

# THE DEFENSE LINE

S.C. DEFENSE TRIAL ATTORNEYS' ASSOCIATION

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## 2013 SCDTAA Officers

(l to r) Ron Wray, Treasurer; Sterling Davies, President; Molly H. Craig, Immediate Past President; Curtis Ott, President-Elect; William Brown, Secretary

SUMMER 2013

VOLUME 41

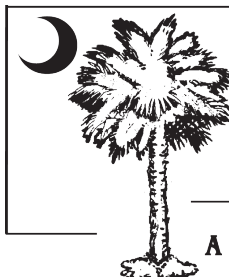
ISSUE 1

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**Summer Meeting**  
**Asheville, NC**  
**July 25-27**

**PAC Golf Tournament**  
**Columbia, SC**  
**September 27**

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



**SOUTH CAROLINA**  
**DEFENSE TRIAL**  
**ATTORNEYS'**

ASSOCIATION

# President's Message

by Sterling G. Davies

"Success is like anything worthwhile. It has a price. You have to pay the price to win and you have to pay the price to get to the point where success is possible. Most important, you must pay the price to stay there." -- Vince Lombardi.



Throughout the country and among every major defense organization, the SCDTAA is considered one of the most successful state defense organizations every year. The past leaders of our organization paid the price to achieve this high level of success. The organization now depends on us to pay the price to sustain this high level of achievement, discover and develop future leaders of the SCDTAA, and continue to improve upon what is already the best state legal

organization in the country. Fortunately for me and the other officers, the Board of Directors of the SCDTAA is comprised of over two dozen individuals willing to pay the price necessary to achieve the continued success of our organization. I can't praise or thank the current and past board members enough for their hard work and dedication.

Since Molly Craig's final message in this publication last fall, your Board has done an incredible job. In November, we hosted the Annual Meeting at The Sanctuary on Kiawah Island. Molly's vision and the SCDTAA Board's planning over the past four years created this incredible opportunity. William Brown, John Kuppens, Johnston Cox and Mark Allison developed an exceptional program. Aimee Hiers and her staff worked tirelessly to ensure a first class production from beginning to end.

When we arrived at The Sanctuary in November, the dividends of this hard work and planning paid off with one of our best Annual Meetings in the organization's 45 years. We had a record number of sixty judges in attendance and well over 100 defense attorneys. This opportunity for our lawyers to personally connect with the state's judiciary is unmatched by any other state legal organization. I would like to personally thank each and every judge for joining us last fall and encourage them to visit with us again this November in Savannah.

In January, the Board had a Long Range Planning Meeting at the South Carolina Bar Convention. We were able to partner with the Plaintiff's Bar in sponsoring a judicial reception the night before our planning session. We then spent an entire day dedicated to ensuring the present and future success of our organization. Again, I would like to personally thank

each and every Board member for their commitment and hard work.

2013 has already been a banner year for the South Carolina Defense Trial Attorneys Association. In April, we once again produced the SCDTAA Trial Academy. Anthony Livoti, Erin Dean, Jack Riordan, John Hawk and Adam Neil put in countless hours working on the program and assembling all the components necessary to allow our 20 students an opportunity to have a true trial experience – jurors, judges, witnesses, trial observers and faculty. Nelson Mullins graciously hosted the two days of training for the Trial Academy, and the faculty was an incredible mixture of renowned trial lawyers from both the Plaintiff and Defense Bars. The students were then able to try their cases at the Matthew J. Perry, Jr. Courthouse. Along with thanking the faculty, jurors, witnesses and trial observers, I would like to thank Judges Barber, Hood, Russo, Addy and James. Each of these judges dedicated an entire day to helping our organization and students and they all gave incredible feedback to the students.

I would like to also thank the many of you reading this message who have helped the SCDTAA PAC grow. I am pleased to announce that we now have a greater presence at the State House than we have ever had in the past. With the help of our lobbyist, Jeff Thordhal, our members are making presentations to judicial subcommittees, offering comments on a number of key pieces of legislation, and constantly tracking emerging and developing issues that may affect our members. In December, we created a task force lead by Gray Culbreath to pay extra attention to any efforts to change the judicial selection process in South Carolina; we will make certain we educate and represent our members regarding any efforts to change the way our state judiciary is selected. Finally, for the first time ever, our Board consists of two legislators, Shane Massey and Derham Cole; we are very appreciative of their efforts to educate and advise the Board on legislative matters.

As the Board continues to look for new benefits it can offer our members, we held our first live video happy hour CLE on May 23. Bill Besley, Johnston Cox, John Kuppens and Jim Ervin were instrumental in planning this creative event that focused on trial motions. Gray Culbreath moderated a panel in Columbia that included Dave Howser and Judge

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# Letter From The Editors

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

EDITORS'  
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And so it is upon us...another sweltering hot, South Carolina summer. Time for backyard barbecues, pool parties, lake adventures and...(wait for it)...summer vacation! As civil defense attorneys, the word “vacation” is something of which we have become increasingly unfamiliar; the word alone can bring heightened stress to even the calmest of lawyers. This is not because attorneys do not enjoy quality family time; we all enjoy it, revel in it and wish we had more of it. Instead it is because the increasing demands of our jobs and practices make taking an actual vacation nearly impossible. Additionally, the sheer amount of work waiting on us when we return from vacation is enough of a deterrent to avoid going altogether. And even when we do take vacation, are we really “vacating”? Are we freeing our minds from the stress and worry of what is going on at the office to really take advantage of our time away? No, we are not. At some point in time, almost every attorney reading this has had a complaint from a family member to “put the \_\_\_\_\_(insert high tech device here) away” and be present. It is the classic battle of work-life balance that we are all striving to achieve and, unfortunately for the vast majority of us, the “life” portion seems to suffer the most.

You can talk to any group of civil defense attorneys and see that the work-life balance plagues us all differently. You have the father/husband who feels guilty because he is working and traveling all the time; the mother/wife who feels guilty because work requirements prevent her from being as domestic as her stay-at-home counterparts; and the single, young professional who seemingly does not have time for a spouse or kids and instead focuses mostly on career. So what is the civil defense attorney to do to maintain some level of sanity? Professionals suggest that those with limited free time at least take “mental health breaks.” Granted, it is not a full on summer vacation, but we have to crawl before we walk, right? Taking a mental health break will help reduce stress, increase our ability to perform to our potential, increase work-life balance, prevent burn out and help us to fully recharge our batteries. A mental health break can range anywhere from a summer vacation to a nice walk outside, or simply taking a few minutes to catch up with that old friend who always makes us laugh.

So, what does this have to do with the *DefenseLine*? Believe it or not, if you are reading these words, you are taking a mental health break. You are taking a few minutes to do something outside of your work schedule and commitments. As editors of the publication, we hope this issue provides an opportunity for you to take a break from your daily “required reading” and, instead, enjoy what the SCDTAA has to offer. In this issue, you will possibly learn about a recent achievement of a colleague or friend of which you were unaware; we will introduce you to a newly elected member of the judiciary; you might even learn about a recent case that affects a particular area of law that is of interest to you; and you will definitely read about what members of the SCDTAA have been up to in 2013 and what you have to look forward to as we plan the 2013 Summer and Annual Meetings. Regardless of your interest area, the *DefenseLine* has something that every member of the South Carolina Civil Defense Bar and Judiciary should find interesting and informative.

Lastly, we would like to continue to encourage our members to contact us with ideas to be included in the *DefenseLine*, whether it is a recommendation for a judicial profile or an idea for an article submission. We will continuously work to make sure that this is a publication that accurately reflects our distinguished organization and one that our readers find pertinent and enjoyable. If you have an idea, please do not hesitate to contact one of us, any member of our Board of Directors, or our Executive Director, Aimee Hiers. As always...we love to hear from you!



Breon C. M. Walker



J. Derham Cole, Jr.



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## **Rusty Goudelock and Buster Holland Honored with SCWCEA Lifetime Service Award**

The South Carolina Workers' Compensation Educational Association (SCWCEA) is pleased to announce the two newest recipients of the Lifetime Service Award, J. Russell "Rusty" Goudelock, II, of McAngus Goudelock & Courie, LLC and Wallace G. "Buster" Holland of Young Clement Rivers, LLP.

The SCWCEA Lifetime Service Award is given by the SCWCEA Board to individuals who have contributed significantly to the success and betterment of the SCWCEA and/or the South Carolina workers' compensation system. The Board unanimously determined there were two individuals that completely fit the criteria of this designation.

"Rusty Goudelock and Buster Holland have worked tirelessly over the years to help build this Association into what it is today. Their leadership and institutional knowledge of the Association and the South Carolina workers' compensation system is invaluable." said Ric Davis, 2012 SCWCEA President and Shareholder with Christian and Davis Law Firm in Greenville, SC.

The Lifetime Service Award is not an annual event. It is given sparingly and only to those individuals who have made it their life's work to enhance the SCWCEA and/or the SC workers' compensation system. It is the highest honor bestowed by the organization.

"Rusty and Buster have been devoted members of the SCWCEA for more than 20 years. Rusty served as president of the association, as well as an officer, board member, chair of multiple committees. He has done everything except run the organization, and I'm not certain he didn't do that. Buster has been on the front lines since the SCWCEA's inception also serving as a board member, chairing multiple committees and spearheading efforts to promote and advance the Association," said Donna Croom, SCWCEA Executive Director.

Goudelock graduated from The Citadel with a degree in Business Administration and received his Juris Doctor from the University of South Carolina School of Law. He is a member of the Council on Litigation Management, the South Carolina Bar and its Workers' Compensation and Labor and Employment Law Sections, the South Carolina Defense Trial Attorneys' Association, and the South Carolina Workers' Compensation Educational Association. He is the Past Chair of the South Carolina Bar's Section of Workers' Compensation

and presently serves on the association's board of directors. Mr. Goudelock has also served as President of the South Carolina Workers' Compensation Educational Association. Additionally, he served as Treasurer and board member for Kids' Chance of South Carolina, a non-profit organization that awards scholarships to children of injured workers. Mr. Goudelock is a member of the Defense Research Institute's Committees on Workers' Compensation Law and Employment Law. He regularly lectures before various organizations on issues related to workers' compensation and employment law and frequently appears before the South Carolina Workers' Compensation Commission and in state courts representing employers, self-insureds and insurance carriers. Mr. Goudelock is one of the South Carolina attorneys practicing workers' compensation law named in The Best Lawyers in America and was also listed in the 2009, 2010, 2011 and 2012 editions of South Carolina Super Lawyers. He was recently honored by South Carolina Lawyers Weekly with the 2012 Leadership in Law Award.

Holland graduated from The Citadel where he was inducted into the Athletic Hall of Fame and received his Juris Doctor from the University of South Carolina School of Law. He is the former chair of Young Clement Rivers' Workers' Compensation practice group and has a preeminent reputation in South Carolina for representing employers and their carriers in workers' compensation claims.

Holland is one of just a few Circuit Court Certified Mediators who concentrates their practice on Workers Compensation cases in Charleston, South Carolina. He is the only Circuit Court Certified Mediator who concentrates his practice on Workers Compensation cases in the Florence/Pee Dee area. He also served on the South Carolina Workers' Compensation Commission's task committee, which drafted proposed regulations requiring mediations in certain South Carolina Workers' Compensation claims. He is a member of the South Carolina Bar, Chairman Ninth Circuit Resolution of Fee Disputes Board, South Carolina Defense Trial Attorneys Association, co-chair of the Charleston County Bar Association Workers' Compensation Section, South Carolina Workers' Compensation Educational Association and has also been a member of the South Carolina Law Review.

Cooper. The panel met at the Columbia Office of McAngus, Goudelock & Courie, and the presentation was broadcast live to MGC's three other South Carolina offices in Greenville, Charleston and Myrtle Beach. I would like to thank Judge Few and Justice Hearn for joining us in Greenville and Myrtle Beach respectively. This unique CLE offered more than 70 of our members an opportunity to share some social time with each other, spend some time with judges, learn about trial motions and do so without spending time and money traveling to a central location. Please look for more of these events in the future.

We now turn to the work necessary to make the rest of our year a success. Jamie Hood and his committee have worked extremely hard to develop an excellent program for the Summer Meeting at the Grove Park in Asheville. Along with our traditional programming, we will also have a separate workers' compensation track, and are pleased to announce that almost every workers' compensation commissioner will be present for that meeting. Please plan to join us in Asheville on July 25 through 27, 2013.

Anthony Livoti is working hard to schedule our annual PAC golf tournament. We have moved this tournament to the fall based on the request of a number of our members. We would appreciate any and all participation we can receive from our members, because our PAC is becoming a much more significant portion of the SCDTAA's overall plan. We have already used the PAC to help fund our legislative/judicial reception in Columbia, and you will tell from Jeff Thordhal's comments in this publication how involved we are

becoming with legislative matters. We certainly appreciate your support and I would like to thank our PAC Board of Directors for their commitment and hard work: Molly Craig, Eric Englehardt, Bill Coates, Rob Tyson and Gray Culbreath.

Finally, I would like to recognize Bill Coates for receiving the Hemphill Award at our 2012 Annual Meeting. Bill served as President of the SCDTAA from 1993 to 1994 and is universally regarded as one of the finest trial lawyers in the country. He has continued to stay extremely involved in the SCDTAA and still serves on our Board. The Hemphill Award is based upon distinguished and meritorious service to the legal profession and/or the public. This award is the highest honor our organization can bestow upon any individual member. Bill is only the fourteenth SCDTAA member to receive this award since our organization was founded in 1968.

Bill's past service and hard work for the organization was the price he was willing to pay to position the SCDTAA as a leader among all national defense organizations. Molly Craig's efforts last year continued in a long line of Bill's successors. I promise you that this year's Board and Officers will gladly pay the price to continue making our organization even more successful.

I look forward to seeing you in Asheville.



## Hemphill Award: Call for Nominations

- Eligibility:** The candidate must be a member of the South Carolina Bar and a member or former member of the SCDTAA. He or she may be in active practice, retired from practice or a member of the judiciary.
- Criteria:** The award should be based upon distinguished and meritorious service to the legal profession and/or the public; and one who has been instrumental in developing, implementing, and carrying through the objectives of the SCDTAA. The candidate should also be one who is or has been an active, contributing member of the Association.
- Procedure:** Nominations should be made by letter, with any supporting documentation and explanations attached. A nomination should include the name and address of the individual, a description of his or her activities in the Association, the profession and the community, and the reasons why the nominee is being put forward.

**Nominations due to Aimee Hiers at SCDTAA Headquarters by July 15**  
**SCDTAA • One Windsor Cove, Suite 305 • Columbia, SC 29223**  
**For more information contact Aimee at [aimee@jee.com](mailto:aimee@jee.com)**

**Read article on 2012 Winner, Bill Coates, on page 29 of this issue**

"The Lifetime Service Award is a testament to both Rusty's and Buster's lifetime of work on behalf of the businesses of South Carolina. Both are magnificent lawyers and considered leaders in the legal community and fixtures of workers' compensation law in South Carolina. We couldn't be more proud of these two fine gentlemen who we consider our friends," said Ric Davis, 2012 SCWCEA President and Shareholder with Christian and Davis Law Firm.

#### **Marcy J. Lamar Co-Authors Sixth Edition of The Law of Workers' Compensation in South Carolina**

McKay, Cauthen, Settana and Stubleby P.A. is pleased to announce that attorney Marcy J. Lamar recently co-authored *The Law of Workers' Compensation in South Carolina, Sixth Edition, 2012*, published by the South Carolina Bar. Ms. Lamar previously co-authored the Third, Fourth and Fifth Editions of the publication, as well as the 2000 Supplement to the Third Edition. This highly-anticipated Sixth Edition contains up-to-date information regarding Workers' Compensation law and incorporates both the 2007 amendments to the South Carolina Workers' Compensation Act as well as pre-2007 case law and statutes. Since its First Edition in 1992, this publication has been viewed as the State's most thorough and scholarly resource on this technical and complex area of law. In addition, the South Carolina Supreme Court and Court of Appeals have cited portions of this publication in several of their recently published opinions.

Ms. Lamar is a member of the McKay Firm's workers' compensation team and practices in the area of workers' compensation defense litigation. Beginning in 2010, Best Lawyers in America has selected Ms. Lamar for inclusion in its prestigious publication every year, including its upcoming 2013 Edition. She is an appointed member of the Medical Seminar Standing Committee for the South Carolina Workers' Compensation Educational Association and an appointed member of the Workers' Compensation Committee for the South Carolina Defense Trial Attorneys' Association. As a 1998 graduate of the USC School of Law, Ms. Lamar was a Member of the Order of Wig and Robe as well as the Moot Court Bar where she also served as Associate Justice of the Second Year Moot Court Team.

The Sixth Edition of *The Law of Workers' Compensation in South Carolina, Sixth Edition, 2012*, contains up-to-date information about Workers' Compensation law and incorporates both the 2007 amendments to the South Carolina Workers' Compensation Act as well as pre-2007 case law and statutes.

#### **Mark W. Buyck, Jr. Awarded the Trial Lawyer of the Year by American Board of Trial Advocates**

Mark W. Buyck, Jr., Chairman of the Board of the Wilcox, Buyck & Williams of Florence and Myrtle

Beach was awarded the Trial Lawyer of the Year by the South Carolina Chapter of the American Board of Trial Advocates at its annual dinner.

#### **Trey Watkins Elected Shareholder at Wall Templeton & Haldrup, P.A.**

Wall Templeton & Haldrup, P.A. is pleased to announce that William "Trey" W. Watkins, Jr. has been elected as a Shareholder of the firm.

Watkins was admitted to the South Carolina Bar in 2005. He received both his Bachelor of Science and Juris Doctorate degrees from the University of South Carolina, and he is an "AV Preeminent" rated attorney by Martindale-Hubbell.

His practice focuses primarily on insurance defense including construction disputes, serious personal injury, and complex litigation. Prior to attending law school, Watkins worked in the surety industry as a Surety Bond Underwriter for Travelers.

He is a lecturer and author on construction and surety industry topics for groups such as the Carolinas Associated General Contractors (CAGC), the American Bar Association's Forum on the Construction Industry, and Lorman Education Services. He currently serves as president elect of the South Carolina Defense Trial Attorneys Association's Young Lawyers, as a member of the South Carolina Bar's Judicial Qualifications Committee, as a construction committee member for the Claims & Litigation Management Alliance, as a member of the Board of Directors for the Charleston Metro Exchange Club, and as an agent for Woodberry Forest School's annual fund.

#### **Matthew Elliott Cox Joins Wilkes Law Firm, P.A.**

Wilkes Law Firm, P.A., is pleased to announce that Matthew Elliott Cox has joined the firm in its Spartanburg office. Matthew returns to Spartanburg after practicing since 2005 with Smith, Currie & Hancock, LLP, a national firm, in its Charlotte, NC office. Matthew received his B.S. in Statistics from Brigham Young University in 1996, and earned his Juris Doctor from the University of South Carolina in 1999. While pursuing his Juris Doctor, Matthew participated in Mock Trial and represented the University of South Carolina at the Regional Competition held in Athens, GA in 1999. Matthew has also previously served as Assistant General Counsel for the SC Department of Insurance; clerked for the Honorable J. Derham Cole; and practiced with Gibbes Burton in Greenville, SC and Johnson, Smith Hibbard & Wildman in Spartanburg, SC. He is a member of the South Carolina, North Carolina and District of Columbia Bars. Matthew's practice at Wilkes Law Firm, P.A., will include all areas of civil litigation, including professional liability defense, construction litigation, commercial litigation and personal injury defense.

Continued on next page



**Vernon Dunbar and Sarah Hurley Approved as Mediators and Arbitrators**

Turner Padgett Graham & Laney, P.A. is pleased to announce that Vernon F. Dunbar and Sarah Day Hurley have been approved by the South Carolina Board of Arbitrator and Mediator Certification as Circuit Court Mediators and Arbitrators. Mr. Dunbar is a shareholder and Managing Partner of Turner Padgett's Greenville office. He practices in the areas of business litigation and workers' compensation. Ms. Hurley, Of Counsel in the firm's Greenville office, has an active commercial litigation practice with a concentration in contract and business disputes and intellectual property litigation.

**David L. Williford Becomes Partner at Davis, Snyder & Williford, PA**

Davis & Snyder, PA is pleased to announce that David L. Williford has become a partner in the firm along with Ashby W. Davis and Steven A. Snyder. The firm name has been changed to Davis, Snyder & Williford, PA, located at 5 Hawthorne Park Court, Greenville, SC 29615 (864-335-3500).

**Richardson Plowden Names Chuck Webb as a Shareholder**

Richardson, Plowden & Robinson, P.A. is pleased to announce that attorney Charles J. "Chuck" Webb was recently named a shareholder in the Firm. Webb joined Richardson Plowden in 2005.

"Chuck's dedication to the integrity of the legal profession is evident through the excellent work he provides our clients," says Steve Pugh, managing shareholder at Richardson Plowden. "We are pleased to have Chuck as a shareholder as we continue our focus of rendering cost-effective, quality service to our clients and the growth of our Firm."

Mr. Webb focuses his practice on real estate transactions, foreclosures, collections, creditor's rights in bankruptcy, and business/corporate law. He earned his Bachelor's Degree from Presbyterian College in 1999 and his Juris Doctor from the University of South Carolina School of Law in 2005. He clerked for Richardson Plowden for more than two years before joining the firm as an associate. Mr. Webb is a member of the South Carolina Bar and Richland County Bar Association.

**Wesley E. Henderson and R. Patrick Martin Join MG&C's Greenville Office**

The law firm of McAngus Goudelock & Courie is pleased to announce that Wesley E. Henderson and R. Patrick Martin have joined the firm's Greenville office. Both Henderson and Martin's practices will focus on workers' compensation defense.

Mr. Henderson received his Juris Doctor from the University of South Carolina School of Law and his undergraduate degree from Wofford College. Prior to joining MG&C, Mr. Henderson practiced employment law and general law.

Mr. Martin received his Juris Doctor from the University of South Carolina School of Law, where he served on the USC Mock Trial Team, and his undergraduate degree from Erskine College. Mr. Martin is a member of the Spartanburg County Bar Association. Prior to joining MG&C, Mr. Martin practiced litigation.

**Renee Dankner Joins Nelson Mullins in Columbia**

Legal corporate attorney Renee Dankner has joined Nelson Mullins Riley & Scarborough in its Columbia office, bringing her experience in corporate in-house, law firm, and nonprofit work to the Firm.

Ms. Dankner joins as of counsel and has 12 years of experience working as in-house counsel for global organizations, including almost six years designing programs, services, and resources for general counsel. Her most recent position was as principal and general counsel of Legal Executive Leadership. Before that, she served as associate general counsel and director of CLO and Legal Executive Services for the Association of Corporate Counsel.

Ms. Dankner focuses on electronic information management and governance, E-discovery, client relations, and business intelligence. Her previous in-house counsel experience also includes her role as senior counsel for Mobil Oil Corporation/Mobil Business Resources Corporation where her practice focused on environmental regulatory and transactions work for the global energy company.

Ms. Dankner earned a Juris Doctor with honors in 1989 from George Washington University, The National Law Center, and a B.A. in Biology in 1986 from The State University of New York at Binghamton, Harpur College.

**Richardson Plowden Welcomes Sheila Bias to the Firm**

Richardson Plowden & Robinson, P.A. is pleased to announce that Sheila M. Bias has joined the Firm as an associate attorney in the Columbia office.

Bias is a member of the Richardson Plowden Litigation Practice Group focusing on research and appellate law and will be overseeing the Firm's law clerk program. She earned her Juris Doctor from the University of South Carolina (USC) School of Law in 2011 and her undergraduate degree from USC in 2005. Prior to joining Richardson Plowden, Bias worked at the South Carolina Supreme Court as a Staff Attorney. Bias is returning to Richardson Plowden after previously working as a law clerk at the Firm while attending law school.

"We're excited to have Sheila back at Richardson Plowden and joining us as an attorney," says Steve Pugh, managing shareholder. "Her keen ability to learn quickly and energetic attitude, is sure to help her excel quickly within the Firm and within the legal community."

Sheila is a member of the South Carolina Bar and



is active in the Young Lawyers Division where she serves on the Cinderella Project committee, the Volunteer Income Tax Assistance committee, and the iCivics committee. Sheila is also a member of the South Carolina Women Lawyers Association and serves on its Board of Directors.

#### **Nelson Mullins' Ed Mullins Receives Rhodes-McDonald Award**

Ed Mullins, of counsel to Nelson Mullins Riley & Scarborough, has been awarded the 2012 Rhodes-McDonald award from the John Belton O'Neill Inn of Court. The award is presented annually to a member who models the conduct and values that the Inn upholds.

Mr. Mullins has been an ambassador for the John Belton O'Neill Inn of Court throughout the United States during his service on the Board of Trustees of the American Inns of Court Foundation, the national organization of the local Inns of Courts, since 2008, and he is a leader in the USC School of Law's Nelson Mullins Riley & Scarborough Center on Professionalism.

The award is named for the late Jeter Rhodes and Heyward McDonald, prominent Columbia, S.C., attorneys whose lives and contributions to the legal profession were a testament to the mission of the American Inns of Court.

#### **Past SCDTAA President Harold W. Jacobs Honored with Statewide Award**

The South Carolina Bar Foundation is proud to announce Nexsen Pruet's Harold W. Jacobs as the 2012 DuRant Distinguished Public Service Award recipient for meritorious service to the law and community. This annual recognition is the most prestigious statewide award members of the South Carolina Bar can bestow on a fellow attorney. The award was presented during the Bar Convention on Jan. 25 at the Myrtle Beach Marriott Resort & Spa.

Jacobs is senior counsel at Nexsen Pruet with a practice primarily in litigation emphasizing the areas of aviation, products liability, antitrust and unfair trade practices. After earning his undergraduate degree from Clemson University and graduating from the United States Naval Academy, Jacobs completed his Juris Doctor at the University of South Carolina School of Law. The School of Law Alumni Foundation later honored him with the Compleat Lawyer Platinum Award, which is given to only three attorneys per section each year for outstanding professional and civic achievement.

Jacobs is a Fellow of the American Bar Foundation and participates as a member of the American Bar Association. Celebrated with multiple listings in Best Lawyers in America, Jacobs has also held leadership positions including president of the South Carolina Bar and South Carolina Defense Trial Attorneys' Association, member of the American Judicature

Society board of directors, chair of the South Carolina Supreme Court Commission on Character and Fitness and chair of the South Carolina Judicial Conference Committee on Judicial Reform.

In his community, Jacobs has served as senior warden on the vestry of St. Michael's and All Angel's Episcopal Church as well as a member of the South Carolina Higher Education Commission and Patriots' Point Authority Commission.

#### **J. Kenneth Carter, Jr. Chosen to Serve as Chairman of the Board of Directors for Business Counsel, Inc.**

Turner Padgett Graham & Laney, P.A. is pleased to announce that J. Kenneth Carter, Jr. has been chosen to serve as Chairman of the Board of Directors for Business Counsel, Inc. Mr. Carter, a partner in the Columbia office, is the practice leader for the Product Liability and Trucking Litigation teams. He has been a trial lawyer with Turner Padgett his entire 23-year career.

"We are delighted that Ken has been chosen to serve as chairman of this prestigious organization," said Eddie Laney, CEO of Turner Padgett. "This is a well deserved honor for Ken, who has devoted his career to service of the profession. The firm is honored as well and greatly values Ken's recognition by Business Counsel."

Mr. Carter serves as state and regional counsel for automotive manufacturers, trucking and transportation companies, construction and building product manufacturers as well as a number of other product manufacturers and medical device companies defending severe, high exposure cases in both state and federal courts.

Business Counsel, Inc., is a network of law firms based in the United States with member firms from around the world focused on providing high quality legal services to the business community. Members of Business Counsel include private law firms in many major economic centers within the United States, Belgium, Canada, China, France, Germany, Hong Kong, Ukraine, and the United Arab Emirates and engaged in business law representation, including transactional law, regulatory and litigation.

#### **Steven W. Hamm of Richardson Plowden Honored with 2013 Compleat Lawyer Award and Leadership in Law Award**

Dedication equals success, which explains why each year Steven W. Hamm's career gets more impressive than the last. Described as thoughtful, insightful, and a model of civility, Hamm is considered one of the most respected lawyers in South Carolina. The attorney of more than three decades has achieved much success in his professional path. It is with great pleasure that Richardson Plowden & Robinson, P.A. announces that Hamm was recently

honored for these traits and achievements by not one, but two prestigious organizations: the University of South Carolina (USC) School of Law and South Carolina Lawyers Weekly.

Hamm is a recipient of the 2013 USC Compleat Lawyer Award, Platinum Level. Since 1992, the USC School of Law has recognized alumni for outstanding civic and professional accomplishments. Hamm was selected for his contributions to the legal profession, exemplifying the highest standard of professional competence, ethics and integrity. Hamm earned his Juris Doctor from the school in 1977. A recognized supporter of the USC School of Law, he was instrumental in settling a major class action and obtained court approval for a cy pres award to the USC School of Law building campaign.

South Carolina Lawyers Weekly bestows its Leadership in Law award to a handful of attorneys throughout South Carolina who have demonstrated excellence in leadership within the legal profession and their community. Hamm was selected by South Carolina Lawyers Weekly for his impactful legal contributions and his many outstanding career achievements. In his 36 years of legal work, Hamm has served as lead counsel in national cases, has held numerous leadership positions for national organizations and local associations, has mentored young attorneys, and has served on the Executive Committee at Richardson Plowden for many years.

“Steve is a tenacious litigator,” says Brad Hutto, a colleague and friend of Hamm’s for nearly 20 years. “He always has his focus on the people that he represents. In spite of his significant medical challenges, Steve has maintained a positive outlook. He is always cheerful and friendly. In fact, when he enters a courtroom, it is not unusual for him to speak to every single person in the court down to the last bailiff. He is genuinely interested in the well-being in his fellow attorneys, co-counsel, as well as opposing counsel.”

Hamm focuses his practice in administrative and regulatory law, specifically complex business litigation. He has been recognized as a Best Lawyer by Best Lawyers in America® for the last two consecutive years and has received the highest “Preeminent AV” rating in Martindale-Hubbell’s peer review rating system. He is a member of the South Carolina Bar and the Richland County Bar Association.

#### **Gifford and Kelley of Richardson Plowden selected to 2013 Class of the SC Bar Leadership Academy**

Richardson Plowden & Robinson, P.A. is pleased to announce that attorneys Emily R. Gifford and Michelle Parsons Kelley were recently selected to the 2013 Class of the SC Bar Leadership Academy.

The SC Bar Leadership Academy is a highly selective program, designed for young lawyers who have been in practice from three to 10 years. The program will equip them with networking opportunities, profes-

sionalism training, community awareness, and other skills necessary to give back to the legal profession and position themselves as leaders in the community.

Gifford joined Richardson Plowden in 2005 and focuses her practice in Construction Law and Insurance Defense. She earned her Master’s in Health Administration while simultaneously completing her Juris Doctor at the University of South Carolina (USC) in 2005. She also earned her Bachelor of Arts degree from the USC Honors College. In addition to her work at Richardson Plowden, Gifford is a pro bono special prosecutor for the Office of the Attorney General, assisting in the prosecution of criminal domestic violence cases. She is a member of the American Bar Association (ABA) Tort Trial and Insurance Practice Section (TIPS) Tortsources Editorial Board, where she serves as Editor-in-Chief. She is also the Chair of the TIPS Self Insurers and Risk Managers Committee, is on the TIPS Outreach to Young Lawyers Taskforce, and graduated from the TIPS Leadership Academy. She is actively involved with the Young Lawyers Division of the South Carolina Bar, and is a member of the South Carolina Defense Trial Attorneys’ Association Construction Law Committee, and co-author of the Surety Law Chapter in the forthcoming South Carolina Bar Construction Law Deskbook. She was also named a 2012 Rising Star by South Carolina Super Lawyers.

Kelley joined Richardson Plowden in 2010 and is a member of the Richardson Plowden Litigation Team where she focuses her practice in general litigation, including appeals and commercial litigation. Kelley earned her Master’s in Public Administration from USC in 2007, while simultaneously completing her Juris Doctor from the USC School of Law, which she attended on a full academic scholarship as a Carolina Legal Scholar. Prior to that, she graduated from the USC Honors College in 2004. Kelley is active in the community, serving in numerous leadership roles. She is the Chair of the South Carolina Commission on Women, an appointed advisor for the South Carolina Federal Credit Union Board of Advisors, is Statewide Chair of the Cinderella Project, a program sponsored by the South Carolina Bar Young Lawyers Division, and she is a pro bono special prosecutor for the Office of the Attorney General, assisting in the prosecution of criminal domestic violence cases. Kelley was selected as the “Face of Y’all” by USC for 2012-2013. In this role, she serves as an ambassador for all USC graduates for the past 10 years. She was also named a 2012 Rising Star by South Carolina Super Lawyers.

#### **Richardson Plowden Opens Office in Charleston**

Richardson Plowden & Robinson, P.A. is pleased to announce the opening of its third office, located in Charleston, SC. With the opening of the 40 Calhoun Street location in Charleston, Richardson Plowden

welcomes attorneys James H. Elliott, Jr. and Samia H. "Sam" Nettles to the Firm.

"We are very excited about our expansion to Charleston and the addition of these attorneys to our Firm," says Steven J. Pugh, Richardson Plowden managing shareholder. "Sam and James are excellent lawyers with extensive defense litigation experience. We are confident that their leadership and professional abilities will help grow our presence in Charleston. With offices in Columbia, Myrtle Beach and now Charleston, our Firm is better suited to meet the needs of our clients all across the state." The firm began operating out of Suite 220 within the Calhoun Street office complex on November 1. The 3,200 square-foot office space is conveniently located at the corner of Calhoun and East Bay Streets in downtown Charleston, allowing for easy access from Interstate 26. Convenient parking is available for clients, visitors and employees in the parking garage next door. The main office phone number is 843.805.6550.

Elliott focuses his practice in professional liability, construction law, products liability, and general civil litigation. He earned his Juris Doctor from the University of South Carolina (USC) School of Law in 1997 and his Bachelor's degree from USC in 1989. Prior to practicing law, Elliott was a licensed insurance adjuster, handling property and casualty claims. While attending law school, he was a member of the Order of Wig & Robe and clerked at the South Carolina Department of Labor Licensing and Regulation. Elliott has tried over 50 cases to verdict and has handled numerous appellate matters. He is a member of the Charleston County Bar Association, South Carolina Bar, American Bar Association, Defense Research Institute, and the South Carolina Defense Trial Attorneys' Association.

Nettles focuses her practice in general litigation, construction law, land use, appellate law, historic preservation law, homeowners' associations, personal injury, and insurance defense. She earned her Juris Doctor from the Charleston School of Law in 2007, her Master's degree from Georgia State University in 2004, and her Bachelor's degree from the College of Charleston in 2003. Upon graduation from the Charleston School of Law, Nettles clerked for The Honorable Deadra L. Jefferson of the Ninth Judicial Circuit. Prior to joining Richardson Plowden, she was an associate attorney at the Pritchard & Elliott law firm in Charleston. She is a member of the Charleston County Bar Association, the South Carolina Bar, and the Defense Research Institute. She is licensed to practice in South Carolina and in Georgia.

#### **John E. Cuttino Inducted into Membership of the American Board of Trial Advocates ("ABOTA")**

Turner Padgett Graham & Laney, P.A. is pleased to announce that John E. Cuttino has been inducted

into membership of the American Board of Trial Advocates ("ABOTA") and was sworn in as a new member on January 31, 2013. Mr. Cuttino is a shareholder in the Columbia office and has practiced law in South Carolina since 1982. His practice includes the defense of major personal injury, construction defect, products liability, and pharmacy liability cases. He earned his undergraduate degree from Wofford College and his law degree from the University of South Carolina.

#### **John E. Cuttino Elected Secretary-Treasurer of DRI**

John E. Cuttino, a shareholder in the firm's Columbia office of Turner Padgett Graham & Laney, P.A., has been elected to the position of Secretary-Treasurer of DRI-The Voice of the Defense Bar. Mr. Cuttino's election took place at DRI's Annual Meeting held in October in New Orleans, Louisiana. As an Officer of DRI, Mr. Cuttino is a member of DRI's six-person Executive Committee which directs all DRI operations. With a membership of more than 22,000, DRI is the world's largest and premier international organization of attorneys and in-house counsel who defend the interests of individuals, insurers, and businesses in civil litigation. DRI provides numerous educational seminars nationally, promotes continuous improvement of the civil justice system and the defense bar, and is committed to the preservation of the civil jury trial. Mr. Cuttino previously served on DRI's national Board of Directors from October 2009 to October 2012.

#### **Brad B. Easterling, Mark B. Goddard, and J. Jakob Kennedy Elected Shareholders at Turner Padgett**

Turner Padgett Graham & Laney, P.A. has elected Brad B. Easterling, Mark B. Goddard, and J. Jakob Kennedy as shareholders of the firm. Easterling practices in the area of workers' compensation law, Goddard concentrates his practice in the area of business litigation, and Kennedy practices in business litigation, employment law and professional liability.

#### **Englebardt Appointed to Executive Committee of NADN**

Turner Padgett Graham & Laney, P.A. is pleased to announce that Eric K. Englebardt has been chosen to serve as a member of the Executive Committee of the South Carolina Chapter of the National Academy of Distinguished Neutrals (NADN), a professional association of elite attorneys with extensive experience in civil and commercial conflict resolution. Mr. Englebardt, a shareholder in the Greenville office and a member of the firm's Litigation Practice and ADR groups, was one of the first two mediators in the state of South Carolina to be nominated for and admitted to the NADN. Membership in the Academy is by invitation only and consists of mediators and arbitrators distinguished by their hands-on experi-

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ence in civil/commercial conflict resolution and commitment to alternative dispute resolution practice. Long an advocate for the use of mediation as a means of resolving disputes, Mr. Englehardt also serves on the Board of Directors for the Upstate Community Mediation Center.

#### **Ashley Rudisill Forbes Joins Turner Padget**

Ashley Rudisill Forbes has joined the law firm of Turner Padget Graham & Laney, P.A. and is based in the Greenville office. Ms. Forbes will concentrate her practice in the area of workers' compensation. After obtaining a B.A. in 2005 from Duke University, she received her Juris Doctor from Wake Forest University School of Law in 2012 where she served as Managing Editor of the Wake Forest Journal of Business and Intellectual Property Law.

#### **Lambert Elected Officer of Junior Achievement of Central South Carolina**

Turner Padget Graham & Laney, P.A. is pleased to announce that Lanneau Wm. Lambert, Jr. has been elected to serve as the Chair-Elect of the Board of Directors for Junior Achievement of Central South Carolina, Inc. Mr. Lambert has served on the Board of Directors since 2008. He is a past president of the South Carolina Bar, serves as practice group leader for the firm's business transactions practice and is a shareholder in the Columbia office. He has more than 27 years' experience in lender counsel representation in complex real estate and asset-based financing and in all aspects of commercial real estate development, leasing and financing. He works regularly with municipalities on various business, real estate and financial matters.

#### **Jennie Smith Joins Turner Padget Law Firm**

Jennie M. Smith has joined the law firm of Turner Padget Graham & Laney, P.A. and is based in the Charleston office. Ms. Smith will concentrate her practice in the area of insurance litigation. Prior to attending law school, Jennie worked as a litigation paralegal for both plaintiff and defense firms for approximately nine years. She received her undergraduate degree from the Miami University and an MBA in 2007 from The Citadel. Ms. Smith received her Juris Doctor from the Charleston School of Law in 2012.

#### **Josh Shaw Speaks at DRI Annual Meeting**

Joshua D. Shaw, attorney in the Columbia office of Turner Padget Graham & Laney, P.A. presented during the Toxic Tort and Environmental Law Committee CLE session at the DRI Annual Meeting held in October in New Orleans, Louisiana. Mr. Shaw focuses his practice on environmental and product liability litigation. His presentation concerned a pending Supreme Court case *Kiobel v. Royal Dutch Petroleum*. *Kiobel* is a putative class action brought against several oil companies and raises a complex federal jurisdictional issue that is of

particular interest to corporations with overseas operations. Mr. Shaw has written several articles on related topics as a representative of the Toxic Tort and Environmental Law Committee; those articles have been published on the website [dritoday.org](http://dritoday.org).

#### **Collins & Lacy's Founding Partner Receives High Honor from Boy Scouts of America**

Collins & Lacy, P.C. founding partner Stan Lacy has received a high honor from the Boy Scouts of America as a 2013 recipient of the Whitney M. Young Jr. Service Award. The award is presented annually to recognize individuals for their outstanding service to scouting and the community. Specifically, the award honors people who help develop and implement scouting opportunities for youth from rural or low-income urban backgrounds.

Lacy has been a significant contributor to the Boy Scouts of America for more than 30 years concentrating on developing new programs and rekindling previous programs in areas of the district where scouting had no presence. During his time as Cubmaster of Packs 2 and 408 and as District Chairman, Lacy recruited hundreds of families into scouting, initiated clean-up projects in neighborhoods, and he was a driving force behind the "Uniform Closet," a program that gathers and donates second-hand uniforms for scouts who could not afford them.

Lacy received the honor along with three other community leaders at a banquet Tuesday night in Columbia. The award is sponsored by the Three Rivers District of the Indian Waters Council/Boy Scouts of America.

During the event, Lacy told the crowd each of them is a hero "who places himself or herself second for the sake of giving a young man the opportunity to learn the values of duty, honor and country. There are so many boys and young men who are not learning those values at home. The men who contribute to Boy Scouts of America are my heroes because they use time, talents and resources voluntarily to give boys and young men the sound building blocks that will last their lifetimes."

"I am supremely proud of our partner, Stan Lacy," said Collins & Lacy attorney Christian Stegmaier. "This honor recognizes his lifelong commitment to scouting. As lawyers, we are charged with being leaders in our society. Stan has risen to this charge time and again throughout his distinguished career. He is a model of what a lawyer active in his community is to be." Stegmaier is Chairman of the Three Rivers District of the Indian Waters Council.

#### **Collins & Lacy, P.C. Managing Partner Certified as Circuit Court Mediator**

Collins & Lacy, P.C. is pleased to announce Managing Partner Ellen Adams has received certification as a South Carolina Circuit Court Mediator

from the South Carolina Supreme Court's Board of Arbitration and Mediator Certification.

Ellen's 20-year career at Collins & Lacy has involved more than 1,000 cases. She practices in workers' compensation and also has experience in general litigation and professional liability. She has argued cases to the Full South Carolina Workers' Compensation Commission, Circuit Court, Court of Appeals and Supreme Court. As managing partner of a statewide business defense firm, Ellen joins an elite group. Only 15 percent of managing partners in law firms across the country are women, according to the American Bar Association (ABA).

"Ellen brings a unique perspective when it comes to mediating disputes," said Stan Lacy, one of Collins & Lacy's founding partners and also a certified mediator. "Her decades of experience have allowed Ellen to form exceptional relationships and respect with lawyers on both sides of the bar. As a mediator, Ellen will do what she does in the course of her own practice - help litigants achieve resolution before the dispute enters what may be a costly litigation battle."

Ellen Adams has been repeatedly named one of the Best Lawyers in America®, and Greater Columbia Business Monthly named Ellen one of the 2012 Midlands Legal Elite in the area of workers' compensation.

#### **McAngus Goudelock & Courie Donates \$10,000 to Special Operations Warrior Foundation**

The law firm of McAngus Goudelock & Courie donated \$10,000 to Special Operations Warrior Foundation, an organization dedicated to supporting the military's special operations forces and their families.

This contribution was made in honor of Retired First Sergeant Matthew P. Eversmann and in memory of Sergeant James C. Joyce and his Fallen Comrades from Task Force Ranger, Mogadishu, Somalia. Eversmann spoke at MG&C's Educational Seminar in Nov. 2012 about his experience in Somalia in 1993, which has been documented in the award-winning film *Black Hawk Down*. The contribution will cover a year of college for an SOWF scholarship recipient, as well as provide a cash stipend to the family of a severely-injured Special Operations Forces warrior, so his family can get to his hospital bedside as quickly as possible.

"McAngus Goudelock & Courie is honored to support the Special Operations Warrior Foundation, an organization dedicated to supporting the military's special operations forces and their families. These men and women have sacrificed all for our country, and we are humbled to give back in this way," said Rusty Goudelock, a founding member of McAngus Goudelock & Courie, a former US Army Officer and Veteran. "The emotional and physical effects of military deployments and war have been experienced first-hand by many of us or our families. On behalf of all our employees, we salute you."

The Special Operations Warrior Foundation provides full scholarship grants, as well as educational and family counseling, to the surviving children of special operations personnel who lose their lives in operational or training missions, as well as immediate financial assistance to severely wounded special operations personnel and their families. Find out more about Special Operations Warrior Foundation at [www.specialops.org](http://www.specialops.org).

#### **Joel Collins elected Vice President of the American Board of Trial Advocates (ABOTA)**

Collins & Lacy, P.C. is pleased to announce the recent election of Joel Collins as National Vice President of the American Board of Trial Advocates (ABOTA). Collins was elected by the general membership of ABOTA, which consists of over 6,800 members in 97 chapters throughout the nation. Collins took the oath of office at the national board meeting in St. Petersburg, FL on January 25, 2013.

As Vice President of ABOTA, Collins begins his first of a four-year commitment. He will become President-Elect in 2014, and will assume the Presidency in 2015. He will remain on the National Executive Committee in the capacity of Past-President in 2016. Collins was the president of the Board of Trustees of the ABOTA Foundation in 2008. Collins will have the distinction of being only the second person to have served as both the President of the ABOTA Foundation Trustees and national president in the organization's 54 year history. One of his goals as president is to lead a delegation of ABOTA members to Runnymede, England for the celebration of the 800th anniversary of Magna Carta on June 15, 2015.

ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the the Seventh Amendment to the U.S. Constitution which guarantees the right to jury trials. ABOTA's primary goal is to educate the American public about the history and value of the right to trial by jury. ABOTA is dedicated to elevating the standards of integrity, honor and courtesy in the legal profession. It has programs which help younger attorneys achieve a higher level of trial advocacy skills. It also has programs to educate the public about the importance of the United States Constitution and the Seventh Amendment.

Robert N. Stone, 2012 National President of ABOTA commented, "Joel is not only a good listener, he is also an outstanding speaker. His knowledge about American history and our Constitution is remarkable. On the occasion of an ABOTA conference with Portuguese judges and lawyers in Lisbon, he discussed our legal system in a wonderful and most informative way. I could not have been more proud to have Joel as our spokesman. He will surely be a great leader of our organization."

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Joel Collins is the co-founder of Collins & Lacy, P.C. He received his undergraduate degree from Clemson University and his law degree from the University of South Carolina School of Law. He was the 2002 recipient of the Jeter E. Rhodes, Jr., Trial Lawyer of the Year Award, presented by the South Carolina Chapter of ABOTA. He is an Adjunct Professor at the South Carolina Honors College, teaching a course on the United States Constitution. He is a member of the International Society of Barristers, the John Belton O'Neall Inn of Court, and the Rotary Club of Lake Murray-Irmo. In 2005, he received the University of South Carolina School of Law Compleat Lawyer Award. In 2009, Collins was the recipient of the ABOTA Foundation Masters in Trial Award.

When asked about his upcoming term as vice-president, Collins said, "Of all the national honorary legal organizations, ABOTA stands out. ABOTA's educational programs for middle school students, high school students, journalists, teachers and members of the Bar place ABOTA at the epitome of public service and professionalism." He added, "Leading this organization is the greatest honor I have ever received. I share this honor with my wife, Rhonda, my family, the members of my firm and my fellow members of the South Carolina Chapter of ABOTA. Without them, this would never have happened."

#### **Nexsen Pruet Elects New Members**

Nexsen Pruet has elected attorney Jennifer Hollingsworth as a Member (Partners) of the firm effective January 1, 2013. Hollingsworth resides in the firm's Columbia office. She practices in the business and commercial litigation practice group where she handles matters such as defending nursing homes and assisted living facilities, certificate of need litigation, fiduciary duty litigation and other complex litigation matters.

In addition to Hollingsworth, Elbert Dorn in Myrtle Beach has been elected as a Member (Partners) of the firm. Dorn devotes his practice to products liability, pharmaceutical and class action litigation. He has been listed in Best Lawyers in America® for Product Liability Litigation since 2007, and listed in South Carolina Super Lawyers® for Personal Injury: Products (2009-2012).

#### **Nexsen Pruet Wins Legal Marketing Award**

The Legal Marketing Association Southeast Chapter (LMASE) has recognized Nexsen Pruet with a First Place "Your Honor Award." The Business Development Initiative award was presented recently at the 2012 Annual LMASE Mini-Conference in Charlotte, NC.

Nexsen Pruet won the prestigious legal industry award following the firm's "Join NP on the Green" events, which were held in conjunction with the PGA Championship at Kiawah's Ocean Club in August.

The PGA provided attorneys and staff with a unique platform for business development and a comprehensive marketing campaign.

Since 2004, the LMASE Your Honor Awards have been presented as part of the Annual Conference of the Legal Marketing Association Southeastern Chapter. The awards highlight the leading designs and creative strategies from firms throughout the Southeast, playing a key role as an inspiration for marketing materials at all firms.

#### **The Claims and Litigation Management Alliance Selects Collins & Lacy Attorney Brian Comer for Membership**

Collins & Lacy, P.C. is pleased to announce its representation within the Claims and Litigation Management Alliance (CLM) continues to grow in size and legal diversity with the addition of Brian Comer.

Brian, who chairs the Collins & Lacy Products Liability Practice Group, joins partners and CLM members Pete Dworjanyn, Christian Stegmaier, Scott Wallinger and managing partner Ellen Adams, who represent the practice areas of insurance, retail/hospitality law, transportation and workers' compensation (respectively). The CLM is a nonpartisan alliance comprised of insurance companies, corporations, corporate counsel, litigation and risk managers, claims professionals and attorneys. Selected attorneys and law firms are extended membership by invitation only based on nominations from CLM Fellows.

As co-chair of the South Carolina Defense Trial Attorneys' Association Products Liability Substantive Law Committee and a member of the Primerus Products Liability Executive Committee, Brian brings a wealth of knowledge and leadership in his primary practice area to CLM. He also publishes several substantive articles in industry and legal publications and on the South Carolina Products Liability Law Blog, which he founded in 2009. In addition, Brian practices in professional negligence litigation, including defense of financial advisors in broker-dealer actions, medical providers, actuaries and other service providers.

"On behalf of Collins & Lacy and the South Carolina legal community as a whole, I am excited to collaborate across the professions and industries represented in CLM," said Brian Comer. "I look forward to taking part in its mission of advancing the highest standards of litigation management in pursuit of client defense."

#### **Delta Theta Phi Fraternity Names Group in Honor of A. Marvin Quattlebaum Jr.**

A newly formed Senate of Delta Theta Phi Fraternity has named its group in honor of A. Marvin Quattlebaum Jr., a partner in Nelson Mullins Riley & Scarborough LLP's Greenville office. The new Senate is based at the Charleston School of Law.

Twelve students organized and petitioned to



become a new student organization at the Charleston school. Delta Theta Phi Fraternity is a professional law fraternity and a member of the Professional Fraternity Association. The Fraternity traces its roots to 1900 where it was established at the Cleveland Law School (now known as Cleveland-Marshall Law School).

"We selected Marvin primarily because of his work on behalf of the South Carolina Bar Association, his legal achievements, and his status as an alumnus of our legal fraternity," said Alex Pinson, a founding member and officer of the senate. "Some of us had seen him speak at our Fall 2011 Convocation ceremony and admired his presence and message. It was important to us to name our student senate after someone for whom we would want to be remembered, and no one I spoke with had anything but an overwhelmingly positive impression of him."

Mr. Quattlebaum was a member of the Strom Thurmond Senate of Delta Theta Phi while attending law school at the University of South Carolina. He served as president of the South Carolina Bar from 2011-2012, has been a member of the S.C. Bar Executive Committee since 2009, and has been a member of the S.C. Bar Board of Governors and House Delegates. He also has served in a leadership position with the S.C. Bar Foundation's Board of Directors and the Society of Justice. He served as chair for the Lawyers Helping Lawyers Commission of the S.C. Bar and chair for the S.C. Bar Board of Governors Law School Task Force. In 2010, the University of South Carolina named him a Compleat Lawyer, and he is a permanent member of the Fourth Circuit Court of Appeals Judicial Conference.

"I am both pleased and humbled to have the student members of the organization honor me in such a way," Mr. Quattlebaum said. "I am particularly pleased that the student members have chosen to be a service-based chapter and will be focusing on charities in Charleston. Giving back to our communities is a strong part of what it means to be an attorney and is a significant focus of our profession and legal organizations."

### **2013 Leadership in Law Awards Honor Two Collins & Lacy Attorneys**

Collins & Lacy, P.C. is pleased to announce partners Jack Griffeth and Jon Ozmint have been selected as recipients of the 2013 Leadership in Law Awards. Jack and Jon are two of only 24 attorneys statewide to receive the designation.

The awards were designed by South Carolina Lawyers Weekly to spotlight those members of the legal community whose leadership, both in the legal profession and in the community, has made a positive impact on our state. The recipients were selected by a panel of judges based on their outstanding achievement in the following key areas: dedication to the legal profession, achievement in their

legal career, along with mentoring and community involvement.

Jack Griffeth is a shareholder in the Collins & Lacy Greenville office. His 36-year practice of law has focused on defense trial work, representing employers in employment related litigation and mediation. A snapshot of Jack's leadership and contribution to community include his work as the President of the Greenville Bar Association (2012), the current President for the South Carolina Bar Foundation Board of Directors and a member of the House of Delegates for the 13th Judicial Circuit, among others. In his current role as President of the S.C. Bar Foundation, Jack works tirelessly to promote the Foundation as the "heart of the Bar" among his professional peers, asking for their support to help improve the lives of underprivileged South Carolinians and promote access to justice.

Jon Ozmint is a shareholder in Collins & Lacy's Columbia office focusing in governmental and regulatory affairs, consulting and crisis management at the federal, state and local levels. Jon's practice also includes employment-related issues, professional liability, professional/occupational licensing representation, white collar criminal defense and complex litigation. The most fundamental examples of Jon's forward-thinking leadership are still in effect today because of his eight years of service as the Director of the South Carolina Department of Corrections (SCDC). During Jon's tenure, the agency developed food, medical, and other cost control measures that today are emulated across the nation. He also helped to establish a privately funded inmate "seminary" program that is offered by Columbia International University and two faith-based addiction counseling programs.

Managing Partner Ellen Adams commented, "Collins & Lacy is excited that, once again, Leadership in Law has honored two of our attorneys. Jack Griffeth has performed tireless service on behalf of the South Carolina Bar Foundation as its current president and to the Greenville Bar as the immediate past president. Jon Ozmint is a leader in every sense of the word and in every aspect of his life. We are grateful that Jack and Jon are being recognized for their diligent efforts on behalf of South Carolina."

The award recipients were recognized at the Leadership in Law event March 14, 2013, in Charleston, South Carolina.

### **Collins & Lacy Elects Attorneys to New Leadership Positions within Statewide Firm**

Collins & Lacy, P.C. is pleased to announce two attorneys have been elected to new positions within the statewide business defense firm. Jon Ozmint of the Columbia office and Mike Pitts of the Greenville office have been appointed as voting shareholders.

Continued on next page

“As we continue to meet the needs of our clients, Jon and Mike complement our growth strategy to successfully serve the thriving businesses of South Carolina. We are excited to welcome these excellent attorneys into a leadership role within our firm,” said managing partner Ellen Adams.

Jon Ozmint is chair of the Collins & Lacy Public Policy practice. He focuses on governmental and regulatory affairs, consulting and crisis management at the federal, state and local levels. Ozmint’s practice also includes employment-related issues, professional liability, professional / occupational licensing representation, white collar criminal defense, and complex litigation. Ozmint is the former director of the South Carolina Department of Corrections (SCDC), former Deputy Attorney General and Chief Prosecutor of the State Grand Jury and former General Counsel for the South Carolina Department of Labor, Licensing and Regulation.

Mike Pitts’ practice focuses on employment law, an area in which he has spent most of his 15-year career helping businesses with labor and employment matters and complex commercial cases. Pitts is experienced in litigation and arbitration, as well as counseling management on ways to avoid disputes. Pitts also practices in commercial litigation, professional liability and municipal law. He currently serves as the Anderson County Attorney. Pitts has consecutively been honored as a South Carolina Super Lawyer and as one of the Best Lawyers in America for his work in labor & employment litigation and employment law management.

**Collins & Lacy P.C. Wins the International Society of Primerus Community Service Award; founding partner Joel Collins wins the Lifetime Achievement Award**

Collins & Lacy, P.C. is pleased to announce the firm has been honored with the International Society of Primerus Law Firms Community Service Award at the 2012 Primerus Global Conference. The firm won the international award following a vote of the Primerus membership based on Collins & Lacy’s participation in numerous community service events, its dedication to providing pro bono legal services, and its active involvement with a number of local charitable and civic organizations.

Primerus is a society of the world’s finest independent boutique law firms and one of the leading resources for local counsel, as it is comprised of carefully selected independent law firms in 125 cities and 35 countries around the world. Primerus firms are characterized by their commitment to the Six Pillars, one of which is Community Service. Primerus members contribute countless hours to leadership activities, pro bono legal services, fundraising, volunteering, and other community service endeavors. It is for this reason that Primerus created its Community Service Award to showcase the firms

that have shown extraordinary service and dedication to their local communities.

“This year, Collins & Lacy attorneys boldly embraced the Primerus Pillar of Community Service. As we reflect on the combined volunteer efforts of our firm members, we are confident our time devoted to our community has been time well spent. It is an excellent investment in the future of the communities in which we work and live,” said founding partner Joel Collins.

Also during the 2012 Global Conference, Collins & Lacy founding partner Joel Collins was awarded the Primerus Lifetime Achievement award. The award is given to members who have helped build their individual institutes, as well as the Primerus organization as a whole, since the establishment of Primerus in 1992.

“Collins & Lacy, P.C. is proud to be South Carolina’s first Primerus Law Firm. I am equally proud to be honored by this network of carefully screened, independent law firms who are committed to the six key Pillars of Primerus: integrity, excellence of work product, reasonable fee structure, professional education, civility to bench and bar, and community service,” said Collins.

**Governor Appoints Collins & Lacy Attorney to South Carolina Workers’ Compensation Commission**

Governor Nikki Haley has appointed Collins & Lacy attorney Aisha Taylor to the South Carolina Workers’ Compensation Commission.

Aisha joined Collins & Lacy in 2007 practicing in workers’ compensation defense and employment law. Aisha regularly appeared before the S.C. Workers’ Compensation Commission and the S.C. Department of Employment and Workforce on both hearing and appellate matters. She developed particular experience in the defense of retaliatory discharge claims arising out of workers’ compensation and discrimination cases.

“I believe Aisha’s knowledge of both employment and workers’ compensation law will translate very nicely and provide additional depth to her work on behalf of the Commission,” said Collins & Lacy Managing Partner Ellen Adams.

The South Carolina Workers’ Compensation Commission is comprised of seven commissioners appointed by the Governor with the advice and consent of the Senate. Commissioners serve terms of six years each. Aisha’s appointment is subject to the approval of the Senate.

“For years, Collins & Lacy clients have benefited from Aisha’s sense of fairness with regard to the law and her sense of duty with regard to her work. It’s a great privilege to have one of our own move forward to serve the citizens of South Carolina in the years to come,” said Adams.

### **Collins & Lacy, P.C. Elects Greenville Attorney as Leader of the Statewide Defense Firm**

Collins & Lacy, P.C. is pleased to announce Mike Pitts has been elected managing partner of the statewide business defense law firm. Mike is an employment attorney in the Collins & Lacy Greenville office.

"Mike is dynamic and dedicated to upholding the mission, vision and values of Collins & Lacy," said Stan Lacy, who co-founded the firm in 1984 with Joel Collins. "We believe his roots in the Upstate community will bring a unique perspective to firm's commitment to effectively and efficiently serve businesses and citizens throughout the entire state of South Carolina."

Mike has spent most of his career helping businesses with labor and employment matters and complex commercial cases, and he is experienced in litigation and arbitration, as well as management counseling. He also practices in commercial litigation, professional liability and municipal law. Mike currently serves as the Anderson County Attorney.

"I look forward to this new adventure working alongside the skilled, talented and dedicated Collins & Lacy team," said Mike Pitts. "Our firm will continue to deliver top-notch service in defense of South Carolina businesses."

Mike graduated with distinction from The University of North Carolina at Chapel Hill, where he was made a member of Phi Beta Kappa. Mike received his Juris Doctor from The University of South Carolina School of Law. He was a member of the South Carolina Law Review and was inducted into the Order of the Wig and Robe. Mike has been honored as one of the Best Lawyers in America for his work in labor & employment litigation and employment law management.

Mike says his main priority is continuing to strategically grow Collins & Lacy to serve the needs of the Palmetto State "while at all times remaining true to our core values and a client-first philosophy."

### **Gallivan, White & Boyd, P.A. Attorney Stuart Mauney Elected to SCARCH Board of Directors**

Gallivan, White & Boyd, P.A. (GWB) is pleased to announce that GWB shareholder Stuart Mauney has been elected to the South Carolina Association of Residential Care Homes (SCARCH) board of directors. This election continues Stuart's long standing involvement in the South Carolina community. He has also served on the board of directors of Mental Health Association of Greenville County, Upstate Mediation Center, and the Greenville Chamber of Commerce's Board of Regents for Leadership Development.

The core principles of SCARCH are accountability, compassion, integrity, and respect. One of its primary goals is to create and maintain standards

which promote and enhance residential care. SCARCH represents the interests of assisted living, residential care facilities, home care, home health, and hospice groups throughout South Carolina. SCARCH also provides services to these facilities, which include: training, research, publications, conferences, and advocacy relations.

### **Katie Stanton Joins Wall Templeton & Haldrup, P.A.**

Wall Templeton & Haldrup, P.A. is pleased to announce Katie Stanton has joined the firm's Charleston office as an associate attorney. A graduate of University of Virginia and the University of South Carolina School of Law, Stanton will focus her practice in the areas of complex litigation, construction litigation, commercial litigation, fidelity & surety law, and insurance coverage & defense litigation.

For five years prior to attending law school, Stanton gained extensive business knowledge while working for IBM and The Walt Disney Company. She was admitted to the South Carolina Bar in 2012. From 2012 to 2013, Ms. Stanton served as a law clerk to the Honorable Brooks P. Goldsmith, Circuit Judge for the 6th Judicial Court.

"We are pleased to have Katie join our firm," said shareholder Morgan Templeton. "Her business experience before attending law school, coupled with her success in law school and judicial clerkship, made her an ideal fit at Wall Templeton. We are confident she will be an asset to the firm and be able to assist our clients."

### **Gallivan, White & Boyd, P.A. Attorney Stuart Mauney Elected to Gateway House Board of Directors**

Gallivan, White & Boyd, P.A. is pleased to announce that GWB shareholder Stuart Mauney has been elected to the Gateway House, Inc. Board of Directors. Gateway House is a local non-profit organization that provides housing and rehabilitation services for those with a chronic mental illness. Stuart has made helping individuals with mental illness an important part of his community outreach. In 2008, Mauney was appointed to chair a task force by Lawyers Helping Lawyers, a program of the South Carolina Bar. Lawyers Helping Lawyers (LHL) provides counseling referrals and resources for attorneys struggling with depression or substance abuse. The task force appointed by LHL worked to raise awareness and promote prevention of these illnesses in the legal profession.

The election to Gateway House continues Stuart's long standing commitment to being involved with community organizations in South Carolina. Earlier in 2013, Stuart was elected to the board of directors of the South Carolina Association of Residential Care Homes. He has also served on the board of directors of Mental Health Association of Greenville County,

Continued on next page



Upstate Mediation Center, and the Greenville Chamber of Commerce's Board of Regents for Leadership Development. Managing Partner C. William McGee states, "Stuart's commitment to improving the lives of those residing in South Carolina is a testament to his character. He will serve Gateway House and the other numerous organizations he is involved with well."

#### **H. Mills Gallivan, Daniel B. White & John T. Lay Receive the Leadership in Law Award**

The law firm of Gallivan, White & Boyd, P.A. is pleased to announce that attorneys H. Mills Gallivan, Daniel B. White, and John T. Lay have received the 2013 Leadership in the Law Award in recognition of their outstanding professional accomplishments, leadership, and community involvement. Gallivan, White, and Lay were three of only 25 South Carolina attorneys to receive the Leadership in Law Award this year. Winning attorneys were nominated by peers and colleagues and selected by the publisher and staff of South Carolina Lawyers Weekly.

Mills Gallivan has 37 years of experience as a civil defense trial attorney, mediator and arbitrator. His long list of service includes: President of National Foundation for Judicial Excellence, President of the Upstate Inn of Court, Senior Director of the Federation of Defense & Corporate Counsel, President of the South Carolina Defense Trial Attorneys' Association, and Commissioner for City of Greenville Planning Commission. Gallivan currently focuses his practice on Alternative Dispute Resolution.

John T. Lay is a shareholder at GWB with over 20 years of experience managing complex, high-stakes litigation for clients trying more than 100 cases to verdict. He has been recognized extensively by peers in the legal profession and is one of the few to receive this award for the second time. Lay is AV Rated in Martindale Hubbell, and listed in Best Lawyers in America in three categories. He is also listed in South Carolina Super Lawyers. Lay is dedicated to serving the legal profession as a member of the International Association of Defense Counsel Board of Directors and as a past president of South Carolina Defense Trial Attorneys' Association.

Daniel B. White's law practice focuses on complex corporate and commercial litigation. He is former President of the South Carolina Bar and former Chairman of the SC Bar House of Delegates. He currently represents the SC Bar as a member of the American Bar Association House of Delegates, the ABA's policy making body. He is state co-chair of the Litigation Counsel of America and is on the Charleston School of Law Board of Advisors. White is listed in Best Lawyers in America in five litigation fields and has received the South Carolina Super Lawyer recognition since the inception of the award. He is also listed in Chambers USA: America's Leading Lawyers for Business.

2011 Leadership in Law recipient and GWB Shareholder Howard Boyd states, "The honoring of these three distinguished attorneys makes all of us very proud. It is impressive to have three of our leaders recognized among the 25 recipients from around the state, all of whom are also great lawyers. A well-deserved recognition for these gentlemen."

Established in 2001, South Carolina Lawyers Weekly is a regional publication that provides legal news, opinions, and court decisions to its readers. The publication offers coverage of developments in case law, changes to court rules, and verdict and settlement reports to South Carolina attorneys.

#### **MG&C Employees Raise Over \$5,000 for Family Shelter in 2012**

The law firm of McAngus Goudelock & Courie is pleased to announce that MG&C employees in the Columbia office raised over \$5,000 for Family Shelter in 2012.

MG&C's fundraising efforts were spearheaded by the firm's Charitable Giving Team, a group of attorneys and staff who coordinate all office-wide giving programs during the year. Many in-office fundraisers were held throughout the year, culminating in \$5,041.90 in donations for Family Shelter.

Each year, all MG&C employees are surveyed to determine a national charity for the firm to support, as well as a local charity for each office. In 2012, the Columbia office chose to support Family Shelter. Family Shelter was established in 1979 and is the only agency in the Midlands that provides shelter and support services to homeless families, allowing parents and children to remain together during the trauma of homelessness.

On December 21, members of MG&C's Charitable Giving Team presented the donation to Family Shelter's Executive Director Rebecca Jacobson.

#### **MG&C Named One of the Best Places to Work in South Carolina 2012**

The law firm of McAngus Goudelock & Courie, LLC, has been named one of the Best Places to Work in South Carolina for 2012. MG&C was one of twenty finalists in the program and was named in the large company category.

"We are excited to once again be recognized as one of South Carolina's Best Places to Work," said Jay Courie, MG&C's managing partner. "The fact that the award is based on employee responses shows that MG&C has a culture of teamwork and opportunities. I also think our employees enjoy our focus on wellness, sustainability and giving back to our community."

This state wide survey and awards program is designed to identify, recognize and honor the best places of employment in South Carolina, benefiting the state's economy, workforce and businesses. MG&C was also a finalist in 2009 and 2010 in the small/medium company category.

The rankings of the 2012 Best Places to Work in South Carolina were unveiled at an awards ceremony on October 4, 2012, and will be published in the December issue of SCBIZ magazine.

The program is a partnership between the S.C. Chamber of Commerce, South Carolina Job Network.com and SC Biz News, LLC. The finalists were chosen based on employee responses to a satisfaction survey conducted by Best Companies Group and employer benefit and policy questionnaires. The responses were weighed against set criteria including leadership, planning, training and development to determine the companies' rankings.

### **Haynsworth Sinkler Boyd's Construction Practice Implements a Collaborative Approach to Providing Solutions to Construction Clients**

As practice group leader, Thomas H. (Tom) Coker, Jr. takes the Firm's construction team to new heights by encouraging an interdisciplinary approach to solving questions confronted by construction professionals. "Whether it is project specific solutions or dispute resolution strategies, our attorneys have the knowledge of project implementation processes and experience delivering innovative solutions to handle our client's most complex needs," says Coker.

Haynsworth Sinkler Boyd's 12-member construction practice group is a state-wide team of lawyers committed to supporting the construction industry's legal needs. It is composed of senior litigators, procurement advisors, and attorneys with decades of experience negotiating and drafting contracts. These skills give the Firm's clients the advantage a limited practice firm cannot provide. Highlights of the attorneys in the Firm's newly restructured practice area are below:

Thomas H. (Tom) Coker, Jr. (Shareholder, Greenville) is guiding the industry-specific group as Practice Group Leader. With more than 35 years of litigation experience, Mr. Coker represents owners, contractors, construction managers, and design professionals in procurement and contract matters. He is named in The Best Lawyers in America® - Construction Law. He is also included in South Carolina Super Lawyers® - Construction/Surety.

L. Dean Best (Shareholder, Charleston) is a trial lawyer focusing on construction defect cases. He has represented general contractors, developers and subcontractors in more than 250 construction matters, including a significant number of multimillion dollar cases.

John C. Bruton, Jr. (Shareholder, Columbia) has more than 30 years experience in handling civil litigation matters including numerous jury and non-jury trials, hearings and appeals. His practice focuses on the defense of products liability, premises liability, professional negligence, insurance, and construction cases. He is recognized in The Best Lawyers in America® - Construction Litigation; Insurance Law; Real Estate Litigation.

Robert W. (Bobby) Buffington (Shareholder, Myrtle Beach) has tried more than 100 cases before juries in state and federal courts. He also is a certified mediator and handles mediations in civil matters statewide. In the construction industry, in addition to litigation, he represents clients in all phases of construction projects, including contract negotiations, management claims and arbitrations.

Charles H. (Charley) Gibbs, Jr. (Of Counsel, Charleston) is a trial lawyer with more than 35 years of trial experience. He handles a wide range of construction, premises liability, and personal injury actions in state and federal courts, with a recent focus on construction litigation.

Jenny Costa Honeycutt (Shareholder, Charleston) practices exclusively in the area of construction law with diverse experience representing contractors, subcontractors, and developers in matters ranging from contract formation to payment disputes to defect litigation. She was named a "Rising Star" by South Carolina Super Lawyer® magazine in the field of Construction Litigation.

Bonnie A. Lynch (Associate, Greenville) focuses primarily on commercial litigation, personal injury litigation, and construction law. She is named a "Rising Star" by South Carolina Super Lawyers® magazine in the field of Business Litigation.

J.W. (Jay) Matthews III (Shareholder, Greenville) helps clients in litigation involving contract disputes, business torts, fiduciary law and shareholder claims. He is listed in The Best Lawyers in America® for Commercial Litigation.

Boyd B. (Nick) Nicholson, Jr. (Shareholder, Greenville) practices primarily in the areas of public procurement, local government law and construction law. He is listed in The Best Lawyers in America® for Litigation - Construction. He advises owners and contractors on contractual issues and represents them in construction-related actions in state court, mediation and arbitration in cases involving issues arising out of changes in the scope of work, delays, scheduling, and construction and design defects.

Bachman S. Smith IV (Associate, Charleston) focuses on insurance defense litigation, maritime law, and construction law. He is named by South Carolina Super Lawyers® magazine as a "Rising Star" in the field of Construction Litigation.

Roopal S. Ruparelia (Shareholder, Columbia) practices in the areas of personal injury litigation, products liability litigation, and construction law. She represents general contractors, subcontractors, owners, and suppliers in residential and commercial construction defect claims.

Joshua D. (Josh) Spencer (Shareholder, Greenville) practices primarily in construction, utility, and business/commercial litigation. He is named

Continued on next page

by South Carolina Super Lawyers® magazine as a "Rising Star" in the field of Construction Litigation.

#### **Gallivan, White & Boyd has Twelve Attorneys Recognized by Super Lawyers**

The law firm of Gallivan, White & Boyd, P.A. announced that nine Gallivan, White & Boyd, P.A. attorneys from the firm's Greenville and Columbia offices have been selected for inclusion in South Carolina Super Lawyers 2013. GWB attorneys appearing in the 2013 edition of South Carolina Super Lawyers include:

##### Greenville

W. Howard Boyd, Jr. – Business Litigation  
Deborah Casey Brown – Workers' Compensation  
H. Mills Gallivan – Alternative Dispute Resolution  
Phillip E. Reeves – Insurance Coverage  
T. David Rheney – Personal Injury Defense: General  
Daniel B. White – Personal Injury Defense: Products

##### Columbia

Gray T. Culbreath – Class Action/Mass Torts  
John T. Lay – Business Litigation  
Curtis L. Ott – Personal Injury Defense: Products

In addition, three Gallivan, White & Boyd attorneys have been recognized as South Carolina Rising Stars by Super Lawyers. Those attorneys include:

##### Greenville

W. Duffie Powers – Bankruptcy & Creditor/Debtor Rights  
Thomas E. Vanderbloemen – Business Litigation

##### Columbia

Breon C.M. Walker – Personal Injury Defense: General  
Managing Shareholder, C. William McGee stated:

"GWB is very proud of the attorneys who have received this honor from South Carolina Super Lawyers. We are fortunate to have such an outstanding group of lawyers practicing at our firm. "

#### **The McKay Firm's Senior Partner Selected for Super Lawyers 2013**

McKay, Cauthen, Settana, & Stublely, P.A. is pleased to announce that Senior Partner, Julius W. "Jay" McKay, II, has been selected for inclusion in South Carolina Super Lawyers 2013. This is Mr. McKay's fifth year being selected for the honor. He practices in the areas of medical malpractice defense, health care law, products liability, commercial litigation, government defense, appellate law and professional licensure disputes. His grandfather, Douglas McKay, Sr., started the The McKay Firm in 1908.

Super Lawyers, published by Thomson Reuters, lists only the top 5% of South Carolina attorneys who have attained a high degree of peer recognition and professional achievement. Super Lawyers utilizes a multi-phased selection process with 12 points of criteria including peer nominations, independent research and peer reviews by other attorneys.

McKay Firm Partner, Daniel R. Settana, Jr., stated: "We continue to be very proud of Jay and his many accomplishments. He is a leader in our firm and a leader in the Midlands community."

#### **Carlock, Copeland & Stair Attorneys Named To Best Lawyers**

Carlock, Copeland & Stair congratulates the following attorneys on selection by their peers for inclusion in The Best Lawyers in America® 2013. (Copyright 2012 by Woodward/White, Inc., of Aiken, SC).

Our lawyers ranked in the 2013 edition are:

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

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

Since it was first published in 1983, Best Lawyers has become universally regarded as the definitive guide to legal excellence. Because Best Lawyers 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 Best Lawyers is considered a singular honor. Corporate Counsel magazine has called Best Lawyers "the most respected referral list of attorneys in practice."

#### **Carlock, Copeland & Stair Attorneys Selected for South Carolina Super Lawyers and Rising Stars**

Carlock, Copeland & Stair, LLP is proud to announce that 9 of our lawyers have been selected for inclusion on the South Carolina Super Lawyers® and Rising Stars lists for 2013.

##### Super Lawyers

Kent T. Stair

Only five percent of the lawyers in the state are named by Super Lawyers. The selections for this esteemed list are made by the research team at Super Lawyers, which is a service of the Thomson Reuters. Each year, the research team at Super Lawyers undertakes a rigorous multi-phase selection process that includes a statewide survey of lawyers, independent evaluation of candidates by the attorney-led research staff, a peer review of candidates by practice area, and a good-standing and disciplinary check.

##### Rising Stars

Kathy A. Carlsten



Andrew W. Countryman  
 Jackson H. Daniel, III  
 Amanda K. Dudgeon  
 David J. Harmon  
 David W. Overstreet  
 Paul E. Sperry  
 Lee C. Weatherly

Rising Stars is a listing of exceptional lawyers who are 40 years of age or under, or who have been practicing for 10 years or less, and have attained a high degree of peer recognition and professional achievement. Only 2.5 percent of the total lawyers in the state are honored on the Rising Stars list.

#### **Twenty-Five Nelson Mullins Columbia Attorneys Selected for 2013 Super Lawyers**

Twenty-five Nelson Mullins Riley & Scarborough LLP attorneys based in Columbia have been selected by their peers to the 2013 list of South Carolina "Super Lawyers" and "Rising Stars" in 11 practice areas. Additionally, partner George Cauthen was among the top 10 vote-getters in the state. Columbia partner Steve Morrison was among the top 25 vote-getters.

The Columbia attorneys listed are:

- Stuart M. Andrews Jr., Healthcare
- George S. Bailey, Estate Planning & Probate
- Jody A. Bedenbaugh, Bankruptcy & Creditor/Debtor (Rising Star)
- A. Mattison Bogan, Appellate (Rising Star)
- C. Mitchell Brown, Appellate
- George B. Cauthen, Bankruptcy & Creditor/Debtor Rights
- Karen Aldridge Crawford, Environmental Litigation
- Clarence Davis, Business Litigation
- David E. Dukes, Class Action/Mass Torts
- Carl B. Epps III, Business Litigation
- Robert W. Foster, Jr., Business Litigation
- James C. Gray, Jr., Business Litigation
- Sue Erwin Harper, Employment & Labor
- William C. Hubbard, Business Litigation
- S. Keith Hutto, Business Litigation
- Francis B.B. Knowlton, Bankruptcy & Creditor/Debtor Rights
- John F. Kuppens, Personal Injury Defense: Products
- Steven A. McKelvey, Business Litigation
- John T. Moore, Bankruptcy & Creditor/Debtor Rights
- Stephen G. Morrison, Business Litigation
- Edward W. Mullins Jr., Business Litigation
- James F. Rogers, Product Liability Defense: Medical Malpractice
- R. Bruce Shaw, Class Action/Mass Torts

- Carmen Harper Thomas, Banking (Rising Star)
- Daniel J. Westbrook, Healthcare

According to the organization, Super Lawyers names South Carolina's top lawyers as chosen by their peers and through independent research. Super Lawyers magazines are published by Thomson Reuters, a provider of information to businesses and professionals.

#### **Three Nelson Mullins Attorneys Selected to Midlands Legal Elite**

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

- John T. Moore – Banking & Finance
- Sue Erwin Harper – Labor and Employment
- George Wolfe – Governmental Affairs

#### **Five Richardson Plowden Attorneys Named 2013 South Carolina Super Lawyers, Six named 2013 South Carolina Rising Stars**

Richardson Plowden & Robinson, P.A., is pleased to announce that five of its attorneys from the Columbia office, George C. Beighley, Eugene H. Matthews, William C. McDow, Anthony E. Rebollo, and Franklin J. Smith, Jr., have been selected to the 2013 South Carolina Super Lawyers listing. Four other Columbia attorneys were selected to the 2013 South Carolina Rising Stars listing: Emily R. Gifford, Michelle P. Kelley, Jocelyn T. Newman, and Joseph E. Thoensen. Drew H. Butler and Samia H. Nettles of the Charleston office were also selected to the 2013 South Carolina Rising Stars listing.

Super Lawyers is a national listing of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The magazine is published in all 50 states and features articles about attorneys named to the Super Lawyers list. The publication is used as a supplement in leading newspapers and magazines across the country and is distributed to all attorneys in the state or region. The Rising Stars addition to Super Lawyers highlights the top up-and-coming attorneys in the state who are 40 years old or younger, or who have been practicing for 10 years or less.

This is the second year Beighley has been recognized as a South Carolina Super Lawyer. He was recognized for his work in Personal Injury Defense: Medical Malpractice. Beighley has been practicing law for more than 37 years and earned his Juris Doctor from the University of South Carolina (USC) School of Law.

Matthews has been honored as a South Carolina Super Lawyer for the last six consecutive years. He was recognized for his work in Employment and

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Labor Law. Matthews has practiced law for 18 years and earned his Juris Doctor from the University of Virginia School of Law.

This is the first year McDow was selected as a South Carolina Super Lawyer. He was honored for his work in Personal Injury Defense: Medical Malpractice. McDow earned his Juris Doctor from the USC School of Law. He has practiced for 24 years.

This is the second year Rebollo has been selected as a South Carolina Super Lawyer. He was honored for his work in Tax Law. Rebollo has practiced law for 24 years and earned his Juris Doctor from the Boalt Hall School of Law at the University of California, Berkeley.

Smith has been recognized as a South Carolina Super Lawyer for the last six consecutive years. He was honored for his work in Construction Litigation. Smith has practiced law for more than 28 years and earned his Juris Doctor from the USC School of Law.

This is the second year that Butler, Gifford, Kelley, and Newman were recognized as Rising Stars. It is the first year that Nettles and Thoensen were recognized. Butler, Kelley, Newman, and Thoensen were honored for their work in General Litigation. Gifford was selected for her work in Construction/Surety Law. Nettles was recognized for her work in Construction Litigation.

#### **Haynsworth Sinkler Boyd Attorneys Named SC Super Lawyers & Rising Stars**

Haynsworth Sinkler Boyd is pleased to announce 36 of its lawyers are included in the 2013 edition of South Carolina Super Lawyers. This distinction includes 7 young lawyers named to the "Rising Stars" category.

Super Lawyers is a research-driven, peer influenced rating service of lawyers who have attained a high degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations. The Super Lawyers lists are published in Super Lawyers Magazines and in leading city and regional magazines across the country.

Haynsworth Sinkler Boyd's attorneys and respective practice areas include the following:

Charleston, SC – 134 Meeting Street, (29401)

Stephen E. (Steve) Darling – Personal Injury Defense: Products

Thomas C. (Tom) Hildebrand, Jr. – Construction Litigation

John H. Tiller – Personal Injury Defense: Products  
Columbia, SC – 1201 Main Street, (29201)

Stephen F. (Steve) McKinney – Business Litigation

Greenville, SC – ONE North Main, (29602)

Thomas H. (Tom) Coker, Jr. – Construction/Surety

David W. Conner – Personal Injury Defense: Products

H. Sam Mabry III – Business Litigation

W. Francis (Frankie) Marion, Jr. – Business Litigation

Moffatt G. (Mott) McDonald – Personal Injury Defense: General

Christine (Chris) Gantt-Sorenson – Employment & Labor

The selection process for Rising Stars is similar to that of Super Lawyers, except to be eligible for inclusion in Rising Stars, an attorney must be under 40, or have been practicing for 10 years or less.

Haynsworth Sinkler Boyd's attorneys and respective practice areas include the following:

Charleston, SC – 134 Meeting Street, (29401)

Jenny Costa Honeycutt – Construction Litigation

Bachman S. Smith IV – Construction Litigation

Greenville, SC – ONE North Main, (29602)

Bonnie A. Lynch – Business Litigation

Christopher B. (Chris) Major – Business Litigation

Joshua D. (Josh) Spencer – Construction Litigation

Charles M. Sprinkle III – Business Litigation

Sarah P. Spruill - Appellate

#### **Turner Padget Attorneys Named Among South Carolina Super Lawyers**

Turner Padget Graham & Laney, P.A. is pleased to announce that 12 of the firm's attorneys have been named by Super Lawyers magazine as top attorneys in South Carolina for 2013. In addition, 11 attorneys are named as South Carolina Rising Stars.

Columbia Super Lawyers:

Reginald W. Belcher – Employment & Labor

John E. Cuttino – Civil Litigation Defense

Catherine H. Kennedy – Estate & Trust Litigation

Lanneau W. Lambert, Jr. – Real Estate

Edward W. Laney, IV – Insurance Coverage

Thomas C. Salane – Insurance Coverage

Franklin G. Shuler, Jr. – Employment & Labor

Columbia Rising Stars:

Shannon F. Bobertz – Civil Litigation Defense

Matthew R. Cook – Workers' Compensation

Nicholas Gladd – Personal Injury Defense Products

Charleston Super Lawyers:

Richard S. Dukes, Jr. – Personal Injury Defense – Products

Elaine H. Fowler – Business/Corporate

Charleston Rising Stars:

Julian K. Allen – Personal Injury Defense General

Nosizi Ralephata – Business Litigation

Shawn R. Willis – Real Estate

Florence Super Lawyers:

J. Rene Josey – Business Litigation  
Arthur E. Justice, Jr. – Employment & Labor

Florence Rising Stars:

C. Pierce Campbell – Banking  
J. Jakob Kennedy – Professional Liability Defense  
John M. Scott, III – Mergers & Acquisitions

Greenville Super Lawyer:

William E. Shaughnessy – Workers' Compensation

Greenville Rising Star:

Brad B. Easterling – Workers' Compensation

Myrtle Beach Rising Star:

Audra M. Byrd – Civil Litigation Defense

**Four Roe Cassidy Attorneys Selected for Inclusion in 2013 South Carolina Super Lawyers And Rising Stars**

Roe Cassidy Coates and Price, P.A. is pleased to announce that four of its attorneys have been recognized in the 2013 South Carolina Super Lawyers and Rising Stars lists. Following are the Roe Cassidy attorneys selected for inclusion, as well as the practice areas in which their work is recognized.

Super Lawyers

Pete Roe – General Litigation  
Bill Coates – Business Litigation  
Randy Moody – Business Litigation

Rising Stars

Trey Suggs – Professional Liability Defense

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations.

**Six MG&C Attorneys Named the Midland's Legal Elite by Greater Columbia Business Monthly**

The law firm of McAngus Goudelock & Courie is pleased to announce that Greater Columbia Business Monthly has named attorneys Weston Adams III, Sterling G. Davies, Andrew Delaney, Thomas Lydon, Hugh McAngus and David A. Ross as some of the Midland's Legal Elite. The Legal Elite were nominated by their peers in the legal community and are published in the October 2011 issue of Greater Columbia Business Monthly.

Mr. Adams was honored in the environmental law category. He leads MG&C's Environment, Energy and Natural Resources Practice Group and the firm's Appellate Law Practice Group. In his environmental law practice, he appears in state and federal court and before state and federal administrative agencies. He serves as the chairman of the South Carolina Conservation Bank, a state agency, and is a frequent speaker and author on environmental legal issues.

Mr. Davies was honored in the construction law category. His practice includes general litigation, with an emphasis on construction litigation, products liability, premises liability, insurance litigation, and major loss cases. He leads the firm's litigation practice group and is serving as president-elect of the South Carolina Defense Trial Attorneys' Association.

Mr. Delaney was honored in the commercial transportation law category. His practice includes general liability defense including automobile negligence, premises liability, products liability, and construction defects.

Mr. Lydon was honored in the business law category. His practice includes litigation involving business, bankruptcy, and probate matters. He regularly appears in state and federal courts representing individuals, financial institutions, and other corporate clients.

Mr. McAngus was recognized in the workers' compensation law category. He is a founding member of the law firm of McAngus Goudelock & Courie and has practiced in the area of workers' compensation law for more than thirty years. Today his practice focuses on defending complex workers' compensation, catastrophic loss, toxic exposure, mediation and occupational disease claims. Mr. McAngus frequently lectures to various organizations on matters related to workers' compensation law.

Mr. Ross was recognized in the real estate law category. His practice includes residential and commercial real estate, commercial transactions and business formations. A former captain of the University of South Carolina basketball team, Mr. Ross serves as a commissioner on the City of Columbia's Design/Development Review Commission, and The State newspaper honored him one of its Top 20 Under 40 young professionals in the Midlands for 2010.

**Collins & Lacy Almost Triples the Number of Attorneys Selected as South Carolina Super Lawyers and Rising Stars**

Collins & Lacy, P.C. has almost tripled the number of its attorneys named to the 2013 South Carolina Super Lawyers® and South Carolina Rising Stars® list. Fourteen attorneys with the statewide business defense firm are included in the 2013 list. That means 50 percent of Collins & Lacy's attorneys have been selected for this esteemed honor. Last year, five attorneys were on the list. The lawyers represent each of Collins & Lacy's four statewide offices, and they represent a diverse range of practice areas.

"The growth of Collins & Lacy's selection in this prestigious listing is exciting for both our firm and clients," said managing partner Mike Pitts, who is a repeat Super Lawyers honoree. "Our expansion in size and legal diversity reflects the success of Collins

Continued on next page



& Lacy's mission to meet the diverse, growing needs of the Palmetto State businesses and citizens."

Super Lawyers is an annual listing of attorneys who have attained a high degree of peer recognition and professional achievement. Rising Stars are attorneys, 40 years of age or younger, who have been practicing for 10 years or less. There are no more than 2.5 percent of the attorneys in the state who are named to the list.

Here is each Collins & Lacy attorney selected, as well as information about the practice areas and cities in which their work is being recognized.

Columbia – 2013 South Carolina Super Lawyers:

- Joel Collins, Civil Litigation: Defense
- Pete Dworjanyn, Insurance Coverage
- Stan Lacy, Workers' Compensation

Greenville – 2013 South Carolina Super Lawyers:

- Jack Griffeth, Alternative Dispute Resolution
- Mike Pitts, Employment Litigation: Defense

Columbia – 2013 South Carolina Rising Stars:

- Charles Appleby, Employment & Labor
- Christian Boesl, Employment Litigation: Defense
- Andy Cole, Construction/Surety

Greenville – 2013 South Carolina Rising Stars:

- Suzy Boulware Cole, Workers' Compensation
- Ross Plyler, General Litigation

Charleston – 2013 South Carolina Rising Stars:

- William (Tom) Bacon, Workers' Compensation
- Bennett Crites, Personal Injury Defense

Myrtle Beach – 2013 South Carolina Rising Stars:

- Amy Neuschafer, Professional Liability Defense

**Ten McAngus Goudelock & Courie Attorneys Named in 2013 S.C. Super Lawyers Magazine**

The law firm of McAngus Goudelock & Courie is pleased to announce that attorneys Rusty Goudelock, Thomas Lydon, Hugh McAngus, Erroll Anne Hodges, Amy Jenkins and Dominic Starr have been recognized in their fields by South Carolina Super Lawyers magazine. South Carolina Super Lawyers magazine recognizes South Carolina's top attorneys as chosen by their peers.

Attorneys Andrew Delaney, Landon "Rocky" Hughey, David Ross and Joseph Sandefur have been named Super Lawyers Rising Stars for 2013. This honor is awarded to attorneys age 40 or younger, or who have been in practice for 10 years or less. Only 2.5 percent of the lawyers in the state are chosen for the Rising Stars list.

Columbia Office:

Rusty Goudelock, a founding member of MG&C,

focuses on workers' compensation and employment law.

Thomas Lydon focuses on litigation involving business, bankruptcy and probate matters.

Hugh McAngus is a founding member of MG&C and a Certified Mediator. He focuses on workers' compensation.

Andrew Delaney focuses on general liability defense including automobile negligence, premises liability, products liability and construction defects.

Landon "Rocky" Hughey focuses on workers' compensation.

David Ross focuses on residential and commercial real estate, commercial transactions and business formations.

Greenville Office:

Erroll Anne Hodges focuses on workers' compensation and labor and employment law.

Charleston Office:

Amy Jenkins focuses on labor and employment law. She chairs the firm's employment law practice group and is a South Carolina Supreme Court Certified Specialist in Labor and Employment Law, as well as a Certified Mediator.

Myrtle Beach Office:

Dominic Starr focuses on business and tort litigation and product liability defense.

Joseph Sandefur focuses on civil litigation including insurance and construction defense litigation, insurance coverage litigation, bad faith defense, dram shop liability, wrongful death, personal injury and premises liability.

**Collins & Lacy P.C. Named to the 2012- 2013 Best Law Firms List**

Collins & Lacy, P.C. is pleased to announce the firm has been recognized in the Best Law Firms 2012-2013 list, just released by the U.S. News Media Group and Best Lawyers®. The business defense firm has earned several top-tier rankings in numerous practices areas for both the Columbia and Greenville metropolitan areas:

Tier 1:

Columbia, S.C.

Criminal Defense: White-Collar – Litigation  
Workers' Compensation Law – Employers

Tier 2:

Columbia, S.C.

Banking & Finance Law  
Litigation – Banking & Finance  
Criminal Defense: White-Collar – Governmental Investigations

Greenville, S.C.

Arbitration  
Employment Law – Management

Litigation – Labor & Employment  
Workers' Compensation Law – Employers

Tier 3:  
Greenville, S.C.  
Mediation

“Our first tier rankings reflect the areas of law in which Collins & Lacy’s very own founding partners practice – this designation symbolizes the strong foundations Joel Collins has built in the white-collar defense arena, as well as Stan Lacy’s numerous contributions to the South Carolina workers’ compensation field,” said managing partner Ellen Adams. “Collins & Lacy continues to build upon these strong pillars in addition to our other tiered rankings within business defense litigation.”

Collins & Lacy’s Greenville rankings reflect senior shareholder Jack Griffeth’s exemplary work as a certified mediator, as well as the office’s employment law practice, which serves businesses, higher education institutions and municipalities in the Upstate.

#### **Four Roe Cassidy Coates & Price Attorneys Named to Greenville Business Magazine’s Legal Elite**

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

- Bill Coates – Criminal Law
- Clark Price – Healthcare Law
- Randy Moody – Labor and Employment
- Josh Smith – Environmental Law

In its first-ever survey, the magazine sent emails to 850 Greenville-area lawyers and asked them who, in their opinions, were the best lawyers in 20 practice areas. Respondents could nominate lawyers in their firms, but for each in-firm lawyer there had to be an out-of-firm lawyer nominated, although not necessarily in the same practice area.

A total of 95 lawyers were identified by their partners and peers as the Legal Elite of the Greenville area.

Greenville Business Magazine honored the Legal Elite with a reception Aug. 16 at High Cotton.

#### **Roe Cassidy Attorney Receive Best Lawyers “Lawyer of the Year” 2013**

Roe Cassidy Coates and Price, P.A. is pleased to announce Clark Price received Best Lawyers “Lawyer of the Year” award for 2013. Only a single lawyer in each practice area and designated metropolitan area is honored as the “Lawyer of the Year,” making this accolade particularly significant. Price was recognized as the top lawyer in the Greenville, South Carolina region in the following practice area:

Clark Price – Medical Malpractice Defense.

#### **Roe Cassidy Again Ranked Among Top Law Firms in U.S.**

#### **News Publication**

Roe Cassidy Coates & Price, P.A., is pleased to announce its inclusion in U.S. News-Best Lawyers® “Best Law Firms” 2012-2013 publication that recognizes the top practices in the nation. The firm was received the following rankings:

##### First Tier (Greenville)

Medical Malpractice Law – Defendants

##### Second Tier (Greenville)

Bankruptcy & Creditor Debtor Rights/Insolvency & Reorganization Law

Employment Law – Individuals

Employment Law – Management

Litigation – Labor & Employment

##### Third Tier (Greenville)

Commercial Litigation

#### **Two Roe Cassidy Attorneys Selected for Inclusion in Best Lawyers 2013**

Roe Cassidy Coates and Price, P.A. is pleased to announce that two of its attorneys have been selected by their peers for inclusion in The Best Lawyers in America® 2013. Following are the Roe Cassidy attorneys selected for inclusion, as well as the practice areas in which their work is recognized:

Randy Moody – Litigation - Labor & Employment; Employment Law - Individuals; Employment Law - Management.

Clark Price - Medical Malpractice Defense.

#### **Richardson Plowden selected as a “Best Law Firm” by Best Lawyers and U.S. News and World Report**

Richardson, Plowden & Robinson, P.A. was ranked by Best Lawyers in America® and U.S. News & World Report as a 2013 “Best Law Firm.” The Firm received a Metropolitan First-Tier Ranking for Columbia, SC in the areas of Commercial Litigation, Construction Law, Legal Malpractice Law – Defendants, Litigation – Construction, and Real Estate Law.

The “Best Law Firms” rankings are compiled by Best Lawyers and U.S. News and World Report. The two publications have teamed up to recognize outstanding law firms throughout the nation. The rankings are based on a rigorous evaluation process from thousands of clients, highly skilled lawyers and law firm representatives who were asked to rate the law firms they consider best in their practice.

“We are honored by this designation,” says Steven J. Pugh, managing shareholder at Richardson Plowden. “Being recognized as a ‘Best Law Firm’ demonstrates our breadth of experience and our ability to provide excellent legal services and value to our clients.”

Continued on next page

**MEMBER  
NEWS  
CONT.**

### **Six Collins & Lacy Attorneys Selected as 2012 Legal Elite of the Midlands**

Collins & Lacy, P.C. is pleased to announce six Collins & Lacy attorneys have been recognized by their peers as members of the Greater Columbia Business Monthly's 2012 Legal Elite of the Midlands.

Over the summer, Columbia Business Monthly invited the 1,397 Midlands attorneys who are members of the South Carolina Bar Association to nominate the top attorneys in 20 practice areas. From these nominations, the Legal Elite were selected for each practice area. The following Collins & Lacy attorneys received this honor:

Ellen Adams – Workers' Compensation

Ellen has enjoyed a 20-year career in the practice of Workers' Compensation and also has experience in general litigation and professional liability.

Charles Appleby - Corporate Business

Charles is an associate practicing in employment law, retail/hospitality/entertainment liability and construction defect litigation. In his employment practice, Charles represents employers from all types of industries in litigation and alternative dispute resolution.

Pete Dworjanyn – Insurance

Pete is the chair of the firm's Insurance Coverage practice area representing American and international insurance companies in litigation involving coverage disputes, first party claims, commercial liability, errors and omissions and bad faith claims. He is also the founding author of the South Carolina Insurance Law Blog.

Lee Floyd – Insurance

Lee is an associate practicing in insurance coverage products liability, commercial transportation and professional negligence. Lee also practices in the area of subrogation litigation, representing American and international insurance companies in litigation to recover amounts paid for substantial property loss claims.

Jon Ozmint - Governmental Affairs

Jon is a shareholder and chair of the Collins & Lacy Public Policy practice group. His practice focuses on governmental and regulatory affairs, consulting and crisis management at the federal, state and local levels. Jon's practice also encompasses employment-related issues, professional liability, professional/occupational licensing representation, white collar criminal defense and complex litigation.

Scott Wallinger - Commercial Transportation

Scott is a shareholder and chair of the firm's Professional Liability practice group. Scott's practice focuses on complex litigation, particularly relating to defense of suits against motor carriers, insurers, businesses and professionals. He frequently defends clients against claims of catastrophic injury and wrongful death.

"Collins & Lacy is committed to providing our clients with excellent legal representation," said Stan Lacy, founding partner of Collins & Lacy. "It is exciting to see so many of our attorneys being recognized for the work that they enjoy doing each day."

### **Gallivan, White & Boyd, P.A. Named "Best Law Firm" by U.S. News and Best Lawyers**

Gallivan, White & Boyd, P.A. is pleased to announce that the firm has been ranked as a "Best Law Firm" by U.S. News and Best Lawyers. The firm's position is determined by qualitative and quantitative data used to provide a comprehensive ranking of the U.S. legal profession. GWB has been ranked a Tier 1 or Tier 2 "Best Law Firm" in 14 practice areas:

- Commercial Litigation
- Litigation – Eminent Domain & Condemnation
- Product Liability Litigation – Defendants
- Workers' Compensation Law – Employers
- Insurance Law
- Mediation
- Personal Injury Litigation – Defendants
- Product Liability Litigation – Defendants
- Mass Tort Litigation/Class Actions – Defendants
- Banking and Finance Law
- Employee Benefits (ERISA) Law
- Employment Law – Management
- Legal Malpractice Law – Defendants
- Railroad Law
- Real Estate Law

### **Turner Padgett Receives First-Tier Rankings in the 2013 Best Law Firms Publication**

U. S. News Media Group and Best Lawyers have released the 2013 "Best Law Firms" rankings, and Turner Padgett has received a first-tier ranking in the below areas of law:

Metropolitan First-Tier Rankings:

#### Charleston, South Carolina

- Professional Malpractice Law – Defendants

#### Columbia, South Carolina

- Commercial Litigation
- Insurance Law
- Litigation – Construction
- Litigation – Eminent Domain & Condemnation
- Litigation – Labor & Employment
- Litigation – Trusts & Estates
- Mass Tort Litigation / Class Actions – Defendants
- Mediation
- Product Liability Litigation – Defendants
- Workers' Compensation Law – Employers

#### Florence, South Carolina

- Mediation
- Tax Law



Greenville, South Carolina

- Arbitration
- Mediation
- Patent Law
- Personal Injury Litigation – Defendants
- Workers' Compensation Law – Employers

Myrtle Beach, South Carolina

- Real Estate Law

**Turner Padget Recognized by Benchmark Litigation**

Turner Padget Graham & Laney has been named one of five “highly recommended” local litigation firms in South Carolina. Nine of our shareholders have been named “Local Litigation Stars.” They are Wayne Byrd, Kenny Carter, Eddie Laney, Steve Ouzts, Thom Salane, Duvall Spruill, Tim St. Clair, John Wilkerson and Drew Williams. Benchmark Litigation, the definitive guide to America’s leading litigation firms and attorneys, made the following comments about the firm.

Turner Padget Graham & Laney is a well-established fixture on the local legal market. Founded in 1929 by a former attorney for the South Carolina Tax Commission, the firm has grown from a sole practitioner’s office to encompass a staff of more than 200 and five offices across the state. “The firm has locations in strategic areas of the state,” opines a client. “This allows them to know the judges, the clerks of the court, and the sheriffs. This matters in South Carolina and federal courts.” In addition to its headquarters in Columbia, Turner Padget has branch offices in Charleston, Florence, Greenville, and Myrtle Beach. A client praises the firm’s no-nonsense approach to litigation. “The firm has a winning attitude,” says a client. “You want sound advice and if they think you need to eat it and settle, they will tell you the truth.”

Wayne Byrd, based at the firm’s Myrtle Beach office, is noted by peers and clients for his securities and general commercial litigation practice. “Wayne is just an amazing litigator,” enthuses a client. “He is brutal on the opposition because his is almost always smarter than the other lawyer and sees issues much faster. He gets out in front of things and drives the other lawyer crazy.” Byrd obtained a directed verdict on behalf of his plaintiff client Hotel & Motel Holdings in a breach of contract case, seeking \$6.45 million in damages in connection with loan guaranties. The judge has the attorney’s fees issue under advisement. Kenneth Carter, Jr. has successfully defended Ford Motors at the trial and appellate levels against alleged design defects in a model’s roof. A client sings the praises of Carter and fellow product liability litigator Andrew Williams: “Carter and Williams are very knowledgeable, practical and cost conscious. As lawyers who have tried cases, they understand what need to be done to obtain a desired result and what is merely process.”

**Turner Padget Recognized as a Leading Litigation Firm in South Carolina**

Turner Padget Graham & Laney, P.A. is pleased to announce that it will be recognized as a leading litigation firm in South Carolina in the 2013 edition of Chambers USA: America’s Leading Lawyers for Business.

Five Turner Padget attorneys have been recognized as leading attorneys in their field:

Columbia Office

- Franklin G. Shuler, Labor & Employment
- Reginald W. Belcher, Labor & Employment
- J. Kenneth Carter, General Commercial Litigation

Charleston Office

- John S. Wilkerson, General Commercial Litigation

Myrtle Beach Office

- O. Allen Jeffcoat, Real Estate

**Best Law Firms in America Selects The McKay Firm for Third Year in Workers’ Compensation Defense**

McKay, Cauthen, Settana & Stublely, P.A. is pleased to announce that the firm has received recognition as one of the 2013 Best Law Firms in America.

The McKay Firm received their national ranking in the area of Workers’ Compensation Law.

“We are proud that our firm continues to receive this prestigious recognition,” said Julius W. “Jay” McKay, II. “We strive to offer new services and find innovative ways to address our clients’ needs and expand their ability to do business in South Carolina.”

**Four McKay Firm Attorneys Named 2012 Midlands Legal Elite**

McKay, Cauthen, Settana, & Stublely, P.A. is pleased to announce that four attorneys from the firm have been selected for 2012 Legal Elite of the Midlands by Greater Columbia Business Monthly. Daniel R. Settana, Jr., M. Stephen Stublely, Kelli Sullivan and David M. Bornemann were selected by their peers as leaders in their respective practice areas. Both Settana and Stublely are partners at The McKay Firm.

Mr. Settana, selected in the area of commercial transportation law, is a graduate of The Citadel and the University of South Carolina School of Law and serves on the Trucking Substantive Law Committee for the South Carolina Defense Trial Attorneys’ Association, is a member of the South Carolina Trucking Association and the Trucking Industry Defense Association. He is also former President of the Columbia Area Citadel Club and former District Director of the Citadel Alumni Association.

Continued on next page

Mr. Stublely, selected in the area of workers' compensation defense law, is a graduate of The Citadel and the Mississippi College School of Law. He is a member of the South Carolina Defense Trial Attorney's Association, the South Carolina Chamber of Commerce, the South Carolina Workers' Compensation Educational Association and also served as a former Past President of the Columbia Area Citadel Club. Mr. Stublely recently received a Preeminent AV Rating from Martindale Hubbell.

Ms. Sullivan, selected in the area of insurance law, is a graduate of the University of South Carolina School of Law and serves on the Medical Malpractice Committee for the South Carolina Defense Trial Attorney's Association. She is also a certified mediator and utilizes her prior experience as both a plain-

tiff's attorney and a defense attorney to assist clients in mediating disputes. Ms. Sullivan is currently participating in Leadership Columbia, Class of 2013.

Mr. Bornemann, selected in the area of workers' compensation defense law, is a graduate of the University of South Carolina Honors College and the University of South Carolina School of Law. He is a member of the South Carolina Defense Trial Attorney's Association, the South Carolina Workers' Compensation Educational Association, the Contemporaries of the Columbia Art Museum, and is a 2012 graduate of Leadership Columbia.

The Legal Elite of the Midlands honored its newest recipients at a ceremony on October 22, 2012, at the Blue Marlin Vista Room.

## **THANK YOU to our 2012 ANNUAL MEETING SPONSORS**

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& Courie**

**Riley Pope & Laney**

**Turner Padgett  
Graham & Laney**

**Wilkes Law Firm**

**Womble Carlyle  
Sandridge & Rice**

# William Alexander (Bill) Coates wins Robert W. Hemphill Award

by H. Mills Gallivan

On November 10, 2012, The South Carolina Defense Trial Attorneys' Association awarded William Alexander (Bill) Coates the Robert W. Hemphill Award. Bill is a former President of the Association (1994), and he has remained active, currently serving as a Past President Advisor to the SCDTAA Board.

Bill has a long history of service to the Defense Bar and to his community. Having graduated from the University of South Carolina School of Law, he started his career in Washington as a legislative assistant for the late Senator Strom Thurmond. During his stint on the Hill, he was counsel to the Minority Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary of the United States Senate. He was an Assistant United States Attorney for South Carolina in the Criminal Division. In 1980, Bill entered private practice and became a partner in the firm of Love Thornton Arnold & Thomason, PA in Greenville. Subsequently, he was a founding partner in his present firm of Roe Cassidy Coates & Price, P.A. Bill's practice includes complex civil, environmental and toxic tort litigation. He also has an active white collar criminal practice, including the defense of governmental investigations.

In addition to the South Carolina Defense Trial Attorneys' Association, Bill has been active in the South Carolina Bar, chairing the Judicial Qualifications Committee and serving on the Lawyers Fund for Client Protection Committee. He has been a member of the Trial and Appellate Advocacy Sections, as well as the Natural Resources Section of the South Carolina Bar.

As a member of the American Bar Association, he has been active in the sections of Litigation and Environmental Energy and Natural Resources. He is

also a Member of the Federation of Defense & Corporate Counsel and the American Board of Trial Advocates—South Carolina Chapter. Bill has been honored as a Fellow in the American College of Trial Lawyers and has been included in the South Carolina Super Lawyers since its inception. He has served on the Board of Governors of the

Defense Research Institute, and as Chair of its Corporate Integrity and White Collar Crime Committee.

Bill has also served his community as Chair of the South Carolina State Ethics Commission and General Counsel for the Greater Greenville Chamber of Commerce as well as Vice-Chair of its Public Policy Committee. He has been a director on the Boards of the March of Dimes-Upstate, Easter Seals Society of Greenville County, and the Greenville Hospital

System. He is an active member of Sertoma. Bill has been awarded the Order of the Palmetto, our state's highest civilian award.

Throughout his distinguished legal career, Bill has been described as a gentleman, a lawyer's lawyer, and a litigator who is never overbearing, but is always present. Bill's friends know that he is not only a fierce advocate, but is the epitome of civility. He has served his clients with distinction, and his country and state with honor. He has given freely of his leadership skills to the legal profession.

Bill's legal career embodies the principal criteria set forth for the receipt of the Robert W. Hemphill Award. His lovely wife, Kathy, recounts that he has spent his life trying to emulate his father whose word was his bond. Certainly Bill has accomplished this goal. The South Carolina Defense Trial Attorneys' Association and his friends congratulate Bill on the receipt of the Fourteenth Robert W. Hemphill Award.





# 2013 Trial Academy Recap

by Adam J. Neil



The Twenty-Third Annual SCDTAA Trial Academy was held in Columbia on April 17-19, 2013. Twenty young lawyers spent two days in intense training featuring classroom instruction and one on one follow up from seasoned practitioners and sitting judges. Nelson Mullins Riley and Scarborough in Columbia graciously hosted the event as participants were given instruction on topics such as preparation of opening and closing statements, examination of expert witnesses, issue preservation for appeal and civility and professionalism. In addition to the instruction time, participants were given the opportunity to meet with their teammates and practicing attorneys for the purpose of preparing for their trial at the end of the week. On Friday, the attendees participated in Mock Trials at the Matthew J. Perry Federal Courthouse in Columbia. Each trial was supervised by a trial observer and presided over by circuit court judges, and the participants had the opportunity to try the case in front of jurors recruited from the Midlands Technical College Paralegal Program, the University of South Carolina Law School and members of the Columbia community. For the first time, law student jurors were able to receive trial experience credit, which is required by Rule 403, for serving as jurors and observing these trials.

The Trial Academy is one of the jewels of the SCDTAA calendar and it could not happen without the membership stepping up to serve as speakers and witnesses. Special thanks goes out to the following judges for giving of their time to preside over the trials: Judge James Barber, Judge Thomas Russo, Judge Frank Addy, Judge George James, and Judge Robert Hood. We also thank the numerous speakers and breakout leaders, many of whom participated and helped out with the Trial Academy for the first time. Special thanks to Dianne Hillman and Lois McLeod at the courthouse for all of their help leading up to and during the Trial Academy. The Trial Academy committee, led by Anthony Livoti, Erin Dean, Jack Riordan and Adam Neil put together a great program. Talent abounds in this organization as many who served as witnesses showed their acting talents, even bringing some jurors to tears. Additional thanks goes out to Dixon Hughes for providing economic loss experts to testify at the mock trials.

Finally, the Trial Academy benefited from a new sponsor, Collision Specialists, Inc. Sarah Wetmore brought them in and did a wonderful presentation on demonstrative evidence. This new sponsor is eager to help out in the defense of your case, so call on them.

All in all, it was another successful Trial Academy. And as we all know, nothing happens without Aimee Hiers and her wonderful staff. Thanks Aimee, we couldn't have done it without you.



# The 2012 Annual Meeting Recap

## The Sanctuary on Kiawah Island

by William S. Brown

2012  
ANNUAL  
MEETING

The 2012 Annual Meeting of the South Carolina Defense Trial Attorney's Association at the Sanctuary was spectacular. A great time was had by everyone in attendance. If you were not there, you missed out. Don't make the mistake of missing the SCDTAA Annual Meeting again.

The educational portion of the meeting was filled with informative and entertaining presentations and panels. The program included an analysis of ethics issues in the world of e-discovery, insight into the minds of a jury, education on mental health and substance abuse, and how to know when someone is telling a lie. The substantive law presentations directed at product liability, business litigation, and law firm management, were informative and timely. We were also grateful for the wisdom, advice, and wit provided by both trial and appellate judges on our panels.

The evenings and afternoons provided plenty of time to connect and interact socially with your fellow defense attorneys and members of the judiciary. Whether you played on the world-class golf courses, enjoyed the fantastic tennis facilities, took part in a day of backwater fishing, or simply relaxed to the sounds of the waves softly breaking on the beach while a gentle breeze blew through the ocean front dunes, you could not have found a better place to spend an early November weekend than Kiawah.

The Sanctuary's 5-star accommodations provided the ideal venue for our program. From the magnificent main lawn, to the grand ballroom, to the luxurious guest rooms, we all enjoyed the beauty, elegance, and relaxed atmosphere of The Sanctuary. Attendance by both our membership and members of the judiciary were at record levels, demonstrating the tremendous benefits of attending the meeting.

At this 45th Annual Meeting of the SCDTAA, Molly Hood Craig completed her term as President. Molly's term as President of the SCDTAA will be remembered for the innovation and excitement that she brought to our Association. She has set the bar high for all those that follow, but the incoming President, Sterling G. Davies, is eager to build on this success with the support of the other officers elected at the Annual Meeting, President Elect, Curtis L. Ott, Treasurer, Ronald K. Wray, and Secretary, William S. Brown.

The great social and educational opportunities which were had at the 2012 SCDTAA Annual Meeting are sure to be repeated again at the 2013 Annual Meeting. Make sure you mark your calendar to join the SCDTAA at the 46th Annual Meeting November 7-10, 2013 at The Westin Resort & Spa, Savannah, Georgia.



# 2013 Summer Meeting July 25-27 Grove Park Inn • Asheville, NC

by James B. Hood



**M**ark your calendars for the 2013 Summer Meeting! With over 7 hours of cutting edge CLE set to the backdrop of the Appalachian Mountains in July, you can't afford to miss it. Come visit with old friends and make new ones as the SCDTAA intertwines CLE and networking. The Grove Park Inn is the perfect setting for a July vacation with spectacular golf, whitewater rafting, canopy tours, fishing and

miles of hiking. The children's program makes this a fantastic family event. During our CLE sessions, you will hear about the future of judicial selection in South Carolina from a distinguished panel led by Justice Costa Pleicones, Senator Shane Massey, Representative Derham Cole, and SCDTAA lobbyist Jeff Thordhal. For our members focusing on workers' compensation, we expect six of the seven Commissioners to attend and participate in the dedicated workers' compensation portions of the meet-



ing, including Breakfast with the Commissioners on Saturday. We are also pleased to have a panel of federal and state judges who will share their perspective of effective advocacy. Other sessions include "Winning Your Case Before Trial," a panel on effective techniques to undermine opposing experts, cybersecurity, an ethics hour and substantive law updates by our substantive law committees. We look forward to seeing you in July!

## Special Thanks to our 2013 Summer Meeting Sponsors

**ABS - Applied Building Sciences**

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**South Carolina Bar Publication Division**

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# Make Plans Now to Attend the 46th Annual Conference

November 7-10 • Savannah, GA

by David A. Anderson

SCDTAA  
EVENTS

The Forty-Sixth Annual Conference of the South Carolina Defense Trial Attorneys' Association will take place at the Westin Harbor Resort in Savannah, Georgia on November 7 – 10, 2013. Your Annual Conference Committee has been working hard to achieve the finest in Continuing Legal Education opportunities and allow you to spend time at a beautiful resort overlooking the Savannah River. You do not want to miss this chance to receive cutting edge information to further your practices as well as spend a relaxing time with the judiciary and friends in the defense bar.

We will start our conference off with a reception on Thursday evening with our educational programs slated for Friday and Saturday mornings. On Friday evening we will once again have our Black Tie Optional Dinner followed by one of the Premier Show Bands in the country, the Atlanta Rhythm and Blues Band. Unlike years in the past, you will not be vying for times to see either the Carolina or Clemson

Football Games, since both teams have off this weekend! We will have a traditional Oyster Roast on Saturday at the Golf Course Clubhouse overlooking the 18th hole, which adjoins the Hotel.

We have a great slate of speakers lined up which include the Honorable Joseph F. Anderson, Jr. speaking on his latest book, *Effective Courtroom Advocacy*; Dallas Attorney Ben Wright speaking on “Computer Privacy and Security Law: Trends and Implications” as well as Dean Robert M. Wilcox speaking on Ethics. They are just a few of the dynamic speakers that we have lined up.

This Conference has much to offer and we look forward to seeing you in Savannah on November 7-10.



## THE WESTIN SAVANNAH HARBOR SAVANNAH, GEORGIA



# What's In It For You?

by John C. Hawk IV



If you're reading this, you're probably already a member of the SCDTAA. Congratulations! That's a good start. But don't spend too much time patting yourself on the back. If you want more out of the organization than simply a line-item on your web bio, I strongly urge you to take your membership to the next level. The SCDTAA is a world-class organization with fantastic opportunities for young lawyers, but it's up to you to get involved.

What's in it for you? First, a professional network of the very best defense lawyers in South Carolina. Our members include the managing partners of most of our state's largest and best firms, former and future judges, as well as active leaders of DRI, the IADC, the ABA, the S.C Bar and other prominent legal associations. Can you afford not to know these folks? The beauty of the SCDTAA is that it provides forums for you, the young lawyer, to interact with these paragons of the profession in relaxed and inviting settings.

Second, education. Sure, you know your stuff, but good lawyers are always striving to improve. The SCDTAA offers a variety of opportunities to help you do that. First, the SCDTAA Trial Academy is an intense three-day program which WILL make you a better trial lawyer. Further, the SCDTAA hosts a variety of CLEs throughout the year and throughout the state. I highly recommend these CLE's to you- they are taught by the best and most-experienced defense lawyers in the state, and they

are geared toward you, the defense lawyer.

Third, judges. Would you know a judge from a neighboring county if you bumped into him/her on the street? For young lawyers who might not see the inside of the courtroom much, the SCDTAA provides great opportunities to interact with and get to know our state's venerable judges. Even for those of you who think you know all the judges, the SCDTAA's conferences present an unparalleled opportunity to interact with judges in a relaxed environment. For example, sixty state and federal judges attended the SCDTAA Annual Meeting last year. The SCDTAA also hosts several well-attended judicial receptions throughout the year, and judges regularly help with the SCDTAA's CLEs. For the young defense lawyer, there is no better way to get to know our state's judges.

Finally, fun. Think a professional organization can't be fun? That's because you haven't been to an SCDTAA event lately. Out-of-state conferences, happy hours, and the above-mentioned events can all be a great time. Of course, the better you get to know your fellow members (both young and old), the more fun they will be.

So go ahead- sign up for the next SCDTAA event. Your boss will approve, you'll learn some new skills, and you'll probably have a blast doing it. If you need further convincing, please give me a call or email and I'll help you get started.

*Editor's Note: The SCDTAA defines a young lawyer as anyone practicing for less than ten years.*

[www.scdtaa.org](http://www.scdtaa.org)

PAC Golf Tournament

September 27, 2013.

Check website for more information coming soon.

# The Honorable R. Keith Kelly

## At-Large Seat 14

Judge R. Keith Kelly is a native of Woodruff, South Carolina. Born June 5, 1958 to Ralph D. and Louise C. Kelly, he is the eldest of three children born to the couple. He attended public schools in Spartanburg County and graduated Woodruff High School and R.D. Anderson Vocational School in 1976. He attended the University of South Carolina Spartanburg and was cross-enrolled in the US Army ROTC program at Wofford College where he served as the Battalion Commander. Graduating in 1981, he accepted his US Army Regular Army commission as an officer and reported to active duty. Leaving the military to attend law school, he was Honorably Discharged from Active Duty in 1984 and immediately accepted a US Army Reserve commission where he served as a Company Commander and later on Battalion staff before being Honorably Discharged.

Judge Kelly received his Juris Doctor Degree from the Walter F. George School of Law, Mercer University, in 1987 and returned to Spartanburg County to practice law. Prior to his election to the bench, Judge Kelly was a partner at Lister, Flynn & Kelly, PA., in Spartanburg, SC. He is admitted to practice in all South Carolina State Courts, US District Court and the Fourth Circuit Court of Appeals.

A former member of the South Carolina House of Representatives, Judge Kelly served on the Judiciary Committee and was Chairman of its Criminal Laws subcommittee. He is a former member of the Spartanburg County Delegation where he served as the Vice Chairman and a former member of the Sentencing Reform Oversight Committee.

Active in his community, he is a member of several organizations including the Woodruff Rotary Club and the Spartanburg Pilots Association.



Judge Kelly resides in Spartanburg County with his wife Cindy. The couple has three adult daughters and one son-in-law.

**Q. What has been the hardest part of transitioning to become a Circuit Court Judge?**

Many of our clients at Lister, Flynn & Kelly are our friends, people and businesses that we have represented for years. I'm going to miss interacting with those clients on a regular basis.

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

I think the biggest challenges are the number of filings per judge throughout the state and converting from a paper to a paperless based system.

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

Please be punctual, prepared to go forward and courteous to everyone. This is our chosen profession; we're all professionals and clients expect the very best from all of us.

**Q. Mandatory mediation has just been established in the 7th Circuit. How do you view mediation to resolve disputes and what impact do you think mandatory mediation will have in the 7th Circuit?**

I practiced in other circuits where mediation is mandatory, and I am a big fan of mediation because it works. Clients can resolve disputes more quickly and can often fashion a creative settlement more to their liking than a decision from the Court.

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

I've wanted to be a lawyer since I was in high school. I enjoyed civics and history classes and later majored in history in college. After completing an active duty tour with the US Army and completing

Continued on bottom of next page



# Happy Hour CLE - Trial Motions

by William G. Besley



The SCDTAA hosted a Happy Hour CLE on Trial Motions on May 23, 2013, which was a grand success. The CLE was attended by 70 association members in four different locations across South Carolina. The CLE originated in Columbia at McAngus Goudeock and Courie's office, and was interactively attended at MGC sites in Charleston, Greenville, and Myrtle Beach. Both Dave Howser (Howser, Newman, and Besley LLC) and Gray

Culbreath (Gallivan, White, and Boyd, PA) led an outstanding program on the proper use, effectiveness, and timing of voir dire, motions in limine, and post-trial motions. There was great discussion on the efforts by the plaintiffs bar to push certain motions and voir dire and the proper strategy for defense counsel to use voir dire and trial motions to their client's advantage. The highlight of this seminar was the active participation of Judge Thomas Cooper at the Columbia panel, Judge John Few in Greenville, and Justice Kay Hearn in Myrtle Beach. These Judges were able to give wonderful feedback and reaction to the various points being made by the panel. The technology utilized between the various office locations led to interesting dialogue between all of the participants across the state. At the conclusion of the seminar, the attendees enjoyed a "Happy Hour" social with the Judges and panel. Our association

thanks these Judges for their time and participation, and thanks MGC law for the use of their offices and technology. This seminar format is an outstanding way for younger members and veterans of our Association to get to hone their trial skills and have an opportunity to interact with the Judiciary in a social setting. We plan to host other Happy-Hour CLEs in the future and encourage SCDTAA members to take advantage of these opportunities. We would especially like to thank Southern Court Reporting and SEA (Scientific Expert Analysis) for sponsoring the event.

## **Special Thanks to our Sponsors:**

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## **KELLY PROFILE CONT. FROM PAGE 21**

law school, I joined the Bar in 1988 and practiced law until elected to the Bench.

**Q. Who has been the biggest influence in your legal career?**

Jim S. Brooks, Esq., who hired me just out of law school with a wife and a ten month old baby. He had a very good practice and needed some help at the time. We worked together for eleven years. Retired now, he remains my mentor and good friend.

**Q. From your observations how has the use of technology in the courtroom impacted trial practice?**

Technology has enabled the very small law firm or solo practitioner to be as prepared as a larger firm. Vast library resources are available on our mobile devices and entire trial notebooks can be loaded onto those mobile devices for courtroom presentations.

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

I really do not see a problem. I think South Carolina has a very good Bar and lawyers are polite to each other.

**Q. What do you enjoy doing in your spare time?**

My hobby is flying. I've been a licensed pilot for many years, and I enjoy flying. As a practicing lawyer and former legislator, it was invaluable as a time management tool. And, I intend to use it while on the Bench. Also, it's a lot of fun be able to get away on short notice whether it's for dinner at the coast or to meet friends in another state.

**Q. What was the last book that you read?**

I just finished reading *Lincoln*.

# Avoid the “Summer Blues”: Things to Consider as You Prepare Your Firm For Summer Associate Programs

by Kristian M. Cross <sup>1</sup>

A summer associate program “should be a form of learning that integrates knowledge and theory learned in the classroom with practical application and skills development in a professional setting.”<sup>2</sup> While summer associate programs include research, drafting legal memoranda, and opportunities for law students to observe practicing attorneys in the court room, most programs also include happy hours, firm dinners, and other social outings. Because alcohol may be served, exposure to lawsuits arising out of workers’ compensation law, employment law, and negligence is heightened.

To help minimize the summer blues, consider the following preparations:

## Are My Summer Associates Considered Employees?

Whether your firm is responsible for potential workers’ compensation claims or employment liability first depends on if your summer associates are considered employees of the firm. The employment relationship between an employer and a worker is a fact-specific determination that you can assess by applying certain general principles.<sup>3</sup> The general test involves determining “the [employer’s] right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment.”<sup>4</sup> In determining the control issue, four factors are considered: (1) direct evidence of the right or exercise of control; (2) method of payment; (3) furnishing of equipment; and, (4) right to fire.<sup>5</sup> Each factor should be weighed evenly.<sup>6</sup>

If you are “paying” your summer associates with experience, they are most likely gratuitous employees for the purposes of workers’ compensation, and therefore, are not “employees” entitled to workers’ compensation under the South Carolina Workers’ Compensation Act.<sup>7</sup> However, unpaid summer associates may still be entitled to rights under the Fair Labor Standards Act (FLSA).

The Department of Labor (DOL) has made the rules and regulations regarding summer associate programs and other internship programs very clear, and law firms that use such programs as a form of unpaid labor may be targeted for review. The DOL Wage and Hour Division has developed a set of guide-

lines to determine if a summer associate must be paid minimum wage and overtime in accordance with FLSA.<sup>8</sup> To determine if someone qualifies as a summer associate or an employee, determine whether:

1. Your summer associate program, even though it includes actual operation of the facilities of your law firm, is similar to training which would be given in an educational environment;
2. The summer associate program experience is for the benefit of the summer associate;
3. The summer associate does not displace regular employees, but works under close supervision of existing staff;
4. The law firm that provides the training derives no immediate advantage from the activities of the summer associate; and on occasion the law firm’s operations may actually be impeded;
5. The summer associate is not necessarily entitled to a job at the conclusion of the summer associate program; and
6. The law firm and the summer associate understand that the summer associate is not entitled to wages for the time spent in the summer associate program.

If all the elements listed above are met, an employment relationship does not exist under the FLSA, and minimum wage and overtime provisions do not apply. Below are suggestions to ensure your summer associate program meets the DOL guidelines:

1. It is strongly recommended the potential summer associate not be a former employee. Your intentions may be honorable and the individual may be willing to work for free, but the appearance of a former employee working as a summer



Continued on next page

associate could be too great for the DOL to overlook.

2. Create a summer associate program with written criteria, including the opportunity for the summer associate to observe and participate in all aspects of the law firm.
3. Have the summer associate sign an internship agreement that shows he/she realizes he/she will not receive pay. The agreement should also state that the law firm is receiving no immediate advantage from the activities of the summer associate, the employer and the summer associate understand the summer associate is not necessarily entitled to a job at the conclusion of the summer associate program, and the summer associate program is for the benefit of the summer associate.
4. Do not allow a partner or associate to utilize a summer associate in place of a missing employee. This will be viewed as structured work and more likely to be

considered an employee entitled to wages for the time spent.

5. If you are not paying your summer associates, strongly consider calling the program an “internship” and referring to them as “interns.” Although “summer associate” is merely euphemistic for “internship” (don’t tell the law students), the term suggests more responsibility and status within the law firm.

### **Happy Hours, Dinners, and Softball...Oh My!**

Now that you’ve determined if your summer associates are employees, determine your liability for all of the summer events you have planned to woo them to your firm. If a summer associate is injured at a firm happy hour, dinner, softball game, or other social event sponsored by your law firm, he/she may be entitled to workers’ compensation benefits. Although, a law firm that is serving as a social host incurs no tort liability to either first or third parties injured by an intoxicated adult guest, intoxication does not automatically bar the individual from workers’ compensation benefits.<sup>9</sup> Moreover, environments in which alcohol is served are ripe for sexual harassment and other employment law related issues.

#### **Workers’ Compensation**

If your summer associates are employees, they are entitled to workers’ compensation benefits for any injuries they sustain arising out of and in the course and scope of their employment. However, not all recreational and social activities fall within the course of employment. Therefore, injuries sustained during such events are not covered under the Workers’ Compensation Act. To determine if a recreational or social activity is within the course of employment, determine whether the activity:

1. occurs on premises during a lunch or recreation period as a regular incident of the employment; or
2. is required by the employer, expressly or impliedly, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or,
3. provides a direct benefit to the law firm beyond the

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intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.<sup>10</sup>

Applying the above test, the South Carolina Supreme Court has specifically held that an injury during a company softball game is not compensable under the Workers' Compensation Act.<sup>11</sup>

Happy hours and firm lunch/dinners may be trickier as several summer associate programs specifically calendar such events and attendance is at least impliedly required. If the Workers' Compensation Act applies, intoxication is an affirmative defense to any injury sustained. The caveat is the employer must show the intoxication was the proximate cause of the injury.<sup>12</sup> Merely showing intoxication was a contributing cause of the injury is not enough to assert the defense.<sup>13</sup>

To reduce your exposure to liability, you don't have to eliminate the firm dinners and happy hours altogether. Instead, try the following:

1. Make the events voluntary and avoid discussing work matters. If formal invitations are sent, specify that attendance is not required.
2. If the event is on-site and during business hours, do not serve alcohol.
3. Move after hours events off-site to a restaurant or other location, and use professional bartenders to serve drinks.
4. Do not encourage over-drinking, such as taking shots or playing beer pong.
5. Limit the length of the party and discourage the infamous "after parties."
6. Stop serving alcohol at least one hour before the party is scheduled to conclude.

### **Employment Law Considerations**

Generally speaking, relationships between attorneys and law clerks should be avoided. However, flowers are not the only things that bloom in the spring and summer months. One of the worst things an employer can do is pretend an office romance will never happen, or that if it does, it will not affect his or her business. With many summer associate programs comes a summer filled with "meet and greet" opportunities in which alcohol is involved 9 out of 10 times. Not only can this spark a wanted, consensual relationship, it can also spark an unwanted advancement.

In preparation for your summer associate programs, review your anti-harassment and fraternization policy with everyone including partners, associates, paralegals, secretaries, and all other firm personnel.

## **Enjoy Your Summer!!!**

Summer associate programs are great opportunities to teach the next generation of attorneys. Preparing yourself for potential liability and refreshing your staff on your firm's employment policies will ensure everyone has an enjoyable summer.

### **Footnotes**

1 Kristian Cross practices in the Collins & Lacy, P.C. Columbia office. She focuses in Employment Law, Workers' Compensation, and Retail / Hospitality / Entertainment law. She is experienced in working alongside employers, restaurants, hotel and bar owners and their insurers to help resolve both employment, workers' compensation and litigation claims. In addition to her roles at Collins & Lacy, Kristian was appointed to the South Carolina Judicial Merit Selection Commission, she also serves on the executive board of Sexual Trauma Services of the Midlands and is a member of the South Carolina Bar Workers' Compensation Section.

2 <http://www.naceweb.org/home.aspx>

3 *Gray v. Club Group Ltd.*, 339 S.C. 173, 184, 528 S.E.2d 435, 441 (Ct. App. 2000).

4 *Kilgore Group v. South Carolina Employment Sec. Comm'n*, 313 S.C. 65, 68, 437 S.E.2d 48, 49 (1993); *Young v. Warr*, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).

5 *Dawkins v. Jordan*, 341 S.C. 434, 439, 534 S.E.2d 700, 703 (2000) *Kilgore Group*, 313 S.C. at 68, 437 S.E.2d at 49-50; *Tharpe v. G.E. Moore Co.*, 254 S.C. 196, 200, 174 S.E.2d 397, 399 (1970).

6 *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 676 S.E.2d 700 (2009).

7 *Kirksey v. Assurance Tire Company*, 314 S.C. 43, 443 S.E.2d 803 (1993) (The Supreme Court found the business owner's daughter was not an employee where there was no evidence she was paid in any form).

8 Fact Sheet No. 71: Internship Programs Under the Fair Labor Standards Act, <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>

9 *Marcum v. Bowden*, 372 S.C. 452, 458, 643 S.E.2d 85, 88 (2007); *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct.App.1986); *Kinsey v. Champion American Service Center*, 268 S.C. 177, 232 S.E.2d 720 (1977); *South Carolina Dept. of Highways & Public Transp. v. Higgins*, 284 S.C. 359, 326 S.E.2d 425 (Ct. App. 1985).

10 *Leopard v. Blackman-Uhler*, 318 S.C. 369, 458 S.E.2d 41 (1995).

11 *Id.*

12 *Kinsey v. Champion American Service Center*, 268 S.C. 177, 232 S.E.2d 720 (1977); *South Carolina Dept. of Highways & Public Transp. v. Higgins*, 284 S.C. 359, 326 S.E.2d 425 (Ct. App. 1985).

13 *Id.*

**ARTICLE  
CONT.**

# Legislative Update

by Jeffrey N. Thordahl, SCDTAA Lobbyist



The 2013 legislative session was certainly packed with headline issues like election reform, ethics reform, infrastructure funding, and Medicaid expansion, though some may argue many of these important issues moved too slowly, if at all. As it relates to the legal profession, there were several issues of interest.

## Judicial Elections:

During the course of the legislative session, the General Assembly held elections for several judicial seats. Due to the unusually large number of seats up for election and the atypical situation where several races were contested on the day of the election, there were initial rumblings about whether our process of electing judges was in need of reform. However, since the election there has been little conversation about changing the current process and many recognize that while our system is not perfect, the alternatives seem to hold little promise to improve the process.

## Legislation:

There were two bills in particular that drew the interest of the SCDTAA this year. Early in the session, H. 3147 was introduced in response to the Bentley Case involving a situation with a Deputy Sheriff in Spartanburg County suffering from mental stress injuries. As introduced, the bill would have created a broad exception for compensable mental stress injuries for anyone without requiring proof of causation by medical evidence. Given that significant proposed change in the law, the leadership of the SCDTAA determined it was necessary to testify that this was not the best way to address the Bentley Case. Rusty Goudelock testified on the SCDTAA's behalf in opposition to the bill. After much discussion, the bill was amended to create a much more limited exception only applicable to law enforcement officers directly involved in the use of deadly force in the line of duty. The bill is on the House Contested Calendar as of May 30th but is likely to move to the Senate for them to debate next year.

House Bill 3974 was introduced to allow the Department of Revenue to expunge the record of a lien once the lien has been fully paid and satisfied. The SCDTAA did not have an issue with bill as intro-

duced however an amendment was added in the House that would allow the court to sua sponte order the name of the defendant be expunged from the public indices where it is recorded when summary judgment is granted to a defendant in a civil action on any cause of action brought against him in the action, or the causes of action are dismissed by consent of the parties. The practical application of the amendment was of concern to the SCDTAA, so Gray Culbreath offered comments and attended the Senate hearing on the bill. Senator Nikki Setzler led the effort to remove the provision from the bill. The bill will be returned to the House, perhaps this year, where the House can either simply drop the amendment as well or insist on their amendment. It will likely be next year before we know the outcome.

Finally, the 16 Jade Street legislation is still outstanding. Two hearings were held this year by a Senate subcommittee on S. 124 gathering input to help craft the best course of action. After lengthy debate and testimony, it remains in the subcommittee. Across the street, the Supreme Court agreed to rehear the case though they have not yet issued an opinion.

The legislative reception with the House and Senate Judiciary Committees hosted by the SCDTAA was held in April and was another great success. It is an adventure every year to get all the elected officials there, but it worked out in the end. The House Judiciary Committee made it to the function after a committee meeting ran later than usual. The Senate was in Session until 8:00 pm that night but most of them came by the event upon adjournment, and several stayed until 10:00pm. Chairman Greg Delleney attended as did Chairman Larry Martin. Several of the new Senators who are lawyers were there so it was a great opportunity to get to know them. New Senators Paul Thurmond, Thomas McElveen, Karl Allen and Greg Hembree were all there.

At the time of this article, it did not look like the ethics reform legislation or government restructuring legislation was likely to be enacted this year. This is the first year of a two-year session, so those bills could be topics of discussion next January.

# Standing Issues in Federal ADA Litigation

by Childs C. Thrasher<sup>1</sup> with assistance from Natalie Welch

Standing may quite possibly be the most important condition for a justiciable claim in federal court.<sup>2</sup> While not often at issue in many areas of defense practice, standing has become one of the hot topics in Americans with Disabilities Act premises liability cases. For standing to exist, the plaintiff must have a personal stake in the outcome of the dispute, demonstrated by at least three “irreducible constitutional minimum” requirements that: (1) the plaintiff has sustained an injury in fact; (2) the injury is traceable to the defendant’s actions; and (3) it is likely that the injury will be redressed by a favorable judicial decision.<sup>3</sup>

In the context of claims brought under the Americans with Disabilities Act (“ADA”), plaintiffs typically seek injunctive relief which requires a showing of an “irreparable injury.”<sup>4</sup> The plaintiff in an ADA case must show more than mere past wrongs to be entitled to injunctive relief. He must show that there is a ‘sufficient likelihood’ that he faces a ‘real or imminent threat of repeated future harm’ for courts to invoke federal jurisdiction.<sup>5</sup> Over the past few years, courts in this district have dismissed many ADA claims for lack of standing based on the failure of the plaintiff to demonstrate “a real or imminent threat of repeated future harm.”

In *Harty v. Burlington Coat Factory of South Carolina*, a 2012 case, the District Court of South Carolina found that a plaintiff alleging violations of Title III of the ADA lacked standing to sue because he failed to demonstrate a “concrete and particularized” injury as a result of the complained of alleged ADA violations and because he failed to demonstrate a “likelihood of substantial and immediate irreparable harm.”<sup>6</sup> Although the plaintiff provided a list of alleged deficiencies in the property that did not meet ADA standards, the Court pointed out that he failed to articulate how he would encounter them upon return.<sup>7</sup> The Court, like many others, held that a general desire to “someday” return to the premises is not enough to establish the required likelihood of “actual or imminent” injury.<sup>8</sup>

Shortly after the *Burlington Coat Factory* opinion was issued, a North Carolina District Court found in *National Alliance for Accessibility and Denise Payne v. Horne River Ridge LP II*, that a plaintiff lacked standing to sue because she lived hundreds of miles from the defendant’s establishment and made only indefinite assertions about future plans to return to the establishment.<sup>9</sup> The Court concluded that osten-

sible ties and conclusive allegations regarding plans to return to an establishment are not enough to establish the “injury in fact” element of the standing doctrine. The Fourth Circuit, has repeatedly addressed similar allegations in ADA litigation, and held that, for similar reasons as articulated in the cases above, a plaintiff has failed to establish the requisite conditions for standing.<sup>10</sup>



## Determining Real and Imminent Threat of Repeated Future Harm

District courts have commonly employed the use of a four-factor analysis when determining whether a plaintiff in an ADA premises liability case has demonstrated a “real and immediate threat of future harm.” The factors regularly considered include: (1) the plaintiff’s proximity to the defendant’s place of public accommodation; (2) the plaintiff’s past patronage; (3) the definitiveness of the plaintiff’s plans to return; and (4) the plaintiff’s frequency of nearby travel.<sup>11</sup> The consensus among courts is that a plaintiff’s proximity to a defendant’s place of business and how often they frequented the business prior to the ADA claim may be indicative of the likelihood to return. A single visit to the alleged location of the ADA violation will typically not warrant the plaintiff a favorable inference that the claim to return is plausible. When considering a plaintiff’s plans to return, the court acknowledges that this does not require the plaintiff to put themselves in jeopardy of harm by returning to a place of alleged violation, however, it is necessary to show that the plaintiff would return but for the safety barriers.<sup>12</sup>

## Recent Debate Regarding Factor Based Analysis

On April 24, 2012, the Court of Appeals for the Fourth Circuit handed down a decision in *Daniels v. Arcade, L.P.*, concerning standing requirements in claims brought under the ADA.<sup>13</sup> In *Daniels*, the Court of Appeals declined to formally endorse the four-factor analysis discussed above. While the Court acknowledged that it often adopts factor-based tests, it found that to apply the four-factor analysis it would “overly and unnecessarily complicate” this particu-

Continued on next page

lar case.

*Daniels* involved a complaint alleging that a local market was in violation of the ADA for various reasons including inaccessible entry routes, ramps, restrooms, and counters for persons who require the use of a wheelchair.<sup>14</sup> The defendant moved to dismiss the case for a lack of standing. The District Court considered the four-factor analysis discussed above and noted that the fact that Daniels lived in “close proximity” to the store weighed in his favor. Ultimately, however, the District Court held that the allegations for establishing standing were insufficient and that Daniels’ statement of intent to return to the market was implausible due to his failure to provide exact dates as to when he would return to the location of the alleged ADA violation.

On appeal, the Fourth Circuit Court of Appeals found that Daniels’ allegations to return *were* plausible because of the “relatively close proximity” of his residence to the market and that, due to the particular facts of this case, it was not necessary for Daniels to state specific planned dates of return. Accordingly, the Fourth Circuit vacated the lower court’s decision to dismiss the case for lack of standing.

### The Effect of *Daniels* on Future ADA litigation

In post-*Daniels* opinions, district courts have taken note of the Court of Appeals decision not to endorse the use of four-factor analysis.<sup>15</sup> However, several have stated that because the *Daniels*’ case is unpublished, it is not precedential in the Fourth Circuit, but merely persuasive.<sup>16</sup> Additionally, many of these courts have concluded that the *Daniels* Court simply chose not to use the four-factor analysis in that particular case based on the facts as presented and find that it is still a proper analysis for assessing standing in ADA litigation.<sup>17</sup>

*Daniels* is distinguishable from other ADA litigation in which the four-factor analysis continues to be used. In *Daniels*, the plaintiff lived within 20 miles of the defendant’s place of business and prior to bringing the ADA claim, “regularly visited” the location.<sup>18</sup> Today, very few ADA suits are permitted to move forward if the plaintiff’s allegations only contain a vague intention to return. The cases which do move forward typically involve a plaintiff similar to Daniels, who lives in relatively close proximity to the location of the alleged violation, making the likelihood of return necessarily greater.<sup>19</sup> The implication of *Daniels* in future litigation with a similar factual context is that it may no longer be necessary for the plaintiff to satisfy the four-factor analysis previously used by the courts.<sup>20</sup>

Conversation regarding the use the four-factor analysis continues to persist. Just this year district courts have examined other areas in which the four-factor analysis may not be applicable.<sup>21</sup> The District Court of Maryland, for example, has held that ADA

cases involving a hotel as the alleged location of violations are not properly analyzed under the four-factors.<sup>22</sup> That Court asserted that the four-factor analysis does not take into consideration that there are many other factors controlling the likelihood that an individual will return to a particular hotel. The distance of one’s residence from a hotel or past patronage of a hotel may not be indicative of a plaintiff’s future plans. Instead, the Court argues, when making ADA claims against hotels, plaintiffs will need to demonstrate factors such as the likelihood that the plaintiff will visit a particular city, when the plaintiff will visit the particular city and where the hotel is located within that city. A plaintiff “need only allege a possible basis” for returning to the hotel, but “need not definitely establish that [he or she] is, in fact, likely to visit the hotel.”<sup>23</sup>

### Tester Standing

A majority of ADA litigation surfacing post-*Daniels* has dealt with plaintiffs who reside hundreds of miles from the location of the alleged violation. The plaintiff’s complaints often contain allegations of violations that do not apply particularly to them individually and very vague statements of intent to return. Commonly, these plaintiffs are referred to as “testers” and their sole purpose in visiting a defendant’s establishment is only to check for ADA violations for purposes of bringing suit. Courts throughout the United States have debated the issue of whether a “tester” plaintiff can demonstrate a plausible interest in returning to the business. However, courts within this district have held that a plaintiff does not satisfy standing requirements if the only reason for returning to an establishment is for the purpose of litigation and would not return otherwise.<sup>24</sup>

In many of these “tester” suits the four-factor analysis has been employed to evaluate the plausibility of a plaintiff’s allegations to return to the defendant’s property. The courts consider the plaintiff’s proximity to the defendant’s business as well as past patronage, definitiveness of plans to return and frequency of travel to establish whether the plaintiff has met the requisite showing of a threat of future harm.<sup>25</sup> It is not enough for the allegations to be only merely-possible; rather, the allegations must be plausible.

### Organization/Association Standing

The recent emergence of claims by ADA “testers” have also involved an additional plaintiff—the organization or association. Standing for an organization can be established if the organization is directly injured. “An organization may suffer an injury in fact when a defendant’s actions impede its efforts to carry out its mission.”<sup>26</sup>

If the organization itself has not been injured, standing can still be found where: (1) its members would have standing to sue in their own right; (2) the interests at stake in the litigation are germane to the



organization's purpose; and (3) neither the claim asserted nor the relief requested require the participation of individual members in the suit.<sup>28</sup> If a member is deemed to have standing, the organization will also have standing. An organization's claim that it has been forced to expend significant resources to identify a defendant's violations of the ADA will not be sufficient to establish injury-in-fact. Expenses incurred in consummation of the organization's purpose or mission is not an injury attributable to a defendant.<sup>28</sup>

## Conclusion

The public accommodations provision of the ADA is integral in the move to eliminate social discrimination of those with disabilities. Title III guarantees that an individual with disabilities will have equal access to professional services, public services, transportation services, lodging services, restaurants, shopping and other recreational facilities.<sup>29</sup> Within these rights, Congress created a broad grant of standing for those who have been unjustly discriminated against.<sup>30</sup> However, this broad grant of standing has given rise to increased litigation, bringing standing in ADA claims to the forefront.<sup>31</sup>

Case law regarding standing in the context of ADA premises liability continues to develop throughout the country with the increase of accessibility claims brought under Title III. In the Fourth Circuit, recent case law suggests that, although the Court will consider the four factor based analysis in examining standing issues, it will ultimately look to the facts of the case as a whole when determining whether a plaintiff has standing to bring the case in federal court.

## Footnotes

1 Childs Cantey Thrasher is an associate in the Columbia office of Gallivan, White & Boyd, P.A. She practices in the areas of Business and Commercial Litigation, Environmental Law, Professional Negligence and ADA Compliance Premises Liability.

2 "Standing is a threshold jurisdictional question which ensures that a suit is a case or controversy appropriate for the exercise of the courts' judicial powers under the Constitution of the United States." *Pye v. United States*, 269 F.3d 459, 466 (4th Cir.2001).

3 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

4 *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

5 *Id.*

6 *Harty v. Burlington Coat Factory of South Carolina, LLC*, Civ. No. 3:11-1138-MBS., 2012 WL 264688, at \*4 (D.S.C. 2012).

7 *Id.*

8 *Id.* at 4.2.

9 *National Alliance for Accessibility and Denise Payne v. Horne-River Ridge II, LP*, No. 1:10cv286., 2011 WL 1103791, (W.D.N.C. 2011), aff'd 2011 WL 1060435 (4th Cir. 2011).

10 See *National Alliance for Accessibility, Inc. and Denise Payne v. Waffle House, Inc.*, 2011 WL 2580679 (E.D.N.C. 2011); *Access for the Disabled, Inc. and Denise Payne v. Karan Krishna, LLC*, 2011 WL 846854 (E.D.N.C. 2011) (*Harty* (E.D.N.C.), 747 F.Supp.2d at 550; *Harty v.*

*Tathata, Inc.*, 2011 WL 1261313 (E.D.N.C. 2011); *Harty v. 42 Hotel Raleigh, LLC*, 2011 WL 1252877 (E.D.N.C. 2011).

11 *Norkunas v. Park Road Shopping Center*, 777 F. Supp. 2d 998, 1002 (2011).

12 *Steger v. Franco, Inc.*, 228 F.3d 889, 892-93 (8th Cir. 2000).

13 *Daniels v. Arcade, L.P.*, 477 Fed. Appx. 125, 129 (2012).

14 *Id.*

15 *National Alliance for Accessibility, Inc. v. Millbank Hotel Partners*, Civ No RDB 1-32223, 2013 WL 053955 (D.Md. 2013), *National Alliance for Accessibility, Inc. v. Belk, Inc.*, Civ. No. 5:12-CV-00386-FL, 2012 WL 1614672 (E.D.N.C. 2013), *National Alliance for Accessibility, Inc. v. Belk, Inc.*, Civ. No. 5:12-CV-394-BR, 2013 WL 1122629 (E.D.N.C. 2013), *Flaum v. Colonial Williamsburg Foundation*, Civ. No. 4:12CV111, 2012 WL 5879128 (E.D.Va. 2012), *National Alliance for Accessibility, Inc. v. W&K of Asheville, LLC*, Civ. No. 1:12CV24, 2012 WL 6761420 (W.D.N.C. 2012), *National Alliance for Accessibility, Inc. v. CMG Bethesda Owner LLC*, Civ. No. JFM-12-1864, 2012 WL 6108244 (D.Md. 2012), *National Alliance for Accessibility, Inc. v. Macy's Retail Holdings, Inc.*, No. 1:11-cv-877, 2012 WL 5381490 (M.D.N.C. 2012), *Payne v. TR Associates, LLC*, 880 F.Supp.2d 702 (E.D.N.C. 2012)

16 *National Alliance for Accessibility, Inc. v. Macy's Retail Holdings, Inc.*, No. 1:11-cv-877, 2012 WL 5381490 at \*4 (M.D.N.C. 2012),

17 See *id.*

18 *Daniels*, 477 Fed. Appx. at 130.

19 *Payne v. TR Associates, LLC*, 880 F.Supp.2d 702, 706 (E.D.N.C. 2012).

20 *Flaum v. Colonial Williamsburg Foundation*, Civ. No. 4:12cv111, 2012 WL 5879128, (E.D.Va. November 12, 2012).

21 See *National Alliance for Accessibility, Inc. v. CMG Bethesda Owner LLC*, Civ. No. JFM-12-1864, 2012 WL 6108244, (D. Md. Dec. 7, 2012); *National Alliance for Accessibility, Inc. v. Millbank Hotel Partners*, Civ. No. RDB 12-3223, 2013 WL 053955 (D. Ma. 2013).

22 See *id.*

23 See *Id.*

24 *National Alliance for Accessibility, Inc. v. Big Lots Stores, Inc., Waffle House Inc.*, 2011 WL 2580679 at \*3 (quoting *Norkunas*, 2011 WL 12481578 at \*6) See also *Nat'l Alliance for Accessibility, Inc. v. Rite Aid of N.C., Inc.* No. 1: 10CV932, 2011 WL 4499294 at \*8 (M.D.N.C. Sept. 27, 2011).

25 See e.g. *National Alliance for Accessibility, Inc. v. Belk, Inc.*, Civ. No. 5:12-CV-00386-FL, 2012 WL 1614672 (E.D.N.C. 2013), *National Alliance for Accessibility, Inc. v. Belk, Inc.*, Civ. No. 5:12-CV-394-BR, 2013 WL 1122629 (E.D.N.C. 2013), *National Alliance for Accessibility, Inc. v. Macy's Retail Holdings, Inc.*, No. 1:11-cv-877, 2012 WL 5381490 at \*4 (M.D.N.C. 2012),

26 *Lane v. Holder*, 703 F.3d 668, 674 (4th Cir.2012) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982)).

27 *Retail Indus. Leaders Ass'n v. Fielder*, 475 F.3d 180, 186 (4th Cir. 2007).

28 *National Alliance for Accessibility, Inc. v. V. Belk, Inc.*, No.5:12-CV-394-BR, 2013 WL 1614672 (E.D.N.C. April 15, 2013).

29 Elizabeth Keadle Markey, *The ADA's Last Stand?: Standing and the Americans with Disabilities Act*, 71 *Fordham L. Rev.* 185, 214 (2002).

30 See *id.*

31 Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of "Abusive ADA Litigation"*, 54 *UCLA Law Rev.* 1, 34 (2006).

# DRI Report

by Samuel W. Outten



The Mid-Atlantic Regional Meeting of DRI was held on April 26 and April 27, 2013 at the Homestead in Virginia. The SCDTAA was well represented with the following members present: Sterling Davies, William Brown, John Cuttino, John Kuppens, and Sam Outten. The Mid-Atlantic region is made up of the District of Columbia, Maryland, Virginia, North Carolina, and South Carolina. Representatives from each of these SLDO's were present. The purpose of this meeting is for SLDO leaders in our

region to get together and exchange ideas about our events, meetings, membership, fundraising, etc.

I was proud to be a member of the SCDTAA during this two day meeting. Our association is active, our membership is strong, and our meetings are well attended. The other SLDO leaders were very interested in the Trial Superstars Seminar which Molly Hood Craig and Jamie Hood put together last April. Our association also benefited from what we learned from the other SLDO leaders. Also, we were

reminded of the valuable resources which DRI has available to its members.

I want to encourage you to become active if you are a member of DRI but inactive, to rejoin if you have dropped out and to join if you have never been a DRI member. There are many benefits to being involved in DRI. Two of the primary benefits are the excellent seminars which DRI conducts throughout the year which allow you the opportunity to learn from top practitioners in your area of emphasis. Also, networking is becoming increasingly more important in our profession. All DRI meetings are great opportunities for you to establish relationships with other defense lawyers from other parts of the country.

I encourage you to consider your involvement and participation in DRI between now and our summer meeting in July. If there are young lawyers (or older lawyers) in your firm who you believe would benefit from DRI membership, please encourage them to join and/or put them in touch with me.



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# Noncompete Agreements in SC are Worth More Than the Paper They're Written On

by Nikole S. Mergo<sup>1</sup>

In light of the restrictive nature with which South Carolina courts have historically viewed noncompetition agreements, many people assume they are not enforceable and, in essence, “not worth the paper they’re written on.” However, in January of this year, the South Carolina Court of Appeals upheld a physician’s noncompetition agreement and expanded the scope of enforceable noncompetition agreements in this state.<sup>2</sup> Importantly, not only does the ruling expand the scope of enforceable agreements, but it also contemplates that future consideration, in the form of severance payments, is acceptable to support such agreements.

## Background

Two interventional cardiologists, who had been shareholders and employees of Columbia Heart Clinic (the practice) since before 2000, were asked in 2004 to sign new agreements containing noncompetition restrictions. The practice had significantly expanded its business and wanted to protect its investment in the shareholder physicians. In April 2006, four months after the practice opened a new office, the two cardiologists left and shortly thereafter opened a competing office within 300 yards of the new practice location. The cardiologists subsequently filed a lawsuit against the practice seeking a declaratory judgment that the noncompete provisions were unenforceable and alleging violations of the South Carolina Payment of Wages Act. The trial court held that the noncompete provisions were unenforceable and awarded the cardiologists unpaid wages. The practice subsequently appealed.

## Non-Competition Agreements at Issue

At issue in the appeal were two noncompete provisions. The first, referred to as the “forfeiture provision,” required the physicians to forfeit any monies payable to them if they practiced medicine in the field of cardiology within a 20-mile radius of any practice office at which they routinely provided services during the year prior to the termination of the agreement. The second restriction constituted a more traditional noncompete, preventing the physicians from “competing” with the practice by: “(A) organizing or owning any interest in a business

which engages in the Business in the Territory; (B) engaging in the Business in the Territory; and (C) *assisting any Person . . . to engage in the Business in the Territory.*”

The “territory” was defined as a 20-mile radius of any practice office where the physicians routinely performed services during the year prior to expiration of the agreement. The “business” was defined as “the practice of medicine in the field of cardiology.”

The third clause of the traditional noncompete provision, containing the “assist with” language, caused the most dispute between the parties, largely because of prior South Carolina court decisions.

## Rulings

**Scope of Services restriction upheld.** The Court of Appeals upheld as “reasonable” the prohibition of “assisting any Person... to engage in [the practice of medicine in the field of Cardiology].” The court agreed with the practice’s argument that the covenant’s prohibition against “assisting” the practice of medicine in the field of cardiology was necessary to prevent the physicians from indirectly engaging in activities they clearly could not participate in directly. Notably, the court distinguished the “assist with” language in the practice’s agreements from language restricting employees from competing in “any manner” that the court had struck down in prior cases.<sup>3</sup>

**Consideration Held Sufficient.** The physicians argued the noncompetition agreements were unenforceable because they were not supported by “new” consideration. The court disagreed and held that the forfeiture provision, which provided that the physicians would be paid \$5,000 per month for each of the 12 months they did not violate the noncompetition restriction, was sufficient consideration. The physicians argued that the promise to pay \$60,000 in severance after termination was “illusory” because they would not receive the money if they competed. However, the court held that “a promise is not illusory merely because its enforceability depends upon



Continued on next page



the performance of a reciprocal promise.”

**Territory Restriction Upheld.** The court held that the 20-mile territorial restriction from the practice location where the physicians routinely performed services was “reasonable” and would not be unduly burdensome on the physicians’ ability to earn a living.

**Liquidated Damages Upheld.** The court held that the provisions at issue were not “unenforceable” for containing a “penalty” for violation of their restrictions. The forfeiture provision contained a liquidated damages provision for violation of the covenant equivalent to 100 percent of the physician’s income in the calendar year prior to termination of the agreement, a figure in excess of \$575,000. The court held that this was not a penalty but, rather, was a conservative estimate of damages sustained by the practice when a shareholder physician departed and competed. The noncompetition provision required the physicians to forfeit all monies payable to them for competing in violation of that section, which included a forfeiture of the \$60,000; all salary earned or accrued but unpaid as

of the date of termination; and the physicians’ pro rata share of the current year’s actual collection percentage of the accounts receivable of the practice, which was about \$240,000. Again, the court held this was not a penalty.

**No Wage Payment Violation.** Finally, the court overturned the trial court’s award of wages under the South Carolina Payment of Wages Act. Because the forfeiture provision was enforceable, no additional wages were due under the agreements.

## Recommendations for Employers

The *Columbia Heart* decision is certainly a positive development for employers, which are often faced with the daily concern of protecting one of their most valuable investments – those highly compensated individuals on whom the success of their company or practice may largely depend. Recognizing this significant investment, the tide in South Carolina seems to be shifting toward upholding agreements that are carefully drafted. Nevertheless, while employers may now have at their disposal new options for future consideration to

enforce such agreements, and more leeway in the inclusion of hefty liquidated damages provisions for violations, employers should continue to exercise caution in attempting to restrict the scope of services in which a former employee may engage in any future employment.

### Footnotes

1 Nikole Setzler Mergo is a member of Nexsen Pruet, LLC, licensed and representing clients in both South Carolina and North Carolina. Nikole practices in complex commercial litigation with a concentration on employment litigation defense and advice and counseling, unfair business practices, pharmaceutical pricing defense and healthcare employment work.

2 See *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013).

33 See, e.g., *Faces Boutique, Ltd. v. Gibbs*, 455 S.E.2d 707 (S.C. Ct. App. 1995) (finding covenant unenforceable that restricted employee from being “employed by, participat[ing] in, or be[ing] connected in any manner with the ownership, management, operation, advertisement or control of any business in direct competition with” the employer).



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# Litigating Reptiles

by David C. Marshall<sup>1</sup>

So you are defending an automobile wreck case, and you have spent hours preparing your client for deposition. Everyone sits down, and the questioning begins:

You've been driving for a long time, correct?

You understand there are certain rules that you must follow while driving?

One of the rules for driving is that you must pay attention at all times, right?

You must maintain control of your vehicle, right?

Why are these rules important?

Because people can get hurt if these rules aren't followed?

People can get killed, right?

And you've known that since you were licensed to drive?

These rules are in place to protect everyone on the roadway, right?

They protect you when you're driving?

They protect your family members?

They protect everyone in the community, right?

And you agree that if a driver fails to follow these rules and causes an accident, then the driver is responsible for any harms and losses caused as a result?

Based upon this line of questioning, your opposing counsel is implementing a particular trial strategy that will be sure to dominate the remainder of discovery and trial. Would your client be prepared to answer these questions? Would you be prepared to recognize the strategy?

In 2009, attorney Don Keenan and jury consultant David Ball authored a book on this particular trial strategy entitled *Reptile: The 2009 Manual of the Plaintiff's Revolution*.<sup>2</sup> Since then, the authors have promoted the book and the underlying strategy to plaintiffs' lawyers across the country through their website, trial blog, seminars, DVD sets, and work-

shops. A subsequent book authored by Keenan, entitled *The Keenan Edge*, provides additional insight for plaintiffs' lawyers implementing the "reptile" strategy.<sup>3</sup> Generally, it consists of the first two years of Keenan's trial blog, before it went private, and offers dozens of additional examples for incorporating the "reptile" into all phases of litigation.<sup>4</sup> Currently, Keenan and Ball's *Reptile* website claims the strategy has resulted in more than \$4.6 billion in verdicts and settlements across the country.<sup>5</sup>



## The Strategy

The "reptile" strategy is premised upon the theory that the human brain consists of three parts, developed through evolution. The reptilian complex, also known as the R-complex or reptilian brain, includes the brain stem and the cerebellum and is the oldest part of the brain. According to Keenan and Ball, the reptilian brain controls our basic life functions, such as breathing, hunger, and survival, and instinctively overpowers the cognitive and emotional parts of the brain when those life functions become threatened.<sup>6</sup> It thrives on evolution and therefore maximizes "survival advantages" and minimizes "survival dangers."<sup>7</sup> One stated goal of the "reptile" trial strategy is to frame each case in a way to shift each juror's brain into survival mode when he or she decides a case.<sup>8</sup> Thus, the "major axiom" repeated throughout *Reptile* is "When the *Reptile* sees a survival danger, even a small one, she protects her genes by impelling the juror to protect himself and the community."<sup>9</sup> Not surprisingly, some opponents of the strategy believe it to be a model of advocacy that features manipulating jurors by fostering fear.<sup>10</sup>

Individual and community safety is the theme of the "reptile" strategy, as Keenan and Ball believe jurors will prefer a verdict that enhances safety.<sup>11</sup> Thus, to employ the strategy, a plaintiff's attorney must show "the immediate danger of the kind of thing the defendant did, and how fair compensation can diminish that danger within the community."<sup>12</sup> To determine if a defendant's actions involved negli-

Continued on next page

gent conduct or community danger, Keenan and Ball outline three questions in *Reptile* that a plaintiff's attorney should answer for a jury:

- How likely was it that the act or omission would hurt someone?
- How much harm could it have caused?
- How much harm could it cause in other kinds of situations?<sup>13</sup>

The “reptile” strategy proponents believe the answers to these three questions give a jury the necessary information to determine if a defendant acted negligently because they show “the tentacles of danger” extend beyond the single plaintiff and throughout the entire community.<sup>14</sup> The authors argue the valid measure of damages is not the amount of harm actually caused in a case, but instead the maximum harm that a defendant's conduct could have caused.<sup>15</sup>

After establishing the danger to the community, the next step of the “reptile” strategy is to demonstrate to a jury that it has the power to improve everyone's safety by rendering a verdict that will reduce or eliminate the dangerous conduct.<sup>16</sup> Reducing danger in the community facilitates survival, which awakens the reptilian part of the brain in each juror and overcomes logic or emotion.<sup>17</sup> Theoretically, implementing this strategy gives jurors a compelling reason to rule in favor of a plaintiff over the defendant despite what their logic might tell them.

Drawing from Patrick Malone and Rick Friedman's book, *Rules of the Road*,<sup>18</sup> Keenan and Ball reduce the “reptile” strategy into a simple formula: Safety Rule + Danger = Reptile.<sup>19</sup> Thus, to employ the strategy, plaintiffs' lawyers must create “safety rules” and demonstrate the danger to the community in order to appeal to the reptilian part of each juror's brain. The book urges plaintiffs' lawyers to frame cases so it appears every defendant *chose* to violate a safety rule.<sup>20</sup> Additionally, Keenan and Ball outline six “must have” characteristics for each safety rule:

- It must prevent danger.
- It must protect people in a wide variety of situations, not just someone in the plaintiff's position.
- It must be in clear English.
- It must explicitly state what a person must or must not do.
- It must be practical and easy for someone in the defendant's position to have followed.
- It must be one that the defendant will either agree with or reveal him or herself as stupid, careless, or dishonest for disagreeing with.<sup>21</sup>

Keenan and Ball state that implementing the “reptile” strategy begins in discovery by seeking admissions from a defendant either in written discovery or depositions.<sup>22</sup> The admissions establish first that a defendant agrees with the safety rule and second that it controls the verdict because a violation endangers everyone.<sup>23</sup> The ultimate goal during a trial involving the “reptile” is to have the jury (1) go beyond the level of harm or damages caused in the case at hand, (2) consider the maximum potential harm the conduct could have caused within the community, and (3) believe the defendant has endangered the community by his or her conduct and unwillingness to accept responsibility.<sup>24</sup>

To spread the “tentacles of danger” as widely as possible, the authors believe every case must have an “umbrella rule,” which is the widest general rule violated by the defendant and one to which every juror can relate.<sup>25</sup> The classic example provided by Keenan and Ball is the rule that “a [\_\_\_\_\_] is not allowed to needlessly endanger the public.”<sup>26</sup> A plaintiff's attorney can fill in the blank with whatever best suits his or her case—a company, doctor, manufacturer, truck driver, or anyone applicable to the specific type of case. After establishing the umbrella rule, the next step for implementing the “reptile” strategy is to create case-specific rules directly applicable to the conduct attributed to a defendant.<sup>27</sup> A case-specific rule in a commercial trucking accident case could be that a truck driver must adhere to the federal motor carrier safety regulations, or he or she needlessly endangers the motoring public. From there, Keenan and Ball recommend having the plaintiff's experts analogize the case-specific rules to other familiar situations to demonstrate how violations can affect everyone in the community, including the members of the jury who have no knowledge of the trucking industry.<sup>28</sup> Moreover, the authors suggest attempting to elicit the same admissions and analogies from the defense experts.<sup>29</sup>

Overall, the strategy works downward from the general umbrella rule to the case-specific rules to awaken “the reptile” in each juror. In the above trucking example, rules flowing from the case-specific rule could include the multitude of ways that a truck driver can violate the applicable federal regulations. This primes the jury to return a verdict for the plaintiff if evidence is presented that the defendant truck driver violated one of the “rules,” thereby needlessly endangering the public and subjecting the community to extremely serious potential harm (no matter the amount of actual harm caused to the plaintiff).

To accomplish the objectives of the strategy, Keenan and Ball encourage plaintiffs' lawyers to make the theme of each case about “harms and losses” to keep the reptilian brain awake so it will influence the verdict and its size.<sup>30</sup> Further, they stress that the proper measure of damages is the *maximum* “harms and losses” a defendant *could*

have caused rather than the actual damages in the case, which may be significantly less.<sup>31</sup> The ultimate goal of implementing the strategy is to obtain a verdict that a jury believes will be the safest decision for *the community*, including each individual juror.<sup>32</sup> Thus, in closing, the lawyer using this strategy must show a jury how the dangers presented by a defendant's conduct extend beyond the facts of a case and affect the surrounding community so the entire case boils down to community safety versus danger.<sup>33</sup>

## Preparation is Critical

Opening statements and closing arguments are critical to implementing the “reptile” strategy. Indeed, they are a plaintiff's lawyer's chance to define the theme of a case and link every aspect of a trial back to the safety rules, potential harms and losses, and the overriding theme of community safety versus danger. However, a good lawyer will likely implement the “reptile” strategy long before trial.

For instance, defense attorneys may first encounter the “reptile” strategy when deposing a plaintiff or a plaintiff's experts. According to Keenan and Ball, using the strategy to prepare witnesses for depositions gives them confidence in answering difficult questions from defense lawyers, educates them on the ultimate trial theme, and lays the foundation for the plaintiff's lawyer to implement the strategy in the opening statements. Indeed, *Reptile* devotes an entire chapter to witness preparation.<sup>34</sup> The authors even offer a 6-disc DVD set outlining the seven phases of “reptile witness preparation.”

Additionally, deposing a defendant offers a prime opportunity for a plaintiff's lawyer to obtain agreement by the defendant to the safety rules that will ultimately dominate the plaintiff's trial strategy. Likewise, depositions of defense experts offer more opportunities for plaintiffs' lawyers to utilize the “reptile” strategy. Not surprisingly, Keenan boasts a “new deposition template” for implementing the strategy, provided exclusively to his seminar attendees.<sup>35</sup> Therefore, recognizing the “reptile” strategy in discovery and preparing witnesses to handle reptilian-styled questions is an increasingly important consideration for defense lawyers. Both *Reptile* and *The Keenan Edge* provide skeleton outlines of questions, opening statements, and closing arguments that even the least skilled plaintiff's attorney can adapt for almost any type of case.

## Commercial Trucking Accident Cases

According to Keenan, he has conducted numerous two-day seminars, offered exclusively for plaintiffs' lawyers and specialized for certain topics. One such seminar is entitled, “Tractor Trailer and the Reptile.”<sup>36</sup> Because of the numerous regulations governing commercial motor carriers, commercial truck accident litigation is fertile ground for plaintiffs' lawyers to implement the “reptile” strategy to inflame juries into large verdicts. Indeed, it is low-

hanging fruit to equate FMCSA regulations to “safety rules” and argue that all violations, no matter if causative to the issues in dispute, “needlessly endanger the community” and create automatic liability based upon potential harm resulting therefrom.

In one trucking example from *The Keenan Edge*, Keenan boils an opening statement into a succinct rule: A driver ... is required ... to watch the road ... and see what's there to be seen ... If the driver does not ... even for an instant ... and as a result hurts someone ... the driver is responsible for the harm ... Now let me tell you what happened in this case ....<sup>37</sup> From this umbrella rule, Keenan provides ideas for presenting case specific information to a jury in order to appeal to “the reptile” and obtain favorable results for a plaintiff.<sup>38</sup> Keenan also provides the reader with a completed set of “safety rules” for use in a commercial trucking accident case:

1. Tractor trailer drivers must be qualified to drive their rigs, so as to protect all in the community.
2. Drivers must be trained to drive their rigs in order to protect all in the community.
3. Tractor trailer drivers must be supervised in order to protect all in the community.
4. Tractor trailer rigs must be safe in order to protect all in the community.
5. Tractor trailer drivers must follow the traffic safety laws in order to protect all in the community.<sup>39</sup>

Defense attorneys handling commercial trucking accident cases must prepare defense witnesses early in discovery to respond to reptilian-styled questions, including the truck driver, safety manager, corporate representative, and expert witnesses. Some examples of questions that might be asked include:

As a commercial truck driver, there are specific rules you must follow, correct?

Like the federal rules governing hours of service?

And you agree the hours of service rules are in place to ensure the safety of everyone on the roadway, right?

They are intended to prevent fatigued drivers from operating commercial vehicles?

Because fatigued drivers operating commercial motor vehicles is a safety concern, right?

Another rule requires preventative maintenance of commercial motor vehicles, correct?

Continued on next page

The rules require daily inspections of the truck and trailer, right?

Inspections of things like brakes?

These rules help identify equipment that needs attention or repair, right?

Because all equipment wears out over time?

And commercial trucking equipment can be especially dangerous if not properly maintained, correct?

These rules protect your safety, don't they?

They protect people like the plaintiff, right?

And you agree that if someone violates those rules and causes an accident, then they should be held responsible for their actions?

\*\*\*

There are certain rules commercial truck drivers must follow, correct?

All drivers are required to pay attention at all times, correct?

Your company wants its drivers to pay attention while driving, right?

And if one of your drivers is not paying attention and causes an accident, then he is responsible for any harms and losses caused, right?

Another rule is that commercial drivers must maintain daily log books, correct?

Those are used to ensure that drivers are following the hours of service rules, right?

There are also rules that trucking companies must follow, right?

Those rules require trucking companies to only allow qualified drivers to operate commercial motor vehicles, right?

And the rules require trucking companies to review each driver's log books to make sure they are complying with the proper hours of service, correct?

The rules require trucking companies to maintain driver log books for six months, correct?

The company agrees those rules are in place to ensure safety, right?

And the company agrees that if a trucking company fails to follow these rules and one of its trucks is involved in an accident, then it is responsible for any harms and losses

caused, right?

Depending on the facts of the case, these may be difficult questions to disagree with. Consideration of favorable facts, possible defenses, and trial theme early in discovery may allow defense counsel to prepare witnesses in a way to combat "the reptile" in depositions and trial. For instance, if there are facts supporting a claim of comparative negligence by the plaintiff, defense witnesses might ultimately agree to the plaintiff's attorney's questions, but also explain why certain "rules" apply equally to, and were violated by, the plaintiff, which in turn caused his or her own injuries.

## Product Liability Cases

Product liability cases offer another opportunity for implementing the "reptile" strategy. Indeed, *The Keenan Edge* provides an example opening statement for implementing the strategy in a product liability case: "A manufacturer ... is never allowed ... to needlessly endanger the public ... If it does ... and as a result someone is hurt ... the manufacturer is responsible for the harm ... A manufacturer ... is never allowed ... to conceal a danger it knows about ... in its product ... because concealing the danger ... would needlessly endanger the public ... Now let me tell you the story of what happened in this case ..." <sup>40</sup>

To set the stage for this type of opening statement, defense attorneys are likely to see reptilian-styled questions in a Rule 30(b)(6) deposition of the manufacturer, distributor, supplier, or seller. Possible questions include:

Does [the defendant] agree that product manufacturers must make products that are free from defects?

Does [the defendant] agree that if a manufacturer makes a product that has a defect and someone is injured because of that defect, then the manufacturer is responsible for the harms and losses caused?

Does [the defendant] agree that manufacturers must make their products so they operate the way the manufacturer represents they will operate?

Does [the defendant] agree that if a product does not operate the way in which it is represented and a person is injured as a result, then the manufacturer is responsible for the harm caused to that person?

Does [the defendant] agree that an authorized dealer must follow the product manufacturer's policies or recommendations when selling, servicing, or repairing a product?

Does [the defendant] agree that if an authorized dealer fails to follow the product



manufacturer's policies, procedures, or recommendations and that failure causes injury to a customer, then the dealer is responsible for the harms and losses caused?

Despite the intent of the strategy, these questions might reasonably be answered, "Not necessarily." After all, that is why we have a legal system—to allow the jury to consider all of the facts and decide what caused the injury and who is responsible. Other proximate causes could account for the alleged injuries, such as the plaintiff's comparative negligence, discovery of defect and voluntary assumption of risk, improper use, misuse, or other intervening causes such as modifications, alterations, or conduct of other third-parties. Jurors do not decide cases in a vacuum. Rather, a jury will consider all of these other factors if present in a case, and defense witnesses should be prepared to fully explain their responses.

## Medical Malpractice Cases

Keenan and Ball fully endorse the "reptile" strategy in cases that turn on the standard of care applicable to the defendant. Indeed, *Reptile* devotes an entire chapter specifically to medical malpractice cases.<sup>41</sup> Because everyone likely agrees with the general rule that "doctors are never allowed to needlessly endanger their patients," the "reptile" strategy frames medical malpractice cases so any medical decision other than the absolute safest choice for a patient constitutes negligence.<sup>42</sup> It boils the entire case down to the simple theory that "the only allowable choice is the safest available choice" because any other choice needlessly endangers a patient.<sup>43</sup>

Because medical malpractice cases offer such a good opportunity for plaintiffs' lawyers to appeal to "the reptile," preparation of both defendants and retained experts is critical, as they may face the following questions:

A doctor must not needlessly expose a patient to an unnecessary danger, true?

A doctor should never expose a patient to such unnecessary danger, true?

It would not be reasonable for any physician to expose a patient to unnecessary harm, true?

That would be completely unreasonable, true?

It would violate the Hippocratic Oath, true?

It would violate standards of care, true?

You learned a long time ago that doctors should not needlessly endanger a patient, true?

It's an important rule, true?

It should be followed by all doctors, true?

And it is a safety rule to protect patients' interests, true?

It protected you when you were a patient, true?

You, as a doctor, must follow this rule, true?

You expect other doctors to follow that rule, true?

The rule, when enforced, ensures public safety, true?

The rule, when enforced, prevents harm to the public, true?

Violation of safety rules by physicians can hurt anybody, true?

They can be hurt seriously, true?

They can even be killed or brain-damaged, true?

If a safety rule is broken and a patient is harmed thereby, do you believe the rule breaker should be held responsible for the harm that was caused?

Safety rules should be enforced, true?

If safety rules are not enforced, those rules lose their value as a rule, true?

If a doctor has more than one course of action to choose between, the doctor should choose the one that is safest for the patient, true?

A doctor must not choose a dangerous course of conduct if a safer choice exists, true?

If fifty percent of the doctors in a given town needlessly endanger the patient that they are caring for, does that make it reasonable and prudent for other doctors in that community to needlessly endanger their patients?

Witnesses facing this line of questioning might respond by invoking a risk-benefit analysis. After all, that analysis is the core of all medical decision making: will the potential benefit to my patient from this treatment, drug, or procedure outweigh the potential harm? For this analysis, "absolute safety" is not the criterion; rather, it is "standard of care." Defense experts can explain this to debunk the plaintiff's attorney's theory that anything other than the absolute safest decision constitutes negligence. If the opposing attorney refers to the Hippocratic Oath, defense experts might explain that "First do no

harm” is an incomplete, and perhaps inaccurate, perversion of the oath. When surgeons make incisions, they do harm. When doctors prescribe medication, the medication can have potential harmful side effects. But doctors make those decisions for the greater good of the patient because they believe the benefits outweigh the risks. That conduct is always judged by a reasonableness standard.

### Consider All Possible Objections

If it appears an opposing attorney will attempt to implement the “reptile” strategy at trial, defense counsel must be prepared to object. Anticipating such objections, *The Keenan Edge* explains that the key to the trial strategy is persistence:

If you can't get it in through the front door, knock on the back door. If you can't get through the back door, then try one of the windows. If that doesn't work, try coming down the chimney. If the place ain't got a chimney, then dig underground. Whatever it takes don't give up until you get it in.<sup>44</sup>

In South Carolina, the golden rule disallows any argument asking jurors to put themselves in the shoes of a party or which arouses their passion or prejudice. Such arguments destroy the impartiality of the jurors and encourage them to depart from neutrality and decide a case based on personal interest and bias rather than on the evidence. The “reptile” strategy appears to be a veiled golden rule argument because it seeks to have jurors decide a case not on the actual damages sustained by a plaintiff but rather on the potential harms and losses that could have occurred within the community, which includes each juror and his or her family members. Indeed, both *Reptile* and *The Keenan Edge* directly or indirectly invoke the underpinnings of the golden rule on multiple occasions by appealing to the reptilian brain of *each juror*.<sup>45</sup> Likely in recognition of this, Keenan and Ball conveniently include an appendix in *Reptile* outlining golden rule law by jurisdiction.<sup>46</sup> Additionally, the appendix describes the boundaries of “community safety” arguments in some venues.<sup>47</sup>

Despite Keenan and Ball's contention that the “reptile” strategy does not constitute improper golden rule arguments or appeal to jurors' emotions, the first line of defense is objecting on the basis that it is tantamount to making an improper golden rule argument. Although the “reptile” strategy may not specifically ask jurors to put themselves in the shoes of a plaintiff, the intent is the same: to have jurors base their verdict not on the evidence of the case but rather on the fear that they or other members of their family or community could be injured, just as the plaintiff was, by the immediate danger of other similar conduct by the defendant, and to have them view compensating the plaintiff as diminishing that danger within the community and to themselves.

Evidentiary rules 401 and 403 may provide additional arguments for excluding the “reptile” strategy. A jury cannot base its verdict on matters not in evidence, conjecture, or speculation. Rather, a plaintiff must prove damages to a reasonable degree of certainty, and only those damages proximately caused by a defendant's conduct can be recovered. Any evidence or argument that goes beyond the scope of a plaintiff's damages and includes potential harm posed to the community is irrelevant and unfairly prejudicial.

There are additional evidence-based objections to the strategy. For instance, litigants often dispute the admissibility of evidence of “other similar incidents.” Such evidence can be highly prejudicial because other incidents are typically used in this context to prove or to disprove some fact in dispute in a case. Accordingly, South Carolina has specific standards governing the admissibility of such evidence. Further, evidentiary rule 404 generally disallows evidence of prior bad acts. These may provide additional bases for excluding evidence or arguments based on the “reptile” approach.

Further, using the reptilian strategy in negligence cases by boiling the issues down to community safety versus danger, as opposed to the damages actually sustained by a plaintiff, may deprive a defendant of the constitutional right to a fair trial. The prejudice to a defendant is compounded when a plaintiff also asserts a claim for punitive damages because allowing a plaintiff to recover for conduct that did not harm him or her significantly implicates due process. Arguments for exclusion on this basis should be given consideration.

Moreover, some jurisdictions have prohibitions against arguments that ask a jury to “send a message to a defendant” or to “act as the conscience of the community.” These cases may offer additional arguments for excluding “reptile” tactics from trial.

Lastly, if unsuccessful in excluding the trial strategy, defense attorneys might consider using their closing arguments to counter the “reptile.” For instance, if an opposing counsel has used the “reptile” strategy during a trial, consider complimenting and praising his or her ability and zeal in representing his or her client. Then explain the appeal to the reptilian brain and inform the jury of the psychological strategy being employed. Exposing to a jury that a plaintiff's attorney has based his or her strategy and trial theme on a desire for the jury to decide the case based on fear or matters not in evidence, as opposed to the facts of the case and actual damages, will allow defense counsel to explain why jurors should disregard such arguments and decide the case based on the facts presented and the applicable law charged by the judge. Indeed, this type of strategy was reportedly implemented by defense attorneys in a case against Keenan himself, resulting

# Defense Wins the Battle of the Brain: South Carolina Supreme Court Clarifies Meaning of Physical Brain Damage with Regard to Lifetime Indemnity Benefit Award

by Vernon F. Dunbar<sup>1</sup> and Ashley R. Forbes<sup>2</sup>

The South Carolina Defense Bar has emerged victorious in the South Carolina Supreme Court's battle over injuries to the brain. On March 6, 2013, the Supreme Court issued two workers' compensation decisions explaining the meaning of physical brain damage under the South Carolina Workers' Compensation Act. In particular, the Court defined "physical brain damage" within the context of the type of brain injury which would entitle an injured worker to lifetime indemnity benefits.

In *Sparks v. Palmetto Hardwood, Inc.*, Op. No. 27229 (March 6, 2013) and *Crisp v. SouthCo, Inc.*, Op. No. 27230 (March 6, 2013), the Court heightened an injured employee's burden of proof in establishing a brain injury—and resulting entitlement to lifetime benefits—by requiring physical brain damage to be both *permanent* and *severe*.

Following the filing of these decisions on March 6, 2013, the Petitioners in both cases petitioned the Court for rehearing. On May 22, 2013, the Supreme Court denied the Petitions for Rehearing and promulgated Substitute Opinions for both cases. The Substitute Opinions did not change or alter the Court's reasoning and conclusions as set forth in the original opinions. As such, these cases are precedential authority for future brain injury claims, and Defendants are pleased to have this weapon in their arsenal.

## Determining Compensation Benefits

In South Carolina, there are three statutes that govern the amount of workers' compensation benefits that an employee may receive for a permanent disability resulting from a workplace injury. First, under S.C. Code Ann. § 42-9-30, there is a schedule for disability. For example, if a claimant has lost the use of his hand, he receives two-thirds of his average weekly wage for 185 weeks; for a shoulder, 300 weeks; for a leg, 195 weeks, and so forth. Generally, the Workers' Compensation Commission will award permanent partial disability to a body part as a percentage to be derived from the total number of weeks. Section 42-9-30 is based on a medical model for compensation. That is, it focuses on medical impairment rather than earning capacity.

Under the economic model for compensation, there are two general disability statutes that deal with loss of earning capacity. S.C. Code Ann. § 42-9-

20 is a wage loss statute. In other words, if an employee sustains an injury and is able to return to work, but at a lower average weekly wage than he received before his workplace injury, Section 42-9-20 would apply.

Finally, there is the total disability statute, S.C. Code Ann. § 42-9-10. The statute says an employee is entitled to 500 weeks—nearly ten years—of compensation where the incapacity to work is total. Moreover, S.C. Code Ann. § 42-9-10(C) awards lifetime benefits for an employee who has suffered "physical brain damage," in addition to one who is rendered paraplegic or quadriplegic. The statute provides:

Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person determined to be permanently and totally disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive benefits for life.

It is this part of the Workers' Compensation Act that was at issue in *Sparks* and *Crisp*. Before these decisions were handed down, it was an easier road for employees to get lifetime indemnity in disputed "brain injury" cases. Therefore, even an injured employee suffering from a mild concussion could have alleged entitlement to lifetime benefits. While the writers of this article certainly do not intend to diminish any type of brain injury, most people likely would agree that an injury resulting in a mild concussion is not as catastrophic as an injury resulting in paraplegia or quadriplegia, conditions which are also set out in the lifetime benefits statute. The Supreme Court made the same observation in these two cases.

## *Sparks v. Palmetto Hardwood, Inc.*

Petitioner Clifton Sparks ("Sparks") worked as a saw operator for Palmetto Hardwood and was struck in the head by a piece of metal during the course of



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Continued on next page

his employment. Sparks had also sustained three prior work-related injuries, two of which injured his lower back. Sparks alleged that he suffered from headaches and loss of cognitive ability, inability to read without a severe headache, inability to balance while standing, hand tremors, and anxiety as a result of his head injury.

Two of Sparks' doctors said he may have suffered a "mild brain injury"; one said he suffered "no physical brain injury"; and three said simply that he had suffered a "physical brain injury." The Commission found that Sparks' testimony about the extent of his brain injury was not credible. However, the Commission also found that Sparks suffered a compensable injury to his head, including a mild concussion. The Commission declined to award Sparks lifetime benefits, but it did award Sparks permanent and total disability (500 weeks of compensation) as a result of his other injuries, in addition to causally related medical treatment.

After remanding to the Commission for clarification of the Commission's use of "physical brain damage," the Circuit Court affirmed the Commission's order. The South Carolina Court of Appeals affirmed, and the Supreme Court followed.

The issue before the Court was the interpretation of the phrase "physical brain damage." The Supreme Court promulgated the new rule that "physical brain damage" must be both permanent and severe in order for an employee to be entitled to lifetime benefits. Because Sparks suffered only a mild concussion, his injury did not rise to the level of physical brain damage as contemplated under Section 42-9-10(C).

The Court pointed to the exceptions of paraplegia, quadriplegia, and physical brain damage outlined in Section 42-9-10(C) that entitle an employee to lifetime benefits, as opposed to the normal limit of 500 weeks. The Court reasoned that the inclusion of physical brain damage with paraplegia and quadriplegia, two permanent and severe conditions, likely showed an intent on the part of the South Carolina General Assembly to award lifetime benefits for only that physical brain damage that rises to the same permanent and severe level.

The Court also looked to other sources in making its decision, including the fact that brain damage as used in the Second Injury Fund statute is required to be permanent (S.C. Code Ann. Section 42-9-400(d)); that the Court would defer to the Commission's interpretation of the statute; and that the purpose of the Workers' Compensation Act is to provide only minimal compensation.

### ***Crisp v. SouthCo., Inc.***

Petitioner Michael D. Crisp ("Crisp") sought benefits for work-related injuries he sustained on March 10, 2004, while working for Respondent employer SouthCo, Inc. (SouthCo). Crisp and his co-workers were using the bucket of a Bobcat earthmover to

assist in erecting a silt fence when the bucket detached from the earthmover, striking various parts of Crisp's body. SouthCo and its carrier, Respondent Pennsylvania National Mutual Casualty Insurance Company ("Carrier"), admitted Crisp sustained compensable injuries to his neck, back, and right upper extremity; however, they denied Crisp had sustained a brain injury and physical brain damage.

In an order dated August 1, 2006, the Single Commissioner extensively catalogued Crisp's medical evaluation, treatment, and diagnoses. The Single Commissioner found as a fact that "the medical records from [Crisp's] initial medical visits . . . do not note any symptoms of brain injury." Moreover, the Single Commissioner found that Crisp "did not complain of and was not diagnosed with any substantial problems with his head until several months after his injury by accident. . . . [and] never had any abnormal MRI scans, CT scans, or other radiological imaging of his brain."

While the Single Commissioner determined Crisp sustained compensable injuries to his neck, back, and right upper extremity, as well as psychological injury emanating from his work-related accident, she declined to find Crisp sustained a physical brain injury or to award lifetime benefits. In an order dated April 3, 2007, a unanimous Full Commission affirmed the findings of fact and conclusions of law by the Single Commissioner.<sup>3</sup> Crisp appealed the Full Commission order to the Circuit Court seeking a finding that he sustained physical brain injury and damage, as well as an award of lifetime medical and indemnity benefits.

By order dated June 30, 2008, in which it reversed the order of the Full Commission, the Circuit Court determined that "the only evidence on the record is that claimant has sustained frontal lobe injury and physical brain damage . . . . [and] the only conclusion that can be reached on this evidence is that claimant has sustained frontal lobe injury and physical brain damage." The Circuit Court concluded as a matter of law that Crisp "sustained physical brain damage within the meaning of the Act."

SouthCo and its carrier timely initiated an appeal in the South Carolina Court of Appeals, in which they contended the Circuit Court erred in reversing the Full Commission because substantial evidence existed to support the Commission's determination that Crisp did not sustain physical brain injury and damage. A unanimous panel of the Court of Appeals reversed the Circuit Court, noting that "the record is replete with substantial evidence to support the Commission's finding that Crisp did not sustain a physical brain injury. . . ." See *Crisp v. SouthCo, Inc.*, 390 S.C. 340, 345, 701 S.E.2d 762, 765 (2010), reh'g denied (Nov. 22, 2010).

Crisp then petitioned the South Carolina Supreme Court for a *Writ of Certiorari* to review the Court of Appeals' Decision reversing the Circuit Court's finding that the Appellate Panel of the South Carolina Workers' Compensation Commission erroneously



determined that Crisp had suffered a physical brain injury and physical brain damage. The Supreme Court granted *Writ of Certiorari* and reversed the Decision of the Court of Appeals. The Court has remanded the case to the Commission for further consideration of whether Petitioner sustained physical brain damage as contemplated under Section 42-9-10(C) of the Workers' Compensation Act.

Aside from the Court's conclusion that this case was not in the proper appellate procedural posture, the Court took the opportunity to provide guidance to the Bench and Bar as to the proper legal interpretation of the term "physical brain damage."

In interpreting Section 42-9-10(C), the Court rejected Crisp's argument that the mere presence of any physical brain injury or damage, regardless of degree, triggers the operation of the statute. The Court determined that Crisp's argument was not persuasive and was contrary to the Legislative intent and to the manner in which the Courts have awarded compensation for brain injuries. The Court noted, as it did in *Sparks*, that the inclusion of physical brain damage along with quadriplegia and paraplegia is expressly indicative of the General Assembly's attempt to compensate an injured employee for life "only in the most serious cases of injury to the brain, separate and apart from other scheduled injuries, resulting in permanent physical brain damage."

The Court reasoned that permanency and physicality are requirements in assessing physical brain damage with regard to entitlement of an award of lifetime benefits. The Court explained that inherent in the requirement that the damage to the brain be severe is also the requirement that the worker is unable to return to suitable gainful employment as a result of the brain injury.

While the Court did not specifically qualify what would constitute severe damage to the brain, it is notable that the Court recited the North Carolina statute with respect to the necessary requirements for lifetime indemnity benefits. The North Carolina statute provides that an injured employee can receive lifetime indemnity benefits "if he or she sustains a [s]evere brain or closed head injury as evidenced by severe and permanent: [s]ensory or motor disturbances; [c]ommunication disturbances; [c]omplex intergraded disturbances of cerebral function; or neurological disorders. . ." N.C. Gen. Stat. Ann. § 97-29(d)(3)(a)-(d).

The Court did not accept the argument that a specific diagnostic test is necessary to medically prove technical brain injury claims, i.e., CT or MRI scan. However, in a footnote the Court cited Crisp's inability to refute the argument that his injuries were not so severe as to require specialized healthcare for the rest of his life. This fact may have an impact on the assessment of whether one has suffered physical brain damage.

The Court remanded the case to the Commission for a determination of whether there is permanent

physical brain damage if the issue of permanency is now ripe for consideration.

## Winning the battle, but not the war?

It is clear that *Sparks* and *Crisp* will change the way attorneys, employers, adjusters, commissioners, and judges view claims involving brain injuries. Generally speaking, claimants' attorneys expect that the Court's use of the word "severe" will need to be litigated and further interpreted in the future. However, defense attorneys maintain the Court made its meaning of "severe" quite clear when it emphasized the "physical brain damage" coupling with paraplegia and quadriplegia in the language of the statute.

As further battles ensue in brain injury cases, defense attorneys will need to employ a multi-disciplinary approach when defending these claims. Right off the bat, Defendants will need to seek out a neurosurgeon, a neurologist, and a neuropsychologist. By way of a gross oversimplification of these professionals' roles in litigation, a neurosurgeon will decide whether an injured employee's condition is operable and if such surgery could be beneficial. Moreover, a neurosurgeon will give an opinion as to whether further diagnostic testing is needed. A neurologist will perform this diagnostic testing to determine if an injured employee has a physical brain injury. Finally, a neuropsychologist will provide confirmation of a brain injury and provide a decision as to any resulting brain damage.

It may also be advisable to have an injured employee placed into a brain injury program that can readily identify "severe" brain damage. In addition, because brain injuries improve over time, it would be prudent to conduct periodic neuropsychological testing throughout the recovery period. If an injured employee is not showing signs of improvement, there is a possibility of malingering. On the other hand, little to no improvement may confirm severe brain damage and may alter a defense attorney's litigation strategy.

Finally, vocational evaluations may prove helpful in preventing an award of lifetime benefits. In order for lifetime benefits to be awarded for physical brain damage under the new rule, a vocational assessment will need to say that it is the brain injury alone that renders an injured employee permanently and totally disabled. Without such an opinion, it will be difficult for claimant's attorneys to reach the lifetime indemnity threshold.

The defense bar needs to be mindful that for non-permanent and severe physical brain damage, Regulation 67-1101 provides compensation for total or partial loss of the brain. Therefore, even without the exposure for lifetime indemnity, a less severe brain injury likely will result in Defendants providing significant compensation.

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in a defense verdict.

These are just some of the possible objections to the “reptile” strategy. I am sure there are others. To increase the chance of success, fully preserve the issue for appeal, and educate the judge before trial, a motion in limine may be in order.

## Conclusion

An increasing number of Plaintiffs’ lawyers in South Carolina are relying on the “reptile” strategy to maximize damages awards, and it has been promoted at the South Carolina Association of Justice’s annual Auto Torts Seminar in recent years. In December 2012, I personally watched as a packed house of South Carolina trial lawyers hung onto every one of Keenan’s words promoting the strategy and criticizing “black hat” defense lawyers, despite the fact that he was the last speaker of the day and went almost an hour beyond the allotted time. Given the proponents’ steadfast belief in the propriety and effectiveness of the strategy, it is sure to remain prevalent in the South Carolina legal community for years to come. Accordingly, defense attorneys must be prepared to recognize the strategy, prepare for it in discovery, educate defense witnesses and judges, object, and seek to exclude it from the courtroom.

## Footnotes

1 David C. Marshall practices in Turner Padgett’s Columbia office. His practice focuses primarily on product liability and other complex litigation involving automotive, motorcycle and truck products, heavy equipment and machinery, drugs and medical devices, construction defects, and commercial trucking and transportation. He is scared of snakes and most other reptiles.

2 David Ball & Don Keenan, *Reptile: The 2009 Manual of the Plaintiff’s Revolution* (Balloon Press, 2009).

3 Don Keenan, *The Keenan Edge* (Balloon Press, 2012).

4 Notably, the glossary of *The Keenan Edge* defines “Black Hats” as “unscrupulous, emotionless, ethically devoid defense lawyers that torch justice” and “The Taliban” as “the evil insurance company that never plays fair, always waits to ambush you and has no shred of humanity or emotion.” *Id.* at 4-5.

5 <http://reptilekeenanball.com/>

6 Ball & Keenan, *supra*, at 17.

7 *Id.*

8 *Id.*

9 *Id.* at 17, 19, 73.

10 Stephanie West Allen, Jeffrey Schwartz & Diane Wyzga, *Atticus Finch Would Not Approve: Why a Courtroom Full of Reptiles Is a Bad Idea, The Jury Expert: The Art and Science of Litigation Advocacy* (May 2010).

11 Ball & Keenan, *supra*, at 27-30.

12 *Id.* at 30.

13 *Id.* at 31-34, 38.

14 *Id.* at 35.

15 *Id.* at 33, 225, 232.

16 *Id.* at 38-39.

17 *Id.* at 45.

18 Patrick Malone & Rick Friedman, *Rules of the Road* (Trial Guides, 2006).

19 Ball & Keenan, *supra*, at 51.

20 *Id.* at 51-54.

21 *Id.* at 52-53.

22 *Id.* at 54-55.

23 *Id.*

24 *Id.*

25 Ball & Keenan, *supra*, at 55.

26 *Id.*

27 *Id.* at 58.

28 *Id.* at 58-59.

29 *Id.* at 59.

30 Ball & Keenan, *supra*, at 101-12.

31 *Id.* at 33, 225, 232.

32 *Id.* at 99.

33 *Id.* at 145.

34 *Id.* at 189-208.

35 Keenan, *supra*, 201-04.

36 *Id.* at 201.

37 *Id.* at 230.

38 *Id.* at 230-51.

39 *Id.* at 100-04.

40 *Id.* at 231.

41 Ball & Keenan, *supra*, at 243-59.

42 *Id.* at 62-63.

43 *Id.* at 64-66.

44 Keenan, *supra*, at 352-53.

45 See, e.g., Ball & Keenan, *supra*, at 17, 19, 39, 72, 73, 80, 86, 99, 149, 169, 170, 227; Keenan, *supra*, at 356.

46 Ball & Keenan, *supra*, at 267-326.

47 *Id.* at 328-30.

As set out above, attorneys ultimately will need to fight zealously to defend any brain injury claim. However, while it remains to be seen how the Commission will apply the new rule set out in *Sparks* and *Crisp*, the defense, for the moment, will enjoy the thrill of victory.

## Footnotes

1 Vernon Dunbar is a shareholder in the Greenville office of Turner Padgett Graham & Laney, P.A. His practice is concentrated in business and commercial litigation matters and complex workers’ compensation claims. Vernon served as a commissioner and later as chairman of the South Carolina Workers’ Compensation Commission from 1989 to 1995. He represented SouthCo and Pennsylvania National Mutual Casualty Insurance

Company in the *Crisp v. SouthCo* matter.

2 Ashley Forbes is an associate in the Greenville office of Turner Padgett Graham & Laney, P.A. She is a graduate of Wake Forest University School of Law where she served as Managing Editor of the Wake Forest Journal of Business and Intellectual Property Law. She devotes her practice to defending employers and insurance carriers against workers’ compensation claims.

3 One of the Commissioners serving on the Full Commission Appellate Panel concurred in the affirmation of the Single Commissioner’s award but stated “I disagree with any physician’s statement that ceasing drug use (including, but not limited to meth and cocaine) will ‘undo’ any damage done by the drugs once the user ceases drug use. Claimant can ride (and does) a motorcycle and has cleared a lot. He has not sustained physical brain damage.”

# Case Notes

Summaries prepared by Walter H. Barefoot, Carmelo B. Sammataro, Ryan Nichols

*Todd v. Ford Motor Co., 2013 U.S. Dist. LEXIS 7207, 1, CCH Prod. Liab. Rep. P19,004, 2013 WL 178261 (D.S.C. Jan. 17, 2013) (J. Anderson, D.J.)*

The district court granted Ford Motor Company's motion for summary judgment on January 17, 2013.

This action arose out of an automobile collision that occurred in Lexington County on March 31, 2007, when a non-party improperly attempted to pass another non-party vehicle and consequently collided with the Plaintiffs, head-on. Attempting to recover for injuries sustained in the accident, Plaintiffs filed a complaint against Ford on March 29, 2010 alleging, among other claims, design and manufacturing defect in the passenger restraint system of their 1995 Mercury Mystique under negligence, strict liability, and warranty theories.

The court found that, because none of the Plaintiffs' experts were able to identify or articulate any malfunctions or flaws in the vehicle's restraint system or side airbag, Ford was entitled to summary judgment as to the design and manufacturing defect claims. In so holding, the court pointed to Plaintiffs' own expert's testimony, where he opined that morbid obesity presents particular restraint challenges in head-on collisions and that those challenges are present in most comparable vehicles. Additionally, the court noted that no expert volunteered any alternative design that could have prevented Mrs. Todd's injuries. With respect to the failure to warn claim, Plaintiffs' expert opined that the warning to overweight passengers was inadequate and virtually nonexistent; thus, he offered a warning he believed would have been adequate. However, the expert noted in his report that the maximum safe weight was unknown and should be established through testing by Ford. The court rejected this opinion, however, because Plaintiffs' expert was unable to present evidence that proper tests exist to allow a manufacturer to test for restraint effectiveness on significantly overweight passengers. As such, Ford was also entitled to summary judgment on the failure to warn claim.

*Quinton v. Toyota Motor Corp., 1:10-CV-02187-JMC, 2013 WL 1680555 (D.S.C. Apr. 17, 2013) (Childs, D.J.)*

This case stems from a fatal accident involving a 2009 Toyota Camry in Aiken County on October 14, 2009. For reasons unknown, decedent lost control of the vehicle, exited the road, struck an embankment and rolled over several times. Decedent suffered severe head injuries and died on October 23, 2009. Plaintiff, as representative of decedent's estate, brought wrongful death and survival actions against Toyota in state court, claiming that the vehicle's roof structure and seat belt restraint system were defective generally and that the Camry's supplemental restraint system, which involves certain airbag technology, was defectively designed because it lacked a rollover-activated curtain shield airbag ("RCSA").

It was undisputed that decedent was wearing her seatbelt at the time of the accident. The Camry also was equipped with a supplemental restraint system, which consists of frontal airbags, front seat mounted side torso airbags and curtain shield airbags ("CSA") mounted along the roof rail above the vehicle's door on each side and are intended to protect the occupant's head upon deployment. The driver's side CSA failed to fully deploy in this instance, which, according to Plaintiff, was the result of a hole in the airbag. Plaintiff's forensic pathologist found that Quinton's fatal head injuries occurred because her head, neck and upper body were partially ejected through her near side window opening, allowing her head to impact the ground during the rollover. Toyota removed to federal court and denied liability. At the conclusion of discovery, Toyota moved for summary judgment.

Ruling on Toyota's motion for summary judgment, the district court agreed with Toyota's contention that Plaintiff's expert failed to opine on whether or not the alternative design he suggested would have prevented Plaintiff's injuries; thus the court granted Toyota's motion as to the Plaintiff's claim that the Camry's roof structure and seat belt restraint system were defectively designed. Next, the court addressed Plaintiff's claims that the Camry's supplemental restraint system was defectively designed because it lacked an RCSA. Although Plaintiff's expert admitted that a curtain shield airbag could be reasonably safe without a rollover sensor and further stated that he did not have enough data to state whether the Camry's CSA system would be reasonably safe without a rollover sensor, the court found that Plaintiff's

burden had been met as the RCSA was a reasonable alternative design. In so holding, the court noted that the use of such technology had been in place in other passenger cars beginning as early as 1999 and that Toyota was using such technology in all of its pick-up trucks, passenger vans, and SUV's by 2009. Additionally, Toyota's own Accident Data Analysis Report found that outfitting passenger cars with RCSAs could lead to a possible 50.5% reduction in fatal injuries due to ejection during rollovers. Thus the court denied Toyota's motion for summary judgment as to the Plaintiff's claim that the Camry's supplemental restraint was defectively designed, finding that Plaintiff proffered sufficient evidence establishing the RCSA as an reasonable alternative design.

***Miranda C. v. Nissan Motor Co., Ltd., S.C., 741 S.E.2d 34 (Ct. App. 2013)***

The court of appeals affirmed the circuit court's decision to deny Nissan's JNOV motion but to grant its alternative motion for a new trial in light of the Branham decision. In so holding, the court found that the exclusiveness of the risk-utility test in design defect cases, resulting from the Branham decision, applied retroactively to all pending defective design cases.

This action arose from an automobile accident in Florence County on February 11, 2007, when the 2000 Nissan Xterra at issue was struck by an oncoming vehicle on the right rear passenger side. Upon impact, one of the body frame mount brackets punctured the fuel tank, resulting in a fire that caused injuries to the nine-year old Plaintiff and her mother. Plaintiff's mother filed suit on her child's behalf alleging design defect based on strict liability, negligence,

and breach of warranty theories. The jury found in Plaintiff's favor, awarding \$2,375,000; however, in its answer to special interrogatory number seven, the jury found that the Plaintiff did not present a reasonable alternative design. Subsequently, the circuit court held a hearing on August 13, 2010, wherein it orally denied Nissan's alternative motions for JNOV and a new trial. The Branham decision came down three days later. After receiving supplemental briefs regarding Branham's effect on the court's prior ruling, the circuit court again denied Nissan's JNOV motion but granted its motion for a new trial. Both parties appealed.

On appeal, the court of appeals first addressed Branham's effect on pending design defect cases, finding that the rule pronounced in Branham would have a retroactive effect as it did not create new substantive rights; rather, it merely affirmed the approach that trial and appellate courts in South Carolina had been following. In affirming the circuit court's denial of Nissan's JNOV motion, the court found that special interrogatory number seven was improper. Basing its reasoning on several facts, including the lack of adequate instructions regarding reasonable alternative designs, the court held that interrogatory number seven violated the prohibition on submitting non-binding advisory interrogatories to a jury. Next, the court addressed Plaintiff's cross-appeal regarding the circuit court's decision to grant a new trial. The court held that, because of Branham's endorsement of the risk-utility test as the exclusive test in design defect cases, the Plaintiff was required to present a reasonable alternative design; thus, a jury decision based on the consumer expectations test could not stand in light of Branham.

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# Verdict Reports

## **Type of Action: Automobile Accident**

Injuries alleged: Basically knee and back pain

Name of Case: Robert Davis vs. Donna Smith and Edna Davis vs. Donna Smith

Court: (include county): Chester County Common Pleas

Case #: 2011-CP-38-00138

Tried before: Jury

Name of judge: The Honorable J. Michael Baxley

Amount: For Defense

Date of verdict: February 11, 2013

Demand: Pre Trial Demand: \$22,500 for Mr. Davis and \$17,500 for Mrs. Davis

Highest offer: None made

Attorney(s) for defendant (and city): George V. Hanna, IV, of Howser, Newman & Besley, LLC, in Columbia

Description of the case, the evidence presented, the arguments made and/or other useful information: Plaintiffs were passengers in a disputed failure to yield right of way collision in which both drivers claim they had a green light. The Defendant's car was struck on the rear right quarter, causing the Defendant's car to leave the roadway and strike a utility pole on the right front quarter.

## **Type of Action: Construction – Defect**

Injuries Alleged: Property Damage

Name of case: Marchant v. Lucas Custom Builders

Court: Lexington County

Name of Judge: Judge William Paul Keesley

Verdict or Settlement: Verdict

Amount: Defense verdict

Date of Verdict: March 22, 2013

Demand: Excess of \$100,000

Highest offer: \$75,000

Insurance Carrier: Underwriters at Lloyd's London

Attorney for Plaintiff: Brian Robinson, Columbia, SC

Attorney for Defendant: Chris Adams, Columbia, SC

Were liability and/or damages contested: Yes

Was the opposing party represented by legal counsel: Yes

Description of case, evidence presented, arguments made:

The Plaintiffs sued builders and individual owners of company regarding a renovation to their property. Plaintiffs claimed repairs and consequential damages in excess of \$410,000. Defendants presented evidence that it did not breach its contract, and Plaintiffs did not suffer any actual damages. The only issue at the Plaintiff's residence was punch-list items, which Defendants were willing to correct. Defendants alleged that any other damages claimed by Plaintiffs, if any, were pre-existing from the original house and were outside the Defendant's scope of work. After a five day trial, the jury deliberated about three hours and returned a verdict for all Defendants.

**Type of Action: Automobile Accident**

Injuries alleged: Cervical sprain, lumbar sprain, knee contusions.

Name of Case: Bishop Samuel Myers, Sr., Mary Myers, and Queenie Mae Myers v. Zolis Fredi Gonzalez

Court: (include county): Richland County Common Pleas

Case #: 2011-CP-40-0200

Tried before: Jury

Name of judge: The Honorable Doyet A. Early, III

Amount: Samuel Myers, Sr. - \$4,126, Mary Myers - \$6,049.14, Queenie Mae Myers \$18,535

Date of verdict: February 11, 2013

Demand: Pre Trial Demand Samuel Myers, Sr. - \$5,000, Mary Myers - \$7500.00, Queenie Mae Myers - \$25,000

Highest offer: \$3,000 for Samuel Myers, Sr., \$5,500 for Mary Myers, \$19,500 for Queenie Mae Myers

Attorney(s) for defendant (and city): Albert R. Pierce, Jr. of Howser, Newman & Besley, LLC, in Columbia

Description of the case, the evidence presented, the arguments made and/or other useful information: This case was a negligence action arising out of a motor vehicle accident. Plaintiffs claimed the Defendant crossed over the center median impacting Plaintiff's car. Defendant admitted liability and the case proceeded as a damages hearing. The witnesses included the three Plaintiffs and the investigating officer.

**Type of Action: Medical Malpractice**

Injuries alleged: Death, Conscious Pain and Suffering

Name of Case: Estate of Jose Melendez v. Beaufort Memorial Hospital, John Crisológo, M.D., Jose Rodríguez, M.D, Patricia Devers, D.O., Richard Stewart, M.D., 24 On Physicians, P.C., and Low Country Medical Group, L.L.C

Court: (include county): Beaufort County Court of Common Pleas

Case number: 09-CP-07-05514 Amended Complaint

Name of Judge: The Honorable G. Thomas Cooper

Amount: Defense Verdict

Date of Verdict: November 15, 2012

Attorneys for defendants (and city): Chilton Grace Simmons and Elizabeth Ballentine of Hood Law Firm, LLC

Description of the case: The Plaintiff filed a medical malpractice action against two hospitalist physicians, two gastroenterologists, and Beaufort Memorial Hospital in connection with the death of the Plaintiff's 68 year old father. The Plaintiff alleged that the decedent died from complications from a dislodged, or misplaced, PEG ("feeding") tube, which resulted in a serious infection called peritonitis. The Plaintiff alleged that the co-defendant gastroenterologists did not place it correctly from the beginning, and that the defendant hospitalist physicians should have caught the misplacement sooner. The Plaintiff presented the pathologist employed by MUSC who performed the autopsy, who testified based on his observations of the decedent's stomach, the PEG tube was never placed correctly. The Plaintiff also presented an expert internal medicine physician and an expert nurse who testified the hospitalist physicians negligently missed signs and symptoms of peritonitis which caused decedent's death 6 weeks later.

The defense presented testimony from numerous treating physicians and from expert physicians who testified on the contrary, the PEG tube was indeed placed correctly initially, but did indeed later become dislodged. They explained the dislodgement is a risk of the procedure, and that the hospitalist physicians timely discovered and addressed the dislodgement. The defense also presented testimony that the decedent died from other co-morbidities, including the stroke that brought him into the hospital, instead of the displaced PEG tube and the resulting peritonitis. The defense established that the doctors conducted appropriate evaluations, and that they appropriately treated the peritonitis that resulted from the displaced PEG tube. The case was tried for almost three weeks. The jury deliberated for less than four hours, returning a verdict in favor of all the defendants.

## **Type of Action: Medical Malpractice**

Injuries alleged: The Plaintiff alleged that the physician negligently placed an interbody cage during the procedure which eventually migrated and caused an impingement on the Plaintiff's iliac vein.

Name of Case: Leona Furr v. Southeastern Spine Institute, Donald R. Johnson, II, M.D.

Court: (include county): Charleston County Court of Common Pleas

Case number: 2011-CP-10-1660

Name of Judge: The Honorable Thomas L. Hughston, Jr.

Amount: Defense Verdict

Date of Verdict: May 23, 2013

Attorneys for defendants (and city): Molly H. Craig and H. Cooper Wilson, III  
of Hood Law Firm, LLC, Charleston, SC

Description of the case: The Plaintiff filed an action against a spinal surgeon and his practice in connection with complications the Plaintiff suffered following a spinal fusion procedure performed in 2009. The Plaintiff alleged that the physician negligently placed an interbody cage during the procedure which eventually migrated and caused an impingement on the Plaintiff's iliac vein. The Plaintiff developed deep vein thrombosis which required several additional surgeries and permanent injuries.

The defense presented testimony from the Defendant, expert physicians, and treating physicians who testified that the cage was the appropriate size, the cage was reasonably placed, the Defendant checked the positioning of the cage interoperatively numerous times, and the decision to leave the cage in position was reasonable and within the standard of care. The defense also presented testimony that migration of cages and the development of blood clots are known complications of the procedure and can occur absent any medical negligence.

The jury deliberated for two hours returning a verdict in favor of the Defendants.

## **Type of Action: Medical Malpractice**

Injuries alleged: Chronic pain, urinary incontinence, depression, significant decline in overall health, and loss of enjoyment of life

Name of Case: Terri Hinson v. Breton C. Juberg, M.D., and North Strand Obstetrics and Gynecology, P.C.

Court: (include county): Horry County Court of Common Pleas

Case number: 2011-CP-26-9015

Name of Judge: The Honorable Clifton B. Newman

Amount: Defense Verdict

Date of Verdict: January 17, 2013

Attorneys for defendants (and city): Robert H. Hood, Jr. and Elizabeth Ballentine of Hood Law Firm, LLC,  
Charleston, SC

Description of the case: The Plaintiff filed a medical malpractice action against an OB-Gyn regarding complications from a hysterectomy performed on the Plaintiff in January 2006 to address abnormal bleeding. During the procedure, the Defendant entered the bladder and performed a cystotomy to repair the injury. The Plaintiff alleged through expert testimony the Defendant doctor was negligent in performing a hysterectomy and right salpingo-oophorectomy without indication, and in leaving a sponge in the Plaintiff at the site of the cystotomy following the procedure. The Plaintiff alleged the retained sponge caused a vesico-vaginal fistula and required an additional procedure to remove the sponge and repair the fistula several weeks later. Plaintiff attributed problems with chronic pain, urinary incontinence, and a significant decline in her health to the Defendant doctor's alleged negligence.

The defense presented testimony from treating physicians and expert physicians who testified it was appropriate to perform the hysterectomy after counseling the Plaintiff on her options and allowing her to decide how to proceed. Further, they explained the duty of obtaining a correct sponge count falls on the nurses and in the face of a correct sponge count, it was appropriate for the Defendant to close the incision and conclude the procedure (as was conceded by Plaintiff's own expert). The defense also presented testimony Plaintiff's current problems and complaints were unrelated to the retained sponge and fistula repair. The defense established the Defendant doctor acted appropriately and within the standard of care in his treatment of the Plaintiff and did not proximately cause her damages. The case was tried for three days and the jury returned a defense verdict in favor of the Defendants.

**Type of Action: Medical Malpractice**

Injuries alleged: Death, Conscious Pain and Suffering

Name of Case: Christina Ward, as the Personal Representative of the Estate of Jonathan K. Ward, deceased v. Jameela Gater, MD, Beaufort Emergency Medicine, P.A., Jose Rodríguez, M.D., 24 On Physicians, P.C., and Randall Cope, D.O.

Court: (include county): Beaufort County Court of Common Pleas

Case number: 10-CP-07-02704

Name of Judge: The Honorable Carmen Tevis Mullen

Amount: Defense Verdict

Date of Verdict: May 17, 2013

Attorneys for defendants: Jose Rodríguez, M.D., 24 On Physicians, P.C., and Randall Cope, D.O.:  
Chilton Grace Simmons and Elizabeth W. Ballentine of Hood Law Firm, LLC,  
Charleston, SC

Description of the case: The Plaintiff filed a medical malpractice action against two hospitalist physicians and an Emergency Medicine physician in connection with the death of Plaintiff's son, Jonathan K. Ward. The Plaintiff alleged the decedent died from salicylate (aspirin) toxicity resulting from the doctors' failure to repeat the decedent's salicylate level when he came in with an overdose of multiple medications. The Plaintiff alleged the Emergency Medicine physician, who did order one salicylate test, should have ordered a repeat salicylate level in the Emergency Room, and that the hospitalist physicians should have ordered a repeat salicylate level when the Decedent was admitted to the Intensive Care Unit. The Plaintiff presented expert testimony from an Emergency Medicine physician, a hospitalist, and a toxicologist/pharmacologist that the failure to repeat the salicylate level caused the Decedent's death, which occurred 36 hours after admission while still hospitalized.

The defense presented testimony from the defendant physicians and expert physicians who testified on the contrary, that the hospitalist physicians appropriately assessed the Decedent while he was in the Intensive Care Unit, and that a second salicylate level was not required. Rather, the defense established the hospitalist physicians reasonably and appropriately treated the Decedent for cocaine toxicity and alcohol withdrawal and complied with the standard of care while treating the Decedent in the Intensive Care Unit. The defense also presented testimony the Decedent died from multi-drug overdose rather than solely salicylate toxicity, and that the cocaine contributed to his death. The case was tried for a week, and the jury deliberated less than an hour, returning a verdict in favor of all defendants.

**Type of Action: Automobile Accident**

Injuries alleged: Soft tissue injuries

Name of Case: Willie Morris Sims and Jerry Franklin Bates v. Johnnie Mae Taylor

Court: (include county): Richland County Common Pleas

Case #: 2012-CP-40-584

Tried before: Jury

Name of judge: The Honorable James Barber

Amount: Under meds - \$2,736.81 to Plaintiff Sims and \$2,081.05 to Plaintiff Bates

Date of verdict: February 13, 2013

Demand: Pre Trial Demand \$9,000 for Plaintiff Sims and \$5,500 for Plaintiff Bates

Highest offer: \$2,500 to Plaintiff Sims and \$1,500 to Plaintiff Bates

Attorney(s) for Defendant (and city): Caroline H. Raines of Howser, Newman & Besley, LLC, in Columbia

Description of the case, the evidence presented, the arguments made and/or other useful information: Defendant backed her vehicle into Plaintiff's vehicle in a low impact parking lot accident, from which Plaintiff claimed lost wages, severe pain, and medical treatment including chiropractor.



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# 2013

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I to r: Bill Davies, Sterling Davies, Molly Craig, Bobby Hood, Sr.

