

## SUMMER 2014

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### SECTION OFFICERS

- Michael K. Kiernan, Chair
- W. Douglas Berry, Vice Chair
- Rick L. Hammond, Vice Chair
- W. Neil Rambin, Vice Chair
- Phillip E. Reeves, Vice Chair
- Gregory P. Varga, Vice Chair

### QUICK LINKS

- FDCC Website
- Membership Directory
- FDCC Publications
- Resources

### UPCOMING EVENTS

- 7/27/2014: 2014 Annual Meeting at The Greenbrier
- 9/17/2014: Corporate Counsel Symposium at Arizona Biltmore

## Message from the Vice Chair



I hope that you all are doing well and looking forward to our Annual Meeting at the Greenbrier in beautiful White Sulphur Springs, West Virginia next week. We will be presenting on “Recent Assaults on the Most Sacred Privilege of All: Does the Attorney-Client Privilege Still Exist?” Please support Mike Kiernan and our section by attending this presentation on Wednesday, July 30th beginning at 7:30 a.m.

As you are more than likely aware, it has been some time since we have circulated a Property Insurance Section Newsletter. We recently agreed to take on the task of preparing our newsletters and have admittedly fallen down on the job. Please accept my sincere apology. Moving forward, we promise to keep the newsletter current and up to the standards of this section.

We look forward to seeing you at the Greenbrier on July 27th.

Best regards,

**Phillip E. Reeves**

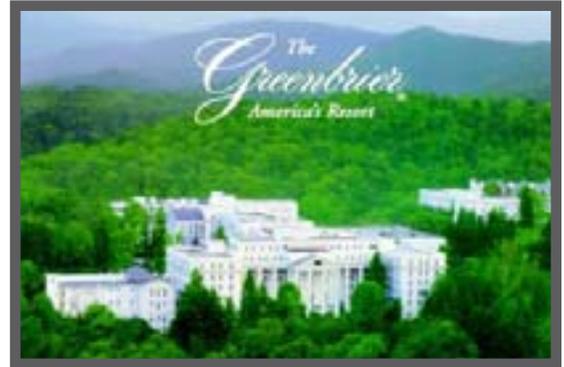
## News & Notes

### **The Greenbrier: White Sulphur Springs, West Virginia July 27-August 2, 2014**

Our Annual Meeting will be held at the Greenbrier. Convention Chairs Leslie and Tom Packer, and Program Chair, Michael Scott, have worked hard to create a fantastic conference.

The Greenbrier is one of the most spectacular meeting venues in the United States. Surrounded by the wondrous Allegheny Mountains, a national landmark, The Greenbrier has hosted distinguished guests and delighted families from around the world since 1778. The resort features classic architecture, unmatched service, numerous outdoor activities, championship golf courses, the world's only Forbes Five-Star mineral spa, award-winning cuisine, and in a surprise development, the New Orleans Saints will be holding their training camp at the Greenbrier. Enjoy a tour of a Cold War-era secret bunker, sporting clays, the newly added casino, tours of nearby Lewisburg, and much more.

The CLE Program is entitled THRIVE! Driving Success Through People, Culture, and Relationships. On Tuesday, the program begins with a comprehensive study of the 21st Century Practice of Law. The study searches for the answers of the ever expanding problems facing law schools, law firms and the corporate world in the 21st Century. Plenary Programs take place Wednesday and Thursday and will include a serious discussion on depression and substance abuse in the legal profession as well as important topics such as creating greatness in a law firm and the nightmares that may arise when managing a law firm. The keynote speaker for the conference is Robert Edsel,



author of the book and now motion picture *Monuments Men: Allied Heroes, Nazi Thieves and the Greatest Treasure Hunt in History*. He will speak on Friday sharing the epic story of the Monuments Men and how they saved the world's greatest art and cultural treasures from Nazi Germany for the benefit of civilization.



### **Corporate Counsel Symposium**

**Defending the Company: Forecasting, Managing and Responding to the Latest Legal Threats**

**Arizona Biltmore – Phoenix, Arizona**

**September 17-19, 2014**

The 11th Annual Corporate Counsel Symposium will be held at the Arizona Biltmore in September. Some of the nation's most experienced corporate counsel, consultants, and outside counsel will present practical tools to help corporate counsel defend the company, forecast, manage, and respond to the latest legal threats. Attendees will have the opportunity to network with the best and brightest in-house and outside counsel, participate in the interactive Corporate Counsel Roundtable, and dine at some of the finest restaurants in Phoenix. See the FDCC website for more information.



### **Save the Date – 2015 Winter Meeting**

**Waldorf Astoria, El Conquistador - San Juan, Puerto Rico**

**February 28 - March 7, 2015**

The Winter Meeting will be held at the Waldorf Astoria, El Conquistador in Puerto Rico in early March. Convention Chairs Walter and Elaine Dukes and Program Chair Mike Glascott are planning a great meeting at the spectacular venue. More information is provided in the spring edition of the Federation Flyer, which you should have received in the mail. It is also posted at the FDCC website.



### Articles Needed for the *Quarterly*

As most of you know, each Section is required to submit an article each year to the *Quarterly*. Our deadline to submit an article this year is **November 30, 2014**. If you have a scholarly article you would like to submit for publication, this is your opportunity to do so. Guidelines for publication are below:

1. The FEDERATION OF DEFENSE AND CORPORATE COUNSEL QUARTERLY (QUARTERLY) is published quarterly through the office of publication by the Federation of Defense & Corporate Counsel, Inc. (FDCC), 11812 North 56th Street, Tampa, FL 33617.
2. Manuscripts and correspondence relating to the submission of articles for possible publication in the QUARTERLY should be sent to the Editor-in-Chief, Susan M. Popik, 38 Woodhill Drive, Redwood City, CA 94061 or emailed to [smpopik@gmail.com](mailto:smpopik@gmail.com).
3. Electronic access to QUARTERLY articles from 1997 to present is provided by the FDCC at its Internet website, [www.thefederation.org](http://www.thefederation.org).
4. The QUARTERLY includes articles that are primarily of interest to corporate and insurance counsel and attorneys who advise, counsel, and represent defendants in civil litigation, arbitrations, and mediations.
5. Most articles published in the QUARTERLY are edited versions of papers that the author(s) wrote for a presentation at the FDCC's Annual Meeting, Winter Meeting, or other FDCC sponsored events. However, other scholarly works are welcome to be submitted. Manuscripts may be submitted directly to the Editor-in-Chief for consideration and possible publication in the QUARTERLY.
6. Regardless of the method used for submitting an article for possible inclusion in the QUARTERLY, at the time of submission the article should be of sufficient quality, both in terms of writing and legal scholarship, that the author considers it to be suitable for publication in a scholarly law journal. In most cases, this means the article should be written in a relatively formal tone and should include citations to legal authorities.
7. Authors are responsible for the accuracy of all statements made in their articles as well as for the accuracy and adequacy of citations. Authors are also responsible for obtaining any copyright permissions needed prior to publication of their articles unless use of another's work falls within Section 107 of the Copyright Act of 1976 (the "fair use" limitation).
8. Articles submitted for publication in the QUARTERLY must be the original work of the author(s). The Editor-in-Chief reserves the right to revoke a publication offer if it is discovered during the editing process that an article is not sufficiently original. Published articles may be retracted if their originality is called into question after publication occurs.
9. Most articles published in the QUARTERLY contain legal research. Articles based on an author's personal, practical experience as defense and/or corporate counsel are also published (and encouraged). All opinions contained in articles are those of the author(s) and do not necessarily reflect the opinions or views of the FDCC or its members. Nonetheless, biased or one-sided opinion pieces, articles that unfairly attack members of the bench or bar, or articles that appear to be advertisements will not be accepted. Manuscripts containing disclaimers are generally rejected and will only be considered for publication if an author is not a licensed attorney. General bibliographies are not appended to QUARTERLY articles.

## News & Notes *(continued)*

10. When a manuscript is accepted for publication, it is accepted with the understanding that the manuscript has not been previously published, in whole or part, except as a working paper. Once a manuscript is accepted by the QUARTERLY for publication, the manuscript may not be published elsewhere without the express permission of the Editor-in-Chief.

11. The editing process for the QUARTERLY is primarily performed to help authors effectively communicate their ideas. As part of this process, all citations are checked and quotations verified. Manuscripts are formatted in the QUARTERLY style and citations to authority are converted to footnotes in a style that conforms to the then current issue of *The Bluebook*. The manuscript may also be edited for grammar, punctuation, and clarity. Once the editing process for an article is completed, each author is given the opportunity to review the article and approve or suggest changes before the article is sent for layout. Articles will be published without final approval if the author does not respond within one week to a request for final approval of the article prior to publication.

12. If the FDCC participates in drafting a “white paper,” the unedited draft may be published in the QUARTERLY as an informational item.

13. Requests for reprints of QUARTERLY articles should be submitted to the Editor-in-Chief. Permission to reprint QUARTERLY articles is regularly granted; however, reprints must bear a legend on the first page indicating that permission to reprint has been granted by the QUARTERLY which reserves all rights to the article.

## Developments in the Law

### Sixth Circuit Holds Term “Obsolescence” in Definition of “Actual Cash Value” Does Not Include Market Value Decline

In prior newsletters and business section calls we have discussed ongoing state litigation, decisions and settlements reached between insurers and various states concerning the failure to search the Social Security Administrations Death Master File (“DMF”) with respect to the payment of death benefits. A recent First Circuit decision should be useful to insurers as they deal with ongoing state investigations and provide at least some assurance that the settlements they have reached won’t be used against them by third parties to obtain damages.

In *Feingold v. John Hancock Life Insurance Company*, No. 13-2151 (1st Cir.), decided May 27, 2014, the First Circuit affirmed the dismissal of a putative class action seeking damages allegedly arising out of Hancock’s adherence to contractual terms before paying death benefits as opposed to affirmatively searching the Social Security Administration’s Death Master File (“DMF”). Under the life insurance policy at issue, proof of death was required before death benefits were paid. The Court determined that the proof of death requirement complied with Illinois law and there was no statutory or common law requirement that Hancock search public records for policyholders’ names. Indeed, the Court noted that providing “notice of a claim is a ‘reasonable requirement in an insurance policy.’” *Id.* at 13, quoting *Am. Country Ins. Co. v. Bruhn*, 682 N.E.2d 366, 370 (Ill. App. Ct. 1997). Plaintiff asserted that because Hancock had entered into a Global Resolution Agreement (“GRA”) with 30 states regarding its handling of unclaimed property, which included the requirement that Hancock search the DMF, it breached the GRA by not doing so with respect to his claim. Essentially, he argued that he was a third party beneficiary of the GRA. The First Circuit rejected this argument, holding that at most, Plaintiff was an incidental beneficiary of the GRA and had no basis to enforce the contract “absent clear intent to the contrary.” [Click here for a copy of the decision.](#)