

Dear Appellate Section Members:

Happy New Year! Can you believe it is 2014 and our Winter meeting is just around the corner?

[Marco Island, Florida from March 2-8, 2014](#)

As you know from the numerous emails you have received recently, we have the upcoming Winter Meeting in Marco Island, Florida from March 2-8, 2014. Registration is now open for the meeting and you should have received your hard copy brochure in the mail as well.

You may have already seen in the brochure that our section is joining with the Extra-Contractual Liability and Professional Liability sections in the program on Wednesday, March 5, 2014 at 7:30 a.m. The program is entitled, "Handle with Care: Bad Faith in the Absence of Coverage." April Elkovitch from Meadowbrook Insurance Group will be the featured industry member along with fellow FDCC members Frank Gassler and David Godwin.

[Annual Meeting at Greenbrier in West Virginia from July 27 - August 2, 2014](#)

The Annual Meeting is at the Greenbrier in West Virginia from July 27 - August 2, 2014. We will be presenting our own program on Supreme Court Practice. FDCC member Joseph Babington along with Wylan Ackerman and myself will share our Supreme Court experiences in a panel, which will be open for questions and discussion. If any of you have been involved in a case that went to the U.S. Supreme Court please let me know. I have already reached out to several of you. We would love to share your experiences during our panel discussion.

[New Section Members:](#)

We added 11 new members this year. Some are longtime members of the FDCC and others are brand new to the organization. Below is a list of our entire Section so we know who we are:

Chair	<u>Perry, Meloney Cargil</u>	Perry Law P.C.	Dallas	TX
Vice Chair	<u>Ackerman, Wylan M.</u>	Robinson & Cole LLP	Hartford	CT
Board Liaison	<u>Celebrezze, Bruce D.</u>	Sedgwick LLP	San Francisco	CA
Member	<u>Alverson, J. Bruce</u>	Alverson Taylor Mortensen & Sanders	Las Vegas	NV
Member	<u>Bauer, Beth A.</u>	HeplerBroom LLC	Edwardsville	IL
Member	<u>Bell, David M.</u>	David Bell & Associates, PLLC	Phoenix	AZ
Member	<u>Broman, Stacy A.</u>	Meagher & Geer PLLP	Minneapolis	MN
Member	<u>Crowell, John W.</u>	Crowell Gillis & Cooper PLLC	Columbus	MS
Member	<u>Del Carpio, Carlos E.</u>	Carroll McNulty Kull LLC	Chicago	IL
Member	<u>Drury Jr., William W.</u>	Renaud Cook Drury Mesaros, PA	Phoenix	AZ
Member	<u>Farrar, Steven E.</u>	Smith Moore Leatherwood LLP	Greenville	SC
Member	<u>Feldman, Stephen D.</u>	Ellis & Winters LLP	Raleigh	NC
Member	<u>Foggan, Laura</u>	Wiley Rein LLP	Washington	DC
Member	<u>Gallivan, H. Mills</u>	Gallivan, White & Boyd, PA	Greenville	SC

Member	Gulotta , James C.	Stone Pigman Walther Wittmann LLC	New Orleans	LA
Member	Henderson , Robert A.	Polsinelli PC	Kansas City	MO
Member	Kingman , Dale L.	Gordon Tilden Thomas & Cordell	Seattle	WA
Member	Lawler , Jean M.	Murchison & Cumming, LLP	Los Angeles	CA
Member	Lilling , Caryn	Mauro Lilling Naparty LLP	Woodbury	NY
Member	Margulis , Andrew L.	Ropers Majeski Kohn & Bentley P.C.	New York	NY
Member	Merten , Howard A.	Partridge, Snow & Hahn	Providence	RI
Member	Miller II, Donald L.	Quintairos, Prieto, Wood & Boyer, P.A.	Louisville	KY
Member	Miller , Thomas P.	Christie Law Group, PLLC	Seattle	WA
Member	Mouledoux , Rene J.	ExxonMobil Law	Houston	TX
Member	Oelschlaeger , Douglas R.	Shuttleworth & Ingersoll, PLC	Cedar Rapids	IA
Member	Quinn , John E	Manier & Herod	Nashville	TN
Member	Roberts , Todd A.	Ropers, Majeski, Kohn Bentley	Redwood City	CA
Member	Ross , Marshall H.	Wharton Aldhizer & Weaver, PLC	Harrisonburg	VA
Member	Scott , John W.	Scott Dukes & Geisler, P.C.	Birmingham	AL
Member	Siebert , Dawn R.	The Travelers Companies Inc.	Charlotte	NC
Member	Spotswood , Robert K.	Spotswood Sansom & Sansbury LLC	Birmingham	AL
Member	Varner , Debra Tedeschi	McNeer Highland McMunn Varner LC	Clarksburg	WV
Member	Walker, IV , J. Tracy	McGuireWoods LLP	Richmond	VA
Member	Zarillo Jr., Anthony J.	Bevan, Mosca, Giuditta & Zarillo, P.C.	Basking Ridge	NJ

FDCC prospects:

This year our section nominated Meg Weist from EMC Insurance. If you know Meg, please call and let her know how much we would enjoy having her in the FDCC. She and I have presented together before conferences and she is a wonderful person. If you have anyone in mind to join the FDCC, please let Mary Nell know so she can send out the appropriate paperwork.

Legal Hot Case:

As reported in the hot cases on 1/3/2014: This case concerns an appeal of a motion for summary judgment. Takeaway: Expert testimony including some facts while omitting others goes to the “accuracy of the conclusions, not to the reliability of the testimony. Case reversed and remanded.

FOOD LION, LLC V. DEAN FOODS COMPANY

U.S. Court of Appeals for the Sixth Circuit

In an appeal from the U.S. District Court for the Eastern District of Tennessee at Greeneville, Dean Foods

Company and Suiza Foods Corporation were accused of violating 15 U.S.C. § 1 of the Sherman Antitrust Act by conspiring with a raw milk supplier/milk processor and the purchaser of the divested processing facilities to divide markets and restrict output. The district court granted summary judgment for Defendants, ruling that Plaintiffs could not provide sufficient proof of injury, nor could they establish the relevant antitrust geographic market, primarily because their expert's testimony was excluded because he formed his opinion concerning geographic market by using an unreliable method. The Sixth Circuit Court reversed and remanded the case. Relevant discussions regarding the admissibility of the expert testimony begins at page 14 of the opinion. The Court reviewed the district court's decision to exclude the expert under the abuse of discretion standard required by *Daubert v. Merrell Dow Pharm., Inc.* The Court found that the district court should not have excluded the expert's testimony because 1) the district court's reasoning in its decision to exclude the testimony rests on an incomplete review of the facts and the application of incorrect legal standards, 2) the requirement that an expert base his findings on facts in the record is a proper legal proposition, but it was misapplied—expert reports must be based on proper facts, but each of those facts does not have to occupy an independent part of the record for an expert to be able to use them when crafting an opinion, and 3) lack of reliance on evidence in the record was combined with criticism that “commercial realities” were not considered, but the expert did not completely ignore commercial realities—including some facts while omitting others goes to the “accuracy of the conclusions, not to the reliability of the testimony.”

If any of you have any cases or other materials you would like to distribute to our Section, please email me.

Have a wonderful week.

Meloney Perry