

FEDERATION OF DEFENSE & CORPORATE COUNSEL



FDCC

DEFENSE LAWYERS. DEFENSE LEADERS.



June 3, 2022 -- Issue 122

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 conducting on behalf of all our members.

#1 Property Insurance Section "Issues to Watch"

FDCC Defense Counsel member [Susan Kidwell](#) is a Partner in the Los Angeles, CA office of [Locke Lord](#) and has provided a report on legal developments that occurred during the month of May, on behalf of the Property Insurance Law Section. Please click on the red bar below to read the full update covering the following topics:

- **Causation**—What is an insured's burden when the claimed loss involves a mix of covered and non-covered causes? *Overstreet v. Allstate Vehicle & Prop. Ins. Co.*, No. 21-10462, 2022 WL 1579278 (5th Cir. May 19, 2022).



- **Valuation**—What is sufficient evidence to recover damages for personal household property destroyed in a fire? *Dobbs v. Allstate Indem. Co.*, No. 21-13813, 2022 WL 1686910 (11th Cir. May 26, 2022).
- **Appraisal**—When is a demand for appraisal “ripe”? *Certain Underwriters at Lloyd’s v. Lago Grande 5-D Condo. Ass’n, Inc.*, No. 3D21-636, 2022 WL 97382 (Fla.Ct. App. May 4, 2022).
- **Contractual Limitations**—When is a contractual limitations period the price of a public adjuster’s “gamesmanship”? *Legend’s Creek Homeowners Ass’n, Inc. v. Travelers Indem. Co. of Am.*, Nos. 20-3163, 21-1288, 21-2196, 2022 WL 1467456 (7th Cir. May 10, 2022).
- **Prejudgment Interest**—When does it begin accruing? *Greater New York Mut. Ins. Co. v. Galena at Wildspring Condo. Ass’n*, No. 2-21-0394, 2022 IL App 2d 210394 (May 23, 2022).
- **COVID Coverage Cases**—Has the death knell sounded?

The [Property Insurance Substantive Law Section](#) Update Sub-Committee Members are: Karen Karabinos, Drew Eckl & Farnham; Christina Bolin, Christian & Small; Kelsie Sullivan, Richards & Connor; Michael Montgomery, Butler Weihmuller Katz Craig; and Susan Kidwell, Locke Lord LLP.

Please click here to see the full update

#2 Sixty Seconds in Seattle



Kids will go absolutely "ape" over Seattle's award-winning zoo. With a dedicated kids' Zoomazium, a petting zoo area and other immersive wildlife experiences for kids, Woodland Park Zoo is the only place in Seattle where you'll get a chance to set eyes on a chuckwalla, a wallaroo and a kookaburra.

No matter what kind of creature you're crazy to see, the [Woodland Park Zoo](#) is the place to go when you want

a glimpse of exotic wildlife. It also features exhibits such as the Living Northwest Trail, which focuses on animals of the Northwest, Western Canada and Alaska, and the Trail of Vines, a stellar primate showcase. This is a fabulous place for the whole family to enjoy.

Registration is now open for the the FDCC's Annual Meeting in Seattle, WA at the Hyatt Regency Hotel, July 25-30, 2022. [Click Here to see the mini-Agenda.](#) After registering for the meeting, you will then receive a code with which to make your hotel reservations. Register now to take advantage of the early-bird discount - by [clicking here.](#)

#3 NY Court of Appeals Bucks the Trend on Regulations

By: Salvatore J. DeSantis



FDCC Defense Counsel Member [Sal DeSantis](#) and his colleague Robert Von Hagen at the [Molod Spitz & DeSantis](#) firm in New York City, NY, have submitted this timely update on behalf of the Federation's [Construction Law Section](#). Please click on the red bar below to read the entire article.

For nearly 30 years since [Ross v. Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494](#) [1993] the Court of

Appeals has stated that New York's Labor Law Section 241(6) requires owners, contractors and their agents engaged in construction, demolition, or excavation to provide certain workplace protections can only be established by demonstrating failures to abide by specific rules promulgated by NYS Labor Commissioner, which are codified in the NY Industrial Code.

For example, a trip and fall on a worksite can result in liability to a landowner or contractor where it occurs due to "debris" or "stored materials" in a "passageway" or "work area", but not if the materials are integral to the work being conducted—the reasoning being that the materials cannot be disposed of or set aside because they are necessary to do to the job. A fundamental requirement of establishing the applicability of a particular code, however, is

that it be sufficiently specific to form a predicate for liability. General safety requirements are not sufficient.

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

#4 MA Supreme Judicial Court Adopts Amendments to Rules of Civil Procedure



The FDCC submitted comments to the Massachusetts Supreme Judicial Court last year and again early this year in support of amendments to the state's Rules of Civil Procedure.

The Court [recently adopted amendments](#) to Rule of Civil Procedure 30 (Depositions Upon Oral Examination) and repealed Rule 30A (Audiovisual Depositions and Audiovisual Evidence), effective September 1, 2022. Revised Rule 30 covers both stenographic and audiovisual depositions, following the structure of Federal Rule of Civil Procedure 30. The revised rule does not include limitations on the number or duration of depositions, retaining the existing Massachusetts practice in this area.

The court also [amended Rule of Appellate Procedure 19](#) to reduce the number of copies of each brief and appendix that must be filed and served, effective May 1, 2022.

#5 FDCC Member in the Spotlight: Laurent Demosthenidy



FDCC Defense Counsel Member [Laurent Demosthenidy](#) of [Flanagan Partners, LLP](#) in New Orleans, LA authored an amicus brief to the Louisiana Supreme Court, along with Thomas Flanagan of his firm, on behalf of the Louisiana Association of Defense Counsel.

The issue was Louisiana's standard for granting a motion to compel an additional medical examination ("AME") under [La. CCP Art. 1464](#) in personal injury cases. The statute requires "good cause" to conduct an AME, which the plaintiffs' bar has been using to block AMEs and which resulted in a circuit split. In the case on appeal, the plaintiff lawyers had used this to block an AME of the plaintiff and then argue to the jury that the defense expert was "diabolical" and just a hired gun who never even examined their client.

The Supreme Court ruled last week and adopted Laurent's position, that "good cause" exists by definition when a plaintiff alleges personal injuries and the AME has a reasonable connection to the injuries in dispute. This was a big victory for defense lawyers in personal injury cases in Louisiana, since it resolved the circuit split in favor of defendants seeking AMEs and leveled the playing field in discovery on this issue.

#5.1 IL Pre-Judgment Interest Statute Declared Unconstitutional



In April 2021, the FDCC sent [Comments](#) to the Governor of Illinois objecting to the passage of SB 72 by the state legislature, which broadened application of pre-judgment interest in civil litigation. The legislation was signed into law as [735 ILCS 5/2-1303\(c\)](#).

We are pleased to report that the Circuit Court of Cook County held the statute unconstitutional. In the case of [Hyland v. Advocate Health and Hospitals Corp., et al.](#), No. 17 L 003541, Judge Marcia Maras entered a Memorandum Opinion in which she held that the pre-judgment interest statute:

- violates defendants' rights to trial by jury as protected by Article I, §13 of the Illinois Constitution of 1970;
- violates the prohibition against special legislation set out in Article IV, §13 of the Illinois Constitution of 1970;
- creates impermissible classifications of defendants. “[The] classification of personal injury and wrongful death defendants as the only defendants paying prejudgment interest, as against all other tort defendants, corrects nothing as these other tort defendants also enjoy the funds that are purportedly being deprived from the other tort plaintiffs. Additionally ... all tort cases cause congestion of courts and using an arbitrary classification of only personal injury plaintiffs to receive prejudgment interest would not encourage early settlements or relieve congestion for all other tort actions;” and
- discriminates among defendants to the same personal injury or wrongful death action.

We will keep FDCC Members advised of further developments as other states also consider amendments to existing pre-judgment interest statutes.

#5.2 Professional Insomnia



Alan Rutkin



Sarannah McMurtry



Dana Frese



Tom Werlein

Our "FedSpeaks" podcast series released a new episode today hosted by FDCC Defense Counsel Member and Chair of the Insurance Coverage Substantive Law Section, [Alan Rutkin](#) of Rivkin Radler, on the "Challenges Facing In House Counsel".

Join Alan as he chats with FDCC Corporate Counsel Members:

- [Dana Frese](#), President & CEO of Healthcare Services Group, Inc. in Jefferson City, MO;
- [Sarannah McMurtry](#), Senior Vice President & General Counsel of Acceptance Insurance Company in Nashville, TN; and
- [Tom Werlein](#), Associate Counsel at Sentry Insurance Company in Stevens Point, WI

for a fascinating insight on what is keeping them all up at night. [Click Here](#) to listen to the podcast - or go to Apple iTunes, Spotify or Stitcher and search "FDCC" for this and all our podcasts brought to you as an exclusive member benefit.



#5.3 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:

- **July 25 - 30, 2022: FDCC's Annual Meeting** at the Hyatt Regency Hotel in Seattle, WA. [Click here to register.](#)

- **August 16-17, 2022: FDCC Virtual Deposition Boot Camp** - 10:0am to 6:00PM ET. Register by emailing: danielle@thefederation.org.
- **September 16 - 18, 2022: FedTechU West** at Gordon & Rees in San Francisco, CA. Registration coming soon.
- **October 16-18, 2022: FDCC's Corporate Counsel Symposium** at the Downtown Marriott in Philadelphia, PA. Registration coming soon.
- **November 9, 2022: Property Insurance Coverage Boot Camp** at the Sheraton Times Square Hotel in New York City, NY. Registration coming soon.
- **November 10-11, 2022: "Live from New York...It's I-3!" FDCC's Insurance Industry Institute (I-3)** at the Sheraton Times Square Hotel in New York City, NY. Registration coming soon.
- **February 19 - 23, 2023: "Friends in All Places!" FDCC's Winter Meeting** at the Omni Hotel in Nashville, TN.
- **July 23 - 28, 2023: FDCC's Annual Meeting at The Broadmoor Resort & Hotel** in Colorado Springs, CO.
- **February 25 - 29, 2024: FDCC's Winter Meeting at the Vinoy Renaissance Hotel** in St. Petersburg, FL

...and finally...
Have a Nice Day
Chris Adolph!



FDCC Industry Member Chris Adolph is Vice President of Property Claims with [Sompo International](#) in Dallas TX, where he is responsible for overseeing Sompo's North American Industry Vertical Platform, including commercial property claims in the US and internationally.

Chris is primarily responsible for the technical work product of property claims, having assumed his present role in

May of 2016 after spending the prior 5 years leading commercial property real estate claims for Chubb North America. He became an FDCC Member in December 2021.

Starting from humble beginnings as the Head Cashier with the [Bartlett Grain Company](#), Chris found his passion and purpose as an insurance professional over the past 24 years rising through the ranks in various positions with the Farmers Insurance Company, Chubb Insurance Company, to his current responsibilities with Sompo International.

Today, we are extremely proud to report that Chris has been recognized for his leadership, experience and guidance in having been named to the Board of Directors with the [Loss Executives Association](#).

If you have a moment today, please join us in sending Chris an email:

cadolph@sompo-intl.com

to congratulate him on this latest achievement and to wish him continued 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."

FEDERATION OF DEFENSE & CORPORATE COUNSEL



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DEFENSE LAWYERS. DEFENSE LEADERS.



**KEEP
CALM
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Be Exceptional Today!