for promoting the concept of civility among lawyers. Also recognized is retiring Justice Robert Clifford of the Maine Supreme Judicial Court. Well done and congratulations Peter!

LANCE WALKER and his wife, Heidi, welcomed the arrival of their second daughter, Dylan, in early September. Dylan and her older sister, Ava, reside with their parents in North Yarmouth.

MATT MEHALIC was appointed to the Board of Directors of Maine Youth Leadership which seeks out local youth to recognize and develop their leadership skills, to create a network of civic-minded students, and to encourage and assist students at critical times in their quest for self-identification and development.

JONATHAN BROGAN spoke at the summer meeting of the Maine Bar Association on the topic "New Rules on Medical Malpractice Screening Panel Hearings".

STEVE HESSERT and **DORIS CHAMPAGNE** attended the 2009 ALFA International Workers' Compensation Practice Group seminar in September in Nashville, Tennessee. Steve received an award in recognition of his exceptional service as the past chair of the WC Practice Group from July 2007 through July 2009. Doris served as a panelist on a program entitled "Always on My Mind; Medicare Mandatory Insurer Reporting Update", and moderated a round table discussion during the ALFA Women's Initiative Program (WIP) breakfast.

JOHN VEILLEUX has been named to the "New England Rising Stars 2009" list published by New England Super Lawyers.

At the annual workers' compensation Comp Summit seminar at Sugarloaf in early October, **STEVE MORIARTY** moderated a panel addressing the increasing difficulty in establishing permanent impairment. **STEVE HESSERT** participated in a panel titled "Human Resources Management Tool".

KEN ALBERT was invited to address the September meeting of the Central Maine Human Resource Association held in Auburn. The presentation focused on the impact of Maine's sexual orientation definition in the work place, specifically gender expression and gender identity. Ken also addressed a group of business owners in central Maine regarding the legal and business implications of the swine flu pandemic for employers in Maine. □

Norman, Hanson & DeTroy, LLC Sponsors Maine Renewable Energy Mission to Europe

Recognizing the strategic importance of developing clean, alternative and independent sources for Maine's energy needs, Norman, Hanson & DeTroy was proud to be one of two lead sponsors of Governor Baldacci's recent trade mission to Spain, Germany and Norway. The Maine Renewable Energy Mission to Europe was organized to help Maine companies gain an in depth view of a wind energy industry and infrastructure in Europe that is by some accounts five to ten years more advanced than ours here in the United States. An additional goal was to introduce the major players in the European wind energy sector to Maine as a possible site for future projects, especially in the offshore wind sector, and also as a manufacturing location.

The Renewable Energy Missions' delegates read like a who's who of Maine business leaders and included Bath Iron Works, Cianbro, Reed & Reed, and

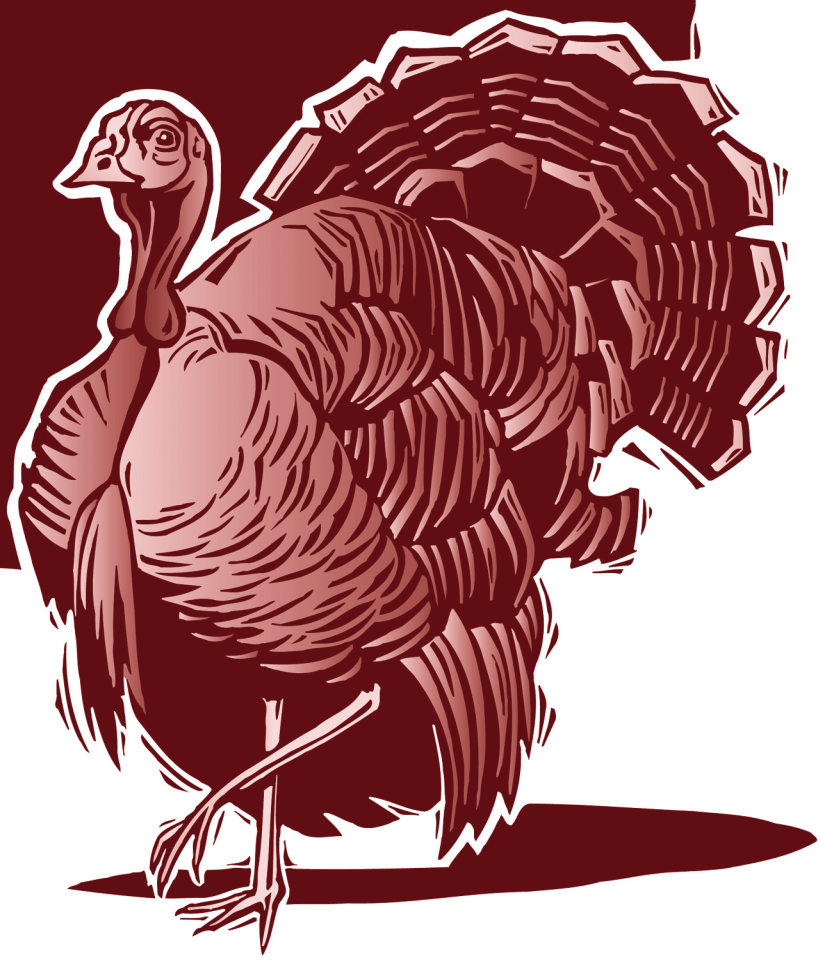
Sprague Energy. *Adrian Kendall*, a member of the firm's commercial practice group and also Germany's Honorary Consul to Maine, participated in the German portion of the Renewable Energy Mission. Not only did Adrian meet with German businesses with specific interest in Maine, but he also provided valuable counsel to Maine companies, introduced Governor Baldacci at the State of Maine reception and executive energy briefing (in German!), and also participated in meetings between Governor Baldacci and leading German political figures. Many of the delegates were particularly pleased to take advantage of Adrian's deep knowledge of European legal and business practices, as well as his language abilities.

Before the mission, Adrian was also invited to brief the delegation on German and European business and legal issues, specifically including issues relating to renewable energy. □

Happy Thanksgiving

from

Norman,
Hanson &
DeTroy, LLC



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