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**BUILDING NETWORKS BUILDING FRIENDSHIPS**

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***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.

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**#1 FDCC Files Amicus Brief in US Court of Appeals for the 5th Circuit**

No. 23-20035

**In the  
United States Court of Appeals  
for the Fifth Circuit**

JENNIFER HARRIS,  
*Plaintiff-Appellee,*

v.

FEDEx CORPORATE SERVICES, INC.,  
*Defendant-Appellant.*

On Appeal from the United States District Court  
for the Southern District of Texas, Houston Division  
District Court Case No. 4:21-CV-1651

**BRIEF OF AMICUS CURIAE  
THE FEDERATION OF DEFENSE AND CORPORATE COUNSEL  
IN SUPPORT OF DEFENDANT-APPELLANT**

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On Wednesday, the FDCC filed an amicus brief in the matter of *Harris v. FedEx Corporate Services, Inc.* in the US Court of Appeals for the Fifth Circuit, No. 23-20035, following the Court's approval of the Motion to File.

The brief joins the request of the Appellant, FedEx Corporate Services to vacate a punitive damages award in the underlying trial, in which the Plaintiff had brought federal claims for alleged violations of Title VII and 42 U.S.C. §1981, alleging discrimination and retaliatory discharge.

In its verdict, the jury awarded \$120,000 for past pain and suffering, inconvenience, and mental anguish; \$1,040,000 for future pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life. The jury then also awarded punitive damages in the amount of \$365,000,000, which was approximately 49% of the net worth of FedEx—\$745.2 million.

The Federation's Brief, prepared by FDCC Defense Counsel member [Neil Rambin](#) and his team at Faegre Drinker, asserts that punitive damage awards must be reasonable and rational; that a statutory cap on punitive damages, if honored, can reflect a legislative due process determination of penalty within the same bounds for the same claims and with fair notice to those potentially liable; and that searching scrutiny is needed to ensure juries answer "the right question" when considering an award of punitive damages.

The case also raises the issue of how Rule 702 was applied in allowing Plaintiff's expert to testify on the Appellant's duty to all its employees rather than the specific duty owed to the Plaintiff.

We will keep members advised on further developments as they materialize. Our thanks to Neil Rambin and his team, as well as Amicus Committee Chair [Gray Culbreath](#) of Gallivan White & Boyd and the members of the Committee in liaising on this effort.

[Click here to read the FDCC's amicus brief](#)

## #2 Meet Our Newest Technology Master Advocates!



The iPads were on fire last weekend at the Veritext Headquarters in Philadelphia, PA as FDCC Evolve Committee Chair [Jimmy Wilkins](#) of Watkins & Eager and his fellow instructors, [Ned Currie](#) of Currie Johnson & Myers, [Paul Schumacher](#) of Dickie McCamey & Chilcote, PC, and [Steve Embry](#) of Embry Law, LLC led a 2 1/2 day intensive session on employing the latest apps and law tech to enhance presentations.

Having completed all requirements of the course, the following FDCC members were awarded the Federation's Technology Master Advocate certification:

- [Ben Howard](#): Neil Dymott APLC
- [Gregory Young](#): Hinkle Law Firm
- [Sarah Hogan](#): Quattlebaum Grooms & Tull PLLC
- [Troy Bell](#): Courington, Kiefer, Sommers, Marullo & Matherne
- [Scott Salter](#): Starnes Davis Florie, LLP
- [Russell Morgan](#): Bradley Arant Boult Cummings LLP
- [Charles Mataya](#): Bradley Arant Boult Cummings LLP
- [Stanford Fitts](#): Strong & Hanni
- [Bryan Calistri](#): Calistri McLaughlin

A big thanks also to [Tara Cheever](#), Co-Founder and Products Manager of [Lit Software](#) for her exceptional help in walking our members through the best

utilization and implementation of the various apps; to [Brian McCann](#) at [Veritext Legal Solutions](#) for the use of the facilities; and to [Brett Burney](#) of Burney Consultants, LLC for assisting in step-by-step guidance of these and other apps that can help tell the story through memorable imagery and animation. He also shared this: [Ten Hidden iPhone Tips You're Probably Not Even Using.](#)

## #3 Marianna Nava Receives Barb Currie Diversity Scholarship

By: Steve Farrar



During her lifetime, Barb Currie was a champion of diversity. Barb changed the lives of many young people in Mississippi through mentoring, teaching and providing guidance in life. The FDCC is committed to diversity and inclusion in our organization. Barb exemplified generosity of spirit. Upon her death and in honor of her giving, Past President, Lewis Collins recommended that the Barb Currie Diversity Scholarship be created. The scholarship allows its recipients to move forward in being a positive role model for society. As a consequence, Barb's initiative and impact are now bearing fruit nationwide. She would be proud.

The Foundation's Scholarship Committee is similarly proud to award this year's Barb Currie Diversity Scholarship to **Marianna Nava**, a third-year law student at [Roger Williams University School of Law](#) in Bristol, RI. Marianna is from Fall River, MA, was born in Brazil and immigrated to the United States with her parents when she was 12 years old. Marianna's story is a compelling one, but as you will read in her personal statement, it is an evolving story which will continue to exemplify the promise this scholarship affords to its recipients: a dedication to the profession of being a zealous advocate to and for those who are less fortunate.

After receiving over 70 applications from 32 different law schools located across the country, the applications were narrowed to four semifinalists by the Scholarship Committee chaired by Roger Hillman. The Foundation Board read

the materials submitted by each of the four applicants, all worthy candidates, and selected Marianna.

We think you will be as impressed in reading Marianna's article as we were in considering her application for the scholarship.

[Click here to read Marianna's Personal Statement](#)

## #4 Incentivizing Employees with Bonuses? Watch Out for Overtime

### By: Robert Lockwood



The labor market is tight right now. Employers are looking for ways to attract and retain employees. One strategy for employee retention is to pay a bonus of some kind. Everybody likes money. So, bonuses are a great way to increase employee satisfaction. But, employers paying bonuses should make sure that they do not accidentally violate the Fair Labor Standards Act as a result.

Here's the scenario. You pay your production employees \$20 per hour. But, you also promise them a \$500 bonus if they reach certain production goals. In the vast majority of cases, you must include at least some part of that \$500 in their regular rate of pay for each week in the bonus period. If the employee works more than 40 hours during a week for which the bonus is awarded, their overtime rate increases.

In our scenario, let's say the employer has a rush job that must be completed in one week. The employer promises a \$500 bonus if production goals are met during the week. The rush job requires an employee to work 60 hours during the week. Ordinarily, the employee would receive \$1,200 for 60 hours of work, plus \$200 for overtime, for a total of \$1,400. But, with the \$500 bonus, their regular rate of pay for the week would be: \$1,700 (\$1,200 + 500), divided by 60 hours, for a regular hourly rate of \$28.33. Overtime would be calculated based on \$28.33 per hour rather than \$20.00. As a result, the employee would be entitled to an additional \$14.17 for each of the 20 hours of overtime, resulting

in \$283.40 owed for overtime. In total, they would be owed: (1) \$1,200 for working 60 hours at \$20 per hour; (2) \$500 for the production bonus; and, (3) \$283,40 for overtime. The total would be \$1,983.40.

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

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Robert Lockwood is an FDCC Defense Counsel Member and a Partner with Wilmer & Lee in Huntsville, AL. Contact him at: [lockwood@wilmerlee.com](mailto:lockwood@wilmerlee.com).

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## #5 New Podcast Episode Released



**Valerie Kellner**



**Micalann Pepe**



Please Click the "Play" Button to hear the Podcast

In this week's FedSpeaks podcast episode, FDCC Defense Counsel [Valerie Kellner](#) of Wilson Elser chats with [Micalann Pepe](#) of Jarburg Wilk.

Learn about:

- How Micalann starts each day with an Iced Coffee!

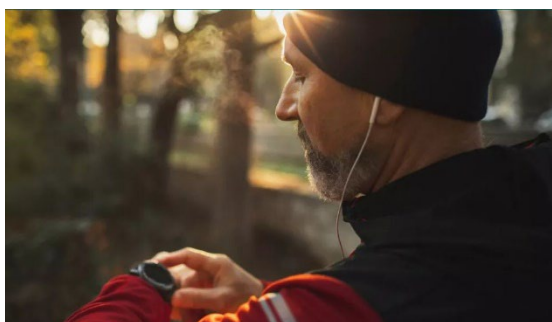
- Her secret on how not to get distracted by emails;
- Balancing her children, Charlotte (11), Jameson (8) and Theo (5) with her family and firm responsibilities; and
- The ever elusive goal of "perfection" in parenting

Stream the Podcast directly from your phone or mobile device; or you can also go to the FedNOW App (click on the "... " in the bottom right hand corner of the App's home page); or grab it on the FDCC website by clicking on the "Podcast's" tab at the top. You can also find the FDCC Podcast's on Apple iTunes, Spotify, Stitcher or wherever you get your Podcasts. Don't miss out on what 5,652 people have already discovered, by learning more about your Federation and the awesome people that comprise our membership!



## #5.1 Biocompatibility & Chemical Safety in Wearable Embedded Devices

By: Dr. Jessica Vargas & Dr. Naomi Clayman



Today's wearables, from smartwatches to sensors embedded in clothing or attached directly to the body, offer both users and physicians monitoring capabilities that could once only take place in a clinical setting.

While in the past people might have been prescribed a monitor or device or required to report to an office for observation, the ability to gather valuable health data continuously has expanded well beyond the treatment room. Vital information can now be gathered everywhere people live, eat, sleep, exercise, and travel. We are at a crossroads where boundaries are blurred between clinical settings and everyday life, and there are likely to be more manufacturers developing wearables that are adaptable to both settings.

While exciting, the [increasing technological capabilities](#) and [ubiquity of modern wearables](#) bring new safety challenges, particularly potential skin irritation and other biocompatibility issues that may result from prolonged user contact, as well as new regulatory considerations.

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

[Jessica Vargas, Ph.D.](#) is a Principal Scientist and [Naomi Clayman, Ph.D.](#) is a Managing Scientist at our Platinum Sponsor [Exponent](#).



## #5.2 The Passing of Andrew McCord Gilchrist



We are saddened to report on the passing of long-time FDCC Corporate Counsel Andrew McCord Gilchrist of ExxonMobil. He was 56 years young. Andy's courageous battle with cancer regrettably ended on April 21, 2023. He was an active member of the FDCC from 2007 - 2019.

For those who knew him, Andy will be remembered as a superstar on the basketball court as well as in the courthouse. He worked at local litigation boutique firms in Houston,

TX, and earned his Board Certification in Personal Injury Trial Law. In 2000, he started as Counsel in the Torts Litigation section of ExxonMobil. He loyally spent the next 22 years of his life at Exxon, and served most recently as General Counsel of ExxonMobil Risk Management, Inc. He would be the first to say that the people he met during his tenure at the FDCC and ExxonMobil were not just colleagues, but dear, life-long friends and mentors. Aside from his professional life, Andy belonged to many communities, including St. John

the Divine Episcopal Church, Houston Country Club, Boot Ranch Golf Club, and Garwood Lease.

Andy is survived by his loving wife, Laura, and his two daughters, Mackie and Ellie, and other family members. We will miss his active presence within the Federation and join with his many friends and colleagues in sending our heartfelt sympathies to Laura and the family.

Memorial gifts should be directed to **Halo House** which provides affordable housing for patients battling leukemia, lymphoma, and myeloma without close proximity to home.

## #5.2 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:

- **May 8, 2023 at 2:00PM ET / 11:00AM PT: Corporate Counsel Roundtable:** "Speaking the Language of Your CFO: Building a Business Case as a Legal Leader Corporate Counsel Virtual Meeting." For Corporate Counsel and their guests only. Hosted by FDCC Corporate Counsel [Marisa Trasatti](#). [Click Here to Register.](#)
- **May 11, 2023 at 4:00PM: FedMEETS/Oregon!** Please join us for some fellowship and drinks at the offices of Gillaspay Rhode Faddis

& Benn at 4380 S Macadam Ave. Ste. 590, Portland. **RSVP to [Vicki Smith](#) or [Liz Rhode](#).**

- **May 17, 2023 at 2:00PM ET / 11:00AM PT: Roundtable for In-House Insurance Members.** [Click Here to Register.](#)
- **June 14, 2023 at 1:00PM ET - FDCC Law Practice Management Town Hall Meeting: "Strategic Planning: process, purpose & goals."** Join Moderator Jody Briandi and her guests: John Trimble; Steve Embry & Frank Ramos. [Click here to register.](#)
- **July 23 - 28, 2023: FDCC's Annual Meeting at The Broadmoor Resort & Hotel** in Colorado Springs, CO. Convention Chair: [Casey Stansbury](#). Program Chair: [Marisa Trasatti](#). Registration coming soon.
- **October 22 - 24, 2023: FDCC's Corporate Counsel Symposium** 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](#)

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**...and finally...  
Have a Nice Day  
Mark F. DiGiovanni !**



Mark DiGiovanni is the Vice President of Litigation Management for **Global Indemnity Group**, a provider of specialty insurance and reinsurance products and services. He has been a valued Corporate Counsel member since 2014.

Mark oversees the management and supervision of Company litigation, including the coordination and retention of panel counsel both nationally and internationally. Prior to joining Global Indemnity, Mark served as claims counsel at Travelers

Insurance Company in the Defense Litigation Group, where he managed high exposure litigation in Eastern Pennsylvania and the New England States.

Before his career in litigation management, Mark practiced insurance defense litigation in Pennsylvania and New Jersey for over twenty years, where he handled a wide variety of complex liability matters.

Sunday is Mark's birthday! Would you join with us in sending him a congratulatory email to:

[mdigiovanni@global-indemnity.com](mailto:mdigiovanni@global-indemnity.com)

Congratulations and Happy Birthday Mark.  
We wish you, Lisa and the family all the very best in the years to come!

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### **Why FDCC?**

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

FEDERATION OF DEFENSE & CORPORATE COUNSEL



**FDCC**

DEFENSE LAWYERS. DEFENSE LEADERS.



**KEEP  
CALM  
AND  
DEFEND  
ON**

**Be Exceptional Today!**