



FDCC

DEFENSE LAWYERS. DEFENSE LEADERS.



August 25, 2023 -- Issue 186

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 President's 3-Pointer **By: Craig Marvinney**



Things Along Leadership Lines

1. The Corporate Counsel Symposium, coming this Fall in Philadelphia (October 22-24, 2023) opened Registration last week! The main program, thanks to Co-Chairs [Alison Christian](#) and [Bill Vita](#), promises to be a great view into “The Leader in WE”, and we are looking for a wonderful turnout.

Be sure to register early to secure your seat! AND, for those who might not be thinking of going to this meeting (the single-most concentrated ratio of corporate counsel to defense counsel in the FDCC year), we have a great twist added: A Law Firm Practice

Management Workshop on Monday 10/23/2023 as a parallel program

contemporaneous with the CCS that afternoon. Tip of the hat to [Jody Briandi](#) and [Frank Ramos](#) for “working up the workshop”.

- Click on the link for the [CCS Brochure](#)
- Click on the link to [register for the Symposium](#)
- Click on the link to [register for the Hotel](#)
- Click on the link to [listen to the CCS Podcast](#)

2. Readings in Leadership – here’s a great book to check out: [Servant Leadership, Robert K. Greenleaf](#), 1977, Paulist Press (335 pgs.). Every so often I’ll list out a title for you as it comes up!

3. Imagine succulence. You know, the kind that pulls the juice out of your cheeks as the combination of dill, swiss cheese, ham, pork, and serious mustard hit your tongue while enjoying a wonderful Cuban Sandwich along Beach Dr. across from Straub Park and the Marina in St. Petersburg. Wait, there’s a dribble that needs a napkin. The Sun hits your shoulder as you smile, sit back in the chair as the soft Bay Breeze catches your face, and think of your partners up North struggling to the office in the full face of a Winter gale, where the weather folks say its 3F, but their foreheads might be splitting with the -11F Wind Chill. Yes, you made the right choice. [Registration’s open](#) for the 2024 Winter Meeting, in St. Petersburg, Florida in February 2024 at the fully restored Vinoy Hotel – Florida’s Gulf Coast elegance on smooth Tampa Bay. Don’t miss it!

**#2 FDCC Corporate Counsel Roundtable
September 12th - 2:00PM ET**

As we move into the last quarter of the year, in-house lawyers face a wave of emerging challenges that will test traditional response plans.

Join [April Berman](#), SVP Deputy General Counsel, [Asurion](#), on **September 12, 2:00PM ET / 1:00PM CT** for a corporate counsel roundtable exploring:

- how in-house counsel should evolve their crisis management response plans to address the newest issues, including AI-enabled cyberattacks,
- recent court rulings affecting employment practices, and
- other grey swan events.



All Corporate Counsel Members and Industry Members are invited to participate in what is sure to be a lively discussion.

[Please click here to register for the Roundtable](#)

#3 Product Liability and the Increasing Complexity of the U.S. Health Industry

By: John Schneider



Litigation involving product liability has been increasing sharply in the U.S. According to Lexis-Nexis, in 2019, the total number of product liability case filings in the U.S. reached 56,041, which was nearly 30% more than the 43,457 cases recorded in 2018.¹ Increasingly, economists have been asked to not only calculate the damages in product liability cases, but also to determine how to allocate those damages among parties who might be associated with the causation of the problem.

As supply chains become more complex, and production processes evolve from traditional factory “production lines” to more fragmented, logistically complex supply and distribution systems, an added challenge in product liability is the identification of responsible parties, and the allocation of responsibility among those parties.

One area where complicated allocation of responsibility has been studied is in environmental economics and environmental law, both of which have direct implications for public health as well. The contamination of Superfund sites, for example, often is attributable to multiple parties, each with some fraction of responsibility. The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), more commonly known as the “Superfund Law,” involves the identification of “potentially responsible parties” (“PRPs”) associated with contaminated sites, where each PRP is responsible for their share of the estimated attributable abatement cost, to be allocated in a “fair and equitable manner.”

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

[John Schneider, Ph.D.](#) is President & CEO of [Avalon Health Economics](#), which has been a Platinum Sponsor of the FDCC for several years.

#4 Cell Phone Usage: How Relevant is it Really? By: Melanie Cheairs



Often times, we find that Texas is on the cutting edge of legal trends. Unfortunately, of late, that cutting edge has given Texas the dubious honor of being home to some of the largest verdicts in the history of our nation. These verdicts are often produced as a result of trial court judges who are prone to let the Plaintiff's Bar run wild with discovery and thereafter, admissibility in trial.

Fortunately, there are our occasional rulings that come down from the highest court in Texas, that may be able to bring a sense of reason back to one of the hottest issues in Transportation cases today- cell

phone usage. Below is an analysis of recent Texas Supreme Court ruling, that while not directly dealing with a truck case, will have long reaching effect on companies who are invaded for information well beyond that which should be relevant for any litigation purpose.

On December 9, 2022, the Supreme Court of Texas granted mandamus relief to a corporate Defendant in an action arising from a chemical release at the Defendant's chemical plant.

Plaintiffs in the action filed a motion to compel Defendant Kuraray America Inc. ("Kuraray") to produce months' worth of cellphone records from employer-issued cellphones assigned to five employees – two supervisors and three board operators. After oral argument, the trial court granted Plaintiffs' motion and ordered Kuraray to produce the records.

Kuraray filed for a writ of mandamus with the Supreme Court of Texas to vacate the trial court's orders. Defendant argued that the Plaintiffs had not shown that there was any causal connection between cellphone use and the chemical release, making cellphone data irrelevant to the Plaintiffs' allegations and rendering the trial court's orders overbroad and beyond the permissible scope of discovery.

[Melanie Cheairs](#) is an FDCC Defense Counsel Member and a Partner with [Mayer, LLP](#) in Houston, TX. This article first appeared in the [FDCC's Insights Magazine](#) on annual developments during the past year, which you can access, together with the applicable footnotes, by clicking on the link above.

#5 Conditions in the CGL Policy Podcast



Crystal Uebelher



Nicole Weir



**FED
SPEAKS**
A PRODUCTION OF THE FEDERATION
OF DEFENSE & CORPORATE COUNSEL

This week's FDCCSpeaks podcast is presented by the Insurance Coverage Substantive Law Section and focuses on the particular Conditions with duties for both the Insured and the Insurer in the Commercial General Liability Policy, and how best to understand them.

FDCC Corporate Counsel Members Crystal Uebelher, Assistant Vice President, and Nicole Weir, Senior Counsel, both with Great American Insurance Company, review the impact of:

- What is "as soon as practicable" in the Notice Condition?
- How does this vary between claims made and Occurrence Policies?
- What constitutes "Prejudice" for the late notice defense?
- What are the Insured's duties in the Assistance and Cooperation Condition?
- How is the "Voluntary Payment / Consent to Settle" Condition best interpreted?
- What is the purpose of the "Other Insurance" Condition?

You can also listen to the over 139 free FedSpeaks podcasts on Apple iTunes, Stitcher, Spotify, on the FDCC365 App, or wherever you listen to your podcasts. Over 6,000 downloads of FedSpeaks podcasts have already happened. Join in today!

[Please click here to listen to the Podcast](#)

#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:

- **September 12, 2023: FDCC Corporate Roundtable - 2:00PM ET / 1:00PM CT**, moderated by [April Berman](#), Senior Vice President & Deputy General Counsel Asurion. [Please click here to register.](#)
- **September 19, 2023: Diversity Roundtable - 1:00PM ET / 10:00AM PT**, moderated by [April Berman](#) of Asurion and [Alonzo Washington](#) of Flaherty Sensabaugh Bonasso, PLLC. [Please click here to register.](#)
- **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 Frank Ciano!



Frank is a Partner with [Gerber Ciano Kelly Brady, LLP](#) in White Plains, NY, where his practice focuses on defending intricate product liability, commercial, corporate, regulatory, and intellectual property matters. He has been a valued member of the FDCC since 2016.

As Chair of the firm's Product Liability, Fire and Life Science practice, he ensures the firm's catastrophic injury team is accessible 24/7 to clients, local counsel and experts. To facilitate his role as national coordinating counsel, for clients from all over the world, Frank has developed a network of highly-skilled regional trial counsel, as well as an

extensive network of proven product liability attorneys throughout Europe, Asia, and South America. He has successfully tackled hundreds of catastrophic cases. These run the gambit from aircraft, children's products, industrial machinery, vehicles of all types, consumer goods, household appliances, sports equipment, medical devices, food products, outdoor power equipment and gas grills.

Frank's practice also focuses on complex commercial litigation. He is co-chair of the firm's Commercial and Corporate Practice Group. He leads a team devoted to "bet the company" commercial lawsuits involving: breach of contract; breach of warranty; violation of various state consumer protection statutes, construction disputes and intellectual property matters.

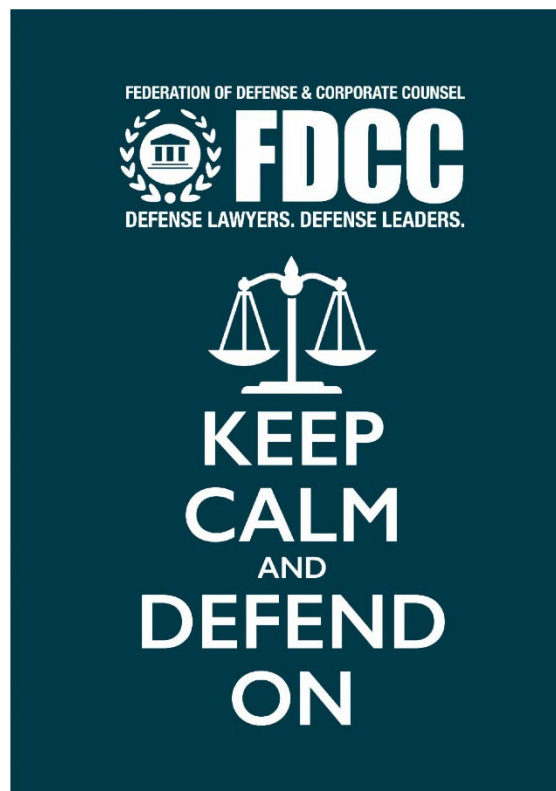
And today, he is celebrating his birthday! Would you kindly join us in sending Frank an email to:

fciano@gerberciano.com

to wish him a very Happy Birthday. All the very best, Frank. We wish you, Connie, 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!