



JALBCA

JUDGES AND LAWYERS BREAST CANCER ALERT

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Editor: Martha L. Golar, Esq.

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SAVE THE DATE – KOMEN NYC RACE FOR THE CURE

The Komen Race for the Cure is scheduled for Sunday, September 13, 2009. Please register by going on-line to the Komen website and joining the JALBCA team. Team Captains are Hon. Shirley Kornreich and Chris Pisacane. The registration deadline is noon on August 31, 2009. Feel free to contact Chris Pisacane with any questions at cpisacan@courts.state.ny.us.

SAVE THE DATE – JALBCA COCKTAIL PARTY IN SEPTEMBER

JALBCA has scheduled its annual cocktail reception to kick-off the Annual Courthouse Alert. The reception is scheduled for Wednesday, September 23, 2009 from 5 pm to 7 pm at the Appellate Division, Second Department Courthouse, 45 Monroe Place, Brooklyn Heights, NY. The Honorary Event Chair is Hon. A. Gail Prudenti, Presiding Justice, Appellate Division, Second Department. The Event Co-Chairs, as in prior years, are Hon. Ellen Spodek and Hon. William C. Thompson of JALBCA's Judge's Division. All persons interested in attending are asked to R.S.V.P. by contacting JALBCA at (212)289.9720.

SAVE THE DATES

ELLEN HERMANSON BREAST CENTER AT SOUTHAMPTON HOSPITAL; ELLEN'S RUN

The Ellen Hermanson Foundation celebrates the new Ellen Hermanson Breast Center at Southampton Hospital at Steven Klein's Bridgehampton Farm - West Kill Farm - on August 15, 2009 at 7 pm. The Honorary Chairperson for the event is Stella McCartney, and Hosts include Kim Cattrall, Donna Karan, Steven Klein, Daphne Guinness and Andre Balazs. For tickets and information, please contact Linda B. Shapiro, LBS Productions at (631)329.5480/(631)329.8789 or lbsp@optonline.net. For directions, please visit the following website: www.ellensrun.org. The Ellen Hermanson Breast Center will provide a single, comprehensive facility where women on Long Island's East End can access state-of-the-art diagnosis, treatment, educational and support services. Ellen's Run, the Foundation's annual 5K race/walk to benefit breast cancer patient support services, is scheduled for Sunday, August 16, 2009 at Southampton Hospital, 9 am sharp, rain or shine.

SAVE THE DATE - JALBCA'S ANNUAL SYMPOSIUM

Date: October 26, 2009

Time: 6 - 8:30 pm

Place: Association of the Bar of the City of New York
42 West 44th Street, NY, NY

2 CLE credits, open to the public, no fee (CLE application pending)

NEWS ITEMS

Database of Health Insurers Criticized by U.S. Senate Commerce Committee

The Senate Committee on Commerce, Science and Transportation, chaired by Sen. John Rockefeller (D-W.Va.), issued a staff report on June 24, 2009 entitled “Underpayments to Consumers by the Health Insurance Industry”. The report followed two hearings in March 2009, followed by a nationwide investigation of how the insurance industry pays benefits to consumers who purchase out-of-network health insurance coverage. The Committee determined that, in every region of the United States, large health insurance companies have been using two faulty database products owned by Ingenix, Inc., a Minnesota health care services company, to under-pay millions of valid insurance claims. The report made the following findings.

“*Usual and Customary Reimbursement Rates.* More than 100 million American consumers pay extra premiums for health insurance coverage that allows them to receive care out-of-network. The largest health insurance companies have been under-reimbursing their customers for out-of-network health care services and have actually been paying out-of-network claims at a lower level than promised, costing Americans billions of dollars out-of-pocket. The tools used by the industry to systematically underestimate the cost of out-of-network services were two “data benchmarking” products sold by Ingenix. Ingenix provided the insurance industry with data it claimed were the prevailing, “usual and customary”

market rates for medical services in specific geographic regions. These data tables were used to pay tens of millions of medical claims for out-of-network services.

Ingenix’s Flawed Data. While the insurance industry represented the Ingenix data to be accurate and objective, in fact, the reliability of the data was fatally undermined by faulty statistical methods and a fundamental conflict of interest. While insurers presented Ingenix as an independent source of medical charge information, the company, in reality, was a wholly-owned subsidiary of one of the country’s largest insurance companies, UnitedHealth Group; therefore, it had a financial incentive to produce charge data that shifted costs away from insurers. Furthermore, all the data used by Ingenix to calculate its benchmark products came from the very same health insurers who purchased Ingenix’s products. Additionally, insurers signed contracts prohibiting them from disclosing information about the databases to consumers or doctors.

It was announced on January 13, 2009 that an agreement had been reached with the New York Attorney General’s office pursuant to which UnitedHealth and several other large national insurance companies agreed to stop using the Ingenix database products and to fund a new non-profit entity that will be able to collect and analyze medical charge data in an independent manner. The Committee report noted that other insurers that purchased Ingenix data in New York – including Aetna Inc., CIGNA Corp., and Wellpoint Inc.- also paid into the settlement. As reported on the New York Attorney General’s

website, the components of the agreement with United were as follows:¹

- United will pay \$50 million to establish a new, independent database run by a qualified nonprofit organization;
- The nonprofit will own and operate the new database, and will be the sole arbiter and decision-maker with respect to all data contribution protocols and all other methodologies used in connection with the database;
- The nonprofit will develop a website where, for the first time, consumers around the country can find out in advance how much they may be reimbursed for common out-of-network medical services in their area;
- The nonprofit will make rate information from the database available to health insurers;
- The nonprofit will use the new database to conduct academic research to help improve the health care system; and
- The nonprofit will be selected and announced at a future date.

¹ The report of the New York Attorney General’s investigation into the scheme to defraud consumers, “Health Care Report: The Consumer Reimbursement System is Code Blue”, can be accessed at http://www.oag.state.ny.us/bureaus/health_care/HIT/reimbursement_rates.html. The report highlights the conflicts of interest and other defects in the current system and calls for reforms. The investigation found the rate of underpayment by insurers ranged from 10 to 28 percent for various medical services across the state.

The Senate Committee report stated that both private litigation and the New York investigation revealed that insurers that contributed charge data to Ingenix often “scrubbed” their data to remove high charges. Ingenix then used additional statistical “scrubbing” methods to remove valid high charges from their calculations. The results of these statistical methods were estimates of “usual and customary” charges that consistently skewed reimbursement rates downward, allowing insurers to reduce their claims payments.

many other insurance products that pay medical claims (e.g., out-of-network dental charges; workers’ compensation amounts in states without workers’ compensation fee schedules; claims payments on catastrophic medical and accident insurance policies; personal injury payments incurred through auto insurance policies). This evidence suggests that the universe of harmed consumers may be much larger than currently estimated.

divide, pinch off small bubbles of cell membranes. These minicells – made of bacterial cell membrane – were loaded with chemicals and coated with antibodies that direct them toward tumor cells. The minicells are loaded with agents that include anticancer toxins and mechanisms to suppress genes that make tumors resistant to toxins. The minicells are also coated with antibodies that will make it likely that they will attach to the cancer cells. Approximately 80% of solid tumor cells have cell surfaces which contain receptors for a hormone known as epidermal growth factor. The antibodies which coat the minicells recognize this receptor and, it is expected, will attach themselves to tumors. The tumor cells then engulf and destroy the minicells, thereby becoming exposed to the anti-cancer agents which were loaded into the minicells. This process of engulfment is a standard defense against bacteria.

Certain Other Findings.

1. The use of Ingenix data was pervasive throughout the health insurance industry, not just among the largest national insurers involved in the New York settlement.
2. The insurance industry failed to provide consumers with accurate, understandable information about Ingenix or the way it used Ingenix data to calculate out-of-network allowances. Sometimes, consumer disclosures contained patently false information.
3. While the Committee investigation focused on the use of Ingenix data in health insurance products, this data appears to be regularly used to calculate reimbursements in

New Treatment for Cancer
Developed by Australian
Researchers

The New York Times (June 29, 2009, A10) reported on new applications of an old idea – treating cancer with bacteria. The idea of treating cancer with bacteria apparently dates back to the 19th century.

The first method was reported online in *Nature Biotechnology* and involves Australian researchers who have developed a method to attack cancer cells that avoids the major drawbacks of standard chemotherapy, i.e., the lack of specificity of chemotherapy and the resistance that cancer cells develop to chemotherapy. The lead researchers are with EnGeneIC, a company in Sydney. The method has been tested so far in animals. The EnGeneIC method involves mutant bacteria which, when they

A second researcher, Dr. Robert M. Hoffman with AntiCancer Inc., based in San Diego, CA, has reportedly obtained remissions with metastasized cancers in mice by treating them with salmonella bacteria. Dr. Hoffman distinguished his experiments- involving metastasized cancers in mice – from those of EnGeneIC, which he reports involve human tumors implanted under the mice’s skin rather than metastasized cancer.

JALBCA PROGRAMS 2009/2010

Set forth below are the proposed dates for the 2009/2010 JALBCA Board meetings and monthly programs:

Tuesday, November 10, 2009
Tuesday, December 1, 2009
Tuesday, January 5, 2009

Tuesday, February 2, 2010
Tuesday, March 2, 2010
Tuesday, April 6, 2010

CALENDAR/CONTACTS

ADELPHI NY STATEWIDE BREAST CANCER

Hotline & Support Program

Adelphi University School of Social Work
Garden City, NY 11530
www.breastcancerhotline@adelphi.edu

CancerCare

275 Seventh Avenue
New York, NY 10001
www.cancercares.org
1.800.813.HOPE (4673)

Telephone education workshop:

DATE: August 26, 2009

TIME: 1:30 - 2:30 pm

TOPIC: Coping with Nausea and
Vomiting from
Chemotherapy

SPEAKERS: Charles L. Loprinzi, MD,
Professor of Oncology,
Mayo Clinic College of
Medicine;
Steven M. Grunberg, MD,
Professor of Medicine,
The University of Vermont
College of Medicine;
Gary R. Morrow, PhD,
MS, University of
Rochester Cancer Center;
Jennifer Crum, MS, RD,
New York University
Cancer Institute;
Carolyn Messner, DSW,
MSW, CancerCare

MEMORIAL SLOAN KETTERING CANCER CENTER

Post-Treatment Resource Program
Educational Forums

215 E. 68th St., Ground Fl.
New York, NY 10021
www.mskcc.org/mskcc/html/59513.cfm
212.717.3527

Bendheim Integrative Medicine Center
1429 First Avenue (at 74th Street)

SHARE (*Self-Help for Women with
Breast or Ovarian Cancer*)

1501 Broadway, Ste. 704A
New York, NY
www.sharecancersupport.org
212.719.0364

JALBCA

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