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Thank You to Our Leadership in a Difficult Year



JOHNSTON COX, 2020 PRESIDENT, AND SARAH WETMORE BUTLER, INCOMING SCDTAA PRESIDENT



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PRESIDENT'S MESSAGE



President
A. Johnston Cox

I was one of those people who thought Covid -19 would be gone when summer hit full swing. It never occurred to me that we would still be taking depositions and holding mediations virtually in November. It never occurred to me that every SCDTAA CLE and conference would be virtual – and now our Annual Meeting will also be virtual on November 13, 2020.

Despite Covid-19, the SCDTAA has carried on with its mission to provide quality CLE opportunities for its members. We have held a diversity symposium, expert deposition boot camp, Summer Meeting, construction seminar and now an Annual Meeting this year. The Annual Meeting will consist of a free 2.5 hour CLE, which includes an entertaining two hour ethics presentation and a presentation by one of our sponsors, JS Held. The CLE will be followed by our Annual Membership Meeting in which we elect board members and officers to lead the organization for the next several years.

Of course, we could not have done this without our Executive Director, Aimee Hiers, who seamlessly guided us through the transition from in-person to virtual meetings. Nor could we have done it without our sponsors, who stuck with us during this difficult time. We will not forget their loyalty.

The pandemic has challenged everyone over the past months. Many people have suffered greatly during this time. But the pandemic has also spurred some change that had been slow in coming and that will continue to affect and improve our lives and the practice of law in the future. One thing I ask you to consider as we begin to re-open the courts and return to the break-neck pace that is the life of a trial

lawyer – try to hold onto the parts of the pandemic that were good - spend more time with your friends and family, exercise and take the time to care about and care for the well-being of others. In your practice, let civility be the cornerstone of your interactions with others, even when it may not be reciprocated. In the long run, the example you set will influence others to follow your lead – and you will not have that terrible feeling of remorse after you fire off that retaliatory email! Good things will come to those who let civility be the guide for their career.

Sarah Wetmore Butler will be taking over the reins on November 13. She has been a wonderful ambassador for the SCDTAA for many years and will do an excellent job as President. Our Annual Meeting format will not allow me to give her the type of introduction to the membership that she deserves, but I hope she knows how much I appreciate her commitment to the SCDTAA and how much I have valued her contributions this year. Hopefully, we can get somewhat back to normal in 2021 and we can all toast the passing of the pandemic at the Grove Park Inn in July and the Sanctuary in November!

Johnston 

A handwritten signature in blue ink that reads "John Cox". The signature is fluid and cursive, with the first name "John" being larger and more prominent than the last name "Cox".


EDITORS' NOTE

Editors' Note

by C. Daniel Atkinson, Michael D. Freeman and James B. Robey III

“**M**ay you live in interesting times.” Apocryphally, this has been called an ancient Chinese curse. It appears in reality to be a curse first by English statesman Joseph Chamberlain in 1898. It is considered wildly preferred to live in tranquil, boring times than interesting ones.

We are over six months into our interesting times, and SCDTAA and the DefenseLine continue to adapt and thrive. In this issue, we provide an interview with Judge Robert Hood, an article from CompuScripts regarding Tips for a Successful Zepo (Zoom Deposition), as well an article from Mike Ethridge and Mary Willis regarding insurers' duty to defend additional insureds. We also include a report from our virtual Summer Meeting. Finally, we provide you with a case law update and an update on the important work being done by our members throughout South Carolina.

This year has been a hard one, missing our traditional in-person Summer Meeting and Annual Meeting. While it is always good to see friends and colleagues' faces via Zoom, we look forward to in-person events, where we can share the fellowship that we all treasure in SCDTAA. Soon, we hope the times will be much less interesting. 



C. Daniel Atkinson



Michael D. Freeman



James B. Robey III

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To Defend or Not to Defend

The Dilemma for Insurers, Subcontractors and their Attorneys regarding Additional Insured Coverage in Construction Defect Litigation

By R. Michael Ethridge and Mary S. Willis



Construction work has always posed substantial risks to owners, contractors, design professionals, and subcontractors. As such, construction contracts usually transfer liability risks from developers downstream to contractors, and contractors downstream to subcontractors by way of indemnification and insurance provisions. Over the last decade, there has been a significant increase across the nation in the number of general contractors turning to litigation to enforce their rights as additional insureds under their subcontractors' commercial general liability policies. Despite the increase, there is little, if any, precedent from the South Carolina appellate courts addressing additional insured coverage in construction defect litigation. The lack of precedent is complicated by the array of additional insured endorsements in the industry and the various endorsements offered by ISO. Earlier this year, however, a South Carolina district court judge issued orders on six summary judgment motions addressing six subcontractor insurer-defendants' duty to defend a general contractor against underlying construction defect litigation.¹

This article seeks to summarize the arguments of the parties and the district court's rulings in an effort to provide guidance to insurers, contractors, subcontractors, and their attorneys regarding these issues under South Carolina law.

This insurance dispute arises out of a construction project managed by Dan Ryan Builders West Virginia, LLC, and Dan Ryan Builders of South Carolina, LLC (hereinafter "DRB"). DRB entered into a contract to construct new homes in a community known as the Foxbank Subdivision, located in Berkeley County. To complete its work under the contract, DRB hired several subcontractors including A.C. & A. Concrete, Inc. ("A.C."), BR's Clearing & Grading, Inc. ("B.R.'s"), Firm Foundations, Inc. ("Firm Foundations"), Land Site Services, LLC ("Land Site"), Southern Atlantic Construction, LLC ("Southern Atlantic"), and Marcinak Construction Company ("Marcinak").

On April 24, 2014, two Foxbank Subdivision homeowners filed suit against DRB in the Court of Common Pleas in Berkeley County (the "Dickerson lawsuit"). The Dickerson lawsuit alleged "property damage," such as "slabs and building

components moving and/or cracking . . . repeatedly and/or continuously and continuing to occur causing damage to building components, the finish and structural elements of the home[s].” Similarly, on March 22, 2017, more Foxbank Subdivision homeowners filed a second lawsuit against DRB and several subcontractors, alleging similar harms as in the Dickerson Lawsuit (the “Tipton Lawsuit”). The two lawsuits were consolidated and are currently pending in state court (the “underlying lawsuit”).

On March 1, 2018, DRB filed a declaratory judgment action in the Charleston Division of United States District Court against its subcontractors’ insurers seeking a declaratory judgment that the underlying lawsuits set forth claims that are covered under each of the insurer-defendants’ commercial general liability policies, and therefore the defendant-insurers have a duty to defend and indemnify DRB in the underlying lawsuit. DRB tendered to each insurer-defendant seeking additional insured coverage under each policy, and the defendant-insurers either “failed to acknowledge and/or respond to DRB’s demands for defense and coverage, denied defense and coverage, identified and threatened to invoke policy defenses contrary to the plan language of the CGL policies, and/or have failed to adequately reserve the right to contest coverage under the policies.” In an Amended Complaint, DRB also brought claims for bad faith refusal to pay first party benefits, indemnification/contribution, and promissory estoppel.

In October of 2018, DRB filed motions for partial summary judgment against each insurer-defendant requesting a declaration that it is entitled to coverage under the respective policies. Each insurer-defendant responded with cross

motions for summary judgment. In April of this year, the district court issued six orders on the motions holding, among other things:

- (i) one insurer-defendant was obligated to defend DRB as an additional insured in the underlying lawsuit;
- (ii) one insurer-defendant had no obligation to defend DRB as an additional insured in the underlying lawsuit, but DRB’s claims for indemnification and contribution could proceed to trial; and
- (iii) four insurer-defendants created material questions of fact as to whether DRB is covered as an additional insured, and therefore, those claims should go to a jury.

Furthermore, the district court ruled in favor of the defendant-insurers on Plaintiffs claim for bad faith, and it addressed an additional novel area of additional insured coverage under South Carolina law: whether the insurer-defendants were estopped from denying coverage because DRB held certificates of insurance. Below is a summary of the arguments and orders.

1. Insurer-Defendant has Duty to Defend

DRB argued State Auto had a duty to defend and indemnify DRB in the underlying lawsuit on two alternative grounds: (1) the terms of the State Auto policy extended coverage to DRB as an “additional insured” pursuant to the additional insured endorsement in the policy; or (2) the issuance of a certificate of insurance by State Auto’s insurance agent conferred upon it “additional insured” coverage by estoppel, irrespective of the terms of the policy.² In response, State Auto argued, among other things, DRB

was not entitled to coverage because the policy expressly limits additional insured coverage to ongoing operations.

The State Auto policy (issued to Southern Atlantic as its primary insured) included an additional insured endorsement, titled “Additional Insured – Owners, Lessees, or Contractors – Automatic Status When Required in a Construction Agreement,” which provides:

A. **Section II – Who is an Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for “bodily injury,” “property damage,” or “personal and advertising injury” caused, in whole or in part, by:

1. You acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured.

In sum, this endorsement provides additional insured coverage to DRB for “property damage” caused by Southern Atlantic if a written contract existed between DRB and Southern Atlantic that required Southern Atlantic to add DRB as an additional insured to the State Auto policy.

The district court held that DRB presented a contract between it and Southern Atlantic that satisfied the terms of the Additional Insured endorsement. Specifically, Article 9 of the contract required Southern Atlantic to add DRB as an additional insured to Southern Atlantic’s CGL policy, as set forth below:

(c) The insurance maintained by [Southern Atlantic] additionally shall comply with the following requirements:

1. DRB shall be added as an Additional Insured on General Liability, Auto Liability and Umbrella policies. Additional insured coverage is required to be per ISO CG2010 11/85 or its equivalent (including completed operations) and coverage is to be on a primary basis.

Thus, the parties did not dispute that DRB was an additional insured to the State Auto policy at the time that Southern Atlantic was performing work at Foxbank.

However, State Auto argued that while DRB had “status” as an additional insured while Southern Atlantic was performing work at Foxbank, that status expired when Southern Atlantic completed its operations. The Additional Insured endorsement in the State Auto policy expressly limited the scope of additional insured coverage, providing that “[a] person’s or organization’s status as an additional insured under this endorsement ends when [Southern Atlantic’s] operations for that additional insured are completed.” The endorsement also included the following “additional exclusions”:

This insurance does not apply to:

2. “Bodily injury” or “property damage” occurring after:
 - a. All work...to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of “your work” out of which the injury or damages arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

State Auto contended these provisions excluded the underlying lawsuit from coverage because “[a]ny insured status enjoyed by DRB was extinguished at the time [Southern Atlantic]’s construction work was completed and/or put to its intended use.” The district court agreed with State Auto that this provision “expressly limited the time and scope of any insured status which may be afforded to DRB” and that DRB’s status expired upon completion of Southern Atlantic’s work. However, the district court held that the underlying lawsuit alleged DRB acted negligently during construction, at which time DRB would have been an additional insured under the policy. In other words, according to the Court, the critical question was not whether DRB had additional insured status at the time the underlying lawsuit was filed, but whether DRB was an additional insured when the property damage alleged in the underlying lawsuit occurred.

In answering this question, the district court, relying on well settled case law, found the State Auto policy unambiguously extended coverage to DRB for property damage allegedly caused by Southern Atlantic that occurred (1) during the State Auto policy period and (2) while DRB had additional insured status, i.e., while Southern Atlantic was performing work on Foxbank. *Crossman Comm’n of N. Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 717 S.E.2d 589, 594 (S.C. 2011) (finding that damage caused by allegedly negligent construction constituted “property damage” and occurred at the time of the negligence). Because the underlying lawsuit alleged property damages that arose from Southern Atlantic’s work on Foxbank, the court held DRB was entitled to additional insured coverage under the State Auto policy. It was irrelevant, to the court, that DRB was no longer an additional insured at the time the lawsuit was filed.

2. Insurer-Defendant has No Duty to Defend

DRB argued Penn National had a duty to defend DRB in the underlying lawsuit on two alternative grounds: (1) the terms of the Penn National policy extended coverage to DRB as an “additional insured” under the “Automatic Additional Insured” endorsement; or (2) the issuance of several certificates of insurance by Penn National’s insurance agent conferred upon it “additional insured” coverage by estoppel, irrespective if the terms of the Penn National policy.³ In response, Penn National argued, among other things, that DRB was not entitled to coverage because DRB did not satisfy the terms of the “Automatic Additional Insured” endorsement.

The Penn National policy (issued to Marcinak as its primary insured), included an “Automatic

Additional Insured” endorsement, which provided:

A. The following provision is added to **Section II – WHO IS AN INSURED**:

1. Any person(s) or organization(s) (referred to below as additional insured) with whom you are required in a written contract or agreement to name as an additional insured for the “products-completed operations hazard,” but only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “[Marciniak’s] work,” at the location or project designated and described in the agreement, performed for that additional insured and included in the products-completed operations hazard.”

In sum, the Penn National policy extended additional insured coverage to DRB if a written contract existed between DRB and Marcinak that required Marcinak to add DRB as an additional insured to the Penn National policy. Critically, however, the Penn National policy only extended additional insured coverage for “property damage” caused by Marcinak “at the location or project designated and described in the agreement.”

DRB presented a contract between it and Marcinak that it claimed satisfied the terms of the additional insured endorsement in the Penn National policies. The parties did not dispute the contract was valid or that it included a provision that required Marcinak to add DRB as an additional

insured to Marcinak’s CGL policy. However, the contract failed to designate the location or project where Marcinak would perform the work, and there was no evidence that the contract governed the work that Marcinak performed on the Foxbank project. Accordingly, the district court rejected DRB’s argument, holding DRB was not entitled to additional insured coverage under the Penn National policy. The court did, however, allow DRB’s claims for indemnification and contribution proceed to trial.

3. Insurer-Defendants Created Materials Questions of Fact

a. Frankenmuth Mutual Insurance Company

DRB argued it was entitled to additional insured coverage under the Frankenmuth policy. The Frankenmuth policy (issued to Land Site as its primary insured) included the following additional insured endorsement:

Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom [Land Site is] performing work when [Land Site] and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on [this] policy.

The policy continues:

Such written contract or agreement must be:

a. Currently in effect or becoming effective during the

term of this policy; and

b. Executed prior to the “bodily injury,” “property damage,” or “personal and advertising injury.”

In sum, the Frankenmuth policy extends additional insured coverage to DRB if (1) an “executed” written contract existed between DRB and Land Site (2) that required Land Site to add DRB as an additional insured to the Frankenmuth Policy.

DRB first relied on a trade contract with Land Site, which included a provision that would require Land Site to add DRB as an additional insured to the Frankenmuth Policy. Although the contract contained initials of a Land Site executive, the “due execution” page, where the parties were supposed to sign, was left blank by Land Site. The district court found the failure to sign the contract fatal to DRB’s claim for additional insured coverage because the terms of the contract itself required Land Site’s signature, and therefore, the contract was not valid. Without a valid contract, the district court held the contract could not satisfy the terms of the policy, and thus did not confer additional insured coverage to DRB as a matter of law.

DRB next relied on several other documents evidencing the relationship between DRB and Land Site regarding the Foxbank project. The district court rejected this argument, holding the Frankenmuth policy required an executed contract, with a provision requiring Land Site add DRB as an additional insured, and none of the additional documents presented contained such a provision.

Although the district court found the contract and other documents presented insufficient to confer additional insured coverage to DRB, the court held there was a genuine issue of material fact regarding DRB’s status as an additional insured under the Frankenmuth policy. Specifically, DRB presented testimony of Edwin Woods, its South Region president, that DRB and Land Site entered into a contract containing an additional insured provision prior to Land Site’s work at Foxbank. This testimony, the court held, was sufficient to create a genuine dispute as to whether there existed a contract that would confer additional insured coverage to DRB under the Frankenmuth policy.

b. Selective Insurance Company

DRB argued it was entitled to additional insured coverage under the terms of the Selective policy. The Selective policy (issued to BR’s as its primary insured) included the following Additional Insured endorsement:

Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom [BR’s has] agreed in a written contract or written agreement to add as an additional insured on [the] policy. Such person or organization is an additional insured only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” performed for that additional insured and included in the “products completed operations hazard.”

In sum, the Selective policy extends additional insured

coverage to DRB if (1) a written contract existed between DRB and BR's (2) that required BR's to add DRB as an additional insured to the Selective policy.

DRB relied on three trade contracts between it and BR's to satisfy this requirement: one dated January 1, 2008, one dated September 1, 2010, and one dated April 1, 2013. Each contract was written and signed by both BR's and DRB, and therefore, the court held the contracts were enforceable. The 2008 and the 2013 contracts included general conditions, which required BR's to add DRB as an additional insured. However, the 2010 contract (which was in effective during the Selective policy period and during a time in which BR's performed work on Foxbank) did not include the general conditions or any provision requiring BR's to add DRB as an additional insured. Therefore, the district court held the contracts were insufficient to confer additional insured status to DRB as a matter of law.

Although the district court found the contracts were insufficient to confer additional insured coverage, the court held there was a genuine issue of material fact regarding DRB's status as an additional insured under the Selective policy. Specifically, DRB presented testimony of Edwin Woods, its South Region president, that DRB and BR's entered into a contract containing an additional insured provision prior to BR's work at Foxbank. This testimony, the court held, was sufficient to create a genuine dispute as to whether there existed a contract that would confer additional insured coverage to DRB under the Selective policy.

c. The Cincinnati Insurance Company

DRB argued it was entitled to additional insured coverage

under the Cincinnati policy. The Cincinnati policy (issued to Firm Foundations as its primary insured) included the following additional insured provision:

SECTION II – WHO IS AN INSURED:

1. Any person or organization described in Paragraph 9.a.(2) below (hereinafter referred to as an additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

- a. A written contract or agreement; or
- b. An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

Is an insured, provided:

- a. The written or oral contract or agreement is:
 - 1. Currently in effect or becomes effective during the policy period; and
 - 2. Executed prior to an "occurrence" or offense to which this insurance would apply; and
- b. They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

In sum, the Cincinnati policy provided two avenues for an entity to be added to the policy as an additional insured: (1) a written contract between the insured and the entity that

requires the insured to add the entity to its CGL policy as an additional insured; or (2) an oral contract that requires the insured to add the entity to its CGL policy as an additional insured, if the entity seeking additional insured coverage has been issued a certificate of insurance that evidences its coverage.

DRB first relied on a contract with Firm Foundations, dated November 8, 2013, which outlined an agreement under which Firm Foundations would perform work for DRB at Foxbank, and it included a provision requiring Firm Foundations to add DRB as an additional insured to the Cincinnati policy. However, the contract's "due execution" page, where the parties were supposed to sign, was left blank by Firm Foundations. The district court found the failure to execute the contract fatal to DRB's claim for coverage because the terms of the contract itself required Firm Foundations' signature, and therefore, the contract was not valid. Without a valid contract, the district court held the contract presented could not satisfy the terms of the policy, and thus did not confer additional insured coverage to DRB as a matter of law.

DRB next relied on several other documents evidencing the relationship between DRB and Land Site regarding the Foxbank project. The district court rejected this argument, holding the Frankenmuth policy required an executed contract that required Land Site to add DRB as an additional insured, and none of the additional documents presented contained such a provision.

Although the district court found the contracts and other documents were insufficient to confer additional insured

coverage, the court held there was a genuine issue of material fact regarding DRB's status as an additional insured under the Cincinnati policy. Specifically, DRB presented testimony of Edwin Woods, its South Region president, that DRB and Firm Foundations entered into a contract containing an additional insured provision prior to BR's work at Foxbank. This testimony, the court held, was sufficient to create a genuine dispute as to whether there existed a contract that would confer additional insured coverage to DRB under the Cincinnati policy.

Finally, the district court also held there was a genuine issue of fact on whether there was an oral agreement to add DRB as an additional insured to the Cincinnati policy because neither party presented evidence of an oral agreement nor cited to an affidavit, deposition, or other testimony that might indicate whether DRB did or did not enter into an oral agreement with Firm Foundations that might confer additional insured coverage. The court held the certificates of insurance, standing alone, were insufficient evidence for the court to find an oral agreement that satisfied the terms of the Cincinnati policy.

d. Main Street America Assurance Company

DRB argued that Main Street has a duty to defend DRB in the underlying lawsuit on two alternative grounds: (1) the terms of the Main Street Policy extend coverage to DRB as an "additional insured" under the "contractors extension endorsement"; or (2) the issuance of several certificates of insurance by Main Street's agent conferred upon it "additional insured" coverage by estoppel, irrespective of the terms of the policy.⁴ The Main Street policy (issued to AC&A as its primary insured)

includes the following “contractors extension endorsement”:

A. Additional Insureds

Each of the following is added to Paragraph C. Who Is An Insured of [the Business Owners Coverage Form] – Section II – Liability but only as specifically described by the following:

1. Any person(s) or organization(s) for whom you are performing operations is also an additional insured, when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for “bodily injury,” “property damage,” “personal advertising injury” caused in whole or part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations or “your work” included within the “products-completed operations” hazard for the additional insured at the located designated and described in the written contract or agreement.

In sum, the Main Street policy extends additional insured coverage to DRB if (1) a written contract existed between DRB and AC&A (2) that required AC&A to add DRB as an

additional insured to the Main Street policy.

DRB relied on a 2013 contract outlining an agreement between DRB and AC&A under which AC&A would require AC&A to add DRB as an additional insured to the Main Street policy. The contract was signed, and therefore, the court held it was enforceable. However, the parties were in dispute as to whether the 2013 contract was executed before or after AC&A completed its work on the project, thereby precluding summary judgment on the issue.

DRB next relied on a 2006 contract with AC&A, which was clearly entered into prior to the commencement of work on Foxbank. With regard to this contract, the parties disputed whether the 2006 contract included terms that required AC&A to add DRB to the Main Street policy as an additional insured. DRB argued the 2006 contract included terms identical to the 2013 contract, which contained a provision requiring AC&A add DRB as an additional insured. The court rejected this argument, holding the documents presented failed to evidence an enforceable contract with an additional insured provision.

Although the district court found the contracts were insufficient to confer additional insured coverage, the court determined there was a genuine issue of material fact regarding DRB’s status as an additional insured under the Main Street policy. Specifically, DRB presented testimony of Edwin Woods, its South Region president, that DRB and AC&A entered into a contract containing an additional insured provision prior to AC&A’s work at Foxbank. This testimony, the court held, was sufficient to create a genuine

dispute as to whether there existed a contract that would confer additional insured coverage to DRB under the Main Street policy.

4. Insurer-Defendants are not Estopped from Denying Coverage because DRB had Certificates of Insurance

DRB next argued that certificates of insurance entitled DRB to additional insured coverage under the respective policies under the doctrine of estoppel because DRB reasonably relied on certificates' statements of coverage. Acknowledging this was a novel area of law in South Carolina, the district court rejected DRB's argument.

The court noted that "[i]n appropriate circumstances, estoppel can be used to prevent the insurer from denying coverage to the insured."⁵ The essential elements of estoppel as related to the party estopped include:


- (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;
- (2) intention, or at least expectation, that such conduct shall be acted upon by the other party;
- (3) knowledge, actual or constructive, of the real facts.⁶

As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.⁷ Further, "the reliance by the party claiming estoppel must be reasonable, and it must proceed in good faith."⁸

The court next noted that courts outside of South Carolina are split regarding whether an insurer can be estopped from denying coverage to a certificate holder where the certificates of insurance purports to extent additional insured coverage. Some have estopped insurers from denying coverage where a certificate of insurance identifies a third party as an additional insured,⁹ whereas other courts have refused to apply estoppel to confer coverage upon a certificate holder.¹⁰ The district courts sided with the courts who have refused to apply estoppel to confer coverage upon a certificate holder, holding the conspicuous disclaimers on the certificates of insurance preclude a finding of estoppel because they rendered DRB's reliance upon the certificates of insurance unreasonable. The court noted that "[n]ot only do the certificates indicate that they are issued as 'matter[s] of information only,' but they also give clear and specific notice to supposed additional insureds that the certificates 'do[] not confer rights' without an endorsement to the policy." Thus, the court found summary judgment was appropriate on DRB's promissory estoppel claim.

CONCLUSION

It is impossible to know at the start of litigation how a court will rule on any particular issue. With no legal precedent from our Supreme Court, additional insured coverage in the context of construction defect litigation has required insurers, insureds, lawyers, and risk managers to lament over the opinions of various courts depending on the particular additional insured endorsement at issue. The *Dan Ryan Builders* opinion provides a detailed analysis of additional insured coverage under several different endorsements with different contracts and factual disputes underlying each.

We anticipate opinions like these will continue to come out of our courts, and we recommend staying apprised of the rulings from our state and federal courts on the ever-evolving issues with additional insured coverage in the context of construction defect litigation. 

Endnotes

- ¹ See *Dan Ryan Builders West Virginia, LLC f/k/a Dan Ryan Builders Inc. and Dan Ryan Builders South Carolina, LLC vs. Main Street America Assurance Company, Selective Insurance Group, Inc., The Cincinnati Insurance Company, Frankenmuth Mutual Insurance Co., State Automobile Mutual Insurance Company, Pennsylvania National Security Insurance, and Pennsylvania National Mutual Casualty Insurance Company*, C/A No. 2:18-cv-00589-DCN (D.S.C. Apr. 3, 2020).
- ² The district court's ruling on DRB's estoppel argument is discussed in more detail under Paragraph 4.
- ³ The district court's ruling on DRB's estoppel argument is discussed in more detail under Paragraph 4.
- ⁴ The district court's ruling on DRB's estoppel argument is discussed in more detail under Paragraph 4.
- ⁵ *Stringer v. State Farm Mut. Auto. Ins. Co.*, 687 S.E.2d 58, 61 (S.C. Ct. App. 2009) (citations omitted).
- ⁶ *S. Dev. Lan & Golf Co. v. S.C. Pub. Serv. Auth.*, 426 S.E.2d 748, 750 (S.C. 1993).
- ⁷ *Id.*
- ⁸ *Provident Life & Acc. Ins. Co. v. Driver*, 451 S.E.2d

- 924, 928 (S.C. Ct. App. 1994) (citations omitted).
- ⁹ See *Sumitomo Marine & Fire Ins. Co. of Am. v. S. Guar. Ins. Co. of Georgia*, 337 F. Supp. 2d 1339 (N.D. Ga. 2004) (applying Georgia law); *Blackburn, Nickels & Smith, Inc. v. Nat'l Farmers Union Prop. & Cas. Co.*, 482 N.W.2d 600, 604 (N.D. 1992) (applying North Dakota law); *Marlin v. Wetzel Cty. Bd. of Educ.*, 569 S.E.2d 462, 472 (W. Va. 2002).
- ¹⁰ See *Mulvaney Const., Inc. v. Bituminous Cas. Corp.*, 571 F. App'x 150 (4th Cir. 2014) (applying Virginia law); *Vinco Inc. v. Royal Ins. Co. of Am.*, 29 F. App'x 753 (2d Cir. 2002) (applying Connecticut law); *TIG Ins. Co. v. Sedgwick James of Washington*, 184 F. Supp. 2d 591 (S.D. Tex. 2001), *aff'd*, 276 F.3d 754 (5th Cir. 2002) (applying Texas law); *G.E. Tignall & Co. v. Reliance Nat. Ins. Co.*, 102 F. Supp. 2d 300, 304 (D. Md. 2000) (applying Maryland law); *Am. Country Ins. Co. v. Kraemer Bros.*, 699 N.E.2d 1056, 1060 (Ill. 1998) (applying Illinois law).

Tips for a Successful Zepo (Zoom Deposition)

By Deborah Dusseljee, RPR, CRC, CLR, CompuScripts, Inc.



By now, you have probably participated in a web conference and are more confident when appearing in a virtual hearing. However, remotely conducting a Zoom deposition, or Zepo, without getting sidetracked by technology is difficult. Use these tips for a successful Zepo to learn, test, practice, and organize in advance. Soon, you will be just as proficient in a virtual environment as you are in an actual conference room.

Presence

To look your best, consider purchasing an external web camera for your laptop or desktop computer. The camera should be optimally positioned at eye level, and your viewing screen can be optimally positioned elsewhere. Any lighting should be in front of you or additionally to the side, but not behind you, to prevent shadowing on your face.

An external microphone and speaker will typically perform better than your computer's internal hardware, and a headset works best for communicating when it is just you in your office or home. Together, the microphone and headphones will help keep extraneous noise out and will follow your moves, keeping the sound of your voice consistent when turning away from the screen. Be sure to



test the microphone's sensitivity in advance of the Zepo. No one wants to strain to hear you, or conversely, hear your every breath. Test your headphones' volume as well.

Always check these external devices before joining a web conference. Laptop settings may boot up your external devices differently, depending on whether you are docked or undocked or have the device plugged into a different port. If your computer does not automatically recognize an external device or your preference, you may need to change your settings. It is also important to keep two or more active microphones separate from each other, including a mobile phone or cloud-based voice service. Microphones that are too close together may cause an echo or feedback.

Finally, remember that upgraded hardware is no substitute for wardrobe. When you go onsite to a deposition, you wear clothing that exudes confidence. Your presence online should be no different. Dress appropriately and project self-confidence.

Connectivity

For a successful Zepo, make sure you are using the best internet connection available. Hard-wired is generally the best, followed by Wi-Fi connections. Cellular connections (3G/4G/LTE) may suffer lag. 5G may significantly change preferences, as it is 25 times faster than 4G. However, 5G is not currently available in all areas.

Web conferences are memory hogs, so turn off all unnecessary devices and refrain from web surfing during the Zepo. Bandwidth use can be affected by movement in the background, such as street traffic or rustling leaves through the window. Static backgrounds like a wall or curtain do not increase

bandwidth usage. Suspend high bandwidth activities such as downloading/uploading large files, cloud synchronizations, and cloud backups. Bolster a weak Wi-Fi signal by turning off unnecessary Bluetooth devices and other gadgets that consume bandwidth or Wi-Fi like Alexa, security systems, TV streaming, kids on iPads, an automobile's console, etc.

A reliable power source is easy to overlook, so make sure devices, even those with good battery life, are plugged in. A hotspot, UPS backup, and Zoom's audio-only telephone login credentials are good redundancies to have on the ready in case your power or internet is disrupted.

Application Functionality

Zoom has unique applications for different devices, plus a browser version. The desktop application (Client) is the most robust and functional, followed by mobile device applications. The browser application requires no download, but it has the least functionality, so take time in advance to download the application that is appropriate to the device you will be using during the Zepo.

Security

The host has many security capabilities with Zoom. Zoom's website is full of details about their security settings, so review them in advance. Make sure your court-reporting vendor employs the level of security appropriate for your particular litigation. At a minimum, ensure that the meeting utilizes encryption, a waiting room, and unique passcodes with meeting numbers for each day's deposition(s). If you have stacked depositions in a single day, witnesses can be accommodated in the waiting room until it is their turn to testify.

It is important to understand that Zoom issues updates to their downloaded applications frequently, so be sure to stay current for up-to-date security and features.

Videos

It is possible to preserve video testimony from a Zoom meeting, but cloud applications that record do fail from time to time. Therefore, it is best to hire a skilled videographer who uses an application's record feature while incorporating recording redundancies outside of the Zoom application.

Consistent with The Supreme Court of South Carolina's Order 2020-09-28-01, in order to protect the integrity of the judicial process and its record, it is strongly recommended that recording only be done by the court reporter for backup audio purposes or a legal videographer. Additionally, attorney-client confidentiality issues that may arise if an audio or video is inadvertently streaming during a deposition's recess.

A videographer manages going on and off the record pursuant to court rules; focuses on framing, lighting, and audio; and interrupts if technical issues persist or a participant is dropped. A good videographer conducts a Zoom video while observing existing court rules. Screensharing can be captured and presented in a picture-in-picture format. Web conference videos need to be transcoded for video/transcript synchronization.

Be organized, familiar, and well-practiced with screensharing and understand how widescreen and standard screenshares impact your courtroom video. If possible, avoid using monitors in a 4K resolution. The best results typically come from screens set to 1080p.

Blended or Hybrid Depositions

In a hybrid or blended web conference, more than one participant attends from a single location. This usually happens when two or more participants are in a law firm's conference room while others attend via a web conference or when a service provider(s) is onsite with a witness and others are remote. Several configurations can be used in a conference room. The objective is to have one omnidirectional microphone or speakerphone where everyone's voice can be heard by those appearing remotely and the vital participant(s) can be seen as well. If the internet connection is capable, you can have every participant in the room view their own laptop with the sound and microphone muted while you are dialed into Zoom's audio on a speakerphone. You can integrate with existing in-house video conferencing equipment in the conference room, but this configuration requires the systems to be compatible, and typically you will need some IT knowledge.

When traveling to a witness's location, consider adding peripheral items to your laptop equipment bag, such as a USB speakerphone, like the ClearOne Chat50, and a USB peripheral 1080p video web camera with an accompanying tabletop tripod. You will have the most flexibility if these two peripherals are separate. The speakerphone may need to be farther down the table, and the camera may need a tripod in front of the witness. This leaves your laptop available for personal use. Be sure to pack some longer USB cables and add a USB hub if your laptop does not have enough ports.

Experience has shown that not all conference rooms are equipped with adequate bandwidth or speakerphones.

It is easy to screenshare with Zoom. You can scroll through a document, go to Google maps, or view a video. With practice, you will develop skills to annotate, highlight, and even draw while screensharing, as Zoom also contains a whiteboard. Take a snapshot or print screen of your evidence that can be copied into a graphics editing program for cropping or saving purposes and save the image as a JPEG or PDF.

Consider adding a mobile Bluetooth speakerphone like the Logitech P710e that connects to your cell phone when all internet options have been exhausted.

Lastly, when going outside of your office or home, bring power cords for all applicable equipment, including your phone, a portable travel surge protector, and an extension cord.

Exhibits

Organize your digital exhibits so that each file represents a single exhibit and that the exhibit number is part of the filename. Use customary vernacular when introducing exhibits so your transcript will read correctly and be indexed traditionally.

Some litigators choose to provide hardcopies or files to the parties beforehand, especially if it is a document-intensive case; others elect to make exhibits electronically available immediately before a deposition; and still others choose to use sharing with various saving techniques.

When the court reporter receives your exhibits -- before, during, or after a deposition -- she will be looking for clear designations of what file corresponds to what exhibit number. Most court reporters are not equipped to handle native file formats, so submit PDF exhibits for digital marking and archival purposes.

Sharing

It is easy to screenshare with Zoom. You can scroll through a

document, go to Google maps, or view a video. With practice, you will develop skills to annotate, highlight, and even draw while screensharing, as Zoom also contains a whiteboard. Take a snapshot or print screen of your evidence that can be copied into a graphics editing program for cropping or saving purposes and save the image as a JPEG or PDF. Sharing a file up to 512 MB can be instantly done using Zoom's chat function if there are no bandwidth issues and if all participants have this functionality, but for security purposes, use non-executable file extensions such as .png, .jpeg, .pdf, and .txt.

Attorney-Client Confidentiality

If you will need to speak to your client or expert during a deposition, arrange for a private chat box or text when within earshot of the web conferencing microphone. Mute your microphone and video at every recess and immediately after the deposition. If you are defending a deposition, mute your microphone except when stipulating or objecting to limit extraneous office chatter and noise. Leave your video streaming so the court reporter has visual cues as well as audio to ensure your objection is noted.

When screensharing, only share the document or application, not your entire desktop. Consider incorporating a separate Zoom connection, like an iPad, to see exactly what is being displayed from your computer.


This also will remind you when to stop screensharing.

Procedural Knowledge

During the current COVID-19 pandemic, all deposition participants, including the court reporter and videographer, may appear remotely. The South Carolina Supreme Court emergency order 2020-04-22-01 states that notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. The notary will need to reasonably verify the witness's identification, so make sure your witness is prepared to present an acceptable photo ID. The witness's location serves as the address for the deposition, consistent with telephonic procedures.

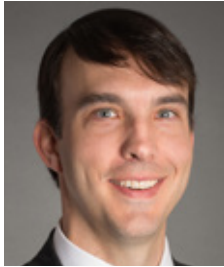
The CompuScripts Advantage

CompuScripts will guide you through Zoom security protocols, provide hands-on training related to useful features, offer tips, and give you practical advice. Zoom itself has a wealth of online resources to familiarize yourself with its features, check your microphone and speakers, or practice in a test meeting.

When you are ready to schedule a Zepo, simply use our online scheduling form or contact us. We will arrange for your court reporter and videographer, set up your virtual connection, and send you a confirmation with the sign-in protocols to be disseminated to participants. It is that easy to have a successful Zepo. 



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2020 Summer Meeting


From The Grove Park Inn to a Virtual Program

by Fred W. Suggs III

While the SCDTAA was excited to return to the Grove Park Inn for its 2020 Summer Meeting, scheduled for July 23-25, 2020, Covid-19 threw us all a curve ball, resulting in the organization transitioning to a virtual program. The SCDTAA transitioned to a three-day virtual program that kicked off with Zoom Trivia Night on July 22 that proved to be thoroughly enjoyable and educational (it remains unlikely that anyone came up with “spatchcock” without cheating).

Our CLE program started bright and early on July 23rd with vendors having the opportunity to briefly present on their services at the beginning of each virtual session. We heard from seasoned litigators, mediators, and judges, as well as experts on ethics and in-house counsel at Boeing. We wrapped up the day with a legislative update from our own legislator, Shane Massey, as well as SCDTAA’s lobbyist, Jeff Thordahl.

We continued with the CLE program on July 24 with practical tips from Judge Michelle Childs and Angela O’Neal related to e-discovery, a presentation on the affidavit of merit statute, and wrapping up with a worker’s comp breakout and hot topic Covid presentation.

We were pleased with the turn out and enjoyed great participation from those who joined the program. 





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Construction Law Webinar

The SCDTAA hosted a virtual Construction Law CLE on October 30 sponsored by Applied Building Sciences. The CLE was well attended and received strong reviews from participants. For those of you who could not attend or need CLE hours in the future, the seminar was recorded and available 24 hours a day. Please contact Aimee Hiers at Association Headquarters for the log on details. Steve Kropski discussed *Sentry v Maybank* (attorney liability to carrier clients) and the mechanics of the first civil jury trial in the pandemic. Jason Gregorie,

PE. from sponsor Applied Building Sciences, discussed advanced technology for forensic investigations along with a discussion of the ever increasing problem of storm water management and liability. Charlie Thomson spoke on recent changes in general liability policies and the implication of those changes on the time on the risk analysis. There was a presentation on mediation tips and tricks from Blanton O'Neal. Finally, Sarah Wetmore Butler and Laura Paris Paton discussed the tool box that all female lawyers can employ for success. Special thanks to Ryan Earhart and Aimee Hiers for organizing the event.

thank
you

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SCDTAA Past President Ernie Nauful

Ernest J. Nauful, Jr. COLUMBIA - Ernest J. Nauful, Jr., 78, died on Tuesday, April 28, 2020, after a short illness. Born in Columbia, S.C. on September 28, 1941, he was the son of the late Ernest J. Nauful, Sr. and Elizabeth Gloria Joseph. He is survived by his wife, Brenda Bradley Nauful, who was the love of his life and his best friend for over fifty years. Mr. Nauful was a lifelong resident of Columbia, where prior to his retirement he practiced law for forty-two years. He was also a veteran proudly serving in the United States Air Force Reserves. He was a graduate of the University of South Carolina, having earned an undergraduate degree in business management in 1965 and a J.D. degree in 1968. He was a pre-eminent attorney known statewide for his trial skills and expertise in healthcare law, medical malpractice and occupational diseases. He was admitted to the South Carolina Supreme Court, the United States District Court for the District of South Carolina, the Fourth Circuit Court of Appeals, the United States Tax Court, the United States Court of Claims, and the United States Supreme Court. He co-authored “Hospital Consent Manual and Legal Reference Guide”, South Carolina Bar’s Jurisprudence “Hospital Law”, and a national publication in the Journal of the Federation of Insurance Counsel on “Peer Review”. He was instrumental in drafting the laws in South Carolina related to Emergency Medical Services and served on the State Emergency Medical Services Advisory Council, including a term as chairman, for



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PASSING
(cont.)**

eighteen years. While in undergraduate school, he served as Charter President of the Carolina Chapter of the American Management Association. He was a member of the Richland County Bar Association, South Carolina Bar, where he served as a member of the House of Delegates, Federation of Defense Counsel, American Society of Law and Medicine, South Carolina Society of Hospital Attorneys, South Carolina Defense Trial Attorneys Association, where he served as a member of the Board, Secretary/Treasurer and President. He was a charter member of the South Carolina Chapter of the American Board of Trial Advocates. An active member of St. Joseph Catholic Church for most of his life, he served as Chairman of the Planning Committee, Building Committee, Finance Council and Special Advisor to the Pastor. He also chaired or co-chaired three capital campaigns for the church and school. He was proud of his service as both a Lector and Extraordinary Eucharistic Minister, but especially those occasions on which he could still serve as an altar server, even after reaching his seventies. Throughout his life he was known to a few for his extraordinary generosity to those in need, especially family and close friends. A rabid Gamecock fan, he was a member of the Gamecock Club for over 50 years and particularly enjoyed Carolina football and baseball. His family and close friends will miss his superb culinary skills. During his lifetime he enjoyed gardening, fishing, and hunting. He was a skilled handyman and could repair almost anything. Although he was grateful for his many professional accomplishments, he was likely the proudest in 1982, when the esteem to which he was held by the medical community he served as an attorney, was recognized with an honorary life membership in the

Lexington Medical Association. He was a recipient of the Pinnacle Award from The Palmetto Hospital Trust, PHT Services, LTD, and Palmetto Health Liability Program for his contributions to the three organizations. In addition to his wife, he is survived by two brothers and four sisters, Eli Nauful (Betty) of Columbia, Rose Mary Nauful of Greenville, Lillie Morris (Pat) of Manor, Ga., George Nauful (Lisa) of Los Angeles, Ca., Victoria Sanders and Catherine Nauful, both of Augusta, Ga. He had numerous nieces and nephews, as well as great-nieces and great-nephews. Due to the COVID-19 pandemic, all services will be private. The family suggests in lieu of flowers, memorials be made to St. Joseph Catholic Church; Lutheran Homes Foundation; or the USC College of Nursing Scholarship Fund. Dunbar Funeral Home, Devine Street Chapel, is assisting the family. "Love is patient and kind. Love is not jealous or boastful. It is not arrogant or rude. Love does not insist on its own way. It is not irritable or resentful. It does not rejoice at wrong, but rejoices in the right. Love bears all things, believes all things, endures all things. Love never ends Faith, hope, love abide, these three, but the greatest of these is love." 

Legislative Update

by Jeffrey N. Thordahl, SCDTAA Lobbyist

The Legislative Session should have ended in May of 2020 however given the significant budget impacts of COVID 19, the CARES Act money that flowed to the state from the Federal action and certain impacts of COVID 19 the session just ended on September 24th.

In order to be in line with the federal position on the Paycheck Protection Program (PPP) the General Assembly adopted a provision that clarifies that forgiven PPP loans are excluded from gross income for state tax purposes. The amendment was authored by Representative Laurie Funderburk and was included in Senate Bill 545, SECTION 2. (https://www.scstatehouse.gov/sess123_2019-2020/bills/545.htm)

As you have probably read, many states, through Executive Order or by passing legislation, have attempted to deal with limiting legal liability for businesses against claims related to the contraction of COVID-19 in the workplace. Both the House and Senate introduced similar bills (S.1259, H. 5527) where their preambles state:

The General Assembly hereby finds and declares that providing reasonable protections from the risk and expense of lawsuits related to the Coronavirus pandemic to businesses and health care providers will help encourage them to remain open and




reopen and that providing such a safe harbor to businesses and health care providers that operate consistent with applicable public health guidance will help ameliorate the adverse impacts of a closed economy and the resulting unemployment.

S. 1259 introduced by Senator Shane Massey and 15 other sponsors did receive a subcommittee hearing the last week of session but there was not time to move it to the floor for debate and have the House consider it this year as well. Senator Massey intends to refile the bill next year. The bill seeks to provide a safe harbor from liability for entities that reasonably adhere to the Public Health Guidance applicable at the time the conduct giving rise to a Coronavirus Claim occurred.

Budget wise, the State finds itself in a tight but not terrible situation. Given what was a very good fiscal year leading up to the economic shut down in March, the General Assembly did not have to make any cuts to existing state agency budgets. However, they were not able to act on the many planned enhancements they wanted to do when the budget looked like it would have almost \$2 Billion dollars in new and recurring money. Instead, the state had about \$700 million in extra one time money of which they conservatively set aside the majority to be prepared for any further reduction in revenue next year beyond what is forecast. In addition, the state used a large portion of the federal CARES Act money to rebuild the State's Unemployment Insurance Trust Fund to avoid an increase in rates on businesses. Time will tell what further impact there is on the state budget, but the legislature has been very deliberate in being prepared and avoiding as many negative consequences

to the business community and individuals as they can.

Finally, a whole host of elections were held by the General Assembly the last week of session for seats on the Boards of public universities and for the Public Service Commission. With a short turnaround time there will be judicial elections coming up in February of next year. Public hearings on the judicial candidates are scheduled for the second half of November and the elections are tentatively scheduled for February 3rd. You can find a list of all the candidates who filed here <https://www.scstatehouse.gov/JudicialMeritPage/MEDIA%20RELEASE%20Announcing%20Judicial%20Candidates.pdf>. 

The Honorable Robert E. Hood

by James B. Robey, III



T

he Honorable Robert E. Hood is a resident judge for South Carolina's Fifth Judicial Circuit. Judge Hood was born and raised in Atlanta, Georgia. He received his undergraduate degree from The Citadel in 1998. Judge Hood excelled at The Citadel where he held numerous leadership positions in the

Corps of Cadets and received numerous awards, to include being named to the President's List. After graduation, he enrolled in law school at the University of South Carolina. While in law school he developed an interest in litigation and was a member of the Moot Court Bar and the Order of Barristers. He graduated from law school in 2001 and went to work as an Assistant Solicitor for the Fifth Circuit Solicitor's Office. In 2003, he went to work at the Attorney General's Office where he prosecuted State Grand Jury cases. During his time as a prosecutor, he participated in some of the most complex and high profile criminal trials in the State. Judge Hood entered private practice in 2005 when he went to work for the Strom Law Firm, LLC. While at the Strom Law Firm, he handled civil cases and also built a criminal defense practice. Judge Hood was elected to the bench in 2012. Since taking the bench, he has served as the Chief Administrative Judge for both the criminal and civil dockets.

Judge Hood uses his wealth of litigation experience to cut



through difficult situations and find practical solutions. He has been described as an experienced, pragmatic and fair jurist. I saw these qualities of Judge Hood on display when I clerked for him back in 2015. I caught up with Judge Hood recently and discussed how COVID-19 is impacting the courts in South Carolina and other items.

1. How is the Fifth Circuit handling the issues associated with COVID-19?

We are doing everything we can to keep the wheels turning, while also ensuring that everyone is safe and comfortable. In Richland and Kershaw Counties, we are not holding in-person hearings unless specifically requested by the parties. I have only done a handful of in-person hearings for civil matters since March. We are mostly using the Webex platform to hear civil motions and other non-jury matters. Most of the civil bar seems to enjoy using this platform. I also enjoy it, especially when it comes to motions hearings. It allows lawyers and judges to better use their time instead of waiting around in the courthouse for a hearing. It also cuts down on travel, which is helpful to most lawyers.

2. Has the Webex platform enabled you catch up on some dockets?

Yes, it has. Early in the year, we had a backlog of non-jury motions. With the Webex platform, we were able to quickly schedule virtual hearings and completely eliminate the backlog. The lawyers were responsive and mostly knew how to work the platform. There is no way we could have completed all of those hearings in-person. It also has allowed us to catch up on minor settlement and wrongful death hearings.

3. What is the biggest problem you have experienced with virtual hearings?

People not knowing how to work the platform. In order for these virtual hearings to go smoothly everyone has to know how to work the platform. You need to know how to work the mute button and be aware that you are on camera. There have been numerous occasions where a lawyer made inadvertent comments while they thought they were muted. Lawyers also accidentally share their screen with everyone (I've seen some interesting things due to this). At the end of the day you have to know how to work the platform and be cognizant of what you are doing while using it.

4. Have you held any virtual trials?

I have not, but I know others who have and they have been successful. Once again, it takes a tremendous amount of planning and coordination to pull it off. I also think it makes things very difficult for the lawyers. So much of what lawyers do in the courtroom is based upon how people react. When you are cross examining someone in-person, you can read their body language, look them in the eye, and try to determine how they might respond. It is very difficult to evaluate how someone is reacting virtually. I also think lawyers lose a bit of their edge due to the witness generally being in a more comfortable space. Most witnesses are uncomfortable when they are on the stand, that dynamic changes a bit when the witness is sitting on their couch or in an office.

5. When do you think the Fifth Circuit will start jury trials again?

I'm hopeful that it will be sooner rather than later. Other

Circuits have held criminal trials and the results seem to be good. The pandemic has created a backlog of cases that need to be tried, especially on the criminal docket. The biggest issue moving forward is going to be safety. We need the jurors to feel safe so they can focus on the cases. However, we need to balance this safety with the rights of others to have their matters heard and decided.

6. Switching gears, is there anything you would like attorneys from outside of the Midlands to know about the Fifth Circuit?

The Fifth Circuit is a great place. We have great communities here that take legal matters very seriously. We get a variety of novel cases due to the state government being located in our Circuit. This variety keeps our judges, lawyers, and jurors on their toes. There is also a great sense of community and cordiality within the Bar here.

7. What is one of your least favorite things to deal with as a Judge?

Discovery disputes. The scope of discovery under our Rules is very broad and I'm not sure if clients realize that. I also think that some of these disputes are due to a lack of communication between lawyers. Lawyers should do everything possible to resolve a discovery dispute before getting the Court involved.

8. Do you have any advice for young lawyers about the practice of law?

My advice is to be flexible. Young associates are asked to do a lot of different things, including things they maybe were not hired to do. Cases change, clients change, firm situations change but you have to be able to adapt. ⚖️

Thank you

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APPELLATE UPDATE

Case Notes

by Helen F. Hiser, Michael D. Freeman, C. Daniel Atkinson and W. Spencer Barrow

Ethier v. Fairfield Memorial Hospital

Opinion No. 27953

Filed May 11, 2020 – Re-Filed May 27, 2020



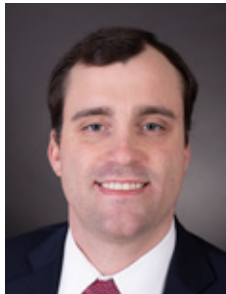
Helen
F. Hiser



C. Daniel
Atkinson



Michael
D. Freeman



W. Spencer
Barrow

In a substituted decision, the Supreme Court reversed a trial court’s decision to deny the plaintiffs’ request for a new trial based on intentional juror concealment and premature deliberations. This is a medical malpractice case where Dr. Bibeau, who worked at Fairfield Hospital where the plaintiff was seen first, misdiagnosed a popliteal aneurysm in the plaintiff’s leg. Because the jury found Dr. Bibeau 30% at fault and the plaintiff 70% at fault, the trial ended in a defense verdict. The juror in question acknowledged that she had worked at Fairfield Hospital but failed to disclose that she worked with Dr. Bibeau and 2 of the nurses involved in the plaintiff’s treatment. After the trial, the plaintiffs learned about the employment relationship, and that the juror had told other jurors how skilled Dr. Bibeau and the nurses were, and that they “were very careful and thorough, and if they said they did something, they did it.” At a post-trial hearing where other jurors testified that they changed their vote based on the juror’s assurance of Dr. Bibeau’s care and skill, the court determined the juror had engaged in premature deliberations but found no (or insufficient) prejudice, and denied the plaintiffs’ motion for a new trial.

Writing for the Court, Justice Hearn explained that, “[b]ecause premature deliberations may affect the fundamental fairness of the trial, the affidavit [by the plaintiffs’ attorney] and juror testimony are admissible.” Then she noted, that, while the burden of proving prejudice, placed on the party claiming premature deliberations, is high, where, as was the case here, the evidence shows jurors changed their votes based on the premature deliberation, it results in a “tainted verdict” which warrants a new trial. In reaching this decision, the Court overruled *Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co.*, 384 S.C. 441, 682 S.E.2d 489 (2009), which “inexplicably” upheld denial of a new trial even though in that case, a juror spoke to fellow jurors about the evidence throughout the trial, and even went to the church for her own inspection prior to deliberations.

Thomerson v. DeVito
Opinion No. 27972
Filed May 27, 2020

In this matter, the Supreme Court answered a certified question from the U.S. District Court, confirming that the 3-year SOL prescribed in Section 15-3-530 does not apply to promissory estoppel because it sounds in equity and not at law. In this case, it had to do with a promise made by the defendants to give the plaintiff a 3% ownership in the company for which he worked. When they failed to do so and the company was later sold to a third party, he brought suit on multiple grounds (including quantum meruit and promissory estoppel), most of which were barred by the SOL. However, the Court said that promissory estoppel (unlike quantum meruit) is not always a suit for monetary damages because, had the defendants not sold the company, the plaintiff would have sought the 3% ownership interest. Thus, while the statutory SOL applies to quantum meruit claims, it did not apply to this promissory estoppel claim.

Justice Few argued in his dissent that the procedural (but not substantive) distinctions between actions at law and in equity should be abolished because they are antiquated.

Progressive Direct Ins. Co. v. Groves
Opinion No. 5750
Filed July 22, 2020

In this UM/UIM coverage case, the Court of Appeals overturned a grant of summary judgment in the insurers' favor in a vehicle-to-vehicle shooting case. The decedent was driving her car while another car, driven by Jimi Carl

Redman, was traveling in a parallel direction. Redman made hand gestures and blew kisses at the decedent and, when both cars stopped at a red light, Redman pulled out a rifle, shot the decedent, and then sped away. The circuit court granted summary judgment, finding that the decedent's death did not arise out of Redman's ownership, maintenance or use of a vehicle because there was no causal connection between the use of the vehicle and the death; that in any event, Redman's act of shooting the decedent was an intervening act of independent significance that broke any causal connection between the use of the vehicle and assault.

The Court of Appeals disagreed, finding a causal connection between Redman's use of his vehicle to commit the assault – he could not have followed the decedent without a vehicle and could not have easily concealed the rifle he shot her with if he had not been in a vehicle. He also used his vehicle to attempt to flee the scene. The Court of Appeals distinguished this case from *Holmes v. Allstate*, where the victim was sitting in a parked car with the engine turned off, by pointing out that, here, the cars were stopped at a stop light briefly but both were still in gear with motors running.

Relying on *Wausau Underwriters v. Howser*, the Court of Appeals held that Redman's act of shooting was not an intervening act of independent significance.

Builders Mutual Ins. Co. v. Island Point, LLC
Opinion No. 27970
Filed May 13, 2020 – Re-Filed August 12, 2020

In this matter, the Supreme Court affirmed that the Insurers did not have a right to intervene in the underlying

construction defect case, and the trial court properly denied them permissive intervention. However, the Court re-emphasized that the Insurers were entitled to contest the extent of their coverage in a subsequent DJ action. The Insurers provided a defense on behalf of their various Insureds, and had attempted to intervene in the action toward the end of the discovery phase for the purpose of preparing special interrogatories for the jury that would have gone to the coverage issue. With respect to intervention as a matter of right, the Supreme Court explained that the party must be a real party in interest, with a direct interest in the subject matter of the proceedings below. As to the trial court's denial of their motion for permissive intervention, the Supreme Court held that the Insurers could not meet the third consideration under Rule 24(b), i.e., that intervention would not delay the proceedings or prejudice another party.

The Court recognized that, absent the Insurers' intervention, the Plaintiff Association had no reason to request a jury form parsing its damages into categories of coverage provided in a CGL policy, but that allowing the Insurers to intervene and request the same would impose an additional burden of proof on the Plaintiff – i.e., to itemize its damages into Insurer-defined categories. Conversely, in a subsequent DJ action, the Insureds and Insurers would have a “collective burden to show which portions of the general verdict are covered under the CGL policies.” The Court also expressed “concerns over the conflict of interest inherent in allowing the Insurers to intervene,” noting the Insureds' counsel might concede liability so as to focus on damages, noting “several counsel explained a special verdict form would force them to alter their presentation of evidence to shunt as

much of the Association's damages as possible into covered, consequential damages ... thereby conceding the Insureds had, in fact, created faulty workmanship in the first place.”

The Court rejected arguments that intervention was mandated by its prior decisions in *Auto Owners v. Newman*, 385 S.C. 187, 684 S.E.2d 541 (2009), and *Harleysville Group Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 803 S.E.2d 288 (2017), saying it was not the intent of *Newman* to categorically foreclose a subsequent declaratory judgment action to resolve a coverage dispute,” and to the extent *Newman* could be read differently, modifying *Newman*. As to *Harleysville*, the Court explained that, although the Special Referee had ordered the insurer to pay the entire verdict because the attempted allocation was “purely speculative,” this was essentially “dicta” because the main ruling was based on the inadequate ROR letter. In fact, the Court specifically rejected “the notion [in *Harleysville*] that, in a declaratory judgment action, it is ‘improper and purely speculative’ to allocate a general verdict into covered and non-covered damages.”

With respect to the subsequent DJ action, the Court noted that the rule set out in *Sims v. Nationwide Mut. Ins. Co.*, that “where an insurance company was notice and [an] opportunity to defend an action against its insured, the company is bound by pertinent material facts established against its insured ... could not apply in situations where the insurance company had a conflict of interest with its insured,” such as where the insurer contested whether some of all of the damages were covered. The Court concluded that, while the parties to a DJ action would be bound by

the total jury verdict, nothing would bar the insurers from “litigating the coverage issue ... after the resolution of the underlying case[.]” The Court first suggested the parties might agree on a framework for allocating damages, subject to a court’s approval. Barring an agreement, the Court provided a “default framework” for the DJ action. First, the primary source of evidence would be the transcript of the merits hearing; however, additional “narrowly tailored” expert evidence could be admitted (pointing to the expert testimony proffered by the insurer in *Harleysville* as an example). “The trier of fact shall then make a determination allocating on a percentage basis what portion of the underlying verdict constitutes covered damages and what portion constitutes non-covered damages.”

The Supreme Court issued further clarification on rehearing of their May 13, 2020 opinion. The only thing they clarified is in Part VI of the opinion, where the Court now states, “In the declaratory judgment action, the record of the merits trial shall be the primary source of evidence concerning matters litigated in that trial, such as the extent of the damages. Additional evidence that is relevant to the coverage dispute determination may be presented in the declaratory judgment action, including expert testimony, but the additional evidence should be narrowly tailored to matters that were not actually litigated in the first trial.^[10]”

^[10]“For example, if the underlying merits trial results in a general verdict, the parties in the declaratory judgment action should be permitted to introduce evidence related to determining which portion of the damages are covered by the policy (or policies).”


Connelly v. The Main Street America Group
Opinion No. 5755
Filed August 12, 2020

In this matter, the Court of Appeals affirmed a ruling that UM insurance applied even where the exclusivity provision of the Workers Compensation Act (“WCA”) otherwise would have barred a claim between co-employees. Connelly was riding in a car driven by a co-worker, who was stipulated to be the at-fault driver. Both Connelly’s and the driver’s insurance policies had UM coverage. The Court agreed with the Circuit Court that, because the WCA granted the co-worker immunity from tort liability, the vehicle she was driving was “transformed” into an uninsured vehicle. The Court also agreed with the Circuit Court that the contractual nature of UM coverage and the legislative intent underlying the UM statute meant that that coverage was available to Connelly even though the co-worker was immune under the WCA. The Court concluded that the phrase “legally entitled to recover” in the UM statute “required only ‘demonstrating fault and resulting damages.’”

Grant v. Jud Kuhn Chevrolet
Opinion No. 5757
Filed August 12, 2020

Here, the Court of Appeals overturned a circuit court decision ordering class arbitration pursuant to the SC Regulation of Manufacturers, Distributors, and Dealers Act (“Dealers Act”). The plaintiff filed suit challenging a “closing fee” charged as part of Chevrolet’s commercial sale of a vehicle. When Chevrolet moved to have the claim decided by bilateral arbitration, the plaintiff requested that any arbitration be a

class arbitration. While the purchase and sales agreement clearly required “binding arbitration administered by the AAA,” it did not specifically reference class arbitration. The Circuit Court reasoned that both the Dealers Act and the AAA’s Supplementary Rules refer to class arbitration and, as a result, Chevrolet had agreed to class arbitration.

The Court of Appeals disagreed, pointing to federal case law that specifies that the agreement to arbitrate is a matter of contract and, more specifically, that an agreement to a class arbitration must be explicitly (not impliedly) agreed to. In other words, “[a]n implicit agreement to authorize class-action arbitration ... is not a term that the arbitrator may infer solely from the fact of the parties’ agreement to arbitrate.” 

SCDTAA Docket

Summers Clarke and Jeffrey Bogdan named Members of Barnwell Whaley

CHARLESTON, SC - Barnwell Whaley is pleased to announce the promotion of attorneys D. Summers Clarke, II and Jeffrey Bogdan to the position of Member in the firm's Charleston office. Both Clarke and Bogdan hold AV preeminent Martindale-Hubbell ratings (the highest, formerly referred to as AV), and both have been recognized by South Carolina Super Lawyers for their work with Clarke mentioned as a Top-Rated Civil Litigation Attorney and Bogdan as a Top-Rated Business Litigation Attorney. Both are members of the South Carolina Defense Trial Attorneys' Association. "At Barnwell Whaley we endeavor to provide exceptional legal services as we counsel and defend businesses and individuals in the Carolinas. Summers and Jeff deliver top quality legal services and have proven to be invaluable members of our litigation defense teams," commented managing member Randell C. Stoney, Jr. "Summers and Jeff's dedication to their clients strengthens our firm as we prepare for the road ahead. I am pleased to congratulate them on this well-deserved promotion."

Summers defends business owners, individual property owners, homeowners' associations, contractors and building and design professionals in all matters of litigation and defense. She is a member of the South Carolina Bar's Judicial

Qualification Committee, the Defense Research Institute, the Professional Liability Underwriting Society, and the Charleston County Bar. She is admitted to the South Carolina Supreme Court, the United States District Court for the District of South Carolina, and the United States Court of Appeals for the Fourth Circuit.

Ms. Clarke earned her undergraduate degree from the University of North Carolina-Chapel Hill's Kenan-Flagler Business School and her Juris Doctor at the University of South Carolina. Upon graduation from law school, she clerked for the Honorable C. Weston Houck, United States District Judge for the District of South Carolina, Charleston division. Ms. Clarke has been practicing law for 13 years and has been with Barnwell Whaley since 2012.

Jeff Bogdan focuses his law practice in the areas of estate planning and civil litigation including medical malpractice, legal malpractice, products liability, construction, general negligence, business disputes, and insurance coverage. He is a member of the American Bar Association, the South Carolina Bar and the Charleston County Bar. He is admitted to practice law before the South Carolina State Court, the United States District Court, the District of South Carolina, and the United States Court of Appeals for the Fourth Circuit.

Mr. Bogdan earned his Juris Doctor at the Charleston School of Law, *cum laude* and his bachelor's degree in Business

Administration from the College of Charleston. In addition, he has completed the prestigious International Association of Defense Counsel Trial Academy at Stanford Law School and he is a member of the Charleston Chamber of Commerce Leadership Charleston Class of 2015. Charleston Business Magazine named him to the Lowcountry Legal Elite list in the area of tax and estate law in both 2018 and 2019. Mr. Bogdan has been practicing law for 13 years, the last seven with Barnwell Whaley.

Barnwell Whaley Welcomes Scott Wallinger as Member

CHARLESTON, SC – Barnwell Whaley is pleased to announce the addition of Scott Wallinger as a member of the firm. Scott brings more than 25 years of experience to Barnwell Whaley’s Charleston office where he will lead the firm’s trucking and transportation defense practice. In addition to trucking and transportation, he concentrates his law practice in the areas of professional liability defense, complex personal injury defense, and commercial litigation.

Scott represents trucking and transportation clients throughout South Carolina in cases ranging from the routine to the catastrophic. His trucking and transportation team provides clients rapid response assistance with accidents, 24 hours a day, 7 days a week.

Scott Wallinger also defends licensed professionals in malpractice suits and in licensing board investigations and disciplinary proceedings.

Wallinger is certified as a mediator by South Carolina Supreme Court Arbitrator and Mediator Certification Board and is an approved Circuit Court mediator. He is regarded as an

accomplished trial lawyer: he has been recognized by the *Greater Columbia Business Monthly* as a *Midlands Legal Elite* in the area of commercial transportation in both 2012 and 2016 and he holds a Martindale Hubbell AV preeminent rating, the highest available.

A Charleston native, Scott Wallinger earned his Bachelor of Science from Clemson University and his Juris Doctor at the University of South Carolina School of Law. He previously served as the Deputy Solicitor for the First Judicial Circuit, and as an Assistant Attorney General of South Carolina. He entered private practice in 2001 and became a shareholder and eventual managing partner of Collins & Lacy, P.C., a prominent defense firm in Columbia, South Carolina, before returning home to Charleston and Barnwell Whaley.

“Every case and every client is unique” said Wallinger, “but all clients who find themselves in litigation want counsel who understands them, their business, and who has a sense of urgency about mounting an effective defense and finding a fair resolution. I and my teammates in this great firm get to pursue that goal every day.”

Established in Charleston in 1938, Barnwell Whaley Patterson & Helms, LLC, represents and counsels businesses and professionals in both North and South Carolina, throughout the United States in Federal Court, and beyond. Widely respected for their work in complex litigation matters, the firm’s 20 members and associates focus on the areas of civil litigation, patents, trademarks and intellectual property, professional malpractice defense, products liability, construction law, business law, estate planning and insurance defense. For additional information, visit www.barnwell-whaley.com.

7 Barnwell Whaley Attorneys Named to 2021 The Best Lawyers in America list Dawes Cooke Named Mediation Lawyer of the Year

Randell Stoney, Jr. Named Personal Injury Litigation Lawyer of the Year

CHARLESTON, SC – Barnwell Whaley Patterson & Helms is pleased to announce that seven attorneys have been recognized and included in the 2021 edition of The Best Lawyers in America. M. Dawes Cooke, Jr., Randell C. Stoney, Jr., K. Michael Barfield, Christopher M. Hinnant, David S. Cox, Barbara J. Wagner, PhD, and D. Summers Clarke have each been named to the 2021 “The Best Lawyers in America” list and Justin P. Novak has been listed in Best Lawyers: Ones to Watch.

The Best Lawyers of America named Dawes Cooke as the 2021 Best Lawyers’ Lawyer of the Year in the area of Mediation for the Charleston metro market. Best Lawyers has named Cooke as a Charleston Lawyer of the Year nine times since 2009 in the areas of arbitration, mediation, bet-the-company litigation, and personal injury litigation. Cooke’s legal accolades include recognition by Chambers USA, Benchmark Litigation, Martindale Hubbell, and Charleston Business Magazine. He is regularly listed in South Carolina Super Lawyers as one of the top 10 attorneys in the state of South Carolina, and he was ranked number one attorney in the state in 2014, 2015 and 2016.

Barnwell Whaley managing member Randell C. Stoney, Jr. has been named as a Charleston 2021 Lawyer of the Year for Personal Injury Litigation – Defendants. A member of

the Defense Research Institute, the South Carolina Defense Trial Lawyers Association, the International Association of Defense Counsel (IADC), and The American Board of Trial Advocates, Stoney has regularly been listed in the editions of South Carolina Super Lawyers as a Top-Rated Civil Litigation Attorney.

The Best Lawyers of America further recognizes Barnwell Whaley attorneys in the following areas for their work in the Charleston, SC and Wilmington, NC markets in the following areas:

- M. Dawes Cooke, Jr. - Arbitration, Bet-the-Company Litigation, Commercial Litigation, Litigation - Health Care, Mediation, Medical Malpractice Law - Defendants, Personal Injury Litigation - Defendants, and Personal Injury Litigation - Plaintiffs
- Randell C. Stoney, Jr. - Construction Law, Litigation - Construction, Personal Injury Litigation - Defendants, and Product Liability Litigation - Defendants
- K. Michael Barfield - Insurance Law and Litigation - Construction
- David S. Cox - Commercial Litigation and Product Liability Litigation - Defendants
- Christopher M. Hinnant - Litigation - Insurance and Personal Injury Litigation - Defendants
- Barbara J. Wagner, PhD - Insurance Law
- D. Summers Clarke, II - Litigation - Insurance

Best Lawyers listings are divided by geographic region and

practice areas and lawyers are reviewed by their peers on the basis of professional expertise, undergoing an authentication process to make sure they are in current practice and in good standing. Best Lawyers: Ones to Watch recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice in the United States.

Elmore Goldsmith Growing and Continuing to Serve The Construction Industry

GREENVILLE, SC – June 12, 2020 – Elmore Goldsmith announces the addition of a new associate, Alan G. Jones.

Alan G. Jones is a graduate of Clemson University and the University of Georgia School of Law. He has extensive experience representing and counseling general contractors and subcontractors and in handling insurance coverage matters. Alan serves on the Board of Directors of the South Carolina Defense Trail Attorneys' Association. He has been recognized as a Rising Star in Construction Litigation by *Super Lawyers Magazine* for 2020.

Elmore Goldsmith Ranked in *Construction Executive's Top 50 Construction Law Firms*TM

GREENVILLE, SC – June 29, 2020 – Elmore Goldsmith has been included in *Construction Executive* magazine's list of "*The Top 50 Construction Law Firms*" in America for 2020. To determine the 2020 ranking, *Construction Executive* surveyed hundreds of law firms throughout the United States with a construction practice. The ranking considered the number of construction attorneys, the percentage of the firm's revenues derived from its

construction practice, the number of AEC clients, and the year in which the construction practice was established.

Founding shareholder L. Franklin Elmore said of the ranking, "It is an honor for our staff, lawyers, and firm to be recognized for the second consecutive year."

The full list of "*The Top 50 Construction Law Firms*" was announced on June 19, 2020.

Elmore Goldsmith recently announced the addition of two named partners. The firm will now be known as Elmore Goldsmith Kelley & deHoll, P.A.

About Elmore Goldsmith Kelley & deHoll, P.A.

Based in Greenville, South Carolina, Elmore Goldsmith Kelley & deHoll, P.A. represents clients from across the country in matters throughout the southeast providing comprehensive legal services related to the needs of owners and developers, contractors, subcontractors, and sureties. For more information: www.elmoregoldsmith.com.

Kylie Cumback Joins Griffith, Freeman & Liipfert

BEAUFORT - Kylie E. Cumback has joined Beaufort, South Carolina, defense firm Griffith, Freeman & Liipfert, LLC as an associate attorney. According to Managing Member, Kelly Dean, Kylie will be joining the team handling personal injury and auto tort claims. "Kylie brings with her a solid foundation of diverse legal experience in both private and public practice. We are excited to have her apply her analytical and investigative skills to our work in insurance defense."

Prior to joining Griffith Freeman, Kylie spent two years as a Civil Rights Investigator with the Michigan State University Office of Civil Rights in East Lansing, Michigan. A native of that area, Kylie earned her J.D. from Michigan State University College of Law in 2018. While there, she was selected as the International Law Review Articles Editor and clerked in the University's Office of General Counsel. Kylie came to South Carolina following her husband's commission as a JAG officer with the United States Marine Corps, and his subsequent assignment to the Marine Corps Recruit Depot, Parris Island.

Attorneys Drew Bradshaw, Jordan Crapps & Jessica Laffitte Recognized By Best Lawyers®

2021 U.S. News & World Report – Ones to Watch Released

GREENVILLE, SC - August 20, 2020 – Gallivan White Boyd is pleased to announce the selection of attorneys, Drew Bradshaw, Jordan Crapps and Jessica W. Laffitte as **2021 Ones to Watch** by *Best Lawyers in America*. This recognition is given to attorneys who are early in their careers and provide outstanding professional excellence in private practice within the United States.

Drew Bradshaw (Greenville) was named Ones to Watch for Transportation Law. Jordan Crapps (Columbia) was named Ones to Watch for Commercial Litigation and Litigation-Securities. Jessica W. Laffitte (Columbia) was named Ones to Watch for Product Liability Litigation – Defendants.

About the Firm

Gallivan White Boyd handles a variety of complex litigation

for local, regional and national clients. Many of our attorneys have been widely recognized for their experience, accomplishments and leadership. Founded over 70 years ago, the firm has offices in Charleston, Columbia and Greenville, South Carolina, and Charlotte, North Carolina.

For more information, visit www.gwblawfirm.com.

Attorneys Gray T. Culbreath, T. David Rheney & Ronald K. Wray III Named 2020 Lawyers of the Year

2021 U.S. News & World Report: Best Lawyers in America

GREENVILLE, S.C. – August 20, 2020 – Gallivan White Boyd partners Gray T. Culbreath, T. David Rheney and Ronald K. Wray II were named **2021 Lawyers of the Year** by *Best Lawyers in America*. Each year, only one lawyer in each practice area and designated metropolitan area is honored as the *Lawyer of the Year*. These lawyers are selected based on voting averages received from peer-review assessments.

Gray T. Culbreath was named *Lawyer of the Year* for Product Liability Litigation - Defendants in the Columbia area. Culbreath was also listed in the 2021 Edition of *The Best Lawyers in America* in the following practice areas: Bet-the-Company Litigation, Commercial Litigation, Mass Tort Litigation/Class Actions – Defendants, Personal Injury Litigation – Defendants and Product Liability Litigation – Defendants.

T. David Rheney was named *Lawyer of the Year* for Personal Injury Litigation – Defendants in the Greenville area. Rheney was also listed in the 2021 Edition of *The Best Lawyers in America* in the following practice areas: Insurance Law,

Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants.

Ronald K. Wray II was named *Lawyer of the Year* for Product Liability Litigation – Defendants in the Greenville area. Wray was also listed in the 2021 Edition of *The Best Lawyers in America* for Commercial Litigation, Product Liability Litigation – Defendants and Railroad Law.

2021 Best Lawyers® List Twenty-Five Gallivan White Boyd Attorneys

2021 U.S. News & World Report – Best Lawyers Released

GREENVILLE, S.C. – August 20, 2020 – Twenty-four attorneys have been included in the 2021 Edition of *The Best Lawyers in America*. With an almost 40-year history of highlighting top legal talent in America, *Best Lawyers* has become an important resource for finding experienced lawyers nationwide. Peer-reviewed listings by *Best Lawyers* are now published in almost 75 countries around the world.

Gallivan White Boyd congratulates the following attorneys included on the 2021 *Best Lawyers* list.

CHARLESTON

- A. Grayson Smith
Personal Injury Litigation–Defendants

COLUMBIA

- A. Johnston Cox
Insurance Law
Personal Injury Litigation – Defendants

- Gray T. Culbreath
Bet-the-Company Litigation Commercial Litigation
Mass Tort Litigation / Class Actions – Defendants
Personal Injury Litigation – Defendants
Product Liability Litigation – Defendants
- John E. Cuttino
Litigation – Construction
Personal Injury Litigation – Defendants Product
Liability Litigation – Defendants
- William R. Harbison
Workers’ Compensation Law – Employers
- Amy L. B. Hill
Commercial Litigation
- Lindsay A. Joyner
Commercial Litigation
- John T. Lay, Jr.
Bet-the-Company Litigation Commercial Litigation
Insurance Law
Mass Tort Litigation / Class Actions – Defendants
Personal Injury Litigation – Defendants
Product Liability Litigation – Defendants
- Shelley S. Montague
Construction Law, Insurance Law, Litigation –
Insurance
- Curtis L. Ott
Commercial Litigation, Product Liability Litigation –
Defendants

GREENVILLE

- W. Howard Boyd, Jr.
Bet-the-Company Litigation Commercial Litigation
Product Liability Litigation – Defendants
- Deborah C. Brown
Employment Law – Individuals Employment Law –
Management
Workers’ Compensation Law – Employers
- Amity Edmonds
Workers’ Compensation Law – Employers
- T. Cory Ezzell
Workers’ Compensation Law – Employers
- H . Mills Gallivan
Arbitration
Mediation
Workers’ Compensation Law – Employers
- Jennifer E. Johnsen
Commercial Litigation
Employee Benefits (ERISA) Law Insurance Law
- C. Stuart Mauney
Mediation
Personal Injury Litigation – Defendants Professional
Malpractice Law – Defendants
- C. William McGee
Personal Injury Litigation – Defendants Product
Liability Litigation – Defendants
- Jared M. Pretulak

Workers’ Compensation Law – Employers

- Phillip E. Reeves
Insurance Law
Personal Injury Litigation – Defendants Product
Liability Litigation – Defendants
- T. David Rheney
Insurance Law
Personal Injury Litigation – Defendants Product
Liability Litigation – Defendants
- Ronald G. Tate, Jr.
Commercial Litigation
Construction Law
- Daniel B. White
Commercial Litigation
Mass Tort Litigation / Class Actions – Defendants
Personal Injury Litigation – Defendants
Product Liability Litigation – Defendants Railroad Law
- Ronald K. Wray II
Commercial Litigation
Product Liability Litigation – Defendants Railroad Law

**Jennifer E. Johnsen Elected Senior Director of the Federation
of Defense & Corporate Counsel-A Professional Trade
Association of Premier Defense and Corporate Counsel**

GREENVILLE, S.C. - August 4, 2020 - Jennifer E. Johnsen has been elected senior director for the Federation of Defense & Corporate Counsel (FDCC) board of directors. The FDCC is a professional trade association of peer-reviewed, premier defense and corporate counsel and industry executives.

The organization is dedicated to leading the profession by advancing the principles of civil justice, actionable knowledge, and fostering the trust and value of fellowship.

Johnsen has been an active member of the FDCC since 2008. She has chaired numerous substantive law committees, served as program chair for the 2019 winter meeting and is Convention Chair for the upcoming 2021 annual meeting. She has served on the board since 2018. Johnsen has played an active role in writing and speaking at many FDCC educational programs. In 2014, Johnsen was the recipient of the John Alan Appleman Award which honors the substantive law section chair who has made the most outstanding contribution to the advancement of the FDCC's educational goals.

Johnsen focuses her practice on insurance coverage litigation, ERISA and non-ERISA benefits litigation and business and commercial litigation. She has been recognized by Super Lawyers® in the area of insurance and by Best Lawyers in the areas of commercial litigation, employee benefits law and insurance law. She has more than 29 years of trial and litigation experience.

Columbia Business Monthly Named Eight Attorneys as Legal Elite in South Carolina

COLUMBIA, S.C. - August 12, 2020 – The law firm of Gallivan White Boyd (GWB) is pleased to announce that eight of its attorneys, Johnston Cox, Will Harbison, Amy Hill, Laura Jordan, Lindsay Joyner, John T. Lay, Shelley Montague and Breon Walker were recognized as the **2020 Legal Elite** by *Columbia Business Monthly*. Legal Elite is the only regional awards program that allows every active attorney to nominate

and vote for their peers in 26 categories.

GWB's list of *Columbia Business Monthly's* Legal Elite includes:

- A. Johnston Cox – Insurance, Personal Injury
- William R. Harbison – Workers' Compensation
- Amy L.B. Hill – Business Litigation, Banking & Finance
- Laura Jordan – Labor & Employment
- Lindsay A. Joyner – Business Litigation
- John T. Lay, Jr. – Business Litigation
- Shelley Sunderman Montague – Construction, Insurance
- Breon C. M. Walker – Business Litigation

Greenville Business Magazine Named Twenty-Three Attorneys as Legal Elite in South Carolina

GREENVILLE, S.C. – August 11, 2020 – The law firm of Gallivan White Boyd (GWB) is pleased to announce that 23 of its attorneys were nominated and voted to *Greenville Business Magazine's* **2020 Legal Elite**, the only regional awards program that allows every active attorney to nominate and vote for their peers across 26 categories. Duffie Powers and Phil Reeves were recognized as **Top Voted** recipients.

W. Duffie Powers: Duffie Powers centers his legal practice on the areas of design and construction and creditors' rights in the firm's Greenville, South Carolina, office. Having previously worked in the construction industry, Duffie has a unique

insight into the challenges faced by those in the industry. Duffie routinely represents contractors, subcontractors, material suppliers, equipment rental companies, architects, engineers and other design professionals. He has represented clients in commercial and residential construction projects of all sizes related to the litigation of construction and design defects, zoning and land use planning issues, contracts and payment disputes.

Phillip E. Reeves: Phil Reeves is a partner in the firm's Greenville, South Carolina, office. He has focused his litigation and trial work over the years on insurance, products liability and transportation. Phil has tried approximately 200 cases and handled numerous appeals in state and federal courts. With a particular emphasis on first party claims, Phil has centered his insurance practice on representing insurers on various insurance coverage issues as well as extra-contractual and bad faith cases for more than 33 years.

GWB's list of *Greenville Business Magazine's 2020 Legal Elite* includes:

- [W. Howard Boyd, Jr.](#) – Business Litigation
- [Deborah Casey Brown](#) – Labor & Employment
- [Robert D. Corney](#) – Business Litigation, Hospitality & Tourism, Personal Injury
- [James Dedman IV](#) – Business Litigation
- [Natalie R. Ecker](#) – Insurance
- [Amity S. Edmonds](#) – Workers' Compensation
- [T. Cory Ezzell](#) – Workers' Compensation

- [Nicholas A. Farr](#) – Insurance, Personal Injury
- [Batten Farrar](#) – Insurance, Business Litigation, Construction, Personal Injury
- [H. Mills Gallivan](#) – Workers' Compensation, Alternative Dispute Resolution
- [Casey P. Gonyea](#) – Workers' Compensation
- [Jennifer E. Johnsen](#) – Insurance
- [Carter Massingill](#) – Construction, Business Litigation
- [C. Stuart Mauney](#) – Healthcare
- [Jared M. Pretulak](#) – Workers' Compensation
- [W. Duffie Powers](#) – Construction (Top Voted), Bankruptcy and Creditors' Rights
- [Phillip E. Reeves](#) – Insurance (Top Voted)
- [T. David Rheney](#) – Personal Injury, Business Litigation
- [Ronald G. Tate, Jr.](#) – Construction
- [Thomas J. Twehues](#) – Workers' Compensation
- [Zachary L. Weaver](#) – Business Litigation, Labor & Employment
- [Daniel B. White](#) – Business Litigation
- [Michelle DeLuca Yarbrough](#) – Workers' Compensation

Breon C.M. Walker Elected President of the South Carolina Black Lawyers Association (SCBLA)

COLUMBIA, S.C. – June 9, 2020 – Gallivan White Boyd

partner Breon C. M. Walker was elected President of the South Carolina Black Lawyers Association (SCBLA). The association is a professional organization committed to serve all lawyers in South Carolina and the community at large. SCBLA strives to be the voice of surrounding communities and to make legal assistance available – with supportive judges, lawyers, law students and many others who are committed to the diversification and progression of the legal community.

This esteemed organization has elected a qualified, outstanding leader to continue its initiatives of promoting professionalism, addressing injustice and providing advocacy statewide.

Walker is a litigation attorney in the firm’s Columbia, South Carolina, office. She has a diverse legal practice in the defense of personal injury claims, products liability, commercial litigation and government relations.

Walker also represents major business interests throughout South Carolina before both state and local government bodies. A native of Columbia, Walker has long-standing ties to the community that enable her to understand state and local government issues and advise clients on how to properly navigate the political landscape.

Mary Caskey Named One of Columbia’s 2020 “Women of Influence”

COLUMBIA, SC -August 4, 2020 – Haynsworth Sinkler Boyd is pleased to announce that Mary Caskey has been selected as one of nineteen “Women of Influence” by the *Columbia Regional Business Report*. Mary and her fellow honorees

will be recognized virtually in September.

A leader at Haynsworth Sinkler Boyd, Mary serves on the firm’s four-member Management Committee and chairs the firm’s Recovery practice group. Mary, a Certified Bankruptcy and Debtor-Creditor Law Specialist, is an experienced litigator who concentrates her practice in disputes involving financial service providers and creditors’ rights for consumer and commercial debts.

Mary is also recognized for her work within the legal industry. She is listed in the 2020 *Best Lawyers in America*® for Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, and Consumer Law and as one of *South Carolina Super Lawyers*® 2020 “Rising Stars” for Creditor Debtor Rights.

Active in the community, Mary is a member of the International Women’s Insolvency & Restructuring Confederation, American Bankruptcy Institute, South Carolina Women Lawyers Association and the South Carolina Bankruptcy Law Association. She is the Vice President for Finance for the Junior League of Columbia and a graduate of Leadership Columbia.

The McKay Firm Welcomes Makenzie Polston to Expand their Insurance Defense Practice

Makenzie Polston, originally from North Augusta, has joined the firm and practices in the areas of general insurance defense and civil litigation. She graduated Cum Laude from Presbyterian College with a degree in Psychology and a Minor in Spanish. During law school she was a member of the Moot Court Bar and Mock Trial Bar. In her third year of law school,

she served as the Associate Justice of Administration for the Mock Trial Bar and competed in mock trial competitions across the country. While in law school, Makenzie clerked for the Children’s Law Center and the McKay Firm. Prior to joining the McKay Firm as an attorney, Makenzie was a Judicial Law Clerk for the Honorable R. Lawton McIntosh, a South Carolina Circuit Court Judge for the Tenth Judicial Circuit.

Polston received her Juris Doctorate from the University of South Carolina and is a member of the South Carolina Bar Association.


The McKay Firm Welcomes Alexander Zuraff to Civil Litigation Practice

COLUMBIA, SC - The McKay Firm is pleased to announce the addition of Alexander Zuraff as the newest attorney at the firm.

Mr. Zuraff practices in the areas of general civil defense and government defense. He graduated from North Carolina State University with a degree in Political Science. Alex went on to earn his Juris Doctorate from the University of South Carolina School of Law where he was also a member of the Moot Court Bar and Order of the Barristers. While in law school, Alex competed in competitions as an advocate on the Moot Court National Competition Team.

Alex is a member of the South Carolina Bar Association and the Richland County Bar Association. He is admitted to practice in South Carolina and before the United States District Court of South Carolina.


Alex resides in Columbia with his dog, Annabelle.



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McKay Firm Partner, Dan Settana, stated “2020 has started off as an exciting year at The McKay Firm, and we are thrilled to have Alex join our team. With his civil and government defense background, he will no doubt offer a valuable benefit to our clients.”

Two Lawyers from The McKay Firm Named to 2021 *The Best Lawyers in America*

COLUMBIA, SC - The McKay Firm is pleased to announce that two of the firm's Partners, Julius W. "Jay" McKay, II, and Daniel R. Settana Jr., have been selected for inclusion in the 2021 edition of *The Best Lawyers in America*.

Mr. McKay was selected for inclusion in the 2021 Best Lawyers® list in the areas of Medical Malpractice Law and Insurance Law. He also practices in Products Liability, Commercial Litigation, Government Defense, Appellate Law and Professional Licensure Disputes. His grandfather, Douglas McKay, Sr., started The McKay Firm in 1908.

Mr. Settana was selected for inclusion in the 2021 Best Lawyers® in the area of Insurance Law. He also practices in Transportation Defense, Civil Rights Defense, Governmental Defense, Premises Liability, and General Insurance Defense.

Since it was first published in 1983, Best Lawyers® has become universally regarded as the definitive guide to legal excellence. Best Lawyers® is based on an exhaustive peer-review survey. Best Lawyers has published their list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals. Its first international list was published in 2006 and since then has grown to provide lists in over 75 countries. Corporate Counsel magazine has called Best Lawyers® "the most respected referral list of attorneys in practice," and the list is published in leading local, regional, and national publications across the globe.

Lawyers from The McKay Firm Named

2020 Midlands Legal Elite

COLUMBIA, SC: The McKay Firm is pleased to announce that seven of the firm's attorneys have been selected for the 2020 Midlands Legal Elite by Columbia Business Monthly.

- Julius W. "Jay" McKay, II - Business Litigation and Healthcare Law
- Daniel R. Settana, Jr. - Insurance Law
- Mark C. Cauthen - Workers' Compensation
- Janet Brooks Holmes - Labor & Employment Law
- Brandon Jones - Insurance Law
- C.E. "Skip" Hardin, Jr. - Business Litigation
- Makenzie Polston - Insurance Law and Government Law

The Midlands Legal Elite honorees, presented by Columbia Business Monthly, are attorneys nominated by their peers in one of twenty different practice areas. The top attorneys in each area are then selected.

John Kuppens wins DRI Richard H. Krochock Award

This award honors an individual who has provided exemplary leadership to the DRI Young Lawyers Committee through sponsorship or participation in its programs and activities, who has provided guidance, support and service as a mentor to the members of the Young Lawyers Committee, and who has promoted those qualities which enhance the public image of the civil defense trial lawyer.

A. Johnston Cox Accepted into The American Board of Trial

Advocates (ABOTA)

A. Johnston Cox has been accepted into the American Board of Trial Advocates (ABOTA). Founded in 1958, ABOTA is an invitation only national association of experienced trial lawyers and judges. ABOTA and its members are dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. ABOTA membership consists of more than 7,600 lawyers—equally balanced between plaintiff and defense—and judges spread among 96 chapters in all 50 states and the District of Columbia.

Johnston is a partner in the firm's Columbia, South Carolina, office. For the past 25 years, his practice has focused on insurance litigation, business litigation, commercial condemnation and personal injury matters. He has litigated cases in state and federal courts throughout South Carolina.

Dedicated to the advancement of the legal profession, Johnston serves as the national membership chair for the Association of Defense Trial Attorneys and president of the South Carolina Defense Trial Attorneys' Association. Johnston is also a member of the Federation of Defense & Corporate Counsel (FDCC) and served on the faculty of the FDCC's Litigation Management College, instructing claims adjusters and managers on practices and techniques to avoid bad faith claims handling.

Gallivan White Boyd Attorneys Recognized in 2021 Edition of Benchmark Litigation

Gallivan White Boyd is pleased to announce that the firm and seven of its attorneys have been selected for inclusion in

the *2021 Edition of Benchmark Litigation – United States*.

Benchmark Litigation is the definitive guide to America's leading litigation firms and attorneys. Rankings are based on extensive interviews with litigators, dispute resolution specialists and their clients, as well as analysis of the market's most important cases and firm developments.

Local Litigation Stars for each state reflect only those individuals who were recommended consistently as reputable and effective litigators by clients and peers.

Columbia, South Carolina

- [Gray T. Culbreath](#) - Appellate; Product Liability
- [John T. Lay, Jr](#) - Commercial; Product Liability

Greenville, South Carolina

- [T. David Rheney](#) - Commercial; Insurance; Personal Injury; Product Liability; Transportation
- [Ronald K. Wray](#) - Commercial; Product Liability; Transportation

The review by Benchmark Litigation reports: Gallivan White Boyd is highly regarded as one of the leading law firms in the southeast, primarily operating out of three offices in South Carolina.

Ronald Wray is based in Greenville and heads the firm's litigation practice group. Wray, who has nearly 30 years of experience as a litigator, focuses his practice on commercial disputes with a particular emphasis on product liability, class action and railroad matters. Managing partner David Rheney

works alongside Wray in the firm's Greenville office and represents clients in personal injury defense, transportation disputes, insurance and reinsurance matters, bad faith litigation, as well as product liability cases. Columbia-based Gray Culbreath has over 30 years of experience and is a trusted authority on commercial and class action litigation, including antitrust, product liability and mass tort matters. Also operating out of the firm's Columbia location is John T. Lay, who dedicates his practice to complex business litigation, including professional malpractice, insurance, False Claims Act, financial services and product liability disputes.

Future Stars are *ones to watch*. These are lawyers who are building their reputations in the market.

Charleston, South Carolina

- [Grayson Smith](#) - Future Star; South Carolina

Columbia, South Carolina

- [Breon C. M. Walker](#) - Future Star; South Carolina, United States (National)

Greenville, South Carolina

- [W. Duffie Powers](#) - Future Star; South Carolina, United States (National)

Gray T. Culbreath Admitted to American College of Trial Lawyers

Gray T. Culbreath has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America.

The induction ceremony at which Culbreath became a Fellow took place online before an audience of 670 Fellows during the recent Induction Ceremony at the 2020 Annual Meeting and 70th Anniversary Celebration of the College.

Founded in 1950, the College is composed of the best of the trial bar from the United States, Canada and Puerto Rico. Fellowship in the College is extended by invitation only and only after careful investigation, to those experienced trial lawyers of diverse backgrounds, who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years trial experience before they can be considered for Fellowship.

Membership in the College cannot exceed 1% of the total lawyer population of any state or province. There are currently approximately 5,800 members in the United States, Canada and Puerto Rico, including active Fellows, Emeritus Fellows, Judicial Fellows (those who ascended to the bench after their induction) and Honorary Fellows. The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. The College is thus able to speak with a balanced voice on important issues affecting the legal profession and the administration of justice.

Culbreath is a partner at Gallivan White Boyd and has been practicing for over 30 years. The newly inducted Fellow is

an alumnus of University of South Carolina School of Law.

U.S. News – Best Lawyers® Ranks Haynsworth Sinkler Boyd In Its 2021 “Best Law Firms” List

COLUMBIA, SC - (Under embargo until November 5, 2020) – Haynsworth Sinkler Boyd has been named a top-tier firm by U.S. News – Best Lawyers® in its 2021 “Best Law Firms” rankings for the 11th consecutive year.

The firm earned a national ranking in [Litigation – Construction](#) and was recognized regionally for 64 practice areas.

The following practice areas received Metropolitan Tier 1 Rankings:

Charleston

- Business Organizations (including LLCs and Partnerships)
- Commercial Litigation
- Corporate Law
- Litigation - Real Estate
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Public Finance Law
- Real Estate Law
- Tax Law
- Trusts & Estates Law

Columbia

- Appellate Practice
- Banking and Finance Law
- Bankruptcy and Creditor Debtor Rights / Insolvency

and Reorganization Law

- Bet-the-Company Litigation
- Commercial Litigation
- Corporate Governance Law
- Corporate Law
- Economic Development Law
- Insurance Law
- Litigation - Antitrust
- Litigation - Banking & Finance
- Litigation - Bankruptcy
- Litigation - Construction
- Litigation - Real Estate
- Litigation - Securities
- Mergers & Acquisitions Law
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Public Finance Law
- Real Estate Law
- Securities / Capital Markets Law
- Securities Regulation
- Tax Law
- Trusts & Estates Law

Greenville

- Bet-the-Company Litigation
- Commercial Litigation
- Economic Development Law
- Health Care Law
- Immigration Law
- Litigation - Banking & Finance
- Litigation - Construction

- Litigation - ERISA
- Litigation - Mergers & Acquisitions
- Litigation - Real Estate
- Mass Tort Litigation / Class Actions - Defendants
- Medical Malpractice Law - Defendants
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Professional Malpractice Law - Defendants
- Public Finance Law
- Real Estate Law

For a full list of rankings, click [here](#).

The *U.S. News – Best Lawyers*® “Best Law Firms” rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field and review of additional information provided by law firms as part of the formal submission process. [Click here](#) for a description of their methodology.

Gallivan White Boyd Honored with Eleven First-Tier Rankings in U.S. News – Best Lawyers® 2021 “Best Law Firms”

GREENVILLE, S.C. - November 5, 2020 – Gallivan White Boyd has been listed in *2021 Best Law Firms* by U.S. News & World Report - Best Lawyers®. The Firm was recognized regionally in 14 practice areas, including 11 Tier 1 Rankings in Columbia and Greenville, South Carolina. Firms included in the *2021 Best Law Firms* list are recognized for professional excellence with impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal proficiency.

The *2021 Edition of Best Law Firms* ranks law firms in 75 national practice areas and 127 metropolitan-based practice areas. Receiving a tier designation reflects the high level of respect a firm has earned among other leading lawyers and clients in the same communities and practice areas - recognizing their services, professionalism and integrity.


Gallivan White Boyd received the following Tier 1 rankings in the *2021 U.S. News & World Report Best Lawyers® - Best Law Firms*:

Metropolitan Tier 1

Columbia

- Bet-the-Company Litigation
- Commercial Litigation
- Insurance Law
- Litigation – Construction
- Litigation – Insurance
- Mass Tort Litigation / Class Actions – Defendants
- Personal Injury Litigation – Defendants
- Product Liability Litigation – Defendants
- Workers’ Compensation Law – Employers

Greenville

- Commercial Litigation
- Insurance Law
- Mass Tort Litigation / Class Actions – Defendants
- Mediation
- Personal Injury Litigation – Defendants
- Product Liability Litigation – Defendants
- Professional Malpractice Law – Defendants
- Workers’ Compensation Law – Employers 



DRI HAPPENINGS

by David A. Anderson, DRI State Representative for South Carolina

As many of you know DRI is the Leading Organization of Civil Defense Attorneys and In-house Counsel. Membership provides access to resources and tools for attorneys who strive to provide high-quality, balanced and excellent service to our clients and corporations. DRI has the specialized relationships, resources, and programs to help expand your network, grow your career, and build your business. We are not just a part of your career; we're a partner in your career. As your State DRI Representative I urge you to renew your existing membership or sign up to be a part of this exciting organization.

- DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation.
- Our network consists of over 20,000 like-minded defense practitioners and more.
- DRI is host to 29 substantive committees and SLGs whose focus is to develop ongoing and critical dialogue about areas of practice.
- DRI provides access to resources and tools to grow your practice – members can search a database of more than 65,000 experts, attend renowned CLE seminars, conferences and webcasts.

Recent Virtual Annual Meeting

For those who may have missed out, DRI's national elections were the last week of October during the DRI Virtual Annual Meeting. The following results were announced Friday, October 23. **Emily G. Coughlin** of Coughlin Betke LLP in Boston, Massachusetts, is now DRI President, taking the reins from **Philip L. Willman** of Brown & James in Saint Louis, Missouri. Phil will continue to serve as DRI Immediate Past President. **Douglas K. Burrell** of Drew Eckl & Farnham LLP, in Atlanta, Georgia, is now DRI President-Elect. **Lana Alcorn Olson** of Lightfoot Franklin & White LLC, Birmingham, Alabama, rises to the office of DRI First Vice President.

Also joining the DRI presidential track is **Patrick J. Sweeney** of Sweeney & Sheehan PC in Philadelphia, Pennsylvania, who was elected DRI Second Vice President by the DRI Board of Directors. The board selected **Anne M. Talcott** of Schwabe Williamson & Wyatt PC in Portland, Oregon, to serve as DRI Secretary-Treasurer. The board also elected four new national directors: **Matthew S. Heflfinger** of Heyl Royster Voelker & Allen PC in Peoria, Illinois; **Anthony J. Sbarra, Jr.**, of Hermes Netburn O'Connor & Spearing PC in Boston, Massachusetts; **Carmen R. Toledo** of King & Spalding LLP in Atlanta, Georgia; and **Sara A. Turner** of Baker Donelson Bearman Caldwell & Berkowitz PC in Birmingham, Alabama.

**DRI
UPDATE
(CONT.)**

The new national directors join the four new regional directors who were elected earlier this year. Allen M. Estes of Balch & Bingham LLP in Birmingham, Alabama, is the new Southeast Regional Director; Lori K. O'Tool of Preg O'Donnell & Gillett PLLC in Seattle, Washington, is the new Northwest Regional Director; Laura Emmett of Strigberger Brown Armstrong LLP in London, Ontario, is the new Canada Regional Director; and Jill Cranston Rice of Dinsmore & Shohl LLP in Morgantown, West Virginia, is the new Central Regional Director. Congratulations to all of the new office holders! 🎉