

FEDERATION OF DEFENSE & CORPORATE COUNSEL



FDCC

DEFENSE LAWYERS. DEFENSE LEADERS.



April 5, 2024 -- Issue 218

Good Morning!

Here are your 5+ things to know on developments, upcoming events and progress being made on initiatives the Federation of Defense & Corporate Counsel is undertaking on behalf of all our members.

#1 "Countdown to Toronto" Listen to Our Inaugural "FedGlobal" Podcast



Heather Sanderson



David Zuber



Emily Stock

Today we kick off a new podcast episode called "**FedGlobal**" featuring our international members and hosted by FDCC International Defense Counsel Member [Heather Sanderson](#) of [Sanderson Law](#) in Calgary, Alberta.

Join Heather and her guests [Emily Stock](#) of and [David Zuber](#) as they "Countdown to Toronto" by providing us with exciting things to do and see in

our host city for the 2024 Annual Meeting - at the Fairmont Royal York Hotel, July 28 - August 3, 2024. What fun things are there to do for kids under 12 and with teenagers; what's the outdoor market scene like; how amazing are the live music venues, comedy clubs and theatres; how do locals spend a summer afternoon; and what sites and excursions are "not to be missed!" Heather, Emily and David break it all down.

Stay tuned for more upcoming episodes of FedGlobal!

[Click here to hear the full podcast](#)



You can listen to this podcast and the other 195 FedSpeaks podcasts on Spotify, iTunes, Stitcher, the Fed365 app or wherever you get your podcasts. Find out what over 10,100 listeners have already discovered by downloading and subscribing to these enlightening episodes by, about and for members of the FDCC.

#2 Add the 2025 Annual Meeting in Park City, UT to Your Calendar



Members of our 2025 Annual Meeting Team traveled to the [Stein Erickson Lodge](#) and [The Chateaux at Deer Valley](#) in Park City, UT this week to meet with the staff and management of the hotels, and scout out memorable excursions for you and your family to enjoy during the week of **July 27 -**

August 2, 2025. (L-R that's President-Elect [Heidi Goebel](#); Convention Chair [Tiffany](#), and her able assistant, [Stephen Alexander](#) in front of the Olympic Park).

Preliminary plans will include summer bobsled runs and other experiences in and around the Olympic Village; ziplining, hiking and biking in the mountains; "restauranting", touring and shopping in town and an incredible line up of world-class CLE and Plenary Sessions being organized by Program Chair [Lee Hall](#). We will keep you advised of more developments as they are formalized. Registration will open after the 2025 Winter Meeting in Charleston, SC.

#3 Strategies for Assessing Reasonable & Fair Market Value

Our colleagues at Avalon Economics have agreed to share their expertise in a 5 part series that briefly discuss 5 strategies that can be employed to help manage medical expenses in personal injury and product liability cases. Here's Part 2...



Assessing Reasonable & Fair Market Value By: Dr. John Schneider and Cara Scheibling

The second in our “5 strategies” series is to never assume that a medical expense is reflective of fair market value or reasonable value. Most jurisdictions allow injured parties to claim medical expenses as damages, but also state in some form or another that defendants

are allowed to challenge the reasonableness of those charges. Simply put, in most jurisdictions a plaintiff can say they paid \$1 million dollars for a simple lab test, but defendants are allowed in return to challenge whether the charge was reflective of fair market value, reasonable value, or relative market value.

There's a good reason this type of language exists in statute. It turns out that challenging medical bills is very important, because medical bills, unlike prices and charges in other industries, generally do not reflect reasonable value or fair market value. The reasons are twofold. First, decades ago the U.S. health industry was virtually 100% non-profit. In order for health care institutions to maintain their non-profit status, they were required to show a substantial “community benefit.” This was usually in the form of charity care but would also include bad debt.

Consequently, health care organizations had incentives to set prices as high as possible, so that if they received less those prices as payment in full, they could assign the difference to either charity care or bad debt. The second reason for the disconnect between medical prices and fair market value came later, in the 1990s,

with the advent of “managed care organizations” (MCOs). MCOs typically focused on tightly managing care, but also negotiated with providers on reimbursement amounts. This provided strong incentives on the part of providers to set prices unusually high, so that even after negotiations with MCOs, providers would still receive favorable rates. Accordingly, MCOs gave providers ongoing reasons to set rates arbitrarily high.

[Click here to read the full article](#)

Coming up next week: "Examining Medical Necessity." [Dr. John Schneider](#) is the CEO and Principal of [Avalon Health Economics](#) and [Cara Scheibling](#) is its Vice President and Principal. They have been a valued Platinum Sponsor of the FDCC for many years and invite you to visit them at the Annual Meeting, July 28-August 3, 2024 in Toronto, ON.

#4 The New "Glue" of Lawyer Retention



Jody Briandi



Howard Merten



Caroline Berdzik

- What is the "glue" that now holds law firm legal assistants, paralegals, support team, associates and even partners together - given the remote/hybrid/in office work environment post Covid?
- How are we able to recruit legal assistants - when some of the roles are being replaced by automation and legal technology?
- How do we better train and develop culture within our firms given these new realities?
- How can I pick someone's brain passing them in the hallway...when they're now working remotely?
- Are in-person after hours activities lost forever?

Yesterday, [Jody Briandi](#) of Hurwitz Fine; [Howard Merten](#) of Partridge Snow & Hahn and [Caroline Berdzik](#) of Goldberg Segalla led a fascinating online discussion in which members shared their ideas, challenges and efforts to address these issues and develop the best way forward. If you missed it, or would like to hear it again, please click on the red button below to listen into the recording. Stay tuned for more free FDCC webinars and interactive virtual meetings from the [Law Practice Management Substantive Law Section](#).

[Click here to watch the recorded webinar](#)

#5 The Consequences of Waiving Consequential Damages

By: Brian P. Nally



On January 3, 2023, Judge Donald Nugent of the United States District Court of the Northern District of Ohio, applying Illinois law, granted Defendant TransUnion, LLC's Motion for Judgment as a Matter of Law, and overturned an \$18 million jury award in favor of Plaintiff Endless River Technologies, LLC.

The lawsuit arose from a 2014 contract in which TransUnion and Endless River agreed to develop a "Quote Exchange." The Quote Exchange was designed to allow insurers to provide real-time comparison price quotes for insurance to consumers. Per the terms of the contract, TransUnion had the option to terminate the contract with 180 days prior notice if the Quote Exchange did not meet TransUnion's expectations. In addition, ownership of the source code for the Quote Exchange would revert to Endless River if TransUnion terminated the contract.

On October 4, 2017, TransUnion exercised its right to terminate the contract, but did not recognize Endless River's ownership of the Quote Exchange's source code and did not timely return it to Endless River after the contract was terminated. After extensive litigation and trial, the jury awarded Endless River \$18 million on its breach of contract claim.

In overturning the jury's damages award, the Court enforced a provision of the contract that barred recovery of any consequential or indirect damages, including lost profits or revenue. It held that the damages awarded to Endless River were consequential damages because they were not sufficiently foreseeable or contemplated under the contract. Indeed, the Court found that an additional "link in the causal chain" was required in order to connect consequential damages to the contract.

[Brian Nally](#) is an FDCC Defense Counsel Member and shareholder practicing out of [Reminger's](#) Cleveland, OH and Indianapolis, IN offices. He is the Chair of Reminger's Business & Commercial Litigation and eDiscovery Practice groups and a leader in the firm's Securities/Financial Services Litigation group. This article is submitted on behalf of the FDCC's [Commercial Litigation Substantive Law Section](#). Footnotes are omitted from the above excerpt but contained within the full article in the link below.

[Click here to read the entire article](#)

#5.1 Welcome Our New Members

Please join us in welcoming the following new members who have been admitted to our membership:



[Dave A. Lucien](#) is a Commercial Property Examiner for North American Property Claims with [Sompo International](#) in New York City, where his responsibilities include negotiating settlements, approving payments and ensuring adherence to industry regulations. Prior to his current duties, Dave worked with the Greater New York Insurance Company; Risk Management (A Division of Brown & Brown); and Allstate Insurance Company.

Sunita G. Kellermeier (no photo available) is Assistant Vice President & Senior Clinical Operations Counsel with the **West Virginia University Health System** in Morgantown, WV. Sunita assists the Chief Legal Officer in managing the legal affairs of West Virginia University Health System, which is comprised of 20 hospitals, and multiple physician clinical practice plans. She oversees the Health Care Team, the immigration team and the Credentials Verification Organization. Sunita and her husband Dr. Brian Kellermeier reside in Morgantown, WV.



Matthew A. Goldstein is Associate General Counsel with **Giorgi Global Holdings, Inc.** in Blandon, PA where he reports directly to the Chief Legal Officer and Chief Compliance Officer. Along with the CLO and CCO, Matthew serves as the lead lawyer for global litigation and insurance, provides primary legal support to **CANPACK US** and global IT, and provides and oversees, with the assistance of another attorney, legal support for The Giorgi Companies, Inc. (including Can Corporation of America, Inc., Giorgi Mushroom Co., Giorgio Foods, Inc., Giorgio Fresh Co., and CF Logistics, LLC).

Matthew and his wife Anna reside in Dresher, PA.

#5.2 What's on the Docket?





Dana Horton is a Partner with **Robinson + Cole** in Providence, RI where she focuses her practice on commercial disputes, with an emphasis on property and liability insurance coverage, extra-contractual/bad faith claims, large loss property subrogation, and product liability matters. She is a member of the firm's Insurance + Reinsurance Group.

Dana also dedicates her time on pro bono efforts by assisting **Perspectives**

Corporation, a Rhode Island entity that provides residential and vocational opportunities to individuals with disabilities, with the appointment of health care guardians. She frequently coordinates community food and holiday gift drives for the firm's Providence, Rhode Island office through the various committees and organizations for which she volunteers her time. She is a member of the Human Rights Committee for Perspectives as well.

She also serves as the co-chair of Robinson+Cole's Wellbeing Committee. Dana is also the former co-chair and current member of the firm's Women's Committee and an active member of the firm's Diversity, Equity, Inclusion, + Belonging Committee. She is a strong mentor advocate and assists with training colleagues with respect to the importance of mentoring.

And today, Dana is celebrating a birthday! Would you join us in sending her a Happy Birthday email to:

dhorton@rc.com

Congratulations Dana and all the very best to you and the family for continued good health, success and happiness in the years to come.

Why FDCC?

"To be the inspired community of vetted defense counsel, exceptional leaders and even better people."

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DEFENSE LAWYERS. DEFENSE LEADERS.



**KEEP
CALM
AND
DEFEND
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Be Exceptional Today!