



FDCC
DEFENSE LAWYERS. DEFENSE LEADERS.



June 27, 2025 -- Issue 283

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Good Morning!

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



Scan the QR Code to easily access the registration page for the 2025 Annual Meeting at the spectacular Stein Eriksen Lodge and its sister property, the Chateau Deer Valley Resort located on the eastern slopes of the Wasatch Mountain Range in Park City, UT.

While the Stein Eriksen Lodge is now sold out, rooms remain available at the Chateau Deer Valley Resort across the street. If you need to cancel your room reservation, please contact [Martha Heinze](#), so we can use that reservation for other members who will be registering between now and the meeting.

We look forward to seeing you **July 28 - August 2, 2025** as we "Train with Champions" and "Go for Gold" together!

**#1 FDCC Joins in PA Superior Court Amicus Brief
on Precluding Expert Witness Testimony**

In The
Superior Court of Pennsylvania

No. 2811 EDA 2024

PAUL and DIANE GILL, h/w,
Plaintiffs/Appellees,

v.

EXXON MOBIL CORP., et al.
Defendants/Appellants.

BRIEF OF *AMICI CURIAE* PRODUCT LIABILITY ADVISORY
COUNCIL, INC., NATIONAL ASSOCIATION OF
MANUFACTURERS, DRI CENTER FOR LAW AND PUBLIC
POLICY, FEDERATION OF DEFENSE AND CORPORATE
COUNSEL, AND PENNSYLVANIA DEFENSE INSTITUTE
IN SUPPORT OF APPELLANT

Appeal from Judgment entered September 23, 2024, in the Court of Common
Pleas of Philadelphia County, Civil Division, at No. 1808, May Term 2020,
Carmella Jacquinto, J.

Reed Smith LLP
Jamie L. Lanphear*
jlanphear@reedsmith.com
1301 K St. NW, #1100E
Washington, DC 20005

*Not admitted in Pennsylvania nor
seeking pro hac admission
pursuant to 204 Pa. Code
§81.502(a)

Reed Smith LLP
James M. Beck (Pa. Bar #37137)
jmbeck@reedsmith.com
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103-7301
(215) 851-8168

Counsel for *Amici Curiae* Product Liability Advisory Council, Inc.,
National Association of Manufacturers, Institute, DRI Center for Law
and Public Policy, Federation of Defense and Corporate Counsel,
and Pennsylvania Defense Institute

The FDCC joined with other industry groups (Product Liability Advisory Council, Inc.; National Association of Manufacturers; DRI Center for Law and Public Policy; and the PA Defense Institute) in drafting a joint amicus brief that was filed on Monday in the Pennsylvania Superior Court.

In *Gill, et al. v. Exxon Mobil Corp., et al.*, the trial court denied defendant-appellant ExxonMobil's motion in limine to preclude Plaintiffs' experts from offering causation opinions that no safe threshold for benzene exposure exists, and that every

exposure to ExxonMobil's benzene-containing gasoline substantially contributed to Plaintiff Paul Gill developing acute myeloid leukemia ("AML"). At trial, Plaintiffs' two expert witnesses did precisely that. In closing argument, Plaintiffs repeatedly urged the jury to return a verdict on that basis.

The Amicus Brief asserts it was error to deny ExxonMobil's in limine motion. Settled Pennsylvania law holds that "no-safe-threshold" causation theories are not generally accepted science in toxic tort or product liability litigation. Expert opinions espousing. Without holding a Frye hearing under Pa.R.E. 702.1, such theories are therefore inadmissible under Pa.R.E. 702's Frye-based standard for evaluating expert testimony.

Plaintiffs' experts offered other inadmissible, not generally accepted testimony. They improperly presented governmental regulatory standards as evidence of causation. Such standards are prophylactic, population-level thresholds, and bear no relation to the common law's more-likely-than-not causation standard for

individual plaintiffs. Overwhelming precedent rejects use of regulatory exposure standards in civil litigation, demonstrating that Plaintiffs' experts' reliance on such material was not generally accepted methodology as required by Frye and Rule 702.

Our thanks to [Bill Vita](#), Chair of the [FDCC's Amicus & Public Policy Committee](#) for leading this important filing on behalf of our industry and Federation members.

[Please click here to read the Amicus Brief](#)

#2 Future Shock: Appellate Practice in an Age of Generative Artificial Intelligence

By Timothy C. Sansone



Imagine it's late on a Friday. A partner at an appellate boutique is preparing a reply brief due Monday in an expedited appeal involving a contested federal election. The legal issues are technical but not novel. Deadlines are tight, the client is watching closely, and a young associate offers to develop a first draft through a generative AI tool—"Just to get it started," he says.

The partner hesitates. Will it save time? Will it sound generic or "store bought"? Would using this "newish" tool be the equivalent of "phoning it in"? Is it ethical—or dangerous? This isn't science fiction. It's already happening.

Toffler's Warning

Generative artificial intelligence (GenAI), including tools like ChatGPT, Claude, Gemini, and legal-specific platforms like Westlaw's CoCounsel, is reshaping how knowledge workers operate—and appellate lawyers are no exception. As the leader of my firm's Appellate & Complex Litigation Team and an avid user of GenAI in my off-hours, I believe the next few years will test not just how we write and research, but how we think about appellate advocacy itself.

As futurist Alvin Toffler warned in *Future Shock* (1970), “The illiterate of the twenty-first century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn.” That idea now has particular urgency in law, a profession built on precedent—but propelled by adaptation.

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

[Timothy Sansone](#) is a new FDCC Defense Counsel member and a Shareholder and Leader of Appellate & Complex Litigation Team at [Sandberg Phoenix & von Gontard P.C.](#) in St. Louis (Clayton), Missouri.

#3 Corporate Counsel Roundtable on the Use of AI

July 16, 2025 at 12:00PM ET / 9:00AM PT



AI is coming to our companies, but we must control its arrival. We must consider AI's impact on confidentiality, privilege, and other concerns.

In this Roundtable, we will discuss the AI tools we are using or reviewing. The possibilities include billing review, contract drafting, and other legal functions.

Tim Moore (Corium, Inc.) will moderate. In-house lawyers are invited to join us in what will surely be an interesting talk. And remember, FDCC Corporate Counsel Roundtables are safe spaces; only inside lawyers can attend.

[Click here to register for the Roundtable](#)

**#4 Commentary: Ending the Plague of
Roundup Litigation
By: Larry Ebner**



The Supreme Court needs to end the plague of Roundup personal injury litigation, which during the past 10 years has infected our civil justice system and undermined federal regulation of pesticides.

As the Atlantic Legal Foundation explained in a recent [amicus brief](#), the pending certiorari petition in *Monsanto Company v. Durnell* (No. 24-1068) affords the Justices an important and timely opportunity to do exactly that.

Roundup's active ingredient, glyphosate, is the nation's most widely used agricultural herbicide. For more than half a century, glyphosate cost-effectively has controlled weeds on a wide variety of crops, thereby boosting growers' productivity, lowering food costs for consumers, and enabling environmental friendly conservation practices such as no-till farming.

Like all pesticide active ingredients, glyphosate is comprehensively regulated by the U.S. Environmental Protection Agency (EPA). To obtain and maintain EPA approval, pesticide registrants (Monsanto, now Bayer, in the case of glyphosate) spend tens of millions of dollars on extensive toxicology, environmental, and other types of scientific studies, which EPA scientists and regulators meticulously and continually review.

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

Larry Ebner is an FDCC Defense Counsel member and the Executive Vice President & General Counsel of the [Atlantic Legal Foundation](#), where he is. He oversees ALF's judicial advocacy activities, including its renowned,

nationwide, amicus curiae (“friend of the court”) program. In addition to monitoring and analyzing cases for possible ALF amicus participation, Larry reviews requests for ALF amicus support and personally authors ALF’s amicus briefs on a wide variety of cutting-edge legal issues in the Supreme Court, federal courts of appeals, and state appellate courts. He is also the founder and principal of the nationwide appellate litigation boutique, [Capital Appellate Advocacy PLLC](#)

**#5 Summer with the
FDCC Property Insurance Section**

By: Susan Kidwell



Summer brings thoughts of cookouts, swimming, family vacations, and other fun activities. But it also brings extreme weather. It’s only June, but we have already seen numerous major storms across the country. What does that mean for the Property Insurance Section? Coverage issues.

If there’s a hailstorm, were the claimed damages caused by a storm within the policy period – or were they caused by historical storms outside the coverage period? If there’s a major rain event and an insured reports water damage from a roof

leak, did the leak due to a “covered cause of loss,” i.e., water coming through a storm-created opening, or was the just roof old, worn out, poorly maintained, or poorly installed? Tornado damage may be obvious, but with any storm-related claim, there may be issues with claims handling, competing estimates, alternative living expenses, and lost business income. Property claims (and subsequent litigation) may also involve issues that arose during the underwriting process.

To explore those issues further, the Insurance Coverage, Extra-Contractual Liability, and Property Insurance sections will provide two days of programming at the Annual Meeting in Park City. The first day will focus on case studies involving agent errors and misrepresentations during the underwriting process, circumstances under which an agent's conduct can affect coverage, how inspections (or the lack thereof) can affect coverage, discovery issues (when are underwriting files discoverable and how can confidential and trade-secret information be protected), and issues involving patterns and practices in the underwriting process alleged to support bad-faith claims.

The second day will consider how insurers can ensure that underwriting and claims function more as teammates and less as competitors to advance the strategic objectives of the company. The moderated discussion panels will help carriers and defense counsel understand and manage risks involving the interplay of underwriting, claims handling, and litigation.

[Susan Kidwell](#) is an FDCC Defense Counsel member and Chair of the Property Insurance Law Substantive Law Section. She is also a Partner with [Troutman Pepper Locke](#) in Austin, TX, where she specializes in appellate practice. She also represents insurers in first- and third-party coverage disputes and has extensive experience in administrative law, arbitration, statutory construction, and personal jurisdiction.

#5.1 Welcome to Our New Members



Please join us in welcoming the following new members to the Federation!



[Matthew Friedlander](#) is the founding partner at [Webb Daniel Friedlander](#) in Atlanta, GA where his practice focuses on appellate advocacy in state and federal courts. He represents a diverse array of clients in complex, high-value commercial and casualty disputes all stages of the litigation process.

At trial, he works with trial counsel to preserve all potential appellate issues. After trial, Matthew drafts and argues post-trial motions and provides appellate representation by drafting appellate briefs and conducting oral argument before the appellate courts. He and his partner [Rachel Nichol](#) reside in Atlanta, GA



Lisa D. Angelo is a Senior Partner and Trial Attorney at **Murchison & Cumming, LLP** in the Los Angeles and Irvine, CA offices. She is also a member of the firm's Professional Liability, General Liability and Retail practice groups, and co-chairs the firm's Professional Development Subcommittee, part of the firm's Diversity and Inclusion's Women's Initiative.

Lisa has a wide variety of practice areas including legal malpractice, medical malpractice, agent/broker malpractice, environmental, product and premises liability, and elder health law.

Away from the office, Lisa enjoys golfing and is an accomplished pianist.



James P. DuChateau is a Partner at **HeplerBroom** in Chicago, IL where he concentrates exclusively on insurance coverage, with an emphasis on first-party property for both commercial and personal lines. He counsels carriers throughout the Midwest and Mountain West on high exposure claims, and coverage issues ranging from appraisal to arson to business interruption.

James also devotes a large portion of his practice to litigating insurance coverage issues in state and federal courts, where he represents insurers in both declaratory matters for noncoverage as well as the defense of contractual and extracontractual liability matters.

He and his partner [Genevieve Jeanty](#) reside in Lincolnshire, IL.



[Frank Gattuso](#) is a Shareholder with [Sweeney & Sheehan](#) in Philadelphia, PA and serves on the Firm's Executive Committee. He handles matters in the areas of general liability, retail & hospitality, transportation, and commercial law as well as involving fatalities and serious injuries, including traumatic brain injuries.

He is a Certified Instructor for the Insurance Society of Philadelphia and is currently a faculty member for the National Business Institute presenting seminars to insurance and business professionals. Frank currently serves as Vice Chair for the Retail and Hospitality Practice Group of USLAW. He is also a member of the National Retail and Restaurant Defense Association (NRRDA), a retail industry centered organization focused on the defense of retail and restaurant businesses.

Welcome Aboard!

#5.2 What's On the Docket



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

- **July 16, 2025 at 12:00PM ET / 9:00AM PT: Corporate Counsel Roundtable on the use of AI** with [Tim Moore](#) of Corium. For FDCC Corporate Counsel Members Only. [Click here to register.](#)
- **July 28 - August 2, 2025: Annual Meeting** at the [Stein Eriksen Lodge & The Chateaux at Deer Valley](#) in Park City, UT. "Go for Gold" with Convention Chair: [Tiffany Alexander](#) and Program Co-Chairs: [Lee Hall](#) and [Kile Turner](#). [Click here to register.](#)
- **September 14-16, 2025: Corporate Counsel Symposium** at the InterContinental Hotel in Chicago, IL. Co-Chairs: [Chelsey Golightly](#), [Nicole Benjamin](#), and [Tim Moore](#), Registration coming in Spring 2025.

- **November 5-7, 2025: Insurance Industry Institute** at the Westin Times Square Hotel in New York City. Co-Chairs: [Sarannah McMurtry](#) and [Jeff Van Volkenburg](#). Registration coming in Summer 2025.
- **February 24-28, 2026: Winter Meeting** at the [J.W. Marriott Desert Ridge Resort](#) in Scottsdale, AZ: "**Together We Rise From the Valley**". Convention Chair: [Frank Ramos](#); Program Chair: [Micalann Pepe](#).
- **July 26 - 31, 2026: Annual Meeting** at the [Corinthia Hotel in Lisbon, Portugal](#): "**A Mosaic of Memories in Lisbon**". Convention Chair: [Lee Hall](#); Program Chair: [Alycen Moss](#).
- **February 28-March 4, 2027: Winter Meeting** at the [Fountainbleu Hotel, Miami Beach, FL](#).
- **July 25-30, 2027: Annual Meeting** at the [Fairmont Banff Springs, Banff, Alberta, Canada](#).

...and finally, Have a Nice Day...

Eric P. Gillett!



Eric is a founding member of [Preg O'Donnell & Gillett](#) in Seattle, WA . Earlier this month, Eric and his associate, Brian Driscoll, received a jury verdict better than their last offer to Plaintiff and more than ten times less than what Plaintiff's counsel requested for damages in closing arguments. The case involved a Waste Management garbage truck that collided with Plaintiff who was driving a standard size pickup truck. Before trial, Defendant admitted its driver was negligent and accepted liability as the driver's employer. The case went to trial on causation and damages only.

Plaintiff alleged that the accident lit up a preexisting neck and back condition that led to neck surgery. The defense introduced evidence that a previous auto accident and back injury caused the need for neck surgery, not the second accident, and, therefore, the accident with Waste Management was also not the cause of the paralyzed vocal cord. To some degree, this issue became a battle of experts. And the jury ultimately concluded that the Waste Management accident was at least a cause of the neck surgery and vocal cord injury.

Because Plaintiff's attorney emphasized these alleged disabilities as the main feature of his claim for general damages, and because Plaintiff testified to the same, it appears the jury was put off by their ask for more than \$9.5 million in general damages. In the end, they awarded him all his past medical expenses as well as about \$300,000 in general damages for a total of \$830,000. This was only slightly higher than Eric's suggested anchor of \$600,000, and well below his last offer of \$1,000,000.

Finally, after Plaintiff counsel rested their case, Eric asked if they wanted to reengage in settlement discussions. At mediation, their final offer was \$3,000,000. Eric said the defense could move above \$1,000,000 if they were

interested in making a new offer. In response, Plaintiff offered \$5,000,000. Eric told them the defense would let a jury decide the outcome. And was happy they did.

Please join us in sending Eric a congratulatory email on this exceptional outcome:

egillett@pregodonnell.com

Way to go Eric!



Why FDCC?

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