



February 2011



## APPELLATE SECTION NEWSLETTER

### INDIAN WELLS UPDATE

#### **WINTER MEETING 2011 -- FACES OF THE DESERT February 26 - March 5, 2011 Indian Wells, California**

I hope everyone is registered to attend the Winter 2011 meeting -- Faces of the Desert -- in Indian Wells, California.

Plan to arrive early and attend the Substantive Law Section Meeting on Tuesday, **March 1, 2011, at 7:30 a.m.** The Appellate, MET Commercial, Corporate Counsel & Financial Institutions will present:

#### **ALTERNATIVE FEE ARRANGEMENTS: WILL THE RECESSION COMPEL A MOVE FROM THE BILLABLE HOUR?**

Speakers will be: Linda S. Woolf, Goodell DeVries Leech & Dann, LLP, Baltimore, MD

Mike McMyne, Burlington Insurance Group, Hartford, CT

John P. Scott, Jr., Starnes Davis Florie LLP, Birmingham, AL

Allison O. Van Laningham, Smith Moore Leatherwood LLP, Greensboro, NC

Stacy A. Broman, Meagher & Geer, P.L.L.P., Minneapolis, MN, Moderator



The program will focus on the following topics:

- Characteristics of Successful Alternative Fee Models and Their Keys to Success
- Potential Limitations on Various Alternative Fee Models
- A Discussion of the Pfizer Legal Alliance
- The Perspective of the Law Firm and the Law Firm Experience with Alternative Fee Models
- The Perspective of Corporate Counsel and Experiences with Alternative Fee Models
- Ethical Considerations in the Implementation of an Alternative Fee Plan (Fulfill your ethics CLE requirements!).

Please join us Tuesday morning, March 1, 2011, at 7:30 for an informative program on the topic of alternative fee arrangements.

Of course, in addition to the Appellate Section's Substantive Law Section Meeting, the rest of the program looks terrific as well.

We look forward to seeing you in Indian Wells.

Stacy A. Broman, Section Chair  
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## AMICUS COMMITTEE

Keep in mind that the FDCC has an Amicus Committee. Allison Van Laningham is our section's liaison to the Amicus Committee.

The FDCC will file an amicus brief in an appropriate case when approved by the Board. If you have a case in which amicus assistance is sought, please contact Allison Van Laningham at [allison.vanlaningham@smithmoorelaw.com](mailto:allison.vanlaningham@smithmoorelaw.com), (336) 378-5520, as soon as possible in the appellate process.

The Amicus Committee is here to help you. Please let us know if you have an appropriate case for amicus support.

## ANNUAL MEETING 2011

Colonial Williamsburg Resort  
Williamsburg, Virginia  
July 24-31, 2011

It's not too early to mark your calendars to attend the 75th Annual Meeting of the Federation at historic Williamsburg, Virginia July 24-31, 2011.

The Appellate Section is planning to team with several other sections to present a program regarding claims splitting -- "Splitting" Insurance Files Between Coverage and Liability Adjusters.

If you have ideas for future presentations, please email [sbroman@meagher.com](mailto:sbroman@meagher.com). It will soon be time to begin planning the Winter 2012 meeting at the Arizona Biltmore in Phoenix.

## FDCC LITIGATION MANAGEMENT COLLEGE

June 12-16, 2011: Emory University Atlanta

FDCC will sponsor the 17th Annual Litigation Management College and the Eighth Annual Litigation Management College Graduate Program at the Emory University Atlanta, Sunday, June 12 to Thursday, June 16, 2011.

Registration is now open on the FDCC website.

## FDCC LEADERSHIP INSTITUTE

July 25-27, 2011: Colonial Williamsburg Resort

The FDCC Leadership Institute will be held alongside the Annual Meeting in historical Williamsburg July 25-27, 2011. Institute attendees participate in 360° leadership assessment, intensive breakout sessions, examine real-life problems and develop practical and effective leadership strategies. Discounted rates are available due to the efficiencies from partnering with the Annual Meeting. Newer members and FDCC members who bring another participant will receive reduced tuition.

## CASE LAW UPDATE

### Arizona Court Restricts Use of *Morris* Agreements

Under Arizona law, an insured that is defended by an insurance company under a “reservation of rights,” may enter into a confessed judgment with the claimant and potentially not violate the insurance policy’s cooperation clause. Such agreements, referred to as *Morris* agreements, include (in addition to a confessed judgment) the insured assigning its policy rights to the claimant in exchange for a covenant to not execute the judgment against the insured’s personal assets. Arizona Courts have recognized the right of an insured to enter into such agreements when a carrier states that it may not indemnify the insured for all or a part of the eventual judgment. *United Services Automobile Ass’n v. Morris*, 154 Ariz. 113, 741 P.2d 246 91987).

In *Leflet v. Redwood Fire & Cas. Ins. Co.*, CA-CV 09-0663 (Ariz. Ct. App., 1st Division, January 20, 2011), the Arizona Court of Appeals held that *Morris* did not extend to agreements that included one insurance company “setting up” other carriers who are not participating in a mutual insured’s defense or indemnity. *Leflet* was a construction defect case. The putative insured, Hancock Communities, was defended by its own carrier, and sought additional insured coverage from several other carriers. A dispute arose over defense and indemnity allocations between Hancock’s own primary carrier, and the additional insurers, referred to in the agreement as the “Non-Participating Insurers.” To resolve the case, Hancock’s carrier paid a fraction of its policy limit, and entered into an \$8.4 million *Morris* agreement along with its insured and the claimant.

While the court reaffirmed the rule that a carrier must first have notice of a *Morris* agreement to be bound by its terms, the court clarified that notice means actual and meaningful notice, and not just constructive notice that the parties are contemplating a *Morris* agreement. Further, notice of the *Morris* agreement must include terms sufficient to cause the agreement, if entered into, to be binding and enforceable. Notice of a potential *Morris* agreement which fails to include terms necessary to make it binding upon the parties, is not proper notice of a *Morris* agreement.

More importantly was the court’s holding that a *Morris* agreement which benefits one carrier against another is not a *Morris* agreement at all. The rationale behind the *Morris* case was not to allow one carrier to avoid paying less than its limits and subject another carrier to a confessed judgment. The policy behind *Morris* was to remove the insured from the potentially crushing exposure of personal liability, and transfer the risk of coverage and collection of the judgment upon the claimant. As the court noted “an insurer that reserves its rights may not employ *Morris* to reduce its liability below policy limits, and an insured that facilitates such an effort breaches its duty to cooperate with its other insurers.” This is a significant case in that it restricts the application of *Morris* to only those circumstances contemplated by the court when the *Morris* case was decided.

Meagher & Geer, P.L.L.P.’s Scottsdale, Arizona office represented Transportation Insurance Company and Transcontinental Insurance Company and argued the case on appeal on behalf of all of the Appellants.

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## HONORS, AWARDS & VICTORIES

Please send us your honors, awards, and victories so that we can include them in our next newsletter. Please share your significant new decisions that may affect the practices of our section members. Please send your decisions to **Stacy Broman** at [sbroman@meagher.com](mailto:sbroman@meagher.com)

Would you like to write an article for *The Quarterly*? Our section is responsible for providing an article. If you have an article or an idea for an article, please contact **Stacy Broman** at [sbroman@meagher.com](mailto:sbroman@meagher.com)

## KNOW A POTENTIAL NEW MEMBER?

Our section is responsible for submitting the names of two potential new members each year. Do you know someone to recommend?

### *Member Profiles*

When is the last time you checked out the section page at [www.thefederation.org](http://www.thefederation.org)?

Is your member profile up to date?

Please take a look and if you have not sent **Susan Coone** ([scoone@thefederation.org](mailto:scoone@thefederation.org)) your updated member profile, please do so.

## UPCOMING EVENTS

- **February 26 - March 5, 2011**      **WINTER Meeting 2011**  
**Hyatt Grand Champions Resort and Spa**  
**Indian Wells, California**
- **June 12 - 16, 2011**      **FDCC Litigation Management College**  
**and Graduate Program**  
**Emory University**  
**Atlanta, Georgia**
- **July 24 - 31, 2011**      **ANNUAL Meeting 2011**  
**Colonial Williamsburg Resort**  
**Williamsburg, Virginia**
- **July 25 - 27, 2011**      **FDCC Leadership Institute**  
**Colonial Williamsburg Resort**  
**Williamsburg, Virginia**
- **March 3 - 10, 2012**      **WINTER Meeting 2012**  
**Waldorf Astoria Arizona Biltmore**  
**Phoenix, Arizona**
- **July 28 - August 4, 2012**      **ANNUAL Meeting 2012**  
**The Fairmont Chateau Whistler**  
**Whistler, British Columbia**
- **March 2 - 9, 2013**      **WINTER Meeting 2013**  
**The Westin La Cantera Resort**  
**San Antonio, Texas**
- **July 28 - August 4, 2013**      **ANNUAL Meeting 2013**  
**The Broadmoor**  
**Colorado Springs, Colorado**
- **TBA**      **WINTER Meeting 2014**
- **July 26 - August 2, 2014**      **ANNUAL Meeting 2014**  
**Silverado Resort**  
**Napa Valley, California**

February 2011



**SEE YOU IN INDIAN WELLS!**



**FDCC APPELLATE SECTION**

Stacy Broman, Chair



David Bell, Vice-Chair



Meloney Cargil Perry, Vice-Chair



Allison Van Laningham, Amicus Liason

