

February 2012



APPELLATE SECTION NEWSLETTER



PHOENIX UPDATE

WINTER MEETING 2012 -- LEGAL SPRING TRAINING March 3 - 10, 2012 Waldorf Astoria Arizona Biltmore

I hope everyone is registered to attend the Winter 2012 meeting --
Legal Spring Training: "Working on the Fundamentals."

The Appellate Section will be teaming with Extra-Contractual
Liability, Insurance Coverage, and Reinsurance/Excess/Surplus Lines
to present the following program:

MULTIPLE CLAIMANTS AND INSUFFICIENT LIMITS - CAN INSURERS LESSEN THEIR EXPOSURE TO BAD FAITH CLAIMS?



Speakers will be: John W. Weihmuller, Butler Pappus
Paul C. Garrison, Corporate Counsel, Infinity Insurance
Phillip Priore, McCormick & Priore
John Briggs, Claims Counsel, Scottsdale Insurance
Barbara O'Donnell, Zelle McDonough & Cohen, LLP

The program will focus on the thorny task of resolving claims when multiple claimants are
vying for insufficient policy limits. Bad faith implications of settling claims within sufficient
limits will be addressed. The panel will explore the conundrums insurer's face and share their
views regarding effective ways to minimize extra-contractual exposures.

Please plan to join us Tuesday morning from 7:30 - 8:45 a.m.

There are lots of fun and informative events in addition to this riveting discussion on
insufficient policy limits. Perhaps we will see you at a baseball game.

We look forward to seeing you at the historic Waldorf Astoria Arizona Biltmore.

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AMICUS COMMITTEE FILES AMICUS BRIEF IN WASHINGTON SUPREME COURT

The Amicus Committee filed a brief in support of the position taken by Farmers Insurance Exchange in *James Bird v. Best Plumbing Group, LLC*. The case is pending before the Washington Supreme Court.

The issue on appeal is whether Farmers was entitled to a jury trial at the reasonableness hearing stage following a consent judgment. The FDCC argued that *Bird* presents the question of the constitutional right of all defendants to have a jury determine whether the essential elements of a claim have been proven, including damages. If the Court of Appeals decision is affirmed, insurance companies in Washington will no longer have the right to a full jury trial as to liability and damages in an assigned third-party bad faith case. Rather, damages in an assigned third-party bad faith case will be effectively set by agreement between the plaintiff and the insured. If determined reasonable, the stipulated amount will become the presumptive amount of damages that can be sought from the insurer in a subsequent bad faith action.

The FDCC argued that insurers in Washington should enjoy the same constitutional rights as all of the litigants. They should not be expected to write insurance in Washington without the right to ask a jury to determine the damages that plaintiffs can seek in bad faith cases. Moreover, they should not be burdened with having to intervene, usually on short notice, in expedited reasonableness proceedings in order to have any say at all in the determination of damages. The FDCC urged the Court to reverse the Court of Appeals and confirm that the constitutional right to a jury trial belongs to all citizens of Washington -- including insurers.

The brief was filed by Diane Polscer of Gordon & Polscer on behalf of the FDCC.

A link to the FDCC's brief in *Bird* may be found here: [Amicus Brief](#)

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, (336) 378-5520, as soon as possible in the appellate process.

ARE YOU READY FOR BASEBALL?

The theme of the Winter 2012 Meeting is baseball - "Legal Spring Training: Working on the Fundamentals."

The Phoenix area plays host to spring training for 15 major league baseball teams. There will be at least 3-5 major league spring training games a day while we are in town. Schedules are available at www.cactusleague.com.

To get you in the baseball spirit . . . try your hand at these major league baseball trivia questions:

Q: What song do baseball fans break into when Mitch Williams steps out of the bullpen?

A: Wild Thing

Q: Whose 1996 single to center, in his first regular season at-bat, was the first hit by a Red Sox pitcher in 24 years?

A: Roger Clemens

Q: Who was the American League base-stealing champ for nine years in the 1980s?

A: Rickey Henderson

Q: Who was the winningest active major league baseball manager before he retired in 1996?

A: Tommy Lasorda

Q: What former Negro League player is the only pitcher in the Hall of Fame with a losing major league record?

A: Satchel Page

Q: Who was the only pitcher to lead the National League in strikeouts three times during the 1980s?

A: Steve Carlton

Q: What clan consisting of Ray, Bob and Bret became the first three-generation family to play major league baseball?

A: The Boone Family

Q: Who set a major league record for the fewest errors by a shortstop, with three in 1990?

A: Cal Ripkin, Jr.

Q: Who was the only major leaguer to play at least 500 games with each of four teams - Houston, Montréal, New York and Detroit?

A: Rusty Staub

ARE YOU READY FOR BASEBALL? (CONT'D)

- Q: Which two cities have ballparks honoring Number 44 above the outfield fence?
A: Atlanta and Milwaukee
- Q: Who returned from a stint in Japan to pound 51 home runs in 1990?
A: Cecil Fielder
- Q: Who was the only baseballer to lay over 500 games at each of five different positions?
A: Pete Rose
- Q: What former Yankee southpaw explained how to doctor a baseball in the 1977 article "Confessions of a Gunkball Artist"?
A: Whitey Ford
- Q: Who has the most wins in Dodgers history-- Don Drysdale, Sandy Koufax or Don Sutton?
A: Don Sutton
- Q: Who led the National League in ERA in each of his last five seasons, ending in 1966?
A: Sandy Koufax
- Q: What two Yankees were nearly traded to Milwaukee for pitcher Warren Spahn and slugger Hank Aaron in 1960?
A: Whitey Ford and Mickey Mantle
- Q: What late, great Dodgers pitcher was known to fans as "Double D"?
A: Don Drysdale
- Q: What pitch does a batter face when Dwight Gooden throws his "yacker"?
A: A curve ball.
- Q: What 50-year old minor league pitcher did 57,000 fans crowd the Orange Bowl to watch in 1956?
A: Satchel Page
- Q: What Nicaraguan-born baseballer was known as "Arriba!" to adoring Latin fans?
A: Roberto Clemente
- Q: What commissioner of baseball was named after a Civil War battle fought in Georgia?
A: Kenesaw Mountain Landis
- Q: What homer hitter is known as "The Big Hurt"?
A: Frank Thomas

ARE YOU READY FOR BASEBALL? (CONT'D)

Q: Who was the last graduate of the Negro Leagues to retire from major league baseball?

A: Hank Aaron

Q: What 1995 World Series teams were both picketed by the American Indian Movement?

A: The Atlanta Braves and Cleveland Indians

Q: How many home run titles did Roger Maris win?

A: One.

Q: What catcher replaced Mel Allen as TV announcer for the Yankees in 1964?

A: Joe Garagiola

Q: What two players are tied for second behind Ty Cobb in total career runs?

A: Hank Aaron and Babe Ruth

The Arizona Diamondbacks pitchers and catchers reported February 19 with their first full workout February 25. View schedules at www.springtrainingonline.com.

Finally, to get you in the baseball spirit, here is view of the Minnesota Twins Target Field from my Minneapolis office.



February 2012

ANNUAL MEETING 2012

The Fairmont Chateau Whistler
Whistler, British Columbia, Canada
July 28 - August 4, 2012

It's not too early to mark your calendars to attend the 76th Annual Meeting of the Federation at The Fairmont Chateau Whistler - Whistler, British Columbia, Canada.

The phone number for the hotel is (604) 938-8000 or (800) 606-8244. The hotel's web address is www.fairmont.com/whistler.

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

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?

OTHER UPCOMING EVENTS

- **June 10 - 14, 2012**
**FDCC Litigation Management College
and Graduate Program
Emory University
Atlanta, Georgia**
- **July 28 - August 4, 2012**
**ANNUAL Meeting 2012
The Fairmont Chateau Whistler
Whistler, British Columbia, Canada**
- **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 2012



SEE YOU IN PHOENIX!

FDCC APPELLATE SECTION

Stacy Broman, Chair



David Bell, Vice-Chair



Meloney Cargil Perry, Vice-Chair



Allison Van Laningham, Amicus Liason

