

# FDCC E-Newsletter

DEFENSE LAWYERS. DEFENSE LEADERS.

News from and about your fellow members and friends.

February 2017

## Construction Section

### Quote of The Month

**“Success is not final, failure is not fatal: it is the courage to continue that counts.”**  
— Winston S. Churchill

### Featured Member



Kevin Faley, Vice-Chair of the Construction Section, is a graduate of Colgate University '79 and was captain of the basketball team. He graduated with a BA in English and attended St John's University School of Law. After graduating in 1983, he was an Assistant District Attorney for The Nassau County District Attorney's Office and began working for Morris, Duffy, Alonso & Faley in 1987. He became a partner in 1993 and a name partner the following year. He specializes in construction and professional liability claims and large and complex general liability cases. Morris Duffy Alonso & Faley is a 42 attorney firm located in downtown Manhattan.

### Upcoming Events

At the Winter Meeting in Charleston, SC, the Construction Section will meet on March 9, 2017 from 7:30 to 8:30. With Marc Harwell moderating the discussion, Robert Moore will discuss *“What lies beneath – beware the meaning and implications of ‘incorporation by reference’ of other documents in construction and related contracts.”* The Professional Liability Section will meet with us.

We expect to explore the legal ramifications of “incorporation by reference” clauses in construction contracts and the problems that arise when the ultimate solution to a problem is in a document referred to or incorporated but often times inconsistent in content and/or scope with the top contract.

During the week of July 23 – 29, 2017 at the Fairmont Le Montreux Palace, Derek Lick, Matt Cairns, and Robert Moore will address *“Contractual Risk Transfer – The Changing World of Indemnification and Insurance in Construction Contracts and Litigation.”*

Wouldn’t it be nice if others would contractually agree to take responsibility for your errors? The panel will first discuss how general contractors attempt to transfer risk to subcontractors

and require subcontractors provide them with insurance coverage. Then they will focus on how some states have begun to prohibit or limit such requirements either through legislative action or as the result of case law. These risk-transfer provisions can have a significant impact on our clients, as they can require indemnification for all risk and liability, sometimes regardless of fault. Similarly, the insurance coverage provisions can require a subcontractor to obtain insurance for the general contractor for the general contractor's own fault – sometimes in an attempt to circumvent anti-risk-shifting law. The panel is expected to highlight the changing landscape of risk shifting so that FDCC members can quickly assess the impact and enforceability of such provisions.

Please plan to attend.

### ***News and Noteworthy***

Please send to Marc Harwell at [marc.harwell@leitnerfirm.com](mailto:marc.harwell@leitnerfirm.com) notice of new noteworthy verdicts, settlements, decisions; awards, honors, or achievements; and articles for publication to the Construction Section.

### ***Blog Post***

Last month Robert Moore posted a blog that addresses several issues that you should consider in the context of "Incorporation by Reference." The blog is available for you to review through the FDCC website.

And each quarter, the Construction Section will continue to post an informative blog that provides practical advice and information that can only help you in your practice. If you have addressed through brief or otherwise a topic that is particularly relevant and insightful for the Construction Industry, please send to Marc for consideration.

### ***Membership***

If you know of an attorney who you think is worthy of the FDCC, please mention him or her to Marc, and he will assist with the admissions proposal process.

### **See you in Charleston!**