KADC

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Kansas Defense Journal

Inside this issue of *Kansas Defense Journal:*

DETERMINING WHAT IS A GENUINE ISSUE WHEN MAKING A MOTION FOR SUMMARY JUDGMENT

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There is much talk these days about the disappearing trial. Over the past 40 years, trials of every category of case in the federal courts have steadily declined in number and now make up only about 1.8% of civil dispositions.[1] For some this presents an alarming trend,[2] but one that recognizably coincides with a shift in many judicial philosophies concerning the trial court's role in managing its cases. One of the more significant shifts in judicial philosophy is trial court acceptance of summary judgment practice as a valid mechanism for deciding cases. However, even with this acceptance, counsel must be aware of when the facts are such that the case can properly be decided by summary judgment.

Prior to 1986, members of the federal judiciary were reluctant to grant motions for summary judgment.[3] Many courts confined its use mostly to disposing of clearly frivolous or unsubstantiated lawsuits, but otherwise court interpretations had rendered its use virtually dormant.[4] Trial court reluctance to grant summary judgment was heightened by frequent appellate reversals.[5] Trial courts were frequently warned against using summary judgment as a "trial by affidavits" and appellate courts did not hesitate to reverse grants of summary judgment.[6] Thus, it was not uncommon for courts to deny summary judgment if the judge had the "slightest doubt" as to the motion's merits.[7]

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FIVE TIPS FOR WORKING WITH YOUR INSURANCE CLIENTS

Cristy Anderson
Kansas Medical Mutual Insurance Co. (KaMMCO)

This is just one person's opinion about the top five things an attorney can do to curry favor with the insurance company in insurance defense litigation. Written from the perspective of former law firm associate turned insurance claims manager, there is no doubt it is easier to make suggestions to attorneys than it is for them to actually follow them. If there is only time for one of the five, read and follow the attorney billing guidelines of the insurance carrier. The lawyer who at least does that is way ahead of the game.

Follow the Guidelines

Almost all insurance companies have attorney billing guidelines they ask defense counsel to follow when working on their insured's files. These guidelines provide consistency in the way the bills look when the insurance company reviews them, give some direction to the attorneys so they know what the insurance company expects, and help the insurance company manage its financial responsibilities.

Time entry and time keeping can be one of the most challenging yet frustrating skills to learn as a new associate attorney. The associate has the difficult job of billing to meet the insurance company's expectations, and those of the supervising attorney, and to

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PRESIDENT'S MESSAGE

Anne Kindling
Stormont-Vail Healthcare, Inc.

Dear KADC Friends,

Spring is a time for new growth and new beginnings, so the Spring issue of the *Kansas Defense Journal* is a good time to update you on our efforts to keep the KADC current and valuable to its members.

We have implemented a Membership Committee, headed by Shon Qualseth. He will be looking at bridging the gap of defense attorneys who are members of DRI but not of KADC, and vice versa. We have been pretty successful with member retention this year, but there is still room to grow and there are a number of defense attorneys who have not joined KADC. Please contact Shon at tlegalshon@aol.com with contact information for colleagues who should join KADC, and we will make a personal effort to draw them in. Membership should be a rite of passage anytime you have a new associate join your firm!

We have been active in the Legislature this year. We count the passage of HB 2188 as a success. This was a joint effort with the Kansas Association for Justice (formerly KTLA) to make the Screening Panel scheme a little more user-friendly. While screening panels may continue to be far from a smooth, timely operation, these are the improvements in the scheme which take effect upon publication in the statute book:

1. K.S.A. 60-3502 and K.S.A. 65-4901 now entitle each defendant to request a separate panel be convened if there is more than one defendant named.
2. K.S.A. 60-3503 and K.S.A. 65-4902 now extend and stagger the time frame for designating panel members. Under the amended statutes, both the plaintiff and defendant now have 20 days to designate a panel member licensed in the same profession, and then the parties have 10 additional days to designate a joint panel member.
3. K.S.A. 60-3505 and K.S.A. 65-4904 now allow the panel 180 days to issue its report.
4. K.S.A. 65-4904 is further amended to require a panel member to otherwise meet the qualifications of K.S.A. 60-3412 in order to testify in a subsequent malpractice case. (K.S.A. 60-3412, for those who don't remember statute numbers, requires that an expert witness in a medical malpractice action spend at least 50% of his or her professional time in actual clinical practice in the 2 years preceding the event at issue in the case, in order to testify.) In other words, a health care provider can serve as a panel member even if 60-3412 is not satisfied, but the panel member will not be allowed to testify unless the panel member is otherwise qualified to testify as an expert witness.
5. The fees to panel members and the panel chair increased slightly, to $500 and $750, respectively. (K.S.A. 60-3505 and K.S.A. 65-4907.)

Another legislative success was an amendment to HB 2825 before it was passed. HB 2825 was designed to put some limitations or conditions on the sealing of court proceedings and records, requiring "good cause" in order to seal the proceedings. As originally drafted, an agreement of the parties to close the proceedings or seal the records did not constitute "good cause." However, language was added to allow agreement of the parties to be considered by the court, though it cannot serve as the sole basis. Additionally, the bill now specifically allows the court to allow a settlement which includes a confidentiality clause to

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KADC FILES AMICUS BRIEF IN SUPPORT OF JOINT DEFENSE AND COMMON INTEREST PRIVILEGE

Greg A. Drumright
Martin, Pringle, Oliver Wallace & Bauer, L.L.P.

Michael G. Jones
Martin, Pringle, Oliver Wallace & Bauer, L.L.P.

The Kansas Supreme Court granted leave to the KADC to file an amicus curiae brief in the case of *Philip Morris USA Inc., et al. v. Daric Smith, et al.* (Case No. 07-99546-S). The underlying case, which was filed in the District Court of Seward County, involved a class action dispute brought by Daric Smith, et al. against a number of tobacco companies (District Court Case No. 00-CV-26). In general, the plaintiff class claimed that the defendants were conspiring to fix the price of cigarettes in the State of Kansas. However, the amicus brief, which we prepared on the KADC's behalf, had nothing to do with the underlying claims. Instead, at issue in the Kansas Supreme Court was a discovery ruling by Special Master Judge Paul Buchanan, which was adopted by Seward County District Court Judge Tom R. Smith, related to the attorney-client privilege and work product doctrine. Following the District Court's ruling, the defendants filed a petition for mandamus with the Kansas Supreme Court.

More specifically, the District Court concluded that Judge Paul Buchanan correctly applied Kansas law when he refused to acknowledge the existence of the joint client doctrine and the common interest doctrine, and ruled that work product protection was waived when shared with jointly-aligned co-parties or when the underlying litigation in which it was created was resolved. The KADC's brief addressed all of these issues and requested that the Kansas Supreme Court reverse the ruling of the District Court, and instead confirm the existence of the joint client and common interest doctrines in Kansas.

In reaching its conclusion on the joint client doctrine and the common interest doctrine, the District Court's legal basis for rejecting what it called the "joint defense privilege" was twofold. First, Judge Smith held that the decision in *State v. Maxwell,* 10 Kan. App. 2d 62, 691 P.2d 1316 (1984), did not support recognition of either doctrine. Second, the District Court reasoned that the controlling principles set forth in *Associated Wholesale Grocers, Inc. v. Americold Corp.,* 266 Kan. 1047, 975 P.2d 231 (1999), required that it reject the defendants' joint defense argument.

While the primary purpose of the KADC's brief was to address the public policy rationale in support of the doctrines, the KADC advanced the argument that Kansas does in fact recognize the joint client doctrine and the common interest doctrine, and that one need not look any further than the language of Kansas' attorney-client privilege statute for confirmation. *See* K.S.A. 60-426.

K.S.A. 60-246 codifies the attorney-client privilege in Kansas. Based on the plain language of the statute, the KADC argued that the Kansas legislature had, in fact, recognized the joint client doctrine and the common interest doctrine, and that the legislative intent should be given effect. The KADC also noted that although K.S.A. 60-246 incorporates the joint client doctrine and the common interest doctrine, codification is not required for the Kansas Supreme Court to reaffirm their existence in Kansas. That is because the doctrines are not separate privileges, but instead, are exceptions to the waiver of the attorney-client privilege.

The issue is again reserved for another day.

Since the initial drafting of this article, the Kansas Supreme Court issued an order dated April 24, 2008, denying the defendants' petition for mandamus on procedural grounds. In doing so, the Kansas Supreme Court emphasized that it was not expressing an opinion regarding the existence or the applicability of the joint defense doctrine in Kansas. Consequently, the issue is again reserved for another day. ▲

KADC MEMBERSHIP COMMITTEE – NOW YOU CAN BE A PART OF THE "COOL KIDS CLUB"

Shon Qualseth
Thompson Ramsdell & Qualseth, P.A.

People like to be in exclusive company. They fork out extra cash to fly first class, or to upgrade from a subcompact rental car all the way up to a mini-sedan. Suites at a football game aren't enough; they have to be luxury suites. Everyone dreamed about being on the varsity chess team and the math club in high school. Certain government officials in New York pay thousands of dollars per hour to enroll in the Emperor's Club. And only a select few are granted the privilege of holding millions of dollars in their bank account for the Nigerian Prime Minister's cousin.

Here in Kansas, lawyers also like to be in exclusive company. There's the Kansas Bar Association, and there's even specialized sections of the KBA. There are American Inns of Court. There's the KTLA. For a small fee, you can become a member of the "Who's Who Of Awesomely Great American Super-Lawyers." And of course there's our organization, the KADC. But while it's nice to be in the exclusive club that is the KADC, it's okay for us to have more members and be a little less "elite." There are many Kansas attorneys out there that could benefit from KADC membership. In addition, a growing organization would allow us to be more flexible in the type and quality of programs and services we could provide to our members, bringing more value to a membership.

There are many Kansas attorneys out there that could benefit from KADC membership.

But if you still have the need to be in an exclusive club within our organization, you need to join the KADC Membership Committee. At our last Board meeting, I was appointed to chair this Committee. It must have been a little dusty in the meeting room at the time, because my eyes teared up at the thought of my fellow Board members bestowing upon me this great honor. After the elation passed, however, I realized I had never been a part of, much less led, any type of membership committee. Luckily, Scott Heidner was there to provide some guidance. The first thing that Scott's baritone voice told me was that I need to delegate some things. Apparently, I need committee members to delegate things to.

This is a call to all KADC members to join me in getting the KADC Membership Committee off the ground. Ideally, we would have committee members representing different geographic areas of the State. Frankly, though, if you have a heartbeat I sincerely believe you would make a fine addition to the Membership Committee.

Even if you don't enlist to become one of the truly elite, the proud, the membership committee, you can still pitch in. Think about your current or recent cases, and there is probably at least one fellow lawyer involved in those cases who might benefit from being in the KADC. I'm no math major, but if each current KADC member were to get one new member to join, I'm confident we would have more members than we do now.

If you are: 1) interested in joining the Committee; 2) have any ideas on how to get new members; or 3) have specific lawyers in mind who might benefit from joining the KADC, please send me an e-mail at tlegal-shon@aol.com. If you have information on how to become a member of the Emperor's Club, however, don't bother sending me an e-mail. I can't afford to become a member until I collect the 30% of $25 million that was promised me by the great uncle of the friend of the Nigerian Prime Minister's cousin. ▲

DRI Seminars

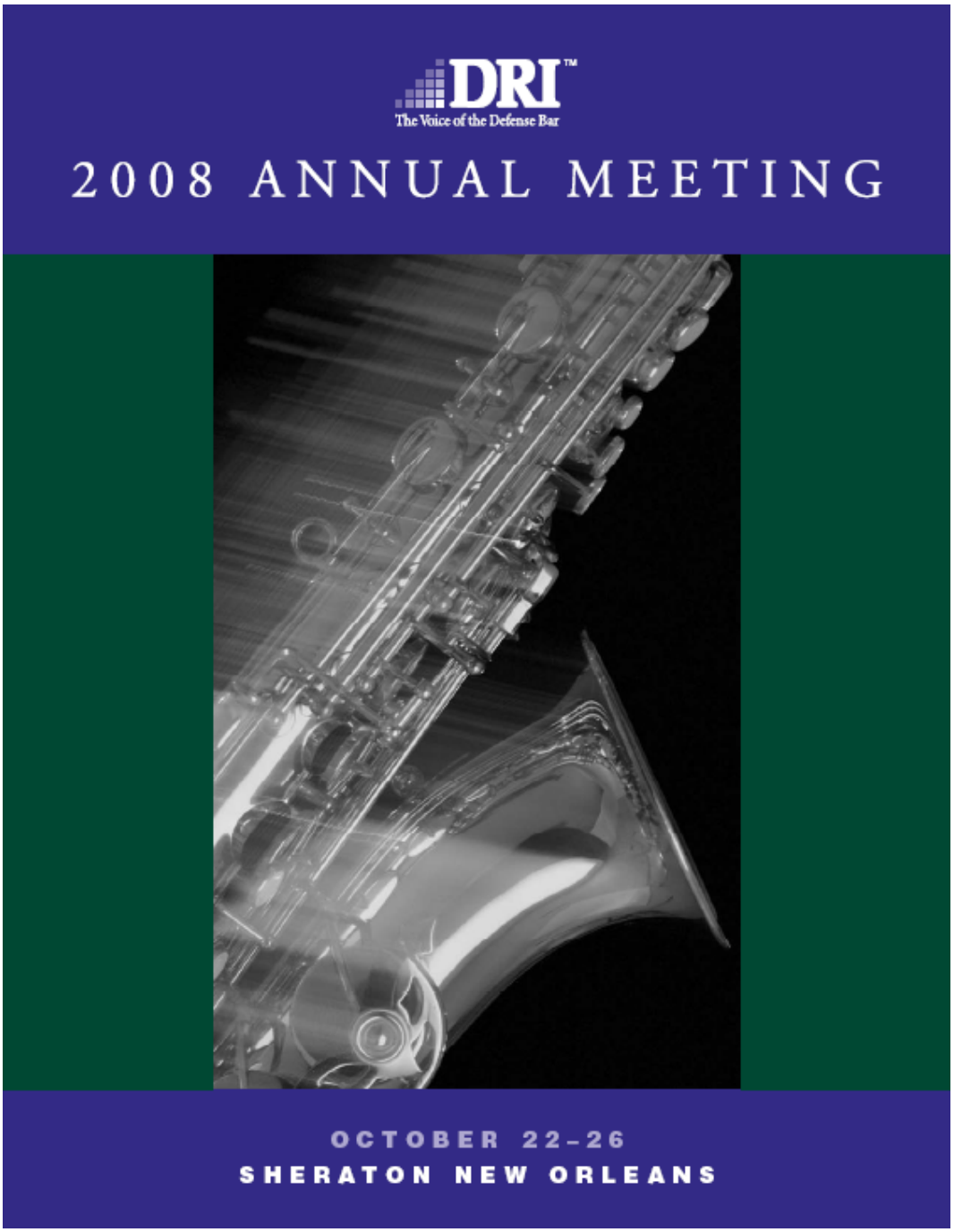
June 5-6, 2008
Young Lawyers
Lake Buena Vista, FL

June 12-13, 2008
Diversity for Success
Chicago, IL

August 18-19, 2008
National Workers' Compensation Review
Orlando, FL

September 4-5, 2008
Intellectual Property Litigation
Chicago, IL

September 4-5, 2008
Nursing Home/ALF Litigation
Orlando, FL



EXECUTIVE DIRECTOR'S REPORT

Scott Heidner
Executive Director

The main part of the legislative session is now over. Legislators will be back the first part of May for veto session, but it is unlikely they will tackle issues of interest to our association. The veto session is traditionally used for budget issues and possible attempts to override vetoes made by the Governor.

I hope you've all been able to track legislation through our weekly bulletins this year. We've added features that we hope are helpful in getting useful information from that bulletin. We've added a box at the top to identify bills that are new that week, and we've added another box that identifies issues for which KADC has submitted testimony. Hopefully this helps members stay on top of new issues, and also have a flavor for which issues the association will use members resources and expertise.

With the session nearing an end, it's a great time to repeat a suggestion I make often in this column. The "off season" for legislators is the very best time to meet them and establish a relationship that will pay off down the line. Legislators are hungry for resources in their district that they can trust and depend on for accurate information. Those that take the time to seek their legislators our and get involved have a huge advantage in gaining access to those legislators during the busy hours of the session. You'd be amazed how few people do.

Remember, you may have two different sets of legislators to contact, one at your residence and one at your office. Take advantage of all those opportunities! ▲

Legislators are hungry for resources in their district that they can trust and depend on for accurate information.

WELCOME NEW KADC MEMBERS

Sophie Counts - Foulston Siefkin LLP, Wichita

William Griffin - Martin Pringle Oliver Wallace & Bauer LLP, Wichita

Brad LaForge - Hite, Fanning & Honeyman, LLP, Wichita

Determining What is a Genuine Issue *(Continued from pg 1)*

A well-known trilogy of Supreme Court decisions in 1986 -- *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 325 (1986), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) -- marked a shift in judicial consideration of summary judgment motions and brought on a new era for summary judgment practice.[8] Following these decisions, there was a greater judicial approval of summary judgment dispositions and, in turn, a marked increase in use.[9] With this shift to greater use and acceptance of summary judgment, courts viewed summary judgment as an acceptable "mechanism for weeding out certain claims at the summary judgment" stage.[10] Today, there can be no doubt that summary judgment is an invaluable tool in every defense lawyer's toolbox.

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However, despite this shift, summary judgment practice is still primarily a fact-driven inquiry in which the court's acceptance of your opponent's version of the facts can make or break your motion. Marshalling the facts in your client's favor therefore is the first and most important aspect of summary judgment practice. This means knocking out the facts that are not material and which are not genuinely at issue in the case. Most plaintiffs recognize this as well and, as a result, rarely admit important facts and further use a variety of tactics designed to misconstrue, confound and blur the facts. It is of paramount importance to directly deal with these tactics and explain to the court what plaintiff is doing and why there is "no genuine issue as to any material fact."[11]

Many practitioners, as well as courts, are well adept at addressing the facts and whether particular facts are material or not to the court's decision. This is what the majority of summary judgment briefing addresses after all. At times, however, practitioners overlook whether there is a truly a "genuine issue for trial" which shows a dispute of the material facts being argued.[12] Whether a fact has been genuinely and effectively controverted becomes the key in determining whether there is a triable issue.[13]

A common belief in summary judgment practice is that a party can always create a genuine issue to avoid summary judgment merely by citing to a piece of evidence or producing an affidavit saying the direct opposite of the fact the party wants to avoid. It is better to think of this as a general rule, but one subject to several exceptions. The general rule is as stated in Kansas Supreme Court Rule 141, which provides:

> Any party opposing said motion has filed and served on the moving party within twenty-one (21) days thereafter, unless the time is extended by court order, a memorandum or brief setting forth in separately numbered paragraphs (corresponding to the numbered paragraphs of movant's memorandum or brief) a statement whether each factual contention of movant is controverted, and if controverted, a concise summary of conflicting testimony or evidence, and any additional genuine issues of material fact which preclude summary judgment (with precise references as required in paragraph [a], supra).[14]

It is crucial to understand, however, that the general rule applies only when the "conflicting testimony or evidence" is genuine, can be used as evidence at trial, and is properly put before the court for the legitimate purpose of showing a triable fact issue at trial.[15] Sifting through the facts to determine if there are any genuine conflicts upon which "reasonable minds could differ as to the conclusions drawn from the evidence" is the primary responsibility of the trial judge in deciding a motion for summary judgment.[16] If con-

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The rules of evidence do not go out the window in considering the evidence on summary judgment.

Determining What is a Genuine Issue *(Continued from pg 7)*

flicts are found, then the resolution of those conflicts is a function for the jury or trier of fact and summary judgment is denied.[17]

In *Anderson*, the Supreme Court made it clear that the summary judgment standard is designed to mirror the standard for a directed verdict and to intercept those cases where "there can be but one reasonable conclusion as to the verdict."[18] The Court found "summary judgment should be granted where the evidence is such that it 'would require a directed verdict for the moving party.'"[19] Thus, summary judgment, like judgment as a matter of law, would be appropriate where there is "no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue."[20]

Further, the Supreme Court has found "there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party."[21] Summary judgment should therefore be granted if the opposing party's evidence is "merely colorable or is not significantly probative" or if it is "of insufficient caliber or quantity to allow a rational finder of fact" to find in favor of that party.[22] "Where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'"[23] Thus, a genuine issue of material fact is present only "where reasonable minds could reach different conclusions based on the evidence" and the issue of fact "has legal controlling force as to a controlling issue."[24]

In making the determination of whether cited testimony or an exhibit is effective to create a genuine issue, it is important to remember that the rules of evidence do not go out the window in considering the evidence on summary judgment. To the contrary, courts are required to "examine all the evidence to determine whether there is a genuine issue as to any material fact and whether the moving party is entitled to judgment as a matter of law."[25] Thus, when evaluating whether a motion for summary judgment may be successful, consideration should be given to whether the evidence the other party cites to oppose summary judgment is properly admissible and, therefore, could be utilized to create a genuine issue for trial. In this regard, Kansas courts have often said:

> To oppose summary judgment, the opposing party must actively come forward with ***something of evidentiary value to establish a disputed material fact***. To have evidentiary value, the particular document or testimony relied upon by the party opposing summary judgment must be probative of that party's position on a material issue of fact. Probative evidence is that which furnishes, establishes, or contributes toward proof.[26]

Thus, merely speculative or conclusory evidence is generally inadmissible and lacks the evidentiary value necessary to create a genuine issue for trial.[27] Similarly, inadmissible hearsay may not be used to oppose a motion for summary judgment.[28] This limitation applies only to inadmissible hearsay; testimony containing hearsay statements is not rendered completely devoid of probative value as evidence rules recognize the probity of various types of hearsay. Therefore, admissible hearsay has been held sufficient to establish a genuine issue of material fact, precluding summary judgment.[29]

One question that commonly arises is whether an expert's report or unsworn statements can be relied upon in opposing summary judgment. An opposing party is not required to prove its entire case at the summary judgment stage.[30] Further, the opposing party is permitted to simply provide a "summary of the conflicting testimony or evidence" in contradicting facts.[31] This often engenders concerns that the plaintiff can rely solely upon an ex-

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Determining What is a Genuine Issue *(Continued from pg 8)*

pert report to avoid summary judgment.

An unverified expert report is "not subject to 'primary' consideration for the purposes of summary judgment," especially when the expert later gives a deposition.

However, that is not the case. An unverified expert report is "not subject to 'primary' consideration for the purposes of summary judgment," especially when the expert later gives a deposition.[32] The Kansas Court of Appeals recently recognized that, since the substance of a preliminary expert report has never been sworn to by the expert, the lack of any sworn testimony or affidavit incorporating or supporting the report makes such a report incompetent to create a genuine issue for trial.[33] Instead, the panel indicated courts must look to the deposition taken under oath instead.[34]

This is not unlike the broad discretion given to trial courts in determining the admissibility of evidence.[35] Likewise, a trial court has discretion to determine the admissibility of evidence at the summary judgment stage. For instance, our Supreme Court noted that a trial court has discretion to deem admitted the uncontroverted facts set forth in a summary judgment motion when the nonmoving party fails to comply with Supreme Court Rule 141(b).[36] Further, the admissibility or exclusion of evidence, or expert opinions, is within the broad discretion of the trial court.[37] However, "[t]he evidentiary issue of whether the trial court abused its discretion in refusing to admit expert testimony is a different inquiry and should be distinguished from the issue of whether a defendant is entitled to summary judgment if a plaintiff fails to provide adequate expert testimony."[38] Thus, no genuine issue would be present where the expert is stricken leaving a plaintiff no expert when such an expert is required to make a claim, or where the testimony of the expert is not legally sufficient to make a claim even when allowed.

On the other hand, a genuine issue will be found if the expert's opinions are legally sufficient and otherwise admissible.[39] Attacks upon expert opinions that challenge the substance of the opinions, but not the admissibility of the opinions, is insufficient to create a genuine issue as trial courts are often instructed not to make such credibility determinations in ruling upon summary judgment motions.[40] However, this does not allow the opposing party free reign to manufacture a case for trial under the guise of a credibility determination. In fact, Kansas courts regularly prevent attempts to create "sham fact" issues for trial.[41] For example, in *Dawson v. Prager*, 276 Kan. 373, 76 P.3d 1036 (2003), the Supreme Court prevented a party from disputing deposition testimony by a contradictory post-deposition affidavit. There is oftentimes a thin line between what may be considered a credibility determination on the one hand and a sham fact where no reasonable jury could find for the opposing party on the other. As a result, arguing this line of cases is sometimes met with mixed results.

Generally, in making this distinction, the Kansas Supreme Court has found that summary judgment will be denied "if there remains a dispute as to a material fact which is not clearly shown to be sham, frivolous, or so unsubstantial that it would be futile to try the case."[42] "The manifest purpose of a summary judgment is to obviate delay where there is no real issue of fact."[43] "The very object of summary judgment is to separate real and genuine issues from those that are formal or pretended, so that only the former may subject the moving party to the burden of trial."[44]

Much of the existing case law in this category has followed the "sham affidavit" rule where courts prevent the use of a post-deposition affidavit to contradict prior sworn testimony.[45] However, the Kansas Court of Appeals recently prevented the use of a pre-deposition expert report to contradict later sworn testimony. The Court found no genuine issue of material fact was created by a prior contrary expert report which was later abandoned at a subsequent deposition of the expert.[46] In *Stormont-Vail HealthCare, Inc. v. Cutrer*, Ms. Cutrer had been a voluntary patient admitted to a psychiatric unit of a hospital and sued the hospital and her treating physician for alleged medical malpractice for abruptly stopping Paxil which she asserted in turn caused an unsuccessful suicide attempt with a combination of non-lethal prescription and over-the-counter drugs. The patient designated an expert and provided a report which provided numerous opinions on alleged breaches of the standard of care and causation.

During his deposition, however, the expert substantially backed off of his opinions stating all of the opinions were preliminary and

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that while the theory of causation was "possible," he could not discern any damages actually suffered by the patient caused by abruptly stopping the Paxil. The patient attempted to controvert the deposition testimony of her own expert in response to summary judgment by referring to the expert's prior written report. In that report, the expert had previously stated, in relevant part, "It is my opinion with a reasonable medical certainty that the abrupt discontinuation of Paxil caused or contributed to Ms. Cutrer's overdose" and that "[t]his is a situation that could have easily been avoided if proper treatment had been followed."[47] The patient's theory was the prior expert report fit within the hearsay exception for prior contrary statements of a testifying witness who is subject to cross-examination which is admissible as substantive proof of the prior statements under K.S.A. 60-260(a). In upholding the district court's refusal to consider the prior report, the Court of Appeals determined it was proper to exclude the report in light of the subsequent deposition testimony of the expert, stating:

> [W]e note Stormont-Vail's argument that the district court "either did or could have excluded the report due to the limiting testimony given by Dr. Logan in his deposition." We agree. Whether or not the report was technically subject to consideration for purposes of summary judgment, our comparison of the report to the deposition testimony has convinced us that the only opinion of causation contained in the expert report was completely disavowed in the subsequent deposition. We view Cutrer's reliance on the disavowed report as akin to an attempt to modify deposition testimony with an affidavit for purposes of summary judgment, a practice long ago prohibited. *Dawson v. Prager*, 276 Kan. 373, 385-86, 76 P.3d 1036 (2003); *Mays v. Ciba-Geigy Corp.*, 233 Kan. 38, 661 P.2d 348 (1983). Based on this view, the district court properly refused to consider the report under these circumstances ....[48]

Thus, like a sham affidavit, the Court of Appeals viewed the attempt to use a previous report that was abandoned at deposition by the expert, as not legitimate to create a genuine issue, but rather as creating a pretended factual dispute which the witness no longer accepted as valid. An interesting question left unanswered by the Court of Appeal's decision is whether it will have any affect upon similar prior statements of other non-expert testifying witnesses. Given the unique set of facts in which the decision was reached, this author would venture to guess that its application will most likely be limited to testifying experts who disavow prior opinions from their expert reports.

There is a risk that district courts may attempt to limit the *Stormont-Vail* decision to simply requiring verification of expert reports before the reports can been used in supporting or opposing summary judgment motions.[49] However, this would be an oversimplification of the decision because, even if the report in *Stormont-Vail* had been later verified after deposition for use in opposing summary judgment, the affidavit would have then been susceptible to the sham affidavit rule in *Dawson*. Thus, the better view is that the district court had discretion to exclude the report from consideration and rely only upon the sworn testimony at deposition. This view is supported by the *Stormont-Vail* holding in which the Court of Appeals recognized the report could still have been disregarded in light of the deposition testimony "[w]hether or not the report was technically subject to consideration for purposes of summary judgment."[50]

Even if the report in Stormont-Vail had been later verified after deposition for use in opposing summary judgment, the affidavit would have then been susceptible to the sham affidavit rule in Dawson.

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Determining What is a Genuine Issue *(Continued from pg 10)*

CONCLUSION

Cases such *Stormont-Vail* and *Dawson* provide clear-cut examples of when a set of facts are simply too thin to create a genuine issue of material fact and survive summary judgment. Apart from the frivolous or sham fact cases, the case law governing summary judgment further provide the opportunity to obtain summary judgment where the facts are "merely colorable or is not significantly probative" or "of insufficient caliber or quantity to allow a rational finder of fact" to find in favor of that party.[51] Thus, any time the opposing party attempts to create a case for trial upon the most thin or implausible factual basis,[52] defense counsel should strive to show the trial court why such purported facts are not admissible or legitimate and fail to create a genuine issue for trial. ▲

Any time the opposing party attempts to create a case for trial upon the most thin or implausible factual basis,[52] defense counsel should strive to show the trial court why such purported facts are not admissible or legitimate and fail to create a genuine issue for trial.

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1. Honorable Patrick E. Higginbotham, *The Disappearing Trial and Why We Should Care*, RAND Review, Vol. 28, No. 2 (Summer 2004); *See also* Brian J. Ostrom, Shauna M. Strickland, and Paula L. Hannaford-Agor, *Examining Trial Trends in State Courts: 1976-2002*, Journal of Empirical Legal Studies 1, no. 3 (November 2004).
2. *See* Honorable William G. Young, *An Open Letter to U.S. District Judges*, 50-JUL FEDERAL LAWYER 20 (2003) ("The American jury system is withering away.").
3. Major Michael J. Davidson, *A Modest Proposal: Permit Interlocutory Appeals of Summary Judgment Denials*, MILITARY LAW REVIEW, Vol. 147, p. 145, 157 (1995).
4. Davidson, *supra* note 3, p. 157.
5. *Professional Managers, Inc. v. Fawer, Brian, Hardy & Zatkis*, 799 F.2d 218, 222 (5th Cir. 1986).
6. Steven A. Childress, *A New Era for Summary Judgments: Recent Shifts at the Supreme Court*, 116 F.R.D. 183 (1987).
7. Childress, *supra* note 4, at 183; *see also Dolgow v. Anderson*, 438 F.2d 825, 830 (2d Cir. 1970); *Doehler Metal Furniture Co v. United States*, 149 F.2d 130, 135 (2d Cir. 1945) ("litigant has a right to trial where there is the slightest doubt as to the facts . . . ."). The United States Court of Appeals for the Fifth Circuit developed a reputation for reversing summary judgment grants causing one federal district court judge in New Orleans to post the sign, "'No Spitting, No Summary Judgments.'" Childress, *supra* note 4, at 183.
8. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476 & n.5 (6th Cir. 1989) (citations omitted*); see also* Childress, *supra* note 4, at 194 ("signals a new era for summary judgments").
9. Jeffrey W. Stempel, *A Distorted Mirror: The Supreme Court's Shimmering View of Summary Judgment, Directed Verdict, and the Adjudication Process*, 49 OHIO ST. L. J. 95, 99 (1988) (noting the three cases "effected major changes in summary judgment doctrine and practice").
10. *Security Serv. v. Ed Swierkos Enter.*, 829 F. Supp. 911, 913 (S.D. Ohio 1993); *see also Bacon v. Mercy Hospital Fort Scott*, 243 Kan. 303, 307, 756 P.2d 416 (1988) ("One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses and we think it should be interpreted in a way that allows it to accomplish this purpose.").
11. FRCP 56(c); K.S.A. 60-256(c).
12. FRCP 56(e); K.S.A. 60-256(e); *Anderson*, 477 U.S. at 248 ("More important for present purposes, summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.").
13. *Matsushita Elec. Indus.*, 475 U.S. at 586-87 ("When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... In the language of the Rule, the non-moving party must come forward with 'specific facts showing that there is a genuine issue for trial.'").

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14. Kan. Sup. Ct. Rule 141(b) (2007 Kan. Ct. Rules Annot. 218).

15. *See Vasquez v. Ybarra, 150 F.Supp.2d 1157, 1161 (D.Kan.2001)* ("[W]hen confronted with a fully briefed motion for summary judgment, the court must determine 'whether there is the need for a trial-whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.'") (quoting *Anderson*, 477 U.S. at 250); *Mays v. Ciba-Geigy Corp.*, 233 Kan. 38, 43, 661 P.2d 348 (1983) ("The very object of summary judgment is to separate real and genuine issues from those that are formal or pretended, so that only the former may subject the moving party to the burden of trial."); Crooks v. Greene, 12 Kan.App.2d 62, 64, 736 P.2d 78 (1987) ("When opposing a motion for summary judgment, an adverse party must come-forward with evidence to establish a dispute as to a material fact.") (citing *Glenn v. Fleming*, 247 Kan. 296, 305, 799 P.2d 79 (1990)).

16. *State ex rel. Stovall v. Reliance Ins. Co.*, 278 Kan. 777, 788, 107 P.3d 1219 (2005). This recalls the story of a newly appointed district judge who was purported to receive instructions on summary judgment procedure from a senior member of

> "Let's consider your age to begin with --
>
> "You needn't say 'exactly,'" the Queen remarked. "I can believe it without that. Now I'll give you something to believe. I'm just one hundred and one, five months and a
>
> "Can't you?" the Queen said in a pitying tone. "Try again: draw a long breath, and
>
> Alice laughed. "There's no use trying," she
>
> "I daresay you haven't had much practice," said the Queen. "When I was your age, I always did it for half-an-hour a day. Why, sometimes I've believed as many as six
>
> Lewis Carroll, THE ANNOTATED ALICE: ALICE'S ADVENTURES IN WONDERLAND AND THROUGH THE LOOKING GLASS 251 (Bramhall House 1960).

17. *Barbara Oil Co. v. Kansas Gas Supply Co.*, 250 Kan. 438, 446-47, 827 P.2d 24 (1992).

18. *Anderson*, 477 U.S. at 250.

19. *Anderson*, 477 U.S. at 251 (quoting *Sartor v. Arkansas Gas Corp.*, 321 U. S. 620, 624 (1944)).

20. K.S.A. 60-250(a)(1); *see also* K.S.A. 60-256 (c) ("The judgment sought shall be rendered forthwith if . . . the moving party is entitled to a judgment as a matter of law.").

21. *Anderson*, 477 U.S. at 249-50, 254 (citations omitted).

22. *Anderson*, 477 U.S. at 249-50, 254 (citations omitted). Likewise, the Advisory Committee has expressly urged trial judges to "assess the proof" of the opposing party, in part to weed out those cases where that party "produces some [evidence] but not enough" to get to trial. 1963 amendment to FED. R. CIV. P. 56(e) advisory committee's note.

23. *Matsushita Elec. Indus.*, 475 U.S. at 587.

24. *Hurlbut v. Conoco, Inc.*, 253 Kan. 515, 519-20, 524, 856 P.2d 1313 (1993); *Knudsen v. Kansas Gas & Electric Co.*, 248 Kan. 469, 483, 807 P.2d 71 (1991).

25. *Business Opportunities Unlimited, Inc. v. Envirotech Heating & Cooling, Inc., 26 Kan.App.2d 616, 617, 992 P.2d 1250 (1999).*

26. *Kastner v. Blue Cross and Blue Shield of Kansas, Inc.*, 21 Kan.App.2d 16, Syl. 6, 894 P.2d 909 (1995) (emphasis added); *Klose v. Wood Valley Racquet Club, Inc.*, 267 Kan. 164, 167 975 P.2d 1218 (1999); *Brock v. Richmond-Berea Cemetery Dist., 264 Kan. 613*, Syl. ¶ 4, 957 P.2d 505 (1998); *Glenn v. Fleming*, 247 Kan. 296, 305, 799 P.2d 79 (1990); *Slaymaker v. Westgate State Bank*, 241 Kan. 525, 531, 739 P.2d 444 (1987).

27. *McCubbin v. Walker*, 256 Kan. 276, 295, 296, 886 P.2d 790 (1994) (holding "conclusory statements standing alone [are not] sufficient to create any material ques-

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Determining What is a Genuine Issue *(Continued from pg 12)*

tion of fact for the jury."); *Reazin v. Blue Cross & Blue Shield of Kansas, Inc.*, 663 F.Supp. 1360, 1479 (D.Kan.1987), *aff'd in part, remanded in par*t, 899 F.2d 951 (10th Cir.1990), *cert. denied,* 497 U.S. 1005 (1990) (stating "[t]heoretical speculation, unsupported assumptions, and conclusory allegations advanced by an expert are neither admissible at trial, [citation omitted] nor are they entitled to any weight when raised in opposition to a motion for summary judgment.").

28. *Thomas v. International Business Machines*, 48 F.3d 478, 485 (10th Cir. 1995); *Miller v. Dillard's, Inc.*, 166 F.Supp. 1326, 1331-33 (D.Kan. 2001). In 73 AM.JUR. 2d, *Summary Judgment*, §18, the author states: "Affidavits containing merely hearsay do not of course meet the requirement of knowledge, and affidavits which set forth only conclusions, opinions, or ultimate facts are insufficient."

29. *Schultz v. Schwartz*, 28 Kan.App.2d 84, 89, 11 P.3d 530, rev. denied 270 Kan. 900 (2000); *Mastin v. Kansas Power & Light Co*., 10 Kan.App.2d 620, 624, 706 P.2d 476 (1985).

30. *Richards v. Bryan*, 19 Kan.App.2d 950, 966-67, 879 P.2d 638 (1994).

31. Kan. Sup. Ct. Rule 141(b) (2007 Kan. Ct. Rules Annot. 218).

32. *Stormont-Vail v. Cutrer*, ___ Kan.App.2d ___, 2007 Kan. App. LEXIS 1165 (released for publication Mar. 5, 2008).

33. *Id.*; *see also Wayman v. Amoco Oil Co., 923 F. Supp. 1322, 1371 (D. Kan. 1996), aff'd 145 F.3d 1347 (10th Cir. 1998) (disregarding an expert report in ruling on a motion for summary judgment, reasoning that the party could have and should have set out material opinions in affidavits or sworn testimony); Fowle v. C & C Cola, 868 F.2d 59, 67 (3d Cir. 1989) ("The substance of this report was not sworn to by the alleged expert. Therefore, [it] is not competent to be considered on a motion for summary judgment."); Adickes v. S.H. Kress & Co., 398 U.S. 144, 158 n.17, 90 S. Ct. 1598 (1970)* ("This statement, being unsworn, does not meet the requirements" of Rule 56[e]); *Proctor v. Sagamore Big Game Club*, 265 F.2d 196, 199 (3d Cir.), *cert. denied* 361 U.S. 831, 80 S. Ct. 81 (1959) ("These self-serving unverified statements of fact . . . are not the type of proof which [Rule 56] requires for the resolution of a motion for summary judgment."); *Johnson v. Resources for Human Development*, 878 F. Supp. 35, 39 n.5 (E.D. Pa. 1995) (rejecting unsworn letters as evidence in opposition to a summary judgment motion).

34. *Stormont-Vail*, ___ Kan.App.2d ___, 2007 Kan. App. LEXIS 1165 (released for publication Mar. 5, 2008).

35. *Moore v. Associated Material and Supply Co., Inc*., 263 Kan. 226, 244, 948 P.2d 652 (1997).

36. *Ruebke v. Globe Communications Corp.*, 241 Kan. 595, 604, 738 P.2d 1246 (1987); *McCullough v. Bethany Med. Center, 235 Kan. 732, 736, 683 P.2d 1258 (1984)* ("Rule 141 is not just fluff–it means what it says and serves a necessary purpose.").

37. *Moore, 263 Kan. at 244; Simon v. Simon, 260 Kan. 731, Syl. 1, 924 P.2d 1255 (1996) ("It is a well-established rule in Kansas that the qualification of an expert witness and the admissibility of expert testimony are matters within the broad discretion of the trial court."); Falls v. Scott, 249 Kan. 54, 63, 815 P.2d 1104 (1991).*

38. *Moore*, 263 Kan. at 235-36.

39. *Mastin*, 10 Kan.App.2d at 624 (stating "'[s]ummary judgment should not be used to prevent the necessary examination of conflicting testimony and credibility in the crucible of a trial.'") (quoting *Fisher v. Shamburg*, 624 F.2d 156, 162 (10th Cir. 1980)).

40. *Mastin*, 10 Kan.App.2d at 624.

41. *See Dawson v. Prager*, 276 Kan. 373, 76 P.3d 1036 (2003); *see also Montoy*, 275 Kan. at 152. *See generally*, Nathan D. Leadstrom, *Sham Fact Issue: When a Court Can Ignore What a Party Has to Say*, KADC Legal Letter, No. 2 (Spring 2004).

42. *Timi v. Prescott State Bank*,

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220 Kan. 377, 386, 553 P.2d 315 (1976); *Montoy v. State*, 275 Kan. 145.

43. *Timi*, 220 Kan. at 386.
44. *Mays,* 233 Kan. at 43.
45. *See e.g.*, *Dawson*, 276 Kan. at 385-86.
46. *Stormont-Vail v. Cutrer*, ___ Kan.App.2d ___, 2007 Kan. App. LEXIS 1165 (released for publication Mar. 5, 2008).
47. *Stormont-Vail,* 2007 Kan. App. LEXIS 1165 at *6-7.
48. *Stormont-Vail,* 2007 Kan. App. LEXIS 1165 at *9-10.
49. *Stormont-Vail,* 2007 Kan. App. LEXIS 1165 at *10-12. Recent trial court decisions relying upon *Stormont-Vail* have required verification of expert reports before they are considered for purposes of summary judgment. Whether such a rule is applicable in every case may be open to debate, but a good summary judgment practice would be to have any expert report verified when used in summary judgment motions, responses or replies.
50. *Stormont-Vail,* 2007 Kan. App. LEXIS 1165 at *9.
51. *Anderson*, 477 U.S. at 249-50, 254 (citations omitted).
52. The *Matsushita* Court stated that "[i]t follows from these settled principles that, if the factual context renders respondents' claim implausible . . . [then] respondents must come forward with more persuasive evidence to support their claim than would otherwise be necessary." 475 U.S. at 487.

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meet the bottom line billing requirements. Reviewing the billing entries from the insurance side can be equally difficult when lawyers fail to comply with the guidelines or when the same mistakes are repeatedly made by the billing attorney.

New associates learning the ropes need to find out in advance what the company expects. They need to find out if the company has billing guidelines, and if it does, they should request a copy of them, actually read them, and keep by their desks to refer to when entering time. All attorneys should personally review bills before the final version reaches the insurance company to be paid. Also, attorneys should find out if the company has other preferences or requirements and do things the way the company wants them done. For example, many insurance companies are now paperless and require all communication via electronic transmission. Sending a deposition report on paper through the mail will require the adjuster to either scan the document or contact the attorney to have the transmission re-sent via electronic transmission. This may sound easy, but multiply it by 20 files and it can take a whole day.

When the lawyer does things the right way from the beginning, the insurance company representative will notice and appreciate the extra effort. For the most part adjusters do not want the attorney to do the adjusters' job for them, but they also do not need extra work piled on top of an already overflowing work load. Just as judges want lawyers to know what to expect from them before entering their courtrooms, insurance companies appreciate familiarity with their guidelines before the work is done on their files.

Work as a Team with the Insurance Company – It's a Control Thing

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It makes a huge difference when the adjuster actually receives the 90-day status report without having to ask for it.

Working with Insurance Clients *(Continued from pg 14)*

Most of us have the same control issues possessed by those in the insurance industry. But lawyers need to recognize that insurance adjusters are not trying to control things just for the sake of control. Sure, there's a little of that (very little), but what they really are trying to do is to avoid dropping the ball on any one of the scores of claims (anywhere from 100-300 or more) they must juggle. At some point the president of the insurance company is going to approach them and ask what's going on in one of their lawsuit claims. "I don't know, I haven't heard from the attorney in three months and I can't get him to return my phone calls or e-mails," is not a good or acceptable answer. The more lawyers think of adjusters as an integral part of the team, the better the process works, keeping in mind that adjusters *and* lawyers are responsible for keeping the insured and the company informed of developments in the litigation process. The information they receive comes, for the most part, from the defense attorney and from their own observations. Therefore, it is imperative that the attorney communicate with the adjuster regarding the litigation process and other developments in the case – especially those that may affect the outcome.

The means of communication will generally will be dictated by the insurance company. Wisely, most attorneys copy the adjuster on deposition reports, pleadings and other communications with the defendant. Some insurance companies also have a formal regular reporting requirement – like a status report every 90 days. The information from such a report, along with other communications from the defense attorney, allows the adjuster to set reserves, aids in the investigation of the claim, and ultimately provides support for the adjuster's recommendation to the company to settle or defend the claim. It makes a huge difference when the adjuster actually receives the 90-day status report without having to ask for it. Often, such reports are only provided after multiple requests – a situation in which everyone loses.

When scheduling depositions in the case and meetings with the insured, lawyers need to know whether the adjuster wants to be in attendance and should at least consider that prospect. Most adjusters recognize that their availability cannot hold up litigation and that they have to be flexible, but as with most things in life, a little courtesy goes a long way.

Know Whom Your Contact is at the Company and Establish a Good Working Relationship

This is not the "schmooze the insurance company representative" section, although that sometimes is appropriate. The advice here is to work with them in a way that helps them provide the best service to the insured. Insurance adjusters and attorneys end up spending quite a bit of time together. Attorneys could spend some of that time learning about the insurance company and the adjuster's job. What do they do in a day? What are their responsibilities on each claim? What is their responsibility to the company on the lawsuits you are working on? Find out what information you can provide to them to help them work through their claims process.

At times attorneys may find themselves at odds with the insurance representative over reductions in their bill or disagreements about other aspects of the case. The best solution is to talk these things out. Many times a more detailed explanation can resolve the difference in a way that serves all parties best. Also, remember that insurance representatives see many claims come and go throughout the year. They may actually think of something you haven't that could assist in defending the case.

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Working with Insurance Clients *(Continued from pg 15)*

Reasonableness on Experts

When it comes to hiring experts to testify in medical malpractice cases, there are several schools of thought. Most will agree that experts can make or break a case and this creates pressure on the attorney to hire the perfect expert that will make the case and contributing to winning at trial. The attorney and the doctor may feel it necessary to hire the world's leading expert no matter what the cost. The insurance company understands the need to hire the best but the best person to testify in front of a small town Kansas jury may not always be the leading expert from New York City.

Insurance companies are generally looking for the most reasonable solution to get the job done.

Insurance companies are generally looking for the most reasonable solution to get the job done. We are lucky in Kansas to have excellent health care providers. Most likely, there is someone in the Midwest who can effectively present expert testimony, in a relative fashion, for a reasonable cost. Jurors may already be familiar with the good reputation of the doctor in the community or have a relative that has been successfully treated by the expert.

Working to keep expert rates reasonable also sends a message to the plaintiff's bar that the defense bar is shopping for reasonable experts and so should they. Sedgwick County and several other counties in Kansas have local rules limiting hourly rates experts can charge for deposition testimony. Notifying experts of this rule when first contacting them and asking them to agree, in writing, to work for the recommended rate will save all parties time and money down the line.

It is understood that attorneys have to know enough about the facts of the case before expert shopping can get under way. However, waiting until one month before the expert deadline should be avoided. To the insurance company, it appears that the attorney is not organized and not paying attention to the time line in the case. Waiting too long to procure experts can also cause issues for the insurance company. The attorney has to have more than one expert review the case in hopes that maybe one of them will be willing to help. This is an added expense that might not have been necessary had the attorney started talking to experts sooner. It can also delay the case, causing the attorney to seek an extension of the expert deadline, which does not sit well with the insurance company or the insured who wants the lawsuit to be resolved as soon as possible. Things could be even worse when the judge won't agree to an extension.

Finally, if prepayment is required by the expert and the attorney needs the insurance company to send the expert a check before he will review the case, everyone has to rush. This upsets the apple cart for everyone from the adjuster to the finance department of the insurance company. The best lawyers and adjusters avoid this situation altogether.

Know the Law and Help Others Learn

Defense attorneys are not the only ones who need to know the law as it relates to the particular area of insurance defense. The areas of medical malpractice and workers compensation, in particular, require highly specialized knowledge and insight for both the lawyer and the insurer. Rarely is this a problem, because the level of expertise among defense attorneys in Kansas is impressive, to say the least. However, one area of concern is whether we are doing enough to train young attorneys to take over the reigns when the more experienced litigators slow down, as they must. It is, understandably, difficult and time consuming for the experienced litigator to pass the art down to younger attorneys. However, it is something that must be done and it can only be accomplished by the experienced litigator. Making arrangements with the carrier, possibly seeking prior approval, for a younger attorney to second chair

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The only way the less experienced lawyer can gain that experience is if he or she gets in there and tries cases.

Working with Insurance Clients *(Continued from pg 16)*

a trial, take fact-witness depositions, question fact witnesses in trial or write briefs are all excellent ways for an associate or junior partner to become familiar and comfortable with the law and to learn from the seasoned trial lawyer.

There is no substitute for trial experience. Most insurance companies won't even hire lawyers whose trial experience they don't know first hand. And the only way the less experienced lawyer can gain that experience is if he or she gets in there and tries cases. The more experienced lawyers need to make sure that happens.

Be Organized and Prepared

This goes without saying (almost) and not much elaboration is needed. Insurance adjusters work with many attorneys. It is only natural that they will compare the work of the various defense counsel. They will know whether you are organized and they take note if you are not prepared. Lawyers ignore this important aspect of the insurance company-attorney relationship at their peril.

Attorneys ask, "What can I do to get cases assigned directly to me from the insurance company?" It will take time and hard work, but if these suggestions are followed, they may get noticed because they will stand out from the crowd. ▲

President's Report *(Continued from pg 2)*

be filed under seal, where the interests of justice would be served. This should allow settlements to be filed under seal where a confidentiality clause was negotiated.

Jim Robinson went to bat, again, for KADC in supporting merit selection of appellate judges. This has become a perennial issue and we are grateful for Jim's strong efforts in support of merit selection. We also saw an effort to remove the caps on non-economic damages, which did not get anywhere this session. It may well reappear in the future, however.

Finally, from the Legislative front you should all take a look at SB 434, which adopts rules for e-discovery that mimic the federal e-discovery rules. This bill has been signed by the Governor and takes effect upon publication.

Next month your Executive Director, Officers, and DRI Liaison will be traveling to Salt Lake City to meet with other SLDO officers from our region. The focus will be Making a Difference – in the defense bar, in the statehouse, and in your law firm. The exchange of ideas with our colleagues in surrounding states is always enlightening.

As always, please contact me or any other Board member with any questions or suggestions.

Regards,
Anne Kindling
akindlin@stormontvail.org ▲

MARK YOUR CALENDAR FOR THESE UPCOMING EVENTS

KADC Breakfast Meeting
June 20, 2008
Capitol Plaza Hotel
Topeka, KS
Register online at www.kadc.org

KADC Annual Meeting
December 5-6, 2008
Marriott
Kansas City, MO

Kansas Association of Defense Counsel
Application for Membership

The undersigned hereby makes application for membership in the Kansas Association of Defense Counsel and submits the following information in connection therewith (membership restricted to an individual)

1. Name _____
   (Last Name) (First Name) (Middle Initial)
2. Firm Name _____ Years Associated _____
3. Address: Office _____
   (Street or Building)
   _____
   (City/State/Zip) (Phone)
   _____
   (FAX) (Email)
   Residence _____
   (Street)
   _____
   (City/State/Zip) (Phone)
4. Send correspondence to: ☐ Office ☐ Residence
5. Date admitted to the Bar in the State of Kansas _____
6. Are you a member of the Defense Research Institute (DRI)? ☐ Yes ☐ No
7. List names of and year of admission of all courts of last resort in which you are admitted to practice: _____
8. List all bar associations and all other professional organizations and law societies to which you belong:_____
9. State all legal and public offices held: _____
   _____
10. List any articles and books you have written:_____
    _____
11. Are you in private practice? If so, state number of years: _____
12. Is your interest in litigation principally defense oriented? _____
13. I have enclosed annual dues for the following membership category:
    ☐ Admitted to the Bar 5 years or more $175.00
    ☐ Admitted to the Bar less than 5 years $85.00
    ☐ Governmental attorney $85.00

Dated this_____ day of_____, 20_____

_____
(Signature of Applicant)

Proposed by:

_____
(Name)

_____
(City and State)

Membership Benefits

Being a member of KADC allows you to take advantage of benefits such as:

- **Continuing legal education**
- **Legislative liaison**
- **A quarterly newsletter to keep you abreast of legal changes and events in Kansas**
- **Amicus Briefs**
- **Weekly emails with hotlinks to Supreme Court and Court of Appeals published opinions**
- **Weekly posting on the KADC website of unpublished Supreme Court and Court of Appeals opinions**
- **Representation to the Defense Research Institute (DRI)**
- **One year free membership in DRI for new KADC members who have not previously been a member of DRI**
- **With both KADC and DRI membership you have the opportunity for exchange of ideas with some of the best attorneys in the state, region and nation**

When completed, this application, together with admission and initiation fee, should be mailed to the Kansas Association of Defense Counsel,
825 S. Kansas Ave., Suite 500
Topeka, KS 66612
Phone (785) 232-9091