



First Professionals Insurance Company

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NEWS & VIEWS

FPIC INSURANCE GROUP TO BE ACQUIRED BY THE DOCTORS COMPANY



THE DOCTORS COMPANY

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Information in this newsletter does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained here are generalized and may not apply to all practice situations. First Professionals recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only.

First Professionals Insurance Company is Florida's Physicians Insurance CompanySM and the endorsed carrier for professional liability insurance by 22 county medical societies, 15 specialty societies, and two statewide associations in Florida.

We are pleased to announce that The Doctors Company has agreed to acquire FPIC Insurance Group, Inc. (FPIC), of which First Professionals Insurance Company, Inc. (First Professionals) is the largest subsidiary. When this merger is complete, First Professionals policyholders will have the advantage of the combined reputation and experience of Florida's longest-serving carrier with the nation's largest medical professional liability insurance provider, and be part of an organization that has over 70,000 member insureds.

"We believe we have found a strategic, well-respected partner in The Doctors Company. Both companies share a steadfast commitment to the protection of physicians and surgeons, including relentless defense, industry-leading risk management services, involvement in legislative reform and exceptional service. We are confident this partnership will benefit our policyholders," said Robert E. White, Jr., president of First Professionals.

The Doctors Company recognizes the importance and value of maintaining a significant local presence and intends to maintain the First Professionals office in Jacksonville, Florida. The Doctors Company also recognizes the important long-term business relationships already established by First Professionals, such as its endorsements with the Florida Medical Association and the Florida Dental Association.

As part of the regulatory approval process required to obtain control of First Professionals, The Doctors Company has submitted the necessary documents with the Florida Office of Insurance Regulations. The documents include a Plan of Operations detailing how The Doctors Company intends to operate First Professionals after the merger is approved.

According to the Plan of Operations, The Doctors Company does not intend to make significant changes to the business plans of First Professionals in the near-term. The Doctors Company intends to continue writing medical professional liability insurance for physicians and surgeons in the states where First Professionals currently operates.

David McHale, The Doctors Company senior vice president and general counsel, said in an e-mail included in the May 25th issue of the Jacksonville Times-Union that First Professionals workers factor into those plans. "Generally speaking, with the addition of over 18,000 insureds, we will need the help of the majority of FPIC's hard-working and dedicated staff to continue to serve those new members," he said. "Among other things, FPIC presents The Doctors Company with the opportunity to join with a well-run, respected company that allows us to significantly add to our membership and expand in regions where we want to have more of a presence."

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The financial strength of a company is crucial to its ability to protect policyholders. Assuming the merger is completed by the fourth quarter of 2011, The Doctors Company anticipates having \$3.7 billion in assets and \$1.5 billion in surplus on a consolidated basis, placing it in the position as the country's largest MPL insurer. FPIC and The Doctors Company currently have excellent A.M. Best ratings of A- and A, respectively.

"We are pleased to announce this partnership between our two physician-founded companies. We look forward to welcoming FPIC's 18,000 insureds to The Doctors Company. Together, we will have increased financial strength and be in an even better position to fulfill our relentless commitment to

advance, protect, and reward the practice of good medicine," said Richard E. Anderson, MD, FACP, chairman and CEO of The Doctors Company.

Regulatory and shareholder approvals are pending in a process that is anticipated to be completed in 90-120 days. The merger is expected to close by the fourth quarter of 2011.

We will provide updates regarding the acquisition as they become available. For additional information regarding the acquisition, please contact Angie Nykamp, Vice President, Marketing at (800) 741-3742, ext. 3071 or angie.nykamp@fpic.com. ♦

FLORIDA LEGISLATION RESULTS



The 2011 Legislative Session was one of the most challenging in many years as proposals affecting the practice of medicine were debated. In spite of those challenges, Florida physicians will benefit from the passage of medical malpractice reform bill, HB 479. Most notably, the provisions in HB 479 include provisions that hold expert witnesses

accountable for their testimony, the consent to settle authority for physicians involved in a malpractice case, and immunity for volunteer team physicians.

FPIC was a strong advocate of this legislation and will continue to support reforms that are beneficial for our policyholders in all states where we provide professional liability insurance. ♦

NEW "CONSENT TO SETTLE" POLICY ENDORSEMENT

A significant benefit of the recent Florida legislation reinstates the right for medical professional liability carriers to provide a "consent to settle" clause to their physician policyholders. Previous legislation, enacted in 1985, prohibited insurance companies from selling a malpractice insurance policy to a physician that gave the physician the authority to control settlement decisions.

In all other states where FPIC provides coverage, a "consent to settle" clause is included in physician policies.

Effective October 1, 2011, Florida physicians will benefit from a policy endorsement which provides the authority to make final decisions regarding settlement.

There are some limited exceptions that allow us to settle a claim without your consent. Those exceptions are set forth in the endorsement and are self-explanatory. FPIC has the sole right to settle any claim under specific circumstances, including:

- The insured is deceased or adjudicated incompetent;

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- The claim was reported to us during an Extended Reporting Period;
- A judgment has been entered;
- The insured's license to practice medicine is suspended, revoked, surrendered, inactive or otherwise has been terminated; or
- If, after reasonable efforts by us, the insured cannot be located.

Thank you for choosing FPIC as your medical professional liability carrier. If you have questions regarding the "consent to settle" provision or your policy endorsement, please contact FPIC's Policyholder Services Department at (800) 741-3742, ext. 3217. ♦

FLORIDA SUPREME COURT WILL REVIEW CAP ON DAMAGES



In *McCall v. USA*, the U.S. 11th Circuit Court of Appeals (the "Court") has rejected the challenge of the plaintiff who alleged Florida's \$500,000 cap on non-economic damages violated state and federal laws. The lawsuit contended that the cap violated patients' rights to access the courts deprived of just compensation and should be struck down because there was no reason for lawmakers to believe the cap would reduce malpractice insurance premiums.

The Court dismissed claims from the plaintiff that the cap robs them of their right to be justly compensated for medical errors. The Court also found that Florida's cap on non-economic damages in medical malpractice cases does not violate the U.S. Constitution or certain clauses of the Florida Constitution. Further, the three-judge panel referenced a report by a Florida House Committee that reported healthcare professionals are retiring or leaving the state due to the rising cost of malpractice insurance.

Because there are no Florida Supreme Court cases on the remaining constitutional issues presented in the case,

the Court has granted the plaintiff's motion to certify the following questions to the Florida Supreme Court:

1. Does the statutory cap on non-economic damages, Fla. Stat. § 766.118, violate the right to equal protection under Article I, Section 2 of the Florida Constitution?
2. Does the statutory cap on non-economic damages, Fla. Stat. § 766.118, violate the right of access to the courts under Article I, Section 21 of the Florida Constitution?
3. Does the statutory cap on non-economic damages, Fla. Stat. § 766.118, violate the right to trial by jury under Article I, Section 22 of the Florida Constitution?
4. Does the statutory cap on non-economic damages, Fla. Stat. § 766.118, violate the separation of powers guaranteed by Article II, Section 3 and Article V, Section 1 of the Florida Constitution?

We will continue to provide updates regarding the challenges to Florida's cap on non-economic damages as they develop. ♦

ARBITRATION PROGRAM SUCCESS

FPIC's unique binding arbitration program has been put into practice by many of its policyholders. For some of the program's participants, arbitration has already resulted in a positive outcome.

The FPIC claims team recently closed another successful claim with a decision for a policyholder. The decision in this case, like the first two arbitration claims closed, was 3-0. It is rare when a case is resolved with a vote by the plaintiff arbitrator for the defense. These decisions demonstrate the value of our arbitration program as an alternative dispute resolution option for our policyholders.

The program has many benefits for both patients and physicians, including:

- Lower legal costs for both parties;
- Lower indemnity payments though the use of an arbitration panel that, relative to a jury pool, will likely make a more well-reasoned and educated decision based upon the medical facts of the case; and
- A more prompt resolution of claims.

We encourage you to consider the benefits of FPIC's arbitration program. For more information, please contact Beth Kosakowski at (800) 741-3742, ext. 3280 or kosakowski@fpic.com. ♦

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