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2021 Annual Meeting The Sanctuary at Kiawah Island Golf Resort



2021 ANNUAL MEETING: NOVEMBER 18-21, 2021



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PRESIDENT'S MESSAGE



President Sarah Elizabeth Butler

Dear Friends,

I took this photo early one morning as I was racing back home from dropping one of our kids at the bus stop. I saw activity on the dock out of the corner of my eye and I heard the boat's engine come to life as it prepared for a day of work at sea. It was a picture-perfect morning (pun intended), but my first thought was "How beautiful, but I don't have time to stop for this." My mind was, of course, filled with all of the things that I needed to accomplish that day and I was focused on getting to work. I am grateful that I gave that decision a second thought and quickly pulled my car in near the docks to watch the boat depart. I drank my coffee and watched the shrimpers load their gear, check their lines and pull away. I thought about what their day on the boat would be like. I took in the deep green marsh and the life in the creek. I took a deep breath and I felt grateful. In recent times, we have endured significant societal stress. Our profession as a whole, in my opinion, is always profoundly stress filled. We simply can't always bear the weight of it all. Everyone needs time to breathe. In coming weeks, try to take a moment to enjoy what's around you and stop the worrying for a bit. Moreover, let's offer each other actual permission to do that. Let's acknowledge to our friends, our family, our staff and our colleagues that things can be tough and that we all need a break. Be intentional in your efforts to be grateful and to be kind. Let's extend to one another grace, support, friendship and community. Take a time out and enjoy the blessings of your surroundings and time with your loved ones. You know as well as I do, you won't regret a moment of it.



Whenever I feel particularly overwhelmed by my seemingly never-ending to do lists, Drew senses my anxiety before I do and he always calms me down by telling me the same thing - "You're doing great." I've learned to embrace his response because, you know what, I am doing great. We all are. Despite deadlines, demands, stress, the pandemic, sorrows and injustices and all of the things that threaten to overwhelm us, there are always things that are going well today. We can't remove stress from our lives entirely, but we can choose not to let it run it. We can try to focus on the

**PRESIDENT'S
MESSAGE
(CONT.)**

good. We can offer one another encouragement. As Ferris Bueller says, “Life moves pretty fast. If you don’t stop and look around once in a while, you could miss it.” So, stop the car, breathe and be grateful.

There is so much for which I am grateful related to the SCDTAA and I want to take a moment to sincerely thank everyone who has put in so much effort to making this a terrific year. We have had successful seminars, a fantastic Summer Meeting at The Omni Grove Park and made meaningful charitable contributions. We have been blessed with terrific presenters and incredibly supportive sponsors. We have more seminars on the horizon and, of course, we are all looking forward to the Annual Meeting at The Sanctuary. Thank you to those that put in the hard work when it comes to sponsorship, membership, seminar and meeting planning and execution. Thank you to the editors of *The DefenseLine*. Thanks to the Diversity & Inclusion and Women in Law committees. I appreciate those who planned the golf tournament and the construction law seminar as I write this letter. My thanks to the Past Presidents’ Committee, to the past presidents who came to the Summer Meeting, and to those who have offered their support and encouragement this year. Thank you to the officers – Johnston, Graham, Mark and Giles. I am indebted to my amazing staff and colleagues at CSKL, my friends and my family for their enduring support. Last but not never, ever least, thank you Aimee. You’ve all heard me say it a hundred times, but it is true, none of our successes are possible without Aimee’s hard work, devotion and friendship to the SCDTAA.

Thank you also for the hospitality that other organizations

have extended this year. There are many events outside of the SCDTAA that other officers and I attend over the course of the year. Several of us attended the South Carolina Bar Convention. We have attended DRI regional events. Johnston and I have been welcomed at other state defense organizations’ annual meetings; Georgia (GDLA), North Carolina (NCADA) and Virginia (VADA). I was honored to attend the South Carolina Association for Justice Annual Meeting. October brings the DRI Annual Meeting. At the SCDTAA Annual Meeting in November, we will be welcoming officers from the SC Bar, SCAJ, DRI, GDLA, NCADA and VADA. Please take time to get to know these fantastic folks. It has been, and will continue to be, a busy year but I am humbled and so immensely grateful for the opportunity to serve you as President of the SCDTAA.

Let me wrap this up by saying that I truly hope to see many of you at the Annual Meeting. Kiawah Island is indeed an idyllic place to enjoy the blessings of our surroundings; to take time to breathe and reflect; to place our worries to the side for a time; to offer to one another kindness and encouragement. We could all use support and grace right about now, and I can’t think of a better setting in which to enjoy time with all of you!

Live today with no regrets ~

Sarah



Your President,

Sarah Elizabeth Butler 

EDITORS' NOTE



James B. Robey III



C. Daniel Atkinson



J. Alexander Joyner


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Editors' Note

by James B. Robey III, C. Daniel Atkinson and J. Alexander Joyner

As 2021 comes to a close, the editorial staff of *The DefenseLine* is grateful for another solid year. The two issues of the DefenseLine published this year have included interesting and new content that came directly from the membership. We would like to emphasize that the contributions of many people allow for the publication of *The DefenseLine*. Without these contributions, *The DefenseLine*, as we know it, would not be possible.

This edition of *The DefenseLine* is full of relevant content for everyone. We have articles on *Tyger-River*, construction repair estimates, and an article from ABS on construction vibration claims. Additionally, we have a judicial spotlight featuring Judge Brian Gibbons and an adversary profile of Bert “Chip” Utsey. As always, we have case notes from Helen Hiser and the Wilkes Law Firm, firm announcements, and updates on various SCDTAA meetings and events.

Once again, the editorial staff is very thankful for the memberships' various contributions to *The DefenseLine* this year. As always, please keep *The DefenseLine* in mind as we close out the year and send us any content or suggestions you may have. We hope you thoroughly enjoy this issue and thank you for reading! 

Construction Vibration Claims

By Al Schweickhardt, PE SE and R. “Bobby” Funcik, PE



Al Schweickhardt



R. “Bobby” Funcik

Construction vibration claims accompany many construction projects. When building, bridge or road construction occurs near existing occupied buildings, there is a good chance of a vibration claim. It is almost a certainty that the nearby building occupants will sense or feel the vibrations from pile driving, vibratory compaction, demolition, or some sort of heavy construction activity. When the occupants sense the vibrations, it is human nature to take a close look at their property and look for consequential damage. If the vibrations can shake their China Curio cabinet, or wake them from a sleep, it logically follows that the vibrations are causing some sort of property damage. Damage claims against the contractor often follow owners’ inspections after they sense construction vibrations. Although heavy construction vibrations can damage susceptible existing neighboring properties when the construction is in very close proximity to the structure, owners of neighboring properties often incorrectly attribute existing damage to construction vibrations. Given proper planning, contractors can protect themselves from damage claims using the following procedure

1. Pre-construction survey
2. Vibration monitoring during construction
3. Post-construction survey
4. Post-construction analysis

Each of these components will be discussed in more detail below.

1. Pre-Construction Survey

The best approach to preventing or disputing vibration claims is a detailed preconstruction survey with a detailed plan to monitor construction vibrations. The contractor is fortunate if a detailed pre-construction survey/inspection was performed. Some local, state, or federal regulations require a preconstruction survey. However, it is unfortunate if the preconstruction survey was not detailed or sloppy. Some examples are a causally performed video survey from a distance that does not pick up on the details of the building. Similarly, a collection of overview photographs without detailed photographs and a photo log are not usually helpful. It takes time and effort to perform an adequately detailed, photographic preconstruction survey. It often

requires man-lifts or other equipment for access, and the inspector should attempt to gain access to the interior of the nearby buildings. If noticeable cracks are documented, it is prudent to install crack monitors, which are one of the simplest, cost-effective, and most useful methods of determining whether a structure moved regardless of the levels of vibrations recorded. Preconstruction surveys are often procured via bid or solicitation, and the lowest bid often produces a substandard survey. Therefore, care should be taking in selecting and experienced and qualified firm to perform the survey.

2. Vibration Monitoring

What are vibrations? Typically, ground vibrations are measured as peak particle velocity (PPV), which is often reported in units of inches per second (in/s). PPV below certain thresholds are generally accepted to not result in damage to structures. The PPV required to cause damage (threshold) is dependent on many factors, including:

- Vibration frequency
- Duration of vibration event
- Delay between events
- Natural frequency of the structure
- Materials and structural systems utilized in the structure
- Soil properties
- Distance from the vibration source to the affected buildings

Ground vibrations resulting from construction are measured

and recorded using vibration monitors/seismographs. A detailed plan for monitoring vibrations should be developed. This requires more than just random placement of seismographs on the ground. Training and experience of monitoring personnel is important. There are industry standards for the calibration and field use of seismographs that must be followed.

Vibration monitors/seismographs consist of three components; a triaxial geophone, the seismograph that accepts the geophone signal and records the data, and the report and analysis software that transfers the data from the seismograph to a PC or other digital device. At least two properly installed seismographs are required to develop a ground attenuation model. The seismograph should be coupled to the ground or the structure. Normal or background vibrations at the site should be recorded prior to the commencement of the construction activity. It is common for vibrations from traffic near the building or occupant activity to produce vibration intensities greater than those from construction activity. A detailed construction log should be kept correlating the measured vibrations with a specific activity. Sometimes false vibration data can be recorded when a seismograph is inadvertently disturbed, such as being kicked or moved. This data is important for the analysis should a vibration damage claim arise.

While seismographs typically record the ground vibrations, the buildings movements or response to the vibrations are usually recorded with accelerometers. Though not commonly performed, accelerometers can be installed at

several locations on a historically sensitive structure to continuously measure building movement and to correlate any ground vibrations resulting from the construction to actual building movement. On a recent study it was found that the movement of a building during high winds was greater than the movement from nearby pile driving that produced vibrations and complaints by the building occupants.

Many vibration claims occur without a preconstruction survey and no vibration monitoring. Although more difficult to perform a quantitative engineering analysis of a vibration claim without the detailed preconstruction survey and vibration monitoring, there are still some methods that can be employed after the fact. There are also qualitative approaches that can be performed in conjunction with the analysis.

3. Post-Construction Survey

What are the typical claimed damages? If damages result from vibrations, they are typically first manifested as cosmetic cracks in finish materials such as drywall, plaster, brick veneer, or stucco. Many studies have investigated the relationship of the magnitude of ground vibrations and damages to buildings. Structures vary in their susceptibility to vibration induced damages depending on their construction. For example, a historic structure constructed on shallow foundations is typically more susceptible to damages than a modern structure constructed on a deep foundation system. One commonly referenced vibration criterion is the United States Bureau of Mines Report of Investigations 8507.¹ A review of literature by Zekkos et al.

indicates that commonly referenced resources providing thresholds for damage resulting from ground vibrations predict PPVs under 2.0 in/s will not cause damage to well-engineered, reinforced structures.² This is particularly true for transient or impact vibration including pile driving.³ The research and studies have found that people can sense vibrations, and find them unpleasant, at much lower intensities than levels considered damaging to building materials. Disturbances due to pile driving are often compounded by the noise associated with the process⁴. “Such sensitivity to vibrations causes a concern for the structural damage potential even at the extremely low levels of vibration that are a recognized nuisance to people”⁵.

Following the completion of a construction project, a post-construction survey may be required if high vibration levels are recorded or if a claim is brought forth by a neighboring property owner. Structural damage can almost always be immediately ruled out. Many times, other causes of the cosmetic damage or perceived damage can be determined. For example, cracks in patio or driveway concrete slabs-on-grade are observed where they naturally occur due to stress concentrations such as inside corners or where crack control joints are omitted or widely spaced. Cracks in bricks are observed where they naturally occur at the ends of a garage lintel or at changes in brick support. Gypsum wallboard cracks are observed at ends of headers over stairs or where floor deflections are observed due to settlement or sag.

A site visit is required to evaluate a claim. Ideally, any cracks or damages would be compared to the pre-construction

survey and any dispute could be easily settled based on a comparison of before and after observations. Even if a pre-construction survey was not available, there is often useful information to be acquired through a site visit. An interview with the claimant provides valuable information. It is helpful to have the claimant give you a tour of the reported damage. The approximate age of the structure and type of building materials are important factors in the analysis of the damage as historic materials are typically more sensitive to vibration-related damage. Sometimes, assessment of the reported damage is straightforward. For example, finding paint inside the surfaces of a brick crack when the last time the brick was painted predates the construction activity by several years. Lighting the gypsum wallboard crack from a particular angle, such as from the camera's flash, reveals definitive evidence of previous repairs. Sometimes even vegetation can be seen growing in exterior cracks. A plan or sketch of the floor plans and exterior elevations are a good idea to develop patterns of damage. It is important to perform the site visit as quickly as possible after a claim is reported to evaluate the damage.


4. Post-Construction Analysis

Google earth or similar should be used to determine the distances and geometry of the construction activity and the subject structure. It can often be shown that the damaged conditions are located the furthest distance from the vibration source and similar construction materials are undamaged closer to the vibration source. If possible, the type and model of the equipment that is the reported source of the vibrations should be obtained from the contractor. It may be possible to find reported data on the frequency

and intensity of the vibrations from the equipment. Or, using the operating frequency and other ratings of the equipment, historic or research data may be able to be used to estimate the frequency and intensity of the vibrations. Then, established vibration attenuation formulas can be used to calculate the expected vibration intensity at the structure. If the calculated intensity is less than established reference levels, it can be shown that the reported damage was not caused by the construction activity. If necessary, actual construction activity using the same or similar equipment can be performed while being measured with seismographs to determine viable site-specific vibration properties and attenuation data for engineering analysis. In addition, there are engineering analyses that can be performed that convert the vibration levels into estimated building displacement for comparison with structural displacements that can occur due to normal loadings during a structure's life.

Summary

The analysis of construction vibration claims has the most veracity when performed using a detailed preconstruction survey and vibration data acquired using the proper equipment, following a detailed plan, by trained and experienced monitoring personnel. Such data will typically allow a robust engineering analysis that will provide evidence the vibrations were much less than intensity levels that cause even cosmetic damage. However, the analysis of possible construction vibration damage claims can still be performed when lacking that data. Detailed site observations, mapping, developing patterns of damaged materials, research of the source of vibrations, and engineering analysis can still provide

sufficient evidence to show that the damaged conditions were not caused by the construction activity. 

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APPLIED
BUILDING
SCIENCES

Endnotes

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- ² Zekkos, A.A., Woods, R.D., and Grizi, A (2013). *Effect of Pile-Driving Induced Vibrations on Nearby Structures and Other Assets* (Michigan DOT ORBP Number OR10-046). Department of Civil & Environmental Engineering, University of Michigan, Ann Arbor, MI.
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Plaintiffs' Cost Of Repair Estimates Construction Litigation's Seafood Stew

“It’s not old fish – It’s new stew”

By F. Heyward Grimball



F. Heyward Grimball

I was watching the Big Short recently, and Anthony Bourdain explained a CDO (collateralized debt obligation) by analogy to a “crafty and morally onerous” Chef’s seafood stew. The seafood stew is a very useful, though murky tool for the “crafty and morally onerous”.

Chef has three day old fish he can’t put on the menu anymore? Throw it in the Seafood Stew! Random quantities of fish or vegetables that aren’t enough to sell alone? Throw them in the Seafood Stew! Fry chef’s not showing up for work? Throw his fish in the Seafood Stew!

It struck me that the Plaintiffs’ cost of repair estimate in a Construction Defect case is a similarly useful tool for the “crafty and morally onerous”. (This is a compliment for the Plaintiffs’ Attorney/Expert -right?) For the sake of those many readers of *The DefenseLine* who are far smarter than I and have managed to avoid construction litigation for most of their careers. Here is a

brief background on the mechanics of the Plaintiffs case:

Unlike a personal injury case, Plaintiffs’ counsel does not usually know all of the issues that he will be raising in a new construction defect lawsuit when the Plaintiff first signs his retainer. The first step for an experienced Plaintiffs Construction Defect Attorney is to hire a forensic expert, typically an Engineer or Architect, to conduct an inspection of the subject property and usually perform some type of destructive testing. A ‘good’ Plaintiff expert will always find something that he contends is a violation of the building code. As an example, I recently deposed a popular Plaintiffs expert who testified that he has inspected over a thousand roofs in his career and that in his opinion every single roof he has inspected was improperly fastened. Every single one. I’m sure all of the defense attorneys reading this would agree the problem was not the roofs, but rather the inspector.

The forensic expert will then issue a report outlining various

alleged construction defects and an alleged scope of repair that is necessary to remediate the alleged defects. It is rare for the scope of repair to have specific quantities, installation instructions, or really any details. Instead, we typically get things like “due to the improper fastening of the roof shingles a complete removal and reinstallation is required” or “Remove all siding and replace”. As is often the case in construction, the means and methods of the alleged repair work are left to the contractor providing the cost of repair estimate.

Cost of Repair Estimates:

It is rare for the cost of repair estimate to be produced concurrently with the Forensic Report. Because the cost of repair expert needs the forensic report in order to prepare his estimate, it inherently provides a second bite at the apple with regard to the establishment of the Plaintiffs’ case. Typically, Plaintiffs are liberal in what they allege is wrong, liberal in what they contend is necessary to repair the alleged defects, and liberal in what they contend it will cost to do so. This is how it often comes to pass that a case, which was filed because the homeowner was mad about a couple of window leaks, ends in the Plaintiffs’ attorney contending that all of the exterior claddings need to be removed and replaced at a cost that is 60% of the value of the home. In this article, we will review some of the utility of the cost of repair estimate to the Plaintiffs case beyond just a damages number and some thoughts on ways to deal with them.

Selling three day old Halibut:

General Contractors almost always are who Plaintiffs’ Counsel hire to serve as cost of repair experts – they are,

in most cases, qualified to opine that something is or is not a construction defect and, especially in single family residence cases, qualified to testify on what is necessary to repair it.

So if Plaintiffs’ Forensic expert whiffs on a position in his report or deposition – if the “Crafty and Morally Onerous Chef” can’t sell all of the Halibut – he doesn’t throw it away. He makes Seafood Stew. So for instance, I had an HVAC case where the Plaintiffs contended that the load calculations were incorrect and that the HVAC units installed were too small to adequately condition the home. My client, the HVAC installer had run the calculations and installed the units. We deposed the Mechanical Engineer Plaintiffs’ Counsel hired and, without getting too much into the weeds, his deposition concluded with him agreeing that he had no criticisms of my client. Rather than settling the case with me for nuisance value, Plaintiffs’ counsel merely had their HVAC cost of repair expert perform his own observations of the units as part of preparing his estimate. He identified several new issues which he contended were defects and included them in his estimate. The old fish became new stew.

It tastes good, but what’s in it?

My least favorite part of Seafood Stew is looking down at my spoon and wondering what on earth I am eating. Cost of repair experts have a myriad of ways to hide the contents of their soup. They range from a complete lack of detail to an overwhelming amount of detail. Perhaps my favorite example of the former was an estimate that I received from one a salty old contractor who has been involved in construction litigation for decades. His estimate contained no quantities, no unit prices, no take offs, no

quotes from subcontractors, and no math beyond the simple addition to get the total. Instead it said things like:

Pre-Construction Services	§8,000.00
General Conditions	§42,000.00
Building Permits	§3,600.00
Supplies Miscellaneous	§2,000.00
Labor	§4,000.00
Demolition	§14,000.00
Substrate repair	§15,000.00
Remove & Replace Windows	§42,000.00
Remove & replace Roof-Shingles	§11,500.00
Remove and replace metal roof	§4,700.00
Replace exterior	§219,620.00
Reframe porches	§24,000.00
Contingency	§20,000.00
Special Inspections	§5,000.00
GC Fee	§81,884.00
Landscaping	§10,000.00
Total	§507,304.00

I deposed the fellow for several hours. I did my best to understand how he came up with the numbers and which of them did or did not relate to my client's work. I still can't tell you how he got to these numbers. I can tell you that I've never lost control of a deposition more thoroughly – most of his 'testimony' was telling tall tales about other attorneys that,

mercifully, the court-reporter chose to leave off the record. To make things all the more amusing, after the deposition he called me on my cell multiple times threatening to have the sheriffs arrest me because the carrier was slower than he wanted in paying his deposition fee and it was sent to the address on his invoice, which was no longer valid...Contractors.

On the other end of the spectrum are the estimates where the contractor provides quantities for every window, every door, every linear foot of caulk, and every other minute detail. The details become so overwhelming that it is hard to say what costs relate to what. This can be a problem for the Plaintiffs and the Defense. By way of an example, I once had a case where Plaintiffs' counsel used an estimate like this – the estimate was so hard to follow that his initial demand (essentially his assertion as to what my topline exposure was) was over \$1 Million less than my calculation of the costs potentially relating to my client's work. It seems like both of us probably got our (voodoo) math wrong to a degree, but under such circumstances is it possible to be right?

In both scenarios (and those in between), there is the wonderful potential for the cost of repair expert to fudge quantities and thereby inflate his estimate. A great example of this is 'waste'. Contractors often will claim that a certain percentage of shingles or siding will be unusable as the material is cut to the appropriate size for installation. I once had a case with 10 condo buildings – Plaintiffs expert claimed there was a 20% waste factor and priced out the removal and replacement of siding for, basically, 12 buildings. Of course, he could not quite explain how he had a 20% waste factor on the removal side of the task.

It's not just white fish – it's a medley!

Often times our favorite “crafty and morally onerous” Chef really only has one fish that he can't sell – “I don't know why maybe it just came out that Halibut has the intelligence of a dolphin”. But no one wants soup with just Halibut in it, so they take tidbits of this and that and voila: ‘seafood stew’. Similarly, often times Plaintiffs’ counsel really only has a window case or a siding case, but they want a complete removal and reinstallation of the exterior cladding in order to maximize the alleged Cost of Repair. So the Cost of Repair expert prices out the removal and reinstallation of everything, even though the forensic expert does not call for it because “I'm not going to warrant someone else's (defective) work”; or “the Town won't let me reuse the windows and I have to remove them to fix the siding”; or, my favorite, “it's actually cheaper just to tear it all off than to try to save part of it”. These positions can be difficult to deal with in deposition because they amount to little more than ‘this is what it will take because I say this is what it will take’.

Do you really want to buy Seafood Stew?

For Defense Counsel, this can present a real challenge. There is really only one way to figure out what's in Seafood Stew: drain the liquid and put the contents under a microscope. Similarly, with cost of repair experts, you can find yourself wondering why they are claiming they need to change the oil on the rental fork lift or if it is really possible they could need 1 million nails to remove 10,000 square feet of siding? Diving into this level of detail is rarely worthwhile or productive – trust me; I've tried, and five years later the contractor is still making fun of me for asking him about

the nails. It is useful to get the Cost of Repair expert on record with regard to what costs are related to your client's work, so that you have ammunition to use against Plaintiffs’ counsel if they come up with outlandish calculations of the damages related to your client's scope. Contractors tend to be more fly by the seat of their pants in a deposition, so you can probably get them telling less than the full truth about something, but they also tend to roll with the punches and admit their mistakes in a way that takes the sting out of it.

Instead, the simpler and generally more productive course of action is to reject the Seafood Stew and start focusing on the Cost of Repair expert's “real work”. Is the expert licensed to do this work? Does he work in this area? Has he ever done this kind of repair before? Does he actually know what he is going to do to fix this building? If the homeowner decides to go forward with this repair, when can he schedule it to start? If subcontractors were used to generate the estimate, are they licensed in this area, can they do the work? Has he ever actually charged someone this much? Has someone ever actually paid him this much for this type of work?

Remember, the Cost of Repair expert wants to talk about his estimate. He's prepared to talk about his estimate. It's a lot harder for him to anticipate the ‘real world’ questions.

Sorry, if I've put you off Seafood Stew for a while. 🍴

Should the *Tyger River* Be Shifting?

By J. Adam Ribock and George C. James, IIIⁱ



J. Adam Ribock



George C. James, III

Nothing seems to frustrate insurance carriers and defense attorneys in South Carolina more than a *Tyger River*¹ or *Nichols*² demand with unreasonable, and oftentimes, ridiculous terms. The demands can sometimes read as if they have been written by Dr. Evil from the *Austin Powers* movies.³ However, the use of this type of demand as leverage for potential bad faith lawsuits against insurance companies has “become fashionable in recent years” in South Carolina as noted by our Supreme Court earlier this year.⁴

South Carolina does not have a bright-line rule for time-limit demands, and there is no set time period in which insurance carriers have to respond—the standard is only whether the carrier acted reasonably.⁵ What is or is not reasonable in such demands has been the subject of numerous lawsuits and the start of many arguments between the Plaintiffs’ and Defense bar.

The South Carolina Court of Appeals is currently considering a case involving a “failure” to meet such a demand and Georgia has recently enacted a statute providing guidance for issuing time-limit demands. Should South Carolina be the next state to address the issue? Hopefully, we will see

some changes to the *Tyger River* doctrine to provide more clarity for everyone’s sake.

The so-called “*Tyger River* doctrine” was first enunciated in *Tyger River Pine Co. v. Maryland Cas. Co.*, 170 S.C. 286, 170 S.E. 346 (1933). In *Tyger River*, an employee of *Tyger River Pine Company* was injured. The applicable insurance coverage only had a \$5,000.00 limit. The insurer provided a defense and had exclusive control over the defense including the exclusive right to settle. The employee subsequently won a \$7,000.00 verdict and offered to settle for \$5,000.00 but the insurer refused. The South Carolina Supreme Court held that the insurer was bound to “sacrifice its interest in favor of those of the insured.” The South Carolina Supreme Court ruled the insurer was liable for the difference between the proposed settlement amount and the verdict, plus interest and costs. The Court concluded an insurer against liability for accidents which assumes the duty for defending a claims owes the duty of settling the claim if that is the reasonable thing to do.

There is no guidance on what terms are or are not allowed in these demands and some plaintiff lawyers are notorious for *Tyger River* demands replete with special stipulations, sometimes contradicting footnotes, and overly detailed

instructions that only provide a short time to respond. As such, a *Tyger River* demand is often calculated to put pressure on insurance carriers (especially those with minimum or nominal limits in comparison to the injuries) to settle under the threat of a bad faith refusal to settle.⁶

Recognizing increased litigation over issues with recent trends used by plaintiff attorneys, the Georgia legislature recently made significant revisions to O.C.G.A. 9-11-67.1, the Georgia statute governing pre-suit settlement demands for injuries arising out of the use a motor vehicle.

In 2013, O.C.G.A 9-11-67.1 was enacted to outline procedures and requirements for these pre-suit settlement demands, and how those demands could be accepted. Subsection (a) of O.C.G.A. 9-11-67.1 included important limitations on pre-suit demands, including five material terms that are required to be included in all pre-suit settlement offers: 1) the time period within which the offer must be accepted, which cannot be less than 30 days from the receipt of the offer; 2) the amount of monetary payment; 3) the party or parties that will be released; 4) the type of release, if any, that will be provided to each releasee; and 5) the claims to be released.

The statute's intent was to provide clarity for insurers in responding to pre-suit time-limit demands. However, over time, plaintiff attorneys successfully used complicated demands with various conditions on insurance carriers to make it more difficult for them to meet all terms of the demand.⁷ The statute did not expressly prohibit additional terms to be added to the material terms listed in subsection (a), and courts held if those additional terms were not

accepted, there was no settlement. The Georgia Supreme Court held "timely receipt of the settlement funds" as a condition of settlement was proper, even though it was not required by the statute. *Grange Mutual Cas. Co. v. Woodard*, 300 Ga. 848 (2017).

An amended statute was recently signed into Georgia law and applies to causes of action arising on or after July 1, 2021.⁸ The amended statute limits the terms that can be included in pre-suit demands to those terms in subsection (a) and those "shall be the only terms" included in an offer to settle under the code section. The amended statute also states if a release is not provided by the claimant with the demand, the insurers "providing of a proposed release shall not be deemed a counteroffer."

O.C.G.A. 9-11-67.1 also requires the demands include medical or other records in the claimant's possession so the claim can be evaluated and also provides that demands can include a term requiring a statement under oath regarding whether all insurance coverage has been disclosed and also can require payment within a specified period of time, but the date shall not be less than 40 days from receipt of the offer.

Despite O.C.G.A. 9-11-67.1's seemingly narrow application to pre-suit demands involving the use of a motor vehicle, Georgia has case law addressing procedures for time-limit demands for tort claims not involving the use of a motor vehicle, and in *Baker v. Huff*, 323 Ga. App. 357 (2013), the Georgia Court of Appeals did not condone a 10-day settlement demand that did not provide material information about the claim necessary for the insurer to evaluate it.⁹

Returning to South Carolina, a carrier's duty to protect the

interests of its insured does not require an insurance carrier to immediately accede to a demand for settlement before it has had a reasonable time to conduct an investigation. The linchpin of the insurer’s liability is its unreasonable delay in tendering its policy limits. *Columbia Ins. Co. v. Reynolds*, C.A. No. 2:18-2975 RMG (D.S.C. Feb. 3, 2020); citing *Noonan v. Vermont Mut. Ins. Co.*, 761 F. Supp 2d 1330, 1336 (M.D. Fla. 2010). Thus, “an insurer, acting with diligence and due regard for its insured, is allowed a reasonable time to investigate a claim; no obligation exists to accept a settlement offer...without time for investigation.” *Johnson v. GEICO*, 318 Fed. Appx. 84 7, at * 3 (11th Cir. 2009).

In *Columbia Ins. Co. v. Reynolds*, the Court held that no reasonable jury could find CIC’s failure to meet the ten business day deadline set by Plaintiff’s counsel before the carrier had conducted a basic investigation, which included a review of the relevant medical records, constituted a bad faith refusal to settle. This is despite the fact the carrier had been alerted that Plaintiff’s injuries would exceed policy limits, and the insurer was under no duty to accept undocumented information about those injuries.

Because “reasonable” varies on an individual case’s facts, is it time for South Carolina to “shift” the *Tyger River* and provide attorneys and carriers with some direction on how to navigate the same? Some momentum could potentially be in the works.

The South Carolina Court of Appeals is considering a case that illustrates some of issues that are the result of not having a statute or clear case law governing the terms or contents of time-limit demands in *Allstate Fire and Casualty Insurance*

Company v. Pamela Goodwin, Appellate Case No. 2018-001108, Civil Action No. 2015-CP-16-0815.¹⁰


The *Goodwin* case arises from an accident that occurred on August 20, 2014. By letter dated December 12, 2014, and received by Allstate on December 17, 2014, Goodwin made a time-sensitive demand for Allstate’s policy limits (\$50,000.00) with specific requests as to how payment should be made to resolve her bodily injury claim. The deadline to respond to the demand was Saturday December 27, 2014.

On December 23, 2014, Allstate sent a check for the applicable bodily injury policy limits via overnight mail that was received prior to the deadline. However, Goodwin rejected Allstate’s payment as it did not comply with the specific payment terms in the demand letter and deemed it a counteroffer that was rejected. Goodwin filed suit against Allstate’s insured. In turn, Allstate filed a declaratory judgment action seeking a declaration that Allstate’s performance under the demand was valid and enforceable and filed a motion for summary judgment in line with this argument. In response, Goodwin argued Allstate’s payment of the policy limits by way of regular check as opposed to the requested cashier’s or certified check constituted a breach of a material term of the agreement to settle and amounted to a counteroffer.

The trial court granted summary judgment to Allstate and determined Allstate accepted the material terms of the time-sensitive demand and their payment constituted a valid and enforceable settlement. The trial court also noted there is no material difference between an insurance check that does not exceed \$50,000.00, and a certified or cashier’s check per South Carolina Rule of Professional Conduct 1.15, and

thus, the type of check was not an essential or material term of a settlement agreement.

The *Goodwin* case is just one of many examples that show the confusion caused when lawyers add seemingly immaterial terms in time-limit demands that may or may not be enforceable under South Carolina law. The *Tyger River* doctrine can be murky in this respect, and an attorney or insurance carrier certainly does not want to be the reason there is a “failure” to comply with a time-sensitive demand. Without guidance however, one can only wonder what is reasonable, and as the case law has shown, reasonable minds can differ.

The Court of Appeals has an opportunity in *Goodwin* to provide such guidance. We will have to wait for the ruling to see if the *Tyger River* is in fact shifting. Otherwise, time-limit demands in South Carolina with unreasonable terms may continue for the foreseeable future. 


Endnotes

- ¹ *Tyger River Pine Co. v. Maryland Cas. Co.*, 170 S.C. 286, 170 S.E. 346 (1933).
- ² *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983).
- ³ In *Fowler v. State Farm Mutual Automobile Insurance Co.*, 300 F. Supp. 3d 751 (D.S.C. 2017), the plaintiff’s attorney sent a demand letter to State Farm insisting the insurer pay its policy limits within a week, “at noon.” 300 F. Supp. 3d at 753. Despite State Farm’s “acceptance” of the demand, the plaintiff’s attorney deemed the response

a counteroffer and rejection, filed suit against the insured, negotiated with the insured—now its adverse party in a lawsuit—for a “confession of judgment of \$7 million” without State Farm’s involvement, took a purported assignment of the insured’s bad faith claim, and sued State Farm for bad faith. *Id.* After State Farm removed the case, the district court granted summary judgment, in part because, “Defendant’s response to the offer could not constitute bad faith as a matter of law.” 300 F. Supp. 3d at 753-54. The Fourth Circuit affirmed. 759 F. App’x 160 (4th Cir. 2019).

- ⁴ “The practice of assigning bad faith claims to leverage insurance companies to pay more than policy limits has apparently become fashionable in recent years.” *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, Op. No. 28034 2021 S.C. LEXIS 71, *20, 2021 WL 2448359 (S.C. Sup. Ct. Filed June 16, 2021) (Shearouse Adv. Sh. No. 20 at 43 fn. 8).
- ⁵ *Nichols.*, 279 S.C. at 339 (stating “an insurer’s *unreasonable* refusal to settle within policy limits subjects the insurer to tort liability” (citing *Tyger River Pine Co.*, 170 S.C. 286 at 290-91) (Emphasis Added)
- ⁶ However, as recognized by the South Carolina Supreme Court in *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, Op. No. 28034 2021 S.C. LEXIS 71, *20, 2021 WL 2448359 (S.C. Sup. Ct. Filed June 16, 2021) (Shearouse Adv. Sh. No. 20 at 43 fn. 8), the Court has never recognized the validity of any assignment of a bad faith claim.


- ⁷ Not meeting the demand would subject the insurer to potential extra-contractual exposure for bad faith/negligent failure to settle claims, as is argued in South Carolina.
- ⁸ The statute applies to offers made prior to the filing of a defendant’s answer. The statute previously only applied to demands that were made prior to the filing of a lawsuit, which resulted in some attorneys filing suit and then immediately serving a demand on the insurer, to avoid the requirements of the statute.
- ⁹ Georgia has a “Holt” demand, similar to South Carolina’s *Tyger River*. In responding to a time-limited settlement offer, an insurer must act reasonably, and is not required to accept an offer which, under all the circumstances, imposes an unreasonably short period of time to respond. *S. Gen. Ins. Co. v. Holt*, 262 Ga. 267, 416 S.E.2d 274 (1992).
- ¹⁰ The South Carolina Court of Appeals held oral arguments in Goodwin on February 1, 2021 so it is expected a decision is forthcoming.
- ⁱ Adam Ribock and George James are attorneys with McAngus Goudelock & Courie in Columbia. They both practice general liability defense.



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Fred W. Suggs III

2021 Annual Meeting

The Sanctuary at Kiawah Island Golf Resort

by Fred W. Suggs III



The SCDTAA is excited to return to the Sanctuary at Kiawah for its 2021 Annual Meeting, scheduled for November 18-21, 2021. As always, we have an exciting program planned for the attendants and guest members of the judiciary. Attendants will have an opportunity to earn 6 hours of CLE credits, including one hour of ethics, while hearing from a panel of our judiciary, Lana Olson, a marketing specialist, as well as Jim Blackburn, author of *Flame Out*, and several other exciting speakers.

In addition to a robust CLE program on Friday and Saturday, we will also hold social events for attendees and guests, including a President's Welcome Reception, a breakfast honoring our judiciary, our traditional Friday Night Banquet and Dance, as well as a lowcountry dinner on Saturday night. Extracurricular activities, including golf, tennis and fishing, will also be available. 🏏

SCDTAA COAT DRIVE

As cooler temperatures approach, **SCDTAA's Philanthropy/SOLACE Committee** wants to make sure that every child and adult in need of a warm coat is covered. **PLEASE BRING NEW OR GENTLY USED COATS TO ANNUAL MEETING** to help fellow South Carolinians stay warm and toasty this winter. Any and every size is needed. If you can't attend the meeting, but still wish to donate a coat please contact any SCDTAA board member to coordinate pickup.



Help SCDTAA make South Carolina a warmer place. SCDTAA's Philanthropy Committee is currently collecting new or gently used coats for distribution to charities located in the Lowcountry, Midlands and Upstate. Men's, women's and children's coats are all needed. Contributions can be brought to the Annual Meeting at the Sanctuary, or contact your SCDTAA Board Member for assistance.

2021 Summer Meeting Recap

By Geoffrey W. Gibbon



Geoffrey W. Gibbon

They say absence makes the heart grow fonder. I think the SCDTAA membership found that especially true over the past year and a half, especially in terms of the inability to conduct in person meetings. So it was with excitement that the SCDTAA made its triumphant return to the beautiful Omni Grove Park Inn for its 2021 Summer Meeting on July 22 – 24th. As is tradition, The Young Lawyers’ Division kicked off the meeting with a happy hour on Thursday evening. Thereafter, attendees enjoyed the Silent Auction and cocktail reception.

The meeting began Friday morning. President Sarah Wetmore Butler welcomed the attendees and oversaw the morning’s Membership Meeting. Thereafter we had the opportunity to introduce and thank our wonderful sponsors.

To get the substantive CLEs started, Henry Deneen of Murphy & Grantland presented an eye-opening and thoughtful session on emotional intelligence titled: Ethics: Transformation Through Looking in the Mirror: Tackling Blind Spots and the Amygdala Hijack. Following Mr. Deneen was an extremely informative session taking on reptile theory issues titled: Trial



Strategy – Fairness with the Rules of the Road. The presenters were former SCDTAA President Johnston Cox of Gallivan White & Boyd, Ron Diegel of Murphy & Grantland, and Nickisha Woodward of Turner Padget. Workers' compensation attorneys convened for a breakout session with Commissioners and a case law update. Following those sessions was a legislative update from SCDTAA Board Member and South Carolina Senator Shane Massey. To finish up the sessions on Friday, longtime SCDTAA sponsor, Applied Building Sciences and its engineers, Jason D. Gregorie and Al Schweickhardt, presented: While You Were Binge-Watching Baby Yoda: Construction Material Escalation During the Pandemic and Update on Recent Construction Failures. It was a very interesting presentation, and we very much appreciated their time and continued support of the SCDTAA.

Following the conclusion of the educational session on Friday, members got out and enjoyed great weather. Activities included golf, axe throwing, a guided electric bike tour, hiking, exploring the shops and restaurants of downtown Asheville, and swimming and lounging by the resort pool. Friday evening saw a return of Bluegrass, Blue Jeans and Barbeque Dinner.

The educational portion resumed Saturday morning and was kicked off by an entertaining and informative session: COVID and the Courts. The panelists were the Honorable Perry H. Gravely and the Honorable Grenville "Doc" Morgan, Jr. Moderating the panel was SCDTAA Board Member Geoff Gibbon of McAngus Goudelock and Courie. Immediately following was another interesting session by a fantastic sponsor, Exigent. Presenting for Exigent was toxicologist, Michael J. McCabe, Jr.

Ph.D., DAB. His presentation titled: Pick Your Poison. Fundamental Principles of Toxicology Applied to Alcohol Cases was exceptional. Continuing with the educational sessions were two breakout sessions. One was: 80,000 lbs. at 65 mph: Trending Issues in Trucking and Transportation presented by Megan Early-Soppa of Moseley Marcinak Law Group. The other breakout session was presented for our workers' compensation lawyers and consisted of a panel discussion on Workers' Compensation Subrogation and Liens, moderated by Vincent C. Northcutt of Lueder, Larkin & Hunter and Zach S. Brown of McAngus Goudelock and Courie. To conclude the meeting was a very informative session titled: GOOD Guys – Guys Overcoming Obstacles to Diversity. To present on this very important topic we were thrilled to have Sheila M. Willis of Fisher Phillips moderate along with panelists and former SCDTAA Presidents David Anderson of Richardson Plowden, John Wilkerson of Turner Padget and William Brown of Nelson Mullins.

Overall, the 2021 Summer Meeting was a success. It was great to get back together, in person, at the Grove Park Inn. We again want to thank all of our sponsors as well as our attendees for making the meeting possible. Also, a big shout out to Aimee Hiers for all her hard work in putting the meeting together. We look forward to seeing everyone at The Sanctuary at Kiawah for the Annual Meeting in November. 🏹

*Enjoy photos from the Summer Meeting
on the following pages...*

SCDTAA makes school supply donation to Mary E. Wright Elementary School



**SCDTAA
EVENTS
(cont.)**

**2021 Summer
Meeting**



**SCDTAA
EVENTS
(cont.)**

**2021 Summer
Meeting**



**SCDTAA
EVENTS
(cont.)**

**2021 Summer
Meeting**



**SCDTAA
EVENTS
(cont.)**

**2021 Summer
Meeting**



★ *Thanks to Our 2021 Summer Meeting Sponsors!* ★

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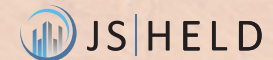
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2021 Golf Classic

By J. Alexander Joyner



J. Alexander Joyner



The Golf Classic returned this year to the Orangeburg Country Club on September 23, 2021. George James, Jud Wooddy, Michael Trask & Josh Rogers were the members of the winning team; congratulations! We would like to thank our tournament sponsor, Inquis, and the additional sponsors, Veritext, Stasmayer, SEA, JS Held, Murphy & Grantland, Gallivan White Boyd, Wall Templeton and Nelson Mullins. The weather was perfect, the course was fantastic, and everyone thoroughly enjoyed the day, happy to reunite after last year's tournament was cancelled due to the pandemic.



SCDTAA EVENTS (cont.)

2021 Golf Classic

The strong turnout included members from all corners of the state, and an even bigger turnout is expected next year. We look forward to seeing you at the 2022 Golf Classic! 🏌️



**SCDTAA
EVENTS
(cont.)**

**2021 Golf
Classic**



**SCDTAA
EVENTS
(cont.)**

**2021 Golf
Classic**



WELCOME TO THE SCDTAA GOLF CLASSIC



Legislative Update

by Jeffrey N. Thordahl, SCDTAA Lobbyist



Jeffrey N. Thordahl

As one would expect, the Legislative session this year was dominated by COVID-19 related issues as well as the adoption of the annual state budget. In addition, a couple bills of note were adopted this year and a couple others were held up but have a good chance to pass next year.

H. 3094 that enacts the “Open Carry With Training Act” passed at the end of the session and was signed into law. The bill allows holders of concealed weapons permits to carry openly and eliminates the necessity to conceal the weapon. Business owners and private employers may post signs prohibiting or allowing weapons on their premises. It remains unlawful to carry a weapon into numerous places, including correctional facilities, courthouses, daycare facilities, etc.

S. 631 enacts the “South Carolina Electronic Notary Public Act” and was signed into law by the Governor. It establishes procedures for registration as an electronic notary public and establishes fees and training requirements. Electronic online notary public applications will not be accepted for processing until the administrative rules are in effect and vendors of technology are approved by the Secretary of State.

H. 3696 (Reps. Lucas, G. M. Smith, Murphy, Simrill, Rutherford and others) would increase the number of circuit and family court judges in certain judicial circuits. The bill adds four circuit court seats and three additional family court seats. An additional circuit court seat is added



to the Second, Ninth, Fourteenth and Fifteenth Circuits. The bill was close to final adoption when the session ended with a pending procedural concurrence vote left in the House. It should be finally approved in January of next year and will go to the Governor for his signature.

S. 432 allows a liability insurer owing a duty to defend an insured, and that defends the insured against a claim, suit, or other action, a right of contribution for defense costs against any other liability insurer owing a duty to defend the insured against the same claim, suit, or other action, under certain circumstances. The bill received second reading in the Senate with a 40-4 vote but was held up on third reading by Senator Gerald Malloy.

The General Assembly's Judicial Elections for 2022 are tentatively scheduled for Wednesday February 2. The date will be confirmed when the General Assembly reconvenes in January and the public hearings/screenings are scheduled for the weeks of November 15 and November 29. The upcoming open Seat in the Fifth Judicial Circuit, Seat 2 (Judge Manning) has drawn the most interest where seven candidates have filed. The full list can be found here - <https://www.scstatehouse.gov/JudicialMeritPage/Media%20Release%20Announcing%20Judicial%20Candidates%202021.pdf>.

The General Assembly will meet in September and October to appropriate the \$2.5 billion in federal funds from the American Rescue Plan Act and the \$525 million from the Savannah River Site (SRS) lawsuit settlement. The Governor's AccelerateSC Committee met and made its recommendations to the Governor on how to allocate the funds. The Governor is now working on his recommendations to the General Assembly. Simultaneously

the House and Senate have special committees meeting to guide them on how to best use these funds.


The State remains in a solid financial position in light of the challenges posed by the impacts of COVID-19. State Comptroller General Richard Eckstrom recently announced the state had closed the books on the FY20-21 fiscal year and once again we will have a surplus in excess of \$1 billion. Eckstrom is recommending the General Assembly use these funds to address deficits in the state retirement system. For more information, [click here](#).

The General Assembly will also come back in session later this year to address the every 10-year redistricting requirement. The U.S. Census Bureau announced the resident population numbers and the States will use this data to re-draw the boundaries of their congressional and state legislative districts. In the current census, South Carolina's population grew by double-digit percentage points for the fifth decade in a row, but that wasn't enough for the state to add another U.S. House seat. South Carolina had 5,118,425 people as of April 1, 2020.

The 10.7% population increase makes South Carolina the 10th fastest-growing state as it rises above Alabama to become the 23rd most populous state in the U.S. The most concentrated growth was in Horry County, where the population shot up 30.4% to more than 350,000 residents. Further south on the coast, Berkeley County followed with a 29.2% increase. Another population boom occurred in York and Lancaster counties, just south of Charlotte. York County added 56,017 people, and Lancaster added 19,364 new residents. Greenville County remains the state's most populous, with more than half a million

people, followed by Richland County and Charleston County. Population declines occurred in some rural counties with the largest decreases in Allendale, Bamberg and Lee Counties.

The Senate has been holding Public Hearings throughout the state over the past few weeks. The House of Representatives is now doing the same to receive public input prior to redrawing the district lines.

Finally, the Fall begins the typical kickoff for elections in the following year. Beginning with filing for seats in March 2022, there will be elections for all Constitutional Statewide offices including the Governor/Lt Governor ticket and the Attorney General among the others as well as all House members. With the new redistricting plans in place, the House seats will be determined based on the new District lines. 

Judicial Profile – The Honorable Brian McDowell Gibbons

by Madison B. Suttie



Madison B. Suttie

Judge Brian McDowell Gibbons resides in Chester, SC and was born in 1966 in Orangeburg, SC. He is the youngest son of the late Beverly Williamson Gibbons and the late Mac Gibbons of Orangeburg.

Brian is a 1985 graduate of Wade Hampton Academy (Orangeburg Prep) and graduated with Honors from The Citadel in 1989. While at The Citadel, Brian played on the Rugby team, and was a member of the Inn of Court, Round Table, and South Carolina Student Legislature. Brian is a devoted alumnus of The Citadel, serving as Secretary/Treasurer and founding president of the Chester/Fairfield Citadel Club for the past 20+ years.

Brian received his law degree from the USC School of Law in 1992. After graduation from law school, Brian started his legal career with two fellow Citadel graduates, Milton Hamilton and Greg Delleney. Brian practiced law with Hamilton, Delleney & Gibbons until May of 2005 when he was elected to the Family Court Bench. Brian enjoyed a general practice of law with an emphasis on civil litigation, criminal defense, family law, and personal injury. He is the former city attorney for Chester, and town attorney for both Fort Lawn and Great Falls, SC. He is licensed to practice in all state courts as well as the US District Court and US Court of Appeals.



Brian was elected to the Circuit Court Bench in May of 2013 after a memorable eight years on the Family Court Bench.

Brian is past President of the Chester Rotary Club, Blackstock Bluegrass and the Chester YMCA board. He also served on the board of Richard Winn Academy in Winnsboro. Brian has served on the Diaconate of Chester Associate Reformed Presbyterian Church for 25 years and currently serves as an Elder in the church. Brian also enjoys serving his church as a youth group leader. Judge Gibbons serves as the Operations Director for the American Legion Palmetto Boys State program, a program he has served with in various capacities for almost 40 years. Brian also served on the South Carolina Trial Lawyers (SCAJ) Board of Governors and the SC Bar Young Lawyers Division for numerous years when he was in private practice.

Judge Gibbons is married to the former Lorena Crouch of Saluda, SC and they have three sons, Mason Bradley, Mitchell Banks, and Marshall Britt. He is a decent golfer and loves all kinds of music. He also plays the guitar and enjoys entertaining.

Q. What factors led you to a career in the law?

A. I didn't always dream of being a lawyer. I graduated from the Citadel in 1989 with a Bachelor of Science in Biology. That was where I met my wonderful wife Lorena. Up until I graduated, my plan was either to go on to medical school to become an orthopedic surgeon, or to dental school. At least that was the plan while Lorena and I were dating, and probably part of the reason why she

stuck with me. Instead, Lorena and I were married while I was enrolled as a student at the University of South Carolina School of Law. I credit the Palmetto Boys State program as the main reason why I chose to switch from a career in medicine to one in the law. I first attended the program in 1984 as a student delegate, or a "citizen", and enjoyed my experience and the people I met through the program so much that I have been involved in different capacities ever since. There are a lot of lawyers on staff and through talking with them and hearing about the work they did, I began to develop an interest in a career in the law. I also saw first-hand what my brother (who is now a Doctor) was going through at medical school while I was at The Citadel, and that convinced me to switch gears and sit for the LSAT and apply to law school.

Q. You were born and raised in Orangeburg, South Carolina. How did you find your way to Chester?

A. During law school I clerked for a defense law firm in Columbia and was running an errand at the House Judiciary Committee where I met Greg Delleney who was a legislator at the time. He saw my Citadel ring and invited me to interview with his law firm and that is how I ended up in Chester and I've been here ever since.

Q. What areas of law did you practice before joining the Bench?

A. When I first got started I basically handled whatever was thrown my way. I had what I like to call the 'Mount Rushmore of Law Practice.' Just like the four figures on Mount Rushmore, I practiced a little bit of everything in

four areas of law: Personal Injury, Criminal Law, Family Law, and Transactional Matters. Over the years I would spend more time in one area than the other, but overall my practice consisted of a little bit of everything. I was in practice for close to 13 years before I joined the bench in 2005, and from a judicial perspective now I'm so glad I had that broad base of experience to draw from and hopefully make correct rulings.

Q. What is your favorite thing about being a Judge?

A. Honestly, the relationship I have with my law clerks. That's the best part of this job. Another great part is that every day brings something new. To quote Forrest Gump, Circuit Court is like a box of chocolates, you never know what you're going to get. For example, last week I was hearing Common Pleas non-jury throughout our circuit – Lancaster on Monday, Chester on Tuesday and then Fairfield on Friday. And in just one week I think I heard a little bit of everything – I heard a request for a preliminary injunction from a Homeowner's Association, followed by motions in a multi-family construction defect case with what seemed like fifty different defendants. Then I heard your typical motions for summary judgment and then we heard land disputes, personal injury cases. I just heard a wrongful death settlement this morning and handled some minor settlements last week. From week to week, or even day to day, I never know what I'm going to get. That variety and the ability to hear and consider issues across multiple practice areas is a great part of being a Judge.

Q. Is there anything you dislike about being a Judge?

A. If I had to pick something, it would be bond hearings in criminal cases – hands down. Because I don't have a crystal ball, I don't know what the future is going to hold and I don't have a magic wand to make it all better. They are difficult situations for all involved and not ones I look forward to hearing. On the civil side, if I were to pick the worst thing about my role as a Judge, is sometimes having to “babysit” lawyers with discovery disputes.

Q. Do you have any pet peeves when it comes to the conduct of lawyers appearing in your courtroom?

A. Visible displays of emotion when counsel gets a ruling they don't like. It is surprising to me how often I see lawyers who are clearly displeased with an outcome slamming down legal pads, making loud disgruntled sighs and rolling their eyes. I understand that as advocates, lawyers are passionate about their cases and can get lost in the heat of an argument, but it is important to remember your decorum and professionalism at all times.

Q. What do you like to do in your spare time?

A. I'm a decent golfer and try to play when time allows. I like to entertain, play guitar, yard work, and of course spend time with my wife and three sons.

Adversary Profile – Bert G. Utsey III, Clawson Fargnoli Utsey LLC

by James E. Haarsgaard



James E. Haarsgaard

For more than 33 years, Bert G. Utsey, III (“Skip”) has represented clients in a wide range of legal matters on both sides of the courtroom. His current focus is on the representation of plaintiffs in insurance bad faith litigation as well as medical malpractice, products liability, serious personal injury, contract and commercial disputes. His vast professional experience includes trying cases in one-room magistrates’ courts all the way to the South Carolina Supreme Court and the Fourth Circuit Court of Appeals.

Skip grew up in Walterboro, South Carolina, and attended the College of Charleston before receiving his law degree from the University of South Carolina. He is a prominent member of our state’s legal community, and is the current President of the South Carolina Association for Justice.

As someone who has spent significant time in his lengthy career successfully advocating for both plaintiffs and defendants, Skip’s insight into the practice of law is unique. In particular, his journey in transitioning from defense attorney to accomplished plaintiff’s attorney provides for an enlightening perspective from a well respected member of our bar.

When did you first develop an interest in the practice of law?

I began toying with the idea of becoming a lawyer in high



school and always had it near the top of the occupations I was considering. I was and continue to be interested in the challenges presented by the practice of law. Clients will often come to me with complicated problems, and I love taking that chaos and logically organizing it into a framework that the law provides.

I once heard Judge Bell liken the law to a seamless web, and I think there is a lot of truth in that analogy. The law covers every situation, and you just have to understand the situation in such a way as to be able to triage it and put it in the right part of the web. A lot of what we do as lawyers is provide organization to messes and search for a solution, and I really enjoy it.

Is it true that you spent some of your career as a defense attorney?

I actually spent thirteen years as a defense attorney with what was then the law firm of Sinkler and Boyd. My practice included insurance defense, products liability defense, and commercial litigation. I was very involved in the defense bar, and I served for several years on the South Carolina Defense Trial Attorneys' Association's Board of Directors. I was also a graduate of the first class of the SCDTAA's Trial Academy. I went on to be an instructor and then a Co-Chairman for the Trial Academy.

What made you want to transition to the plaintiff's side of the law?

I had multiple reasons for transitioning to a plaintiff's attorney. Billing audits were becoming more common place as were restrictions on what attorneys could do

without prior authorization. I also noticed that an increasing number of experienced adjuster clients were leaving the business and being replaced by less experienced people. Additionally, insurance companies were beginning to control things from the top such that I felt that they were no longer claim focused. Unfortunately, I found that these developments really hamstrung my ability to protect my clients.


I had always had an interest in doing plaintiff's work and enjoyed the more personal interaction that comes with that side of the law. I then discovered an opportunity when Judge Buckner was elected to the bench because his departure from the plaintiff's bar left a void of full-time plaintiff's practitioners in Walterboro. Fortunately, Judge Buckner approached me about buying his practice, and, almost simultaneously and independently, Johnny Parker approached me about opening an office in Walterboro for Peters Murdaugh. The opportunity was perfect timing and obviously successful as I spent the next 20 years as a member of the Peters Murdaugh firm.

How did you come to join forces with Sam Clawson, Jr. and Christy Fagnoli?

I have known Sam and Christy for a long time and even had cases against them when they were defense attorneys. I have always thought very highly of them both personally and professionally. When they became plaintiff's attorneys, we would often compare notes and trade ideas. I eventually reached out to Christy to discuss her experience in starting her own firm. In the process of talking to both Christy and Sam about their experiences and advice, it became

evident to all of us that there was a mutual interest in working together.

What are your goals in the upcoming year for the South Carolina Association for Justice?

We have an ongoing goal as an organization to maintain an eye on legislation that may threaten and restrict the rights of our clients. We are aware of several matters on the horizon that are of interest in that regard. Overall, if any proposed legislation might limit our client's rights, we will assert our input at the appropriate hearings and advocate that our position be adequately considered by legislators while addressing whether to enact that legislation. 

New Releases from the South Carolina Bar Publications Department

A Guide to Civil Practices and Procedures in Magistrate Court

The Honorable Kenneth G. Southerlin

Release Date: April 2021

Cost: \$95, plus S&H and tax (includes download of book and forms)

Annotated South Carolina Rules of Professional Conduct 2021 Edition

Professor Nathan M. Crystal

Release Date: April 2021

Cost: \$85, plus S&H and tax (includes download of book)

Masters-in-Equity and Special Referees in South Carolina, Fifth Edition

John S. Nichols

Release Date: June 2021

Cost: \$40, plus S&H and tax (includes download of book and forms)

Practicing before the United States Court of Appeals for the Fourth Circuit: A Guide from Start to Finish

Editors: Beth Burke Richardson, Esq. and Thomas E. Vanderbloemen, Esq.

Contributing Authors: Tina M. Cundari, Esq., Joshua W. Dixon, Esq., Professor James F. Flanagan, Rachel M. Hutchens, Esq., Stephanie E. Lewis, Esq., Beth Burke Richardson, Esq., Jonathan A. Roth, Esq., Kirsten E. Small, Esq., Amy Hendrix Smith, Esq., Edward G. Smith, Esq., Robert E. Stepp, Esq., Kathleen M. Stoughton, Esq., Thomas E. Vanderbloemen, Esq., William J. Watkins, Jr., Esq.

Release Date: May 2021

Cost: \$65, plus S&H and tax



South Carolina Drug Case Tool Kit, Third Edition

John V.S. Crangle

Release Date: August 2021

Cost: \$80, plus S&H and tax

***South Carolina Evidence Handbook Annotated,
Sixteenth Edition***

Justin S. Kahn

Release Date: August 2021

Cost: \$80, plus S&H and tax (includes download of book)

South Carolina Rules Annotated 2021

Justin S. Kahn

Release Date: August 2021

Cost: \$80, plus S&H and tax (includes download of book)

Service of Process in South Carolina, Fifth Edition

John S. Nichols

Release Date: June 2021


Cost: \$45, plus S&H and tax (includes download of books and forms)

***Tax Sales of Real Property and Mobile Homes in
South Carolina, Fourth Edition***

Dean A. Hayes

Release Date: April 2021

Cost: \$45, plus S&H and tax (includes download of books and forms)

For more information, to view each book's table of contents, and to order your books please visit the SC Bar CLE's online store: <https://cle.scbar.org/Book-Store/View-All-Products>. You may also call the publication coordinator, Kerie Nickel, at 803-771-0333, ext. 126, to place your order over the phone. 

SCDTAA Docket

Copeland Stair Kingman & Lovell is proud to announce the following recognitions for its attorneys:

- Sarah E. Butler, 2022 Best Lawyers® recognition for Litigation - Construction and Litigation – Insurance
- Gary Lovell, Jr., 2022 Best Lawyers® recognition for Medical Malpractice Law – Defendants and Personal Injury Litigation
- Paul Sperry, 2022 Best Lawyers® recognition for Construction Law and Litigation – Construction
- Kent T. Stair, 2022 Best Lawyers® recognition for Construction Law and Legal Malpractice Law – Defense and Litigation – Construction
- Lee C. Weatherly, 2022 Best Lawyers® recognition for Personal Injury Litigation

Elmore Goldsmith Kelley & deHoll, P.A. Recognized as South Carolina ‘Super Lawyers’

Four attorneys from Elmore Goldsmith Kelley & deHoll have been named by South Carolina Super Lawyers Magazine for 2021. Super Lawyers recognizes attorneys who have distinguished themselves in their legal practice and less than five percent of lawyers in each state are selected to this exclusive list.

Attorneys recognized as Super Lawyers are:

- L. Franklin Elmore – Construction Litigation
- Mason A. Goldsmith, Jr. – Construction Litigation

Attorneys recognized by Super Lawyers as Rising Stars:

- Bryan P. Kelley – Construction Litigation
- Alan G. Jones – Construction Litigation

The selection process for the Rising Stars list is the same as the Super Lawyers selection process, with one exception: to be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less.

Elmore Goldsmith Kelley & deHoll Attorneys Recognized in The Best Lawyers in America® for 2022

The law firm of Elmore Goldsmith Kelley & deHoll is pleased to announce that three of the firm’s attorneys have been selected by their peers for inclusion in The Best Lawyers in America® for 2022:

- L. Franklin “Frank” Elmore: Construction Law and Litigation–Construction
- Mason A. “Andy” Goldsmith, Jr.: Construction Law and Litigation–Construction
- Bryan P. Kelley: Construction Law and Litigation–Construction

Alan G. Jones received a 2022 *Best Lawyers: Ones to Watch in America* recognition for Appellate Practice, Commercial Litigation, Insurance Law and Litigation-Construction.

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

Super Lawyers is an independent lawyer rating service that selects attorneys using a rigorous, multilevel rating process. Through peer nominations, evaluations, and third-party research, outstanding attorneys are selected based on their professional accomplishments.

Four MGC Attorneys Recognized in the 2021 Legal Elite of the Lowcountry

McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the inclusion of five attorneys in *Charleston Business Magazine's* 2021 Legal Elite of the Lowcountry. Recognized attorneys in MGC's Charleston office include:

- Mark Davis: Workers' Compensation ("Top Vote-Getter")
- Amy Jenkins: Labor and Employment ("Top Vote-Getter")
- Danielle Payne: Business Litigation ("Top Vote-Getter")
- JD Smith: Construction ("Top Vote-Getter")

Since 2017, *Charleston Business Magazine* has honored Lowcountry attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for the 2021 Legal Elite are featured in the August 2021 edition of *Charleston Business Magazine*.

Thirteen MGC Attorneys Recognized in the 2021 Legal Elite of the Midlands

COLUMBIA, SC – McAngus Goudelock & Courie (MGC), a regional insurance defense firm, is pleased to announce the inclusion of 13 attorneys in *Columbia Business Monthly's* 2021 Legal Elite of the Midlands. Recognized attorneys in MGC's Columbia office include

- Brett Bayne: Insurance
- Trippett Boineau: Construction ("Top Vote-Getter")
- Sterling Davies: Insurance
- Justin Hunter: Workers' Compensation
- Jason Lockhart: Workers' Compensation ("Top Vote-Getter")
- Tommy Lydon: Business Litigation ("Top Vote-Getter")
- Stuart Moore: Workers' Compensation
- Julie Moose: Insurance
- Adam Ribock: Insurance ("Top Vote-Getter")

- Drew Richardson: Insurance
- David Ross: Residential Real Estate (“Top Vote-Getter”)
- Creighton Segars: Insurance and Construction
- Michael Trask: Insurance

Since 2010, *Columbia Business Monthly* has honored Midlands attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for the 2021 Legal Elite are featured in the August 2021 edition of *Columbia Business Monthly*.

Eleven MGC Attorneys Recognized in the 2021 Legal Elite of the Upstate

McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the inclusion of 11 attorneys in *Greenville Business Magazine’s* 2021 Legal Elite of the Upstate. Recognized attorneys in MGC’s Greenville office include:

- Mark Allison: Workers’ Compensation
- Amanda Bradley: Insurance
- Kristie Commins: Workers’ Compensation
- Vernon Dunbar: Insurance
- Geoff Gibbon: Insurance and Construction (“Top Vote-Getter”)

- Katie Grove: Workers’ Compensation
- Tyler Hembree: Workers’ Compensation
- Erroll Anne Hodges: Workers’ Compensation
- Beth McMillan: Insurance and Business Litigation
- Robert Mebane: Construction
- Bo Williams: Insurance (“Top Vote-Getter”)

Since 2012, *Greenville Business Magazine* has honored Greenville attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for the 2021 Legal Elite are featured in the August 2021 edition of *Greenville Business Magazine*.

Wilkes Law Firm, P.A.

Wilkes Law Firm, P.A., is pleased to announce that Brian Garrett Livingston has joined the firm in its Charleston office. Brian will be representing clients within the firm’s areas of civil litigation of construction, business, aviation, insurance, motor vehicle claims, as well as professional liability defense as to architects, engineers, and lawyers.

Brian earned his law degree in 2016 from the Washington & Lee University School of Law. At W&L Law, Brian served as the Managing Editor for the Journal of Civil Rights and Social Justice and served on the Powell Lecture Board. Prior to attending law school, Brian graduated from Clemson University with a B.A. in History. Prior to joining Wilkes Law

Firm, Brian spent several years as an Assistant Solicitor in Oconee County and several years at a prominent regional defense firm.

Brian is married to Olivia B. Broderick of Baton Rouge, and lives in Charleston. Apart from practicing law, he enjoys hiking, fishing, and attending live music. Brian is a member of the South Carolina Bar Association, Greenville County Bar Association, Charleston County Bar Association, and the Defense Research Institute.

Turner Padget Associate Hannah Stetson Honored With Columbia Business Monthly Best And Brightest Award

Turner Padget is pleased to announce that Hannah Stetson, associate in the firm's Columbia office, has been named as one of Columbia Business Monthly's 2021 Best & Brightest 35 and Under – an elite group of young professionals who are making a difference in their workplace and community. Now in its sixth year, the annual Best & Brightest 35 and Under award celebrates the men and women who are rising stars in the Columbia business community. Stetson will be honored at an event on September 30 at Segra Park and is profiled in the September issue of Columbia Business Monthly.

Stetson is a member of the firm's Workplace Litigation Team. She dedicates her practice to counseling, training and defending businesses and employers, including startups and small to mid-size businesses. In addition to advising and defending employers throughout the Carolinas, Stetson has leveraged her employment law experience to champion Columbia's small business community. She was part of a team of Turner Padget lawyers who developed the firm's

Palmetto Propeller initiative to provide pro bono assistance to startups and small businesses in the Southeast. Since its implementation, Stetson has counseled startup and small business owners on policies and best practices that help their companies grow and thrive in Columbia's marketplace. Within the firm, she cultivates the development of young lawyers' careers as co-chair of the firm's Associate Committee.

Stetson earned her undergraduate degree from the University of South Carolina and her law degree from Wake Forest University School of Law.

Turner Padget Associate Frank Stern Honored With Greenville Business Magazine's Best And Brightest Award

Turner Padget is pleased to announce that Frank Stern, associate in the firm's Greenville office, has been named as one of Greenville Business Magazine's 2021 Best & Brightest 35 and Under – an elite group of young professionals who are making a difference in their workplace and community. Now in its 27th year, the annual Best & Brightest 35 and Under award celebrates the men and women who are rising stars in the Greenville business community. Stern will be honored at an event on September 23 at Southern Bleachery and is profiled in the September issue of *Greenville Business Magazine*.

As a member of the Litigation Team, Stern served as first chair in nearly 20 jury trials – most of which have resulted in complete defense verdict trials. While the vast majority of cases filed in Greenville County never make it to the courtroom, he has led up to six jury trials each year for the last several years. Stern represents national insurance

carriers, leading trucking and transportation companies, and other businesses in courtrooms across upstate South Carolina, including Greenville County. He focuses his practice on defending clients in insurance disputes; product liability, personal injury and premises liability suits; and construction litigation.

Stern co-chairs the firm's Associate Committee. In this role, he organizes Continuing Legal Education programs and social events, mentors other associates, and serves as a liaison to the firm's partner and Executive Committee.

Stern earned his undergraduate degree from Clemson University and his law degree from the University of South Carolina School of Law.

33 Turner Padget Attorneys Named Among Best Lawyers In America

Turner Padget announces that 23 of its attorneys have been included among Best Lawyers in America for 2022, 10 attorneys are included among the "Ones to Watch" and 4 have also received the "Lawyer of the Year" award. As one of the oldest and most distinguished legal directories, Best Lawyers conducts peer-review surveys to compile its annual list of top attorneys across several practice areas. The 2022 edition of the publication is available today at www.bestlawyers.com.

The Turner Padget attorneys named among Best Lawyers in America and their respective practice areas for 2022 are:

Charleston

- David S. Cobb – Construction Law; Insurance

Law; Litigation: Construction; and Personal Injury Litigation: Defendants

- Richard S. Dukes – Commercial Litigation
- John S. Wilkerson – Professional Malpractice Law: Defendants

Columbia

- R. Hawthorne Barrett- Insurance Law
- Reginald W. Belcher- Employment Law: Management; Labor Law: Management; and Litigation: Labor and Employment
- J. Kenneth Carter, Jr. – Product Liability Litigation: Defendants
- Michael E. Chase – Workers' Compensation Law: Employers
- Cynthia C. Dooley – Workers' Compensation Law: Employers
- Mark B. Goddard- Litigation: Trusts and Estates; and Personal Injury Litigation: Defendants
- J. David Johnson, IV – Tax Law; and Trusts and Estates
- Catherine H. Kennedy- Litigation: Trust and Estates; and Trusts and Estates
- Lanneau Wm. Lambert, Jr.- Banking and Finance Law; Corporate Law; Mergers and Acquisitions Law; and Real Estate Law
- Edward W. Laney IV- Personal Injury Litigation: Defendants

- Ian D. McVey- Mortgage Banking Foreclosure Law
- Charles F. Moore- Litigation: Insurance and Personal Injury Litigation: Defendants
- Thomas C. Salane- Appellate Practice; Insurance Law; Personal Injury Litigation: Defendants; and Product Liability Litigation: Defendants
- Carmelo B. Sammataro- Personal Injury Litigation: Defendants
- Franklin G. Shuler, Jr.- Employee Benefits (ERISA) Law; Employment Law: Management; Litigation: ERISA; Litigation: Labor and Employment; and Mediation

Florence

- J. René Josey – Appellate Practice; Criminal Defense: General Practice; and Criminal Defense: White Collar
- Arthur E. Justice, Jr. – Employment Law: Management; and Litigation: Labor and Employment

Greenville

- David L. Moore, Jr.- Appellate Practice; Personal Injury Litigation: Defendants; and Product Liability Litigation: Defendants

Myrtle Beach

- R. Wayne Byrd- Commercial Litigation; Litigation: Banking and Finance; Litigation: Mergers and Acquisitions; and Litigation: Trusts and Estates

- William E. Lawson- Litigation: Construction

The Turner Padgett attorneys named among Best Lawyers in America: “Ones to Watch” and their respective practice areas for 2022 are:

Charleston

- Robert E. Kneece, III – Personal Injury Litigation: Defendants
- Kristen N. Nichols – Commercial Litigation
- Benjamin J. Tripp – Insurance Law
- Nickisha M. Woodward – Product Liability Litigation: Defendants

Columbia

- Cheslyne Shea Brighthop – Professional Malpractice Law
- Ryan T. Judd- Real Estate Law
- Hannah D. Stetson- Litigation: Labor and Employment

Florence

- Emily A. Jordan- Commercial Litigation

Greenville

- Frank S. Stern- Insurance Law

The Turner Padgett attorneys receiving the Best Lawyers in America “Lawyer of the Year” award for 2022 are:

Charleston

- David S. Cobb- Construction Law
- R. Wayne Byrd- Litigation: Banking & Finance
- William E. Lawson- Litigation: Construction

Greenville

- David L. Moore, Jr.- Appellate Law

Since it was first published in 1983, Best Lawyers in America has become universally regarded as the definitive guide to legal excellence. Because its research is based on an exhaustive peer-review survey in which more than 36,000 leading attorneys cast almost 4.4 million votes on the legal abilities of other lawyers in their practice areas, and because lawyers are not required or allowed to pay a fee to be listed, inclusion in the guide is considered a singular honor. Corporate Counsel magazine has called Best Lawyers in America “the most respected referral list of attorneys in practice.”

Turner Padgett Attorneys Named Among South Carolina Super Lawyers and Rising Stars For 2021

Turner Padgett is pleased to announce that 9 of its attorneys have been recognized by South Carolina Super Lawyers for 2021. Six attorneys from across the firm are included among the annual list of leading lawyers, and an additional three attorneys have been named as Rising Stars by the publication. Super Lawyers creates a diverse listing of outstanding attorneys who are honored for their professional achievements. Only five percent of lawyers in South Carolina

are named as Super Lawyers, and no more than two-and-a-half percent are selected as Rising Stars. The complete list is available today at www.superlawyers.com.

The Turner Padgett attorneys named among South Carolina Super Lawyers for 2021 by office are:

Charleston

- Richard S. Dukes: Personal Injury – Products: Defense

Columbia

- Catherine H. Kennedy: Estates and Probate
- Lanneau Wm. Lambert, Jr.: Real Estate
- Thomas C. Salane: Insurance Coverage
- Franklin G. Shuler, Jr.: Employment and Labor

Florence

- J. René Josey: Business Litigation

The Turner Padgett attorneys named as Rising Stars are:

Charleston

- Kristen N. Nichols: Creditor / Debtor Rights
- Nickisha M. Woodward: Personal Injury – General: Defense

Columbia

- W. Taylor Stanley: Business Litigation

Every year, Super Lawyers selects attorneys from all firm sizes and over 70 practice areas throughout the United

States. Each candidate undergoes a multiphase selection process where they are evaluated on 12 indicators of peer recognition and professional achievement. Super Lawyers can be found online at www.superlawyers.com, where lawyers can be searched by practice area and location.

Collins & Lacey, P.C.

Collins and Lacey senior shareholder and management committee member, Claude Prevost, was selected by his peers for inclusion in the 28th Edition of *The Best Lawyers in America*®. Claude was recognized for Construction Law. His focus at Collins and Lacey includes the areas of construction defect litigation, professional liability, products liability, premises liability, trucking defense and catastrophic injury and death.

Haynsworth Sinkler Boyd Recognized as a Leading Law Firm in 2021 Chambers US

Haynsworth Sinkler Boyd is pleased to announce that the firm has been recognized in the 2021 edition of *Chambers USA: America's Leading Lawyers for Business*.

Chambers USA has ranked the following HSB practice areas in South Carolina:

- Banking & Finance
- Corporate/Mergers & Acquisitions
- Healthcare
- Litigation: General Commercial
- Real Estate

In addition, *Chambers USA* recognized two HSB attorneys as leading lawyers in their practice areas in South Carolina:

- Frankie Marion: Litigation: General Commercial
- Steve Matthews: Litigation: General Commercial

Chambers USA ranking results are gathered through thousands of confidential interviews conducted with clients and lawyers by a team of full-time editors and researchers. Individual lawyers are ranked on the basis of their knowledge, experience, ability, effectiveness and client service. Learn more about the methodology used.

Haynsworth Sinkler Boyd Attorneys Recognized by Best Lawyers

Haynsworth Sinkler Boyd is proud to announce that *Best Lawyers*®, a legal peer-review guide, has selected the following attorneys for inclusion in *The 2022 Best Lawyers in America*®, including two attorneys as “Lawyer of the Year”.

The following attorneys have been recognized as “Lawyer of the Year” for their respective practice areas:

Charleston

- Wm. Howell Morrison – Professional Malpractice Law – Defendants

Columbia

- James Y. Becker – Litigation – Banking and Finance

The following attorneys are listed in *The 2022 Best Lawyers in America*® for these specific practice areas:

Charleston

- Stephen E. Darling – Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants
- Stafford J. McQuillin III – Commercial Litigation
- Wm. Howell Morrison – Commercial Litigation; Professional Malpractice Law – Defendants
- John H. Tiller – Mediation; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants
- Adam N. Yount* – Commercial Litigation; Personal Injury Litigation – Defendant

Columbia

- James Y. Becker – Consumer Law; Litigation – Banking and Finance
- John C. Bruton, Jr. – Insurance Law; Litigation – Construction; Litigation – Real Estate; Personal Injury Litigation – Defendants
- Mary Caskey – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law; Consumer Law
- Clarke W. DuBose – Mass Tort Litigation / Class Actions – Defendants; Product Liability Litigation – Defendants
- Robert Y. Knowlton – Bet-the-Company Litigation; Commercial Litigation; Litigation – Intellectual Property; Litigation – Securities
- Roopal S. Ruparelia – Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants

Florence

- Pierce T. MacLennan – Employment Law – Management

Greenville

- J. Ben Alexander – Medical Malpractice Law – Defendants; Professional Malpractice Law – Defendants
- Thomas H. Coker, Jr. – Litigation – Construction
- W. David Conner – Mass Tort Litigation / Class Actions – Defendants
- H. Sam Mabry III – Litigation – Banking and Finance; Litigation – Intellectual Property; Litigation – Labor and Employment; Litigation – Mergers and Acquisitions; Litigation – Real Estate; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants
- Christopher Major – Commercial Litigation
- W. Francis Marion, Jr. – Bet-the-Company Litigation; Commercial Litigation; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants
- J.W. Matthews III – Commercial Litigation
- Moffatt G. McDonald – Litigation – Environmental
- Sally McMillan Purnell – Medical Malpractice Law – Defendants; Personal Injury Litigation – Defendants; Professional Malpractice Law – Defendants
- J. Derrick Quattlebaum – Insurance Law; Litigation – ERISA

- Joshua Spencer – Litigation – Construction
- Sarah Spruill – Commercial Litigation

* *Lawyers who are listed for the first time*

Ten Haynsworth Sinkler Boyd Attorneys Recognized in 2021 South Carolina Super Lawyers

Haynsworth Sinkler Boyd is pleased to announce that ten attorneys have been listed in the 2021 edition of *South Carolina Super Lawyers®*, including four attorneys who were named as “Rising Stars.”

Selection for *Super Lawyers* is based on a patented multi-phase process, including peer nominations and evaluations, along with independent research. Those selected for the *Super Lawyers* list are among the top 5% of attorneys in the state. Rising Stars are those attorneys under 40 years of age or have less than ten years of legal experience.

Haynsworth Sinkler Boyd attorneys recognized in the 2021 lists are:

Charleston

- Stafford J. (Mac) McQuillin III: Business Litigation (Rising Star)
- John H. Tiller: Personal Injury – Products: Defense

Columbia

- James Y. Becker: Business Litigation
- Mary M. Caskey: Creditor Debtor Rights (Rising Star)
- Robert Y. Knowlton: Business Litigation

- Robert L. Reibold: Civil Litigation: Defense

Greenville

- H. Sam Mabry III: Business Litigation
- Denny P. Major: Business Litigation (Rising Star)
- Moffatt G. McDonald: Personal Injury – General: Defense
- Joshua D. Spencer: Construction Litigation (Rising Star)

Wall Templeton & Haldrup

The firm would like to congratulate several attorneys for their selection as The Best Lawyers in America 2022.

Associate Stephanie Brown (since 2021) has been recognized in the practice of Insurance Law for the 2022 edition of The Best Lawyers in America: Ones to Watch.

Morgan Templeton (since 2011) and Mark Wall (since 2010) have been recognized for their work in Insurance Law.

Graham Powell (since 2018) has been recognized for Commercial Litigation, Insurance Law, and Litigation-Insurance.

Morgan Templeton and Graham Powell have also been recognized in the specific focus of COVID-19.

Trey Watkins (since 2021) has been recognized for Construction Law and Construction Litigation.

Richardson Plowden & Robinson, P.A.

The 2021 edition of The Best Lawyers in America® features

nine Richardson Plowden & Robinson, P.A. attorneys who were selected by their peers: Leslie A. Cotter, Jr., for legal malpractice law; Frederick A. Crawford for health care law; Jared H. Garraux for construction law; Emily Gifford Lucey for construction law; Steven J. Pugh for product liability litigation; Anthony E. Rebollo for tax law; Frank E. Robinson II for real estate law; Franklin J. Smith, Jr. for construction law, and S. Nelson Weston, Jr. for Corporate Law. Attorney Caleb M. Riser was selected to the 2022 listing of “Ones to Watch.”

Seven Richardson Plowden Attorneys Selected 2021 Legal Elite

Columbia Business Monthly and the Charleston Business Journal have featured six Columbia and one Charleston Richardson Plowden & Robinson, P.A. attorneys respectively in the 2021 Legal Elite publication. Amongst the Firm’s Columbia attorneys, George C. Beighley was selected for his work in Medical Malpractice Defense; Benjamin P. Carlton was selected for Corporate Law; Steven J. Pugh was selected for his work in Public Utilities; Caleb M. Riser and Franklin J. Smith, Jr. were chosen for Construction Law; and S. Nelson Weston, Jr., was selected for his work in Bankruptcy & Creditors Rights. Megan C. White of the Firm’s Charleston office was chosen for her work in Construction Law.

Four Robinson Gray attorneys honored as among ‘Legal Elite’ for 2021

Columbia Business Monthly has named nine Robinson Gray attorneys to the magazine’s Legal Elite of the Midlands list for 2021. The list recognizes Midlands lawyers whom their

peers consider outstanding in their respective practice areas.

Here are the four chosen as Legal Elite, with the practice areas in which they are being recognized:

- Grady Beard, Workers Compensation
- Becky Laffitte, both Personal Injury and Insurance
- Kelly Morrow, Workers Compensation
- Shannon Poteat, Workers Compensation

The magazine has been publishing the Legal Elite feature since 2010. The selection process begins with nominations from more than a thousand active lawyers in the Midlands. While attorneys are allowed to nominate members of their own firm, for each in-firm nomination there must be a corresponding out-of-firm nomination. Attorneys are not allowed to vote for themselves.

Kelly Morrow completes Furman University’s Women’s Leadership Institute

Kelly Morrow, a member with Robinson Gray law firm, recently graduated from the Furman University Women’s Leadership Institute, as a member of the Spring 2021 class.

She is one of 58 women, representing 44 organizations and eight states, who graduated from the program on June 1. The institute is a leadership development program for both existing and developing female leaders. This curriculum is focused on teaching participants evidence-based leadership theory and practical application of these theories to help them inspire followers, lead groups, and achieve organizational

goals — all in the context of better understanding the unique challenges women face in the workplace.

The curriculum included cultural awareness, leading teams, accepting and giving feedback, negotiating, communicating effectively, design thinking, developing personal brands and more than a dozen other topics.

“The Women’s Leadership Institute provides women with tools and techniques to help them succeed in their chosen careers and in life,” said Furman President Elizabeth Davis. “It was exciting to see such a strong class come together during a challenging time and commit to developing their skills while building a stronger network of women leaders across South Carolina.”

Kelly Morrow focuses her practice at Robinson Gray on workers’ compensation and workers’ compensation mediation. Representing carriers and employers, she has tried hundreds of cases before the S.C. Workers’ Compensation Commission. Kelly also regularly delivers presentations on trends in workers’ compensation.

She was recently named the new leader of Robinson Gray’s Diversity, Equity, & Inclusion Team.

For 2022, Best Lawyers honors 12 at Robinson Gray, two named Lawyers of the Year

The 2022 edition of *The Best Lawyers in America*® honors 12 Robinson Gray attorneys for the quality of their practice in Columbia.

Two of those – J. Calhoun Watson and Shannon Till Poteat – were also named Lawyers of the Year, in

Professional Malpractice Law-Defendants and Workers’ Compensation Law-Employers, respectively. *Best Lawyers* gives this award to individuals with the highest overall peer-feedback for a specific practice area and geographic region. Only one lawyer is recognized as the “Lawyer of the Year” for each practice area and location.

Here is the Best Lawyers list for Robinson Gray:

- Grady Beard – Workers’ Compensation Law-Employers
- Benjamin Gooding – Commercial Litigation
- Becky Laffitte – Insurance Law; Litigation-Construction; Personal Injury Litigation-Defendants; Product Liability Litigation-Defendants; Transportation Law
- Gibbs Leaphart – Workers’ Compensation Law-Employers
- Michael Montgomery – Litigation-Insurance; Personal Injury Litigation-Defendants
- Kelly Morrow – Workers’ Compensation Law-Employers
- Shannon Till Poteat – Workers’ Compensation Law-Employers
- Beth Richardson – Commercial Litigation; Litigation-Securities
- Bobby Stepp – Bet-the-Company Litigation; Commercial Litigation
- Monty Todd – Personal Injury Litigation-Defendants

- Rob Tyson – Administrative/Regulatory Law; Commercial Litigation; Litigation-Trusts and Estates
- Cal Watson – Bet-the-Company Litigation; Commercial Litigation; Professional Malpractice Law-Defendants

Also, one attorneys named Ones to Watch by Best Lawyers:

- La’Jessica Stringfellow – Commercial Litigation; Medical Malpractice Law-Defendants; Personal Injury Litigation-Defendants

“Ones to Watch” awards are recognitions of attorneys who are earlier in their careers – typically, they have been in practice for 5-9 years.

“Of course, I am deeply appreciative of the recognition I’ve personally received this year from Best Lawyers,” said Cal Watson, who is the law firm’s managing member. “But I’m even prouder of all my colleagues, from Becky Laffitte, who has been recognized since 2003, to those who made the list for the first time this year: Ben Gooding, Kelly Morrow, and La’Jessica Stringfellow. Thanks so much to all our local peers who voted for us.”

Recognition by Best Lawyers is based entirely on just that – peer review. The methodology is designed to capture, as accurately as possible, the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area.

Beard and Stringfellow named as recipients of 2021 Leadership in Law Awards

Robinson Gray is pleased to announce that attorneys Grady Beard and La’Jessica Stringfellow have been chosen as honorees for the 2021 South Carolina Lawyers Weekly Leadership in Law Awards.

The Leadership in Law Awards recognize attorneys from across the Palmetto State who have achieved success in their law practice, made contributions to society and had an impact on the legal profession. Each is nominated by a peer or peers, then selected as an honoree by an internal panel of judges. Short bios of all honorees can be found in the August issue of *South Carolina Lawyers Weekly*.

Grady Beard is a member of Robinson Gray law firm. He focuses his practice on workers’ compensation, workers’ compensation mediation and appellate advocacy. He is a co-author of *The Law of Workers’ Compensation Insurance in South Carolina*, Sixth Edition, a comprehensive book analyzing this complex area of law. Grady is a Fellow in The College of Workers’ Compensation Lawyers and a member of the National Workers’ Compensation Defense Network. He serves as Vice President of the South Carolina Workers’ Compensation Educational Association, and is active in the South Carolina Defense Trial Attorneys’ Association. Grady has been consistently recognized by Best Lawyers and was recently named a 2021 South Carolina Super Lawyer®.

La’Jessica Stringfellow is an associate practicing in the areas of business and commercial litigation. She represents clients in a wide range of disputes

involving insurance defense, health care and nursing home litigation, and election law. She is very active in the South Carolina Bar Association and serves as the education subcommittee chair of the Diversity Committee. She also serves as the South Carolina Young Lawyers Division co-chair of the Publications committee and Protecting Our Youth committee and is active in the American Bar Association. Last year during the pandemic, La'Jessica helped plan and host a virtual video series featuring distinguished and diverse members of the South Carolina judiciary. In January of 2021, La'Jessica was appointed to serve on the South Carolina Access to Justice Commission, and she was recently honored as a Best Lawyers' 2022 "One to Watch" for her legal work in Columbia.

Gallivan White Boyd announces multiple lawyers receiving recognition in the 2022 Edition of *Best Lawyers in America*®

2022 Lawyers of the Year:

Gray T. Culbreath was named *Lawyer of the Year* for Mass Tort Litigation/Class Actions - Defendants in the Columbia area. Culbreath was also listed in the 2022 Edition of *The Best Lawyers in America*® in the following practice areas: Appellate, Bet-the-Company Litigation, Commercial Litigation, Mass Tort Litigation/Class Actions - Defendants, Personal Injury Litigation - Defendants and Product Liability Litigation - Defendants.

John T. Lay Jr. was named *Lawyer of the Year* for Product Liability Litigation - Defendants in the Columbia area. Lay was also listed in the 2022 Edition of *The Best Lawyers in America*® in the following practice areas: Bet-the-Company

Litigation, Commercial Litigation, Insurance Law, Mass Tort Litigation/Class Actions - Defendants, Personal Injury Litigation - Defendants and Product Liability Litigation - Defendants.

Shelley S. Montague was named *Lawyer of the Year* for Litigation – Insurance in the Columbia area. Montague was also listed in the 2022 Edition of *The Best Lawyers in America*® in the following practice areas: Construction Law, Insurance Law, Litigation – Insurance and Personal Injury Litigation – Defendants.

Jennifer E. Johnsen was named *Lawyer of the Year* for Insurance Law in the Greenville area. Johnsen was also listed in the 2022 Edition of *The Best Lawyers in America*® in the following practice areas: Commercial Litigation, Employee Benefits (ERISA) Law and Insurance Law.

2022 *Best Lawyers*® List

CHARLESTON

- **A. Grayson Smith** - Personal Injury Litigation - Defendants

CHARLOTTE

- **James M. Dedman IV** - Litigation - Insurance

COLUMBIA

- **A. Johnston Cox** - Insurance Law - Personal Injury Litigation - Defendants
- **Gray T. Culbreath** - Appellate Practice; 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** (posthumously) - Workers' Compensation Law - Employers
 - **Amy L.B. Hill** - Commercial Litigation; Litigation - Trusts and Estates
 - **Lindsay A. Joyner** - Commercial Litigation; Litigation - Banking and Finance
 - **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; Personal Injury Litigation - Defendants
 - **Curtis L. Ott** - Commercial Litigation; Product Liability Litigation - Defendants

GREENVILLE

- **Deborah C. Brown** - Employment Law - Individuals; Employment Law - Management; Workers' Compensation Law - Employers

- **Amity S. Edmonds** - Workers' Compensation Law - Employers
- **T. Cory Ezzell** - Workers' Compensation Law - Employers
- **Nicholas A. Farr** - Insurance Law
- **H. Mills Gallivan** - Arbitration; Mediation; Workers' Compensation Law - Employers
- **Jennifer E. Johnsen** - Commercial Litigation; Employee Benefits (ERISA) Law; Insurance Law
- **Carter Massingill** - Litigation - Construction
- **C. Stuart Mauney** - Mediation; Medical Malpractice Law - Defendants; Personal Injury Litigation - Defendants; Professional Malpractice Law - Defendants
- **C. William McGee** - Personal Injury Litigation - Defendants; Product Liability Litigation - Defendants
- **Duffie Powers** - Commercial Litigation
- **Jared M. Pretulak** - Workers' Compensation Law - Employers
- **Phillip E. Reeves** - Insurance Law; Litigation - Insurance; Personal Injury Litigation - Defendants; Product Liability Litigation - Defendants
- **T. David Rheney** - Insurance Law; Litigation - Insurance; Personal Injury Litigation - Defendants; Product Liability Litigation - Defendants
- **Ronald G. Tate, Jr.** - Commercial Litigation;

Construction Law

- **Zachary L. Weaver** - Commercial Litigation
- **Ronald K. Wray II** - Commercial Litigation; Product Liability Litigation - Defendants; Railroad Law

2022 Best Lawyers in America® - Ones to Watch

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.
- Thomas Twehues (Greenville) was named Ones to Watch for Workers' Compensation Law - Employers.

29 Gallivan White Boyd Attorneys Selected as Legal Elite of SC

29 Gallivan White Boyd attorneys have been nominated and selected by their peers for inclusion in *Columbia Business Monthly*, *Greenville Business Magazine* and *Charleston Business Magazine's 2021 Legal Elite*.

Legal Elite winners are chosen by area attorneys that are members of the South Carolina Bar. This is


the only regional awards program that gives every active attorney the opportunity to participate. The magazine lists the top recipients in 26 categories.

Congratulations to the following attorneys who have been recognized:

Drew Bradshaw– Insurance

Debbie Brown– Labor & Employment

- A. Johnson Cox– Insurance, Personal Injury
- Jordan Crapps– Corporate Investigations
- Gray Culbreath– Environmental
- John Cuttino– Personal Injury
- Natalie Ecker– Insurance
- Amity Edmonds– Workers Compensation
- T. Cory Ezzell– Workers Compensation
- Nick Farr– Insurance
- H. Mills Gallivan– Insurance, Workers Compensation
- Amy Hill– Banking and Finance, Bankruptcy & Creditors Rights, Business Litigation
- Jennifer Johnsen– Insurance
- John Jones– Personal Injury
- Laura Jordan– Labor & Employment
- Lindsay Joyner– Business Litigation

- Jessica Laffitte– Health Care, Insurance
- John T. Lay– Business Litigation, Energy and Utilities, Insurance
- Carter Massingill– Business Litigation, Construction, Insurance
- C. William McGee– Corporate Investigations
- Shelley Montague– Construction, Insurance
- Curtis Ott– Retail & Consumer Products
- Duffie Powers– Bankruptcy & Creditors Rights, Construction
- Jared Pretulak– Insurance, Labor & Employment, Workers Compensation
- Phillip Reeves– Business Litigation, Insurance
- David Rheney– Insurance, Personal Injury
- T.J. Twehues– Workers Compensation
- Zach Weaver– Business Litigation, IP, Labor & Employment
- Daniel White– Business Litigation
- Michelle Yarbrough– Workers Compensation 



Young Lawyers Division Update

by Nickisha Woodward



Nickisha Woodward

2021 appeared like it would be the movie Groundhog Day for the Young Lawyers Division (“YLD”), because we were still unable to hold the Trial Academy and social events due to Covid-19 pandemic, but alas we were wrong. On July 22-24, SCDTAA held its Summer Meeting and first in person meeting in over a year at the Omni Grove Park Inn in beautiful Asheville, North Carolina. Needless to say, a wonderful time was had by all and I think I can speak for everyone when I say the defense bar truly enjoyed the opportunity to interact in person and discuss hot legal topics. The annual charitable silent auction at the summer meeting, was a great success! There were auctions items ranging from a beautiful handcrafted charcuterie board made by SCDTAA past president John Wilkerson to an autographed basketball by Women’s Olympic Head Coach Dawn Staley. Thanks to everyone who attended and bid we were able to raise \$7,355.00 for some amazing charities. We are looking forward to a great annual meeting in November and an awesome 2022.

Opportunities for Involvement: For the upcoming year, the YLD is in the planning phase of conducting

substantive CLE courses specifically designed for young lawyers. Do you need training on 30(b)(6) depositions, expert depositions, having problems with motions for summary judgment, or maybe there are practice areas you would like subject matter specific training by seasoned practitioners? If so, and you have topic ideas that you would like to see as a CLE for young lawyers, please contact Nickisha Woodward at nwoodward@turnerpadget.com.

YLD Seat Vacancies: If you are a young lawyer seeking greater involvement in the SCDTAA, leadership opportunities are available. The YLD needs its next President AND Vice President. Both positions will serve a two-year term and the Vice President will move into the role as President for two years after completion of their role as Vice President. If you would like to nominate someone or you would like to self-nominate, please submit your nominations to Aimee Hiers at ahiers@pmpamc.com or Nickisha Woodward at the email address above. We encourage you to get involved and continue the work of the YLD. 🏛️

Verdict Reports

TYPE OF ACTION:

Product Liability

NAME OF CASE:

Raeann Bayless v. Boston Scientific Corporation; and Coloplast Corp.

Court: (include county):

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

CASE NUMBER:

6:20-cv-831-Orl-37GJK

NAME OF JUDGE:

The Honorable Roy B. Dalton, Jr.

AMOUNT:

Defense Verdict for Boston Scientific


DATE OF VERDICT:

June 15, 2021

ATTORNEYS FOR DEFENDANT:

Molly H. Craig and James B. Hood of Hood Law Firm, LLC, Charleston, SC and Amy Fiterman, Traci T. McKee and Jessica Benson Cox of Faegre Baker Biddle & Reath, LLP

DESCRIPTION OF THE CASE:

Plaintiff asserted claims against Boston Scientific and Coloplast Corp. arising out of her pelvic floor surgery for stress urinary incontinence and pelvic organ prolapse which involved the implantation of two medical devices: Boston Scientific's Advantage Fit™ Transvaginal Mid-Urethral Sling System ("Advantage Fit") and Coloplast's Restorelle® Y ("Restorelle Y"). This case is one of tens of thousands that have been pending since a multi-district litigation was created roughly 10 years ago for Boston Scientific and all other mesh manufacturers. 

Verdict Report Submissions Wanted!

**Have a verdict report to
share? The form to submit
the information can be found
on the SCDTAA website and
should be sent in word format
to ahiers@pmpamc.com.**



Case Notes

by Helen F. Hiser, J. Alexander Joyner and Brian E. Livingston

*Daniel Lee Davis, individually and on behalf of all those
similarly situated,
vs. ISCO Industries, Inc.*

Appellate Case No. 2018-000857
Opinion No. 5840
Filed August 4, 2021
Heard December 8, 2020

The Court of Appeals affirmed the circuit court’s denial of the employer/defendant’s motion to compel arbitration in a suit brought by a former employee. In this case, the employer defendant’s human resources department improperly released plaintiff’s personal information in response to a fraudulent e-mail. The plaintiff brought suit against defendant alleging claims for breach of implied contract and negligence. The Defendant moved to dismiss and compel arbitration based on the arbitration clause in plaintiff’s employment contract demanding arbitration for all claims “arising out of or relating to [plaintiff’s] candidacy for employment, employment and/or cessation of employment.” The circuit court determined the arbitration provision was not applicable to plaintiff’s case, because plaintiff’s “claims in this case arise out of [defendant’s] release of the personal identifying information of [plaintiff]” and “there is no relationship between the subject matter of [plaintiff’s] claims in this case and the arbitration agreement.” In

affirming the circuit court’s decision, the court of appeals distinguished *Landers v. Federal Deposit Insurance Corp.*, 402 S.C. 100, 739 S.E.2d 209 (2013) (finding a former employee’s claim that “he was constructively terminated from his employment as a result of [the CEO’s] tortious conduct towards him” provided “a clear nexus between his claims and the employment contract sufficient to establish a significant relationship to the employment agreement”), determining that the “human resources employee disclosing [plaintiff’s] information to hackers [does] not truly relate to [plaintiff’s] employment.” Accordingly, the Court affirmed the denial of defendant’s motion to compel arbitration as there was not a significant relationship between the plaintiff’s employment and the conduct alleged.

*United Services Automobile Association
vs. Belinda Pickens*

Appellate Case No. 2020-000439
Opinion No. 28050
Filed August 11, 2021
Heard May 25, 2021

The Supreme Court of South Carolina held that Section 38-77-340 of the South Carolina Code allows a named driver exclusion to preclude uninsured motorist (UM) coverage of a passenger injured in an accident involving an unknown driver. The petitioner in this case had executed



Helen F. Hiser



J. Alexander Joyner



Brian E. Livingston

a named driver exclusion titled “VOIDING AUTOMOBILE INSURANCE WHILE NAMED PERSON IS OPERATING CAR” under which she listed her son. The petitioner subsequently suffered injuries while in a vehicle being driven by her son and filed a UM claim. USAA denied petitioner’s claim and initiated a declaratory judgment action. The circuit court granted USAA’s motion holding that “the excluded driver endorsement was not limited to liability coverage, but also applied to UM coverage” and “that to permit [petitioner] to recover UM limits after having signed an exclusion naming [the son] as an excluded driver would violate public policy.” The circuit court further held that the Supreme Court’s ruling in *Nationwide Insurance Co. of America v. Knight*, 428 S.C. 451, 835 S.E.2d 538 (Ct. App. 2019), *aff’d*, Op. No. 28028 (S.C. Sup. Ct. filed May 12, 2021) (holding that section 38-77-340 did not prohibit the exclusion of UIM coverage) was applicable to these facts.

In affirming the circuit court’s decision, the Supreme Court emphasized that petitioner “entered into an agreement with USAA naming [the son] as an excluded driver.” The Court further stated that “Ultimately, under this outcome, the statute’s purposes-providing the named insured the opportunity to pay lower premiums when a bad driver would otherwise be included within the policy and protecting the motoring public by requiring the excluded driver to either surrender his driver’s license or be insured under his own policy-are accomplished.” As such, USAA’s denial of UM coverage did not violate section 38-77-340.

Jeffrey Lance Cruce vs. Berkeley County School District

Appellate Case No. 2018-000791

Opinion No. 5854

Heard February 2, 2021

Filed September 1, 2021

The Court of Appeals held that plaintiff, a high school football coach and athletic director, was a public official and, as such, the Tort Claims Act required him to prove actual malice as a part of his defamation claim. The Court of Appeals thus reversed the circuit court’s denial of the school district’s motion for directed verdict and motion for judgment notwithstanding the verdict, as the Tort Claims Act precludes governmental entities from being held liable for losses due to employee conduct constituting actual malice.

In this case, the Berkeley County School District first demoted, then terminated, plaintiff from his position as football coach and athletic director after multiple losing seasons and his ill-fated decision to stop punting based on analytics. An internal audit also confirmed that numerous necessary documents were misplaced and out of order in the student athletes’ files. The plaintiff subsequently filed an action against the District for wrongful termination and defamation. In support of his defamation claim, the plaintiff alleged the District’s agents, while acting within the scope of their authority, made false and defamatory statements about his “fitness for his profession to employees, students, volunteers, potential employers, and members of the community . . . with conscious indifference to and complete disregard of the truth of their statements.” The District answered, asserting that the South Carolina Tort

Claims Act barred the defamation claim as governmental entities are shielded from liability for losses due to employee conduct constituting actual malice, and actual malice was an essential factor in plaintiff's claims. The circuit court denied the District's motion for directed verdict as to the defamation claim. The jury ultimately found for plaintiff and awarded a \$200,000.00 verdict. The District moved for a judgment notwithstanding the verdict, which the circuit court also denied.

In reversing the circuit court's decision, the Court of Appeals relied on its prior decision in *Garrard v. Charleston Cnty. Sch. Dist.*, 429 S.C. 179, 838 S.E.2d 698 (Ct. App. 2019) ("In considering whether a person is a public official, the employee's position must invite public scrutiny and discussion of the person holding it, unrelated to the current controversy."). Like the plaintiff in the present case, the *Garrard* plaintiff was a football coach. In determining he was a public figure, the Court emphasized the coach's interactions "with the parents of the athletes after each game" and participation "in newspaper and television interviews." In the present case, the Court of Appeals noted how similarly situated the present plaintiff was to the *Garrard* plaintiff, and determined plaintiff was a public official. The Court of Appeals then stated that because plaintiff "was a public official, he has the burden of proving of actual malice." The Court of Appeals also noted that "[U]nder the Tort Claims Act, the District, as a governmental entity, is not liable for a loss resulting from employee conduct that constitutes actual malice." "Therefore, the Tort Claims Act bars [plaintiff's] defamation action because he has to prove the District's employee's conduct constituted actual malice in order to

recover on this claim." The Court thus reversed the circuit court's denial of the District's motions for directed verdict and judgment notwithstanding the verdict.

Nationwide Ins. Co. of America v. Kristina Knight, individually and as P.R. of the Estate of Daniel Knight

Appellate Case No. 2020-000026

Opinion No. 28028

Heard February 2, 2021

Filed May 12, 2021

The Supreme Court upheld Nationwide's named driver exclusion, finding it clear, unambiguous, and not in violation of any statute. Ms. Knight signed an exclusion titled "Voiding Auto Insurance While Named Person is Operating Car" listing her husband, whereby "all coverages" (the policy contained liability, UM, and UIM coverages) were purportedly excluded while he was "operating any motor vehicle." During the policy period, the husband was killed in a motorcycle accident. After recovering some insurance proceeds on separate policies covering the husband, Ms. Knight sought to recover UIM proceeds under the policy *sub judice*, which claim was denied based on the named driver exclusion. Ms. Knight objected to the exclusion as a violation of public policy. Both parties filed motions for summary judgment in Nationwide's declaratory judgment action, and Nationwide's motion prevailed. The Court explained that its role in evaluating Ms. Knight's public policy argument was limited to determining whether the subject policy provision violated a statute.

The Court ruled that section 38-77-340 allowed an insured to exclude a bad driver in order to reduce the rates of insurance for the insured's self, as long as the excluded driver has

turned in his/her license or is otherwise insured. Because the husband had his own insurance, the Court found that the statute was written to promote the type of policy provision here. However, Ms. Knight argues that the statute's use of "the" in the phrase "...insurance shall not apply while the motor vehicle is being operated" invalidates the subject policy, as it uses the phrase "any motor vehicle." Ms. Knight argued that the statute only allows such exclusions as they pertain to the vehicle listed in the policy which contains the exclusion; stated otherwise, the exclusion could only apply to liability coverage, not UIM coverage. The Court disagreed, finding that the power to exclude coverage derives not from any statute, but instead from the parties' right to contract for and to exclude coverages.

Moreover, because UIM coverage is only statutorily required to be offered (but the insured can choose not to purchase same), the Court found that this exclusion of UIM coverage does not violate section 38-77-160. Accordingly, Knight and Nationwide agreed to exclude the husband from all coverages under the policy in a clear and unambiguous provision which did not violate any statute, and the exclusion was upheld.

Leisel Paradis v. Charleston Cnty Sch. Dist., James Island Charter H.S., and Robert Bohnstengel and Stephanie Spann, in their Individual Capacities

Appellate Case No. 2018-002025

Opinion No. 28030

Heard December 12, 2019

Filed May 19, 2021

Petitioner's civil conspiracy claim was dismissed by the circuit court for failing to plead special damages, which

dismissal was upheld by the Court of Appeals. The Supreme Court reversed and remanded.

Petitioner was a teacher that filed a defamation claim against the District and High School and a civil conspiracy claim against Bohnstengel and Spann, the principal and assistant principal, respectively. Petitioner alleged that all Respondents subjected her to an unwarranted and invasive performance evaluation due to their disagreement with Petitioner's desire to report a student's misconduct to the police, which evaluation caused her to be blacklisted, ostracized, and ultimately terminated. The circuit court dismissed all claims, finding that Petitioner failed to plead special damages, and the Court of Appeals affirmed, relying on the "Todd rule." *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981).

After walking through the history and development of the civil conspiracy cause of action, where damages is an element, the Court noted the *Todd* rule's new requirement of pleading special damages. The *Todd* Court held that the gravamen of the civil conspiracy claim is the resulting damage to the plaintiff; therefore, the claim becomes actionable only once some overt act proximately causes harm to the plaintiff. The plaintiff in *Todd* failed to plead such an overt act, so the complaint failed to state a cause of action for civil conspiracy. The Court explained that this pleading requirement subsequently evolved, tenuously, into one for special damages. South Carolina courts then began to use the *Todd* rule to dismiss civil conspiracy claims that failed to plead special damages beyond those alleged in other claims in the complaint.

Petitioner was granted authority to argue against the *Todd*

rule, wherein Petitioner argued it should be abandoned as a misreading of a section *Corpus Juris Secundum* (prohibiting duplicative recoveries) by the *Todd* Court to impose a requirement of pleading overt acts in furtherance of the conspiracy beyond those acts for which damages had already been sought. The Court found that. “in addition to perhaps” the foregoing, the *Todd* rule seemed to emanate from differing interpretations of the term “special damages.” Traditionally, special damages are those that might be the natural result of an injury, but are not the necessary or usual consequences of the defendant’s conduct (*c.f.*, general damages, which are implied by law as the proximate and foreseeable consequences). In the civil conspiracy context, however, the Court found that the term means damages above and beyond those resulting from the plaintiff’s other claims.

Reiterating that *Todd* was intended to require pleading an overt act, and not special damages, the Court overruled *Todd* and other cases relying on *Todd* to the extent they impose a special damages pleading requirement. A plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.

Justice Few concurred with the majority’s elimination of the *Todd* rule. However, Few notes the lack of specific requirements, elements, or standards, and how same allows judges and juries to determine civil liability based not on the law, but on their individual sense of fairness or responsibility.

Accordingly, he “disagree[s] with the majority that we should unleash this still-undefined and now-unrestrained menace on the public as an independent tort.” Few calls for reserving the tort only in its derivative form (*e.g.*, against a defendant who did not participate in the actual fraudulent conduct).

Angela D. Keene, Individually and as P.R. of the Estate of Dennis Seay, Deceased, and Linda Seay v. CNA Holdings, LLC

Appellate Case No. 2019-000816

Opinion No. 28052

Heard June 11, 2020

Filed August 11, 2021

Seeking to correct/clarify a long history of confusion surrounding the “statutory employee doctrine,” the Court affirmed the circuit court’s determination that Seay was not the statutory employee of Hoechst.

Hyston (later, Hoechst) Fibers hired Daniel Construction to build and maintain a polyester fiber plant in Spartanburg. The contracts required Daniel to purchase workers’ compensation insurance, for which Hoechst reimbursed Daniel for the premiums. Seay was employed by Daniel, working various maintenance/repair positions at the Hoechst plant from 1971 until 1980, which exposed Seay to asbestos. Seay eventually developed mesothelioma, and filed suit against CNA Holdings, Hoechst’s corporate successor (Seay died, so his estate took over handling the lawsuit).

CNA argued Seay was a statutory employee, and the workers’ compensation law provided his exclusive remedy. The circuit court disagreed in denying CNA’s motion for summary

judgment, and the jury awarded Seay's estate a total of \$16 million. The Court of Appeals affirmed.

Section 42-1-400 reads in relevant part: "When any person, in this section . . . referred to as 'owner,' undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section . . . referred to as 'subcontractor') for the execution or performance by . . . such subcontractor of . . . any part of the work undertaken by such owner, the owner shall be liable to pay to any work[er] employed in the work any compensation under this title which he would have been liable to pay if the work[er] had been immediately employed by him."

The Court prefaced that the purpose of the statutory employee doctrine is to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment. It recognized a long line of cases finding that maintenance workers were statutory employees of manufacturing businesses, and a broad view of an employer's "trade, business, or occupation" in early cases. However, it noted that recent jurisprudence has been inconsistent with the broad interpretation of "trade, business, or occupation." The ultimate question before the Court was just that: "whether the work contracted out is 'part of [the owner's] trade, business or occupation.'" While noting that the *Bridges*, *Boseman*, and *Marchbanks* tests remain valid considerations, the Court notes the focus initially should be what the owner decided is part of its business (especially considering the increasing trend of outsourcing work formerly handled as part of the business). Here, Hoechst made a legitimate business decision to outsource its maintenance

and repair work, and not to simply avoid the costs of insuring those workers, as it reimbursed those costs to Daniel. The original purpose of the statutory employee doctrine, to prevent business managers from outsourcing work for the purpose of avoiding workers' compensation costs, is not served by making CNA Holdings an additional provider of workers' compensation benefits, especially in light of the economic evolution where it has become standard for business to bear the cost of insuring workers against injury, nor is that purpose furthered by granting CNA Holdings immunity for its wrongful conduct. Accordingly, the Court affirmed the circuit court's determination that Seay was not the stator employee of Hoechst.

Justice James dissented, and would have found Seay a statutory employee because his actions were an important part of the trade or business of the employer, *Glass v. Dow Chem. Co.*, 325 S.C. 198, 201, 482 S.E.2d 49, 50 (1997), and his status was far stronger than many others' in precedent cases. Additionally, James writes that the modern economy should not have guided the majority's reason or opinion, given that Seay's work was performed from 1971-1980. 🏛️

Endnotes

1 *Tyger River Pine Co. v. Maryland Cas. Co.*, 170 S.C. 286, 170 S.E. 346 (1933).

2 *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983).

3 In *Fowler v. State Farm Mutual Automobile Insurance Co.*, 300 F. Supp. 3d 751 (D.S.C. 2017), the plaintiff's attorney sent a demand letter to State Farm insisting the insurer pay its policy limits within a week, "at noon." 300 F. Supp. 3d at 753. Despite State Farm's "acceptance" of the demand, the plaintiff's attorney deemed the response a counteroffer and rejection, filed suit against the insured, negotiated with the insured—now its adverse party in a lawsuit—for a "confession of judgment of \$7 million" without State Farm's involvement, took a purported assignment of the insured's bad faith claim, and sued State Farm for bad faith. *Id.* After State Farm removed the case, the district court granted summary judgment, in part because, "Defendant's response to the offer could not constitute bad faith as a matter of law." 300 F. Supp. 3d at 753-54. The Fourth Circuit affirmed. 759 F. App'x 160 (4th Cir. 2019).

4 "The practice of assigning bad faith claims to leverage insurance companies to pay more than policy limits has apparently become fashionable in recent years." *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, Op. No. 28034 2021 S.C. LEXIS 71, *20, 2021 WL 2448359 (S.C. Sup. Ct. Filed June 16, 2021) (Shearouse Adv. Sh. No. 20 at 43 fn. 8).

5 *Nichols.*, 279 S.C. at 339 (stating "an insurer's *unreasonable* refusal to settle within policy limits subjects the insurer to tort liability" (citing *Tyger River Pine Co.*, 170 S.C. 286 at 290-91) (Emphasis Added)

6 However, as recognized by the South Carolina Supreme Court in *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, Op. No. 28034 2021 S.C. LEXIS 71, *20, 2021 WL 2448359 (S.C. Sup. Ct. Filed June 16, 2021) (Shearouse Adv. Sh. No. 20 at 43 fn. 8), the Court has never recognized the validity of any assignment of a bad faith claim.

7 Not meeting the demand would subject the insurer to potential extra-contractual exposure for bad faith/negligent failure to settle claims, as is argued in South Carolina.

8 The statute applies to offers made prior to the filing of a defendant's answer. The statute previously only applied to demands that were made prior to the filing of a lawsuit, which resulted in some attorneys filing suit and then immediately serving a demand on the insurer, to avoid the requirements of the statute.

9 Georgia has a "Holt" demand, similar to South Carolina's *Tyger River*. In responding to a time-limited settlement offer, an insurer must act reasonably, and is not required to accept an offer which, under all the circumstances, imposes an unreasonably short period of time to respond. *S. Gen. Ins. Co. v. Holt*, 262 Ga. 267, 416 S.E.2d 274 (1992).

10 The South Carolina Court of Appeals held oral arguments in Goodwin on February 1, 2021 so it is expected a decision is forthcoming.