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2018 Summer Meeting - July 27, 2018 The Sonesta Resort • Hilton Head Island • SC





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PRESIDENT'S MESSAGE



President
Anthony W. Livoti

This year is an exciting one for the South Carolina Defense Trial Attorneys' Association and I am truly honored to serve as your President. We have many outstanding events planned to celebrate our 50th year as an organization. It is a great time to be a member of the SCDTAA.

Our year got off to a great start as your Officers and Board met for a long-range planning meeting during the South Carolina Bar Convention in January. President-Elect Jamie Hood led us through a thorough look at what we do as an Association and how we can continue to improve over the next several years. Jamie and the Board came up with some great ideas for the future of the SCDTAA that we hope to begin implementing soon.

This spring was filled with several great events. In April we held our annual SCDTAA Spring Golf Classic in Columbia. This golf tournament has served as a fund raiser for the SCDTAA PAC in the past. This year funds raised will be earmarked for helping to attract keynote speakers at upcoming meetings. We had great weather and an excellent time at Spring Valley Country Club. Thanks to Mark Allison, Jim Irvin, and Ken Shaw for their hard work in putting on this tournament. The tournament was held the same week as our Annual Legislative and Judicial reception in Columbia at the Oyster Bar. This event again drew a large crowd of judges and legislators. Members of the General Assembly enjoy this event and this reception continues to raise our profile with our Legislature.

Our Summer Meeting is shaping up to be a great one. This year will be the first of two years for the Summer Meeting at the Sonesta Resort on Hilton Head. Trey Watkins and Andy Delaney have a great agenda planned with family-friendly

activities. After many years of our Summer Meeting in the mountains of Asheville, we are looking forward to enjoying the beautiful beaches of Hilton Head. Our year will culminate in a return to The Sanctuary at Kiawah Island for our Annual Meeting in November. The Sanctuary never disappoints and Graham Powell and Giles Schanen have a fantastic meeting in the works to include IADC President Craig Thompson and New York Times Bestselling Author Denise Kiernan.

At our past Annual Meeting at The Cloister, I talked about being "others focused" in the work we do in our firms and with the SCDTAA. I'm pleased to report about the progress being made on our new initiative, the "SCDTAA Emerging Leaders Program." We invited over 100 eligible young lawyers to participate and I'm thrilled that 35 have accepted the challenge to participate in this inaugural program. The main focus of the Emerging Leaders program is to provide leadership training for these lawyers to equip them to be the next generation of leaders in our firms and in the SCDTAA. You'll be hearing more about this in the coming months, but please support the lawyers in your firm that are participating in this program as we make an investment in them that I know will bear fruit in the future.

I am honored to serve as your President and excited about the year ahead. I hope to see you soon during this coming year. 🏛️

A handwritten signature in black ink, appearing to read "Anthony W. Livoti". The signature is fluid and cursive, with a large loop at the end.

THANK YOU! 2017 ANNUAL MEETING SPONSORS

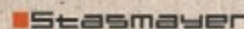
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Editors' Note

by Geoffrey W. Gibbon and Michael D. Freeman



Geoffrey
W. Gibbon



Michael
D. Freeman

Welcome to the Spring/Summer 2018 edition of *The DefenseLine*. 2017 was a banner year for the SCDTAA as we celebrated the 50th SCDTAA Annual Meeting in November at The Cloister at Sea Island, Georgia. While tough to top such a big milestone, we think 2018 promises to be yet another exciting and busy year for the SCDTAA. As always, our issue is aimed at providing our SCDTAA members and other readers with important information about the SCDTAA, helpful practical tools to assist in your practice, and important updates to the law in South Carolina. We also strive to provide information to help SCDTAA members learn how they can get more involved.

This issue contains articles and updates that we hope our readers find informative and useful in their respective practices. We've also included a profile of Judge Grace Knie, an interview with DRI President John Kuppens, a look at some recent legislation impacting the defense bar, and an update on recent decisions from South Carolina's appellate courts. Additionally, we are introducing a new column called "Practically Speaking." Our goal with this new column is to provide an outlet for attorneys, judges, and other contributors to discuss a wide variety of topics affecting our members. While we anticipate discussions about matters directly related to the practice of law, we also welcome

submissions related to work-life balance, mental health, funny stories, general life advice, etc. Sarah Wetmore Butler, has been kind enough to author the inaugural Practically Speaking column. We hope you enjoy the new edition.

As many of you know, this summer our Summer Meeting is moving from Asheville, North Carolina to Hilton Head Island, South Carolina. This year, for the first time, the Summer Meeting is being held at the Sonesta Resort from July 27-29. In November we return to The Sanctuary at Kiawah Island for our Annual Meeting. We have no doubt these meetings will be as fun and informative as ever. Additional information about these meetings is contained in this issue and we encourage everyone to attend.

We want to thank all our contributors, authors, and staff for all of their excellent work in providing our content and putting this issue together. We also want to thank our SCDTAA members, board, and officers that make our organization so strong and so enjoyable to be a part of. If you are reading this issue and are not a member of the SCDTAA we encourage you to join. As always, we welcome any feedback our readers have about this issue so we can continue to provide helpful content for our members. 🏹

SCDTAA Docket

Collins & Lacy Attorney Inducted into the National Academy of Distinguished Neutrals

Collins & Lacy is pleased to announce that attorney Ellen Adams has been inducted into the National Academy of Distinguished Neutrals. Membership is by invitation only and is limited to mediators who are thoroughly reviewed, meet stringent practice criteria, and are peer nominated. A certified circuit court mediator since 2005, Adams is the first female from South Carolina inducted into this prestigious association.

Nelson Mullins Riley & Scarborough Founder Honored by University of South Carolina School of Law

Nelson Mullins Riley & Scarborough retired partner Edward W. Mullins Jr. has received a Certificate of Appreciation in recognition of his many contributions to the Nelson Mullins Riley & Scarborough Center on Professionalism. Robert Wilcox, Dean of the University of South Carolina School of Law, acknowledged his extraordinary leadership in mentoring and professionalism during the February presentation. Under Mullins' leadership, Nelson Mullins contributed \$1 million to the School of Law to establish the Center, which is nationally known for professionalism and mentoring in the U.S.

Richardson Plowden Attorney Honored by South Carolina Lawyers Weekly

Richardson, Plowden & Robinson PA attorney Franklin J.

Smith, Jr., has received a 2018 Leadership in Law Award, given by the South Carolina Lawyers Weekly. Each year, South Carolina Lawyers Weekly bestows this prestigious award to only a handful of attorneys throughout South Carolina who have demonstrated excellence in leadership within the legal profession and their community. The winners were nominated by their peers and colleagues and selected by the publisher and staff of South Carolina Lawyers Weekly. As Richardson Plowden's pragmatic leader and managing shareholder for four years, Smith was selected by South Carolina Lawyers Weekly for his ability to lead the firm to exceptional growth while maintaining an extremely successful legal practice.

Nelson Mullins Partner Elected to the American Bar Foundation's Fellows

The American Bar Foundation has elected Sarah T. Eibling, a partner in Nelson Mullins Riley & Scarborough LLP's Columbia office, to the Fellowship. Membership in the Fellows is limited to 1 percent of lawyers licensed to practice in each jurisdiction. The Fellows is a global honorary society of attorneys, judges, law faculty, and legal scholars whose public and private careers have demonstrated outstanding dedication to the highest principles of the legal profession and to the welfare of their communities, according to the organization. Members are nominated by their peers and elected by the Board of the American Bar Foundation.

Nelson Mullins Partner Inducted into the American College of Trial Lawyers

Robert W. “Robbie” Foster, Jr., a partner in Nelson Mullins Riley & Scarborough LLP’s Columbia office, has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America. The induction ceremony at which Foster became a Fellow took place recently before an audience of 900 persons during the 2017 Annual Meeting of the College in Montréal, Québec.

Richardson Plowden Names New Managing Shareholder

Richardson Plowden is pleased to announce that attorney Steven J. Pugh will lead the firm as its new Managing Shareholder. Mr. Pugh succeeds Franklin J. Smith, Jr., who served as Richardson Plowden’s Managing Shareholder since 2014.

Richardson Plowden Welcomes New Associate to its Columbia Office

Richardson Plowden & Robinson, PA is pleased to announce that Jasmine D. Wyman has joined the Firm as associate attorney in the Columbia office. Wyman will focus her practice in General Litigation and Construction Law. Wyman earned her Juris Doctor from the Charleston School of Law in 2014. She earned her Bachelor of Science degree in Human Resource Management from Clemson University in 2011. Prior to joining Richardson Plowden, Ms. Wyman worked with another Columbia-area firm as an associate attorney. She has also served as law clerk to the Honorable DeAndrea G. Benjamin and to the Honorable Clifton B. Newman.

Rachel Hutchens Joins Sowell Gray Robinson Law Firm

Sowell Gray Robinson is pleased to announce that Columbia native Rachel M. Hutchens has joined the firm as an associate. She graduated magna cum laude from Wofford College in 2006, receiving her bachelor’s degree in English and History. She then attended the University of South Carolina School of Law, where she served as a constitutional law tutor and was a member of the ABA Real Property Probate and Trust Law Journal. Rachel earned her Juris Doctor in 2009. In 2009, she became a member of the South Carolina Bar and subsequently served as law clerk to the Honorable Dennis Shedd in the Fourth Circuit Court of Appeals. Before joining Sowell Gray Robinson, she practiced in Columbia with another law firm for five years.

Murphy & Grantland Honored with Communications Award

The South Carolina Chapter of the International Association of Business Communicators presented Murphy & Grantland with an Award of Excellence. M&G launched its “Erasing Risk” campaign in early 2017. The image-driven messaging conveys M&G’s commitment to helping clients reduce the risk of being sued initially and ultimately the risk of an adverse settlement.

Murphy & Grantland Shareholder to Lead South Carolina Defense Trial Attorneys’ Association

Murphy & Grantland shareholder Anthony Livoti is the newly installed President of the South Carolina Defense Trial Attorneys’ Association (SCDTAA). The installation came at the group’s 50th Annual meeting in November. “Anthony has worked tirelessly for the SCDTAA in many capacities

over the years and will use his outstanding relational skills and selfless attitude to be an exceptional leader for the defense bar of South Carolina. Our firm could not be prouder of him,” said JR Murphy, founding partner at M&G.

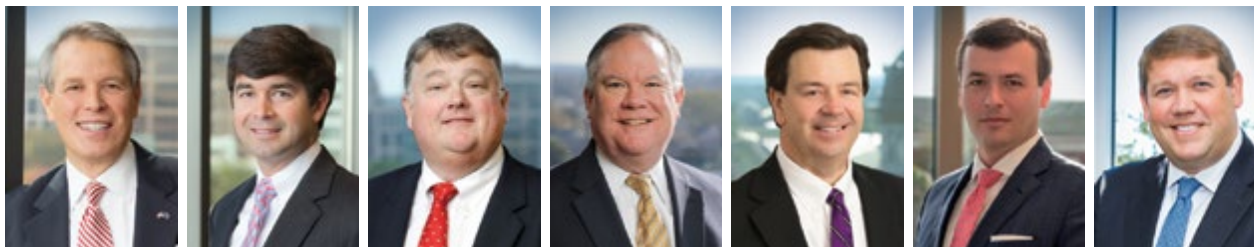
Nelson Mullins Welcomes New Partner

Nelson Mullins Riley & Scarborough LLP has elected Miles Coleman to the partnership effective January 1, 2018. Miles Coleman is a former associate with the Columbia office who joined the Firm in 2011 and practices in the areas of appellate law, business litigation, and First Amendment.

Gallivan White Boyd Adds Of Counsel to its Columbia Office

Gallivan White Boyd is pleased to announce that Alice Price Adams has joined the firm as of counsel. Based in the Columbia office, her practice emphasis is on litigation and premises liability. Adams has over 17 years of experience as a practicing attorney, and is co-author of the Hospital Law section of South Carolina Jurisprudence, the legal encyclopedia. A magna cum laude graduate of Clemson University, Adams received her J.D. degree from the University of South Carolina School of Law.

For ADR, this team is the right alternative.



Mills Gallivan Greenville *Jared Pretulak* Greenville *Stuart Mauney* Greenville *Gray Culbreath* Columbia *John Cuttino* Columbia *Mikell Wyman* Charleston *Jay Jones* Charleston

The Alternative Dispute Resolution team at Gallivan White Boyd is both widely experienced and highly honored. The firm has received the *Best Lawyers Tier 1 Classification in Mediation* and the *US News and World Report Best Law Firms* designation. Individual attorneys have been named to the list of *Best Lawyers in America for ADR*.

Team members have received extensive training in an array of practice areas and are certified by the South Carolina Supreme Court. How can we put our knowledge and experience to work for you?



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Gallivan White Boyd Welcomes New Partners

Gallivan White Boyd is pleased to announce that attorneys Lindsay Joyner and Nick Farr have been elected partners in the firm. Joyner, based in the Columbia office, has a practice emphasis on business and commercial, financial institution, professional negligence, and trust litigation. Active in professional development and leadership, Joyner is the 2017-2018 president of the South Carolina Bar's Young Lawyers Division. Farr, based in the Greenville office, has a practice emphasis on insurance coverage issues, torts and personal injury defense. Farr was named to Greenville Business Magazine's 2016 and 2017 list of Legal Elite - Insurance.

Gallivan White Boyd Attorney Inducted into the American College of Trial Lawyers

Gallivan White Boyd is pleased to announce that shareholder John T. Lay, Jr., has been inducted into the Fellowship of the American College of Trial Lawyers. Fellowship is extended only by invitation, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of professionalism and collegiality. Membership in this prestigious organization is composed of preeminent members of the Trial Bar from the United States and Canada and is recognized as the leading trial lawyer's organization in both countries. Although there are currently more than 5,700 Fellows across the U.S. and Canada, membership can never be more than 1% of the total lawyer population of any state or province.

Gallivan White Boyd's Mauney Elected Chair of Board of Directors for Gateway House

Gallivan White Boyd is pleased to announce that Greenville partner C. Stuart Mauney has been elected chair of the Board of Directors for Gateway House. Gateway is a clubhouse which provides psychiatric rehab services to the chronically mentally ill in the Greenville community. It offers its members a sense of hope, confidence and belonging. Stuart is a long time mental health advocate, having served as a volunteer with the SC Bar Lawyers Helping Lawyers program. He previously served on the Advisory Committee for the ABA Commission on Lawyer Assistance Programs.

Barnwell Whaley Law Firm Celebrates 80 Years

Barnwell Whaley Patterson & Helms, LLC celebrated the 80th anniversary of the law firm on New Year's Day, 2018. Colonel Nathaniel Barnwell and Ben Scott Whaley joined forces and opened their offices on Broad Street in downtown Charleston on January 1, 1938 and built a groundbreaking civil litigation defense firm. Although the firm's namesakes, Nathaniel Barnwell, Ben Scott Whaley and Robert "Sonny" Patterson have passed on and William C. "Billy" Helms retired in 2013, their law partners continue to provide exceptional legal counsel and service to businesses and professionals with offices in both Wilmington, North Carolina and Charleston, South Carolina.

Barnwell Whaley Named to 2018 U.S. News "Best Law Firms" List

Barnwell Whaley Patterson & Helms, LLC has been ranked in the 2018 *U.S. News - Best Lawyers*® "Best Law Firms"

list regionally in 10 practice areas. Barnwell Whaley has been included each of the eight consecutive years that *U.S. News & World Report* and *Best Lawyers* have published the “Best Law Firm” rankings. For the Charleston, South Carolina regional area, Barnwell Whaley is recognized as a Tier 1 law firm in the areas of Commercial Litigation, Intellectual Property Litigation, Mediation, Personal Injury Litigation – Defendants, Personal Injury Litigation – Plaintiffs, and Trademark Law. In addition, Barnwell Whaley is listed in the areas of Arbitration and Construction Law on Tier 2 and is included for work on Corporate Law and Product Liability Litigation – Defendants matters on Tier 3.

Collins & Lacy Elects New Shareholder and Practice Group Chair

Collins & Lacy, P.C. is pleased to announce Ashley Kirkham has been promoted to shareholder and Workers’ Compensation Practice Group Chair at the firm. As practice group chair, Ashley will lead the workers’ compensation team in advancing marketing efforts, internal goals, and day-to-day operations. In her practice, Ashley represents employers and their carriers against claims and disputes throughout South Carolina. Her experience with defending claims against repetitive trauma injuries, jurisdictional disputes, and fraud make Ashley a tremendous asset to the Collins & Lacy workers’ compensation team. She also volunteers her time through the South Carolina Bar Young Lawyers Division and is on the Board of Directors for Kids Chance of South Carolina.

Carlock Copeland Attorneys Find Success in ADR and Administrative Hearings

Carlock Copeland’s Sarah Wetmore Butler and Madison Suttie recently defended a client in a condemnation action where the arbitrator found the client without any liability. Sarah Wetmore Butler and Nick Stewart also successfully helped a contractor client achieve a complete dismissal of all claims against him relating to an action filed with the licensing board.

Carlock Copeland Names Paton and Winton as Two New Partners to the Firm


Carlock, Copeland & Stair, LLP congratulates Laura Paris Paton and Tyler P. Winton on being selected to join the Firm’s partnership. Laura is co-chair of the firm’s Construction Litigation Practice Group and a member of the firm’s General Liability Practice Group. Laura holds an AV Preeminent Peer Review rating by Martindale-Hubbell and has been named a Super Lawyers Rising Stars® by Super Lawyers® in 2014, 2016 and 2017. Tyler P. Winton is a Partner in the Charleston office where he concentrates his practice in professional malpractice defense work. Tyler proudly focuses on the representation of architects and engineers within the construction litigation context. Prior to joining Carlock, Copeland & Stair, Tyler practiced law at a well-respected litigation boutique in Columbia, S.C., where he concentrated his practice on complex commercial litigation and the efficient resolution of business disputes. Tyler has been named a South Carolina Rising Stars® by Super Lawyers® in 2015, 2016 and 2017.

Tem Miles Named Partner at The McKay Firm

The McKay Firm is pleased to announce that Tem Miles has been named as a Partner in the law firm. A Citadel and Thomas M. Cooley School of Law Graduate, Tem's law practice focuses primarily on government defense, general insurance defense, trucking and transportation law, workers' compensation, civil litigation defense, and subrogation. Tem is a member of the South Carolina Bar Association, Richland County Bar Association, South Carolina Defense Trial Attorneys' Association, South Carolina Trucking Association, and the South Carolina Workers' Compensation Educational Association. He is also a member of the West Columbia City Council as Mayor Pro-Tem, and is active in the community as a Member of the Cayce West Columbia Jaycees, a Past President of the Greater Columbia Citadel Club and Member of the Epworth Early Intervention Center's Fund Development Committee.

The McKay Firm Welcomes Melissa J. Arnold

The McKay Firm is pleased to announce the addition of Melissa J Arnold as the newest associate at the firm. Ms. Arnold practices in the areas of governmental litigation, civil rights defense, Section 1983, and in the Court of Appeals. Ms. Arnold graduated with Honors from the University of California, Davis, with a degree in International Relations. She worked in the financial services industry before continuing her education at California Western School of Law in San Diego where she obtained her J.D. During her time there, she served as CFO of the Moot Court Honors Board and was a Clinical Intern for the California Innocence Project. Prior to joining The McKay Firm, Ms. Arnold was the Executive

Director of Lowcountry Legal Volunteers and was an Attorney in the South Carolina Department of Corrections Office of General Counsel. Ms. Arnold is a member of the South Carolina Bar Association, Richland County Bar Association and the South Carolina Women Lawyers Association. 

2018 Summer Meeting

by William W. Watkins, Jr.



We are headed to the beach!
Mark your calendars now
for the 2018 Summer

Meeting on Hilton Head Island. On July 27 through July 29 we will enjoy the accommodations at the Royal Sonesta Resort. The Hotel is located on the beach with 11 beautifully landscaped acres leading to its seaside courtyard.

Your Summer meeting committee is hard at work to ensure the weekend at our new venue will be both educational and fun, and we encourage you to bring the whole family. The location is perfect for a tournament style afternoon of beach games and a golf tournament. Or, feel free to relax at the beach, by the pool or in the Arum Spa. We will have a children's program, so bring the family to Hilton Head and enjoy all the island has to offer.

We are excited to welcome great speakers. To mention a few, we are expected to hear from Mark Lanterman who will be discussing recent high-profile cyber-crime events, including website breaches impacting retailers, banks, and government agencies. Mark will discuss particularly dangerous types of threats that might affect individuals involving the Dark



Web, the Internet of Things, phishing, and Wi-Fi attacks. Dick Willis and Becky Lafitte will draw on Hollywood to teach us about cross-examination, and Frank Ellerbe will shed some light on the Electric Utility Industry in SC.

As in years past, we welcome the South Carolina Workers' Compensation Commissioners to the meeting. A workers' compensation breakout program has been developed and will be led by Rocky Hughey and Brian McElreath that will include the annual breakfast with Commissioners. We will continue the silent auction, but it will conclude on Saturday

SCDTAA EVENTS (CONT.)

night with a seafood dinner. Another new addition to the program will be a separate breakout track for our younger lawyers who are pursuing the emerging leader designation.

We look forward to seeing and your family at the beach on Hilton Head Island! 🏖️



Don't Miss the 2018 Annual Meeting!

by Giles M. Schanen, Jr.

Please mark your calendars for November 15-18, 2018, when the Annual Meeting of the SCDTAA will return to The Sanctuary at Kiawah Island.

The Sanctuary provides a fabulous venue for our program. It is an exquisite property that combines Southern hospitality, elegance, and a relaxed atmosphere. With world-class accommodations, dining options, and recreational opportunities, the Sanctuary is a true 5-star resort.

The Annual Meeting Committee is working diligently to assemble an educational program that will match the quality of the accommodations at The Sanctuary. Our speakers will include Craig Thompson, who will become IADC President in July of 2018, and New York Times bestselling author Denise Kiernan. Donald W. Beatty, Chief Justice of the South Carolina Supreme Court, will provide an update on the state of the judiciary. The remainder of the program will consist of panels and speakers who will discuss current legal issues of significance to members of both our Association and the judiciary.

The Annual Meeting also will provide a number of opportunities for our members and guests to network with colleagues in the defense bar and our state and federal judiciary, including our President's Welcome Reception, a lowcountry oyster roast and dinner

at Mingo Point, and our annual Friday evening banquet and dancing. Our members and guests also will have the opportunity to participate in a number of exciting recreational activities such as a tennis, a guided inshore fishing trip, or a golf tournament at the recently renovated Osprey Point course.

We are excited about this year's Annual Meeting, and look forward to seeing you at The Sanctuary in November! 🏏



2018 Spring Golf Classic

by Mark A. Allison

Spring Valley Country Club hosted the Ninth Annual Spring Golf Classic on April 19th. Seven teams participated from member firms Murphy & Grantland, MGC, Richardson Plowden, Haynsworth Sinkler Boyd, Gallivan White Boyd, and Sowell Gray. The golfers enjoyed abundant sun, but strong winds and slick greens made scoring difficult.

Team Richardson Plowden (Jared Garraux, Brian Casey, Tyler Rody, and Ben Carlton) won the event with an 8 under par round of 64. Team Haynsworth Sinkler Boyd (Ken Shaw, Willie Witherspoon,



SCDTAA EVENTS (CONT.)

Churchill Powers, and Brandon Anderson) took runner-up honors with a 6 under par 66.

The SCDTAA expresses appreciation to the following sponsors: Clark & Associates, CompuScripts, Rimkus, Copper Dome Strategies, Murphy & Grantland, Nelson Mullins, Smyth & Whitley, and The Hood Law Firm. Title sponsor Clark & Associates hosted a top-notch hospitality tent at the 18th green and even awarded special prizes to the unnamed, last place team (Anthony Livoti!) We look forward to continuing our annual day of golf and fellowship next spring. 🏌️



SCDTAA Legislative Reception – A Fun Evening

by Robert E. Tyson, Jr.

On April 18, the SCDTAA held its annual legislative reception at the Oyster Bar in Columbia. This year the reception followed a CLE for corporate counsel.

Invited guests included members and staff of the House and Senate Judiciary Committees and legislative leadership of both bodies. Additionally, members of the South Carolina Judiciary were invited. Speaker Jay Lucas, House Judiciary Committee Chairman Greg Delleney, Senate Judiciary Chair Luke Rankin, and many House and Senate members enjoyed the oysters and the refreshments. The SCDTAA welcomed Supreme Court Justices John Few and Buck James and many other judges who dropped by the reception.

Why is this reception important? Providing members of the defense bar an opportunity to meet key legislative leaders affords them the ability to discuss important issues affecting the legal field. For example, many members were discussing the importance of increasing judicial pay to ensure we have and retain top judges on the bench. Also, since most of the members of the Judiciary committees are lawyers, SCDTAA representatives can have meaningful and direct discussions about legislation that affects the defense bar.

Developing relationships with the members of the General Assembly is essential so that when issues important to the defense bar arise, we already have relationships and credibility with the leaders of the General Assembly. It is valuable to know



SCDTAA EVENTS (CONT.)

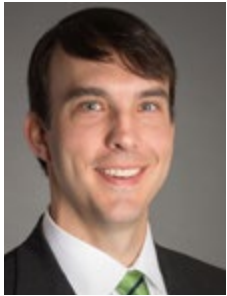
personally your representatives so that when legislation is before them, the legislators know they can depend on our insight.

Thank you to the members and staff of the General Assembly and the Judges who took the time to enjoy the fellowship and meal with members of the defense bar. See you next year. 🗑️



2018 Trial Academy

by Fred W. Suggs III



The 2018 SCDTAA Trial Academy, held in Columbia on May 23-25, 2018, was a great success. We hosted a full class of 24 young lawyers from across the state for the three-day event.

As always, we had a great line up of speakers who taught on all facets of trial work, from pretrial preparation and professionalism, to bare bones trial work, such as organizing an opening statement and closing argument, as well as preparing and presenting lay and expert witnesses.

In addition to the scheduled presentations, seasoned trial lawyers were available to work closely with participant teams during three scheduled break-out and practice sessions over the two-day classroom time.

In addition to the lectures and practice, we held a joint judicial/young lawyers reception on Thursday night at the Columbia Firefly's ballpark. Unfortunately, the weather did not cooperate and the game was cancelled after a rain delay. We did, however, enjoy good food, drink and camaraderie, and appreciate the judges who braved the weather and made an appearance.

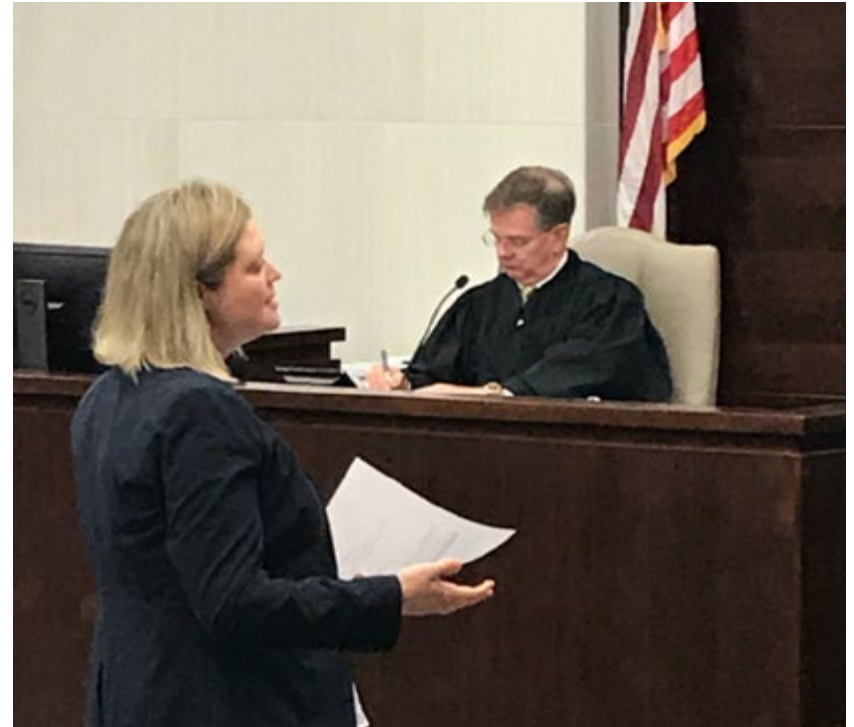
Finally, the Trial Academy culminated in a mock trial on Friday. Thanks to Judge Frank Addy, Judge Stephanie McDonald, Judge Alison Lee, Judge Knox McMahon, Justice George James and Judge James Barber from the Circuit bench, Court of Appeals, and Supreme Court who presided over the trials for our young



SCDTAA EVENTS (CONT.)

attorneys. Trial observers were present in each courtroom to observe the entire trial in order to provide feedback to the participants following the trial. Juries comprised of attorneys, law students, paralegals, and other citizenry carefully considered the attorney arguments and witness examinations and testimony in rendering their verdicts at the close of the trials.

We are thankful to SEA for once again sponsoring the Trial Academy this year. Thank you to everyone who made it a success. 🏛️



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Corporate Counsel Seminar

by Lucy Grey McIver



The SCDTAA sponsored a Corporate Counsel CLE on April 18, 2018. SCDTAA President Anthony Livoti gave a warm welcome to attendees consisting of in-house counsel from the corporate and government sectors. Gallivan White Boyd shared its beautiful office space with us for the seminar. John Nichols, Counsel at the Supreme Court Office of

Disciplinary Counsel, was the first speaker. Previously in his private practice with Bluestein, Nichols, Thompson and Delgado, John twice received the Best Lawyers in America award for “Lawyer of the Year” in the area of appellate practice. John was a founding partner of this firm and his practice focused on appellate work and general tort litigation. He gained 20 years of experience advocating for justice on behalf

of South Carolina citizens. John provided some insight into how the Office of Disciplinary Counsel operates and addressed potential issues for in-house counsel. John is a seasoned and successful lawyer who brings a wealth of experience to the ODC. We are grateful to John for sharing his time and talents with us (and hopefully his knowledge about how to avoid receiving personal letters from him in his official capacity).

Our second speaker was our own, Jeff Thordahl, who works for Copper Dome Strategies, LLC, a subsidiary of Haynsworth Sinkler Boyd, as a lobbyist and consultant. Jeff is well known in the public and private sectors for his vast experience with state and local government affairs and he shared some of his insights about the current state of affairs in South Carolina. Jeff has represented clients from various industries including energy, transportation, insurance, solid waste disposal, healthcare, information technology and professional associations. Previously Jeff worked in-house with two Fortune 500 companies. He understands the complex issues that in-house counsel can face daily and brought this perspective to his informative and entertaining presentation.

Following the CLE, the SCDTAA hosted participants at the Legislative and Judicial Reception at the Oyster Bar. Thank you to Anthony Livoti, Aimee Hiers, John Nichols, Jeff Thordahl and Gallivan White Boyd for making the SCDTAA Corporate Counsel CLE a success. 🏛️



2017 Annual Meeting Wrap Up

by Joshua L. Howard



2017 marked the 50th Anniversary of the Annual Meeting of the South Carolina Defense Trial Attorneys' Association. In celebration, the SCDTAA returned to its roots. For this special meeting held on November 9-12, 2017, the membership and more than 60 state and federal judges convened at The Cloister, Sea Island, Georgia, one of America's most famed, historic and stunning beach and golf resorts. This Annual Meeting was truly one to remember.

For most of the SCDTAA's history, The Cloister was a regular venue for the Annual Meeting. This tradition was interrupted by the renovation and the temporary closure of The Cloister. After a long absence, this is not The Cloister of year's past. Attendees were able to experience championship golf, the luxurious Spa at Sea Island, the famed Sea Island Shooting School, fishing, relaxing by the pools or on the beach or simply enjoying the serenity.

In recognition of the 50th Anniversary, the SCDTAA

SCDTAA EVENTS (CONT.)

Past Presidents kicked off the meeting on Wednesday night with a very special Past President's Dinner and Celebration. On Thursday, the traditional arrival date for most attendees, the SCDTAA carried on its tradition of beginning the meeting with the President's Welcome Reception. This reception is the opportunity for the attendees to visit and connect with friends old and new before dining at one of the resort's outstanding restaurants.

Friday morning began with the Breakfast Honoring the South Carolina Judiciary. The Breakfast has quickly become a welcome tradition and is the SCDTAA's opportunity to thank the excellent members of our judiciary for their service. After breakfast, the association held its membership meeting, during which Anthony Livoti of Murphy and Grantland, P.A. was elected the association's new president, and a new slate of officers and board members were elected.

The CLE programming commenced with a very informative program on how to rebut and avoid pitfalls in life care plans and vocational wage loss analysis. This program was presented by SCDTAA sponsor InQuis Global, LLC and its experts Reg Gibbs and Steven Yuhas. We were then treated to an entertaining and informative presentation by our guest Tim Pratt, Executive Vice President, Chief Administrative Officer, General Counsel and Secretary of Boston Scientific entitled Keys to Success for the 21st Century Lawyer. Next, board member Graham Powell of Wall, Templeton and Haldrup, P.A. delivered a construction law update on SC Code 15-38-15 and issues in settlement setoffs and former board member John Hawk of Womble Bond Dickinson delivered an insurance law update on ERISA litigation. The morning concluded with an



**SCDTAA
EVENTS
(CONT.)**

informative and entertaining judicial panel on Reflections from the Bench on the Changes in the Practice of Law in South Carolina. The panel provided a look back into how members of our judiciary have perceived the changes in the practice of law over their years of practice and public service. Sitting on the panel was trial court judges The Honorable Perry M. Buckner III, The Honorable Diane S. Goodstein, The Honorable J. Derham Cole and South Carolina Supreme Court Associate Justice The Honorable John W. Kittredge. The panel was moderated by former SCDTAA president William A. Coates of Roe Cassidy Coates & Price, PA. After an afternoon of recreational excursions, attendees gathered in their formal best for a cocktail reception and our annual banquet in The Cloister ballroom. During





this time, the association recognized outgoing president David Anderson of Richardson Plowden for his able leadership of the organization, and presented him with a gift of appreciation. When the banquet ended, the dance party began, and continued long into the night.

Following the conclusion of the Membership Meeting, Saturday's programming began with an ethics update from

Dean Robert M. Wilcox of the University of South Carolina School of Law. Next, we were honored to be joined by newly elected and installed Chief Justice Donald W. Beatty of the South Carolina Supreme Court who delivered our annual State of the Judiciary address. It was an honor to welcome our Chief Justice and to hear his thoughts on the state of the judiciary in South Carolina. Following a break, we were

SCDTAA EVENTS (CONT.)

pleased hear from our sponsor Elliott Davis and its partner Missy Johnson on Reasonable Certainty in Economic Damages. This presentation was followed by a trucking law update on preparing a driver for deposition from former SCDTAA president Curtis Ott of Gallivan White and Boyd.

The educational portion of the meeting ended with a truly special talk delivered by Chief Judge Roger L. Gregory of the United States Court of Appeals for the Fourth Circuit. Chief Judge Gregory delivered a thought provoking address on the crucial role of lawyers and the judiciary in our past and in our coming future. We were truly fortunate to welcome Chief Judge Gregory and his wife to join the SCDTAA members and our judiciary at the 50th Annual Meeting of the SCDTAA and hope they do so again in the near future.

Attendees were then able to enjoy another beautiful Saturday afternoon in recreation, relaxing by the pools or on the beach, or gathering in the hospitality suite to watch college football teams in action. In the evening, the day concluded with the traditional BBQ and oyster roast at Sea Island's Rainbow Island.

The weekend wrapped up on Sunday morning as attendees said their goodbyes. While the many year hiatus ended with our 50th anniversary visit to The Cloister, Sea Island, it will not be our last. The Annual Meeting continues to provide outstanding networking, professional development, and social opportunities for members, judges, and spouses. We look forward to seeing you this November 15-18 at the 2018 Annual Meeting at The Sanctuary at Kiawah Island, South Carolina. 🏏



Photos by Jay Foster of Full Circle Entertainment.

Past Presidents Dinner

by David A. Anderson



On November 8th 2017 we kicked off our 50th Annual Meeting with a Past Presidents Dinner overlooking the Ocean Club Beach at the Cloister. Twenty of our former Presidents were in attendance for this historic event. An excellent number considering we presently have 7 former Presidents who are Defending



clients in Heaven and two Presidents who were in the midst of an out of state trial during that time. We felt this dinner was an excellent way to recognize the past accomplishments of our past leaders and showcase what our association has done in the past 50 years of its existence. The Dinner was attended by the 2017 Officers and the former Presidents and their guests. What a wealth of legal talent assembled to kick off our 50th year as a vital organization in the defense

of civil actions. (Pictured in the photograph from left to right is Ron Wray, David Rheney, Molly Craig, Bill Davies, Bobby Hood, Sr., John T. Lay, Sterling Davies, Jay Courie, Mark Wall, Hugh McAngus, Sr., Tom Wills, William Brown, Mark Phillips, Bruce Shaw, Curtis Ott, Mills Gullivan, Bill Coates, Sam Outten, Stephen Darling, and John Wilkerson.) 🏛️

Judge Grace Gilchrist Knie

by Geoffrey W. Gibbon

Judge Grace Gilchrist Knie was born in Edgefield, South Carolina. She is the daughter of James W. Gilchrist, Sr., and Elizabeth H. Gilchrist.

Judge Knie attended primary and secondary schools in Edgefield County and received her bachelor's degree *magna cum laude* from Columbia College in 1986. While attending Columbia College, she was on the President's List and Dean's List for four years. She was a Harry Truman Scholarship finalist for South Carolina, a Fellow of the Center for the Study of the Presidency in Washington, D.C., and a representative to The Washington Center for Women's Development. In 1989, she graduated from the University of South Carolina School of Law.

While in undergraduate school and law school she was active in student government, including having served as President of Senate and a member of the May Court at Columbia College, and as Vice President of the Student Government Association in Law School. She also maintained several jobs to pay for her undergraduate and law school education.

In 1989-1990, she served as a law clerk for Resident Circuit Judge James B. Stephen of the Seventh Judicial Circuit. She first practiced as an Associate for Bruce Foster, P.A. from 1990-1992. She thereafter practiced as a sole practitioner from 1992-2017 and served as the City Prosecutor for the City of Spartanburg, a part-time position, at the same time



for 15 years. She received the Martindale-Hubbell, AV Preeminent Rating, and was a member of Super Lawyers Judge Knie was a former President and Executive Committee member of the Spartanburg County Bar Association. She was Chairman of the Spartanburg Cinderella Prom Project of the Spartanburg Bar Association from 2008-2013. She served as a member of the South Carolina Legal Services Board as the representative for the Seventh Judicial Circuit.

Judge Knie is married to Spartanburg attorney Patrick E. Knie and is a member of the First Presbyterian Church of Spartanburg. She and her husband live in Spartanburg County where they care for their numerous rescue animals.

Judge Knie was elected by the South Carolina General Assembly on February 1, 2017, to fill the unexpired term of the Honorable Roger L. Couch, Resident Judge of the Seventh Judicial Circuit, Seat 2

What led you to a career in the law?

As a child and teenager growing up in Edgefield, SC, I have always been interested in a combination of history, politics, and the law. While in high school and as an undergraduate, I had an opportunity to work in Washington as a Congressional Page, and Intern, and ultimately for the Senate Judiciary Committee. I also during that period worked in South Carolina for the US Attorney's office, and several law firms. All of those experiences reinforced my interest in practicing law.

What have you found to be the most challenging part of being a Circuit Court judge?

Finding a way to work off the calories from the delicious

meals and treats provided as a result of the hospitality from courthouse personnel in their efforts to welcome me to the various counties where I have traveled.

What has been the most enjoyable part of being a Circuit Court judge?

I have had an opportunity to meet many delightful and interesting people: court house employees, police officers and security personnel, and attorneys, as well as, travel through SC as I work. I have visited numerous counties and visited the courthouses in those counties.

Is there anything you miss about private practice now that you are a Circuit Court judge?

Yes, of course, the relationships with my clients and the reward from, and a genuine sense of, having assisted people in a difficult time, probably the most difficult in their lives.

What advice do you have for young lawyers just starting their careers?

Be open minded about your future, your first position may not be your final career path. Do not be afraid to make a bold career change. Enjoy your work and the people that you work with. Take time to plan your future. Prioritize for your personal life, family, and health.

What advice do you have for lawyers preparing to try a case or argue a motion in your Courtroom?


Communicate with opposing counsel prior to the hearing date, confirm that opposing counsel has received every

**JUDICIAL
PROFILE
(CONT.)**

document that you plan to introduce. Premark exhibits, and provide a hard copy of the documents for my use.


What do you enjoy doing in your spare time?

I enjoy tending to my rose gardens, and doing yard work in general. Reading and listening to books on CD, and studying antique furniture are favorite pastimes. My husband and I have a variety of pets, caring for them gives me great pleasure. Cooking with my husband in the evenings is very relaxing. I also enjoy regular exercise. 🏃



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The Voice of the Defense Bar

YLD Spring 2018 Update

by Derek M. Newberry



The Young Lawyers Division (“YLD”) of the SCDTAA provides opportunities for lawyers in the early years of their practice to meet and develop friendships with other lawyers, learn from more seasoned lawyers and to get involved in the SCDTAA.

YLD Leadership: Nickisha M. Woodward of Turner Padgett is the President-Elect of the YLD and will serve a two year term. In addition, the following young lawyers recently assumed regional YLD leadership positions:

UPSTATE:

Geoff Gibbon
McAngus Goudelock & Courie

MIDLANDS:

Jessica Waller
Gallivan, White & Boyd

LOW COUNTRY:

Mike Leech
Clawson & Staubes

**GRAND STRAND/
PEE DEE:**

Stephanie Mascella
Collins & Lacy

AT LARGE:

Alex Joyner
Wilkes Law Firm

Many YLD members also are currently serving in other leadership capacities within the SCDTAA, including on the Board of Directors and its subcommittees.


Summer Meeting: We are anxiously looking forward to the Summer Meeting July 27th – 29th at the Sonesta Resort in Hilton Head, SC. The Summer Meeting is an excellent opportunity for

young lawyers to develop professional connections and friendships with other members of the defense bar and to interact with Workers’ Compensation Commissioners in a casual setting. This meeting is always fun, and, given the new coastal location, this year surely will be no exception.

For the Summer Meeting, the YLD is organizing the annual Silent Auction to benefit the National Foundation for Judicial Excellence, the South Carolina Bar Foundation and the Kids’ Chance of South Carolina. The auction is the opening event of the Summer Meeting and we hope you will attend and support these worthy causes.

YLD Summer Meeting Subcommittee Members James Robey, Ran Stoney and Perry Buckner are working hard to gather auction items to ensure the auction continues its history of success. Please let us know if you, your firm or someone you know can donate auction items this year.

Upcoming Happy Hours: The YLD is in the process of scheduling regional happy hours to provide additional, fun opportunities for young lawyers to network. Please keep an eye out for emails and other announcements in this regard.

Opportunities For Involvement: If you are a young lawyer seeking greater involvement in the SCDTAA, or a “more seasoned” lawyer seeking greater involvement for younger members of your firm, we encourage you to reach out to us about ways to get involved. 



Practically Speaking

by Sarah Wetmore Butler

“Never lose sight of the fact that the most important yardstick of your success will be how you treat other people.” – Barbara Bush

Lawyers need to treat one another better, and each one of us must serve as the example of any change that we want to see. Despite the significant focus in recent years on civility in our practice, there are still some serious offenders. Don't get me wrong, most attorneys that I have the great fortune to work with are considerate, gracious and professional. It's the outliers that that leave me troubled.

With that introduction to the topic, let me take a moment to introduce the newest addition to *The DefenseLine*: Practically Speaking. The SCDTAA is excited about the possibilities that this column offers. It's a space to talk about what's on our minds. It's a place to share ideas openly. We hope readers will feel encouraged to send in their candid advice and important thoughts.

I like to think that I am generally optimistic. I try to see the bright side and the good in everyone. However, I have to admit that sometimes this job can really get to me. The stress and the work load can be overwhelming. The hours spent working and the responsibilities that we have can be draining. Most days, I can handle it, but sometimes it weighs on me and what really pulls me down are lawyers

who are ill-tempered, disagreeable or even downright nasty. I'm talking about the lawyers who make it their mission to make everything difficult. I'm not talking about the lawyer who is a fair adversary or an advocate for their client. I respect that. In fact, if you look up 'advocate' in the thesaurus, lawyer is a listed synonym. Other synonyms are proponent, champion, spokesperson and upholder. That's our profession. I am bringing to light the mean, dishonorable or petty conduct that I occasionally, and very unfortunately, run across. We have all met him or her: The lawyer that is just difficult for difficulty's sake. They are exhausting.

You know what, and who, I am talking about. It's like a hobby to these few unprincipled lawyers out there. The lawyer who won't talk to you about anything. The lawyer who sends snarky emails. The lawyer who sends threatening letters. The lawyer that takes preposterous positions. Attorneys who storm out of depositions, who name call, who make a fight out of everything. Where do these conceited, obnoxious professionals spring from? Where did they learn or perceive that being uncooperative and ugly is somehow part of being an attorney?

Again, I am not talking about the lawyer who is always a

little crusty or doesn't have a good bedside manner; we all know one (or more). I am not talking about the attorney who is having a bad day or makes a mistake; we've all be there (several times). I am talking about the lawyer who can't be trusted. The attorney that misrepresents facts or conversations. The person who won't give an inch and is always on the attack. The lawyer who seems to have made it their life's mission to create obstacles and unnecessarily make all interactions unpleasant.


Well, I've had it. It's time to call these colleagues out of their hiding places. Things won't change unless we talk about the realities and talk to the offenders. Ask them to lunch, take them for a cup of coffee, give them a call and find out what's really going on with them. Most of the time, this kind of behavior is rooted in insecurity, fear or novice. It's up to all of us to preserve civility in our practice, to identify the troublemakers (or trouble-seekers) and encourage them change their ways. As I tell our children, be the change you want to see in the world.

Speaking of our children, my eleven-year-old is an old soul, wise behind her years. She had a situation at school recently where a group was upset with the behavior of a classmate and it was causing strife in the class. My daughter face-timed the alleged offender and told her what the other students were complaining about and explained how she had made them feel. It turned out that the classmate was clueless about how the others felt and hadn't considered how she had been upsetting anyone. The classmate decided to apologize to those she had mistreated, and the two friends ended the conversation laughing and planning for the next

day. I asked my daughter about her call to the classmate and she explained; if no one tells her what they think she is doing wrong, if no one is honest with her, how does she know, how can she change, and how can she apologize so we can all just get back to being friends and having fun?

So let's take a lesson from the eleven-year-old. It's up to us to be the positive examples and role models. It's up to all of us not to tolerate deliberate nastiness. It's up to us to reach out and find out what might be going on, and ask if we can help. It's up to us to say: stop with the nasty emails, stop with the disrespectful attitude, stop with the snarky retorts, stop the harassing conduct during depositions, stop refusing to communicate, stop being obnoxious, stop acting irrationally, stop with the threats, stop with the name-calling, stop being inflexible, unreasonable and mean. Enough is enough.

We have enough stress and overwhelming responsibility to shoulder in our profession without also dealing with the vicious tactics of lawyers who don't embrace civility in this practice. We all have to display empathy and kindness. We have to practice cooperation and thoughtfulness, even when faced with just the opposite. To anyone reading this who may be asking themselves if they have engaged in conduct that was unprofessional or unkind recently, today is a new day. Here is your chance to act with more grace and courtesy. Here is your reminder that kindness does not equal vulnerability. You can be civil and that does not make you weak. The best lawyers are considerate, supportive and compassionate to those around them, even their toughest opponents and even on their worst days. Read the oath that we all took and think about how you are going to treat your fellow lawyers

from this day forward. It's the civility, professionalism, camaraderie and compassion that I experience in my fellow lawyers that gets me through even the hardest days. 

Lawyer's Oath

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect, and defend the Constitution of this State and of the United States;

I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;

To my clients, I pledge faithfulness, competence, diligence, good judgment, and prompt communication;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge, or jury by a false statement of fact or law;

I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice;

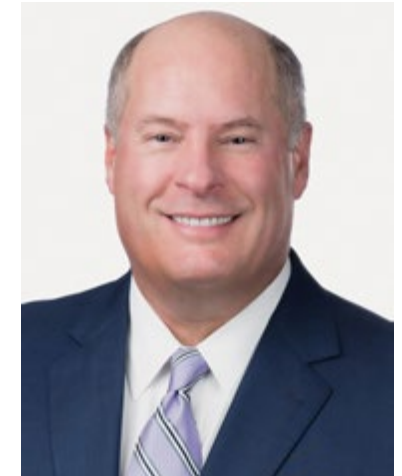
[So help me God.]

Interview: John F. Kuppens

by Geoffrey W. Gibbon



The SCDTAA has been fortunate over the years to have some of its members also serve in key positions with DRI. One such member is John Kuppens, current President of DRI. John is a partner at Nelson Mullins and is a member of their Consumer Product Safety, Risk Prevention and Regulatory Practice Group as well as their Consumer & Mechanical Products Litigation Group. John graduated from Clemson in 1986 with a BS in Accounting. He then attended law school at the University of South Carolina School of Law, receiving his JD in 1989. He has been recognized as a South Carolina Super Lawyer (2009-2018) and has been listed in The Best Lawyers in America – Commercial Litigation, Product Liability Litigation (2009-2018). In 2013 John was selected by The Best Lawyers in America as the Columbia, SC Product Liability Litigation – Defendants “Lawyer of the Year.” In addition to serving as the current President of DRI, John has served as the National Director for DRI and been the chair of its Product Liability and Young Lawyers Committees. He’s also served on the Board of Directors for the SCDTAA. We are proud to call him a member of the SCDTAA and appreciate him taking some time to share some wisdom with other members.



John F. Kuppens, DRI President
Nelson Mullins Riley &
Scarborough LLP

How and when did you first get involved with DRI?

I joined DRI soon after I was admitted to the Bar in 1989, but did not get meaningfully involved until I attended a DRI Young Lawyers Committee conference in 1992. It was immediately a great fit for me, and I eventually became the chair of that committee. Later I became involved in the Product Liability Committee, and I still attend its seminars. I should add that I have also been an SCDTAA member since I started practicing law, and I think those memberships provide important member benefits that complement each other. I was a member of the SCDTAA Board for six years, and it is a great organization.

What are some of the best ways for young lawyers to get involved in DRI?

The wants and needs of young lawyers has changed since my time, but DRI is still the best defense bar organization to meet their needs. Joining the Young Lawyers Committee and attending its annual seminar is a great way to get meaningfully involved in DRI because it helps you create your own national network of referral contacts and gives you a platform to speak and write so you can demonstrate your capabilities. DRI also offers online networking through its new DRI Circles App, which allows you to create and join referral groups with

other DRI members. DRI is also developing more on-demand educational programs to meet the needs of lawyers that prefer to learn in place. Meeting the needs of younger lawyers is a focus for me as president, because my involvement in DRI as a young lawyer was what kept me involved.

What has been the most enjoyable part of serving as the President of DRI?

That is easy. The best part is getting the chance to meet our members and the members of the various state defense organizations. It is invigorating how many smart, motivated lawyers we have, and they give me great comfort about the future of our profession.

What has been the most challenging part of serving as the President of DRI?

DRI is the “big tent” defense bar organization, and its work covers many areas. In fact, DRI does so many things that its members are not always aware of important actions or resources that benefit them. For example, the DRI Center for Law and Public Policy is our research and advocacy group. Dozens of DRI members contribute to amicus briefs for important USSC cases, advocate about proposed changes to court rules and Restatements, and issue white papers on issues like data protection laws and artificial intelligence.

Starting this year, DRI is engaging its State Representatives as liaisons to help us make state defense organizations more aware of what the Center is doing and flag issues at the state level on which DRI can assist. The State Representatives are respected leaders who we count on to help maintain our valued relationships with state defense organizations.

What types of changes do you see in the next 10-20 years for the practice of law?


Purchasers of legal services are looking for cheaper ways to

resolve disputes, including the use of technology and non-lawyers to replace tasks that lawyers have traditionally done. As long as they feel that litigation is too expensive, the push for these alternatives will continue, and the more of a “commodity” practice it is the more vulnerable it is. These changes are happening, and it behooves us to acknowledge this fact and adapt our practices so that we can continue to thrive. Those measures include leveraging technology to improve our efficiency and developing/honing the skills that only lawyers can provide.

What are some of the ways DRI and SCDTAA, and other state defense organizations can work together more effectively?

DRI truly values its special relationships with the state defense organizations, and it is always trying to support them and look for opportunities to work together. Some examples include partnering on webcasts, coordinated messaging to our respective members in a state about legislative issues, and supporting fair judicial elections. DRI views its relationship with state defense organizations as a partnership, which depends on communication and adjusts to the needs of these changing times.

What are some things/resources about DRI that members of the SCDTAA should know about or may not realize or fully take advantage of?

In addition to the work of the Center, did you know that by using DRI LegalPoint you can search the contents of every DRI magazine article, seminar paper, newsletter, and compendium ever published? It is free to members and available on the DRI website. It is an incredible value because you are able to tap into the insights and analysis of our members on an issue. 

Legislative Update

by Jeffrey N. Thordahl, SCDTAA Lobbyist



The most recent two year legislative session has largely drawn to a close. It should not come as a surprise to hear that the session was dominated by the repercussions caused by the failed effort to build the two new nuclear reactors in South Carolina. The number of lengthy meetings held to understand what happened, then meetings to decide what to do, then followed by meetings on proposed legislation and of course the individual meetings legislators had to understand the issue, took up an amazing amount of time and focus. Several of the proposed bills were still being discussed in conference committee even after the normal adjournment on May 10. As the General Assembly has the ability to call themselves back into session in order to finish unfinished business, they were supposed to come back in late May and again in late June. Since the budget was not completed by late May, nor were several other bills including the utility bills, the May session was canceled.

It is expected that the 2018/2019 Budget will be resolved in the June session and possibly some of the utility bills. One other issue hanging out there that should be resolved in yet another brief session later in the year is the tax conformity issue. Given the magnitude of the federal tax law changes which in turn have generated a larger than normal affect at the state level (as well as the time spent on the nuclear issues) that issue remains to be resolved. It is usually adopted with little fanfare but given the magnitude of the state level changes it has become complicated.

Perhaps the biggest news on the legal front is the retirement of Representative Greg Delleney who was the Chairman of the House Judiciary Committee. He was first elected in 1991 and served as Chairman for many years. After the elections in November the House Judiciary Committee will elect a new Chairman. We wish Chairman Delleney well.


In the vein of changing leadership, the resignation of Senator John Courson triggered a shift in the chairman of the various Senate committees. While nothing has been officially announced at this time, based on seniority of the majority party members it looks like the following: Senator Harvey Peeler will become Chairman of the Education Committee, Senator Danny Verdin will become Chairman of the Senate Medical Affairs Committee and Senator Paul Campbell will become the Chairman of the Senate Agriculture Committee.

Finally, by the time you read this we will know who will be facing off for Governor in November. Certainly this race and others will dominate the news this fall. As you know this is the first election cycle where the Governor and Lt. Governor run as a ticket. Keep in mind all House Seats and Constitutional Officer Seats are up for election. In two years all House and Senate seats will be up for election. 🏛️

Can They Say That?!

An Examination of South Carolina's Dead Man's Statute and How It May Apply in Your Case

by Allyce Bailey



Issues presented by the words of the dead are not exclusive to wrongful death claims and probate litigation. In any case in which the live testimony of a potential witness is no longer feasible due to that person's unavailability due to death, South Carolina Code Section 19-11-20, the "Dead Man's Statute," may rear its ugly head in your litigation and can lead to complicated debates about what statements made by other witnesses who spoke with the decedent prior to death are admissible or inadmissible.

The statute provides, in relevant part, that "no party to an action or proceeding ... who has a legal or equitable interest which may be affected by the event of the action or proceeding... shall be examined in regard to any transaction or communication between such witness and [the deceased] ... when such examination or any judgment of determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him."¹

Essentially, "The rule prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest."²

Recent Case Involving the Dead Man's Statute

I recently tried a wrongful death case in which the potential applicability of the statute quickly became an issue. On or about January 6, 2016, an 18-wheeler crashed into a restaurant in North Augusta, South Carolina, causing extensive damage to the front of the restaurant. On or about January 19, 2016, the City of North Augusta issued a building permit to allow my client's construction company to make repairs to the premises and these repairs began on or about that date. During repair efforts to the interior and exterior of the front of the building, the dining room of the restaurant was closed to the public. The drive-thru remained open and was operational during normal business hours. During this time, there were two signs posted on the glass doors of the restaurant entrance stating that the dining room was closed. The restaurant's lighted road sign also stated that the drive-thru was open.

On February 5, 2016, the eventual decedent attempted to enter the dining room of the restaurant during evening hours. Upon arrival to the restaurant, the decedent, who was ninety-one years old, parked his car in a diagonal position alongside the building and fell somewhere between his vehicle and the

entrance of the restaurant. Plaintiff alleged that the decedent fell while pulling on the locked door of the restaurant; however, she was not present to actually witness him fall.

In fact, there were absolutely no witnesses at all to this alleged fall. However, the decedent's daughter, an heir to the estate with a clear pecuniary interest in the outcome of the litigation, alleged that the decedent relayed to her that he fell while pulling on the doors. Additionally, the plaintiff argued that the decedent's medical providers would also be in a position to testify regarding the circumstances under which the decedent allegedly incurred his injuries opining that the information was relayed to them by the decedent and used for the purposes of medical treatment.

Unfortunately, the decedent suffered injuries to his neck and unfortunately died approximately eighteen days later and we were forced to examine whether the decedent's relatives' and his medical professionals' testimony in this vein would be admissible during the trial of the case.

Exceptions to the Rule

"The rule is founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matters when such testimony, if untrue, cannot be contradicted."³ It is presumed that an interested party would relay any communications had with the decedent in a light most favorable to their position in the case. Without being afforded the opportunity to cross examine the decedent, allowing such one-sided testimony would place the opposing party at a distinct disadvantage.

However, disfavoring the exclusion of evidence pursuant to

the Dead Man's Statute, South Carolina law provides a number of exceptions to the application of the Dead Man's Statute.⁴

The Dead Man's Statute will not exclude:

- (1) testimony where the party asserting the statute "opens the door" by offering testimony otherwise excludible;
- (2) testimony by the attorney who prepared the will on the ground that the attorney is not an interested person;
- (3) testimony where the witness's present or previous interest will not be affected by the event of trial;
- (4) witness testimony that is against his or her interest;
- (5) testimony about a transaction between the deceased and a third party;
- (6) the introduction of documentary evidence; and
- (7) testimony about the acts, demeanor, or conduct of the decedent where the testimony is offered merely for its bearing on an issue of mental competency.⁵

Dealing with Potential Hearsay Exceptions

The Dead Man's Statute is essentially another bar to hearsay being admitted at trial. Accordingly, it is also often necessary to be prepared to overcome the plaintiff's attempts to circumvent the applicability of the Dead

Man's Statute by asserting a hearsay exception. Below are a few of the hearsay exceptions that are often offered against objections pursuant to the Dead Man's Statute and some thoughts on attacking the plaintiff's position.

South Carolina Rule of Evidence 803 (1) provides:

Present Sense Impression: A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.⁶

Similarly, South Carolina Rule of Evidence 803 (2) provides:

Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.⁷

The most important issue to examine with regard to a present sense impression or excited utterance assertion is when the statement was made. "Whether a statement is admissible under the excited utterance exception to the hearsay rule depends on the circumstances of each case and the determination is generally left to the sound discretion of the trial court."⁸ "A useful rule of thumb is that where the time interval between the event and the statement is long enough to permit reflective thought, the statement will be excluded in the absence of some proof that the declarant did not in fact engage in a reflective thought process."⁹

Also of note, South Carolina Rule of Evidence 803 (4) provides:

Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of

medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.¹⁰

In my case, while both of the decedent's treating physicians noted that the decedent had relayed to them that he injured himself while trying to enter the restaurant, both doctors also admitted that effective treatment could have been rendered without knowing the exact mechanism of injury or geographic location in which the injury occurred arguably removing the statements from the realm of "reasonably pertinent" to diagnose or treat the decedent.


General Tips

Don't open the door! During deposition and trial preparation of your clients, be sure to instruct your own clients not to open the door to any such statements by offering any testimony regarding communications they may have had with the decedent. Additionally, ensure that none of your deposition or witness examination questions would invoke a response from any witness that might inadvertently open the door to such testimony.

Examine interests that may not be clear. The law provides an exception to allow testimony by those who may not have an interest in the outcome of the litigation. The test is whether the witness has a certain or vested legal or equitable interest, and the interest may possibly be affected by the direct, legal operation of the judgment.¹¹ But that interest may not always be clear. Be sure to examine potential

interests in the litigation that may not be derived through direct inheritance from the estate. Would this person stand to inherit if all of the current interested parties expired? Does this person have an ulterior motive to influence the outcome of the litigation in the form of paid testimony or a business dealing unconnected to the litigation?

Conclusion

In sum, like with many legal issues, the decision as to whether to allow a decedent to testify from the grave will ultimately lie within the discretion of the trial judge. More often than not, the uncontradicted testimony of a decedent can be damaging to the defense of a case. A prudent defense attorney would be wise to immediately analyze whether the statute applies in their case and promptly derive a plan of action to use the facts and evidence available to refute any potential objections or counterarguments asserted by the plaintiff. 

Endnotes

- ¹ S.C. Code Ann. § 19-11-20.
- ² *Brooks v. Kay*, 339 S.C. 479, 486, 530 S.E.2d 120, 124 (2000).
- ³ *Id.*
- ⁴ *Id.* at 486.
- ⁵ *Id.*
- ⁶ SCRE 803(1).
- ⁷ SCRE 803(2).
- ⁸ *State v. Burdette*, 335 S.C. 34, 43–44, 515 S.E.2d 525, 530 (1999).
- ⁹ *State v. Burroughs*, 328 S.C. 489, 500, 492 S.E.2d 408, 413 (Ct. App. 1997).
- ¹⁰ SCRE 803(4).
- ¹¹ *U.S. Fire Ins. Co. v. Macloskie*, 320 S.C. 459, 463, 465 S.E.2d 759, 761 (Ct. App. 1995).

Verdict Reports

TYPE OF ACTION:

Medical Malpractice

NAME OF CASE:

Teresa Stanley, As the Personal Representative of the Estate of Homer P. Powell, Deceased v. HHC South Carolina, Inc. d/b/a Lighthouse Care Center of Conway; and William Van Horn, MD

COURT: (INCLUDE COUNTY):

Horry County Court of Common Pleas

CASE NUMBER:

2016-CP-26-00417

NAME OF JUDGE:

The Honorable Larry B. Hyman, Jr.

AMOUNT:

Defense Verdict

DATE OF VERDICT:

February 2, 2018

ATTORNEYS FOR DEFENDANT:

Molly H. Craig, Brian E. Johnson and Jean Marie Jennings of Hood Law Firm, LLC, Charleston, SC

DESCRIPTION OF THE CASE:

Plaintiff alleged the Defendant psychiatric facility was negligent in providing care and treatment to the Decedent during his twelve day admission to the inpatient psychiatric facility. The Decedent was transferred to the Defendant facility following an admission to Loris Hospital to address behavioral issues related to a previous diagnosis of vascular dementia. The Plaintiff alleged the healthcare providers at the psychiatric facility failed to adequately monitor and care for the Decedent which resulted in an emergency transfer to Conway Medical Center for severe dehydration, malnutrition and suspected falls.

The defense proved that the Decedent's medical problems which developed at the psychiatric hospital were related to co-morbidities that existed prior to admission and any alleged deviation did not proximately cause harm to the Decedent.

TYPE OF ACTION:

Medical Malpractice

INJURIES ALLEGED:

Permanent peroneal nerve injury and “drop foot”

NAME OF CASE:

Jack Daniel Turner v. Self Regional Healthcare

COURT: (INCLUDE COUNTY):

Greenwood County Court of Common Pleas

CASE NUMBER:

C.A. No.: 2015-CP-24-00623

TRIED BEFORE:

Jury

NAME OF JUDGE:

The Honorable Donald B. Hocker

AMOUNT:

Defense Verdict

DATE OF VERDICT:

September 28, 2017

DEMAND: (REQUIRED IF DEFENSE VERDICT)

\$200,000.00

HIGHEST OFFER:

\$10,000.00

MOST HELPFUL EXPERTS:

(NAME, TITLE AND CITY)

Kimberly Croy, RN, BSN, OR Nurse Manager, Ralph H. Johnson VA Medical Center, Charleston, SC

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Steven A. Snyder, Greenville, SC

DESCRIPTION OF THE CASE, THE EVIDENCE PRESENTED, THE ARGUMENTS MADE AND/OR OTHER USEFUL INFORMATION:

Steven A. Snyder of Davis, Snyder, Williford & Lehn, PA in Greenville, South Carolina, successfully defended a medical malpractice case involving a 52-year-old male went into the hospital for left shoulder arthroscopic surgery to repair a rotator cuff injury and left the hospital with right side “foot drop” resulting from a compression injury to his peroneal nerve that subsequently proved to be a permanent injury.

In *Jack Daniel Turner v. Self Regional Healthcare*, Case Number 2015-CP-24-00623, Court of Common Pleas for the County of Greenwood, South Carolina, Snyder represented the defendant hospital system that had been sued for vicarious liability arising out of the alleged negligence of its employees.

The Plaintiff alleged negligence in the positioning of the patient for surgery in what is referred to as the “beach chair” position. The Plaintiff further alleged that the Defendant hospital system and its employees were negligent for failing to monitor and check the patient intraoperatively for potential compression points that could result in injury. The Plaintiff’s expert testified that that the un-scrubbed circulating nurse was negligent for failing to go up under the surgical drape intraoperatively to check the legs and feel for potential points of compression.

During the trial, the Defendant acknowledged the injury, conceded it could not identify or determine what object or source of pressure caused the injury, and contended

that bad things sometimes happen in medicine even when the standard of care has been met and all established, required and appropriate measures have been taken to protect the patient and reduce the risk of complications.

Defense witnesses testified and explained the manner in which the patient was positioned and padded for the procedure, safety precautions taken for the patient's protection, and practices to avoid intraoperative changes in the patient's position or the positioning of surgical equipment that could contribute to injury. Operating room personnel and other witnesses for the defense also educated the jury as to the methods and critical importance of the sterile field and sterile technique, the balancing of risks and benefits between possible infection and possible nerve injury from a compression source, and further testified that a circulating nurse would not routinely go under the surgical drapes intraoperatively but would do so only in very unusual circumstances, such as when it is strongly suspected the patient's position has moved. The defense also countered and disproved the different theories or "possibilities" offered by the Plaintiff's expert as to the mechanism of injury. Ultimately, the defense presented expert testimony to establish that the Plaintiff's injury is a rare but known complication that can occur even when the standard of care has been met.

At the conclusion of a four-day trial, the 12-member jury deliberated just 23 minutes before returning a unanimous verdict in favor of the party Defendant and its employees.

Date of Verdict: September 28, 2017 

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Case Notes

by Helen F. Hiser and James B Robey III

Theodore G. Hartsock, Jr., as Personal Representative of the Estate of Sarah Mills Hartsock v. Goodyear Dunlop Tires North America Ltd. And Goodyear Tire & Rubber Company, Op. No. 27793, filed April 25, 2018

The South Carolina Supreme Court recently answered the following certified question from the Fourth Circuit – “Does South Carolina recognize an evidentiary privilege for trade secrets?” This question arose from a discovery dispute regarding information related to the “design and chemical composition” of an allegedly defective tire that led to the motor vehicle accident that was the basis for the underlying lawsuit. The Supreme Court answered this certified question in the affirmative, holding that pursuant to the S.C. Trade Secrets Act, S.C. Code Ann. §§ 39-8-10 to -130, South Carolina recognizes a qualified privilege for trade secrets.

Under Section 39-8-60(B), a party seeking production of trade secret information must demonstrate a “substantial need” for the material. In order to make that showing, a party must meet the following four criteria: “1) the allegations in the initial pleading setting forth the factual predicate for or against liability have been plead with particularity; 2) the information sought is directly relevant to the allegations plead with particularity in the initial pleading; 3) the information is such that the proponent of the discovery will be substantially prejudiced if not permitted access to the information; and 4)

a good faith basis exists for the belief that testimony based on or evidence deriving from the trade secret information will be admissible at trial.” Where substantial need has been shown, the material still may be protected under an appropriate protective order. Justice Few dissented taking issue with the term “privilege” in the certified question.

Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, Timothy R. Fallon, Fallon Luminous Products Corporation, GE Business Capital Corporation, formerly Transamerica Business Capital Corporation and South Carolina Department of Revenue, Op. No. 27773, Filed February 28, 2018

This Supreme Court opinion affirms an earlier Court of Appeals’ decision that email notice of an order triggers the 30-day period in which to file an appeal under Rule 203(b) (1), SCACR. “[T]he time to serve the notice of appeal from a master’s decision begins on the day the party receives written notice that an order or judgment has been entered,” regardless of whether the notice is received via email or regular mail, and despite Rule 5, SCRCF’s requirement that all notices be served by mail. The Court explained that the appellate rules apply to the timeliness of a Notice of Appeal, and an email is sufficient to trigger the 30-day window so long as it is from the court, an attorney of record, or a party.



Helen F. Hiser



James B. Robey III

The Court distinguished this case from *White v. SC DHEC*, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011), which stemmed from an Administrative Law Court (ALC) matter and held that an email received from an attorney in the case containing a signed and filed copy of an order did not commence the time to appeal under Rule 203(b)(6). The Court explained that the appeal provisions relating to the ALC require receipt of the decision and not just receipt of notice of the entry of a decision. The Court overruled *White* to the extent that it required service by mail, as receipt via email is sufficient to trigger the appeal deadline. The Court also stated that fairness dictates that its decision apply prospectively only, and allowed the underlying case to proceed despite a late-filed appeal.

*Brian Morin v. Innegrity, LLC, Op. No. 5550,
Filed April 25, 2018*

In this opinion, which stems from a breach of contract and Wage Payment Act case, the Court of Appeals considered whether Innegrity’s Board, which fired Morin without cause, was liable for back pay and other contractual promises it made to Morin. Innegrity argued that certain promises it made (an agreement to remove Morin as a guarantor on certain bank loans once they went into default, after the bank purportedly refused to remove Morin) were excused under the doctrine of impossibility.

The Court disagreed, reasoning that “Innegrity assumed the risk it would be able to relieve Morin of the guarantees, whether by making alternative arrangements with the lender or paying off the loan.” Among other things, the Court ruled that Morin was entitled to back pay under the Wage Payment Act, but that the majority of the back pay was not

subject to trebling under the Wage Payment Act because it found Innegrity’s view of the enforceability of certain terms “was reasonable enough to form a good faith basis for withholding Morin’s wages.” The Court also upheld the trial court’s condition¹ placed on the use of Morin’s deposition testimony (in which he had invoked the Fifth Amendment to questions concerning a federal criminal investigation into whether he had falsified certain records under a federal grant) at trial, emphasizing the wide discretion exercised by trial courts in matters of evidentiary rulings.

*D.R. Horton, Inc. v. Builders FirstSource –
Southeast Group, LLC, and Builders FirstSource, Inc.,
and Joseph Naccari, Individually and d/b/a Master
Framers, Op. No. 5529, Filed January 10, 2018*

In this contractual indemnification case, the Court of Appeals affirmed a grant of summary judgment in favor of Builders FirstSource (BFS). This case stemmed from a construction defect case where a homeowner sued DR Horton for alleged defects with her home. The Circuit Court compelled the case to arbitration and the homeowner and DR Horton engaged in a 2-day arbitration after which the arbiter issued an award in the homeowner’s favor for \$150,000. The arbitration award did not indicate what damages were found to be compensable but, instead, stated “Counsel for the parties

¹ The trial court held that Innegrity “would only be entitled to admit the deposition” if Morin pled the Fifth Amendment before the jury. The trial court further explained that Innegrity “could ask Morin the same questions it posed in the deposition, but until, it did so, the deposition evidence was excludable as unduly prejudicial.”

have requested an [o]rder containing a monetary award only.”

DR Horton subsequently attempted to enforce the indemnification clause in its contract with BFS. The Court of Appeals upheld summary judgment because it found the indemnification clause, which clearly required BFS to indemnify DR Horton for its own negligence, to be in violation of S.C. Code Ann. § 32-2-10 and public policy. It appears the Court reached this result because the arbitration agreement was silent as to who caused the compensable damages, since Section 32-2-10 prohibits indemnity provisions in construction contracts purporting to indemnify the promisee for damages caused by “the sole negligence of the promisee.” In addition, because the arbitration award did not specify what damages were incurred, the Court held that DR Horton’s claim for contribution was properly denied.

Johnny Eades v. Palmetto Cardiovascular and Thoracic, et al, Op. No. 27770, Filed February 28, 2018

In this opinion concerning expert witness affidavit requirements in medical malpractice actions, the Supreme Court held that an expert witness affidavit that does not state that the expert is certified in the precise practice areas as a defendant may nonetheless be sufficient to comply with S.C. Code Ann. § 15-36-100(A), which requires submittal of an expert witness affidavit prior to commencement of a professional negligence actions – to include medical malpractice actions.

The Court first noted that this statutory provision, which is in derogation of the common law, must be strictly construed. In this case, the circuit court granted the defendants’ motion to dismiss based on the fact that the affidavit in question did

not state that the expert was certified in the specific practice areas of the two defendant doctors. The defendant doctors argued the affidavit was insufficient because their practice areas were emergency medicine and primary care, whereas the expert was a vascular and critical care surgeon. The Court stated it did not need to determine whether the practice areas were sufficiently similar under § 15-36-100(A)(1) or (2) because the case fell under § 15-36-100(A)(3), which allows an individual to qualify as an expert if he/she has scientific, technical or other knowledge that will assist the court. This section allows, “the production of an expert affidavit from a doctor who is not certified in or does not practice in the same area of medicine as the defendant doctor, but otherwise possesses specialized knowledge to assist the trier of fact.”

Wadette Cothran and Chris Cothran v. State Farm Automobile Insurance Company and Robert Tucker, Op. No. 5524, Filed November 22, 2017

In this opinion, which stems from a bad faith refusal to pay insurance benefits and breach of contract action, the Court of Appeals overturned the circuit court’s grant of summary judgment in favor of the insureds. Wadette Cothran was injured in an automobile accident and incurred medical expenses in excess of \$5,000. Her employer’s workers’ compensation carrier paid \$5,000 and State Farm, Cothran’s auto insurer, only paid \$991 in lost wages even though the policy issued to Cothran had personal injury protection (PIP) limits of \$5,000.

The Court of Appeals held that State Farm’s PIP provision, which provided it was “excess over any benefits recovered under any workers’ compensation law or any other similar

law” did not violate S.C. Code Ann. § 38-77-144, explaining that the provision “applies only to prevent tortfeasors from reducing their liability by the amount of PIP benefits recovered by a claimant.” The Court also held that, because PIP coverage is voluntary, a reduction of PIP benefits by an amount recovered under workers’ compensation does not violate public policy. This appeal was decided without oral argument.

Amendments to the ADR Confidentiality Rules


On January 31, 2018, the South Carolina Supreme Court submitted an order amending, Rule 8 of the South Carolina Court-Annexed Alternative Dispute Resolution Rules concerning the confidentiality of ADR proceedings. The amendments explicitly provide for the confidentiality of documents and electronic information presented during mediation. This is an expansion from the former version of the Rule which stated that confidentiality pertained to communications and “records, reports or other documents created solely for use in the mediation.”

The amendments also include a waiver of confidentiality

provision, which provides that “[u]pon the signing of an agreement reached during mediation, confidentiality is waived as to the terms of the agreement, unless otherwise agreed to by the parties.”

Additionally, the amendments provide an expanded list of exceptions to confidentiality. Confidentiality does not attach to information disclosed during a mediation that is “offered for the purpose in judicial proceedings of establishing, refuting, approving, voiding, or reforming a settlement agreement reached during a mediation.” The other exceptions to confidentiality included in the former Rule are still present.

Lastly, the amendments include a subsection stating that information that is disclosed during mediation, but would be admissible or subject to discovery, “does not become inadmissible or protected from discovery by reason of its disclosure or use in a mediation.”

The amendments have been submitted to the General Assembly, but have yet to be formally adopted. 



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