

FEDERATION OF DEFENSE & CORPORATE COUNSEL



FDCC

DEFENSE LAWYERS. DEFENSE LEADERS.

GIVE ME  THINGS TO KNOW

August 11, 2023 -- Issue 184

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 You Make the Choice!



Take a look outside...sure...it looks nice and warm now...but let's fast forward a few months. By the time February 25-29, 2024 rolls around, are you going to be ready to get away from shoveling back breaking snow, having to endure bone-chilling wind chills and scraping off the windshield every morning? And for those in the warmer climates, are you going to be ready for a change of scenery? We've got you covered. Why not join your FDCC friends and colleagues at the 2024 Winter Meeting in sunny, warm and inviting St. Petersburg, FL at the incredible Vinoy Renaissance Hotel?

Registration opened last Friday and the response has been overwhelming! President Craig Marvinney, First Lady Paula McQueen, Program Chair Frank and Ana Ramos, Convention Chairs Wendy-Nia and Sean Griffin have put together a memorable experience of on-site and off-site activities, and arranged cutting edge legal sessions with subject matter experts that will provide insights on developments within our areas of practice and on what lies ahead.

Let's get you registered!

[Click here to register for the 2024 Winter Meeting](#)

#2 Long-Covid and Long-Term Disability Benefits

By: Jennifer Johnsen



More than three years after the World Health Organization declared COVID-19 a pandemic, the United States District Court for the Western District of Washington has held that an employee suffering from what has been termed “long-COVID” is entitled to receive long-term disability (LTD) under a group LTD policy. [Abrams v. Unum Life Insurance Company of America](#), No. C21- 0980 TSZ, 2022 WL 17960616 (W.D. Wash. Dec. 27, 2022).

This appears to be one of the first reported decisions addressing disability based on this new condition – and, of import to this group – the case involves an LTD claim filed by a shareholder in a law firm.

Background

In April 2020, a trial and appellate partner at a law firm began to experience daily fevers, severe fatigue, and mental foggiess. Prior to that time, he was an accomplished, experienced trial attorney who enjoyed an active lifestyle which included running marathons. In fact, he planned to participate in three

marathons in 2020. His symptoms, however, resulted in a significant decline in his legal abilities, a fact substantiated by his former colleague at the firm who noted he could not continue to perform as a lawyer and it was unclear to her that he was able to understand the information conveyed to him. After his doctors were unable to effectively treat his symptoms, he filed a claim for long-term disability benefits under the firm's group LTD policy.

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

[Jennifer Johnsen](#) is an FDCC Defense Counsel Member and a Partner at [Gallivan, White & Boyd](#) in Greenville, SC.

#3 Shedding Light on Solar Panel Degradation

By: Sumit Chaudhary and Ezra Jampole



As utilities and corporations sign solar contracts, stakeholders must weigh performance and longevity. Solar panels do more than generate power — they finance it.

Grid-scale solar projects are funded by energy contracts, pegged to megawatt-hour prices,

and tied to the long-term output of their solar panels. As photovoltaic (PV) modules age, however, they gradually produce less power. Known as solar panel degradation, the reduced output of PV modules over time affects the financial viability of grid-scale solar projects, with early signs of degradation often undetected or improperly diagnosed by routine outdoor monitoring. For the largest of grid-scale solar projects, accelerated or undetected solar degradation can mean tens of millions of dollars in missed performance payments.

The financial viability of grid-scale solar projects for utilities, investors, and a variety of other stakeholders rests on accurate predictions about PV module degradation. The underperformance or failure of PV modules over time can

result in contractual disputes, requiring project developers to pay liquidated damages and replace low-performing modules — and impairing their ability to recover capital investments.

[Sumit Chaudhary, Ph.D.](#) is a Senior Manager and [Ezra Jampole, Ph.D., P.E.](#), is a Senior Managing Engineer at [Exponent](#), which is a valued Platinum Sponsor of the FDCC.

#4 Law Practice Management Town Hall Wednesday, August 16th at 1:00PM



Jody Briandi



Jimmy Wilkins



Steve Embry

This coming Wednesday, August 18th - at 1:00PM, we will be holding another of our exceptional Law Firm Practice Management virtual Town Halls. This one will cover **Law Firm Technology**. Please join moderator [Jody Briandi](#), along with industry experts and FDCC Members [Jimmy Wilkins](#) and [Stephen Embry](#) for an interactive discussion on technology, including:

- platforms,
- products,
- creating efficiencies,
- what's on the horizon and
- what every law firm leader should know.

We look forward to having you join us.

[Please click here to register](#)

#5 So You Got the Call of the Trucking Accident...Now What?

By: Jennifer Mauer Lee



Whether it is early in the morning or the middle of the night, the insurance carrier or client has contacted you about an accident and you have to respond. First thing is you have to check conflicts but time is typically of the essence, especially if an accident just happened. So act fast but be thorough. At the same time you can find out some information that will not create a conflict such as when and where did the accident happen?

If the accident just happened, you will need to contact your accident reconstructionist to find out how quickly he or she can get on site. After conflicts clear, call the driver and get on the road! Make sure your client knows what they need to gather while you are on your way. When there is not a conflict with your firm and who you are supposed to represent, you also need to make sure there is not a conflict between the driver and the company. I always check with the company first by asking if they know of any reason they will want to point the finger at the driver, giving rise to a conflict. If they say no, you can contact your driver so get his number to call him on the way and especially before he talks to the police, if possible.

Who is your team?

Your team consists of you, your paralegal, your accident reconstructionist, and your client. When you call the driver, you need to advise that you represent the company only at this point. You have to then find out if there is a conflict from his perspective, meaning if he blames the company for the accident. This is tricky because you cannot find out too many facts or you can conflict out of the case completely. Once there is no conflict, find out who the driver has talked to and what happened. Once you get to the scene you will need to gather all evidence that exists. Typically, your accident reconstructionist will photograph and document the scene. You need to look at the surrounding area though to see if there is anything that can help with your case. Once there was a gas station across the street from my accident scene that had a video camera facing the parking lot. It caught the entire accident on film. No one from the gas station

would turn it over but I learned where to send a letter to request preservation and how long I had to take care of it before the video erased itself. You also need to identify witnesses and find out what the police have decided about the accident. They typically will not disclose everything but try to find out where you can get the report and when so you can get the full copy as soon as it is available. You need to find out if your client has reporting procedures and if so, have them complete the paperwork. Note that if the client fills out something in the normal course of business it is likely discoverable. Also make sure that the FMCSR are followed based on the type of accident and what happened.

[Please click here to read the entire article](#)

And as an extra bonus, [click here](#) for Jennifer's chapter in the book of *Prosecuting and Defending Truck and Auto Collision Cases*, published by the Texas Bar Association on what to do within the first 48 hours after an accident.

[Jennifer Mauer Lee](#) is an FDCC Defense Counsel Member and Senior partner with [Fee, Smith, Sharp, & Vitullo, LLP](#) in Dallas, TX.

#5.1 What's on the Docket? FDCC's Upcoming Events



Please register and mark your calendar to attend the following FDCC events of relevant and timely substantive content:

- **August 16, 2023: 1:00PM - Law Practice Management Town Hall Meeting "Law Firm Technology"** with Jody Briandi, Steve Embry and Jimmy Wilkins. [Please click here to register.](#)
- **August 16, 2023: 1:30PM to 2:45PM ET - Coverage 101: A CGL Primer – Zoom Presentation** - Sponsored by the FDCC Insurance Coverage Section. [Please preregister](#) by emailing either Dan Kohane at ddk@hurwitzfine.com or John Trimble at jtrimble@lewiswagner.com. You will then receive a link for the presentation.
- **October 22 - 24, 2023: FDCC's Corporate Counsel Symposium & Law Firm leadership Workshop** at the Philadelphia Downtown Marriott Hotel in Philadelphia, PA. ***"The Leader in WE"***. Co-Chairs: [Alison Christian](#) and [Bill Vita](#).
- **November 8 - 10, 2023: FDCC's Insurance Industry Institute (I-3)** at the Sheraton Times Square Hotel. ***"Insights, Innovation & Inspiration: New Approaches for Insurance Leaders."*** Co-Chairs: [Micalann Pepe](#) and [Alycen Moss](#).
- **February 25 - 29, 2024: FDCC's Winter Meeting at the Vinoy Renaissance Hotel** in St. Petersburg, FL. Convention Chair [Sean Griffin](#); Program Chair: [Frank Ramos](#). [Click here to Register.](#)

...and finally...
Have a Nice Day
Joseph Moore!



Joe Moore is a Director in the Litigation Practice Group in the Richmond, VA office of McCandlish Holton. He has been a valued Defense Counsel Member of the FDCC since 2021.

Joe's diverse practice is focused in the areas of premises liability, trucking litigation, personal injury, and commercial disputes. Joe has handled every phase of the litigation process, from investigation through discovery and trial. He also has extensive experience handling mediations and other forms of alternative dispute resolution. Joe regularly practices in all state courts in Virginia as well as the Eastern and Western Districts of Virginia. He has also argued appellate matters

before the Supreme Court of Virginia and the United States Court of Appeals for the Fourth Circuit. He has also been a presenter for the National Business Institute and is actively involved in the Richmond Bar Association.

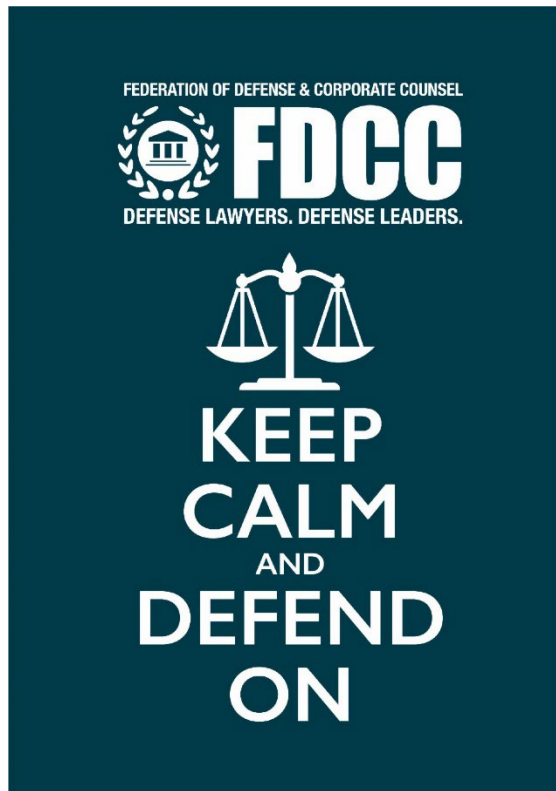
And tomorrow is his birthday! Would you kindly join us in sending Joe an email to:

joe.moore@lawmh.com

to wish him a very Happy Birthday. All the very best, Joe. We wish you, Jenn and the family 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."



Be Exceptional Today!