



# Hassan & Reardon, P.C.

Attorneys at Law

## NEWSLETTER

DECEMBER, 2008

### ATTORNEYS

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### A Message from Frank E. Reardon

It is gratifying to look back upon 2008 and share the accomplishments that Hassan & Reardon has achieved with you. This year we have handled cases before the Massachusetts and Federal courts, diversified our case list to include probate and immigration matters, and grown to five attorneys. As the firm continues to represent leading healthcare professionals and institutions, and expand its services to other areas of the law, the outlook for 2009 is bright.

Our newsletter captures some of our successes both inside and outside of the courtroom and illustrates the wide range of matters that our firm has handled over the past twelve months. I am also pleased to announce the publication of our website at [www.hassanreardon.com](http://www.hassanreardon.com) which documents the firm's continued success.

As the courts continue to encourage dispute settlement out of the adversarial courtroom, we have observed a great increase in the use of arbitration and mediation to resolve disputes in the past years. I have thus taken on the position of Arbitrator for the American Health Law Association Alternative Dispute Resolution Service. In this capacity, I have arbitrated the out-of-court resolution of matters arising between members of the healthcare field. This position has provided me the opportunity to practice law from the other side of the viewpoint of the factfinder, issuing decisions and helping parties to come to a resolution outside of the courtroom.

I am pleased to welcome LeeAnn Modestino and Kathleen Reardon to the firm. Both attorneys bring experience and enthusiasm that will benefit the firm. Additionally, Robert Walsh joins the firm "Of Counsel" and will be essential to the diversification of the client base.

I wish you and your family happy holidays, and a prosperous and healthy 2009.

### Superior Court Enters Permanent Injunction Barring Pro Se Plaintiff from Filing Future Lawsuits

By James J. Horgan, Esq.

Several years ago a pro se litigant brought a qui tam action against a major Boston teaching hospital, prestigious medical school and several individual physicians. The action was ultimately dismissed, but during the course of investigation and discovery it was learned that the plaintiff had filed more than 25 suits in the Superior Court and the Federal District Court.

A decision was made to establish a procedure to deter the plaintiff from filing similar vexatious suits in the future. Court rules do provide for sanctions and costs against a plaintiff for the filing of vexatious and frivolous litigation. Here those remedies were not available and were not a meaningful deterrent to the filing of frivolous litigation by this plaintiff.

Accordingly, on behalf of our clients we sought a temporary restraining order in the Superior Court to enjoin the plaintiff from filing future lawsuits. The Superior Court entered the temporary restraining order.

We returned in 2008 for a hearing to have the restraining order made permanent. The Superior Court having heard the evidence of the vexatious and frivolous nature of the plaintiff's various suits, entered an order that prevents the plaintiff from filing suit in the Superior Courts of the Commonwealth of Massachusetts against any defendant without first obtaining leave from the Regional Administrative Judge.

### Firm Publishes New Website

Hassan & Reardon is proud to announce the publication of its new website. Please visit [www.hassanreardon.com](http://www.hassanreardon.com) for information about the firm and its most recent accomplishments.

# Recent News and Events

## Court Upholds Arbitration Ruling

By Toby M. Jesson, Esq.

In late 2007 and early 2008, Hassan & Reardon tried and obtained a defense verdict for two physicians in a complex medical malpractice matter. Given the seriousness of the allegations and the complexity of the issues presented, by agreement of the parties, this difficult case was tried before an Arbitrator over the course of eight full days.

The case revolved around a lengthy course of post-surgical treatment and care rendered to a young boy with a known heart condition over the course of several years by two Board Certified Pediatric Cardiologists. The plaintiffs alleged that the two physicians misdiagnosed a serious pediatric cardiology condition in a boy already being followed by the two physicians for his known heart condition. The plaintiffs claimed that this alleged misdiagnosis ultimately led to the need for a cardiac transplant in the thirteen-year-old child.

It was the position of the defendants that the two physicians fully complied with the standard of

care during their years of treatment of the boy, and that the physicians did all that was required of them to ensure that the boy's post-operative treatment and care was as good as the situation could allow. Extensive expert testimony was presented on behalf of both sides in the case.

After eight full days of arbitration, seventeen witnesses (to include eight expert witnesses), two thousand pages of testimony, as well as extensive briefing of the issues by both parties, Hassan & Reardon obtained a defense verdict for its physician clients.

The plaintiffs opted to move for reconsideration by the Arbitrator pursuant to the Arbitration Rules and, after additional briefing and a ninth day of hearing before the Arbitrator in the early summer of 2008, the Arbitrator affirmed the original decision in favor of the defendants. The plaintiffs then moved the Superior Court to vacate the decision of the Arbitrator pursuant to M.G.L. c. 251, but the Superior Court denied the motion and confirmed the award of the Arbitrator in favor of the defendants in the case.

## Handling Vaccine Injury Cases

By LeeAnn Modestino, Esq.

The National Childhood Vaccine Injury Act of 1986 created the National Vaccine Injury Compensation Program (VICP). VICP is a no-fault system designed to resolve claims of individuals injured by one of the listed vaccines covered by the program. Petitioners that file under a reasonable basis and in good faith, may have reasonable lawyers' fees and legal costs paid by the plan. VICP is funded by an excise tax on vaccines which is held in the Vaccine Injury Compensation Trust Fund. In most vaccine injury cases, a claim must be filed with VICP before a civil suit could be filed against the provider or manufacturer of the vaccine. If a claimant files under VICP and wishes to pursue a claim against a provider or manufacturer, the claimant can waive any award granted by VICP and file in the traditional tort system.

Petitions are filed in the United States Court of Federal Claims. The U.S. Department of Health and Human Services acts as the respondent in vaccine injury cases with the U.S. Department of Justice's legal department handling the petitions. To be awarded compensation under the plan, a peti-

tioner must prove that the injured person received a vaccine covered by VICP and that the first symptom of the injury occurred within a specific time periods, called a Table Injury outlined by the VICP,; or the vaccine caused the injury; or the vaccine caused an existing illness to get worse (significantly aggravated). Additionally, the Court must find that the injury or death was not the result of any other possible causes.

In late 2006, associate LeeAnn Modestino and a partner at a previous firm filed a vaccine injury petition in the Court of Claims under the VICP system. The case involved the death of an infant after receiving routine childhood vaccinations. Initially, the infant's death was ruled as SIDs, however her parents were not convinced and sought out legal services. As there was not a clear Table Injury, the petition required proving causation. Evidence presented in the petition showed the infant could sit up and roll over on her own, and thus was beyond the age of a typical SIDs baby. Additionally, there were markers in the infant's blood that may have indicated a vaccine injury. The party's were able to reach a settlement in the case and the family of the infant established an educational trust in their infant's name.

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## Appeals Court Upholds Summary Judgment

By James J. Horgan, Esq.

Several years ago, we obtained summary judgment in favor of a senior executive at a major Boston teaching hospital. The executive was accused of defamation in connection with letters he sent in response to inquiries from public officials and activist groups regarding the termination of an employee.

In the proceedings before the Superior Court, the executive was granted summary judgment. The court was persuaded that an executive must be able to rely on the investigation and conclusions reached by subordinates where those subordinates have as a part of their job responsibilities the investigation of such incidents on behalf of the hospital. Moreover, the Court found that as a public charity, this particular hospital was obliged to respond to inquiries from elected officials. An appeal was noticed by the plaintiff.

The issues were briefed and submitted to the Appeals Court. In the summer of 2008, the Appeals Court issued an opinion upholding the summary judgment. Since that time, the plaintiff has sought further appellate review, which the Supreme Judicial Court denied.

## Attorney Walsh Participates in AILA *Pro Bono* Program Before the U.S. Immigration Court

Attorney Robert Walsh has recently assumed his *Of Counsel* role with Hassan & Reardon this past year. Attorney Walsh brings to the firm his practice in Immigration Law, focusing primarily on employment based visas; family based immigration visas; and representation of individuals in removal proceedings before the United States Immigration Court in Boston, Massachusetts.

Attorney Walsh dedicates over 100 hours each year in *pro bono* legal services representing asylum seekers and detained indigent individuals. He is a member of the American Immigration Lawyers Association.

## Recent Publication

By Kathleen E. Reardon, Esq.

Kathleen Reardon co-authored an article on "Maritime Security Operations: Law and Practice at the Beginning of the 21<sup>st</sup> Century" that was recently published in the *International Peacekeeping Journal: The Yearbook of International Peace Operations*. The article focuses primarily on the principle of proportionality, and discusses the implementation of universal principles when addressing conflict among national maritime security rules and enabling interplay between the law of neutrality and the practice of maritime interdiction operations.

As suggested by Rear Adm. Fabio Caffio of the Office of Legal Affairs of the Italian Navy, the article examines the utility of defined operational zones, and the prescribed consent of the master to carry out coercive boardings by actionable intelligence in cases of necessity. States acting at sea under Article 51 of the United Nations Charter face what have been categorized as the four main challenges to maritime law in the twenty-first century: first, the traditional challenge of competition and conflict; second, the irregular and new challenges that rise and fall over time; third, the challenge of catastrophic events; and fourth, disruptive challenges that arise with technology. In addressing these challenges, the international community has implemented preventative practices rooted in protocols such as Proliferation Security Initiatives, as well as national and integrated international efforts to facilitate international cooperative security maintenance.

The article highlights the need to balance the right to interdict against the freedom of passage, demonstrating that such a balance is essential to the success and legitimacy of multilateral security operations. Multilateral state effort to implement the rule of proportionality is one of the many necessary steps towards international cooperation in the battle against global terrorism and strong maritime security.

## New Additions to the Firm

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### LeeAnn Modestino, Esq.

LeeAnn Modestino is licensed to practice in Massachusetts, New York, and New Hampshire. She is a member of Health Law Advocates pro-bono network. Recently, LeeAnn handled a pro-bono second level insurance appeal to a patient's employer in a self-funded plan. LeeAnn's success in the appeal saved the patient more than \$65,000 and assured that the doctors were fully compensated for the extensive surgical procedures they performed.

Prior to joining Hassan & Reardon, LeeAnn practiced in Saratoga Springs, New York and worked on a variety of health related cases. Additionally, LeeAnn has gained employment law experience working in-house at a South Shore company.

A Suffolk Law graduate, LeeAnn is licensed to practice in New York, Massachusetts and

New Hampshire. In law school, LeeAnn served as the Founding Notes Editor on the Journal of Health & Biomedical Law and graduated with a legal concentration in Health and Biomedical Law. LeeAnn interned at Health Law Advocates and was also a member of the Health Law Society.

Before attending law school, LeeAnn worked in the marketing department of Elsevier Science's medical journal division as well as for an on-line medical data storage company.

On a personal note, LeeAnn enjoys running road races and competing in sprint distance triathlons. LeeAnn also enjoys boating and skiing.

### Kathleen E. Reardon, Esq.

Kathleen E. Reardon is licensed to practice in Massachusetts, has passed the New York bar exam, and is pending licensure in New York.

Ms. Reardon received her Juris Doctor from the Catholic University of America Columbus School of Law in Washington, DC. Upon receiving her degree, the Comparative and International Law Institute recognized Ms. Reardon for her studies on the economic and financial impacts of legal regulations, both domestically and abroad. Those studies included participation in the Business and Trade Law Summer Program in Cracow, Poland, where she attended classes on Comparative Securities Regulations and the legal structure of the European Union. Ms. Reardon was also President of the Health Law Society, and Executive Editor to the quarterly American Bar Association's National Security Law Report.

While studying law in Washington, DC, Ms. Reardon interned at the Enforcement Divi-

sion of the Federal Aviation Administration, where she assisted attorneys in preparation for arguments before the United States Court of Appeals and the National Transportation Safety Board. Ms. Reardon also drafted a memorandum on the attributes of evidentiary procedure in administrative hearings which appeared in the National Transportation Safety Board Bar Association's 2008 Annual Meeting during the FAA New England Regional Counsel's participation in a panel discussion.

Ms. Reardon was also certified to practice under supervision by the District of Columbia Court of Appeals as a Student Attorney representing the Columbus Community Legal Services General Practice Clinic. The Columbus Community Legal Services Clinic is a nationally recognized low-income legal clinic associated with the Catholic University of America Columbus School of Law.