THE DEFENSE LINE

S.C. DEFENSE TRIAL ATTORNEYS' ASSOCIATION

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- 10-34: Rapid Response Truck Accident Investigation and Evidence Protection
- "Standing Your Ground" in Civil Actions

Another Successful PAC Golf Classic

SUMMER 2013

VOLUME 41

ISSUE 2

WWW.SCDTAA.COM

Annual Meeting
Westin Harbor Resort
Savannah, GA
November 7-10

Trial Academy
Spring 2014

Summer Meeting
Asheville, NC
July 24-26, 2014

President's Message

by Sterling G. Davies

State of the SCDTAA (with a large side of Thank You)

As I rapidly approach the best position in the SCDTAA (Immediate Past President), I am extremely pleased and proud to report that our organization remains as strong as ever. Your past, present and rising leaders have created the best state legal defense organization in America. As we look at our current and future Board members, we should have no doubt that the SCDTAA will only grow in strength and stature over future years.

Your Board of Directors and your Executive Director have worked so diligently over the past year that my experience as President has been both unbelievably rewarding and unexpectedly smooth. Your current Board consists of self-driven and hardworking members who have all accepted individual responsibilities and risen to each and every occasion; not only can you count on each of them doing all that is asked, but I can guarantee you they will go above and beyond the call of duty in every situation. Personally, I cannot thank them enough. As an organization, we certainly owe them a significant debt of gratitude.

All of our major events this year started with incredible Board member leadership, developed into unbelievable programming, and culminated with unparalleled execution and participation. From the Trial Academy to the Summer Meeting and Annual Meeting, our educational offerings were second to none. Additionally, the outstanding editions of *The DefenseLine* continue to gain statewide and even national attention and are the envy of every state legal defense organization. Our interaction with our sponsors reached new heights this year and the SCDTAA PAC is stronger than it has ever been. We've made significant strides over the past year in streamlining our organization's bylaws and making it easier for your Board to reach quick and informed decisions that help advance the SCDTAA. Over the past few years, the SCDTAA has enjoyed a burgeoning reputation at the State Capitol. The frequency with which our organization has been asked to comment on proposed legislation has grown significantly, and our input, both informally and at formal hearings, has been incredibly well received.

Additionally, our organization continues to offer its members more opportunities for personal interaction with state and federal judges and workers compensation commissioners than any other state legal defense organization in the country. This close connection to our judiciary amazes every other state group. We all owe tremendous thanks to our Justices, Judges and Commissioners for constantly supporting our group and regularly participating both from an educational and social standpoint in so many of our events. We can never thank our bench enough for the time they are willing to dedicate to our organization, and I personally feel this is the greatest benefit we offer our membership.

We all owe a special thanks to your current Executive Board—Curtis Ott, Ron Wray, William Brown and Molly Craig. Another huge thank you goes to our Executive Director, Aimee Hiers. As I often put in my emails to them, these ladies, gentlemen and even Curtis have made the past year not only successful and rewarding but extremely enjoyable. I hope you will take time to thank them as well as the other Board members at every opportunity.

As most of you know, I have been around this organization since I was a young boy; I think Molly Craig and I met each other at the Summer Meeting in 1976, and I know I was dragged to almost every one thereafter. I have unbelievable memories of seeing my father serve as President of the SCDTAA and then watching him receive the Hemphill Award. I will never forget presenting that same award to Steve Morrison, my first legal mentor. Most of all, I am extremely indebted to this organization for the lifelong friendships it has helped me form with so many of you reading this letter.

Thank you again for allowing me to serve on the Board for the past decade and for this special privilege of being the SCDTAA President for the past year. I look forward to seeing you all at every event in the future, and I am confident the rising leaders of the organization will greatly surpass the accomplishments of those who preceded them.

Thank You,

Letter From The Editors

by Breon C. M. Walker, J. Derham Cole, Jr.,
Walter H. Barefoot, and John C. Hawk IV

The Fall/Winter edition of *The DefenseLine* always serves as a look back at all the things the SCDTAA has accomplished over the course of the year and a look ahead at the exciting things to come! The fact that it usually comes out right around the time of our Annual Meeting is no coincidence; what better way to reinforce how great our organization is, and how talented our members are, than to read about all of our accomplishments, trial victories and legal updates in *The DefenseLine*, then spend three days with each other as we continue to learn together and fellowship? No wonder this is our favorite time of the year!

We hope that you have enjoyed reading *The DefenseLine* this year as much as we have enjoyed putting it together. The most rewarding part of being editors of this publication is that we actually learn during the process. We comb over every page to make sure the issue is up to your standards, and, in so doing, we become intimately familiar with the content; therefore, we learn—before our readers—about what's new in the General Assembly, the numerous achievements and honors bestowed upon our members, and the latest case updates and trial victories. At the end of the process, when the issue is ready for print, one thing always comes to mind: We look darn good on paper and even better in person!

Over the course of the year we have enjoyed hearing from you, be it words of support or suggestions for upcoming issues. Our members are not ones to hold their tongues; when we ask for feedback you always answer the call, which helps to make this one of the best statewide publications in the country. Please continue to provide feedback, as it helps us produce a quality publication that our members—and members of our judiciary—actually enjoy reading.

So, what should you expect from this issue? As usual, our members are making great strides and being honored both locally and nationally for their hard work. Did you miss the Summer Meeting? Don't worry, we will fill you in on what you missed. Are you interested in what is going on at the State House? You will be up-to-date on all the latest in the General Assembly. Did work commitments prevent you from participating in the PAC golf tournament? Our recap will make you feel like you were there. We will also take you up close and personal with U.S. Magistrate Judge Shiva Hodges and Circuit Court Judge William Seals, Jr. And, most importantly, we have the latest updates on case law that affects our members. This issue contains articles on everything from the most recent Jade Street opinion to how to properly respond to a commercial trucking accident scene. There is even an article on the hotly contested "Stand Your Ground" defense and its effect on civil cases. As you can see, this issue covers a wide array topics making it as diverse as the practice areas of our readers.

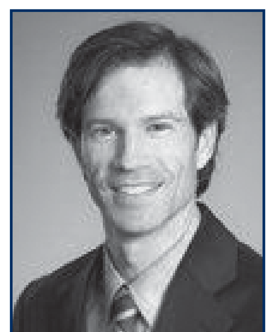
Since this is our final "Letter from the Editors" for the year, we hope you have had a productive 2013 and wish you even more success in 2014. We hope you enjoy this issue and take the time to relax and read it at your leisure. If you see something you like, tell us. If you see something you dislike, we want to know that, too. If you have an idea for an article or would like to be published, we welcome you with open arms! We want to continue to be a premiere civil defense publication and can only do that by giving our readers what they want. If you have a comment, suggestion or an idea for an upcoming issue, please do not hesitate to contact one of us, any member of our Board of Directors, or our Executive Director, Aimee Hiers.

As always…we love to hear from you!

Breon C. M. Walker

J. Derham Cole, Jr.

Walter H. Barefoot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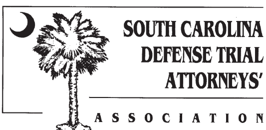

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Mary E. Sharp Selected for Riley Institute at Furman's Diversity Leaders Initiatives's 8th Class

Mary E. Sharp of Griffith, Sadler and Sharp, PA, is one of 44 leaders from across the Lowcountry and surrounding areas selected to participate in the 8th Lowcountry class of the Riley Institute at Furman's Diversity Leaders Initiative (DLI). "Our Fellows represent a wide range of professional, community and personal interests. They have very different experiences and perspectives and they work and live in very different settings, but they are all established community leaders and all share a desire to help move South Carolina forward," said Don Gordon, executive director of the Riley Institute.

Poised to join 1200 Riley Fellows from across the state, class members meet over the course of five months in a format driven by timely, relevant case studies and other experiential learning tools designed to maximize interactions and productive relationships among program participants. DLI is expertly facilitated by Juan Johnson, an independent consultant and former Coca-Cola Vice President. "The DLI provides a unique opportunity for a broad cross section of leaders to come together to build additional leadership skills, develop new relationships, and contribute to building better communities throughout South Carolina," said Johnson. As part of the program, leaders work in cross-sector groups to respond to real issues and opportunities in their communities through capstone service projects.

Participants reflecting South Carolina's demographics and representing the corporate, nonprofit, education, faith-based and government sectors are chosen by nomination and application. "The frames of reference and skills that DLI graduates share provide a remarkable platform for working together to help South Carolina compete in the 21st century," Gordon said.

143 Womble Carlyle Attorneys Named Best Lawyers in America

Womble Carlyle placed 143 attorneys on the 2014 Woodward/White Inc.'s The Best Lawyers in America rankings, a new record for the firm. In addition, 13 Womble Carlyle attorneys were identified as the top attorney in their specific practice area for their market.

Four Turner Padget Attorneys Named to Midlands Legal Elite

Turner Padget is pleased to announce that four Columbia attorneys have been recognized by their peers as members of the Greater Columbia Business Monthly's 2013 Legal Elite of the Midlands. Columbia Business Monthly invited Midlands attorneys who are members of the South Carolina Bar to nominate the top attorneys in 20 practice areas. From these nominations, the Legal Elite were selected for each practice area. J. David Johnson, IV, Charles F. Moore, Thomas C. Salane and Franklin G. Shuler, Jr. were selected by their peers as leaders in their respective practice areas.

Mr. Johnson, selected in the area of tax law, is a graduate of the University of South Carolina and the University of South Carolina School of Law. David practices in the areas of tax and estate planning, probate and trust administration and business valuations.

Mr. Moore, selected in the area of insurance law, is a graduate of the University of South Carolina and the University of South Carolina School of Law. Charlie has a general litigation practice with a concentration in civil litigation defense.

Mr. Shuler, selected in the area of labor and employment law, is a graduate of Georgia Institute of Technology and Samford University School of Law. Frank is a certified mediator and concentrates his practice in employment and labor law.

Mr. Salane, selected in the area of insurance law, graduated from the University of South Carolina and obtained his J. D. from the University of South Carolina School of Law. Thom concentrates his practice in complex insurance litigation, including class action claims, bad faith actions, governmental and regulatory administrative matters.

Elmore Goldsmith Named 2013 Go-To Law Firm

The law firm of Elmore Goldsmith has been recognized as a "Go-To Law Firm" for Contracts Litigation by the general counsel of the top 500 companies in the U.S., according to a survey conducted by ALM's Corporate Counsel magazine.

ALM formulates its "Go-To Law Firm" rankings by surveying General Counsel and gathering data from various sources, such as public records, key publications, and well-respected commercial databases, in order to determine who Fortune 500 companies turn to as their primary outside counsel.

Continued on next page

"We are honored to be recognized by our clients for our quality service." said Frank Elmore. "This distinction is a result of our firm's commitment to the delivery of excellent legal services."

Gallivan, White & Boyd Firm Adds Attorney Lisa C. McMillan

Gallivan, White & Boyd, P.A. is pleased to announce that Lisa C. McMillan has joined the firm's Greenville office as Of Counsel to the firm. McMillan joins GWB's Workplace Practices Group, where her practice will focus on workers' compensation defense, insurance carriers, self-insured corporations, third-party administrators, and claims servicing agencies. Lisa also has experience handling Social Security disability matters.

Lisa is a seasoned workers' compensation defense attorney who has been practicing in this area of the law since 2007. She has experience trying workers' compensation cases to conclusion and arguing appeals before the SC Workers' Compensation Commission. McMillan received her undergraduate degree, summa cum laude, in Art History and History from Wofford College as well as a Master's degree in History of Art from the University of Warwick in Coventry, England. She earned her Juris Doctor from the University of South Carolina School of Law. C. William McGee, the firm's managing shareholder, states, "The firm is delighted that Lisa has chosen to join the firm, where she began her practice. She is a professional and skilled attorney that will be a tremendous asset to our Workplace Practices Group."

Charles F. Turner, Jr. Named to Greenville's "Legal Elite"

Turner Padget is pleased to announce that Charles F. Turner, Jr. has been named to Greenville Business Magazine's "Legal Elite" for 2013. Mr. Turner is a shareholder in the Greenville office and is an experienced trial lawyer representing large corporations, small businesses and individuals. Greenville Business Magazine honored the Legal Elite with a reception on August 22 at High Cotton in Greenville. The Legal Elite awards are divided into categories and are voted on by attorneys across the state.

Dedicated to "Service above Self": Collins & Lacy attorneys Exemplify Commitment to Rotary

Two Collins & Lacy, P.C. attorneys have been honored by their respective Rotary Clubs. Founding partner Joel Collins is the 2013 Rotarian of the Year for the Rotary Club of Lake Murray – Irmo, and shareholder Scott Wallinger has been elected and sworn in as 2013 President of the Capital Rotary Club in Columbia.

Joel Collins was honored as Rotarian of the Year Award by the Lake Murray – Irmo Club for his commitment to upholding the Rotary motto "service above self." The pledge to service is channeled through five avenues: club service, vocational service, community service, international service, and new generations. Joel was a charter member of the Lake Murray – Irmo Club when it was founded in 1989 and has remained an active member.

"I believe no other organization in the world has had the impact as a cause for good more than Rotary. I am humbled to receive this award from such an honorable organization," said Collins.

Scott Wallinger began his term as the 2013 – 2014 President of Capital Rotary on July 1. The Capital Rotary Club was formed in 1987 and has 56 members. Scott has been an active member for 13 years and is looking forward to working alongside his fellow Rotarians to enhance and strengthen the club's many service projects.

Collins & Lacy, P.C. Moves its Greenville Office to Downtown

Downtown Greenville has been named one of "America's Best Downtowns" by Forbes, "One of the Top 10 Tastiest Towns in the South" by Southern Living, and "One of America's Most Fun, Affordable Cities" by Bloomberg Business Week. Now - Collins & Lacy is calling it home, as the statewide defense firm has moved its Greenville office to the heart of Downtown.

"The restaurants, boutiques, and other businesses that make Greenville such a great place to live and work are now our neighbors," said Collins & Lacy Managing Partner Mike Pitts. "We are proud to be part of the economic fabric of this great city."

Collins & Lacy has had a Greenville presence for the past five years but made the move to Downtown as part of its commitment to effectively and efficiently serve the needs of the Upstate community.

"Greenville is moving forward, and so are we. Collins & Lacy's move to Downtown places us in the center of the action. It strategically positions us to meet the needs of our current clients while enabling us to help new businesses in the area navigate the legal side of running a company," said Pitts.

Collins & Lacy's new Greenville address is 110 West North St., Suite 100, Greenville, SC 29601. In addition to Greenville, Collins & Lacy has offices in Columbia, Charleston and Myrtle Beach.

Gallivan, White & Boyd, P.A. Attorney Childs Cantey Thrasher Accepted into the Leadership Columbia Class of 2014

Gallivan, White & Boyd, P.A. is pleased to announce that attorney Childs Cantey Thrasher has been selected for the Leadership Columbia Class of 2014. Established in 1973 by the Greater Columbia Chamber of Commerce, the Leadership Columbia program provides existing and emerging leaders with opportunities to enhance their civic knowledge and network. The program will provide Thrasher with insight into community issues, leadership skills, opportunities for community involvement, and access to community leaders to discuss current

issues in Columbia.

Thrasher's law practice is based out of the firm's Columbia, South Carolina office. Her practice focuses on business and commercial litigation, and environmental law, including products liability, professional liability, internet law and ADA premises compliance. Thrasher also has experience practicing in state and federal courts. She is dedicated to the community through her involvement with the South Carolina Arts Foundation, Conservation Voters of South Carolina, and the Washington and Lee Palmetto Alumni Association.

Thrasher's dedication to her profession is just as impressive as her dedication to the community. Thrasher is a member of the SC Defense Trial Attorney Association, Richland County Bar Association, the South Carolina Bar's Environmental and Natural Resources Section and Young Lawyers Division, the American Bar Association Section of Environment as well as the Toxic Tort and Environmental Law Committee of the Defense Research Institute. Managing Shareholder C. William McGee stated, "Childs continues to rise as a leader in the Columbia community. We look forward to seeing the continued positive impacts of her hard work at the firm and in the community."

Clawson & Staubes Opens Columbia Office

Clawson & Staubes, LLC is pleased to announce the opening of a Columbia office. The office is conveniently located at 1612 Marion Street in the heart of downtown Columbia.

Established in 1975, Clawson & Staubes, LLC has grown from 3 attorneys and 1 office to 38 attorneys and 4 offices. With lawyers licensed in South Carolina, North Carolina, and Georgia, the firm is able to effectively provide coverage in a broad geographic footprint.

Clawson & Staubes' attorneys are experienced in many areas of practice including commercial and residential real estate, estate planning and probate, taxation, commercial law and bankruptcy, construction, corporate law, litigation, insurance defense, workers compensation, community associations, franchise law, mediation, and municipal law.

South Carolina Lawyers Weekly ranked Clawson & Staubes, LLC the 17th largest firm in the state, as well as number 1 in greatest growth between 2012 - 2013. Clawson & Staubes, LLC has also been recognized by US News – Best Lawyers® "Best Law Firm" 2013 edition with a Tier 1 ranking for its bankruptcy section.

Carlock, Copeland & Stair Attorneys Named to Best Lawyers

Carlock, Copeland & Stair congratulates the following attorneys on selection by their peers for inclusion in The Best Lawyers in America® 2014.

Our lawyers ranked in the 2014 edition are:

Kent T. Stair
Construction Law (Atlanta, GA; Charleston, SC)
Legal Malpractice Law (Atlanta, GA; Charleston, SC)
Best Lawyer® Since 2006

D. Gary Lovell, Jr.
Personal Injury Litigation (Atlanta, GA; Charleston, SC); Best Lawyer® Since 2013

R. Michael Ethridge
Insurance Law (Charleston, SC)
Litigation – Construction (Charleston, SC)
Best Lawyer® Since 2014

N. Keith Emge, Jr.
Professional Malpractice Law (Charleston, SC)
Best Lawyer® Since 2014

Elmore Goldsmith Firm and Attorneys Recognized in Best Lawyers in America; Elmore Named Greenville's Construction Lawyer of the Year

The law firm of Elmore Goldsmith is pleased to announce that the firm has been selected as a tier 1 firm in the Greenville metropolitan area for commercial litigation, construction law and construction litigation.

Three of the firm's attorneys have been selected by their peers for inclusion in The Best Lawyers in America 2014. Additionally, for the second consecutive year, Frank Elmore has been recognized as "Lawyer of the Year" for Greenville Litigation – Construction. The publication is the oldest and most respected peer-review publication in the legal profession.

The following Elmore Goldsmith attorneys are included in The Best Lawyers in America 2014, with (10) designating those who have been recognized for at least ten years:

Mason A. "Andy" Goldsmith (10): Commercial Litigation, Bet-the-Company Litigation, Litigation-Construction

L. Franklin "Frank" Elmore: Construction Law and Litigation – Construction

Mason A. "Andy" Goldsmith, Jr: Construction Law and Litigation – Construction

"The rankings we have received are an affirmation of our commitment to the delivery of excellent service to our clients," said Frank Elmore.

Best Lawyers is one of the oldest peer-review publications in the legal profession and is regarded by many as the definitive guide to legal excellence. Rankings are based on an exhaustive peer-review process in which attorneys from across the country provide feedback on the legal abilities of other lawyers in their respective practice areas.

Continued on next page

Twenty Gallivan, White & Boyd Attorneys Named to Best Lawyers in America

Gallivan, White & Boyd, P.A. is pleased to announce that 20 of its attorneys have been named to the 2014 edition of Best Lawyers in America, one of the most respected peer-reviewed publications in the legal profession. The attorneys are recognized for their leadership in 17 different categories.

W. Howard Boyd, Jr., Shareholder, Greenville, SC – Bet-the-Company Litigation, Commercial Litigation, Product Liability Litigation - Defendants

Deborah Casey Brown, Shareholder, Greenville, SC – Employment Law – Management, Workers' Compensation Law – Employers

A. Johnston Cox, Shareholder, Columbia, SC – Insurance Law

Gray T. Culbreath, Shareholder, Columbia, SC – Bet-the-Company Litigation, Commercial Litigation, Mass Tort Litigation/Class Actions - Defendants, and Product Liability Litigation – Defendants

Stephanie G. Flynn, Partner, Greenville, SC – Personal Injury Litigation – Defendants

H. Mills Gallivan, Shareholder, Greenville, SC – Arbitration, Mediation, Workers' Compensation Law – Employers

William R. Harbison, Partner, Columbia, SC – Workers' Compensation Law – Employers

Jennifer E. Johnsen, Shareholder, Greenville, SC – Commercial Litigation, Employee Benefits (ERISA) Law, Insurance Law

John T. Lay, Shareholder, Columbia, SC – Bet-the-Company Litigation, Commercial Litigation, Insurance Law, Mass Tort Litigation/Class Actions – Defendants, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants

C. Stuart Mauney, Shareholder, Greenville, SC – Mediation, Personal Injury Litigation – Defendants, Professional Malpractice Law – Defendants

C. William McGee, Managing Partner, Greenville, SC – Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants

Curtis L. Ott, Partner, Columbia, S.C. – Commercial Litigation, Product Liability Litigation - Defendants

Phillip E. Reeves, Shareholder, Greenville, SC – Insurance Law, Personal Injury Litigation – Defendants, Product Liability Litigation - Defendants

T. David Rheney, Shareholder, Greenville, SC – Insurance Law, Personal Injury Litigation – Defendants

Luanne C. Runge, Shareholder, Greenville, SC – Commercial Litigation, Legal Malpractice Law – Defendants

Gregory P. Sloan, Shareholder, Greenville, SC – Personal Injury Litigation – Defendants

Ronald G. Tate, Jr., Shareholder, Greenville, SC – Commercial Litigation

Thomas E. Vanderbloemen, Greenville, SC – Copyright Law, Litigation – Intellectual Property, Trademark Law

Daniel B. White, Shareholder, Greenville, SC – Commercial Litigation, Mass Tort Litigation / Class Actions – Defendants, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants, Railroad Law

Ronald K. Wray II, Shareholder, Greenville, S.C. – Commercial Litigation, Railroad Law

H. Mills Gallivan Re-elected As a Senior Director of Federation of Defense and Corporate Counsel

The law firm of Gallivan, White & Boyd, P.A. is pleased to announce that H. Mills Gallivan has been reelected as a Senior Director to the Board of the Federation of Defense & Corporate Counsel. The FDCC is an international organization composed of leaders in the legal community. FDCC membership is an honor, as members have been judged by their peers to have achieved professional distinction, and are committed to promoting knowledge, professionalism, fellowship and the cause of justice. Gallivan will serve a one year term as a Senior Director of FDCC, beginning this year.

Gallivan has spent 37 years serving clients, litigating claims, studying the "ins and outs" of workers' compensation cases, and managing GWB's Workers' Compensation practice. He is now focusing a major portion of his practice on mediation while continuing to be a significant influence on GWB's workers' compensation and administrative law practices. Gallivans' election to the position of Senior Director of the FDCC continues his role as a leader in the community and the legal profession. His long list of service includes:

Chairman of the Board of National Foundation for Judicial Excellence

Past President of National Foundation for Judicial Excellence

President of the South Carolina Defense Trial Attorneys' Association

President of the Upstate S.C. American Inn of Court,

Commissioner for City of Greenville Planning Commission

President of Rotary Club of Greenville Foundation.

Gallivan has previously received the Defense Research Institute Exceptional Performance Citation and was the 2010 recipient of the South Carolina Defense Trial Attorneys' Association's prestigious Robert Hemphill Award. He is perennially featured as one of the Best Lawyers in America and a South Carolina Super Lawyer. Managing Shareholder C. William McGee states, "Mills has been a leader with our profession for four decades. His continued leadership within the FDCC and other organizations will only continue to help the advancement of the practice of law."

Attorney Lindsay Anne Joyner Elected to the Columbia Museum of Art's Contemporaries Board of Directors

Gallivan, White & Boyd, P.A. is pleased to announce that Lindsay Anne Joyner has been elected to the Columbia Museum of Art's Contemporaries Board of Directors. The Contemporaries are an affiliate group of the Columbia Museum of Art established in 1994. The Contemporaries focus on engaging young professionals of the midlands in the arts. The organization currently has a membership of over 500 professionals. The Contemporaries mission is to provide an opportunity to support the museum through promoting the museum and its programs, diversifying the museum's membership, and leading the next generation of museum supporters.

Joyner began serving her two-year term on July 1, 2013. She will also be the 2014 incoming chair for the popular Fire & Ice Ball. Additionally, Joyner will serve on the Art Acquisition Committee.

Joyner practices law in GWB's Columbia, South Carolina office. Her practice focuses on the representation of corporate and individual clients in contractual disputes, business torts, shareholder disputes, and other complex litigation arising out of business transactions. Joyner is dedicated to serving her profession through her involvement with the iCivics Committees of the Young Lawyers Division of the South Carolina Bar and the Young Lawyers Division of the American Bar Association. Joyner also supports and serves the Columbia community beyond the arts through her involvement with the Junior League of Columbia and the Downtown Church.

Managing Shareholder C. William McGee stated, "Lindsay is one of our most promising young attorneys. She is a tremendous asset to the firm and I'm confident that she will continue to contribute to the Columbia community for many years to come."

Seven GWB Attorneys Recognized as Legal Elite by Greenville Business Magazine

The law firm of Gallivan, White & Boyd, P.A. is pleased to announce that seven of the firm's attorneys were recognized as being among Greenville's Legal Elite for 2013 by Greenville Business Magazine. GWB's Legal Elite include:

Todd R. Davidson – Corporate and Business

T. Cory Ezzell – Workers' Compensation

Paul D. Greene – Construction

W. Duffie Powers - Bankruptcy and Creditors' Rights

Phillip E. Reeves – Insurance

Thomas E. Vanderbloemen – Intellectual Property

Daniel B. White – Transportation

Greenville Business Magazine (GBM) focuses on the news and developments that affect, or were initiated in, the Upstate of South Carolina. GBM asked attorneys in the Upstate to nominate other attorneys who in their opinion were leading lawyers in 20 particular practice areas. C. William McGee, the firm's Managing Shareholder, stated, "Our attorneys are leaders in their fields and in our community. We are grateful that these outstanding lawyers have been recognized as being among Greenville's Legal Elite."

Gallivan, White & Boyd, P.A. Attorney Childs Cantey Thrasher Elected President of the South Carolina Arts Foundation

Gallivan, White & Boyd, P.A. is pleased to announce that attorney Childs Cantey Thrasher has been elected Board President of the South Carolina Arts Foundation. Established in 1972, the S.C. Arts Foundation is a nonprofit organization dedicated to recognizing, encouraging and supporting the art and artists of South Carolina. Throughout its history, the SCAF has pursued creative ways to help the business community and private citizens contribute to a thriving arts community across the state. The organization is led by a diverse board of directors comprised of statewide business and civic leaders, artists, educators and others interested in supporting the rich variety of artistic expression found in the Palmetto State.

Thrasher has made the arts one of her community outreach focal points. Prior to her appointment to the Foundation Board of Directors in 2010, Thrasher served two terms on the Columbia Museum of Art's Contemporaries Board, where she served on the Art Acquisition Committee which funded and commissioned the original Dale Chahuly chandelier now displayed in the museum's atrium. Thrasher has served as vice president of the Foundation since 2011. Her term as president will begin July 1, 2013.

Thrasher's law practice is based out of the firm's Columbia, South Carolina office. Her practice focuses on business and commercial litigation and environmental law, including products liability, professional liability, internet law and ADA premises compliance. Her dedication to her profession is just as impressive as her dedication to the community. Thrasher is a member of the SC Defense Trial Attorneys' Association, Richland County Bar Association, the South Carolina Bar's Environmental and Natural Resources Section and Young Lawyers Division, the American Bar Association Section of Environment as well as the Toxic Tort and Environmental Law Committee of the Defense Research Institute.

Managing Shareholder C. William McGee stated, "Childs is an accomplished lawyer and devoted member of the community. We are fortunate to have such a dedicated and talented attorney at the firm."

Continued on next page

Breon C. M. Walker Recognized in Nation's Best Advocates: 40 Lawyers Under 40 by the National Bar Association

Gallivan, White & Boyd, P.A. is pleased to announce Breon C. M. Walker has been chosen to receive the prestigious Nation's Best Advocates: 40 Lawyers Under 40 award presented by the National Bar Association (NBA) and IMPACT. The Nation's Best Advocates: 40 Lawyers Under 40 award recognizes distinguished attorneys within the African American legal community who have earned the highest level of respect and distinction in their legal practice through unrelenting dedication to their profession and community. Award recipients are selected based on achievement, community involvement, innovation, vision, and leadership.

Walker joined GWB as an associate in 2011 and was elected as a partner in 2013. She is a member of the firm's Business and Commercial Group and Insurance Group in the GWB's Columbia, South Carolina office. Walker's practice focuses on motor vehicle liability, premises liability, product liability and commercial litigation, with extensive experience trying cases to verdict.

Walker earned her Bachelor of Science degree in Business Administration with a double major in marketing and management from the University of South Carolina Honors College in 2000. Walker earned her Juris Doctor from Emory University School of Law in 2003, where she was the recipient of the Custer Tuggle Award for Excellence in Family Law.

Walker is very active in the legal and civic communities both locally and nationally. Locally she is a member of the South Carolina Bar, the Richland County Bar Association where she serves as co-chair of the Young Lawyers' Division, and the South Carolina Defense Trial Attorneys' Association as a member of the Executive Committee and Editor-in-Chief of the organization's publication, *The Defense Line*. Nationally, Walker is a member of the Defense Research Institute and National Association of Railroad Trial Counsel. She is also a member of the Columbia Chapter of The Links, Inc. serving as Public Relations Officer.

Walker's dedication to her practice led to her recognition in 2012 and 2013 as a Super Lawyers "Rising Star." She was also recognized as one of South Carolina's Top Ten Emerging Legal Leaders in the 2011 edition of South Carolina Lawyers Weekly. Managing Shareholder C. William McGee stated, "Bre is a very talented and accomplished lawyer. We are extremely fortunate to have her as a partner in our firm. This truly is a tremendous and well deserved honor for her."

The NBA was formally organized in Des Moines, Iowa, on August 1, 1925. Its membership includes over 20,000 lawyers, judges, educators, and law students nationwide. Ultimately, the NBA works to "advance the science of jurisprudence; improve the administration of justice; preserve the independence of the judiciary and to uphold the honor and integrity of the legal profession."

Gallivan, White & Boyd Law Firm Adds Attorney Jessica Waller

Gallivan, White & Boyd, P.A. is pleased to announce that Jessica Waller has joined the firm's Columbia office as an associate. She practices in the firm's Insurance Practice Group, focusing on the defense of tort and personal injury cases as well as insurance coverage matters. Jessica received her undergraduate degree, magna cum laude, in Political Science from the University of South Carolina. She earned her Juris Doctor, summa cum laude, from the Charleston School of Law, where she served as the Publications Editor for the Federal Courts Law Review. Jessica is a member of Phi Beta Kappa.

Following her graduation from law school, Jessica served nearly two years as a law clerk for the Honorable John W. Kittredge in the Supreme Court of South Carolina. During her clerkship, Jessica worked on a wide variety of appellate proceedings involving diverse areas of the law. C. William McGee, the firm's managing shareholder, states, "We are very pleased that Jessica has chosen to join our firm. The experience she gained from her clerkship with the South Carolina Supreme Court will be invaluable and it will provide her with a tremendous foundation for entering private practice."

Kate K. Loveland Joins Howser, Newman & Besley, LLC

The law firm of Howser, Newman & Besley, L.L.C. is pleased to announce that Kate K. Loveland has joined the firm's Charleston office. Ms. Loveland's practice will focus on workers' compensation defense and construction litigation. Ms. Loveland received her Juris Doctor from the University of South Carolina School of Law in 2012 where she served as a member of the Moot Court National Team and an Associate Justice of the Moot Court Bar. Prior to joining Howser, Newman & Besley, L.L.C., Ms. Loveland clerked for the Honorable Alison Renee Lee.

Haynsworth Sinkler Boyd Practices & Attorneys Recognized in 2013 Chambers USA Rankings

Haynsworth Sinkler Boyd, P.A. received numerous distinctions in the 2013 edition of Chambers USA. The UK guide annually ranks American law firms and lawyers by state and practice area.

Chambers USA ranked Haynsworth Sinkler Boyd in the top tier for: Corporate/Mergers & Acquisitions; and Corporate/ Mergers & Acquisitions: Banking & Finance.

The firm was also recognized for its strengths and abilities in the areas of: Litigation: General Commercial; and Real Estate.

<u>Columbia, SC</u>

William C. Boyd – Corporate/M&A, Senior Statesman

Nick Nicholson Elected Managing Director of Haynsworth Sinkler Boyd, P.A.

Haynsworth Sinkler Boyd, P.A. has elected Boyd B. (Nick) Nicholson, Jr. as the Firm's Managing Director. He succeeds Anne S. Ellefson, Managing Director since 2008, who will continue her practice in the Firm's Real Estate team.

In relation to the Firm's objectives, Nick Nicholson said, "Our efforts will continue to be focused on assisting our clients by offering them our experience and know-how in order to meet the challenges posed by the current economic environment and providing prompt and efficient legal services at the standards our clients expect."

Recognized by The Best Lawyers in America® for Construction Litigation, Mr. Nicholson will combine his new responsibilities as Managing Director with his work in the areas of public procurement, local government law, and construction law. He previously led the Firm's Governmental, Utilities, and Nonprofits group working with government and non-profit agencies with respect to contract and procurement issues, FOIA requests, constitutional and general law challenges, governance issues and general liability matters. Mr. Nicholson practices in the Firm's Greenville office.

Mr. Nicholson is a graduate of Leadership Greenville and a board member for the South Carolina Association of Public Charter Schools. He is also a frequent speaker on procurement law matters and has presented at SC Bar annual meetings, SC Construction Bar seminars, SC Government Law Bar seminars, Association of Counties meetings, and other venues.

David M. Bornemann Appointed to Cayce Municipal Election Commission

McKay, Cauthen, Settana, & Stubley, P.A. is pleased to announce that David M. Bornemann, an associate with the firm, as been appointed to the Cayce Municipal Election Commission.

Bornemann, a 2006 graduated of the University of South Carolina School of Law, has been an associate with the firm since 2012. He practices in the areas of workers' compensation defense, subrogation and workers' compensations appeals.

The Municipal Election Commission works with the City of Cayce's Municipal Clerk and Lexington County's Board of Voter Registration during city elections. They oversee poll managers and poll workers, and maintain voting guidelines for the city's district voting locations.

"I'm excited to have the opportunity to work with the City of Cayce in this capacity," stated Bornemann. "I've been a proud resident of this community for the past six years and look forward to taking a more active role in supporting the city's future success."

Bornemann, a Cayce resident, is also a member of the Columbia Art Museum Contemporaries, the Palladium Society of the Columbia Historical Foundation and the Columbia Habitat for Humanity Young Professionals. He was also a 2012 graduate of Leadership Columbia.

Kelli Sullivan Selected for Leadership Positions at SC Bar Association

The South Carolina Bar Association has selected Kelli L. Sullivan to serve on both the Resolution of Fee Disputes Board and the Ethics Advisory Committee.

The Resolution of Fee Disputes Board at the SC Bar Association is made up of attorneys who "promptly and professionally mediate, investigate and arbitrate fee and disbursement disputes." The Board Members are appointed by the SC Bar President and handle about 100 cases each year. The Ethics Advisory Committee, a Committee that Ms. Sullivan has served on for more than five years, renders legal opinions concerning various types of ethical issues raised by members of the SC Bar Association.

Ms. Sullivan is a certified mediator and has nine years of experience as a Plaintiff's attorney in medical malpractice, employment litigation and personal injury matters. Her extensive knowledge of the insurance industry and experience as a Plaintiff's attorney make her uniquely suited to help clients resolve their most complicated cases. Her background on both sides of complex issues is an asset to The McKay Firm and its clients. She also serves as a member of the Medical Malpractice Committee with the South Carolina Defense Trial Attorneys' Association and a volunteer mediator for Magistrate's Court cases in Richland and Lexington Counties.

Kelli Sullivan Named Partner at the McKay Firm

McKay, Cauthen, Settana, & Stubley, P.A. is pleased to announce that Kelli L. Sullivan has been named a Partner in the firm.

Mrs. Sullivan is a certified mediator with 17 years of experience, including eight years as General Counsel for a major insurance company. Her extensive knowledge of civil litigation and insurance-related issues make her uniquely suited to help clients resolve their most complicated cases. Her background on both sides of complex issues is an asset to The McKay Firm and its clients.

Mrs. Sullivan serves as a member of the Medical Malpractice Committee with the South Carolina Defense Trial Attorneys' Association, a Member Mediator for the South Carolina Workers' Compensation Educational Association, a volunteer mediator for Magistrate's Court cases in Richland and Lexington Counties, a member of both the Resolution of Fee Disputes Board and the Ethics Advisory Committee with the South Carolina Bar Association, and a graduate of the 2012 Class of Leadership Columbia. She was also named one of

Continued on next page

the 2012 Midlands Legal Elite.

Julius W. "Jay" McKay, II, Managing Partner of McKay, Cauthen, Settana & Stubley, said, "Kelli embodies the experience, knowledge and dedication to client service that our law firm prides itself on."

Mrs. Sullivan, a native of Greenville, lives in Columbia with her husband, Mike, and their two children.

Thirteen MG&C Attorneys Selected for 2014 Edition of The Best Lawyers in America

Thirteen attorneys from McAngus Goudelock & Courie have been selected by their peers for inclusion in the 2014 edition of Best Lawyers in America®.

Charleston, SC

Mark Davis in Workers' Compensation Law – Claimants and Workers' Compensation Law – Employers

Amy Y. Jenkins in Employment Law – Individuals; Employment Law – Management; Litigation – ERISA; and Litigation – Labor and Employment

Columbia, SC

Weston Adams III in Appellate Practice

Sterling G. Davies in Commercial Litigation

Scott B. Garrett in Workers' Compensation Law – Employers

A. Mundi George in Workers' Compensation Law – Employers

J. Russell Goudelock II in Workers' Compensation Law – Employers

Thomas E. Lydon in Commercial Litigation and Litigation – Banking and Finance

W. Hugh McAngus in Workers' Compensation Law – Employers

M. McMullen Taylor in Water Law

Greenville, SC

Tom Chase in Insurance Law

Erroll Anne Y. Hodges in Workers' Compensation Law – Employers

G.D. "Doc" Morgan, Jr. in Insurance Law and Personal Injury Litigation – Defendants

MG&C Brings The Long Run 15k to Famously Hot Columbia

McAngus Goudelock & Courie is bringing an exciting new event to Famously Hot Columbia. The Long Run, a unique road race, will be held on Super Bowl Sat., Feb. 1, 2014. The Long Run will be a 15k course that winds through historic downtown Columbia, Cayce and West Columbia, beginning and ending on the revitalized Main Street.

Why is a law firm putting on a race? MG&C is the driver behind this event in an effort to combine firm values of charitable giving, community support and employee wellness. Net proceeds from the races will benefit Souper Bowl of Caring, the firm-wide charity for 2014.

"We founded MG&C in Columbia 18 years ago. We made the decision to put on The Long Run as a way to give back to a charity that was also started in our Midlands community," said Hugh McAngus, a founder of MG&C. "Souper Bowl of Caring began 23 years ago in our hometown, and has grown to serve the hungry across the nation. Combining MG&C values of giving and wellness, we are excited to present the inaugural Long Run this February."

The Long Run is a distance of about nine miles, and is aiming to draw both the serious and intermediate runner. The distance is more challenging than a 10k, but not as strenuous as a half-marathon. Runners wanting to do a shorter distance can register for the Not-So-Long Run 5k, sponsored by Midlands Orthopaedics, which will also run through downtown Columbia. Both courses will begin on Gervais St. in front of the State House and end on Main St. Cash awards will be offered to the top three male/female finishers in both racing events, as well as cash prizes for a Super Bowl themed costume contest. Online registration for The Long Run and Not-So-Long Run opens on Aug. 1.

"Not only will this event bring hundreds of runners to our city joining a wonderful tradition that includes the USMC Mud Run, the Governor's Cup and the Columbia Marathon, it does so while promoting a truly worthy cause," said Columbia Mayor Steve Benjamin. "We are very proud to host The Long Run and we sincerely thank the Souper Bowl of Caring for all the great work they do."

The date and distance of this race was carefully selected with input from Strictly Running owner Selwyn Blake. "With ideal running temperatures averaging from the mid-30's to 60 degrees in Feb., and with many runners in mid-marathon training, this distance is a good compliment to the serious runner's training calendar," Said Blake. The race also ties in with nationwide events supporting Souper Bowl of Caring, the nonprofit benefitting from the race. Souper Bowl of Caring is a national charity born in Columbia who uses the energy of the Super Bowl to mobilize youth in a united national effort to care for people in their local communities who are hungry and in need.

"With the support of businesses like MG&C, the Souper Bowl of Caring will mobilize thousands of young people across the Midlands to raise funds for scores of local food banks and pantries," said Brad Smith, Founder and Chairman Emeritus of Souper Bowl of Caring. "Completing The Long Run will require strength, but I'm especially impressed that proceeds from this endeavor will help those that are weak, hungry and hurting."

The Long Run is presented by McAngus Goudelock & Courie. Other sponsors include Midlands Orthopaedics and Janney Montgomery Scott LLC. For sponsorship and more information about The Long Run, visit www.mgclongrun.com. For more information about Souper Bowl of Caring, visit

www.souperbowl.org.

Best Lawyers 2014 Guide Lists 42 Nelson Mullins Columbia Attorneys, Four Lawyers of the Year

Forty-four Nelson Mullins Riley & Scarborough Columbia attorneys have been selected for inclusion in The Best Lawyers in America® 2014 (Copyright 2012 by Woodward/White, Inc., of Aiken, S.C.).

In addition, four attorneys have been named as Best Lawyers' "Lawyer of the Year" for Columbia in their respective practice areas. They are

• David E. Dukes, Securities Litigation

• Mark C. Dukes, Intellectual Property Litigation

• Daniel J. Fritze, Securities/Capital Markets Law

• William C. Hubbard, Mass Tort Litigation/Class Actions – Defendants

According to the organization, lawyers are selected for inclusion based on a peer-review survey. Lawyers are not allowed to pay a fee to be listed. Best Lawyers is based on confidential evaluations by and interviews of leading attorneys about the professional abilities of their colleagues within the same geographical area and legal practice area.

The Columbia lawyers listed are:

• Stuart M. Andrews, Jr., Healthcare Law

• George S. Bailey, Trusts and Estates Litigation, Tax Law, Trusts and Estates

• Edward D. Barnhill, Jr., Real Estate Law, Real Estate Litigation

• C. Mitchell Brown, Appellate Law, Commercial Litigation

• Thomas A. Brumgardt, Corporate Law

• George B. Cauthen, Bankruptcy and Creditor-Debtor Rights/Insolvency and Reorganization Law, Bet-the-Company Litigation, Bankruptcy Litigation

• Karen Aldridge Crawford, Environmental Law, Environmental Litigation

• Christopher J. Daniels, Personal Injury Litigation - Defendants, Product Liability Litigation - Defendants

• Travis Dayhuff, Healthcare Law

• Gus M. Dixon, Corporate Law, Mergers & Acquisitions Law, Securities/Capital Markets Law

• Dwight F. Drake, Government Relations

• David E. Dukes, Bet-the-Company Litigation, Commercial Litigation, Patent Litigation, Securities Litigation, Personal Injury Litigation - Defendants, Product Liability Litigation - Defendants

• Mark C. Dukes, Intellectual Property Litigation, Technology Law

• Debbie Durban, Litigation – Labor & Employment

• Carl B. Epps III, Personal Injury Litigation - Defendants

• Robert W. Foster, Jr., Personal Injury Litigation - Defendants, Product Liability Litigation – Defendants

• Daniel J. Fritze, Corporate Law, Mergers & Acquisitions Law, Securities/Capital Markets Law, Securities Regulation

• James C. Gray, Jr., Administrative/Regulatory Law, Insurance Law

• Sue Erwin Harper, Employment Law – Management, Litigation – Labor & Employment

• Alice V. Harris, Healthcare Law

• Bernard F. Hawkins, Jr., Environmental Law, Environmental Litigation

• P. Mason Hogue, Jr., Corporate Law, Mergers & Acquisitions Law, Mergers & Acquisitions Litigation, Securities/Capital Markets Law

• William C. Hubbard, Commercial Litigation, Banking & Finance Litigation, Mass Tort Litigation /Class Actions - Defendants

• S. Keith Hutto, Commercial Litigation, Franchise Law, Banking & Finance Litigation

• Kenneth Allan Janik, Employee Benefits (ERISA) Law, ERISA Litigation, Tax Law

• J. Mark Jones, Commercial Litigation

• D. Larry Kristinik III, Commercial Litigation, Securities Litigation

• John F. Kuppens, Commercial Litigation, Product Liability Litigation – Defendants

• James K. Lehman, Commercial Litigation, Environmental Litigation, Mergers & Acquisitions Litigation, Securities Litigation

• Steven A. McKelvey, Jr., Franchise Law

• John T. Moore, Financial Services Regulation Law

• Stephen G. Morrison, Bet-the-Company Litigation, Commercial Litigation, Product Liability Litigation - Defendants

• Edward W. Mullins, Jr., Bet-the-Company Litigation, Commercial Litigation, Personal Injury Litigation – Defendants

• Edward Poliakoff, Government Relations

• James Rogers, Mass Tort Litigation/Class Actions - Defendants

• R. Bruce Shaw, Mass Tort Litigation/Class Actions - Defendants, Personal Injury Litigation - Defendants, Product Liability Litigation - Defendants

• B. Rush Smith III, Commercial Litigation, Banking & Finance Litigation, Mass Tort Litigation/Class Actions – Defendants, Bet-the-Company Litigation

• Stacy Taylor, Environmental Law

• David G. Traylor, Jr., Mass Tort/Class Actions – Defendants, Personal Injury Litigation - Defendants, Product Liability Litigation – Defendants

• Ralston B. Vanzant II, Real Estate Law

• Daniel J. Westbrook, Healthcare Law

• George B. Wolfe, Government Relations

Legal Publisher Chambers and Partners Recognizes Nelson Mullins, Columbia Attorneys

Continued on next page

Legal directory publisher Chambers and Partners has recognized Nelson Mullins Riley & Scarborough LLP in its national category for its products liability and mass torts litigation and singles out Columbia partners David Dukes and Steve Morrison as "key individuals" in the practice.

The organization also recognized the Firm's corporate/mergers and acquisitions and general commercial litigation practices in South Carolina and recognized eight Columbia attorneys as "key individuals" and "notable practitioners" for their practices. They are:

- Gus Dixon, Corporate/M&A
- David Dukes, Product Liability and Mass Torts, Litigation: General Commercial
- Daniel J. Fritze, Corporate/M&A
- Sue Erwin Harper, Labor & Employment
- P. Mason Hogue, Corporate/M&A
- Steven McKelvey Jr., Transportation: Road (Carriage/Commercial)
- John Moore, Corporate M&A: Banking and Finance
- Steve Morrison, Product Liability and Mass Torts, Litigation: General Commercial

Rankings are based on interviews with law firms and clients and released in Chambers USA 2013, according to the organization. The qualities on which rankings are assessed include technical legal ability, professional conduct, client service, commercial astuteness, diligence, commitment, and other qualities most valued by the client.

Nelson Mullins' Dukes Inducted Into International Academy of Trial Lawyers

The International Academy of Trial Lawyers has inducted David E. Dukes, a partner in Nelson Mullins Riley & Scarborough LLP's Columbia office, as a Fellow.

The International Academy is comprised of lawyers representing both sides of the Bar: prosecutors and defense lawyers in criminal cases, and plaintiffs' and defense counsel in civil litigation. Fellowship is by invitation only and is limited to 500 active trial lawyers. The organization promotes reforms in the law, facilitates the administration of justice, promotes the rule of law internationally, and elevates the standards of integrity, honor & courtesy in the legal profession.

Mr. Dukes practices in the areas of pharmaceutical and medical device litigation, business litigation, patent litigation, and coordination of national litigation. He has served as national trial counsel for companies in the pharmaceutical, computer, and consumer products industries. He is a former president of DRI – The Voice of the Defense Bar and Lawyers for Civil Justice and is also a Fellow of the American College of Trial Lawyers.

Nelson Mullins' Bill Latham Earns Certified Information Privacy Professional Designation

Bill Latham, a litigation partner in Nelson Mullins Riley & Scarborough LLP's Columbia office, has earned the designation of Certified Information Privacy Professional (CIPP/US) through the International Association of Privacy Professionals (IAPP).

The IAPP is a not-for-profit association for privacy professionals worldwide that was founded in 2000. It is the largest global information privacy organization in the world, with more than 12,000 members in 78 countries. The IAPP indicates that the CIPP/US is the preeminent professional certification offered in information privacy today.

Mr. Latham received the CIPP designation upon passing the Certification Foundation and CIPP/US examinations. Specifically, he demonstrated knowledge of:

- Federal privacy laws, including HIPAA, Fair Credit Reporting Act (FCRA) and Fair and Accurate Credit Transactions Act (FACTA), Gramm-Leach-Bliley Act and the Children's Online Privacy Protection Act (COPPA)
- Various state information privacy and data breach notification laws
- U.S. federal regulation of marketing practices, including Do Not Call, CAN-SPAM and the Junk Fax Prevention Act (JFPA)
- Employment-related privacy laws, plus best practices for privacy and background screening, employee testing, workplace monitoring, employee investigation and termination of employment.

Only a small number of attorneys are CIPP certified, as the certification primarily is sought by Chief Privacy Officers, information technology specialists, information security leaders and other industry professionals.

Legal Guide Publisher Legal 500 Recognizes Nelson Mullins Attorneys, Practices

Legal directory publisher The Legal 500 has recognized three Nelson Mullins Riley & Scarborough attorneys.

The practice areas and the attorneys noted in the annual publication are

- Product liability and mass tort defense: pharmaceuticals and medical devices D
- David Dukes
- John Kuppens
- Mark Jones

The Legal 500 publishers interview law firm commercial clients and attorneys every year and develop recommendations for inclusion based on responses, according to the organization. The UK-based reference guide has been published annually for more than 25 years.

Giles M. Schanen, Jr. Joins Board of American Partnership for Eosinophilic Disorders

The Board of Directors of the American Partnership for Eosinophilic Disorders (APFED), based in Atlanta, GA, announces the election of a new board officer, Giles M. Schanen, Jr. Mr. Schanen will serve as Secretary of the Board.

Mr. Schanen received his Bachelor of Arts in History from Furman University in 1999, and graduated from the University of Georgia School of Law, cum laude, in 2002. He is a litigation partner with the national law firm of Nelson Mullins Riley & Scarborough, LLP, in its Greenville, SC office. Mr. Schanen currently serves on the Board of Directors of the South Carolina Defense Trial Attorneys' Association, and is a member of numerous professional organizations, including the American Bar Association, the Federal Bar Association, and the South Carolina Bar, to name a few. He is also the parent of a child who is affected by an eosinophil associated disease.

"APFED is honored to have the expertise that Mr. Schanen brings to the board," said APFED President, Dr. Wendy Book. "We look forward to working with him to improve the programs and services that we offer to our patient community."

The American Partnership for Eosinophilic Disorders (APFED), founded in 2001, is a non-profit organization dedicated to patients and their families coping with eosinophil associated diseases, which occur when levels of eosinophils, a type of white blood cell, are elevated in certain areas of the body. Eosinophils play an important role in the immune system, helping to fight off certain types of infections and parasites. These cells respond to triggers (e.g., food and airborne allergens) by releasing toxins into the affected area. The diagnosis depends on where the eosinophils appear in elevated amounts:

Eosinophilic Cystitis: bladder

Eosinophilic Fasciitis: connective tissue

Eosinophilic Gastrointestinal Disorders:

Eosinophilic Colitis (EC): large intestine

Eosinophilic Esophagitis (EoE): esophagus

Eosinophilic Gastritis (EG): stomach

Eosinophilic Gastroenteritis (EGE): stomach and small intestine

Eosinophilic Granulomatosis with Polyangiitis, aka Churg-Strauss Syndrome: blood vessels, various organ systems

Eosinophilic Pneumonia: lungs

Hypereosinophilic Syndrome: blood and any organ

Eosinophilic gastrointestinal disorders are distinct diseases affecting the gastrointestinal tract, which render the patient unable to tolerate food proteins. Treatments for these disorders include restricted diets or total food elimination, requiring patients to live off an elemental formula (taken either orally or via a feeding tube), and/or steroid treatments.

"As the parent of a child with an eosinophilic disorder, I have long admired APFED's work in the areas of awareness, advocacy, and research," Mr. Schanen said. "I have witnessed the remarkable ways in which APFED impacts families coping with these disorders, and I am excited to have the opportunity to contribute to APFED's mission through board service."

"It is a pleasure to welcome Giles Schanen as a new board member. Mr. Schanen brings to the table a unique perspective and experience in family philanthropy that will enhance our efforts to serve families who live with eosinophil associated diseases," said Mary Jo Strobel, APFED's Executive Director. "We are pleased to have his guidance and leadership as our organization continues to grow and expand."

Five Nexsen Pruet Attorneys Named Best Lawyers in America

Bet-the-Company Litigation

Russell T. Burke	2003	Columbia, SC

Commercial Litigation

Russell T. Burke	2003	Columbia, SC
Elbert S. Dorn	2007	Myrtle Beach, SC
Val H. Stieglitz	2013	Columbia, SC
Bradish J. Waring	2005	Charleston, SC

Litigation - Labor and Employment

Nikole Setzler Mergo	2013	Columbia, SC

Product Liability Litigation – Defendants

Elbert S. Dorn	2007	Myrtle Beach, SC

Kenny Gardner Named to Lawyers of Color "Hot List"

Nexsen Pruet is pleased to announce that attorney Kenny Gardner has been named to the Lawyers of Color "Hot List" for 2013. The publication hosted a reception for the honorees who will be profiled in a special issue.

From Lawyers of Color:

Lawyers of Color (LOC) recently named 100 early- to mid-career minority attorneys under 40 from the Southern Region to its inaugural Hot List. The honorees were chosen through a two-pronged process. Our selection committee spent months reviewing nominations and researching bar publications and legal blogs in order to identify promising candidates. We accepted nominations from mentors, peers, and colleagues. We also made editorial picks based on our research of attorneys who had noteworthy accomplishments or were active in legal pipeline initiatives.

Lawyers of Color, which was founded as On Being A Black Lawyer, has been recognized by the American Bar Association, National Black Law Students Association, and National Association of Black Journalists. Founded in 2008 as a news and

Continued on next page

resource center, the company has grown into a social media firm providing research, career development, and brand marketing opportunities to clients.

Kenny Gardner is a business litigation associate practicing in the firm's Charleston office. His experience includes matters involving, asbestos, environmental torts, medical devices and pharmaceuticals, securities fraud and white-collar crime.

Nexsen Pruet Recognized as One of America's 350 Largest Law Firms

Nexsen Pruet is pleased to announce that the firm remains on The National Law Journal's list of the 350 largest law firms in America. Only three South Carolina-based firms made the list.

Results of the publication's 2012 survey were announced on Monday. The firm makes the cut as the 224th largest firm in the country. The numbers are based on a January survey of attorneys in Nexsen Pruet's eight offices.

Seven Roe Cassidy Attorneys Named to Greenville Business Magazine's Legal Elite

Greenville Business Magazine has recognized seven Roe Cassidy attorneys as among the area's Legal Elite. The following are the Roe Cassidy attorneys selected for inclusion, as well as the practice areas in which their work is recognized:

Pete Roe – Bank and Finance Law

Bill Coates – Criminal Law

Clark Price – Healthcare Law

Randy Moody – Labor and Employment

Trey Suggs – Civil Litigation

Josh Smith – Environmental Law

Ella Barbery – Estates and Trust

Richardson Plowden Celebrates 40-Year Milestone; Provides Meals to 40 Families across South Carolina

This year marks the 40th anniversary for South Carolina law firm, Richardson Plowden & Robinson, P.A. The full-service firm employs more than 30 attorneys, 80-plus support staff, and operates out of three offices across South Carolina. Richardson Plowden is commemorating this major milestone by providing three meals a day to 40 families across South Carolina for the next two weeks.

"Thanks to the vision and success of our founding members, the hard work of our employees, and the continued support of our loyal clients, we have much to be thankful for at Richardson Plowden," says Steve Pugh, managing shareholder at the law firm. "But, at the end of each day, children in our state still go to bed hungry. Providing meals to 40 needy families in Columbia, Myrtle Beach, and Charleston is a small way in which we can give back to those within our communities who are less fortunate."

Richardson Plowden is partnering with Harvest Hope Food Bank in Columbia, Helping Hand of Myrtle Beach, and Lowcountry Food Bank in Charleston to provide meals for those who are in need.

"These struggling families will not have to worry about their next meals, thanks to the enormous generosity of Richardson Plowden," said Harvest Hope CEO Denise Holland. "Each of these households struggles to feed four family members. Richardson Plowden is providing needed hunger relief for 160 people across South Carolina, three times a day, for fourteen days. That totals to 6,720 meals from this one contribution, demonstrating Richardson Plowden's deep-rooted commitment to helping their communities."

Six Richardson Plowden Attorneys Selected to Best Lawyers in America; Hamm Selected "Lawyer of the Year" for Columbia, SC in Administrative/Regulatory Law

The 2014 edition of The Best Lawyers in America features six Richardson Plowden & Robinson, P.A. attorneys who were selected by their peers: Leslie A. Cotter, Jr., Frederick A. Crawford, Steven W. Hamm, Francis M. Mack, Frank E. Robinson, II, and Franklin J. Smith, Jr. Best Lawyers also selected Hamm as a 2014 "Lawyer of the Year" for Columbia, SC in the area of Administrative/Regulatory Law.

Leslie A. Cotter, Jr. was selected by Best Lawyers for his work in Legal Malpractice Law. This is the fourth consecutive year Cotter has been recognized by Best Lawyers. He focuses his practice on professional malpractice defense, insurance defense litigation, governmental liability defense, employment and civil rights litigation, and products liability and personal injury defense. Cotter is also a certified mediator and arbitrator. He is a member of the South Carolina Bar and has continuously served in the House of Delegates since 1992, served two terms on the Nominating Committee of the Bar, is a member and past Chair of the Practice and Procedure Committee, and is a member of the Professional Responsibility Committee. Cotter is a member of the Bar of the U.S. Court of Appeals for the Fourth Circuit and is a permanent member of the Fourth Circuit Judicial Conference. He also is a member of the American Bar Association, Defense Research Institute, South Carolina Defense Trial Attorneys' Association and the John Belton O'Neall Inn of Court. In 2012, Best Lawyers distinguished Cotter as Columbia, SC, Legal Malpractice "Lawyer of the Year."

For the sixth consecutive year, Frederick A. Crawford was recognized by Best Lawyers for his work in Health Care Law. Crawford focuses his practice on health care law, contracts, accounting malpractice defense, estate planning, and corporate law. He also represents dentists, hospitals and physicians and provides counsel on matters including, but not limited to, Anti-kickback Safe-harbors, Certificate of Need (CON), Corporate Compliance and Stark exceptions. He is a member of the Richland County Bar Association, American Health Lawyers Association and the Columbia Estate

Planning Council. In 2011 and 2012, Crawford was selected by his peers as one of Greater Columbia Business Monthly's Midlands Legal Elite for his work in business law. Additionally, he has had an AV peer review rating by Martindale Hubbell for 19 consecutive years.

Steven W. Hamm was chosen by Best Lawyers for his work in Administrative and Regulatory Law. This is the fifth consecutive year that he has been recognized by Best Lawyers. This is his first year being recognized as a "Lawyer of the Year." Hamm focuses his practices on administrative and regulatory law and is the Firm's lead attorney on government relations. Hamm is a member of the South Carolina Bar, and is licensed to practice in the U.S. Court of Appeals, Fourth Circuit; U.S. District Court, District of South Carolina; U. S. Supreme Court; and U.S. Court of Appeals, District of Columbia Court. His distinguished career includes past positions as the state consumer advocate and administrator, South Carolina Department of Consumer Affairs; chairman, Federal Reserve Board's National Consumer Advisory Council; president, National Association of State Utility Consumer Advocates; and president, National Association of Consumer Agency Administrators. In 2013, Hamm was selected by the University of South Carolina School of Law for the Compleat Lawyer Award for his more than 30 years of success in the law profession.

This is the thirteenth consecutive year that Francis M. Mack has been recognized by Best Lawyers. This year he was selected for his work in three areas of law: Bet-the-Company Litigation, Commercial Litigation and Construction Litigation. Mack focuses his practice on complex commercial litigation in the areas of contract disputes, construction, fidelity and surety law, and insurance defense matters. He also is a certified arbitrator. A licensed engineer, Mack is a member of the American Bar Association, South Carolina Bar, Richland County Bar Association, South Carolina Defense Trial Attorneys' Association, and the American Society of Mechanical Engineers. He is a frequent speaker on the topic of construction law as it relates to design professionals. Mack has also been previously recognized as a South Carolina Super Lawyer.

Frank E. Robinson was honored as a Best Lawyer in the area of Real Estate Law. This marks his twenty-first consecutive year as a Best Lawyer. Robinson focuses his practice on business and commercial law and real estate. His experience includes representing lenders and developers in various aspects of real estate finance and development. He is a member of the American Bar Association, South Carolina Bar and the Richland County Bar Association. He holds the title of Lieutenant Commander in the U.S. Naval Reserve. In 2010, Best Lawyers distinguished Robinson as Columbia, SC, Real Estate "Lawyer of the Year."

Franklin J. Smith, Jr. was selected by Best Lawyers in the area of Construction Litigation. This is his eleventh consecutive year being recognized by Best Lawyers. Smith's practice is focused on construction law, federal contract law, fidelity and surety law, insurance defense, and professional malpractice. Smith also is a certified mediator and arbitrator. He is a member of the American Bar Association, South Carolina Bar, and Richland County Bar Association. He is also a member of the Dispute Avoidance and Resolution Division of the Forum on the Construction Industry, is a member of the panel of arbitrators for the American Arbitration Association, is on the Board of Advisors for the Clemson University Civil Engineering Department, and is a member of the South Carolina Defense Trial Attorneys' Association. In 2010 and 2012, Best Lawyers distinguished Smith as Columbia, SC, Construction Law "Lawyer of the Year." Smith has also been recognized as a South Carolina Super Lawyer for past four years.

Richardson Plowden's Bias Selected as Vice-chair of the Columbia Cinderella Project

Richardson, Plowden & Robinson, P.A. is pleased to announce that attorney Sheila M. Bias was recently selected as vice-chair of the Columbia Cinderella Project, a program sponsored by the Young Lawyers' Division of the South Carolina Bar.

The Cinderella Project is a clothing initiative that gives socially and economically disadvantaged high school girls across South Carolina the ability to go to prom wearing gently used prom dresses, shoes and accessories that are donated by members of the community.

"Sheila was previously a committee member of the Cinderella Project," says Michelle Kelley, statewide-chair of the Cinderella Project and also a Richardson Plowden attorney. "Sheila was specifically selected for this role as vice-chair after taking initiative and showing dedication at last year's Project. She took ownership of key areas and really demonstrated her dependability."

Bias is a member of the Richardson Plowden Litigation Team where she focuses her practice in general litigation, appeals and research. She earned her Juris Doctor from the University of South Carolina School of Law in 2011. She is an active member of the SC Bar's Young Lawyers' Division, with involvement not only in the Cinderella Project, but also the Volunteer Income Tax Assistance Committee and the iCivics Committee. Bias is also a member of the South Carolina Women Lawyers Association and a member of the 2013-2014 Provisional Class for the Columbia Junior League.

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Shelton W. Haile of Richardson Plowden Selected to Palmetto Health Children's Hospital Board

Richardson Plowden & Robinson, P.A. is pleased to announce that attorney Shelton W. Haile was recently elected to the Palmetto Health Children's Hospital Board. Haile will serve a three-year term on the Board beginning in October.

Haile is a member of Richardson Plowden's Medical Malpractice Group. His statewide litigation practice focuses on defending private and governmental healthcare providers in medical malpractice and civil rights actions, as well as in administrative and general litigation matters. In addition to his work representing healthcare industry clients, Haile has represented national, regional and local companies in general litigation matters.

Haile graduated cum laude with a bachelor's degree in political science from the University of South Carolina (USC) in 2000 and received his Juris Doctor from the USC School of Law in 2004. Haile is also a member of the Palmetto Health Institutional Review Board. He currently serves on the Medical Malpractice Law Committee of the South Carolina Defense Trial Attorneys' Association and The Harmonie Group's Health Care Practice Committee.

Haile is a member of the South Carolina Bar, the Richland County Bar Association, the South Carolina Defense Trial Attorneys' Association, and the Defense Research Institute. He has served on the South Carolina Bar's Law Student Liaison Committee and Young Lawyers Division's Professional Development Committee.

Richardson Plowden Welcomes Richard A. "Trey" Jones III to the Firm

Richardson Plowden & Robinson, P.A. is pleased to announce that Richard A. "Trey" Jones III has joined the Firm as an associate attorney in the Columbia office.

Jones is a member of the Richardson Plowden Medical Malpractice Group. He earned his Juris Doctor from the University of South Carolina (USC) School of Law in 2012, while simultaneously earning his Master's in Public Administration. In 2008, Jones earned his Bachelor of Science from USC. Prior to joining Richardson Plowden, Jones clerked for the Honorable Edward B. Cottingham in Columbia. Jones also worked at the Office of the Attorney General while attending law school.

"With Trey's addition to our Medical Malpractice team, we've strengthened our ability to meet client needs and represent their interests," says Steve Pugh, managing shareholder at Richardson Plowden. "We are happy to have him on board."

Jones is a member of the South Carolina Bar, Richland County Bar Association, and the American Bar Association. He is also a member of the Columbia Museum of Art Contemporaries.

Richardson Plowden Welcomes William B. Woods to the Firm

Richardson Plowden & Robinson, P.A. is pleased to announce that William B. "Bill" Woods has joined the Firm as Special Counsel in the Columbia office.

Woods focuses his practice on Construction Law and General Litigation. As a South Carolina Certified Mediator and Arbitrator, Woods also dedicates a portion of his practice to Alternative Dispute Resolution. Prior to joining Richardson Plowden, Woods was the owner and sole practitioner at the Woods Law Firm in Lexington. He has tried more than 700 lawsuits to conclusion with the majority of cases resulting in defense verdicts. He has also been successful in numerous cases before the South Carolina Supreme Court and Court of Appeals.

"We are privileged to have Bill join us," says Steve Pugh, managing shareholder at Richardson Plowden. "Bill has forged a stellar reputation in his 40 plus years of practicing law in South Carolina. Our Firm and our clients stand to benefit tremendously from his knowledge and practice."

Prior to earning his law degree, Woods was a claims representative for State Farm Insurance Company, Allstate Insurance Company, and Seibels, Bruce & Co. In 1971, Woods earned his Juris Doctor from the University of South Carolina (USC) School of Law. Woods is a member of the South Carolina Bar, Lexington County Bar Association, and the South Carolina Defense Trial Attorneys' Association.

Smith Moore Leatherwood Announces Four of the Firm's Attorneys Named Best Lawyers in America

Smith Moore Leatherwood LLP is pleased to announce that four of its attorneys have been selected by their peers for inclusion in The Best Lawyers in America 2014, the oldest and most respected peer-review publication in the legal profession (Copyright 2013 by Woodward/White, Inc., of Aiken, SC). The honored attorneys from Smith Moore Leatherwood span 50 distinct substantive areas in North Carolina, South Carolina and Georgia, with many attorneys being named Best Lawyers in more than one area. One attorney is making his Best Lawyers debut in 2014: H. Michael Bowers.

"I am proud to know that our attorneys are continually recognized for excellence in their practice areas," said Rob Marcus, Chairman of the firm's Management Committee. "The fact that our attorneys are designated as Best Lawyers in 50 categories shows the breadth and depth of our experience. Our clients know that if they need representation or legal support in more than one area, they can find that guidance within Smith Moore Leatherwood."

The following Smith Moore Leatherwood attorneys are included in The Best Lawyers in America 2014:

Charleston, S.C.

H. Michael Bowers: Commercial Litigation

Greenville, S.C.

Steven E. Farrar: Bet-the-Company Litigation, Commercial Litigation, Legal Malpractice Law (Defendants), Construction Litigation, Professional Malpractice Law (Defendants)

Jack Riordan: Personal Injury Litigation (Defendants)

Kurt M. Rozelsky: Personal Injury Litigation (Defendants), Product Liability Litigation (Defendants)

Smith Moore Leatherwood Attorney Zandra L. Johnson Named to Lawyers of Color's Inaugural "Hot List"

Smith Moore Leatherwood attorney Zandra L. Johnson has been selected by the Southern Region of the Lawyers of Color for its inaugural "Hot List," which honors early- to mid-career minority attorneys who are excelling in the legal profession. Johnson will be honored for this distinction at a reception and photo shoot to be held at Greenberg Traurig's Atlanta, Ga. office July 16, 2013.

The honorees were chosen through a two-pronged process, whereby a selection committee – comprised of editorial staff and advisers, as well as law school fellows and interns – spent months reviewing nominations and researching bar publications and legal blogs to identify promising candidates. Nominations from mentors, peers, and colleagues were also accepted.

Johnson is Of Counsel in Smith Moore Leatherwood's Greenville, SC office, and her practice concentrates on commercial defense litigation. Her experience and practice includes products liability, professional negligence, church litigation, real estate litigation and premises liability. Product liability cases have included representation of manufacturers of cranes, hydraulic jacks, automotive parts, plant machinery and consumer products. Since joining Smith Moore Leatherwood in 2003, she has also gained experience in traditional business litigation and appellate litigation. Johnson practices in both state and federal court.

Johnson graduated with a B.A. in Political Science, summa cum laude, from South Carolina State University and a J.D. from St. John's University School of Law. She has been honored by YWCA as a Dream Achiever; featured by Destiny Magazine as a Woman of Achievement; recognized by South Carolina's Greater Middleton Chapel AME Church as a Phenomenal Woman; and selected by Greenville Business Magazine as one of the Best and Brightest 35 and Under.

Smith Moore Leatherwood Announces Two Attorneys Named Best Lawyers' 2014 Lawyers of the Year

Two lawyers from Smith Moore Leatherwood were recently selected by their peers for inclusion in The Best Lawyers in America© 2014 (Copyright 2013 by Woodward/White, Inc., of Aiken, SC).

Best Lawyers, the oldest and most respected peer-review publication in the legal profession, has named the following Smith Moore Leatherwood attorneys Best Lawyers' 2014 Lawyers of the Year:

- Steven E. Farrar, Professional Malpractice Lawyer of the Year, Greenville, SC
- Robert D. Moseley, Jr., Insurance Lawyer of the Year, Greenville, SC

Two Smith Moore Leatherwood Attorneys Named 2013 Legal Elite by Greenville Business Magazine

Two attorneys from Smith Moore Leatherwood have been selected by their peers as part of Greenville Business Magazine's 2013 Legal Elite. The Legal Elite awards are divided into twenty legal-and-business-related categories and are voted on by attorneys across the state.

The following Smith Moore Leatherwood attorneys were honored as Legal Elite in these practice areas (some in more than one area):

- Steve Farrar (Insurance)
- Rob Moseley (Insurance; Transportation)

Reggie Belcher Recognized as One of the "Nation's Most Powerful Employment Attorneys – Up and Comers"

For the second consecutive year, Reggie Belcher, a shareholder in the Columbia law office of Turner Padget Graham & Laney P.A., has been recognized as one of the "Nation's Most Powerful Employment Attorneys – Up and Comers" in the June 16, 2013, issue of Human Resource Executive magazine. The list was prepared for the magazine by LawDragon. The South Carolina Supreme Court has certified Reggie as a specialist in Employment and Labor Law, and he is a Certified Mediator.

Thirty-three Turner Padget Attorneys Selected for Inclusion in Best Lawyers in America; Seven Named Lawyers of the Year

Listed from the firm's Charleston office are:

- John K. Blincow, Jr., Medical Malpractice Law Defense
- Elaine H. Fowler, Mergers & Acquisitions Law, Real Estate Law
- Michael G. Roberts, Health Care Law, Tax Law, Trusts and Estates
- John S. Wilkerson III, Professional Malpractice Law Defense

Listed from the firm's Columbia office are:

- Kenneth Carter, Jr., Product Liability Litigation Defense
- Michael E. Chase, Workers' Compensation Law for Employers
- Danny C. Crowe, Municipal Litigation, Mediation, Municipal Law
- John E. Cuttino, Construction Litigation, Product Liability Litigation
- Cynthia C. Dooley, Workers' Compensation Law

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Member News cont.

for Employers

• Charles E. Hill, Legal Malpractice Law Defense, Medical Malpractice Law Defense

• Catherine H. Kennedy, Trusts & Estates Litigation, Trusts and Estates

• Lanneau W. Lambert, Jr., Banking and Finance Law, Corporate Law, Mergers & Acquisitions Law, Real Estate Law

• Edward W. Laney IV, Personal Injury Litigation Defense

• Steven W. Ouzts, Mass Tort Litigation / Class Actions Defense, Product Liability Litigation Defense

• Thomas C. Salane, Insurance Law

• Franklin G. Shuler, Jr., Employee Benefits (ERISA) Law, Employment Law – Management, Litigation – ERISA, Litigation - Labor & Employment, Mediation

• W. Duvall Spruill, Commercial Litigation, Banking & Finance Litigation, Construction Litigation, Real Estate Litigation

• D. Andrew Williams, Construction Litigation

Listed from the firm's Florence office are:

• Richard L. Hinson, Mediation

• J. René Josey, Appellate, Non-White-Collar Criminal Defense, White-Collar Criminal Defense

• Arthur E. Justice, Jr., Employment Law – Management, Labor & Employment Litigation

• Julie Jeffords Moose, Commercial Litigation

• J. Munford Scott, Jr., Tax Law, Trusts and Estates

• John M. Scott III, Tax Law

Listed from the firm's Greenville office are:

• Vernon F. Dunbar, Workers' Compensation Law for Employers

• Eric K. Englebardt, Arbitration, Mediation

• William E. Shaughnessy, Workers' Compensation Law for Employers

• Wilson S. Sheldon, Personal Injury Litigation

• Charles F. Turner, Jr., Personal Injury Litigation

• O. Shayne Williams, Workers' Compensation Law for Employers

Listed from the firm's Myrtle Beach office are:

• R. Wayne Byrd, Commercial Litigation, Banking & Finance Litigation, Mergers & Acquisitions Litigation, Trusts & Estates Litigation

• Otis Allen Jeffcoat III, Real Estate Litigation, Real Estate Law

• William E. Lawson, Construction Litigation

Best Lawyers' 2014 Lawyers of the Year are:

• John K. Blincow, Medical Malpractice Defense (Charleston)

• John S. Wilkerson III, Professional Malpractice Defense (Charleston)

• Charles E. Hill, Legal Malpractice Defense (Columbia)

• W. Duvall Spruill, Real Estate Litigation (Columbia)

• John M. Scott III, Tax Law (Florence)

• Eric K. Englebardt, Arbitration (Greenville)

• Otis Allen Jeffcoat, III, Real Estate Law (Myrtle Beach)

Hylton Approved as Circuit Court Mediator

Turner Padget Graham & Laney, P.A. is pleased to announce that J. Brandon Hylton has recently been approved by the South Carolina Board of Arbitrator and Mediator Certification as a Circuit Court Mediator. Mr. Hylton is a shareholder in Turner Padget's Florence office. Brandon practices almost exclusively in workers' compensation defense. He received his undergraduate degree from Presbyterian College and his Juris Doctor from the University of South Carolina School of Law.

Kennedy Receives Influential Women in Business Award

Turner Padget Graham & Laney, P.A. is proud to announce that Catherine H. Kennedy has been selected as a finalist in the Executive category for Columbia's 2013 Influential Women in Business awards presented by the Columbia Regional Business Report. The 2013 winners will be announced at a luncheon on Thursday, August 22, 2013 at the Doubletree Columbia. The finalists are local women who have demonstrated professional excellence and leadership in their careers and community. Ms. Kennedy's past experience includes serving as a teacher, the Richland County probate court judge, a practicing attorney and a mediator. Catherine Kennedy is Special Counsel in Turner Padget's Columbia office and focuses her practice on estate planning and probate and trust administration and litigation.

Wall Templeton & Haldrup Celebrates Two Year Anniversary

Since its founding, Wall Templeton & Haldrup has welcomed a new shareholder, three new attorneys, and five legal staff members within its Charleston and Raleigh offices. The firm is thankful for the excellence of its team and the trusted relationships it has developed with past and present clients. The firm looks forward to many more years of growth and partnership.

Morgan S. Templeton Appointed Chairman of the Products Liability Committee of IADC

Wall Templeton & Haldrup congratulates Shareholder Morgan S. Templeton on his appointment as the Chairman of the Products Liability Committee of the International Association of Defense Counsel. His position became effective July 2013.

The Products Liability Committee is the largest substantive law committee for the IADC, and it serves all members who defend manufacturers, product sellers, and product designers. The IADC is an

invitation only association made up of in house and outside lawyers who devote the majority of their practice to defending individuals and corporations in civil lawsuits.

Wyche Achieves High Rankings in Chambers USA

Once again, Wyche has earned high rankings in Chambers USA: America's Leading Lawyers for Business ("Chambers"). Chambers recognizes Wyche for its work in Litigation, Corporate/Mergers & Acquisitions, Labor & Employment, and Real Estate. Ten Wyche attorneys are identified as leading lawyers in their respective practice areas based on in-depth client and peer reviews.

Chambers ranks Wyche as one of the country's top law firms in the Litigation practice area. Wyche attorney Wallace Lightsey, is listed as leading lawyers in this practice area. Sources tell Chambers that "The Wyche attorneys are a unique collection of highly skilled and very intelligent people, who are also very personable. Their performance has been stellar on the matters they have handled."

Wyche received high rankings for its Labor & Employment practice as well. Mark Bakker is highlighted as a leading lawyer for his work in this practice area. Chambers notes "Wyche is recognized for its strong employment practice, which covers the full scope of issues including discrimination, harassment, ERISA, employment torts and litigation."

Wyche is also highly ranked for its work in Real Estate and Litigation practice areas.

Based in London, Chambers and Partners has been publishing leading legal directories worldwide for more than 20 years and prides itself on the independence and objectivity of its research. With over 140 full-time researchers, the publication evaluates the strengths and reputations of law firms and individuals through extensive interviews with lawyers and clients.

Nelson Mullins Receives National Beacon of Justice Award

The National Legal Aid & Defender Association has selected Nelson Mullins Riley & Scarborough LLP to receive its annual Beacon of Justice Award for providing pro bono representation to those unable to afford representation.

The NLADA recognized the Firm for its participation in the creation of a pro bono appellate program to handle appeals for indigent clients; for Barton v. S.C. Department of Probation, Parole and Pardon Service; and for its representation in class actions to improve prison conditions for inmates with mental illness.

"We are honored by this recognition by the NLADA. Pro bono service is deeply rooted in our culture," said Nelson Mullins Managing Partner Jim Lehman. "I am never surprised by the extraordinary service our attorneys have shown to pro bono clients. It not only reflects our commitment to our profession and communities, but more importantly to those we are able to help."

Mark W. Buyck, III Named to Best Lawyers

Mark W. Buyck, III of Willcox, Buyck & Williams, Florence, South Carolina, has been named to The Best Lawyers in America© for practice areas of Employment Law – Management and Labor Law Management.

Molly H. Craig Elected President of International Association of Defense. Prestigious Legal Organization Taps Second Woman to Lead in its 93-Year History

July 15, 2013 - CHICAGO, IL - At its Annual Meeting held at the Grand Wailea Resort in Maui, Hawaii, the International Association of Defense Counsel (IADC) elected Molly H. Craig President for the 2013-2014 term. The IADC is an invitation-only professional association for corporate and insurance defense lawyers around the world. Mrs. Craig is the second woman to be elected President in the association's 93 year history.

Mrs. Craig is a partner of The Hood Law firm, LLC, in Charleston, South Carolina. She focuses her practice on civil litigation and the defense of catastrophic product liability, professional liability, pharmaceutical and medical device, nursing home litigation, employment litigation and negligence matters throughout the United States. Mrs. Craig is ranked in the Chambers USA Guide and was recently invited to serve as a Fellow of the International Academy of Trial Lawyers. Additionally, she is listed in Best Lawyers in America and in South Carolina Super Lawyers.

Mrs. Craig is actively involved in various professional and civic organizations. She is a past president of the South Carolina Defense Trial Attorneys' Association and the National Coordinator for Justice Sandra Day O'Connor's project iCivics. She received her B.A. from the University of the South, Sewanee and her J.D. from the University of South Carolina School of Law. Mrs. Craig is married to Steven Craig and they have three children.

The International Association of Defense Counsel has served a distinguished membership of corporate and insurance defense attorneys since 1920. Its activities benefit the approximately 2,400 invitation-only, peer-reviewed international members and their clients through networking, education, and professional opportunities, and also benefit the civil justice system and the legal profession. The IADC takes a leadership role in many areas of legal interest and professional development. For information, please visit www.iadclaw.org.

Blakely L. Molitor Joins Collins & Lacy

Collins & Lacy, P.C. is pleased to announce Blakely Molitor has joined the firm's Columbia office. Molitor is an associate practicing in the areas of insurance defense litigation and workers' compensation defense.

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Member News cont.

"Blakely is a unique asset to the Collins & Lacy team in that she has knowledge and experience as both a claimant's attorney and a defense attorney," said Ellen Adams, chair of the statewide firm's Workers' Compensation Practice.

Prior to joining Collins & Lacy in September 2013, Molitor worked as an attorney for a Columbia-based firm practicing in insurance and workers' compensation. While in law school, Molitor worked as a summer associate for Collins & Lacy.

"I'm excited to be back at the firm and joining such a great team," said Molitor. "I look forward to working with the businesses of South Carolina and continuing to meet the needs of our clients."

Molitor, a native of Charlotte, North Carolina, majored in Biology as an undergraduate of the University of North Carolina, Chapel Hill, and from there, received her Juris Doctor at the University of South Carolina School of Law in Columbia, South Carolina.

"Blakely's addition to the Collins & Lacy team is a strategic one in that she strengthens our goal to provide the best possible defense for businesses statewide," said Mike Pitts, Collins & Lacy Managing Partner.

Eight GWB Attorneys Recognized As Legal Elite

The law firm of Gallivan, White & Boyd, P.A. is pleased to announce that eight of the firm's attorneys have been recognized as being among the 2013 Legal Elite of the Midlands by Columbia Business Monthly. GWB's Legal Elite in the Midlands include:

- James Brogdon - Personal Injury
- Johnston Cox – Insurance
- Will Harbison - Workers Compensation
- John Hudson – Healthcare
- John T. Lay - Civil Litigation
- Shelley Montague – Construction
- Grayson Smith – Insurance
- Childs Thrasher - Environmental

C. William McGee, the firm's Managing Shareholder, stated, "Our Columbia attorneys are incredibly talented and we are grateful for their recognition as part of the Legal Elite of the Midlands."

GWB's Products Liability Blog Reaches 1000 Posts

Gallivan, White & Boyd, P.A. is pleased to announce that Abnormal Use: An Unreasonably Dangerous Products Liability Blog has reached a major milestone of 1,000 posts. Abnormal Use (www.abnormaluse.com) began blogging in January of 2010 and has posted every business day since. Abnormal Use is edited by partner Jim Dedman with contributing authors Nick Farr, Rob Green, and Frances Zacher.

Abnormal Use features posts each business day regarding products liability cases and litigation in addition to interviews with law professors and practitioners. Abnormal Use has been linked to and referenced in the New York Times, National Public Radio, Scientific American, The Economist and many other blogs and periodicals. Furthermore, the editors of the ABA Journal have selected Abnormal Use as one of the ABA Journal's Blawg 100 for the third year in a row. Readers of the ABA Blawg 100 have also voted GWB's Abnormal Use blog as their favorite blog in the Torts category for the third consecutive year. Blog editor Jim Dedman states, "The success and longevity of the blog is directly due to the efforts of our lawyer writers. I am proud of the dedication and creativeness of the attorneys as well as humbled by the loyalty of our readers. GWB has and will continue to have a strong web, social media, and blogging presence."

Two McKay Firm Attorneys Named 2013 Midlands Legal Elite

McKay, Cauthen, Settana, & Stubley, P.A. is pleased to announce that two attorneys from the firm have been selected for 2013 Legal Elite of the Midlands by Greater Columbia Business Monthly. Mark D. Cauthen and David M. Bornemann were selected by their peers as leaders in their respective practice areas.

Mr. Cauthen, a Partner at The McKay Firm, was selected in the area of workers' compensation defense and is a graduate of Wofford College and the Cumberland School of Law. He was the recipient of the American Jurisprudence Award for Commercial Transactions and a member of the National Trial Team at Cumberland Law School. He has achieved an AV-Preeminent Rating, the highest standard for his legal abilities and ethical standards, from Martindale-Hubbell. He is a member of the South Carolina Defense Trial Attorneys Association, the South Carolina Workers' Compensation Educational Association, the Defense Research Institute and is a former board member of Kid's Chance of South Carolina.

Mr. Bornemann, also selected in the area of workers' compensation defense, is a graduate of the University of South Carolina Honors College and the University of South Carolina School of Law. He is a member of the South Carolina Defense Trial Attorneys' Association, the South Carolina Workers' Compensation Educational Association, the Contemporaries of the Columbia Art Museum, the City of Cayce Municipal Elections Committee and is a 2012 graduate of Leadership Columbia.

Governor Riley to Receive 2013 Global Vision Award

The Columbia World Affairs Council will present former Governor Richard W. Riley with the 2013 Global Vision Award. This is the 20th year the Columbia World Affairs Council has presented the award to a leader whose contributions have made a significant impact on South Carolina and helped project the state globally.

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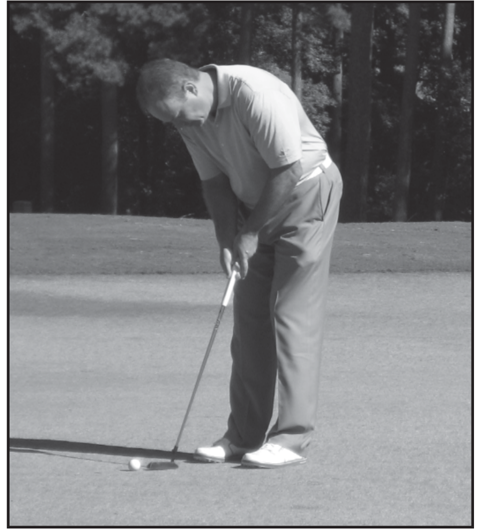
Continued Success for the SCDTAA PAC Golf Classic

by Anthony W. Livoti

Glorious weather and a great golf course greeted 44 players at Columbia Country Club for the 4th Annual SCDTAA PAC Golf Classic. With a new location and new time of year, the event still drew 11 teams, numerous sponsors and lots of great golf. Although fun is on the agenda, raising money for the SCDTAA PAC is the real focus. Now in its fourth year, the tournament has raised nearly $65,000 for the PAC since its inception. This money gives the Association a voice with the General Assembly and helps the Association address issues critical to defense attorneys and their clients. This year's tournament was sponsored by SEA, Ltd., the engineering firm that has been a great supporter of the Association. Teams that participated came from the following firms and businesses: Murphy & Grantland; McAngus, Goudelock, and Courie; Haynsworth Sinkler Boyd; Aiken Bridges; Ogletree Deakins; A.W. Roberts Court Reporting; Gallivan White, and Boyd; SEA, Ltd.; Turner Padget Graham and Laney; Sowell Gray; and Bowman and Brooke. Additional sponsors included EveryWord Court Reporting; Compuscripts; Page Rehab; Maybank Law Firm; Carlock Copeland; Hood Law Firm; Copper Dome; and McKay Cauthen. Low Gross went to the team of McAngus Goudelock and Courie and low net went to AW Roberts. The committee chairs of Johnston Cox and Anthony Livoti, along with committee members Ken Shaw, Trippett Boineau, and Andy Delaney worked to put on a great event, along with the behind the scenes efforts of Executive Director Aimee Hiers. We look forward to making the SCDTAA PAC Golf Classic a fall tradition.



During his time leading the state, Governor Riley initiated the Education Improvement Act, the Employment Revitalization Act, the S.C. Research Authority, regional nuclear waste compacts, merit selection of public service commissioners, greater openness in government, and a constitutional amendment creating a state reserve fund.

Serving as United States Secretary of Education, he helped launch initiatives to raise academic standards, improve instruction for the poor and disadvantaged, increase parental involvement in education, expand grants and loans to help more students attend college and prepare young people in America for work.

The Columbia World Affairs Council was established in 1993 to raise awareness of international activities in the Midlands, help people connect across the region, bring distinguished speakers and foreign diplomats to Columbia to address international issues and create a bridge to build new international relationships. The Council administers the Sister-City program for the City of Columbia and is a member of the Washington-based World Affairs Councils of America.

Three Nelson Mullins Attorneys Selected to Legal Elite of the Midlands

COLUMBIA, SC – Columbia Business Monthly has named three Nelson Mullins Riley & Scarborough attorneys to its list of the Midlands 2013 'Legal Elite' in three practice areas:

- George Cauthen, Bankruptcy & Creditors Rights
- Frank Knowlton, Bankruptcy & Creditors Rights
- John Moore, Banking & Finance

The magazine invited members of the S.C. Bar Association who practice in the Midlands to nominate lawyers in 20 practice areas, according to the publication. Respondents could not nominate themselves, but they could nominate people within their firms. For every in-firm nomination, there had to be an out-of-firm nominee, although not necessarily in the same practice area.

Meghan Hall, Richard Marsh Join The McKay Firm

COLUMBIA, SC – McKay, Cauthen, Settana, & Stubley, P.A. is pleased to announce the addition of Meghan Hazelwood Hall and Richard E. "Rich" Marsh as the newest Associates of The McKay Firm.

Mrs. Hall, a Columbia native, practices in the areas of trucking and transportation law, general insurance defense, government defense, civil litigation defense, civil rights, Section 1983 defense, business litigation and products liability. Prior to practicing law, she interned with U.S. District Court Judge P. Michael Duffy in Charleston. She and her husband, Trevor, reside in Columbia.

Mr. Marsh, a Charlotte, North Carolina native, practices in the areas of trucking and transportation law, products liability, commercial litigation, governmental defense, general insurance defense, subrogation and civil litigation defense. Prior to joining The McKay Firm, he was a Law Clerk for the Honorable James R. Barber, III in Columbia. He and his wife, Anna, reside in Columbia.

Julius W. "Jay" McKay, II stated, "We continue to watch our firm grow and we couldn't be happier to have Meghan and Rich be a part of it. They are each a welcomed addition to our team and bring with them great experience and a good work ethic."

Molly Lee Joins Turner Padget

Molly H. Lee has joined the law firm of Turner Padget Graham & Laney, P.A., serving of counsel. She is based in the Florence office and practices in the area of business litigation. Molly is a native of Columbia, South Carolina. She received her undergraduate degree from Vanderbilt and her law degree from the University of South Carolina School of Law. Upon graduation from law school, Molly moved to Florence. In addition to representing small and large businesses, she has handled complex litigation and appellate matters.

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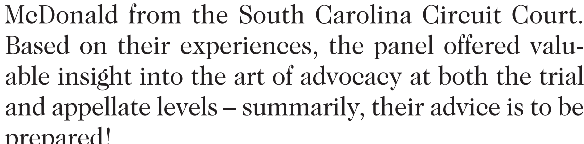
2013 Summer Meeting Wrap-Up

by James B. Hood

July 25-27, 2013 marked the 46th South Carolina Defense Trial Attorneys' Association Summer Meeting. Members and their spouses were treated to a spectacular mountain weekend at the newly renovated Grove Park Inn. By all accounts, the Grove Park has successfully updated the resort while also maintaining the traditional charm that continues to draw repeat visitors. For those who missed the 46th Summer Meeting, you won't want to miss next year's meeting to experience the beautifully renovated property and the opportunity to enjoy one of the Association's premier meetings. Josh Howard, Mark Allison, John Kuppens, and I served as the Summer Meeting Committee, and we worked hard to plan a weekend that balanced cutting-edge CLE with networking and recreational activities. With the assistance of each CLE presenter, we were able to offer diverse and timely educational programming as well as entertaining social gatherings.

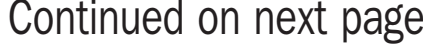
On Thursday, the meeting attendees arrived in Asheville finding old friends as well as many new faces. The Welcome Reception remains one of the highlights of the weekend as we all have a chance to step away from the office and spend some time with our friends and their families. The Young Lawyers' Division, headed by John Hawk, hosted a fantastic silent auction which included exciting items ranging from football tickets to weekends in the mountains to fishing trips. Every item that was auctioned was bid on and purchased, and we were thrilled to raise money for our designated charities.

Friday morning kicked off with an informative CLE on Cyber Liability which was presented by Robert Sumner. With so many new avenues for electronic information – and subsequently for hackers to attack – this topic is becoming more and more important in our daily practice. Following Robert's presentation, we were treated to an insightful presentation on advocacy from our distinguished judicial panel which included the Honorable Michelle Childs of the United States District Court of South Carolina, the Honorable Bruce Williams from the South Carolina Court of Appeals, and the Honorable Stephanie McDonald from the South Carolina Circuit Court.



Based on their experiences, the panel offered valuable insight into the art of advocacy at both the trial and appellate levels – summarily, their advice is to be prepared!

The substantive law committees for ADR, Commercial Litigation, and Workers' Compensation organized programs on relevant topics within their specialties and each was well-attended. We appreciate the help we received from each of these committees as the feedback we received was positive across the board on each of these CLE's. As we all know, the use of expert witnesses continues to expand and our common law continues to address certain aspects of expert testimony that have become more prevalent. Clark Dubose offered an excellent update on the state of the law. Recently, several relevant opinions came out regarding experts and Clark's presentation was exactly what we needed to review and discuss the same. The update on the law



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addressing expert witnesses was followed by a panel discussion by Brian Comer, Blanton O'Neal, Trey Suggs and moderated by Ron Wray regarding their experience both with handling their own experts and questioning the opposition's experts. Each member of the panel offered personal experiences they have had with experts – both good and bad – and their insights served as a great reminder on the importance of consistent communication with your expert witness.

Friday afternoon was a beautiful day, and there were a host of recreational activities from which to choose. Whether you played in the annual golf tournament, bounded through the treetop canopy on the zipline adventure, visited the local micro-brewery for a tour and tasting or headed to the courts for the tennis social, the wide variety of activities in and around Asheville offers something for everyone. After a full day of meetings and socializing, everyone gathered for the Bluegrass, Blue Jeans and Barbeque on the Blue Ridge. The setting was casual and so relaxing, some of us found it difficult to leave.

We started Saturday morning with a breakfast with the Workers' Compensation Commissioners who were kind enough to spend some time with us. We were honored to have all of the Workers' Compensation Commissioners in attendance. It offered our members the opportunity to hear directly from the Commissioners and allowed them to discuss current trends that they are facing and sharing their perspectives on the same. Following the breakfast, Zandra Johnson presented an insightful CLE on ethics. The Workers' Compensation Committee organized another great breakout session while Cary Hiltgen, past-president of DRI, presented a unique presentation on "How to Win Your Case Before Trial".

During the late morning on Saturday, the Product Liability subcommittee and the Trucking Law subcommittee organized breakout sessions for their respective specialties which were well-attended and informative. The CLE presentations ended on Saturday with what was one of the highlights of the weekend: the Honorable Costa Pleicones from the South Carolina Supreme Court along with Representative Derham Cole, Senator Shane Massey, and SCDTAA lobbyist Jeff Thordahl engaged in a panel discussion regarding the future of judicial selection in South Carolina. Our own Rob Tyson served as the moderator and navigated us through the current process, external pressures that we face attempting to influence the way judges are selected, opportunities to improve the process and a candid comparison of our system to the competing systems of gubernatorial appointments and popular elections. While no perfect system exists, it is clear that South Carolina utilizes fair and unbiased methods for selecting our judges, and we all have a much clearer understanding of the process thanks to our distinguished panel.

The Summer Meeting continues to provide fantastic networking, professional development and social opportunities. It is also a great family vacation as the Grove Park Inn's children's program offers activities for children of all ages in the afternoons and evenings. So, if your schedule wouldn't allow you to get away to Asheville this past summer, be sure to block off the dates for next year which are July 25-27, 2014. Until then, we look forward to seeing you in Savannah at our Annual Meeting!

Special Thanks to our 2013 Summer Meeting Sponsors

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The 46th Annual Conference: A Must Attend Event!

November 7-10 • Savannah, GA

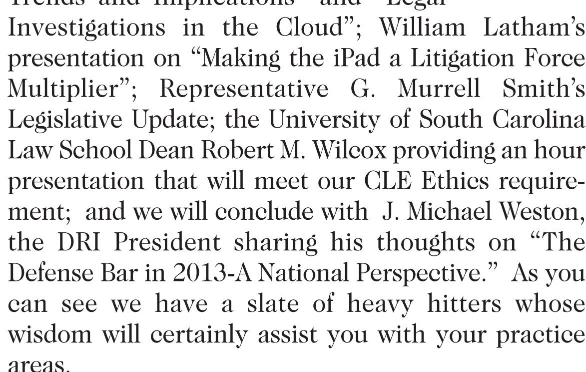
by David A. Anderson

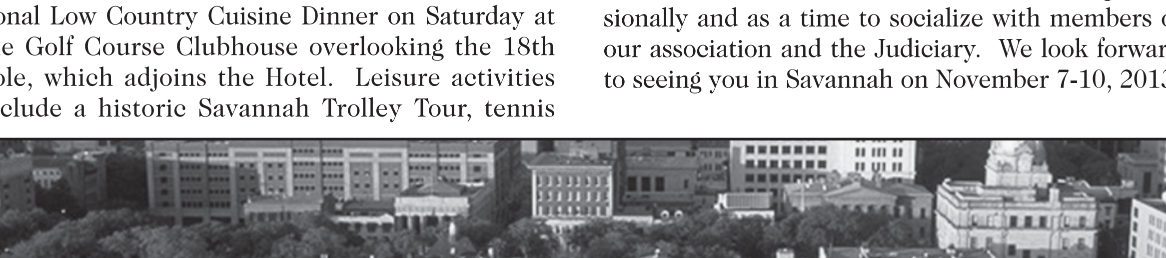
The Forty-Sixth Annual Conference of the South Carolina Defense Trial Attorney Association will take place at the Westin Harbor Resort in Savannah, Georgia on November 7 – 10, 2013. The Annual Conference Committee has put together a dynamic educational program as well as fun and exciting leisure events which are sure to be a hit. The event location is the beautiful Westin Savannah Harbor Resort & Spa, a relatively short drive from most locations in our state. This majestic hotel situated on the South Carolina side of the Savannah River overlooks both the river and Savannah entertainment center. The resort complex, complete with golf, bike trails, tennis, pool and a world class spa, awaits your arrival.

We will start our conference with a reception on Thursday evening, with our educational programs slated for Friday and Saturday mornings. On Friday evening we will once again have our Black Tie Optional Dinner with entertainment from one of the Premier Show Bands in the country, the Atlanta Rhythm and Groove Band. Unlike years in the past, you will not be vying for times to see either the Carolina or Clemson Football Games, since both teams have off this weekend! We will have a traditional Low Country Cuisine Dinner on Saturday at the Golf Course Clubhouse overlooking the 18th hole, which adjoins the Hotel. Leisure activities include a historic Savannah Trolley Tour, tennis tournament, wine tasting, golf tournament and backwater fishing, to name just a few of the scheduled events.

We have a great slate of speakers lined up which include the Honorable Joseph F. Anderson, Jr. speaking on his latest book, *Effective Courtroom Advocacy* ; Chief Justice Jean Toal providing the State of the Judiciary presentation; Dallas Attorney Ben Wright speaking on "Computer Privacy and Security Law: Trends and Implications" and "Legal Investigations in the Cloud"; William Latham's presentation on "Making the iPad a Litigation Force Multiplier"; Representative G. Murrell Smith's Legislative Update; the University of South Carolina Law School Dean Robert M. Wilcox providing an hour presentation that will meet our CLE Ethics requirement; and we will conclude with J. Michael Weston, the DRI President sharing his thoughts on "The Defense Bar in 2013-A National Perspective." As you can see we have a slate of heavy hitters whose wisdom will certainly assist you with your practice areas.

This Conference has much to offer both professionally and as a time to socialize with members of our association and the Judiciary. We look forward to seeing you in Savannah on November 7-10, 2013.





THE WESTIN SAVANNAH HARBOR
SAVANNAH, GEORGIA

The Honorable Shiva V. Hodges
United States Magistrate Judge

Shiva V. Hodges assumed the duties of United States Magistrate Judge on April 1, 2010. She served in the Florence Division of the District of South Carolina until January 2012, when she moved to the Columbia Division. She previously served for six years as a career law clerk to United States District Judge Joseph F. Anderson, Jr. Prior to her career in public service, she worked as a litigator at Parker Poe Adams & Bernstein, LLP, in Columbia.

Judge Hodges graduated from the Governor's School for Science and Mathematics in 1991 and from the University of South Carolina Honors College with a B.S. in Biology in 1996. In 2000, she obtained her J.D. from the University of South Carolina School of Law, together with a Master of International Business (MIBS) in the Italian track. She is licensed in both South Carolina and North Carolina.

What has been the biggest challenge you face with the court system?

The biggest challenge I face as a judge with the court system is the same challenge I faced while in private practice: effectively handling the volume of cases timely. Sometimes I feel like that I Love Lucy episode where Lucy and Ethel fall behind in their job wrapping chocolates because of the speeding conveyor belt, and they end up stuffing chocolates in their mouths and hats. There's a constant stream of cases and motions being filed that require timely and thoughtful consideration. The challenge is to do the work, do it right, do it well, and do it timely.

Who has been the biggest influence in your legal career?

Judge Joe Anderson has been the single biggest influence in my legal career. I was fortunate to serve as his intern during law school and as his career clerk before my current position with the court. I could not help but be transformed by those years of exposure to his judicial philosophy, keen intellect, strong work ethic, and common sense practicality. He would always remind his law clerks that each case was the most important one on our docket to those litigants and we should treat them as such, regardless of the amount of money involved.

Counsel now takes an oath that requires fairness, integrity, and civility, not only to the court, but also in all written and oral communications. Has this been a problem that you have observed?

I'm delighted to report that this has not been a problem for me. We're fortunate in South Carolina that we still have a relatively small and stable bar, especially compared to larger metropolitan areas with more transient populations of attorneys who may encounter more negative behavior. My experience has been that good litigators do not need to resort to incivility and unfairness to effectively represent their clients against opposing counsel and in court. I believe our bar is fortunate in that regard, and I'm proud to be a part of it. My mother-in-law has a sign in her kitchen that says "Because nice matters." Our state is too small for bad behavior. If opposing counsel doesn't know you or your kinfolk, then all it takes is one phone call to find out the scoop. Most folks know that, and they make sure that their interactions will elicit a positive recommendation. There are always outliers, but by and large, the members of our bar play well with others.

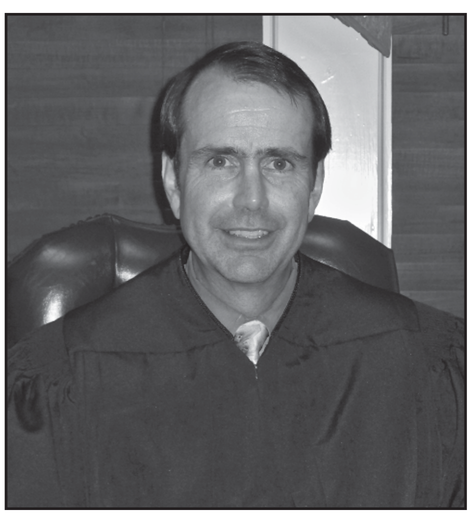
What do you enjoy doing in your spare time?

My husband, Hayne, and I have four boys ages 1 to 8, so most of our spare time is spent on a baseball or soccer field or fetching snacks. I love Carolina football and baseball, and in the days B.C. (before children), I enjoyed traveling, reading, and cooking.

What was the last book you read?

I usually have a couple of books going on my Kindle. I just finished Let's Explore Diabetes with Owls by David Sedaris and have been reading Bringing Down the House: The Inside Story of Six MIT Students Who Took Vegas for Millions by Ben Mezrich. Both books are very entertaining, in different ways.

The Honorable William H. Seals, Jr.
South Carolina Circuit Court



Judge William Henry Seals, Jr. was born in Marion County on August 19, 1961. His parents are the late William H. Seals, USMCR and attorney, and Melba Reid Seals. Judge Seals is married to the former Phoebe Anderson Richardson of Darlington, S.C. and they have one son, William Henry Seals, III.

Judge Seals graduated high school from Pee Dee Academy and from Charleston Southern University in 1982. Judge Seals then attended the University of South Carolina in pursuit of a MBA when he decided the law was his calling. He graduated from the Cumberland School of Law in 1990. Thereafter, Judge Seals practiced law in Marion with James E. Brogdon from 1990 to 1995, and then as a sole practitioner until 2009. Judge Seals engaged in the general practice of the law with an emphasis in civil litigation. Judge Seals also served as Marion's Municipal Court Judge from 1996 to 2009. In this regard, he received from the City of Marion The Outstanding Public Service Award given in appreciation for his leadership, integrity and contributions to city government as an outstanding citizen and municipal employee. Judge Seals was elected as South Carolina Circuit Court Judge, At-Large Seat 6, on February 11, 2009, to fill the unexpired term of Judge James E. Lockemy.

Judge Seals and his family are active members of The Church of the Advent Episcopal Church in Marion. Both Judge Seals and his wife are coaches of their son's Sporting Clays Team at Pee Dee Academy, and all three love the outdoors. Judge Seals particularly enjoys NASCAR, canoeing the swamps of the Little Pee Dee River, and hunting, with a special affection for bow hunting and duck hunting. Judge Seals also enjoys spending time on his farm in the Zion Community of Marion County along with his German Shepherd, Gus.

What has been the hardest part of transitioning to become a Circuit Judge?

Knowing that everything I say in court is being transcribed virtually all of my working hours. It takes getting used to the fact that all I say is being recorded, repeated, and/or typed. Also, I had to adjust to the fact that the lawyers, parties, and the public are listening and watching most of what I do on the bench. A laugh, smile or a frown or an otherwise meaningless expression might be interpreted the wrong way. Thus, keeping a calm demeanor with a poker face seems to work best for me but does not necessarily come naturally. Also, the travel has been an adjustment for me and my family. Being from Marion where there are limited terms of court, I am more times than not on the road. Needless to say, I no longer need a GPS to travel just about anywhere in this state.

What advice do you have for lawyers appearing in your courtroom?

I like pretrial briefs. I do read them even after hours or on the weekends if necessary. However, it does me no good to be handed a voluminous pretrial brief while I am qualifying the jury for that particular trial or while opposing counsel is giving their opening statements. Also please keep the briefs – brief. I respect the public and their time away from family and work, thus do not want to stop the process to read a pretrial brief that has been given to me at the last minute. Furthermore, I would suggest that the lawyers get to court early and go ahead and mark exhibits, and if possible, stipulate on the record prior to trial items that are being entered into evidence. All of this leads to judicial economy. I can assure you that the court appreciates this as much as the public.

What are the mistakes you most often see lawyers make in cases before you that could easily be corrected?

In preparing for trial, think about potential matters that will require an objection and be prepared for it. When the time comes state your objection and the precise reason or rule to back it up and vice versa when the objection is directed at you. Most, if not all, evidentiary problems can be anticipated. Doing this is professional and builds credibility with the judge and the jury. I understand that to object or not is often times strategy but when needed, be ready and prepared. The judge appreciates this and it makes for

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Legislative Update

by Jeffrey Thordahl, SCDTAA Lobbyist

This time last year we were working with a relatively new Lt. Governor - Glenn McConnell, a new Senate President Pro Tem - Senator John Courson, a new Chairman of Senate Judiciary Committee – Senator Larry Martin and a new Chairman of House Judiciary Committee – Representative Greg Delleney. Now, a year later, they have all settled into their roles and the General Assembly is back to the business at hand; however, there is always something just around the corner and 2014 will certainly be interesting.

First, all nine of the Constitutional Officers are up for re-election. The most highly anticipated race is, of course, the race for Governor between the incumbent, Governor Nikki Haley, and the likely Democratic candidate, Senator Vincent Sheheen. It is expected that all of the current Constitutional Officers will seek re-election. Of course, only the Governor is limited to two terms. In addition, all of the elections for the House of Representatives will be held in 2014. It also warrants mentioning that there will be a contested race for the Chief Justice of the Supreme Court. It is expected that the election of judges by the General Assembly will be in early February.

Senator Gerald Malloy was appointed to the Judicial Merit Selection Commission in August. He replaced Senator Floyd Nicholson from Greenwood, who resigned. In January of 2013, Representative Bruce Bannister, an attorney from Greenville, was appointed to the Committee to fill a vacancy. In addition to these two members, the other legislative members of the Commission include: Chair - Senator Larry A. Martin, Representative Alan D. Clemmons, Representative David J. Mack, III, and Senator George E. Campsen, III. Current non-legislative members are: Mrs. Kristian M. Cross Bell, Mr. Joseph Preston "Pete" Strom, Jr.; Mr. John Davis Harrell, and Mr. H. Donald Sellers.

Legislatively, going into next year there are some issues still lingering, such as what to do about the 16 Jade Street Case dealing with LLC liability. With the new Supreme Court Opinion issued in August, the General Assembly is likely to sit tight on the pending legislation. There is also the Workers Compensation bill introduced in response to the Bentley v. Spartanburg case. Finally and notably, at the very end of the 2013 legislative session, SCDTAA Board Member and Senator, Shane Massey, introduced two Tort Reform Bills. There are many substantive issues included in the bills such as punitive damages reform, non-economic damages limits and many others. You can view the bills here - S. 773 and S. 788. Given that 2014 will be the second year of a two year session, passage of either bill is highly unlikely although the debate will begin. In the past, broad Tort Reform legislation has taken several years to gather a majority vote in both bodies to pass and will most likely be the case this time as well.

Seals Profile Cont. From Page 29

a better case instead of simply having a "deer in the headlights stare" when an objection is made or should have been made yet could have been easily foreseen and prepped.

Is there a particular pet peeve that you have as it relates to conduct in your courtroom or for practitioners before you?

Do not interrupt and talk over the judge, a witness or other lawyers. I am surprised how often, the witness, other lawyers and I are simply interrupted by a lawyer arguing out of turn. I recognize that lawyers have a hard job and that lawyers in court are under stress. However, I can assure the bar that I will allow each lawyer ample opportunity to try their case without me pushing and prodding. Slow down and remember your courtroom decorum. The bench and the public appreciate this and verdicts tend to reflect it.

What do you enjoy doing in your spare time?

I enjoy time with my family, hunting, and fitness. I also enjoy reading and red wine. Reading and red wine tend to mesh well together.

What was the last book you read?

Hornet Flight by Ken Follett.

Who has been the biggest influence in your legal career?

My father was a tremendous influence on me. I worked under him in college and during law school and learned that patience is a virtue and all living things deserve respect. My father died while I was in law school, thus I never had the opportunity to practice with him. However, when I started practicing law, I had the opportunity to try cases with, and against, Mike Nunn, a former attorney in Florence. I learned from him, most times the hard way, to be early, calm, gentlemanly and always prepared and that nothing less is acceptable. He was a good role model for me as a young lawyer. Mike is now a Captain with the Florence Sheriff's Department.

ARTICLE

16 Jade Street v. R Design Revisited: How Can It Be Used to Protect Members?

by William T. Young [1]

In April 2012, the Supreme Court determined that a member of an LLC could be held individually liable for acts undertaken by the member in the scope of his role as a member of an LLC.[2] Recently, the Court withdrew that opinion, and while the refiled opinion relieves the individual LLC member from liability in that particular instance, the Court does not address the novel issue of whether an LLC protects against individual liability when a member is undertaking acts in furtherance of the LLC.[3] However, the Court's new opinion provides potential guidance to successfully arguing that a member of an LLC may not be held individually liable for acts undertaken on behalf of the LLC.

Carl Aten, along with his wife, organized R Design Construction Co., LLC. The Atens were the only members of the LLC, and Carl held a South Carolina residential builders license. R Design contracted with 16 Jade Street, LLC for the construction of a small condominium project in Beaufort, South Carolina. Although R Design subcontracted with Catterson and Sons Construction, Inc. to perform a majority of the work, Aten was onsite daily and also performed work on behalf of R Design. A disagreement arose during the course of construction, and R Design left the project. Jade Street then commenced the subject action, asserting claims of negligence, breach of contract, and breach of warranty against R Design and Aten. Jade Street also asserted similar claims against Catterson and Sons, Inc. and Michael S. Catterson, individually. The breach of contract claim against Aten was dismissed prior to trial.

Following a bench trial, the trial court determined that Michael Catterson could not be held individually liable, but found that R Design, Carl Aten, and Catterson & Sons were jointly and severally liable to Jade Street, awarding Jade Street $925,556 in damages. The trial court found that Aten was "more than a mere member manager" of R Design, and therefore determined that he was individually liable to Jade Street under a theory of negligence. In so doing, the trial court determined that S.C. Code Ann. §40-59-400, which states that a "responsible charge" for a project holds "professional responsibility for the building services" created an individual duty that Aten owed to Jade Street.

Aten appealed, arguing that §40-59-400 does not give rise to an action against him. He further argued that he was protected from individual liability by the South Carolina Uniform Limited Liability Company Act. The Supreme Court certified review, and in its original opinion, focused on the LLC Act, and in particular S.C. Code Ann. §33-44-303.[4] In a 3-2 decision, the Court found that the section was ambiguous, and analyzed the legislative intent of the statute to find that the section did not protect Aten from individual liability.

Although the majority never explained the ambiguity it found[5], it nevertheless applied the rules of statutory construction and determined that the General Assembly did not intend for an LLC to provide a shield to protect an individual member of an LLC. Consequently, the majority held that Aten was individually liable to Jade Street.

Aten argued on rehearing that, even assuming the statute was ambiguous and failed to provide protection from individual liability, the majority failed to examine whether Aten could be held individually liable to Jade Street under the particular facts of the case. This argument was predicated upon the contention that Aten, as an individual, owed no duty to the developer. Aten argued that any duty owed arose from the contract for construction between Jade Street and R Design, to which Aten was not a named party, and which did not obligate Aten personally. The Supreme Court agreed, and determined that Aten could not be individually liable to Jade Street because he owed no duty to Jade Street. The Court specifically rejected the contention that Aten's possession of a residential builder's license created a duty to Jade Street.

While the Supreme Court resolved the specific issue of Aten's liability to Jade Street (or lack thereof), it left unsettled the novel issue of whether an individual may be protected from personal liability through an LLC. Moreover, the original *Jade Street* opinion emboldened Plaintiffs' attorneys, who have viewed the opinion as an invitation to name individual members as defendants in actions against the LLC. Because of this, and because the Supreme Court recognized that any analysis of an individual member's liability necessarily requires the specific showing that all elements of a cause of action must exist before the liability question is reached, we are

Continued on next page

provided with some guidance on how to potentially argue against individual liability to members of LLCs. In many instances, the easiest way to combat claims against individuals may be to demonstrate the individual owed no duty to the plaintiff.

The manner in which a duty is created is likely an important consideration in such an analysis. In *Jade Street*, the duty arose from the contract between R Design and Jade Street. Aten was not a party to that contract, which the court recognized when it dismissed the breach of contract claim against Aten. Therefore, Aten could not owe any duty to Jade Street through the contract, and Aten did not owe any common law duty to Jade Street. Therefore, once the Supreme Court determined that §40-59-400 failed to create a duty, the claim against Aten had to fail.

Had Aten owed a common law duty to Jade Street, he may have been potentially liable to Jade Street. For example, if a member of an LLC injures another while the member is operating a motor vehicle, the member will likely be subject to personal liability, even if he was operating the vehicle in connection with his duties as a member of the LLC. The difference results from the member owing a common law duty of safe operation of a vehicle, which is independent of his relationship with the LLC. By contrast, Aten's involvement with Jade Street existed solely because of the contract between Jade Street and R Design, which does not create an individual duty owed by Aten.

As alluded to above, the creation of an LLC may not provide an absolute shield to individual liability. There is likely no protection afforded to an individual LLC member when he breaches a common law duty owed independent of his participation in an LLC. However, in instances where a duty arises from a contract, two additional barriers potentially exist to the imposition of individual liability against a member. The first stems from principles of agency, which are implicated by virtue of the relationship between an LLC and its members. The Restatement (Second) of Agency provides that an agent owes a duty to his principal under a contract, and generally not to a third person.[6] The Restatement further provides that an agent who makes a contract on behalf of a (disclosed or partially disclosed) principal is not liable for nonperformance of that contract by the principal.[7] Finally, "[a]n agent who intentionally or negligently fails to perform duties to his principal is not thereby liable to a person whose economic interests are thereby harmed."[8] That leads to the second barrier: the economic loss rule.

The economic loss rule states that there is no tort liability for a product defect when damage only occurs to the product itself. Our Supreme Court established an exception to that rule in *Kennedy v. Columbia Lumber & Mfg Co., Inc*., determining that purchasers of a new home would have a claim in negligence for defective construction, no matter the resulting damage.[9] Following *Kennedy*, the exception to the economic loss rule expanded.[10] More recently, however, the Court confirmed the only exception to the economic loss rule is the narrow one established in *Kennedy*.

In *16 Jade Street*, it was argued that Aten could not be held personally liable because the loss that resulted to Jade Street was to the product itself, and therefore liability could only rest in contract. It was further argued that because Jade Street was a developer, and not a purchaser, it was not among the class of persons for who the exception to the economic loss rule was intended to protect. That distinction, while technical, is not inconsequential, as *Kennedy* plainly recognizes the lack of sophistication in construction by most homebuyers, while developers are more sophisticated in construction.

The Supreme Court did not have to address the principles of agency or the economic loss rule in *16 Jade Street*. However, both issues can be useful to defense counsel representing an LLC or an individual member. Additionally, there is no automatic transfer of liability from an LLC to a member. Rather, there must be a showing that the member would be liable if he was acting in an individual capacity. Although the extent to which an LLC provides a member protection from individual liability remains an undecided question, *16 Jade Street* demonstrates that the LLC form does provide some barrier to individual liability. As more cases involving the LLC form make their way through the appellate courts, it is incumbent upon defense counsel to ensure that individuals are afforded as much protection as possible under the LLC Act.

Footnotes

1 Bill Young is an associate with Howell, Gibson & Hughes, P.A. in Beaufort. His practice focuses primarily on construction litigation, including defending claims against general contractors and subcontractors. He is admitted to practice in South Carolina, the United States District Court for the District of South Carolina, and the United States Court of Appeals for the Fourth Circuit.

2 *16 Jade Street, LLC v. R Design Construction Co., et al.*, 398 S.C. 338, 728 S.E.2d 448 (2012).

3 *16 Jade Street, LLC v. R Design Construction Co., et al*., -- S.E.2d --, 2013 WL 4553851 (2013).

3 The statute provides:

(a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

(b) The failure of a limited liability company to

Continued on bottom of page 34

Article

High Court Vindicates Employer's Right to Terminate for Cause

by Cynthia Dooley and Ashley Kirkham

On July 17, 2013, the Supreme Court held that when an injured employee is on light duty as a result of a work-related injury and is terminated for a valid cause unrelated to the work accident, the injured employee will not be entitled to temporary disability benefits. *Pollack v. Southern Wine & Spirits of America*, Opinion No. 27285 (July 17, 2013).

The South Carolina Supreme Court appears to have limited last year's *Cranford v. Hutchinson Construction*, Op. No. 4939, Ct. App. June 13, 2012, decision with regard to an injured worker's right to temporary disability benefits while on light duty work restrictions. In *Cranford*, the Court of Appeals held an employer was required to provide ongoing temporary total disability benefits when an injured employee, who is still on light duty and has not reached maximum medical improvement, is terminated from his employment. This decision was worrisome for employers in South Carolina, because it could be interpreted as meaning employers were forced to keep an employee on light duty despite a reason for termination unrelated to the work accident, or to pay that injured employee temporary disability benefits.

However, *Pollack* seems to clarify the issue of under what circumstances an injured employee is entitled to temporary benefits.

Pursuant to South Carolina Regulation 67-502(B)(1), "[d]isability benefits are used to compensate the employee for the difference in what he was making before and after an accident *due to the injury sustained*" (emphasis added), employers argued that if an injured worker's inability to earn income was not a result of the work accident, the employer was not required to provide temporary disability benefits. However, the court has noted in some cases that temporary disability benefits are still required. *See Last v. MSI Const. Co.*, 305 S.C. 349, 409 S.E.2d 334 (1991) (substantial evidence supported the continuation of temporary total disbality benefits where the employer sought to terminate benefits based on a claimant's refusal to accept medical care while the claimant was incarcerated); *Johnson v. Rent-A-Center, Inc.*, 398 S.C. 595, 730 S.E.2d 857 (2012) (affirming the Commission's award of temporary total disability benefits and rejection of the employer's argument that it attempted to accommodate the employee's injury and that its purported offer of light duty work was reasonable). The *Cranford* decision in June 2012 officially worried employers: Would an employer be required to continue to accommodate an injured employee with light duty work restrictions who had not reached maximum medical improvement without regard to that employee's actions? Would an employee be able to do essentially whatever they wanted to on the job while the employer must turn a blind eye or pay that injured worker two-thirds of their average weekly wage until he or she reached maximum medical improvement? The court's decisions seemed to fly in the face of the regulation, which requires temporary benefits only to be paid when the injured worker could not work as a result of the injury itself.

Dooley

Kirkham

In *Pollack*, the claimant, Daren Pollack, suffered an admitted injury to his back while lifting a case of alcohol for his employer, Southern Wine & Spirits. Claimant's physician issued lifting restrictions not to exceed fifteen pounds. Southern Wine & Spirits accommodated Claimant's light duty restrictions and provided him with his full salary while he worked light duty.

Two months later, Claimant, a manager for Southern Wine & Spirits, was involved in a minor accident involving a company vehicle. Claimant did not report the collision, in violation of company policy that required *all* accidents and incidents to be reported, whether or not there was damage to the company vehicle or other property. Southern Wine & Spirits terminated Claimant for his failure to report the accident. It was an especially egregious violation of company policy for Claimant to fail to report the accident since one of his job duties was to investigate company vehicle accidents. Further, one of Claimant's direct employees reported Claimant's vehicle accident rather than Claimant himself.

Claimant filed a Form 50 seeking temporary total disability (TTD) compensation from the date of his termination. Southern Wine & Spirits opposed his request for TTD based on his termination for cause unrelated to the accident and arguing it *was* accommodating Claimant's work restrictions. Claimant

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admitted to having previous infractions during his employment as well. Claimant's supervisor, Sonny Blocker, testified that but for Claimant's violation of company policy, Claimant would still be working within his light duty work restrictions for Southern Wine & Spirits.

The single commissioner denied Claimant's request for TTD benefits. The full commission affirmed, finding that Claimant was not out of work due to his injury, but because he violated company policy, which led to his termination. The Supreme Court affirmed, holding that "[a]n injured worker will be entitled to TTD compensation when his incapacity to earn wages is *due to* or *because* of the injury." *Pollack*, Op. No. 27285 at p.5 (citing *Travelscape, LLC v. S.C. Dep't of Rev.*, 391 S.C. 89, 98, 705 S.E.2d 28, 33 (2011) (emphasis added).

The Court noted that the workers' compensation statute, South Carolina Code § 42-9-260, and its accompanying regulations provide that "the entitlement [to] TTD benefits is premised on a nexus between the work-related injury and the inability to earn wages." It further rejected Claimant's contention that the workers' compensation laws mandate payment of TTD when an employee is fired from an accommodated, light duty position. Such a result would protect injured employees who engage in misconduct while being accommodated with light duty work. It would further punish employers seeking to accommodate their injured employees. The court noted that "[t]o accept Appellant's argument that, as a matter of law, no employer may ever terminate an injured, accommodated employee without incurring responsibility for TTD benefits would be contrary to section 42-9-260 and applicable regulations." *Pollack*, Op. No. 27285 at n.4.

The *Pollack* Court made clear that they were constrained by the substantial evidence standard of review. Under this standard, the Court will ask whether, considering the record as a whole, reasonable minds would reach the same conclusion the Commission reached to justify its decision. As such, a Commissioner's findings of fact will be given great weight.

The Court stated, while emphasizing the importance of the Commission's fact-finding role, that "an employer's denial of TTD benefits must be scrutinized carefully." Recent case law in South Carolina has seen this scrutiny in action. The *Pollack* Court cited one recent South Carolina Court of Appeals decision that required employers to pay temporary disability benefits following termination of an injured employee for cause, *Davis v. UniHealth Post Acute Care*, 741 S.E.2d 770 (Ct. App. 2013), where the court held substantial evidence supported the Commission's determination that the employer was required to pay TTD compensation to the claimant where the claimant did not refuse employment by falling asleep very briefly on the job. *See Pollack*, Op. No. 27285 at n.5.

While it remains to be seen how the *Pollack* decision will be applied in the future, we expect employer's exposure for temporary total disability benefits will decrease as a result of the Court's holding. However, employers should be mindful of *Davis* and similar factual circumstances where the court has carefully scrutinized the employer's reason for terminating the employee. It is likely that the Commission and appellate courts will consider an employer's possible motivation to "look for" a reason to terminate an injured employee when issuing their decisions regarding an employer's liability for temporary disability benefits.

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observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) a provision to that effect is contained in the articles of organization; and

(2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

4 The dissent, authored by Justice Beatty, with which Chief Justice Toal concurred, determined that no ambiguity existed in the statute, and therefore members of LLCs were shielded from individual liability.

5 Restatement (Second) of Agency §352 (1958).

6 Restatement (Second) of Agency §328 (1958).

7 Restatement (Second) of Agency §357 (1958).

8 299 S.C. 335, 384 S.E.2d 730 (1989).

9 See Colleton Prep. v. Hoover Universal, Inc. 379 S.C. 181, 666 S.E.2d 247 (2008).

10 Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47 (2009).

Article

Revisiting *Batson v. Kentucky* and its Progeny in Light of *State v. Rogers*

by Amanda Blundy [1]

Batson v. Kentucky and its progeny have formed the modern day basis for requesting an explanation of peremptory challenges on prospective jurors on the alleged basis of race. Recently, the South Carolina Court of Appeals analyzed *Batson* and subsequent decisions, creating a roadmap for presenting and responding to *Batson* motions in the trial court setting.

In September 2013, the South Carolina Court of Appeals reached a decision in *State v. Rogers* [2], on an appeal of a criminal conviction, holding the trial court erred in granting the State's *Batson* [3] motion regarding three jurors. The Court examined the history of *Batson* motions, looked at the interpretation of *Batson* in subsequent decisions, and examined the burden on the opponent of a peremptory strike in establishing that the strike was pretext for purposeful discrimination.

Background

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution sets the standard for ensuring a juror is not struck on the basis of race or gender.[4] While the judicial system affords each party, during voir dire, to eliminate a certain number of jurors without cause, these peremptory challenges must be for a race and gender-neutral reason. As explained in Rogers, a Batson hearing may be requested by the opposing party when one party strikes a member of a cognizable racial group or gender.[5] An opponent, in requesting a *Batson* hearing, must have a prima facie case of racial discrimination, but then the burden shifts to the party who made the strike to provide a race-neutral explanation. Once a race-neutral explanation is provided, the trial court must examine whether the strike was actually discriminatory.[6] If a trial judge's finding is appealed, appellate courts examine the totality of facts and circumstances in the record when determining whether a *Batson* violation has occurred.[7]

In *Rogers*, Defendants Brandon Rogers (Appellant) and co-defendant Daniel Rogers were indicted for second-degree burglary and petit larceny. Rogers and his co-defendant, during jury selection, struck nine prospective Caucasian jurors; both Rogers and his co-defendant were African American. The State requested a *Batson* hearing for eight of the nine strikes. Five of the eight jurors were precluded from being struck by the trial court. Of the eight jurors in question, three were ultimately selected for the second jury.[8] Jurors 65, 89, and 166 sat on the second jury, which found Defendants guilty. Defendants appealed the trial court's finding that these three jurors were struck for discriminatory reasons.

<u>The *Batson* Hearing for Jurors 65, 89, and 166</u>

At the *Batson* hearing, Defendants stated they struck Juror 65, a Caucasian, retired, female school teacher, because of her profession. They explained teachers are disciplinarians and do not like excuses. The trial court agreed with the State in that this explanation was improper because this was a stereotype of the teaching profession.[9] The State and the trial court relied on *Payton v. Kearse*, stating stereotyping of groups is prohibited.[10] Also, the trial court found Defendants' explanation was pretextual, because a juror was seated by the defense who was similarly situated to Juror 65.

<u>The Burden Shifts to the Opponent to Prove the Reason was Pretext for Discrimination</u>

Juror 166, a Caucasian, male, sales representative, was also struck by Defendants. When questioned of the reason at the *Batson* hearing, defense counsel stated "(he) was a sales representative. I know from my personal experience they do tend to be more conservative. Also, I believe he had somewhat of a crew cut haircut, looked kind of militant. They also tend to be conservative, law and order type folks. I know sales reps like my father drive around all day selling stuff, listening to Rush Limbaugh. I don't think he would have a whole lot of sympathy for my client, is what he looked like. "[11]

The State asserted this rationale by the defense to be pretextual, because it was based on a stereotype. Also, striking a juror because of his political affiliation is improper, according to the State.

Lastly, Juror 89, originally struck by Defendants, but sitting in the second jury, came into question in the Batson hearing. Juror 89, a white female, was a manager at CitiFinancial in Lumberton, North Carolina. At the hearing, defense counsel cited his

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race-neutral reason to be that she worked for CitiFinancial in Dillon, South Carolina, and they used the Sheriff's Department to serve all of their papers. The trial court found this reason to be pretextual because of counsel's inaccurate belief that the juror worked at a different CitiFinancial office location.

Upon review of the record, the Court evaluated the reasons given by defense counsel, the response by the State, and the decision of the trial court. In doing so, the Court revisted *Batson* and many cases in South Carolina, interpreting *Batson*, further defining how *Batson* motions should be handled at the trial court level.

Stereotypes based on a Profession

In addressing the decision on Juror 65, the Court of Appeals disagreed with the trial court's decision that "stereotyping of groups or subgroups" is prohibited by the South Carolina Supreme Court case of *Payton v. Kearse*.[12] The *Payton* Court prohibited striking a juror on a "racially stereotypical reason."[13] In the instant case, the stereotype of the teaching profession was race-neutral and not prohibited based on the rationale in *Payton*.

Since defense counsel offered a race-neutral explanation, the burden shifts to the state to prove the reason was not pretext for discrimination. Since the State's explanation as to stereotype fails, the Court also evaluated the explanation that a similar juror was seated. The record failed to support the trial court's decision that a similarly situated juror was seated. In order for an opponent to show pretext based on the seating of another juror, the opponent must show "that similarly situated members of another race were seated on the jury."[14] In the instant case, the juror used by the State to show pretext was actually stricken by the Defendants and was the same race as the challenged juror, Juror 65.

Stereotypes based on Appearance

The Court of Appeals also reviewed the trial court's decision relating to Juror 166. The Court evaluated the defense's strike of Juror 166, based on his conservative appearance and a crew cut haircut, finding these were race-neutral explanations. The description of "conservative" was a gender and race-neutral explanation. The Court went on to state "(f)urthermore, the wearing of a crew cut is not a characteristic peculiar to any particular racial group."[15] This is a gender neutral explanation and a crew cut haircut is not a characteristic of any particular racial group. The Court used the more recent decisions of *Purkett v. Elem and State v. Adams* [16], which offered a deviation from *Foster v. Spartanburg Hospital System* [17], in forming its opinion. Foster required the proponent of the strike offer a reasonable explanation, while subsequent caselaw such as *Purkett* and *Adams* stated a party's reasons do not have to be persuasive or even plausible. The *Rogers* court reasoned that the defense counsel's reason was based on personal experience, not a sweeping generalization. Also, the Court noted he was not struck because he was a member of a particular party. Based on cases such as *State v. Flynn* [18] and *State v. Cochran* [19], the *Rogers* Court reasoned that defense counsel's reasons were race-neutral, although questionable.

Turning to Juror 89, the Court of Appeals evaluated the trial court's decision that the mistaken belief that Juror 89 worked in the Dillon office proved the strike was pretextual; the Court found "this mistake was not evidence that his explanation was pretext for racial discrimination."[20] The Court evaluated the record and found the reason for the strike was that the juror's employment created a relationship with law enforcement and the specific office was immaterial. Returning to the decision in *Cochran*, employment may be used as a race-neutral explanation. Similar to its finding for Jurors 65 and 166, the Court found the trial court erred in finding a *Batson* violation.

Based on its evaluation of the record and analysis of *Batson* and South Carolina's application of the case and its progeny, the Court of Appeals failed to support the trial court's decision as to Jurors 65, 89, and 166. Since these jurors were ultimately seated, the remedy was a new trial. [21]

Conclusion

More than 25 years have passed since B*atson v. Kentucky* was handed down and while state courts still grapple with the application of *Batson* and subsequent caselaw, South Carolina's recent decision provides a framework for counsel and trial courts in bringing and responding to *Batson* motions. While the *Rogers* decision further clarifies South Carolina precedent, it will be up to the trial courts to ensure the purpose of *Batson* is achieved - ensuring the right to a fair trial by a jury of one's peers and further eradicating discrimination in the jury selection process.

Footnotes

1 Amanda Blundy is an associate in the Charleston office of McAngus Goudelock and Courie. Ms. Blundy's practice focuses on general litigation defense, premises liability, personal injury issues, construction defects, and insurance coverage issues.

2 *State v. Rogers*, 2013 S.C. App. Lexis 215.

3 *Batson v. Kentucky,* 476 U.S. 79 (1986).

4 *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d at 810 (2001).

5 *State v. Rogers*, 2013 S.C. App. Lexis citing Shuler, 344 S.C. at 615, 545 S.E.2d at 810.

6 *Purkett v. Elem*, 514 U.S. 765, 767 (1995).

7 *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001).

8 *State v. Rogers* at 2.

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ARTICLE

Waiver of Liability: Does Yours Pass the Test?

By Kyle A. Hougham [1]

I. Introduction

It is a Saturday afternoon and John Doe has a brilliant idea; he decides to take his family out for a little excitement. Doe loads up the family "truckster" as my parents would call it and he, along with his family, arrives at the local inflatable jungle gym. At the cash register where Doe exchanges his hard earned dollars for the chance at bouncy castle glory, he is given a document that states the following:

> **A COMPLETED WAIVER IS REQUIRED TO PARTICIPATE. SORRY, NO EXCEPTIONS.**
>
> In consideration for being allowed to enter the Center and/or participate in any programs, the undersigned, on his or her own behalf, acknowledges, appreciates and agrees that:
>
> 1. Activities can be hazardous and dangerous. Activities require strenuous exercise and various degrees of skill. I understand that these activities can result in serious injury to the person; I assume any and all risk and damage or injury while on the Center's premises.
>
> 2. I am aware of the risk, hazards and danger of personal injury, disability and/or death as a result of participation at the Center, including those that may arise out of the negligence of other participants.
>
> 3. I have read a copy of the rules and understand it is my responsibility to ask questions if necessary. Although there are employees to monitor the Center, it is my responsibility to monitor my own activities. I certify that I am in good health and that I have no physical limitations that would preclude me from safe participation at the Center.
>
> 4. In consideration for my admission to the Center, I herby release, waive and forever discharge and covenant not to sue the Center and it's owners, employees, officers, directors and all other person or entities acting on its behalf, from any and all claims, damages, liability, costs or expense including attorneys fees which are related to or arise out of or in any way connected to my participation or use of the Center.
>
> 5. By execution of this agreement, it is my intention to assume all risk of injury and do hereby surrender and waive any rights to sue or exercise any legal right to seek damages against the Center, its owners, agents, employees, officers, directors and/or all other persons or entities acting on its behalf.
>
> 6. I acknowledge that my participation in activities at the Center is strictly voluntary. I herby certify that I am over the age of 18 years; I have carefully read the foregoing covenant not to sue and acknowledge that I understand and agree to all of the above terms and conditions. Prior to signing this agreement, I have had an opportunity to ask any and all questions. I am aware that by signing this agreement, I assume all risks and waive and release all substantial rights I may have and possess.

Without reading the document, Doe artfully strikes out his John Hancock on the signature line and proceeds into the swarm of neon colored bouncy inflatables when a certain obstacle course catches his eye. At that point Doe decides he is going to attack the course just as he envisioned he might have done to the Aggro Crag [2] when he was a child watching GUTS on Nickelodeon. Right as Doe nears the pinnacle of the course, dreaming of that constantly illuminated piece of the Aggro Crag on his mantle, the unthinkable happens; one wrong step and he blows out his knee.

A question races through Doe's mind: What was that piece of paper he signed before he walked past the cash register? Did Doe just give away his right to recover against the Center for injuries he sustained while on the course? This article endeavors to answer that question by providing a comprehensive overview of the current state of the defense of assumption of risk, and provide drafters of such documents the information needed to draft waivers of liability that will pass judicial muster either at the summary judgment level or trial. Furthermore, even in instances where the executed waiver of liability is

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not enough, this article will provide strategies to bolster your defense under the doctrine of assumption of risk.

II. Assumption of Risk – An Overview

The preeminent case in this domain is *Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*.[3] After adopting our current comparative negligence system in 1991, the South Carolina Supreme Court in *Davenport* outlined the four requirements to establishing the defense of assumption of risk: (1) the plaintiff must have knowledge of the facts constituting a dangerous condition; (2) the plaintiff must know that the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to that danger.[4] As a preliminary matter, it must first be determined whether a particular case involves express or implied assumption of risk.

While it is routinely assumed that the doctrine of comparative negligence subsumed assumption of risk under South Carolina law, there are still several instances in which it can be raised as an affirmative defense, barring the plaintiff's claim for damages; however, those scenarios are highly fact intensive and are discussed below.

III. Express Assumption of Risk

Express assumption of risk sounds in contract and occurs when the parties expressly agree in advance, either in writing or orally, that the plaintiff will relieve beforehand the defendant of his or her legal duty toward the plaintiff. [5] This is contrasted with implied assumption of risk wish arises when the plaintiff implicitly, rather than expressly, assumes known risks.

As acknowledged by *Davenport*, the courts in South Carolina have analyzed express assumption of risk cases in terms of exculpatory contracts.[6] Exculpatory contracts similar to the language outlined above have previously been upheld by courts of this state.[7] However, because such contracts tend to induce a want of care on the part of the drafter, they are not favored by the law and will be strictly construed against the party relying upon the document. [8]

A fact pattern similar to the facts above presented itself to the South Carolina Court of Appeals in the case of *McCune v. Myrtle Beach Indoor Shooting Range*.[9] In *McCune*, the plaintiff filed an action against the business for injuries she sustained while participating in a paintball game. Specifically, the plaintiff was fitted with a mask prior to participating in the paintball match. At some point during the match, the plaintiff's mask became loose and a paintball struck her in the face rendering her legally blind in her left eye.[10] Prior to participating in the paintball match, the plaintiff executed a release of liability with the following clauses:

1. The risk of injury from the activity and weaponry involved in paintballs is significant, including the potential for permanent disability and death, and while particular protective equipment and personal discipline will minimize this risk, the risk of serious injury does exist;
2. I knowingly and freely assume all such risks, both known and unknown, even if arising from the negligence of those persons released from liability below, and assume full responsibility for my participation; and,

———

4 . . . and I for myself and heirs . . . hereby release and hold harmless the American Paintball League, the APL certified member field, the owners and leasers of premises used to conduct the paintball activities, their officers, officials, agents and/or employees, with respect to any and all injury, disability, death or loss or damage to person or property, whether caused by the negligence of the releasers or otherwise, except that which is the result of gross negligence and/or wanton misconduct.

I have read this release of liability and assumption of risk agreement, fully understanding its terms, understanding that I have given up substantial rights by signing it, and sign it freely and voluntarily without any inducement. [11]

South Carolina courts have routinely held that an exculpatory clause such as those outlined above will never be construed to exempt a party from liability for his own negligence in the absence of explicit language clearly indicating that such was the intent of the parties.[12] The court determined that the agreement was sufficient to limit the liability of the range to the plaintiff and found that the release entered into by the parties did not contravene public policy. The court upheld the agreement based largely because the agreement was voluntarily signed and specifically stated: (1) the plaintiff assumed the risks, whether known or unknown; and (2) the plaintiff released the range from liability, even from injuries sustained because of the range's own negligence. [13] Furthermore, it was also clear the plaintiff voluntarily entered into the release in exchange for being allowed to participate in the paintball match.[14]

The Court reasoned if agreements such as these, voluntarily entered into, were not upheld, the effect would be to increase the liability of those organizing or sponsoring such events to such an extent that no one would be willing to undertake to sponsor a sporting event and thus, would not be in the public interest.[15] However, several exceptions to the holding

were outlined. Courts have declined to apply waivers of liability when the individuals seeking to limit their liability did not specifically outline the individuals covered by the waiver.[16] Furthermore, the courts have explicitly stated that waivers of liability will never be found to limit liability when the injury was caused by the party's gross negligence.[17]

Therefore, counsel must endeavor to draft such documents carefully when attempting to limit their client's risk and liability through a waiver of liability. In doing so, counsel should be cognizant to include the following language in the document: (1) identify the individual within the document with as much specificity as possible in order to guard against a finding by the court that the waiver is ambiguous or overbroad; (2) identify risks associated with the activity and warn the plaintiff against those risks that are both known and unknown; and (3) in no uncertain terms, state the plaintiff is waiving their claim for damages due to the negligence of any parties, including negligence on behalf of party seeking to enforce the waiver – for example, employees of the Center.

Based on this analysis, it appears the waiver entered into prior to Doe's obstacle course glory would not be sufficient to limit his remedies against the Center; however, there are still a few more tricks up their sleeves.

IV. Primary Implied Assumption of Risk

Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity.[18] Furthermore, the *Davenport* court found the adoption of comparative negligence in this state did not affect the doctrine of primary implied assumption of risk.[19] The *Davenport* court explained that primary implied assumption of risk is not a true affirmative defense, but instead goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff.[20] Stated another way, implied assumption of risk focuses not on the plaintiff's conduct in assuming the risk, but on the defendant's general duty of care and is but another way of stating the conclusion that a plaintiff has failed to establish a prima facie case of negligence by failing to establish that a duty exists.[21]

Thus, under this analysis the question becomes, whether the risk encountered by the plaintiff ultimately causing their injury was inherent in the activity? Generally speaking, this defense is used within the recreational or sports context.[22] Additionally, it is legally inconsequential whether the plaintiff is hurt participating in a recreational activity or within a professional sporting context. South Carolina courts have indicated that the critical fact in the analysis is not the level of play but the nature of the sport or activity.[23] In fact, the courts have gone so far as to indicate that some degree of ordinary recklessness on the part of other participants will be tolerated, even if violating a rule of the game, and will be considered an ordinary risk the plaintiff would assume by participation.[24]

While generally applying to the recreational sport and activities contexts, an argument can be made to extend and invoke the defense of primary implied assumption of risk when the plaintiff's injuries are caused by a risk that is inherent to the particular activity. It is imperative for counsel to establish through deposition testimony of either the plaintiff or an expert that the risk encountered by the plaintiff was in fact inherent in the activity. After establishing this fact, testimony or evidence from the plaintiff indicating their awareness of the identified risk is essential to the defense of the case. And in this case, while the waiver entered into at the beginning of this article may not have been enough to pass muster under express assumption of the risk, it is a significant piece of evidence that can be used to bolster counsel's argument for summary judgment under primary implied assumption of the risk doctrine.

V. Secondary Implied Assumption of Risk

Even if the plaintiff's action for negligence survives the defenses of express assumption of risk and primary implied assumption of risk, there is still hope for the defendant and its counsel. At this level, the plaintiff's actions are analyzed under the traditional elements of assumption of risk: (1) the plaintiff must have knowledge of the facts constituting a dangerous condition; (2) the plaintiff must know that the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to that danger.[25]

While not a true affirmative defense at this point, the analysis of the plaintiff's actions within these factors go towards whether or not the plaintiff was comparatively negligent for his injuries. In instances where the defendant or premises obtained a waiver of liability prior to the plaintiff's participation, and that waiver failed as a defense under express assumption of risk, counsel should argue vehemently to keep the waiver within evidence in the case. It is likely the plaintiff will argue that the waiver, if defective, is ineffective to bar the plaintiff's claim as a matter of law and thus, should be excluded from evidence. However, the terms contained within the waiver establish the efforts of the defendant or premises' to warn the plaintiff of the risks associated with the activity. Thus, this information speaks to the dangers and risks known to the plaintiff at the time of his injury.

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ARTICLE CONT.

VI. Conclusion

While Doe is likely to continue his legal action against the Center, this article has provided counsel a three prong attack at combating the plaintiff's claim for damages in instances where they have assumed the risk of injury, and have entered a waiver of liability highlighting those risks, prior to engaging in the activity. Furthermore, this article highlights the need for careful drafting of a waiver of liability to survive judicial scrutiny and bar the plaintiff's case at the summary judgment level or trial.

Footnotes

1 Mr. Hougham is an associate in Gallivan White and Boyd's Greenville office and practices general liability defense, including premises liability, personal injury, products liability and motor vehicle accidents. He received his degree in Finance from the University of Iowa in 2006 where he was a BigTen Scholar Athlete and later received his law degree from Campbell University's Norman Adrian Wiggins School of Law in 2009. While attending Campbell, Mr. Hougham was a member of the Law Review and served as an Articles Editor. He has maintained a continuous practice with the law firm of Gallivan White and Boyd since 2009. Mr. Hougham is a member of the South Carolina Bar Association, the Greenville County Bar Association, and is actively involved in the First Tee of Greenville and the Red Shoe Society.

2 For a detailed view of the Aggro Crag type the following link into your favorite browser: http://www.youtube.com/watch?v=-P8R9fxOOdc

3 333 S.C. 71, 79-80, (1998)

4 *Id*. at 79 (citing *Seen v. Sun Printing Co*. 295 S.C. 169 (Ct.App.1988)

5 *Id.* at 79

6 *Id.* at 80

7 *See Huckaby v. Confederate Motor Speedway, Inc.* 276 S.C. 629 (1981); *Pride v. Southern Bell Tel. & Tel. Co.*, 244 S.C. 615 (1964)

8 *Fisher v. Stevens*, 355 S.C. 290 (Ct.App.2003)

9 *McCune v. Myrtle Beach Indoor Shooting Range, Inc*., 364 S.C. 242 (2005)

10 *Id.* at 245

11 *Id.* at 248-249

12 *Id*. at 248 (quoting South Carolina Elec. & Gas Co. v. Combustion Eng'g, Inc. 283 S.C. 182, 191 (Ct.App.1984)

13 *Id.* at 249

14 *Id.*.

15 *Id.*. at 250 (quoting *Huckaby v. Confederate Motor Speedway, Inc.*, 276 S.C. 629, 630 (1981)

16 *Fisher*, 355 S.C. 294-295

17 *McCune* at 251

18 *Davenport* at 81

19 *Hurst v. East Coast Hockey League, Inc.*, 371 S.C. 33, 39 n. 1 (2006) (citing *Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. at 87)

20 *Id.*.

21 *Id.*

22 *See Hurst v. East Coast Hockey League, Inc*., 371 S.C. 33 (2006) (holding that the risk of being struck by a flying puck is inherent to the game of hockey and is also a common, expected and frequent risk of hockey); *Gunther v. Charlotte Baseball Inc.*, 854 F.Supp. 424 (D.S.C.1994) (holding that a the hazard of being struck by a foul ball is a risk that is assumed by spectators and remains after due care has been exercised and is not the result of negligence by the baseball club); *Rudzinski v. BB*, 2010 WL 2723105 (D.S.C.2010) (holding that the plaintiff's injuries were due to conduct consistent with the inherent risks presented in golf and absent evidence of intentional conduct summary judgment under the doctrine of primary implied assumption of risk was proper; and *Cole v. Boy Scouts of America*, 397 S.C. 247 (2011) (holding the plaintiff's injuries were inherent in the participation of a softball game and summary judgment was proper under the doctrine of primary implied assumption of risk).

23 *Cole v. Boy Scouts of America*, 397 S.C. 247, 252 (2011)

24 *Cole* at 254.

25 *Davenport*, 333 S.C. 71, 79-80, (1998)

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9 State v. Rogers at 5.

10 *Payton v. Kearse*, 329 S.C. 51, 55-56, 495 S.E.2d 205, 208 (1998).

11 *State v.Rogers*, 2013 S.C. App. Lexis 215, 12.

12 *Payton v. Kearse*, 329 S.C. 5`, 55-56, 495 S.E.2d 205, 208 (1998).

13 *Id* at 56-57.

14 *Rogers* citing *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 91 (1999).

15 *Rogers* at 14.

16 *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996).

17 *Foster v. Spartanburg Hospital System*, 314 S.C. 282, 442 S.E.2d 624 (Ct. App. 1994).

18 368 S.C. 83, 84, 627 S.E.2d 763, 764 (Ct. App. 2006).

19 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006).

20 *Rogers* at 24.

21 The decision in *State v. Rogers* is not considered final until the time expires to file a rehearing motion and, if filed, determined.

22 *State v. Haigler*, 334 S.C. 623, 628-29, 515 S.E.2d 88, 90 (1999).

Article

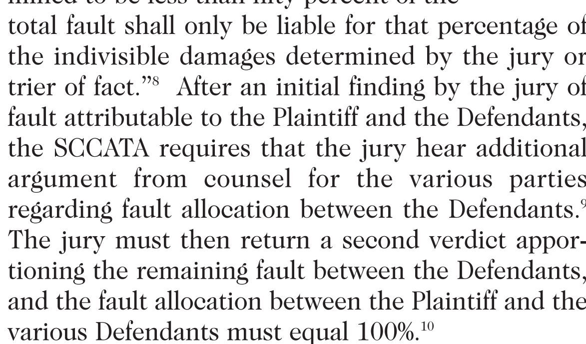
Pointing the Finger: An Examination of South Carolina Law Regarding Allocation of Fault to Non-Party Tortfeasors

by Robert R. Sansbury III [1]

We've all been there. A new file comes in with facts we've heard a million times before: Plaintiff began stopping for traffic and was rear ended by Defendant. You pick up the phone after your first cup of coffee and call your new client to get his version of events, and, as it turns out, your "simple wreck case" is not so simple. In fact, Defendant and all three of his passengers allege that the Defendant barely tapped the rear of the Plaintiff's vehicle. They further allege that a third car, a non-party, slammed into the rear of the Defendant's vehicle after the initial accident and propelled them into the Plaintiff which resulted in a far greater impact than the first one. Of course, the non-party tortfeasor denies this happened. To make matters worse, not only is the third vehicle not a party to this lawsuit, but Plaintiff's counsel has strategically chosen not to sue the non-party as neither Plaintiff nor the non-party have any applicable insurance. What started as a simple rear-end collision has now become a complex case of "pointing the finger." So what do you do to protect your client and your carrier?

I. The Contribution Among Tortfeasors Act

Prior to the passage of The Contribution Among Tortfeasors Act, South Carolina followed the common law doctrine of pure joint and several liability, which held that a co-Defendant, even if found only 1% at fault, could be held liable for 100% of the judgment.[2] To trigger joint and several liability the Plaintiff merely had to prove that the Defendants caused "a single injury, which [was] the proximate result of the separate and independent acts of negligence of two or more parties." [3] In the 1993 case of *Nelson-v. Concrete Supply Co*. our Supreme Court abolished contributory negligence and adopted a modern comparative fault system; however, *Nelson* retained common-law joint and several liability.[4] Recognizing obvious problems with this doctrine, our legislature passed The South Carolina Contribution Among Tortfeasors Act ("SCCATA"), which applies to causes of action arising after July 1, 2005.[5] SCCATA did not completely abolish pure joint and several liability, rather, it restricted it to situations where the co-Defendant is found 50% at fault or greater.[6] Further, the SCCATA "does not apply to a Defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs."[7] Absent any exception applying, the SCCATA states that "[a] defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact."[8] After an initial finding by the jury of fault attributable to the Plaintiff and the Defendants, the SCCATA requires that the jury hear additional argument from counsel for the various parties regarding fault allocation between the Defendants.[9] The jury must then return a second verdict apportioning the remaining fault between the Defendants, and the fault allocation between the Plaintiff and the various Defendants must equal 100%.[10]



II. Allocation of Fault to a Non-Party Tortfeasor

Because the SCCATA requires that fault allocation among the Plaintiff and Defendants equal 100%, the jury is presumably not permitted to allocate fault to a non-party on the verdict form. However, the SCCATA goes on to state, "[a] defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for <u>any or all</u> of the damages alleged by any other party".[11] Plaintiffs will often argue for a reading of subsection (D) which permits Defendants to only argue that a non-party is liable for <u>all</u> of the Plaintiff's damages, thereby resulting in a potential Defense verdict, but this interpretation neglects the inclusion of the word "any" by our legislature and seems inconsistent with the term "any or all." Indeed, the word "any" implies that a Defendant retains a right under the SCCATA to apportion <u>part</u> of the fault to a non-party,

Continued on next page

otherwise the term "any" would be meaningless. Although this precise issue has not been addressed by our Appellate Courts, a substantial body of law has developed around the problem presented by non-party tortfeasors.

Plaintiff attorneys presented with this issue often invoke case-law holding that a Defendant cannot "force a Plaintiff to sue a Defendant against its will." In South Carolina, "it is well-settled that a plaintiff has the sole right to determine which co-tortfeasor(s) she will sue."[12] Recently, in *Chester v. S.C. Dept. of Pub. Safety*, our Supreme Court addressed this issue in the context of the South Carolina Tort Claims Act.[13] *Chester* involved a multi-car accident on I-95 where three State agencies were alleged to be negligent as a result of smoke obscuring visibility on the roadway.[14] Because multiple vehicles and State agencies were involved, there were numerous potential Plaintiffs and Defendants.[15] Several individual Plaintiffs brought suit against the Estate of Carolyn Chester ("the Estate") in Hampton County, and the Estate then filed a separate lawsuit in Dorchester County naming only the three State agencies.[16] After filing suit in Dorchester County, the Estate settled several of the Hampton County claims and received money in the settlements, presumably from counter-claims and cross-claims.[17] The State agencies contended, and the trial judge agreed, that the South Carolina Tort Claims Act abrogated the common law regarding forcing a Plaintiff to sue a Defendant for purposes of fault allocation, and allowed the State agencies to name several additional Defendants under Rule 19, SCRCP, which allows joinder for "necessary parties."[18] Specifically, the State agencies invoked S.C. Code Ann. §15-78-100(c), which states, "In all actions brought pursuant to [the S.C. Tort Claims Act] when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined." However, the Supreme Court reversed holding that 15-78-100(c) only allowed fault allocation to <u>named</u> Defendants, and since the Dorchester County Plaintiff (the Estate) did not name the other tortfeasors in her lawsuit, the trial court erred in allowing the State agencies to join them as Defendants, in that it would "overturn . . . firmly entrenched common law principle[s]."[19] Although *Chester* did not address the SCCATA, it clearly showed the Supreme Court's unwillingness, even after the SCCATA's passage, to allow fault allocation to non-party tortfeasors.

III. Adoption of Non-Party Fault Allocation by other States

Other states have adopted one of three basic frameworks regarding comparative negligence and fault allocation to non-parties, either by the passage of modern comparative fault statutes or by judicial creation. The first approach is "pure" common-law joint and several liability where Defendants are potentially liable for the full verdict amount, but are later permitted to pursue contribution from a non-party tortfeasor either through a third-party, or separate contribution lawsuit.[20] However, these jurisdictions do not allow fault allocation to a non-party or joinder of the non-party in the underlying lawsuit. The second approach is a "modified" joint and several liability model where each Defendant may be held liable for the full verdict only if certain criteria are met, such as 50% or greater negligence, recklessness, or the use of alcohol; jurisdictions following this approach typically do not allow for the inclusion of non-party fault allocation, but allow separate or third-party contribution actions.[21] The third approach is pure "several" liability where Defendants are only liable for their own percentage of fault, usually with non-party tortfeasors included in this allocation.[22]

No system is perfect. In the pure joint and several liability jurisdictions a single Defendant may be forced to pay the full verdict, even if he is only one percent liable, while at the same time a contribution action may be fruitless as the non-party tortfeasor who is truly at fault may be insolvent. On the other hand, an innocent Plaintiff may not recover a full verdict in either the modified or pure several liability jurisdictions as a Defendant may only be liable for his portion of the verdict, while the other part of the verdict may be uncollectable if the co-Defendant or non-party is insolvent.

IV. Addressing Non-Party Fault Allocation in South Carolina

There are several different modes of attack when a non-party tortfeasor is implicated in a newly received lawsuit. One strategy is to sue the non-party in a third-party action. A party taking this approach should not only sue the non-party for contribution, negligence, and indemnity, as the case may be, but should also separately plead 15-38-15(D), which addresses a Defendant's right to argue that a non-party may be liable for "<u>any and all</u>" of the Plaintiff's damages. Theoretically, 15-38-15(D) creates a separate third-party cause of action as not only does the phrase "any and all" suggest that fault can be allocated to the non-party *entirely*, but that fault can also be allocated *partially*, which requires the non-party to be on the verdict form. Additionally, 15-38-15(D) does not simply state that a Defendant may argue a non-party may be at "fault" for the Plaintiff's damages, but rather that the non-party may be "liable," which would require a finding of fault by the jury. A potential downside to suing the non-party in a third-party claim is that 15-38-15(C)(3) states that "the total of the percentages of fault attributed <u>to the plaintiff and to the defendants</u> must be one hundred percent," with no mention of any fault allocation to *third-party* defendants. So, a

strict reading of the statute implies that third-party defendants cannot be included for purposes of fault allocation on the verdict form. Fortunately, Rule 14 states that "[u]pon motion of any party, or on its own motion, the Court may order that a party designated as a third-party defendant be joined as a plaintiff or defendant under Rules 19 or 20, when the ends of justice and efficiency in proceedings would be served thereby. In event such joinder is ordered, designation of such party or his pleading as 'third party' shall thereafter be dropped."[23] So, it would likely be prudent to not only sue the non-party in a third-party claim, but to also make a motion under Rule 19 or 20 to drop the "third-party label" and add the third-party as a true Defendant. Plaintiffs will likely argue that this is tantamount to forcing them to sue the third-party or non-party, but if 15-38-15(D) indeed creates a separate cause of action for fault allocation only - as opposed to suing in negligence, indemnity or contribution – then the Defendant is not asking the Plaintiff to "sue" the third-party or non-party, rather, the Defendant is merely asking the Court to allow the jury to allocate fault to the third-party or non-party on the verdict form as the statute mandates. A second approach to addressing non-party fault is to not sue the non-party in a third-party claim, but rather attempt to add the party pursuant to Rule 19 or 20 later after some discovery has implicated the non-party; however, a Defendant taking this "wait and see" approach may lose their right to proceed against the non-party in a third-party claim.

V. Conclusion

Non-party fault allocation is a dynamic, evolving concept not only in South Carolina, but also nationwide. A good argument can be made using the language of the SCCATA, that the Act creates a separate cause of action for fault allocation to non-parties pursuant to the plain language of the statute. Further, it is possible that our Appellate Courts may eventually hold that allowing non-party fault allocation pursuant to the SCCATA does not violate established case-law against forcing a Plaintiff to sue a non-party as the Defendant invoking the act is merely seeking fault allocation by the jury, not monetary relief from the non-party. While it is unclear how our Appellate Courts will rule on this issue, it will probably take further clarification from the legislature before Defendants are allowed to allocate fault to a non-party. What is clear, however, is that the current system of contribution, especially against a judgment proof, insolvent non-party is woefully inadequate for a Defendant who attempts to "point the finger" at a non-party tortfeasor.

Footnotes

1 Mr. Sansbury practices general liability defense including premises liability, personal injury, construction defects, insurance coverage disputes, products liability and motor vehicle accidents. He received his law degree from the University of South Carolina School of Law, where he was a member of the John Belton O'Neil Inn of Court, served as president of the Criminal Law Society, and received the Judge Joseph F. Anderson Best Advocate Award. He holds a bachelor's degree in language and international trade from Clemson University. After law school, Mr. Sansbury clerked for South Carolina Circuit Court Judge Roger M. Young. He is a member of the South Carolina Bar Association, the Charleston County Bar Association, and is actively involved in the Courthouse Keys and Special Olympics Committees of the Young Lawyers Division of the South Carolina Bar.

2 *Rourk v. Selvey*, 252 S.C. 25; 164 S.E.2d 909 (1968).

3 *Id*. at 28, 910.

4 Nelson-v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991)

5 S.C. Code Ann. § 15-38-15

6 *Id.*

7 *Id.* (F).

8 *Id.* (A).

9 *Id* (C)(3)(b).

10 *Id* (C)(3).

11 *Id* (D) (emphasis added).

12 *Chester v. S.C. Dept. of Pub. Safety*, 388 SC 343, 698 SE2d 559 (2010) *see also Doctor v. Robert Lee, Inc*., 215 S.C. 332, 55 S.E.2d 68 (1949); *South Carolina Dep't of Health and Envior. Control v. Fed. Serv. Indus., Inc.*, 294 S.C. 33, 362 S.E.2d 311 (Ct. App. 1987).

13 *Chester*

14 *Id.*

15 *Id.*.

16 *Id.*

17 *Id.*. (the *Chester* opinion does not specify the settlement allocations from the Hampton County claims; presumably the Estate received settlements from various counter-claims or cross-claims)

18 *Id.*.

19 *Id.*

20 *See* N.C.G.S.A. § 1B-2 (North Carolina); 10 Del. C. § 6302 (Deleware); *Tatum v. Schering Corp.*, 523 So.2d 1048 (Ala. 1988) (Alabama - holding each Defendant may be held liable for the entire loss)

21 M.C.A. § 15-1-49 (Mississippi – no joint in several liability unless Defendants acted in concert); Cal. Civ. Code Ann. § 1431 (California – joint and several liability for economic damages only); SCCATA (South Carolina)

22 IND. Code § 34-4-33-5 (Indiana); O.C.G.A. § 51-12-33 (Georgia – modified pure several liability); F.S.A. § 768.81 (Florida – pure several liability except for intentional torts)

23 Rule 14(c), SCRCP

Young Lawyer Update

by John C. Hawk IV

Without fail, the silent auction is always the highlight of the Young Lawyers' calendar year. This year was no exception. The auction was both a great success and a great time.

The silent auction is held in conjunction with the Summer Meeting in Asheville each July. All proceeds are donated to legal charities. The SCDTAA's young lawyers worked for months to collect donations for the auction, and their work resulted in a wide range of items up for bid. Looking for a selection of fine wine or bourbon? You were in luck. Need a golf lesson or a barre class? We had those, too. For sports enthusiasts, we had tickets to soccer, baseball and football games, the grand prize being four tickets to the Clemson-Carolina game (courtesy of Michael Montgomery). For the more tech-oriented, we had televisions and iPads. The most sought-after items were a three hour cruise through the Charleston Harbor aboard the *Compromise* (courtesy of the Hood Firm) and a two-night stay at the Sanctuary on Kiawah Island.

This year's auction raised $7000 for the National Foundation for Judicial Excellence, a charitable organization whose mission is to support and educate the judiciary. We could not have done it without the help of Aimee Hiers, Perry Buckner, Jared Garraux, Brandon Jones, Katie Lyall, Michael Montgomery, Sam Nettles, Claude Prevost, Erin Stuckey, Trey Watkins, Cooper Wilson, and the entire Executive Board of the SCDTAA. Truly, this was a team effort.

We also could not have done it without the support of our donors. I urge you to support these local businesses, many of whom have supported the SCDTAA for years: Blue Marlin Restaurant, Brittons of Columbia, Brookgreen Gardens, Carowinds, Celadon Furniture, Charleston Battery, Charleston Riverdogs, Charleston Place Hotel, Charleston Preservation Society, Columbia Museum of Art, Frances Marion Hotel, Lighter Breeze Charters, the Mills House Hotel, Old South Carriage Company, Pinehurst Resort, Pure Barre Greenville, Ritz Carlton, Ruth's Chris Steakhouse, the Sanctuary, TRY Sports, Tommy Condons, the Westin-Savannah, and Z-Man Lures.

With the 2013 auction behind us, we are now planning several CLEs and happy hours geared toward young lawyers for the fall. If you have not received emails regarding young lawyer events but would like to, please contact me at jhawk@wcsr.com. Better yet, let me know if you'd like to help organize next year's Trial Academy or silent auction, or would like to get involved in some other way. There are plenty of opportunities. I look forward to seeing you at upcoming events.

A SPECIAL THANK YOU TO OUR SILENT AUCTION DONORS

Blue Marlin Restaurant
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Carowinds
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Charleston Riverdogs
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Frances Marion Hotel
Lighter Breeze Charters
The Mills House Hotel
Old South Carriage Company
Pinehurst Resort
Pure Barre Greenville
Ritz Carlton
Ruth's Chris Steakhouse
The Sanctuary
TRY Sports
Tommy Condons
The Westin-Savannah
Z-Man Lures

ARTICLE

10-34: Rapid Response Truck Accident Investigation and Evidence Protection

By Christopher J. Daniels, Timothy M. McKissock, and Jay T. Thompson [1]

In the 1977 classic film *Smokey and the Bandit*, [2] Sheriff Buford T. Justice witnessed a speeding trucker shear the open driver's door off his patrol car. In a slow, southern drawl, he immediately admonished his son to "put the evidence in the car, Junior." The evidence, of course, was the door that lay in the middle of the road, detached after the collision. Justice planned to use it as evidence to put the "sombitch" trucker away until he was gray.

So went Justice's official evidence collection and preservation from a truck collision on the silver screen. Today, our response to a commercial vehicle accident is a little different. Each collision involving a commercial vehicle is unique and complex due to the range of truck sizes, weights, and configurations. Updated technology allows many vehicles to be tracked and events to be recreated down to the second. Therefore, successfully defending a commercial trucking client after an accident presents many unique challenges.

In commercial vehicle accidents, especially those involving serious injury or death, litigation is often foreseeable from the outset, and proper response to the accident is essential. You may get only one opportunity to collect critical evidence from the scene and the vehicles before it is compromised. This article provides an overview of some best practices to make the most of that opportunity.[3] Responding quickly, hiring an appropriate reconstructionist, collecting and preserving Event Data Recorder and Electronic Control Module data, and making the best use of available accident reports are all key steps that must be executed properly. Additionally, awareness of the potential for evidence spoliation resulting from improper handling or destructive testing procedures is essential. Maintaining contact with opposing counsel and witnesses, such as drivers who may leave the company, is also a must. Ultimately, a thorough knowledge of proper post-accident investigation procedures and data collection techniques may allow the careful practitioner to put the brakes on an otherwise costly commercial trucking lawsuit.

Respond quickly to the scene, preferably with an accident reconstructionist.

Much of the critical evidence necessary to recreate the events leading up to an accident is perishable within hours or even minutes after the event. Physical evidence, such as debris fields, tire skid marks, fluid puddles, and stains on the roadway are all subject to rapid degradation caused by cleanup efforts of first responders, subsequent traffic passage, and weather. The braking and traction conditions of the roadway surface can change with fluctuations in weather. Further, determining the exact distance between accident vehicles and other objects may be difficult once the wreckage has been moved.

Daniels

In serious accidents, especially those involving personal injury, the company owning or operating the commercial vehicle is well-advised to notify legal counsel immediately. When the severity of the accident warrants, it is also advisable to arrange for an accident reconstructionist to inspect the scene and the vehicles as soon as possible, preferably on the same day as the accident. Counsel should have a working library of experienced reconstructionists who can be called on short notice, preferably with an understanding of each reconstructionist's background and specialties. While accident reconstructionists can be expensive and may not be appropriate in all cases, the reconstructed accident models can be invaluable. Ideally, counsel should accompany the reconstructionist. If a same-day inspection is not possible, the inspection should be conducted soon thereafter, preferably at the same time of day as the accident.

McKissock

Thompson

Accurate accident reconstruction is critical in litigation, and it requires the analysis of a multitude of variables by a reconstructionist well-versed in the mechanics of tractor-trailer collisions. The foundation of reconstruction begins with accurate data for the reconstructionist. Accordingly, the collection and preservation of physical evidence is the lynchpin of effective commercial vehicle accident reconstruction, and thus, the key to successfully defending your client.

Ideally, an accident reconstructionist should have

an engineering degree and extensive experience with commercial vehicle accidents. His or her primary role is to determine the cause of the accident through his analysis of the scene, the vehicles, photographs, and relevant documents, including measurements taken at the scene. The reconstructionist should speak with first responders and examine and document the entire scene. Specific attention should be given to each vehicle's tire marks, gouge marks, accident debris, and, of course, the final rest position of the vehicles involved. The reconstructionist should also recommend additional investigation work that may need to be done. In due course, the reconstructionist should assist counsel in developing a narrative of the accident which accurately reflects the events leading up to the incident.

In serious accidents, the client may hire an adjuster or third party administrator to be on site quickly. Adjusters and TPAs can provide a valuable preliminary assessment, including a general description of the scene and the availability of eyewitnesses. However, hiring an adjuster or TPA to perform a preliminary assessment should not replace having legal counsel respond to the scene with a reconstruction expert. A good reconstructionist brings to the table a greater degree of knowledge, skill, training, education, and experience that is essential in assessing how an accident occurred and which vehicles contributed to the collision. We have seen adjusters' assessments of accident scenes prove to be inconsistent with the observations of an experienced, knowledgeable reconstructionist. For example, recently an adjuster was retained to respond to an accident scene. He photographed the scene within a few hours after the accident, documented tire marks, and took measurements from the tire marks to the point of impact. However, when the reconstructionist arrived later the same day, he made additional observations proving that the adjuster had documented and measured the wrong tire marks, which was a crucial fact showing that the truck driver had almost no time to react or avoid the collision.

Avoid spoliation by documenting the condition of all vehicles and preserving all relevant records.

When it comes to documenting the condition of each of the accident vehicles, "more is better." A complete record of each vehicle's condition begins with a comprehensive catalog of photographs. The photographer should document the interior of each vehicle involved, including snapshots of the dash gauges and digital readouts. (Be mindful, however, of the possible implications of turning the ignition key to the "on" position, as mentioned below). It may be important to capture the view from the driver's seat, both where the vehicle came to rest and, if possible, the view that existed around the time of impact. Additionally, the exteriors of the vehicles should be photographed from a perspective that clearly captures the location, as well as the extent of any damage or points of contact as evidenced by dents, scratches, or foreign paint. Due to the myriad loading configurations present in commercial vehicles, photos should be taken of all cargo areas while they are still loaded, including the interiors of any trailers or boxes.

Exact measurements should be recorded of the size of the trailer, wheels, and tires, specifically noting each tire's tread depth and air pressure. These measurements may be compared with applicable regulations to show compliance with statutory vehicle restrictions. The condition of the brake system should be noted, as well as the wear on the shoes and pads. On heavy trucks, the slack adjusters should be examined by a professional mechanic or mechanical engineer to determine if they were set to correctly transmit the driver's brake application force and compensate for brake lining wear. Precise distances and angular measurements between vehicles, objects, and debris may be ascertained by employing a Total Station device, which can often be used, if necessary, to recreate a three-dimensional model of the vehicles and accident scene. Modern GPS equipment (and, potentially, GPS data recorded by a vehicle's on-board computer) may also aid in determining the exact location of each vehicle after the accident.

A comprehensive inspection of all exterior lighting, including a function test of brake lights and turn signals, should be completed promptly. When relevant, an inspection of the entire electrical system of the vehicle by an authorized mechanic may also prove worthwhile. The placement and effectiveness of DOT-required reflective conspicuity tape should also be noted when poor visibility or darkness may be at issue.

In addition, the client should be advised to take appropriate steps to preserve relevant documentation regarding the commercial vehicle, the driver(s), the incident, and the company's response to the incident. Identifying, collecting, and preserving the appropriate documents may require coordinating with third parties, including rental or leasing companies, service centers, drug and alcohol testing facilities, and the driver. Ideally, a copy of pertinent documents should be sent to counsel.

Depending on the circumstances, categories of documents related to the vehicle may include all applicable permits and licenses, inspection and maintenance records, event data recorder and/or electronic control module data (see below), records of the dispatch instructions applicable at the time of the incident and the load being transported, data from the vehicle's satellite tracking system, if applicable, and records related to the post-accident condition of the vehicle. Categories of documents related to the driver may include the driver qualification file (including training records, pre-employment inquiries, and driving history reports or MVRs), daily driver logs and/or time cards for the thirty-day

period preceding the incident, and post accident drug and alcohol testing results.

Collect as much data as possible from each vehicle.

Modern Event Data Recorders (EDR) and Electronic Control Module (ECM) equipment are programmed to record a wealth of important pre-crash data such as vehicle speed, braking application, engine speed, throttle position, and seat belt usage, much like the "black box" on a commercial aircraft.[4] The National Transportation Safety Board supports the use of data recorders as a means of helping determine the factors leading up to a crash, and also the determination of the magnitude and direction of forces sustained during the crash.[5] Such recorders are now commonplace on many modern commercial vehicles, and the parameters they measure may be admissible in South Carolina courts.[6]

If any of the vehicles in the collision have such modules, they can be a valuable source of information. After an accident, an automotive engineer can download all data stored in an EDR by using special software. Alternatively, local truck services are typically available on short notice for this type of service. Once the data is collected, an accident reconstructionist can utilize the information to create a timeline of events leading up to the incident and calculate forces generated during the crash. Ultimately, this tool may assist counsel in telling the story of the accident.

The investigation of a December 1999 motorcoach crash in Colorado illustrates the type of information obtainable from a diesel engine ECM.[7] The recorder indicated the motorcoach had been on the verge of losing control for nearly a mile before the actual crash occurred. The following parameters were recorded:

- At :47 seconds prior to going off the roadway, the drive wheels slipped on the slick roadway due to transmission retarder forces;
- At :44 seconds the transmission went into neutral and at :41 seconds the engine speed went to idle;
- Between :35 and :15 seconds prior to the crash several brake applications were made in an attempt to arrest the speed of the bus;
- At :15 seconds a throttle application sent the engine RPM to its governed speed; and,
- At :05 seconds the vehicle began rotating, prior to exiting the roadway and overturning.

At the time of the report, the investigation into this incident was incomplete and the NTSB had not published its findings; however, the data recorder provided valuable information which would have been otherwise unavailable.

Electronic data is not stored indefinitely on the EDR or ECM, and failing to recover the data prior to moving the vehicle may contaminate the recorded parameters or delete them entirely. In some instances, even turning the key in the ignition can erase valuable data stored in the truck's databanks. Therefore, the accident vehicles should not be moved any more than necessary prior to collection of ECM and EDR data.

For example, some trucks record data based on a "last stop record." In this mode, when the vehicle's ignition is in the "on" position, measurements are taken each time the truck's motion stops. Generally, the data from the prior "last stop" is overwritten each time the truck stops anew. A problem may arise when such a vehicle is towed or moved to the side of the road after an accident because information about the accident may be overwritten by a new last stop record. Other EDRs record data based on a hard-braking or sudden deceleration event. This event recording mode is less susceptible to accidental erasure, although the data may be dumped after a few days, weeks, or months following the accident due to the limited storage capacity of the recording device. In all cases, it is prudent to download the EDR data as soon as possible and before any subsequent movement of the accident vehicle. As a preventive measure, counselors are wise to advise their trucking clients of the importance of not moving a vehicle any more than necessary until the electronic data is collected.

A recent Louisiana case highlights the necessity of knowledgeable handling of an EDR.[8] There, an event data recorder from an accident vehicle was not removed until two weeks after the crash. The vehicle was not secured in a police impound yard but was stored by a towing business following the accident. The officer who removed the event data recorder from the vehicle had no training on how to properly remove the recorder. An expert testified the vehicle should have been photographed, the recorder exposed and photographed in its place before it was removed, and the recorder's serial number captured for identification purposes. Additionally, an officer kept the recorder in his vehicle's trunk for two weeks before it was brought to a state police office for downloading. The expert testified that since the data file within the recorder was electronic, it was possible the data could have been altered or corrupted by improper handling. In sum, the recorder was not treated as evidence, as a proper chain of custody was not maintained. The trial court granted a motion in limine to exclude the EDR data from evidence, and this decision was ultimately affirmed by the state's high court.

Establish protocols prior to destructive testing.

When litigation ensues—and often in pre-suit investigations—the plaintiff's lawyer is likely to request an inspection of the commercial vehicle. Most aspects of an inspection will usually not be destructive, consisting instead of photographs and measurements of various aspects of the vehicle.

Continued on next page

ARTICLE CONT.

Sometimes, however, a party may request an inspection that requires destruction of certain component parts of the vehicle. Of course, this raises immediate concerns with potential spoliation of evidence.

Destructive testing should never be conducted without a protocol agreed upon by all parties and consistent with applicable law, which provides a framework for each party to conduct and document the needed inspection(s) and avoids potential claims of spoliation. You should consult with your expert to develop an appropriate protocol before any destructive testing is performed. Often, we will first coordinate a non-destructive inspection to observe and photograph the equipment. This allows the experts to identify whether any destructive testing is needed and to create the appropriate protocol for such testing.

A protocol must be customized to the needs of the case and the equipment to be inspected. For example, when accidents occur at night, visibility is often an issue, and the commercial vehicle's lighting and other visibility markers may come into play. Destructive testing of lighting components is a distinct process from destructive testing of other components such as brake systems. The goals are to be thorough and methodical, because once the destructive inspection has occurred, the equipment may no longer be available in the condition that existed at the time of the accident. At a minimum, a protocol should include photographing and videotaping the entire testing process, including the pre-testing and post-testing conditions of the vehicle and parts. Importantly, all parties should be given ample notice, time to inspect the parts to be tested, and be permitted to be present for the testing.

To avoid spoliation, a conservative approach should be taken to preservation of evidence. Any action by one of the parties that modifies the condition of the vehicles or the accident scene could be considered destructive and lead to a spoliation claim.

<u>If the MAIT team is involved, obtain a MAIT report from SC Highway Patrol.</u>

The Multi-disciplinary Accident Investigation Team (MAIT) is a specialized unit within the South Carolina Highway Patrol. According to the Department of Public Safety, the MAIT team investigates complicated vehicle crashes using state-of-the-art technology and analysis to reconstruct the scene.[9] The Highway Patrol established the MAIT team in 1995 not only to assess responsibility in accidents, but also to determine the subtle contributory and injury causes in wrecks and, in turn, to use these factors to prevent collisions of a similar nature in the future. The MAIT team consists of highly trained state troopers who have specific skills in accident reconstruction, traffic engineering, and automotive engineering. The MAIT team does not investigate all accidents but will generally be called to investigate the following types of collisions or incidents:

- Prosecutable collisions where multiple fatalities occur.
- Prosecutable felony driving under the influence collisions with death or great bodily injury.
- Fatalities involving commercial vehicles where mechanical failure is suspected or any collision where a manufacturer defect of a vehicle is a possible contributor.
- A collision with multiple fatalities involving hazardous materials or a collision involving spillage or leakage of a significant amount of hazardous material that threatens life or property.
- Any fatal collision investigated by Department of Public Safety (DPS) involving a law enforcement officer.
- A collision involving a fatality or great bodily injury where a contributing factor may be a possible road defect.
- Hit-and-run fatalities.
- Collisions investigated by DPS involving a pursuit resulting in

injury or death.[11]

The investigations can include in-depth speed analysis, mechanical inspection, complicated or scale diagramming, physical evidence collection, occupant kinematics, extensive witness interviewing or consultation, and much more. Through a Freedom of Information Act (FOIA) Request made to the SCDPS Office of General Counsel, anyone can obtain the following information from the MAIT investigation: MAIT investigation report, photographs, videotape, a diagram of the scene, and audiotapes. The information gleaned from a MAIT report may prove invaluable to a reconstructionist, especially if he or she was unable to inspect the scene on the day of the accident.

A recent case demonstrates the importance of promptly securing the MAIT report. A truck with mechanical problems was traveling below the speed limit on a South Carolina highway. A passenger vehicle slammed into the back of the truck, killing the passenger vehicle driver. The highway patrol's initial report identified the accident's primary contributing factor as "driving too fast for conditions" by the passenger vehicle. The detailed MAIT report, however, was far more insightful, revealing that a large-screen smartphone was found in the seat of the passenger vehicle with pornography playing, along with other related paraphernalia. Also, the deceased driver was found with his pants unbuttoned and unzipped. The MAIT report changed the primary contributing factor to "distracted/inattention."

Notify opposing counsel (if applicable) before putting the commercial vehicle back in service.

Under South Carolina law, changing the condition of evidence can lead to claims for spoliation sanctions. The South Carolina Supreme Court has held that, "when evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party."[12] For example, in a recent product liability case against an auto maker, the plaintiff had the allegedly defective vehicle towed away and crushed prior to filing suit. The circuit court "charged the jury that it could draw a negative inference from the plaintiff's actions," and the Court of Appeals stated that it was "troubled by the intentional destruction of the truck under any circumstances, particularly without notice to Ford and before Ford was given a chance to inspect it."[13]

On the other hand, however, it is often financially impractical for a trucking or transportation company to remove a commercial vehicle from service indefinitely. South Carolina law does not provide definitive guidance on preservation of evidence when doing so would be economically unfeasible for one or more parties. In the absence of such guidance, because the act of putting a commercial vehicle back in service is likely to modify the evidence in the case, a trucking or transportation company should be fully informed of the potential legal consequences of destruction or modification of evidence and should make informed business decisions considering this information. Counsel may provide notice to opposing counsel and give them an opportunity to respond before the company puts a truck or trailer back in service and keep the lines of communication open to avoid a claim that evidence was destroyed or modified without an opportunity for all interested parties to inspect and document the evidence. Failure to do so may prevent a party's inspection of the evidence in its original state. It is also prudent to consider whether any other parties need notice of the accident or may have an interest in examining the vehicle, such as trailer or chassis companies, recently visited truck service centers, fleet financiers, and the like.

Maintain contact with witnesses.

In recent years, we have seen a trend where a plaintiff's lawyer attempts to negotiate with a trucking company before filing suit but is unable to reach a resolution; sometime during this process, the driver leaves the company and may even move out of state. The plaintiff then files suit only against the driver, without notifying the company. The driver does not inform his former employer about the suit and goes into default. The plaintiff then seeks to enforce the default against the former employer under a theory of vicarious liability, even though the employer had no notice of the suit.

The South Carolina Supreme Court recently examined this same issue in *McClurg v. Deaton*.[14] In *McClurg*, the defendant truck driver was involved in an auto accident while employed and driving for a company called New Prime, Inc. ("New Prime"). Within days after the accident, New Prime's insurer commenced an investigation. New Prime communicated numerous times with the plaintiffs regarding the accident and potential resolution of their claims. Shortly before the statute of limitations ran, the plaintiffs filed suit only against the driver, who was no longer employed by New Prime. The plaintiffs did not notify New Prime or its insurer of the lawsuit. The driver failed to respond to the complaint, and an $800,000 default judgment was entered against the driver.

New Prime did not learn of the lawsuit until after the default judgment was entered. New Prime had an insurance policy with a $2,000,000 deductible, creating the possibility that New Prime could be responsible for the entire amount of the judgment entered against its former employee. New Prime filed a motion to intervene, which the circuit court granted. New Prime simultaneously filed a motion to set aside the default judgment under Rule 60(b), SCRCP, which the circuit court denied on the basis that the plaintiff had no duty to notify New Prime of the lawsuit.

On appeal, the Court of Appeals held that the

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circuit court erred because the plaintiff had a duty to notify New Prime of the lawsuit. Therefore, the failure to notify New Prime of the lawsuit constituted both surprise and excusable neglect under Rule 60(b)(1) and misrepresentation and misconduct under Rule 60(b)(3). However, the Court of Appeals affirmed the decision not to set aside the default judgment on procedural grounds, finding that the defendants failed to argue that they had a meritorious defense under Rule 60(b)(2), so the issue was not preserved for appeal.

On grant of certiorari, the Supreme Court agreed that the issue of a meritorious defense was not properly preserved for appeal and affirmed the Court of Appeals' ruling. However, Chief Justice Toal issued a separate dissenting opinion, asserting that the motion to set aside the default judgment should have been granted based on surprise and misconduct, observing that the default judgment in that case was "obtained, in [her] opinion, by [the plaintiffs'] trickery and deception."[15]

Conclusion

Successfully defending a commercial trucking client after an accident requires a particular skill set that differs in composition from that used for a common automobile accident. The complexity and variety of commercial vehicles on the road today dictates that the practitioner is well-versed in evidence collection and preservation in a multitude of environments, including on the side of the road. Ultimately, the successful defense of a commercial trucking client oftentimes rides on the skill and experience of the litigator, who must make sure that the investigation is done correctly to ensure that the critical information is properly secured and the evidence is not altered, leaving the client to defend against spoliation claims.

Footnotes

1 Chris Daniels and Tim McKissock are equity partners and Jay Thompson is an associate in the Columbia, SC office of Nelson Mullins Riley & Scarborough, LLP. They have represented commercial carriers and other businesses in all aspects of the trucking and transportation industry.

2 Yes, *Smokey and the Bandit* does qualify as a classic film. If you doubt this, ask any trucker or NASCAR fan.

3 Because every commercial vehicle case is unique and complex, all suggestions in this article may not be appropriate in all cases. These suggested best practices should be taken as guidelines to be applied according to the needs of each case.

4 *Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, Volume II Supplemental Findings for Trucks, Motorcoaches, and School Buses*, DOT HS 809 432 (May 2002).

5 *Id.* § 2.3.

6 *Lloyd v. Gen'l Motors Corp*., No. 0:05-1495-CMC, 2006 WL 196302 (D.S.C. Jan. 20, 2006) (EDR data used to support motion for summary judgment; motion granted).

7 *Id.*

8 *LaBorde v. Shelter Mut. Ins. Co.*, 80 So. 3d 1, 2 (La. App. 3d Cir. 2011), reh'g denied (Dec. 7, 2011), writ granted, judgment rev'd, 82 So. 3d 1237 (La. 2012) reh'g denied, 85 So. 3d 1257 (La. 2012).

9 SOUTH CAROLINA HIGHWAY PATROL, FOIA General Information http://www.scdps.gov/foia (last visited Sept. 17, 2013).

10 *See, e.g., Lexington Fatal Crashes Under Heavy Review*, available at http://lexington-sc.patch.com/groups/police-and-fire/p/lexington-fatal-crashes-under-heavy-review (last visited Sept. 17, 2013) (describing MAIT team).

11 SOUTH CAROLINA HIGHWAY PATROL, FOIA General Information http://www.scdps.gov/foia (last visited Sept. 17, 2013).

12 *Kershaw Cnty. Bd. of Ed. v. U.S. Gypsum Co*., 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990).

13 *5 Star, Inc. v. Ford Motor Co.*, 395 S.C. 392, 393 n.2, 718 S.E.2d 220, 221 n.2 (Ct. App. 2011).

14 *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011).

15 *Id.* at 88, 716 S.E.2d at 889.

Article

"Standing Your Ground" in Civil Actions

By Jocelyn Newman [1]

Since early 2012, the country has been focused on *The State of Florida v. George Zimmerman*, a criminal case in which a private citizen was acquitted of second-degree murder in the shooting of an unarmed teenager.[2] The investigation, trial and aftermath of the *Zimmerman* case raised legal questions, ethical issues and debates on race relations, but it was Florida's "Stand Your Ground" law which became the "hot button issue."

As in Florida, Stand Your Ground principles are encompassed in South Carolina jurisprudence. And although the topic is most commonly discussed in the criminal context, the South Carolina law applies to – and can have negative implications in – civil actions as well.

Origin of Stand Your Ground: The "Castle Doctrine"

"Stand Your Ground" has become the most commonly-used phrase to describe a legal defense which gives individuals the right to use deadly force to defend themselves without any duty to retreat danger. It is a variation on self-defense but is not a new legal concept; versions of Stand Your Ground have existed in the common law for years.

Before any legislation was enacted on this issue, South Carolinians were guided by the old maxim, "A man's home is his castle." This adage suggests that a person should have ultimate security within their home and has an ultimate right to exclude anyone from his home. Over time, these general principles became known as the common law "Castle Doctrine."

A "castle doctrine" – also known as "dwelling defense" or "defense of habitation" – is defined as "an exception to the retreat rule allowing the use of deadly force by a person who is protecting his or her home and its inhabitants from attack." [3] Castle doctrines exist in many states and are most commonly applied in criminal prosecutions. However, the doctrines provide immunity from both civil and criminal prosecution to people who use deadly force against others within their homes.

The South Carolina Castle Doctrine modifies self-defense law.[4] In a typical self-defense case where deadly force is used, the prosecution has the burden of disproving, beyond a reasonable doubt, the claim of the accused that he was without fault in bringing about the harm against him; that he was, or actually, reasonably believed that he was, in imminent danger of losing his life or sustaining serious bodily injury; and that he had no other probable means of avoiding the danger than to use deadly force.[5] The Castle Doctrine alters this, so that if the danger occurs within the home or dwelling of the accused, he has no duty to retreat, irrespective of whether there were other means for avoiding the danger.[6]

The South Carolina Castle Doctrine or some other version of Stand Your Ground principles have been applied since as early as the late 1800's, when the South Carolina Supreme Court found it proper to charge a jury that in attempting to eject a trespasser, "…if, while doing so, he is assaulted by the trespasser, then he is not in this case bound to flee, but he may stand his ground against such trespasser, and repel his assault…"[7] Within the last decade, however, these common law principles have been modified by the state legislature.

Modification of the Castle Doctrine

In 2005, under the administration of former Governor John "Jeb" Bush, Florida reportedly became the first state to enact and codify a Stand Your Ground law.[8] South Carolina soon followed, enacting the Protection of Persons and Property Act ("the Act") in June 2006.[9]

The legislature stated, "It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business."[10] As a result, the common law Stand Your Ground principles and the Castle Doctrine became statutory law.

The Act extends the protections provided by the Castle Doctrine; preserves citizens' right to bear arms; and reaffirms the rights of law-abiding citizens to protect themselves, their families, and others from intruders or attackers.[11] Where the common law doctrine applied only to a person's dwelling, the Act offers the same defense to persons within their vehicles and workplaces.

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The Act also provides immunity from civil action or criminal prosecution in certain circumstances. Notably, the South Carolina Supreme Court has held that the Act created "a true immunity, and not simply an affirmative defense," requiring courts to protect citizens from unjust legal actions against them when appropriate.[12]

How to Invoke Immunity

In order to determine whether the Act should offer protection from criminal prosecution or civil action, a party must file a pre-trial motion to request that the court conduct a hearing on the issue.[13] In practice, one would assume that such motions should be filed by the party seeking immunity. However, recent South Carolina case law advises that a request may be filed by either party to an action.[14]

The statutory language of the Act itself does not dictate how or when its protections may be invoked.[15] Thus, the South Carolina Supreme Court assumed its duty of giving meaning to the statutory language in 2011 in *State v. Duncan*.[17] The focus of the analysis was on the statutory provision that "it is proper for law-abiding citizens to protect themselves … *without fear of prosecution or civil action.*"[17] An evaluation of the plain meaning of that language led to the Court's determination that the only way to meaningfully enforce the immunity provision of the Act and to shield a person from trial is for the defendant to request immunity in a pre-trial motion.[18] "Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial."[19]

Minimal Criminal Impact, Civil "Catch-22"

Unlike self-defense and castle doctrines, which can be applied in a variety of contexts, the Act provides immunity only when deadly force is used.[20] Therefore, as a matter of law, anyone seeking to invoke the protections provided by the Act must concede that deadly force was used against their opponent.

Practically speaking, it seems that there is often no "downside" for criminal defendants seeking immunity under the Act. For example, a defendant accused of murder may request immunity from prosecution under the act, requesting that the indictments against him be dismissed. In doing so, the defendant admits the use of deadly force against the victim – a fact which is already apparent under the circumstances of the case. If the defendant prevails in his argument, he wins. If not, the trial proceeds without incident, and the defendant suffers no penalty.

There is a much greater gamble when the Act is raised by civil defendants. If the civil defendant is granted immunity, he fares just as well as the criminal defendant did. However, if the court disagrees with his argument, the defendant is left in the precarious position of having stipulated that he used deadly force against the plaintiff – a necessary concession for a party attempting to invoke protection under the Act. In actions for assault, battery or false imprisonment, for example, such an admission by the defendant could deprive him of any meaningful defense to the plaintiff's allegations; would operate as an admission of one or more elements of the plaintiff's causes of action; and may strengthen the plaintiff's damages claim – all of which are enormous penalties for a defendant in a civil action.

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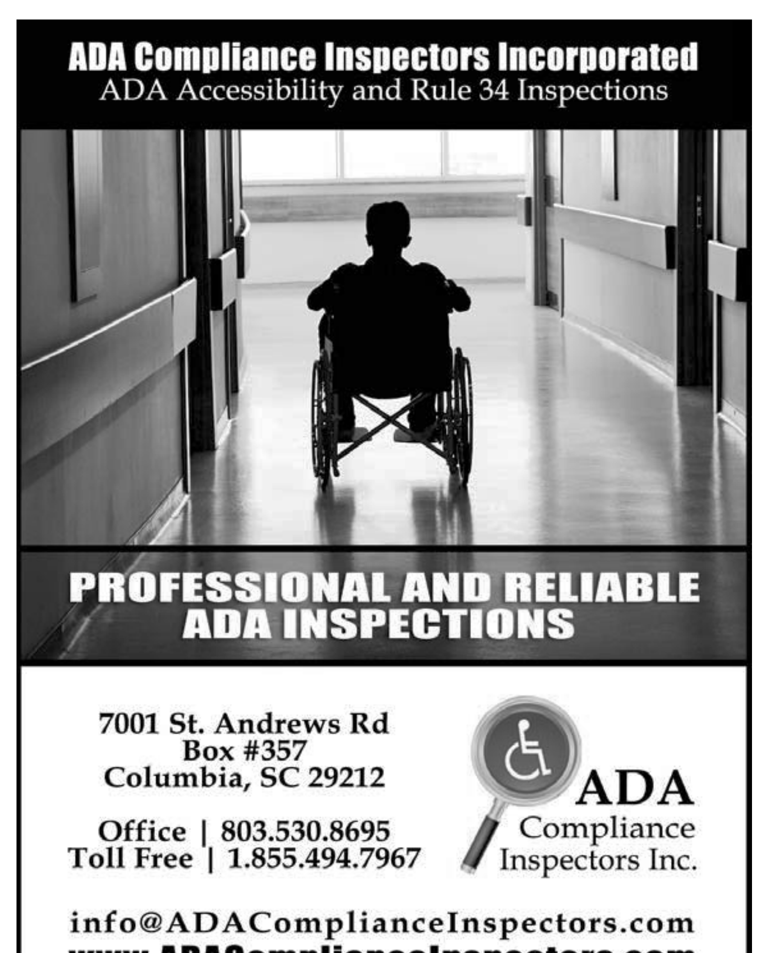


DRI Update

By John Kuppens

The DRI Annual Meeting was held in Chicago on October 16-20, and it was well attended by SCDTAA members. It was a very informative and enjoyable meeting, highlighted by the National Program for State and Local Defense Organizations. The SLDO program was an excellent combination of idea sharing and tips from experienced leaders. Also, the Mid-Atlantic Region held a wonderful dinner on Wednesday night that was arranged by DRI Regional Director Peggy Ward. The Mid-Atlantic region is made up of the District of Columbia, Maryland, Virginia, North Carolina, and South Carolina. Representatives from each of these SLDO's were present, and it was a relaxing chance to continue to exchange ideas about our events, meetings, membership, fundraising, etc.

The SCDTAA is clearly one of the most active SLDOs, our membership is strong, and our meetings are well attended. The other SLDO leaders were very interested in the Trial Superstars Seminar which Molly Hood Craig and Jamie Hood put together last April. Our association also benefited from what we learned from the other SLDO leaders. Also, we were reminded of the valuable resources which DRI has available to its members.

DRI holds the SCDTAA in high regard, as is demonstrated by the fact that newly installed DRI President Michael Weston will be one of our speakers at the SCDTAA Annual Meeting in Savannah. Mike practices in Des Moines, Iowa and is a fantastic speaker.

If you are not a member of DRI or are one but inactive, please consider joining and/or becoming more active. DRI membership brings many benefits, including its excellent seminars and networking opportunities. DRI can be of great assistance to you in developing your practice and making life-long friends.

If Denied Immunity, When Can You Appeal?

Until recently, it seemed that a trial court's denial of immunity under the Act was immediately appealable to the South Carolina Supreme Court. In August 2013, the Court undertook to clarify the proper timing for such appeals, providing instruction for criminal cases but leaving the question unanswered for civil actions.[21]

In *State v. Isaac*, a defendant charged with murder filed a pre-trial motion seeking immunity from prosecution under the Act.[22] The trial court conducted a hearing, determined that the Act did not apply to the facts of the case as a matter of law, and denied the defendant's request for immunity.[23] The defendant filed an immediate appeal to the Supreme Court, halting the trial.[24] By doing so, the defendant employed a seemingly infallible strategy to avoid an immediate trial – making an unsuccessful attempt to prevent being subjected to litigation yet still, by virtue of his immediate appeal, delay the trial while awaiting an appellate hearing.

The basis of the defendant's argument in *Isaac* was the Court's footnoted statement in *State v. Duncan* that "an order granting or denying a motion to dismiss under the Act is immediately appealable, as it is in the nature of an injunction."[25] Referring to that language as "dicta and regrettable," the Court clarified its opinion in *Isaac*, but only as to criminal prosecutions.[26] The Court held that although an order *granting* immunity under the Act is immediately appealable – because it is a final order in the case, not because it is similar to an injunction – an order *denying* the same relief is not.[27] The Court in *Isaac* resolved the criminal questions presented to it but was very careful to distinguish that case from cases pending in the court of common pleas.[28]

Conclusion: Unresolved Questions

While *Isaac* provided answers for navigating the Act in criminal cases, it raised additional questions in the civil context. If a defendant wants to invoke immunity from a civil action pursuant to the Act, ask the following questions: Was the defendant protecting himself or others from harm? Did the incident occur at the defendant's home, in their car or at their place of business? Should the defendant admit that he used "deadly force" against the plaintiff? What are the potential consequences of the defendant admitting the use of deadly force? If the request is denied, when should an appeal be filed?

Unless and until the bench and bar receive additional guidance from the South Carolina Supreme Court, many of those questions will not have defined answers. As a result, civil defense attorneys must ask themselves and their clients whether a chance at immunity under the Protection of Persons and Property Act outweighs the risks or, perhaps, whether the opportunity to present an "issue of first impression" to the South Carolina Supreme Court justifies the gamble.

Footnotes

1 Jocelyn Newman is an associate attorney in the Richardson Plowden Columbia office. She focuses her practice in general litigation. Ms. Newman earned her Bachelor of Science degree from the University of South Carolina in 1999, and her Juris Doctor from Howard University School of Law, Washington, D.C., in 2004, where she was a Merit Scholar. She is a member of the South Carolina Bar, American Bar Association, National Bar Association, the Richland County Bar Association, the South Carolina Defense Trial Attorneys' Association, and the Defense Research Institute.

2 No. 592012CF001083A (Fla. 18th Cir. Ct. July 13, 2013).

3 BLACK'S LAW DICTIONARY 209 (7th ed. 1999).

4 *See, e.g., State v. Dickey*, 394 S.C. 491, 502, 716 S.E.2d 97, 102-03 (2011).

5 *Id*. at 499, 716 S.E.2d at 101.

6 *Id*. at 502, 716 S.E.2d at 102-03.

7 *State v. Bodie*, 33 S.C. 117, 11 S.E. 624 (1890).

8 Florida had First Stand Your Ground Law, Other States Followed in 'Rapid Succession,' NBC NEWS, http://usnews.nbcnews.com/_news/2013/07/18/19522874-florida-had-first-stand-your-ground-law-other-states-followed-in-rapid-succession?lite (last visited Sept. 24, 2013).

9 S.C. Code Ann. § 16-11-410 (Supp. 2012).

10 S.C. Code Ann. § 16-11-420(A) (Supp. 2012).

11 See S.C. Code Ann. § 16-11-420 (Supp. 2012).

12 *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011).

13 *See id.*

14 *Id*.

15 *See* S.C. Code Ann. §§ 16-11-410 to -450 (Supp. 2012).

16 392 S.C. 404, 709 S.E.2d 662.

17 *See id.* at 407-410, 709 S.E.2d at 663-65; see also S.C. Code Ann. § 16-11-420(B) (Supp. 2012).

18 *Duncan*, 392 S.C. 404, 709 S.E.2d 662.

19 *Id* at 410, 709 S.E.2d at 665.

20 S.C. Code Ann. § 16-11-440 (Supp. 2012).

21 *See State v. Isaac*, No. 27302, 2013 WL 4456870 (S.C. Sup. Ct. Aug. 21, 2013).

22 *Id*

23 *Id*.

24 *Id*.

25 *Duncan*, 392 S.C. at 407 n.2, 709 S.E.2d at 663 n.2.

26 *Isaac*, 2013 WL 4456870 at *4.

27 *Id* *2.

28 *See id*. at *2-4.

Case Notes

Summaries prepared by Walter H. Barefoot, Carmelo B. Sammataro, Ashley Forbes

Nicholson v. South Carolina Department of Social Services, Op. No. 5171 (Ct. App. Sep. 4, 2013).

This workers' compensation case addresses the question of whether an employee's fall, due to her shoe scuffing the carpet as she was walking at work, arose out of her employment, such that she would be entitled to workers' compensation benefits as a result of her injuries. Carolyn Nicholson, the claimant, was a supervisor in the investigations department of the South Carolina Department of Social Services. On February 26, 2009, she was walking down the hallway of her office to a weekly audit meeting. She was carrying ten case files weighing approximately fifteen pounds at the time. On her way to the meeting, her shoe scuffed the carpet and she fell, injuring her neck, back, and left shoulder.

The claimant sought medical treatment and temporary total disability benefits for the period of time she was out of work. However, her employer denied she sustained compensable injuries by accident arising out of her employment. At a hearing before a Single Commissioner of the South Carolina Workers' Compensation Commission, the claimant asserted that it was the friction from the carpet that caused her fall. She testified that the floor was level and free from defects. She further testified that she did not believe the files she was carrying caused her to fall.

The Single Commissioner found the claimant did not prove a causal connection between her fall and her employment. The Single Commissioner noted particularly that the fall "would have carried the same consequences had she fallen on a carpeted floor outside" her place of employment. The Commissioner relied on the South Carolina Supreme Court case of *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955), which held that an idiopathic fall, one that arises from some pre-existing physical condition personal to the claimant, did not provide the requisite causal connection to work for the injuries resulting from it to be compensable.

The Full Commission reversed the decision of the Single Commissioner, finding that the claimant's injuries did not result from an idiopathic or unexplained fall but rather from her shoe scuffing the carpet. The Commission found the claimant's employment was a contributing cause to her fall because she was required to work in a carpeted area.

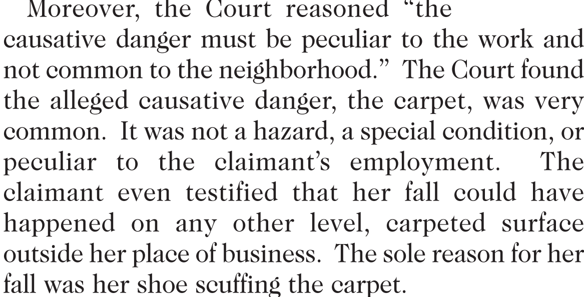
Pursuant to South Carolina Code Section 42-1-160(A), a claimant must prove that he or she sustained an "injury by accident arising out of and in the course of employment." These are two distinct requirements. The Court of Appeals did not dispute that the claimant sustained injuries in the course of her employment. She was at work at the time of the fall. The sole issue before the Court was whether the claimant's injuries arose out of her employment.

The Court distinguished the facts of Bagwell, agreeing with the Full Commission that there was a non-personal reason for the claimant's fall—her shoe scuffing the carpet. Therefore, her fall was neither idiopathic nor unexplained. However, the Court noted Bagwell reiterated that the term "arising out of" required a causal connection between the injury and the conditions under which the work was performed. The Court found the carpet was not a hazard that caused the claimant's injuries. The Court further found the case distinguishable from one in which a claimant slipped on a wet sidewalk outside his employee housing facility. In that case, there was a sink outside, and water ran down the sidewalk when people used the sink. Thus, the wet sidewalk was found to be a risk associated with the conditions under which the claimant was required to live. In contrast, in the instant case, the carpet was not a risk associated with the employment.

Barefoot

Sammataro

Forbes



Moreover, the Court reasoned "the causative danger must be peculiar to the work and not common to the neighborhood." The Court found the alleged causative danger, the carpet, was very common. It was not a hazard, a special condition, or peculiar to the claimant's employment. The claimant even testified that her fall could have happened on any other level, carpeted surface outside her place of business. The sole reason for her fall was her shoe scuffing the carpet.

HOLDING: The claimant's injuries, resulting from her shoe scuffing a carpet at work, did not arise

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out of her employment and were not compensable. Chief Judge Few dissented from this opinion, finding that substantial evidence supported the Commission's factual finding of a causal connection between the claimant's injury and her employment.

Lee v. Bondex, Inc., Op. No. 5173 (Ct. App. Sep. 25, 2013)

This workers' compensation case illustrates the appellate courts' deference to the Commission's findings under the substantial evidence standard of review. Bernard Lee, the claimant, was installing a large metal hood, weighing 1500 to 2000 pounds, onto a machine in the Bondex plant. The hood had been lifted with a forklift, and the claimant was working with three other co-workers to guide the hood into place. The forklift could not hold the hood high enough. When the four men were attempting to lift the hood manually, the hood fell onto the claimant's left shoulder.

Bondex initially paid for the claimant's medical treatment and the claimant worked light duty. The claimant began working with bales of polyester fiber, cleaning machines, and labeling pallets, all constituting light duty work. Due to arm pain with all of these jobs, he eventually was assigned to sweeping floors. When Bondex ceased paying for medical care approximately two months following the claimant's accident, the claimant filed a workers' compensation claim. Bondex then agreed to provide more medical treatment. An orthopedist imposed additional work restrictions on the claimant. Bondex terminated the claimant upon receiving the work restrictions. The claimant then filed a claim for temporary total disability benefits.

The Single Commissioner found the claimant had not sustained a compensable injury and denied the claim. The Full Commission found the claimant sustained compensable injuries to his neck, left arm, and left shoulder. The Commission relied on the opinions of four doctors who examined the claimant and believed the accident caused his injuries. The Commission also found the claimant was entitled to temporary total disability benefits because Bondex could not accommodate his restrictions. The Commission decided to hold in abeyance the issue of compensation for the claimant's right shoulder, right arm, and lower back.

In discussing the issue of the claimant's entitlement to temporary total disability compensation, the Court of Appeals emphasized that, in order to prove temporary disability, a claimant need not go into the marketplace and seek a job within his work restrictions. In contrast to a claim for permanent disability compensation, in order to prove temporary disability, a claimant need only prove that his work restrictions prevented him from performing the job he had prior to the injury and that light duty work at his employer was unavailable.

HOLDING: The Court of Appeals found substantial evidence supported the Commission's decisions that (1) that the claimant sustained a compensable injury and (2) the claimant was temporarily and totally disabled and entitled to temporary total disability compensation. The Court further remanded the case for a decision as to the compensability of the claimant's alleged injuries to his back,

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right shoulder, and right arm.

Judge Lockemy concurred with the majority's opinion that there was substantial evidence to support a finding of compensability. He further concurred with the majority's opinion that the case should be remanded for a decision regarding the claimant's other alleged injuries. However, he disagreed with the decision to affirm the Full Commission's conclusion that the claimant was entitled to temporary total disability benefits. He submitted that "the decision of temporary total disability must be based upon evidence that [the claimant] is unable to perform services other than those that were so limited in quality, dependability, or quantity that a reasonably stable market for them did not exist . . . ." He noted that Bondex's refusal to offer light duty work may have been a contributing factor to the decision of whether the claimant was entitled to temporary total disability, but it was not conclusive. As such, he believed the Full Commission should make additional findings of fact as to the claimant's ability or inability to find other work.

Poch v. Bayshore Concrete Products/South Carolina, Inc., Op. No. 27304 (Aug. 28, 2013)

This case examined the issue of an employer's immunity from a tort action based on the Workers' Compensation Act's exclusive remedy provision. Poch was a temporary laborer hired by Bayshore SC to assist with a site cleanup project. Bayshore SC was a wholly owned subsidiary of Virginia corporation Bayshore Corp. Bayshore SC was formed to help fulfill a bid to supply pre-cast concrete forms for use in the Carolina Bays Parkway Project in Horry County. When the project reached its final stages, it sought temporary labor to dismantle the equipment and casting beds. Poch was killed when a trench collapsed as he was working in it to extract concrete abutments.

Poch's estate received workers' compensation benefits through the temporary employment agency and then sued Bayshore Corp. and Bayshore SC in tort. Bayshore Corp. and Bayshore SC claimed Poch was a statutory employee of both the parent and the subsidiary. Thus, workers' compensation was the exclusive remedy. The Court of Appeals affirmed the circuit court's decision that Bayshore Corp. and Bayshore SC were immune from civil suit. The Court ruled Bayshore SC was Poch's statutory employer and there were no exceptions to eliminate Bayshore SC's immunity. The Court also ruled Poch was a statutory employee of Bayshore Corp. under a contractor/subcontractor analysis. As such, Bayshore Corp. could invoke the workers' compensation exclusivity provision.

Poch's estate asserted the Court of Appeals erred in determining that Bayshore Corp. was a statutory employer. The Supreme Court addressed this question by analyzing Bayshore SC's status first. Finding that Poch was engaged in activity that was "part of the owner's trade business or occupation" as required under section 42-1-400, the Supreme Court found Bayshore SC qualified as Poch's statutory employer. Therefore, it was immune from liability in tort.

The next question the Court addressed was whether Bayshore Corp. could claim immunity based on its relationship to Bayshore SC. Poch's estate claimed Bayshore SC was a separate and distinct corporate entity. The Court found the Court of Appeals applied an incorrect legal standard, although it reached the correct result. The correct approach in examining the relationship between the two corporations was the one found in *Monroe v. Monsanto Company*, 531 F. Supp. 426 (D.S.C. 1982). The Court applied the eight Monroe factors and determined that Bayshore Corp. was immune from tort action because Bayshore Corp. and Bayshore SC could be viewed only as one economic entity.

Finally, the Court addressed the question of whether Bayshore Corp. and Bayshore SC could benefit from immunity where they failed to offer proof of or secure workers' compensation coverage for Poch. Although the Court conceded Bayshore Corp. and Bayshore SC could have lost their tort immunity had they failed to procure workers' compensation coverage, the Court relied on an affidavit from an underwriter for the insurance carrier which attested to workers' compensation coverage at the time of the accident.

HOLDING: Bayshore Corp. and Bayshore SC proved they were entitled to immunity under the Workers' Compensation Act's exclusivity provision. Although the Court of Appeals erred in its analysis by using the contractor/subcontractor doctrine rather than the alter ego theory, it reached the correct result. Bayshore Corp. and Bayshore SC were entitled to retain their immunity because they secured workers' compensation coverage.

Chief Justice Toal concurred with the majority's opinion regarding the Monroe factors and their application. She dissented as to the insurance requirement, however, noting that Bayshore Corp. and Bayshore SC failed to submit adequate proof that they secured or filed workers' compensation coverage as required by S.C. Code Ann. § 42-5-20 and *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 523 S.E.2d 766 (1999). Justice Pleicones agreed that the Monroe factors should be applied but disagreed with the result reached by the majority. He further disagreed that Bayshore Corp. and Bayshore SC complied with the insuring requirement.

Verdict Reports

Type of Action: Motor Vehicle Accident

Case: *David H. Meece v. Casey Marie Tucker*

2012-CP-23-2389

Court: Greenville County Court of Common Pleas

Trial Judge: Donald Hocker

Defense Counsel: T. David Rheney, Gallivan, White and Boyd

Plaintiff's Counsel: Scott Dover

Trial Dates: July 24-26, 2013

Verdict: Defense Verdict

Description of case: This case arose from an automobile accident at the intersection of I-385 and Haywood Road on October 2, 2009. Both vehicles had just exited off of I-385 and were the lead vehicles at the top of the exit ramp. At that time the plaintiff was returning from the hospital, where he had just met with doctors to discuss taking his mother off of life support following a stroke she had had several days earlier. The defendant struck the plaintiff in the rear in what was admittedly a low speed impact with minimal damage to the plaintiff's vehicle. However, the plaintiff claimed to have suffered a herniated disc in his neck as a result. Liability for the accident was admitted but all of the plaintiff's damages were disputed.

The plaintiff admitted that he did not feel any specific neck pain on the day of the accident, although he claimed he was sore and tense all over, and that he did not seek any medical treatment that day. Instead, he testified that when he returned to his mother's hospital the following day to ask that she be taken off life support, he felt a jolt of pain in his neck when he leaned over to kiss her goodbye. However he still did not seek any medical care for another two weeks. After several months of treatment the plaintiff underwent a planned cervical fusion. That surgery was aborted because the plaintiff aspirated after being placed under anesthesia. A second surgery was successfully performed several months later and the plaintiff had a very good recovery. He claimed medical expenses of approximately $120,000 as a result of the accident.

At trial the plaintiff's neurosurgeon, Dr. Michael Bucci, testified that in his opinion the herniated disc was caused by the accident. However, he admitted on cross examination that his opinion as to the timing of the herniation was based 100% on the plaintiff's statement to him that his pain began at the time of the accident. He was not in the court room for the plaintiff's testimony. He also admitted on cross examination that it was his opinion that a herniated disc could be caused by almost anything, including reaching up to screw in a light bulb in an awkward position, leaning over to pick up a trash can and leaning over to kiss your daughter goodnight while she is in bed, and that if a person felt the immediate onset of pain that would be the most likely time the herniation occurred. After being told the plaintiff testified that he felt a sharp pain in his neck when he leaned over to kiss his mother goodbye, Dr. Bucci refused to admit, based on his own testimony, that was most likely when the herniation occurred, but did admit that would "change the equation".

Brian Boggess of SEA, Ltd. testified as a bio-mechanical engineer. A very lengthy voir dire was undertaken outside the presence of the jury as plaintiff's counsel contested whether Boggess was qualified to testify that a herniation most likely did not occur in the accident. He conceded Boggess was qualified to testify to the forces involved in the accident based upon his background in engineering and accident reconstruction, but not that the plaintiff could not have sustained a herniated disc in the accident. Judge Hocker allowed Boggess to testify as an expert in bio-mechanical engineering, including to the forces involved in the accident and the impact those forces would have on the average person, and only instructed Boggess he could not testify that this particular accident caused this particular injury to this particular plaintiff since that was a medical opinion. Boggess did an excellent job and effectively conveyed to the jury that the forces involved in this accident were the equivalent of plopping down on a couch or descending a flight of stairs, and that there was no support in testing or literature that such forces could herniate a cervical disc in an accident like this one.

The jury deliberated for five minutes before returning a defense verdict.

Type of Action: Trucking Accident/Negligent Hire & Supervision with Disputed Liability

Injuries alleged: Plaintiff alleged to have suffered catastrophic injuries including loss of vision in one eye and a permanent moderate brain injury that necessitated a life care plan and lost wages for his life expectancy given his claim of total permanent disability.

Name of Case: *Jimmie Dale Bryant v. Trexler Trucking, Inc.*

Court: In the United States District Court for the District of South Carolina. Florence Division.

Case number: 4:11-CV-02254-RBH

Tried before: Jury

Name of judge: The Honorable R. Bryan Harwell

Amount: Defense verdict on the issue of liability.
Damages and comparative fault were never reached by the jury.

Date of verdict: March 15, 2013

Demand: $1,850,000.00.

Highest offer: $600,000.00.

Most helpful experts : Defendant utilized several experts. Those that were among the most helpful included an accident reconstructionist and a trucking safety expert. Michael A. Sutton, P.E. of Cary, North Carolina, Defendant's accident reconstructionist testified that Plaintiff had an unobstructed view for a distance of more than two football fields to see Defendant's truck and take evasive action prior to impact. Mr. Sutton also testified that given the condition of the filaments in one of Plaintiff's tail or running lights, Plaintiff's brakes were not applied and had not been applied within three (3) seconds immediately prior to impact. Douglas R. Lax, Sr., CDS, CSSM, of Summerville, South Carolina, a trucking safety expert, testified that there was no provision in the Federal Motor Carrier Safety Act, the North Carolina or South Carolina commercial driver's license manuals or industry practice that prohibited u-turns.

Attorney(s) for defendant: Thomas J. Keaveny, II and Amy B. Rothschild, Charleston, South Carolina

Description of the case: While driving a truck owned and operated by Defendant Trexler Trucking, Inc., W. Michael Parker was delivering a load of materials to a construction dump site near the intersection of U.S. Highway 501 and U.S Highway 22 in Conway, South Carolina. Access to the road into the site where the materials were to be delivered could only be gained by traveling north on U.S. Highway 501 and as Mr. Parker was traveling south on U.S. Highway 501, he needed to pass the site, make a u-turn and travel north on U.S. Highway 501 to access the road. To make the u-turn, Mr. Parker moved into the left turn lane, reduced the speed of his truck to about 5 mph and shifted into third gear. Mr. Parker saw a glimmer of headlights so far down the road that he believed he would be able to complete his turn without interfering with the oncoming vehicle. Mr. Parker was more than three fourths of the way through his turn and straightening out when Plaintiff who was traveling between 35 – 45 mph rode underneath the rear axle of the front of Mr. Parker's trailer.

Both experts testified that Mr. Parker and Plaintiff had clear and unobstructed views of one another. Plaintiff had almost 700 feet or 10 seconds to yield to Defendant's truck. There was no evidence that Plaintiff tried to avoid impact and the evidence indicated Plaintiff did not attempt to brake until possibly the last couple of seconds before impact. Plaintiff claimed to have no recollection of the accident. Plaintiff suffered a traumatic brain injury and lost vision in one eye.

At the time of trial, Plaintiff's medical bills were approximately $350,000.00. Plaintiff claimed that Defendant negligently hired, supervised and trained Mr. Parker and that Mr. Parker violated S.C. Code Ann. §§56-5-2140(a) and 56-5-2350 (1976, as amended) in failing to yield the right of way.

Defendant asserted comparative fault as a defense. The jury did not reach the issue of comparative fault finding no liability on the part of Defendant. Plaintiff's post trial motions for judgment as a matter of law on the issue of negligence and for a new trial were denied.

The Court entered judgment in favor of Defendant and against Plaintiff in the amount of $9,380.87 in costs.

Continued on next page

Type of Action: Negligent Supervision, Assault & Battery, & Unfair Trade Practices Act Violation

Injuries alleged: Mental injury – Post Traumatic Stress Disorder

Name of Case: *Jace Benjamin Cameron v. Camden Military Academy*; Eric Boland, Individually and as an Employee of Camden Military Academy; C.H. Armstrong, Individually and as an Employee of Camden Military Academy; Vertis Wilder, Individually and as an Employee of Camden Military Academy

Court: United States District Court, Columbia Division

Case #: 3:12-cv-00846-JFA

Tried before: Jury (2 females, 8 males; 4 African-American, 6 Caucasian)

Name of judge: Joseph F. Anderson

Amount: Defense Verdict

Date of verdict: July 2, 2013

Demand: Confidential – made in mediation

Highest offer: Confidential – made in mediation

Most helpful experts:

- Michael S. Dorn (Bullying and school safety) (Juliette, Georgia)
- Leah S. Willis, RN, BSN, MHA, NE-BC (School Nursing) (Mount Pleasant, South Carolina)
- Ryan C.W. Hall, M.D. (Psychiatry) (Lake Mary, Florida)

Attorney(s) for defendant: Duke R. Highfield, Stephen L. Brown, James E. Scott, IV, Catherine H. Chase, Brandt R. Horton of Young Clement Rivers, LLP, Charleston, SC 29401

Description of the case: Young Clement Rivers, LLP, attorneys, Duke R. Highfield, Stephen L. Brown, James E. Scott, IV, Catherine H. Chase, and Brandt R. Horton, obtained a defense verdict after a 14 day trial in a negligent supervision, assault and battery, and unfair trade practices case. The case, *Jace Benjamin Cameron v. Camden Military Academy; Eric Boland, Individually and as an Employee of Camden Military Academy; C.H. Armstrong, Individually and as an Employee of Camden Military Academy; Vertis Wilder, Individually and as an Employee of Camden Military Academy* (3:12-cv-00846-JFA), was tried in the District of South Carolina before the Honorable Joseph F. Anderson over 14 days. After 90 minutes, the jury returned a verdict in favor of all the defendants on all claims. Plaintiff was represented by Marguerite S. Willis, Victoria L. Eslinger, James C. Smith, and Travis C. Wheeler of Nexsen Pruet, LLC.

Plaintiff Jace Cameron alleged that from August 2008 to January 2009, while he was a 13 year old student at Camden Military Academy ("CMA"), a boarding school in Camden, South Carolina, that he was bullied, hazed, assaulted, and sexually assaulted by other students. He also alleged that he was assaulted by an official of the school, Vertis Wilder, during this time.

Plaintiff alleged that Defendants CMA, Eric Boland, C.H. Armstrong, and Vertis Wilder were negligent in their supervision of students. He alleged that CMA, Boland, and Armstrong were negligent in their supervision of Defendant Wilder. He alleged Defendant Wilder assaulted and battered him on one occasion when Defendant Wilder allegedly jabbed Plaintiff in the chest with his hand. He also alleged that CMA violated the South Carolina Unfair Trade Practices Act.

The Court granted Defendants' motion for summary judgment as to Plaintiff's claims against CMA, Boland, Armstrong, and Wilder for negligent misrepresentation and intentional infliction of emotional distress. The Court also granted Defendants' motion for summary judgment as to Plaintiff's claims against CMA for hazing and breach of contract.

CMA is a non-profit school. As such, it and the individual defendants, all officials at CMA, claimed limitations on liability under the South Carolina Solicitation of Charitable Funds Act.

Defendants denied liability. The defense noted the inconsistencies in Plaintiff's versions of the alleged events, several of which had been provided under oath, and questioned whether the events alleged actually happened. Through the use of discovery, the defense was able to establish that Plaintiff was not truthful about his Post-Traumatic Stress Disorder ("PTSD") symptoms. He ultimately conceded at trial that he fabricated certain aspect of his claims of sexual assault in his prior sworn testimony.

Plaintiff alleged that he suffered from PTSD and mental anguish as a result of his experiences at CMA. He left CMA in January 2009 but first sought treatment for his mental anguish in October 2010. Plaintiff did not see a treating psychiatrist until less than one month before trial.

Plaintiff's forensic expert, James C. Ballenger, M.D., testified that Plaintiff suffered from PTSD and would

require three to five years of trauma specific psychotherapy, three to five years of other psychotherapy, and recurring psychotherapy throughout the Plaintiff's life. Dr. Ballenger also testified that Plaintiff may be hospitalized in the future and would require medications for the rest of his life. Plaintiff sought $2,270 in past medical expenses and $616,587.52 in future medical expenses, in addition to damages for pain and suffering. Plaintiff asked the jury for $618,857.52 plus $5 Million, $7 Million, or $10 Million.

Defendants' psychiatric expert, Ryan C.W. Hall, M.D., explained that Plaintiff's varying accounts of alleged sexual assaults were inconsistent with PTSD and more consistent with malingering. Defendants' school safety expert, Michael S. Dorn, explained that the results of surveys taken around the time that Plaintiff attended CMA showed that CMA students reported bullying on par with the national average at the same time.

This case is one of the first, if not the first, where Plaintiff's Facebook production was entered into evidence at trial in South Carolina. This evidence was a key aspect to showing that Plaintiff's reported symptoms of PTSD were more consistent with malingering.

Type of Action: Dog Attack

Name of Case: *Chadwick Duck v. Talmadge Holmes*

Case #:2011-CP-23-4271

Court : Greenville County Court of Common Pleas

Name of Judge: Robin B. Stilwell

Defense Counsel: T. David Rheney and Walker Miller of Gallivan, White & Boyd

Plaintiff's Counel: Andrew Barr

Trial Dates: September 3-5, 2013

Verdict: For Plaintiff $225,000 less previous payments of $28,000

Description of case: This case arose from an alleged dog attack on the defendant's property on May 29, 2010. On the day of the accident the defendant was holding a yard sale. Later in the day, after the sale was over, the plaintiff came by and asked if he could look at the items for sale. He was given permission by the defendant to do so. He was approached by 3 of the defendant's 4 mixed breed pit bulls, which did not show any aggression toward him. Both the plaintiff and the defendant testified the plaintiff was uncomfortable with the dogs, so the plaintiff either asked or the defendant offered to put the dogs inside the house. The plaintiff then continued to the top of the driveway, and claimed that the 4th dog, also a mixed breed pit bull, charged him, which led to his running and falling on the stone driveway, fracturing his elbow. The defendant denied that the dog charged the plaintiff, claiming instead that the dog simply walked around the corner of the house from the back porch where it usually stayed, that the plaintiff yelled "Dog!" and took off running down the driveway where he fell, while the dog went the opposite way back to the porch.

Liability for the accident was disputed. The plaintiff asserted causes of action for negligence and for strict liability. He claimed past medical expenses of approximately $80,000 for his elbow surgery and future medical expenses of $23,000 for a planned future surgery to remove the hardware in his elbow, as well as lost past wages of $23,000 and lost future wages of approximately $8,000 following his surgery. He was assigned an impairment rating of 20% of his right arm by his surgeon.

The jury deliberated for several hours before returning a verdict in favor of the plaintiff. It found the defendant was not strictly liable, concluding the dog did not attack the plaintiff, but found the defendant was negligent, apparently concluding he should have put the 4th dog up when he put the other 3 dogs up as argued by the plaintiff. Post-trial motions for new trial and JNOV were filed based upon inconsistency of the verdict and errors in admission of various evidence during trial. Those motions were denied and the case likely will be appealed.

Continued on next page

Type of Action: Medical Malpractice

Name of Case: *Shelley and Gerald Huckabee v. Dr. William Dennis*

Court: Charleston County Court of Common Pleas

Case number: 2011-CP-10-1185

Name of Judge: The Honorable Deadra Jefferson

Amount: Defense Verdict

Date of Verdict: June 28, 2013

Attorneys for defendant: Molly H. Craig, Jennifer F. Nutter and Brian E. Johnson of Hood Law Firm, LLC, Charleston, SC

Description of the case: The Plaintiff filed a medical malpractice action against her treating gynecologist related to the performance of a laparoscopic assisted vaginal hysterectomy with vaginal vault suspension. During the course of the procedure, the Defendant excised a lesion and inadvertently also cut through several layers of Plaintiff's colon at that time. Two days later, the Defendant received a telephone call from the pathologist advising the sample removed contained evidence of bowel tissue indicating a possible perforation. The Defendant planned to notify the Plaintiff of the complication the following day but she presented to the emergency department with a bowel perforation prior to notification. The Plaintiff alleges the Defendant did not timely notify the Plaintiff of the injury after receiving this information from the pathologist and, as a result, she experienced a colon perforation the following night necessitating repair surgery and an approximately two week hospitalization. The Plaintiff also alleged she was not sufficiently informed to provide informed consent to the procedure and is more likely to experience bowel obstructions and complications in the future.

The defense presented testimony from the Defendant, expert physicians, and two treating surgeons who testified a bowel perforation is a known complication of the Plaintiff's procedure and can occur in absence of medical negligence. Further, the Defendant explained why it was reasonable to exercise his clinical judgment in deciding to wait and notify the Plaintiff of the injury.

The jury deliberated for one hour and fifteen minutes before returning a verdict in favor of the Defendant physician.

Type of Action: Trademark Violation; Breach of Contract

Injuries alleged: The Plaintiffs alleged violation of the Plant Variety Protection Act (PVPA), the Lanham Act (Trademark Infringement), and Breach of Contract.

Name of Case: *The Turfgrass Group, Inc. and University of Georgia Research Foundation, Inc. v. Carolina Fresh Farms, Inc. and Carolina Fresh Farms, LLC*

Court: United States District Court of South Carolina – Orangeburg Division

Case #: 5:10-cv-00849-JMC

Tried before: Jury

Name of judge: District Court Judge J. Michelle Childs

Amount: Defense verdict

Date of verdict: September 4, 2013 (Jury deliberated 45 minutes)

Demand: $4.2 million

Attorney(s) for defendant: Robert F. Goings of Goings Law Firm, LLC, Columbia, and Christian E. Boesl of Collins & Lacy, P.C., Columbia.

Description of the case: After nearly two weeks of trial, it took the jury only 45 minutes to find in favor of the Defendants, clearing Carolina Fresh Farms of any wrong doing on all counts. The defense verdict was in opposition to the Plaintiffs' request for damages in the amount of $4.2 million. The Plaintiffs sought damages for loss of market share and profits obtained as a result of the alleged violation of Plaintiffs' trademarks, unfair competition, and false advertising under the Lanham Act The Plaintiffs sought damages for loss of compensation, market share, and royalties for alleged violations of the Plant Variety Protection Act; and, Plaintiffs sought damages for Carolina Fresh Farms alleged breach of the sublicensee agreement, the failure to make royalty payments, and other post termination conduct.

Type of Action: Premises Liability

Name of Case: *Richard Hanson v. Vicki Thomas Gray, Gerald M. Gray, and Marshall P. Sherard, as personal representatives of the Estate of James M. Gray, Marshall P. Sherard, individually, Hartwell Lake Properties and Mike Davenport*

Case #: 2011-CP-04-1751

Court: Anderson County Court of Common Pleas

Trial Dates: July 15-19, 2013

Trial Judge: Eugene C "Bubba" Griffith

Defense Counsel: T. David Rheney and Nick Farr of Gallivan, White and Boyd, Greenville, SC

Plaintiff's Counsel: Richard C. "Dickie" Jones, Jones, Seth, Shuler and Jones

Verdict: $82,000

Description of case: This was a premises liability case arising from an accident at a home owned by Defendants Marshall Sherard and James Gray through Hartwell Lake Properties, and built, in part, by Mike Davenport. The home was rented to several Clemson University students who were in the same fraternity. On August 29, 2009 the plaintiff was attending a bid night party for the fraternity when he leaned on deck railing, which gave way and caused him to fall 12 feet to the ground. He struck his head on a cement wall surrounding an HVAC unit and sustained a closed head injury. He was airlifted to Greenville Memorial Hospital, where he remained hospitalized for several days before being discharged. He returned to Clemson two weeks after the accident and completed the semester on a reduced class schedule.

At the time of the accident the plaintiff was majoring in Mechanical Engineering and was a member of the Air Force ROTC program. He planned to become a pilot following graduation. Because of his closed head injury the plaintiff was discharged from the ROTC program at the end of the semester. After an appeal he was re-admitted to ROTC the following semester but was told at that time he would not be permitted to apply for the flight program until five years after his injury. At the conclusion of that semester the plaintiff changed majors to Industrial Engineering after failing a core curriculum class required in Mechanical Engineering. He also lost several scholarships as a result of his GPA failing below 3.0.

Discovery revealed that the railing through which the plaintiff fell was defectively installed and that the plaintiff did not contribute to the failure of the railing by overloading it. As such, liability on behalf of one or more of the defendants was clear. Prior to trial several defendant contractors were dismissed. Davenport Construction, which built the deck and railing, remained as a defendant through trial. Davenport claimed that he built the railing as instructed by Gray, although he conceded that was done contrary to applicable building codes and Oconee County regulations. Gray, who was principally responsible for overseeing construction of the home for the company, died several months after the accident, before the lawsuit was filed, and never testified in the case.

Throughout the case the plaintiff claimed damages of nearly $350,000, including medical bills of nearly $60,000, an extra semester of expenses for school, lost scholarships and lost future flight pay. At trial the plaintiff initially testified that he had just learned that he would be permitted to apply for the flight program and would report for a physical within a week of trial, and that should he pass his physical he could potentially start flight school within several months. However, on the third day of trial it was learned that the plaintiff had been told that instead of attending flight school the Air Force had decided that he would be sent to drone pilot school instead, which the plaintiff testified effectively ended his dream of being a pilot. Because drone pilot pay is the same as pilot pay, that significantly reduced the plaintiff's claim of lost future income. All other damages claimed by the plaintiff with the exception of the medical bills were disputed.

Continued on next page

Type of Action: Automobile Accident

Injuries alleged: Injuries to the back, neck and shoulders with left hip replacement and insertion of a spinal cord stimulator.

Name of Case: *Melvin Thomas, Jr. vs. Dante S. Ham*

Court: Court of Common Pleas/ Florence County

Case #: 2010-CP-21-344

Tried before: Jury

Name of judge: Honorable Michael G. Nettles

Amount: $1,000.00 actual damages

Date of verdict: August 27, 2013

Demand: Policy limits of $125,000.00

Highest offer: $35,000.00

Attorney(s) for defendant: J. David Banner of Aiken Bridges, P. A., Florence, South Carolina

Description of the case: The plaintiff presented medical bills in the amount of $245,181.30 as a result of injuries allegedly sustained as a result of this motor vehicle accident. The plaintiff had a pre-existing history avascular necrosis and the plaintiff's treating physician, pain specialist, Dr. Anthony Alexander testified at trial that the plaintiff's left hip replacement was the result of an exacerbation to his pre-existing AVN. Dr. Alexander also testified that the plaintiff had a spinal cord stimulator inserted in his back as a result the continued pain resulting from the motor vehicle accident. The plaintiff also testified that he had been unable to return to work following the collision and was earning approximately $1,000.00 per week.

The defendant admitted simple negligence and the issue for the jury was proximate cause and damages. The defendant retained an orthopedic surgeon to review the plaintiff's medical records both past and subsequent to the accident, who testified that neither the left hip replacement nor the spinal cord stimulator was related to the motor vehicle accident. The defendant's expert testified that the plaintiff's initial treatment at the emergency room followed by a few weeks of physical therapy were the only bills and treatment related to the accident.

The jury deliberated for approximately one (1) hour before returning its verdict.

Type of Action: Motor Vehicle Accident

Injuries alleged: Neck, left shoulder, and respiratory issues resulting from the inhalation of airbag dust; medical specials of $12,200.00.

Name of Case: *Amy McCombs v. Xavier Jamaal O'Neal*

Court: Circuit Court-Greenville County

Case number: 12-CP-23-0643

Name of Judge: The Honorable G. Edward Welmaker

Amount: $5,000.00

Date of Verdict: October 1, 2013

Last Demand: $15,000.00

Last Offer: $5,000.00

Attorneys for defendant: Nick Farr of Gallivan, White & Boyd, P.A., Greenville, South Carolina

Description of the case: Plaintiff was a front-seat passenger in a vehicle operated by her mother when Defendant hydroplaned in rainy conditions, crossed over into Plaintiff's lane, and struck Plaintiff's vehicle head-on. The driver's side airbag in Plaintiff's vehicle deployed, allegedly exposing her to dust exposure. Plaintiff alleged that the exposure caused her to develop respiratory issues several months after the accident.

Type of Action: Premises Liability/Negligence

Injuries alleged: Cervical spine injury, permanent disability

Name of Case: *Darin E. Richardson and Nancy Richardson vs. LH of Spartanburg, LLC, d/b/a as Monkey Joe's*

Court: Circuit Court-Spartanburg County

Case number: 2011-CP-42-3372

Name of Judge: The Honorable Roger L. Couch

Amount: Defense Verdict

Date of Verdict: July 18, 2013

Attorneys for defendant: Greg P. Sloan and Kyle A. Hougham of Gallivan White and Boyd, Greenville, SC

Description of the case: Plaintiff alleged severe neck injuries arising out of an accident that occurred in Spartanburg, South Carolina on August 2008. Plaintiff alleged that employees of Monkey Joe's actively facilitated a race between Plaintiff and a young girl. As a result of that race, Plaintiff alleged that he sustained permanent injuries after attempting to enter the Ultimate Module Challenge, an inflatable recreational device. Plaintiff's medical bills totaled approximately $170,000 and his loss of earning capacity claim totaled $1.65 million.

Defendant denied that it breached any duty owed to Plaintiff or that Plaintiff's alleged injuries were proximately caused by any actions of Monkey Joe's. Specifically, Defendant alleged that the sole proximate cause of Plaintiff's injuries was his own negligence. Furthermore, Defendant alleged that Plaintiff voluntarily executed a release and waiver of liability and thus, would be precluded from bringing any claims for his alleged injuries. Ultimately the waiver was deemed insufficient as a matter of law to bar Plaintiff's action.

The case was tried over four days and the jury returned a defense verdict in favor of Monkey Joe's and its owners.

Type of Action: Motor Vehicle Accident

Injuries Alleged: Neck and back sprain, hip bruise

Name of Case: *Natavia Roper v. Melissa Benjamin and Ashley Wright*

Court: Charleston County Court of Common Pleas

Case Number: 12-CP-10- 01075

Judge: The Honorable Kristi Lea Harrington

Amount: Admitted liability by Defendant Benjamin; defense verdict for Defendant Wright;
Plaintiff awarded $0 in damages.

Date of Verdict: June 12, 2013

Attorney for Defendant: James P. Sullivan, Charleston, South Carolina

Description of Case: Plaintiff was a passenger in Defendant Benjamin's vehicle when a collision occurred with Defendant Wright's vehicle. Plaintiff treated at the ER on the same day and sought treatment from a physician and chiropractor for about 5 weeks following the accident. At trial, Defendant Benjamin admitted fault for the accident; however, Plaintiff's credibility regarding her alleged injuries was called into serious question. Plaintiff asked the jury for over $42,000.00. The jury returned $0 in damages.

Continued on next page

Type of Action: Medical Malpractice

Injuries Alleged: Destruction of MTP joint in the great toe allegedly due to septic arthritis and osteomyelitis.

Name of Case: *Naomi R. Mason and Anthony R. Mason vs. Anthony L. Mason, D.P.M.*

Court: Greenville County Court of Common Pleas

Case Number: 2012-CP-23-00564

Name of Judge: The Honorable L. Casey Manning

Amount: Defense Verdict

Date of Verdict: August 29, 2013

Attorneys for Defendant: V. Clark Price of Roe Cassidy Coates & Price, P.A., Greenville, SC

Description of the Case: The Plaintiffs filed a medical malpractice action against a podiatrist regarding complications that developed following a bunionectomy. The patient alleged that a podiatrist should not have performed the procedure because of a pre-existing fracture that had not been allowed to heal. The patient further alleged that the podiatrist negligently failed to address a post-operative infection at the surgical site which resulted in septic arthritis, osteomyelitis, and consequent destruction of the toe joint. The patient alleged that the damage to her toe forced her to resign her position as a radiology technologist and caused her permanent pain and impairment. The patient's husband claimed loss of consortium.

The Plaintiffs called as their expert an orthopedic surgeon who cared for the patient after she discharged the podiatrist. The expert testified that the toe joint was destroyed by septic arthritis which the podiatrist had failed to appreciate and address. The expert testified that the toe was obviously infected and that if the podiatrist had surgically cleaned the wound earlier the damage to the toe joint would not have occurred.

The defense presented testimony from an expert podiatrist and from the defendant podiatrist who testified that the surgery was appropriately performed and that the toe joint was damaged by traumatic osteoarthritis and not infection. The defense contended that the toe joint was never infected. The defense also presented testimony that the patient had not followed the post-surgical instructions of the podiatrist and had contributed to her injuries by refusing to wear a surgical shoe and crutches. The patient testified that she used the crutches and that the surgical boot hurt her foot and the podiatrist refused to replace it.

At final argument, the Plaintiffs' attorneys asked for medical bills of $70,000.00, loss of income of approximately $200,000.00, and general damages for pain and suffering. The case was tried for four days. The jury deliberated for two hours before returning a verdict in favor of the defendant podiatrist. Ella S. Barbery assisted in preparing the case for trial.

2014

TRIAL ACADEMY

TBA

Summer

SUMMER MEETING

July 24-26

Grove Park Inn

Asheville, NC

ANNUAL MEETING

November 6-9

Pinehurst Resort

Pinehurst, NC

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