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2020 ANNUAL MEETING – NOVEMBER 13 – 15 • THE RITZ-CARLTON REYNOLDS • LAKE OCONEE, GREENSBORO, GA

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PRESIDENT'S MESSAGE



President
A. Johnston Cox

“These are strange times.” I have heard this phrase many times over the last several weeks, and it is certainly a true statement. Our profession, like so many others, is struggling to adapt to a world that is new to us – although perhaps not so new to our children – the so-called “virtual world,” a world devoid of real, live, person to person interaction. Of course, older members of the defense bar (I guess I have to include myself in this category now) are perhaps struggling a little harder than some of our younger members. We are unsettled, not only by the toll of Covid-19 on the health and safety of communities around the world, but also by the toll it may exact upon the practice of law as we knew it in February of 2020. We had heard of Skype, Zoom and Webex, but had never thought of using them on a regular basis, much less buying stock in them. After all, human interaction is the most important tool of the trial lawyer’s trade. Without it, how do we use the interpersonal skills, negotiating tools and the powers of persuasion that we have learned and honed during the course of our careers? We are getting a glimpse of a world with no jury trials – and we do not like it.

The reality is that we have all seen some of these changes coming but have been slow to accept them. After all, trial lawyers like to examine the evidence and size up the opponent in person, not through a computer monitor. There will no doubt be change, but not all of the change will be bad. Some lawyers will prove to be happier, more efficient and more effective working from home than in an office setting. Some defense lawyers may learn to delegate more work through experiencing, if even for a short time, that a less hectic deposition, hearing and trial schedule can actually

make one a better lawyer and advocate for one’s clients. There will be a need to adapt, but we can and will do it.

The South Carolina Defense Trial Attorneys’ Association will also adapt. The mission of the SCDTAA is to “promote justice, professionalism and integrity in the civil justice system by bringing together attorneys dedicated to the defense of civil actions.” There is no doubt that this pandemic has affected our ability to bring together attorneys dedicated to the defense of civil actions. We have been unable to schedule events historically held in the spring, including our annual Trial Academy, PAC golf tournament and Legislative Reception. However, we plan to move forward with all of our events once the state opens back up for business. We also plan to offer virtual CLEs and Young Lawyer happy hours in the very near future.

On July 23 – 25, 2020, the Summer Meeting will be back at The Omni Grove Park Inn in Asheville, North Carolina. The Inn has been completely remodeled and updated, but retains its historical grace and charm. The Omni Grove Park is truly one of my favorite places, in no small part due to the SCDTAA’s nearly 50-year history with the place. Our Summer Meeting Committee, headed by Trey Suggs, is putting together a fantastic program, and by late July we will all need to get some cool, mountain air while sitting on the Terrace. Please join us this summer for what will surely be a much anticipated and therapeutic experience.

We are also planning to move forward with the Annual Meeting on November 13 – 15, 2020 at the Ritz-Carlton Reynolds, Lake Oconee, Greensboro, GA. We have arranged for Augusta National Golf Club to hold its little golf tournament the same weekend – I cannot think of a better



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



The Omni Grove Park Inn, Asheville, North Carolina

place to watch the Masters (except at the Augusta National) than in the SCDTAA hospitality suite in the new Reynolds Pavilion complete with indoor and outdoor stone fire places!

The more astute of you will have noticed that the dates for this event have changed from November 12th – 15th to November 13th – 15th. This year's Annual Meeting will run from Friday to Sunday, one day shorter than normal, which will allow Trey Watkins and his planning committee to shake it up a little. We are excited to have the chance to make this year's Annual Meeting different and special. You will have to attend to see what Trey comes up with!

These are strange times. These are difficult times. The SCDTAA is a family and is here to help. If any SCDTAA attorney or staff member needs assistance,



Ritz-Carlton Reynolds, Lake Oconee, Greensboro, GA

please contact Aimee Hiers at (803) 252-5646. We will do everything in our power to help you.

Wishing you health and safety,

Johnston 

A handwritten signature in blue ink that reads "John Johnston".



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EDITORS' NOTE

Editors' Note


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

“**S**emper Gumby!” was a directive I learned in Boy Scouts. A play on the Marines’ motto of “always faithful,” I was taught as a boy that it was important always to be flexible in the face of ever-changing challenges. Now, more than ever, we as defense trial attorneys are called upon to be flexible and to quickly adapt to our rapidly-changing world.

While it feels like our social interactions have ground to a halt, the need for lawyers and advocacy is stronger now, in a climate of uncertainty. In this issue, we offer some pointers on practice in this new environment, with a practice article on remote mediations.

As our members have come to expect, Helen Hiser has provided us with an excellent update on recent appellate opinions, and we are happy to carry updates on important events in the lives of our members and our member firms. We also include an interview with former SCDTAA Board Member, Derham Cole, who is currently Interim Chancellor at the University of South Carolina – Upstate.

SCDTAA is moving forward in these unusual times, and now, more than ever, we need active participation from our members. This issue includes information on upcoming SCDTAA events, which we hope you will consider attending. Additionally, we hope you will consider contributing articles to future editions of *The DefenseLine*.

As always, we look forward to hearing your suggestions on how we at the DefenseLine can better meet the needs of your practice. Remember, we are always flexible. 



C. Daniel Atkinson



Michael D. Freeman



James B. Robey III




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Social Distance Trials

A Requiem For The Way Things Were Back Then...

by James R. Old, Jr., Hicks Thomas LLP, Austin, Texas



It was a Friday afternoon post-quarantine. I was attending a routine Rule 166 status conference from my office in Austin – my first hearing by Zoom. Up until that time, my Zoom experience constituted a few calls with family or co-workers. Think happy hours disguised as “staff meetings.” Nothing too serious.

That afternoon, I wore my navy blazer, tie and button down shirt, and sat uncomfortably in my office chair trying to make sure the Judge could not tell I had on blue jeans and checking to make sure the “Tiger King” virtual backdrop on my computer was not being displayed. The Judge was in his courtroom, in full regalia, in Houston. The Court clerk was in the courtroom on a separate feed and could not be seen or heard, but he was running the



show. Meantime, my opposing counsel (also in Houston, but at his office) showed up in a golf shirt claiming he did not know he had to cover our hearing. Lesson #1, don't do that.

We all received a little admonishment from the Judge concerning his virtual dress code, then our conference quickly came to the question *du jour*: How were we going to try an attorney's fees dispute when the Plaintiff's lawyer insisted on giving live testimony rather than submitting the fees evidence to the court by affidavits? That question sent us on a 5-day odyssey leading to the first "trial by Zoom" to the bench in Harris County.

Sure enough, the Judge offered to try the case at a distance, using Zoom. Neither lawyer had the guts to suggest they had no clue how to do that, so we agreed. Then, in the time it took to hit the "Leave this Meeting" button on our computers, we were set to go to trial the next Wednesday – that's right, five days later.

The lump suddenly dwelling in my throat when I hung up from the call/hearing told me I had just essentially asked to be put in a situation that I was ill-prepared to handle. I had no idea what it really meant at that time, but I knew I had a very steep learning curve ahead of me –I needed to figure out what I didn't know, so I could then learn what I needed to know. And fast.

For the next few hours, rather than joining a little late afternoon "Zoom Happy Hour" I was immersed in learning the nuances of electronic distance hearings and the virtual tools at my disposal. I will share some tips I learned with you here:

Get help. I got lucky. My first call was to my expert witness,

Dwayne Newton. He not only was "available" to testify by Zoom (from his California quarantine location) but he had already taken about a dozen depositions using Zoom and was highly proficient. Dwayne spent as much time preparing me as he did preparing for his testimony, and I will be forever grateful. Having someone – a kid stuck at home, a neighbor, co-worker or even expert witness - available to help you master Zoom is a big deal, so do not let your ego keep you from seeking help.

Plan ahead. This process is new, so it takes time to practice it, and get things to "work" before the lights go up during the actual trial. I had to reconfigure monitors, incorporate previously unknown hardware, and do all sorts of things to make things work. There is no way to do that on the fly. And, it requires lots of front-end time for preparation along with ample technology support handy if you're not proficient.

Zoom Tools. You can set up a "personal call" on Zoom and practice using it by way of a call with yourself! I must have set these up a dozen times, and it works. But I also suggest pre-planning calls with your witness, your paralegal or some forgiving co-worker (preferably a younger one who has "real" experience with the product) who can offer critiques you would miss. Rehearsing in the Zoom world is more ballet than lawyering, and it is essential.

Subject matter expertise on Zoom to practice:

- **"Share Screen"** – it means what it says. If you have a document up on share screen, everyone can see your entire screen, not just the document. So, don't hit that share button until you are ready. Be sure to have the



document set on “full screen” mode so your desktop is not visible before you hit the share button. Be sure to “Stop Sharing” when you are ready to take it down. But note, you can select which window you want to share, meaning you do not have to share the whole screen. It just takes practice.

- **Share tools.** There is a drop-down tool bar when you’re sharing documents. That tool bar allows you to highlight, draw, and do all kinds of neat tricks to make your presentation better. There is even a “whiteboard” function which is really useful. But, the little additions you use when presenting stay on the screen, and are not actually attached to the document – so it gets awkward to use this tool if you’re moving from page to page, or document to document.
- **More Share tools.** You can save as screen shots any mark-ups of documents as you go – and before you erase them to go to another page. This is helpful, as you can create exhibits as you go, and then offer them, and send them to the clerk at the conclusion of the hearing (this is also helpful for depositions).

Other practical pointers – work out with your witness in advance how you and your witness want things to flow. If your witness is better at Zoom than you, let the witness run the presentation – sort of like asking the witness to “walk over to the chalkboard” in a live courtroom.

Document Management. My phrase, not a technical one.

- **Exhibits.** Our judge did not allow us to use any document that was not exchanged and on our exhibit list – even for

refreshing recollection or impeachment. So, first find out how your judge will handle these issues, and then be over-inclusive on your exhibits, even if that means you have to give up some super-secret strategy issues by doing so.

- **Demonstrative Aids.** We were in a trial to the bench, so both sides went relatively easy on this. We marked them as exhibits but things got awkward when the other side objected to our demonstrative aid and the court sustained. We then had to work out a way to identify the document as a “court exhibit.”

Presentation. You may not be present in person, but you still have an audience and maybe one much bigger than you think. The Judge is watching, of course, but in our case the trial was live-streamed and we had over 2,000 other members of the “gallery” watching as well – including clients, friends, other lawyers, reporters and who knows what other kinds of bored, stuck-at-home Perry Mason types.

Mind your manners. While it is difficult to pick up on non-verbal clues with a headshot as your only visual, facial expressions are magnified. Rolling your eyes is not a good look and will be noticed. Fidgeting, moving around, getting up and walking around (out of camera), simply do not “work well” in this environment.

Be heard. Several quick points:

- First, I used a headset because the Judge told me that he had a hard time hearing me during our status conference. I suggest a Bluetooth one, as you then do not have to fiddle with a tether. It felt goofy at first, but I forgot about it after awhile. Plus no one notices that you have this “thing” on



your head. Sacrifice looks for functionality.

- Second, if you do not use a headset, you (and your witness) need to maintain a constant distance from the microphone so your voice does not modulate in and out of the sound.
- Third, do not speak over anyone. I know this is hard to do when you are in the heat of battle, but Zoom only allows one speaker at a time. No one will hear you when you talk over someone else anyway, so do not do it. This also means the court reporter will not hear you. Preserving your record means more than making the right objections, it means making sure your objections actually are heard by the right people.
- Fourth, silence any background noise. This means cell phones, computer calendar reminders, office phones, and of course any other potential noise interruptions.

Be seen. Remember, this is “your show” of which you are the director, producer, lead actor and stage hand. This means check your lighting, your back drop and your camera angle before you start the proceeding (I set mine up the night before). My opposing counsel chose to put an American flag behind him while he testified, which was a nice touch, but he had it over the wrong shoulder. Any Boy Scout would have noticed. I suggest a solid background that fills the space behind you (as opposed to a solid colored back drop that only partially does so, which is a distraction), or an un-cluttered one (and yes, I had to clean up my credenza to make that happen).

Do not forget your witness. Check with your witness on all these points too – backdrop, microphone, clothing, lighting,

Zoom skills, etc. Obviously, you want your witness to be prepared for this just like you are – which means a lot of extra front-end work by both of you.

Be able to see. This is tricky, and not necessarily what you think.

- **Use an extra monitor.** By this I mean, use two monitors for your own presentation (one that is dedicated to sharing documents, and one for seeing the court and witnesses).
- Make sure you can see what the court sees. It is impossible to see what Zoom is displaying when you are looking only at your screen, and in our case we had a lot of extraneous markings, and even documents, displayed on screen that neither side (when presenting) had any idea they were showing. And we had instances when we assumed the witness (and court) could see documents we *thought* we were sharing, when we had not hit that little “share” button.
- There are two options that I can identify that might correct this problem – first, log in on another computer as a viewer and have that screen close by in your line of sight so you can see what everyone else sees. Or, have an assistant “run” your presentation, so it is that person who pulls up your documents, does the marking, etc. You can still do additional marking using the Zoom drop down tools if you wish to highlight things as you go. This latter option serves several purposes – it frees you up to concentrate on the Q&A, and also allows you to see what the court is seeing without using an added computer or device.

Streamline things. I suggest highlighting or marking up your exhibits *before* trial. That way you save time



and avoid fumbling around. For this I used the Adobe features on the .pdf files that were set up as our exhibits. Go to the top right-hand corner of the document and tap on “Comment” and a drop-down menu of tools falls into your hands. You can highlight, draw, put in arrows, etc., save the document and have it ready to go before the judge says “call your first witness.”

Witness identification. It threw me a bit when the judge first asked us to identify our witnesses for the record, but it makes sense for all involved, especially the court reporter.

Timing. Just like with most things we do, when lawyers estimate a time to complete a task, it typically takes twice as long. We told the judge we could do this trial in an hour and a half. It took over four. Why? Well, the technology is still a little clunky, and there are unforeseeable issues. Things like needing to break so the court reporter can check on her home-schooling children, or dropped sound feeds, or technical glitches in the feeds. And then, it just takes a little longer when the lawyers are transitioning in and out of .pdf files, and adding or erasing (or saving) document mark-ups, while trying to “move along” in their presentations. So, try to eliminate any extraneous materials on the front end, but plan to spend more time doing what you need to accomplish than you think.

Strategy. It goes without saying that we all thrive on courtroom drama. We would not be trial lawyers if we did not get excited to be “on stage” cross-examining witnesses and the like. And yes, you get that same little tingly feeling when in a Zoom environment. But, we have to remember that we are still professionals. So, here are a few things to address up front:

- **Witness communication.** If one side invokes the rule excluding witnesses, how do you ensure that the witness does not have access to any communication from any third party viewing the proceedings, or otherwise does not stream the proceedings? The Zoom waiting room feature may be the ticket. We did not have that issue in our trial.

Other thoughts on this subject:

- **Witness coaching.** This is different. This involves communications *while* the witness is testifying. Zoom allows private “chat” communications between individual participants during a call. That means one can easily send “chat” messages between witness and counsel while on camera, and no one would know. Also, a witness can easily have a separate monitor – iPhone, iPad, etc., in front of them, on a desk, or even in their hands during the examination that would allow a means of separate communication. There needs to be explicit instructions on this subject, and agreements in advance all around. Just remember, cell phone text chimes during examination create suspicion, even if they are entirely innocent.
- **Strategic Interruptions.** While this was a trial, it was also a phone call, and things got informal at times. Try to avoid interruptions – but beware that if you set your Zoom settings on “mute” during your opponent’s witness examination, the witness and your opposing counsel will see that, and assume that you cannot possibly get a timely objection on the record. Take time to learn how to use the space bar to override the “mute” feature in Zoom. Big help.




- Witnesses, like the lawyers, should also be aware that their physical demeanor while on a Zoom broadcast is magnified. Normal physical reactions such as moving away from the camera when stressed or feeling challenged, are more visible and can create awkward moments – like when the judge said that one witness seemed harder to hear on cross than he did on direct. Not good.
- **Stage presence.** I have never been more aware of my physical reactions when I was *not* the one asking questions. Be aware of the need to “smile and look at the camera” when not actually asking questions of the witness. Not only did I feel awkward looking at the camera, but also down or away from the camera at first. It really is just like being in the presence of the jury in the courtroom – only magnified with the camera only a few feet away from your face, and a “live-stream” audience to boot.

All in all, despite the short lead-in and steep learning curve, this was a good experience for all involved. I was forced to get comfortable with a technology I did not know, and honestly did not plan to get to know because I at least hoped, like the rest of us, that all of “this” was just temporary.

But the truth is social distanced law practice is not going away anytime soon, if ever. As things currently stand, most Texas counties are not expecting to call juries until July, and that sounds optimistic. Getting jurors to show up after July will be a major problem even if the courts re-open.

On the other hand, most judges (and lawyers) are growing accustomed to using Zoom or other similar platforms for hearings and depositions. In fact, many judges have noted

that they “like” the Zoom system better than the old-school, in-person way of doing things. And, some suggest that Zoom hearings are here to stay regardless of whether things ever return to “normal” again.

Plus, keep in mind your clients. Things are about to change for our relationship with them. They enjoy being able to live-stream our hearings or depositions from their offices (at home or work). And, perhaps more importantly, our clients will lose interest in paying us to go across the state or country to interview witnesses, attend hearings or even to take depositions now that the genie is out of the bottle and everyone has learned how easy it is to work remotely. We can do this all by Zoom now, and we lawyers will have to justify being “old school” and wanting to meet with our witnesses, experts or even perhaps judges, in person. The technology is cheap, quick, efficient, and we lose very little in the translation (well, sort of). And, just think, it is not all that bad to be able to make it home for dinner, either! 





MEMBER NEWS: Have news about changes in your firm, promotions, memberships and organization or community involvement? Please send all firm news to aimee@jee.com in Word format.



SCDTAA Docket

Barnwell Whaley Named to 2020 *U.S. News - Best Lawyers*® “Best Law Firms” List in 16 Practice Areas

CHARLESTON, SC – Barnwell Whaley Patterson & Helms, LLC has been ranked in the 2020 *U.S. News - Best Lawyers*® “Best Law Firms” list for the tenth consecutive year in 16 practice areas. Firms included in the 2020 “Best Law Firms” list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.

For the Charleston, South Carolina regional area, Barnwell Whaley is recognized as a Tier 1 law firm in the areas of:

Bet-the-Company Litigation
Commercial Litigation
Intellectual Property Litigation
Mediation
Medical Malpractice Law - Defendants
Personal Injury Litigation – Defendants
Personal Injury Litigation – Plaintiffs
Trademark Law

In addition, Barnwell Whaley is listed on Tier 2 in the areas of Admiralty and Maritime Law, Construction Law and Insurance Law in Charleston, SC and in the area of Litigation – Insurance for the Wilmington, NC office.

The firm is ranked on Tier 3 for Arbitration, Corporate Law and Product Liability Litigation – Defendants in Charleston and Personal Injury Litigation – Defendants in Wilmington.

Wilmington Attorney Chris Hinnant Recognized in 2020 *North Carolina Super Lawyers*

WILMINGTON, NC – Barnwell Whaley Wilmington member attorney Chris Hinnant has been recognized as a *Top Rated Civil Litigation Attorney* in the 2020 *North Carolina Super Lawyers* list. Hinnant concentrates his law practice in the areas of medical malpractice, construction defects, premises liability, dram shop claims, personal injury and all manner of commercial disputes. *Best Lawyers in America* recognizes him for his work in personal injury defense litigation. Hinnant works at the firm’s Wilmington, NC office, located in the historic Murchison Building at 201 North Front Street.

Each year, no more than five percent of the lawyers in the state are selected by the research team at *Super Lawyers* to receive this honor. *Super Lawyers*, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and



peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.

Four Barnwell Whaley Attorneys Named as *Legal Elite* by *Charleston Business Magazine*

CHARLESTON, SC – Barnwell Whaley attorneys M. Dawes Cooke, Jr., David S. Cox, Barbara J. Wagner, and Jeffrey Bogdan have been named to the 2019 “*Legal Elite*” list published by *Charleston Business Magazine*. *Charleston Business Magazine* recognizes Lowcountry area attorneys with a peer-nominated *Legal Elite* list of leading attorneys in 20 practice areas.

David Cox is profiled in the publication this year for his work in the areas of business litigation and intellectual property. An accomplished business litigator, Cox represents businesses in all matters from general business advising to risk management and litigation of commercial disputes, including those related to intellectual property as well as products liability.

Dawes Cooke is recognized for his work in insurance law. Cooke adds his Legal Elite award to his growing list of accolades from *The Best Lawyers in America*, *Benchmark Litigation*, and *Chambers USA*, among others.

Barbara Wagner, PhD is recognized for her work in construction law, where she represents owners, developers, general contractors, sub-contractors, engineers, manufacturers and suppliers of construction products in business, construction and product liability matters.

For the second year in a row, Jeff Bogdan is named a Lowcountry legal elite for his work with tax and estate

matters. Bogdan has experience with all aspects of estate planning, including establishing wills, powers of attorney, and end-of-life medical directives, as well as with tailoring complex trusts to protect and preserve assets upon death and during life. Jeff is also proficient in representing personal representatives and beneficiaries in probate proceedings.

All four of Barnwell Whaley’s *Legal Elite* named attorneys are additionally listed as *South Carolina Super Lawyers*, and all hold *Martindale Hubbell AV* Preeminent ratings.

Barnwell Whaley Member Barbara Wagner Elected to Charleston County Bar Executive Committee

CHARLESTON, SC – Barnwell Whaley member attorney Barbara J. Wagner, PhD was elected to the Charleston County Bar Association Executive Committee at the association’s annual meeting February 27th at the Francis Marion Hotel downtown. The Charleston County Bar was founded in 1699 with the purpose of maintaining high standards in the legal profession and to provide outstanding legal education and professional development for Charleston County attorneys. Its goals also include public service and better access to legal services for all citizens in Charleston County.

Dr. Wagner focuses her law practice in the areas of business law and civil litigation, specifically professional liability, construction defects, insurance defense, asbestos litigation and toxic torts. A graduate of Indiana University (B.S.) and the University of California, Davis (Ph.D.), Dr. Wagner earned her juris doctor *magna cum laude* as a member of the first graduating class of the Charleston School of Law. She has been recognized by *Charleston Business*



Magazine and *South Carolina Super Lawyers* for her work in construction law and personal injury-products matters. She holds a Martindale-Hubbell Preeminent rating (the highest rating available, formerly referred to as AV).

Four Barnwell Whaley Attorneys Named to 2020 *The Best Lawyers in America* List – Dawes Cooke Named *Bet-the-Company Litigation Lawyer of the Year*

CHARLESTON, SC – Barnwell Whaley Patterson & Helms is pleased to announce that seven attorneys: M. Dawes Cooke, Jr., Randell C. Stoney, Jr., K. Michael Barfield, Marvin D. Infinger, and Christopher M. Hinnant have been named to the 2020 “*The Best Lawyers in America*” list. *Best Lawyers* has published its list for over three decades and is widely considered as one of the most reliable, unbiased sources of legal referrals worldwide. Lawyers on the list are reviewed by their peers on the basis of professional expertise and undergo an authentication process to make sure they are in current practice and in good standing. Listings are divided by geographic region and practice areas. Barnwell Whaley attorneys are recognized for their work in the Charleston, SC and Wilmington, NC markets.

Charleston attorney Dawes Cooke is named by *Best Lawyers* as the 2020 *Bet-the-Company Litigation Lawyer of the Year*. He has been previously named *Lawyer of the Year* on seven occasions and is recognized for his work in matters pertaining to Commercial Litigation, Bet-the-Company Litigation, Mediation, Arbitration, Personal Injury Litigation - Plaintiffs, Personal Injury Litigation - Defendants, Medical Malpractice Law – Defendants, and Litigation-Healthcare.

Barnwell Whaley managing member attorney Randell C. Stoney, Jr. is named to the Charleston, SC *Best Lawyers* list for his legal work in the areas of Construction Law, Personal Injury Litigation - Defendants, and Product Liability Litigation - Defendants.

K. Michael Barfield is recognized by *Best Lawyers* for his handling of insurance law matters. He is a member attorney in the firm’s Charleston office.

Marvin D. Infinger has received the Charleston area *Best Lawyers’ Lawyer of the Year* designation on four occasions: in 2019 and 2015 for work in Admiralty and Maritime Law, in 2015 for Litigation – Intellectual Property, and in 2009 for Bet-the-Company Litigation.

For his work in Wilmington, NC, Barnwell Whaley member attorney Christopher M. Hinnant is recognized by *Best Lawyers* for his work in Personal Injury Litigation – Defendants and in Litigation – Insurance.

Elmore Goldsmith, P.A. Receives Tier One Rankings in *U.S. News - Best Lawyers®* 2020 “Best Law Firms”

GREENVILLE, SC – November 1, 2019 – *U.S. News - Best Lawyers®* released the 2020 “Best Law Firms” rankings, and Elmore Goldsmith, P.A. has been recognized in three areas. For the Greenville metropolitan area, the firm has received tier one rankings for Construction Law, Litigation – Construction, and Litigation – Securities.

Firms included in this tenth edition are recognized for professional excellence with persistently impressive ratings from clients and peers.



“We are honored to be among the law firms included in this year’s report,” said Frank Elmore. “The recognition is acknowledgement of the firm’s commitment to excellence in the service of our clients.”

Elmore Goldsmith Attorney Recognized in *The Best Lawyers in America*® for 2020

The law firm of Elmore Goldsmith is pleased to announce that Frank Elmore has been selected by his peers for inclusion in *The Best Lawyers in America* for 2020.

L. Franklin “Frank” Elmore: Construction Law and Litigation–Construction

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

Earhart Overstreet Welcomes Ryan M. Gunther to the Firm

Earhart Overstreet LLC is pleased to announce the addition of Ryan M. Gunther as the newest attorney at the firm. Mr. Gunther practices in the areas of malpractice and construction litigation, as well as business and corporate matters. He graduated from Charleston Southern University with a degree in Business Administration and continued his education at the University of South Carolina School of Law. During his first year, he clerked for the U.S. Attorney’s Office. During his second year, Mr. Gunther clerked at a plaintiff’s firm focusing on personal injury and products liability. Between

undergraduate and law school, Mr. Gunther was drafted by the Atlanta Braves and spent two seasons with their organization. He remains active in the baseball community today. Mr. Gunther is a member of the South Carolina Bar Association.

Hedrick Gardner Announces Attorney Promotions

NORTH CAROLINA – January 2020 – Hedrick Gardner Kincheloe & Garofalo LLP, a leading regional litigation and dispute management law firm, is pleased to announce the promotion of Lee Dixon.

“We are excited to promote these five individuals in recognition of their years of excellent work and dedication to their clients,” said Hedrick Gardner managing partner Paul Lawrence. “We look forward to many more years of their continued success.”

In the Columbia office, Lee Dixon was promoted to partner. Lee focuses his practice on civil litigation and workers’ compensation.

Murphy & Grantland Founding Shareholder Elected to American Board of Trial Advocates

Murphy & Grantland is proud to announce that our Founding Shareholder John Grantland was elected to membership in the South Carolina Chapter of the American Board of Trial Advocates (ABOTA). ABOTA is an invitation-only organization that has worked since 1958 to preserve and promote the right to a civil jury trial provided by the Seventh Amendment to the U.S. Constitution. Election to ABOTA is based on “personal character, honorable reputation and proficiency as a trial lawyer.” Grantland concentrates his



practice in the areas of insurance defense, trucking and automobile defense, and premises liability. As a defense trial attorney, he has successfully tried over 200 cases to verdict in state and federal courts across 40 counties in South Carolina.

Adams Joins MGC's Charleston Office

CHARLESTON, SC – McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the addition of attorney Ryan Adams to their firm's Charleston office. Adams' practice focuses on construction, litigation, premises liability, products liability, transportation and trucking.

Adams earned a Juris Doctor and Bachelor of Arts from the University of South Carolina. He is also a member of the South Carolina Defense Trial Attorneys Association's Young Lawyers Division.

Bayne Joins American Board of Trial Advocates

COLUMBIA, SC – Attorney Brett Bayne, located in MGC's Columbia office, has joined the American Board of Trial Advocates' South Carolina chapter. ABOTA is an invitation-only organization and requires its members to have at least five years of active experience as a trial lawyer, have tried at least 10 civil jury trials to conclusion and possess additional litigation experience.

Bayne received a Juris Doctor from the University of South Carolina and a Bachelor of Arts from Baylor University. He has practiced law for almost a decade, and currently focuses on general civil litigation defense while specializing in trial litigation. Outside of MGC, Bayne teaches Trial Advocacy at the University of South Carolina School of Law, and has served

as the Faculty Advisor and Head Coach of the school's Mock Trial Bar since 2013. He is also a member of the South Carolina Bar Association, Richland County Bar Association, Claims and Litigation Management Alliance, South Carolina Defense Trial Attorneys' Association and Defense Research Institute.

American Board of Trial Advocates is a national association of experienced trial lawyers and judges. ABOTA and its members are dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. ABOTA membership consists of more than 7,600 lawyers—equally balanced between plaintiff and defense—and judges spread among 96 chapters in all 50 states and the District of Columbia.

Four MGC Attorneys Recognized Among 2019 Charleston Legal Elite

CHARLESTON, SC – McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the inclusion of four attorneys in *Charleston Business Magazine's* 2019 Legal Elite. Recognized attorneys in MGC's Charleston office include:

Amy Jenkins – Labor & Employment
Allison Nussbaum – Workers' Compensation
Danielle Payne – Business Litigation
JD Smith – Construction

The listed attorneys have had the pleasure of being included in *Charleston Business Magazine's* Legal Elite in prior years as well. In 2017 and 2018, Amy Jenkins was recognized for her work in Labor & Employment. In 2017 and 2018, Allison Nussbaum was recognized for her work in Workers' Compensation. In 2018, Danielle Payne was recognized



for her work in Business Litigation. In 2017 and 2018, JD Smith was recognized for his work in Construction.

Since 2017, *Charleston Business Magazine* has honored Lowcountry attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for the 2019 Legal Elite are featured in the September/October 2019 edition of *Charleston Business Magazine*.

Goudelock Named Recipient of CLM Professionals of the Year Award

COLUMBIA, SC – McAngus Goudelock & Courie (MGC), a regional insurance defense firm, is pleased to announce that founding member Rusty Goudelock is a recipient of CLM’s Professionals of the Year Award as Outside Counsel. Nominees were evaluated based on a series of criteria including a demonstrated passion for the industry and willingness to work hard for the greater claims or litigation management community, their development of a transformative or innovative process, their contribution to the success of their company or client(s) through strong claims or litigation management practices, their involvement within the greater claims or litigation management community and the extent to which they exemplify CLM’s mission statement.

“We are all very proud of Rusty and this well-deserved recognition,” says Jay Courie, fellow founding member and MGC’s managing member. “Rusty has been a

leader in our Industry for over 30 years. He is well respected by other lawyers as well as the clients we serve. I can’t think of a more deserving representative.”

Goudelock received a Juris Doctor from the University of South Carolina School of Law and a Bachelor of Science in Business Administration from The Citadel. He has been representing business interests in workers’ compensation and related employment matters for over 30 years, while being an active member in key national professional programs devoted to workers’ compensation issues.

Goudelock is a member of the South Carolina Bar Association, South Carolina Defense Trial Attorneys’ Association, South Carolina Workers’ Compensation Educational Association, Defense Research Institute and the Claims and Litigation Management Alliance. He has been named among Best Lawyers in America, Columbia Business Monthly’s Legal Elite of the Midlands, South Carolina Super Lawyers and was a recipient of the South Carolina Lawyers Weekly Leadership in Law Award and the South Carolina Workers’ Compensation Educational Association’s Lifetime Service Award.

The CLM, a member of The Institutes, is dedicated to meeting the professional development needs of the claims and litigation management industries. As a part of their mission to promote and advance the claims and litigation management professions, the CLM sponsors the CLM Professionals of the Year Award program.



MGC Founding Member, Hugh McAngus, Retires

COLUMBIA, SC – After 44 years of law practice and 25 years of dedication to McAngus Goudelock & Courie (MGC) and his clients, founding member Hugh McAngus announced his retirement on March 13. He is among the instrumental leaders that have grown MGC from one office in Columbia, South Carolina into a regional insurance defense firm with 16 offices in six states. McAngus is also a trailblazer in South Carolina’s workers’ compensation industry, having served in leadership roles across various professional associations.

“Hugh has been the heart and soul of our law firm since it was founded in 1995,” says Rusty Goudelock, fellow founding member. “While we will greatly miss working side-by-side with him every day, we are so excited for him. He goes forth with our deepest love and best wishes, as well as our strongest commitment to continue to carry on the legacy of professionalism, integrity, collegiality and service to our clients that he so strongly instilled in all of us.”

“Rusty and I have been very fortunate to have the privilege of having Hugh as our law partner,” says fellow founding member and MGC managing member, Jay Courie. “Not many people are fortunate enough to spend over 30 years working with their mentor, role model and best friend.”

As a graduate of the University of South Carolina School of Law, McAngus focused on defending complex workers’ compensation claims, while being actively involved in the development of workers’ compensation law on both a state and national level. Since starting his practice in 1976, McAngus not only made it a priority to obtain the

best results for his clients, but he also served as a role model and mentor to a number of attorneys and legal staff.

“We are very excited and happy for Hugh as he begins his retirement and gets an opportunity to spend more time with his family,” says Courie. “He has been a great mentor to so many of us over the years, and has always been a guiding influence in our decision making. Hugh is loved and respected by all and will be greatly missed day to day.”

McAngus has been an active member of the South Carolina Defense Trial Attorneys’ Association (SCDTAA), serving on the board of directors and executive committee, as well as president. In November 2014, he was presented with the prestigious Hemphill Award by SCDTAA, showing distinguished and meritorious conduct and service to the legal profession and the public. McAngus was the 16th recipient of this award in the association’s 50-year history. He is also the past president of the South Carolina Self-Insurers Association, and served on the South Carolina Workers’ Compensation Educational Association’s legislative study committee as well as the Defense Research Institute’s committee on state and local defense organizations.

McAngus has received several other accolades including being named among South Carolina Super Lawyers from 2008 to 2019, Greater Columbia Business Monthly Midlands’ Legal Elite in 2012 as well as The Best Lawyers in America from 1995 to 2020. He was also the recipient of the South Carolina Association for Justice’s Worthy Adversary Award, which honors a defense attorney who displays exemplary professionalism, honesty and ethical behavior.



Robert Mebane Joins MGC's Greenville Office

GREENVILLE, SC – McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the addition of attorney Robert Mebane to their firm's Greenville office. Mebane focuses his practice on litigation matters.

Robert Mebane earned a Juris Doctor from the Charleston School of Law and a Bachelor of Arts from Wofford College and has been practicing law for the last 10 years, with an emphasis in construction litigation and insurance defense.

Pugh Elected to the SCWCEA Executive Board

GREENVILLE, SC – Attorney Stephanie Pugh in MGC's Greenville office was recently elected to the South Carolina Workers' Compensation Educational Association's Executive Board. Pugh received a Juris Doctor degree and a Bachelor of Arts degree from the University of South Carolina, and a Bachelor of Science degree from the University of North Carolina at Pembroke.

Stephanie Pugh has been practicing law since 2009, and regularly speaks and presents on workers' compensation at state-wide seminars. Pugh is also a member of the South Carolina Defense Trial Attorneys' Association, the South Carolina Women Lawyers Association and the Greenville Young Lawyers Association.

The South Carolina Workers' Compensation Educational Association (SCWCEA) conducts seminars and programs designed to educate those involved in workers' compensation claims in the state. Professional members include adjusters, attorneys, employers, human resource managers, insurance,

medical professionals, paralegals, rehabilitation professionals, risk managers, state government and surveillance/investigative.

Legal Publication Recognizes Jim Lehman for Leadership in Law

COLUMBIA, S.C. – S.C. Lawyers Weekly has selected Nelson Mullins Managing Partner Jim Lehman for a 2020 Leadership in the Law award, which recognizes attorneys from across the Palmetto State who have achieved success in their law practice, made contributions to society, and had an impact on the legal profession.

Lehman has served as managing partner of the firm since 2011. He is responsible for overall leadership and management of the firm, including strategy, leadership development, financial performance, and operations at South Carolina's largest law firm. He also maintains a robust practice serving clients in business and securities litigation, white collar investigations, and professional liability.

He leads an organization that focuses its pro bono work and charitable giving in education, the arts, humanitarian needs, and religion. Under his tenure, the firm received the Beacon of Justice Award from the National Legal Aid & Defender Association.

Lehman also uses his legal skills to serve organizations, including currently serving as Claflin University's Board of Trustees chair. Claflin has been recognized as a leading HBCU by U.S News & World Report, which ranked the university No. 9 out of the top 10 HBCUs in America this year. Lehman also has served in various community leadership positions, including his



current service on the Columbia Urban League’s Board.

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Nelson Mullins’ George Wolfe Honored with Development Award

COLUMBIA, SC – The South Carolina Economic Developers’ Association (SCEDA) has honored Columbia partner George Wolfe with SCEDA’s Ally Award. The organization recognized him as a private sector individual “who assists state and local developers in South Carolina and has gone above and beyond to enhance their community or state.” Wolfe is only the fifth recipient to receive the award since its inception in 2005, and the first since 2010.

Wolfe advises clients in the areas of economic development and governmental law. His practice is focused on representing foreign and domestic companies establishing or expanding operations in South Carolina. He has represented companies establishing or expanding operations in the state from around the United States and from many other countries around the world, including China, France, Germany, India, Japan, Sweden, Switzerland, and the United Kingdom.

“Often in economic development, the most impactful people are the ones working diligently behind the scenes to make

things happen,” said SCEDA President Andrena Powell-Baker, SCCED. “It is our distinct honor to recognize George, our friend and colleague, for his many selfless contributions to our industry and, to a larger degree, our state.”

Wolfe co-chairs Nelson Mullins’ Economic Development Practice Group. He is also a former SCEDA president and presently serves in leadership positions for a variety of development-related organizations, including the S.C. Council on Competitiveness and the Columbia World Affairs Council. Wolfe has been active over the years in the development of laws and policies to promote economic development in South Carolina and has participated in drafting and amending many of South Carolina’s tax and incentive laws.

Richardson Plowden recognized as a 2020 “Best Law Firm”

Richardson Plowden is pleased to announce the *Best Lawyers in America* and *U.S. News & World Report* have recognized our Firm with a “Best Law Firm” metropolitan First-Tier Ranking for Columbia, S.C., in the areas of:

Administrative/Regulatory Law

Construction Law

Litigation

Product Liability Litigation – Defendants

Six MGC Attorneys Recognized Among 2020 South Carolina Super Lawyers

COLUMBIA, SC – McAngus Goudelock & Courie (MGC), a regional insurance defense firm, is pleased to announce the inclusion of six attorneys in the 2020 South Carolina Super



Lawyers list, with three being recognized as Rising Stars.

**Brett Bayne (Columbia – Civil Litigation: Defense) –
2020 South Carolina Rising Star**

**Ashley Forbes (Greenville – Workers’ Compensation) –
2020 South Carolina Rising Star**

**Katie Grove (Greenville – Workers’ Compensation) –
2020 South Carolina Rising Star**

**Hugh McAngus (Columbia – Workers’ Compensation) –
2020 South Carolina Super Lawyers**

**Tommy Lydon (Columbia – Business Litigation) – 2020
South Carolina Super Lawyers**

**Bill Shaughnessy (Greenville – Workers’ Compensation)
– 2020 South Carolina Super Lawyers**

The listed attorneys have had the pleasure of being included among South Carolina Super Lawyers in prior years as well. Bayne was named to the Rising Star list in 2018 and 2019; Forbes was named to the Rising Star list in 2019; Grove was named to the Rising Star list in 2019; McAngus has been named to the Super Lawyers list since 2008; Lydon has been named to the Super Lawyers list since 2010; Shaughnessy was named to the Super Lawyers list in 2012, 2018 and 2019.

Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers,

an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.

Dawes Cooke and David Cox ranked in Chambers USA

CHARLESTON, SC – Barnwell Whaley member attorneys M. Dawes Cooke, Jr. and David S. Cox have been ranked in the Chambers USA 2020 Guide for their work in litigation: general commercial matters. Chambers USA ranks the top lawyers and law firms across all the United States of America, with only 18,135 attorneys ranked in the 2020 guide.

Chambers’ litigation coverage includes the full course of a dispute such as pre-trial negotiations, documentation and preparation for trial, summary judgment motions, trial, appeals and enforcement proceedings in commercial disputes before civil courts including proceedings before state and federal trial and appellate courts and United States Supreme Court. Experience with alternative dispute resolution matters, involving non-court mediation, are also considered. Chambers rankings are compiled through assessment of a firm’s work and opinions from external market sources, with an emphasis on client feedback. Firms and lawyers need to demonstrate sustained excellence in order to be ranked in the guide.

Chambers notes, “Dawes Cooke handles product liability, construction defect and personal injury claims as part of a wide-ranging litigation practice. In addition to being an accomplished trial lawyer, he also has experience in arbitration and mediation.” A past president of the South Carolina Bar, Cooke is a Fellow in the American College of




Trial Lawyers and is regularly listed in The Best Lawyers in America, South Carolina Super Lawyers, Benchmark Litigation, and Charleston Business Magazine’s Legal Elite for his work as an accomplished litigator as well as a seasoned arbitrator and mediator. He holds a Martindale-Hubbell Preeminent rating (the highest, formerly called AV).

David Cox is described in Chambers USA as handling “a range of complex product liability cases, particularly in relation to industrial equipment and vehicles. He has further expertise in media-related disputes and IP litigation.” An accomplished business litigator, Cox represents numerous South Carolina and national companies for general business advising, risk management and litigation of commercial disputes, both as plaintiff and defendant. He concentrates his practice in these areas as well as insurance coverage, intellectual property and trade practices litigation. He has been recognized for his work in these areas by Benchmark Litigation, South Carolina Super Lawyers and Charleston Business Magazine as a Legal Elite.

Four Barnwell Whaley attorneys named to 2020 South Carolina Super Lawyers list – Dawes Cooke listed as a top ten attorney in South Carolina

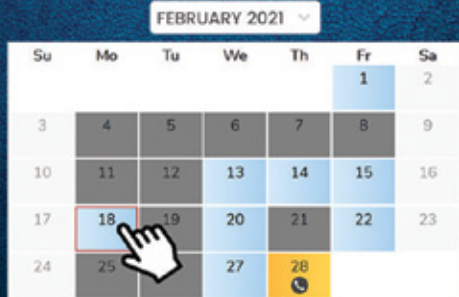
CHARLESTON, SC – Barnwell Whaley attorneys M. Dawes Cooke, Jr., Randell C. Stoney, Jr., and David S. Cox have been chosen for inclusion in the 2020 *South Carolina Super Lawyers*, and Jeffrey Bogdan has been listed as a 2020 *South Carolina Super Lawyers Rising Star*. Member attorney Dawes Cooke has been named to the top ten list for attorneys in South Carolina. Each year, no more than five percent of the more than 10,000 lawyers in the state are selected by the research team at Super Lawyers to receive the *Super Lawyers*



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honor, and 2.5 percent are selected for the *Rising Stars* honor. Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a



patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.

Dawes Cooke is once again recognized by *South Carolina Super Lawyers* as a *top-rated civil litigation defense attorney in Charleston, SC*. He has been listed in Super Lawyers annually since 2008, has appeared in the top 10 list annually since 2009, was featured in 2011, and was listed as the number one attorney in the state in the years 2014, 2015 and 2016.

B.C. Killough, a registered patent attorney, is recognized for the sixth year in a row for his work as a *South Carolina Super Lawyers top rated intellectual property attorney* in Charleston.

Randell C. Stoney, Jr., for the twelfth year in a row, has been selected as a *South Carolina Super Lawyers top rated civil litigation defense attorney*. Listed twice as a top-25 attorney in South Carolina, Stoney works in the areas of civil litigation, personal injury - general and alternative dispute resolution as he is certified as both an arbitrator and a mediator.

David S. Cox has been named a *South Carolina Super Lawyers top rated products liability attorney* for the Charleston, SC area for his work in the area of personal injury – products defense. Cox is also recognized by *Chambers USA, Benchmark Litigation, and Charleston Business Magazine* for his work in products liability, business litigation, and intellectual property litigation matters.

Jeffrey Bogdan is listed as a *South Carolina Super Lawyers Rising Star top rated business litigation attorney*. Bogdan concentrates his law practice on matters involving general

business disputes, civil litigation, and probate and estate law. He is also recognized by *Charleston Business Magazine* as a *Lowcountry Legal Elite* in the area of tax and estate law.

Elmore Goldsmith Attorneys Recognized as South Carolina ‘Super Lawyers’

Greenville, SC – April 28, 2020 – Two attorneys from Elmore Goldsmith have been named by South Carolina Super Lawyers Magazine for 2020. Super Lawyers recognizes attorneys who have distinguished themselves in their legal practice and less than five percent of lawyers in each state are selected to this exclusive list.

Elmore Goldsmith attorney recognized as Super Lawyer:

L. Franklin Elmore – Construction Litigation

Elmore Goldsmith attorney recognized by Super Lawyers as Rising Star: Alan G. Jones

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

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

Michael R. Burchstead Elected Shareholder of Collins & Lacy

Attorney Michael R. Burchstead has been elected as a shareholder of the Collins & Lacy law firm. Through



his Government, Ethics, and Compliance Practice, Burchstead represents public officials, governmental entities, political campaigns, lobbyists and lobbyist principals, and others who have issues with or seek advice on compliance with South Carolina or federal law.

He also defends businesses and professionals in matters before state and federal courts.

“Michael’s practice is addressing an under-served need in this state, particularly in its ability to assist individuals, companies, and governmental entities who want to do the right thing, but have difficulty navigating the complexity of the Ethics Act and other state laws,” said Collins & Lacy President Chris Adams. “He has also proven to be a valuable team member in achieving positive results for Collins & Lacy’s clients in litigation defense.”

Michael Burchstead joined Collins & Lacy in 2017 after serving as the General Counsel for the South Carolina State Ethics Commission, where he provided advisory opinions and prosecuted enforcement actions under the Ethics, Government Accountability, and Campaign Reform Act of 1991. Michael’s experience also includes prosecuting health care fraud cases as an Assistant Attorney General for the State of South Carolina and working as a legislative aide to three members of the United States House of Representatives in Washington, D.C.


Roopal Ruparelia Earns Certified Litigation Management Professional (CLMP) Designation

Haynsworth Sinkler Boyd’s Roopal Ruparelia has earned the Certified Litigation Management Professional (CLMP) designation from the Claims and

Litigation Management Alliance. Each year only 100 participants are selected for the Litigation Management Institute, hosted at Loyola Law School in Chicago.

The Litigation Management Institute is the first certification program specifically designed to provide a comprehensive understanding of the business of litigation management. The program bridges the gap between legal theory and litigation strategy and the business aspects of litigation management.

Roopal heads a robust general civil litigation practice with an emphasis on the defense of both personal injury and construction defect claims. She has tried cases in South Carolina courts for nearly 20 years and is well versed in the challenges facing her clients.

Roopal is a graduate of the University of South Carolina School of Law and Wofford College. She is listed in The Best Lawyers in America for Product Liability Litigation – Defendants. 





2020 Summer Meeting

July 23-25
The Omni Grove
Park Inn
Asheville, NC

2020 Golf Classic

Fall 2020

Trial Academy

Fall 2020

2020 Annual Meeting

November 13-15
The Ritz-Carlton
Reynolds
Lake Oconee,
Greensboro, GA

2021 Summer Meeting

July 22-24
The Omni Grove
Park Inn
Asheville, NC

2021 Annual Meeting

November 18-21
The Sanctuary
Kiawah Island, SC





52nd Annual Meeting Recap

The Ritz Carlton, Amelia Island, FL- November 14-17, 2019

by Lucy Grey McIver



The South Carolina Defense Trial Attorneys' Association held our 52nd Annual Meeting at the Ritz Carlton on Amelia Island. While the weather was not the ideal for fun in the sun activities, we enjoyed an exciting few days that provided opportunities and programming for members at every level, from seasoned litigators to young lawyers and Emerging Leaders.

On Thursday following business meetings, President Jamie

Hood hosted a Welcome Reception to provide attendees with an opportunity to connect with old and new friends. We scattered about the resort and into town to take advantage of Amelia Island's hip dining scene.

We kicked off our first full day with a breakfast honoring the judiciary. Then we got down to business with a welcome from Jamie Hood, followed by our membership meeting. Then we laughed through the Humorist at Law's ethics presentation, "May It Displease the Court," and marveled at how funny



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ethics can be when certain attorneys (not from around here!) displease the court. Next we heard from Nextpoint on how modern technology can help you please the court and win your case and from our stellar appellate court judges, the Honorable Aphrodite Konduros and the Honorable Stephanie McDonald, on how to prevail at the appellate level. After a morning of education, we joined the Women in Law for a reception overlooking the beautiful grounds, then engaged in various activities around the island. We reconvened for our formal banquet and danced the night away with the entertaining live band, Atlanta Rhythm & Groove.

On Saturday morning, after an optional beach run, we heard from R&D Strategic Solutions on the successful Trial Superstars program. Anthony Livoti moderated a panel of exceptional leaders consisting of the Honorable Bruce Williams, Molly Hood Craig and John Robert Murphy for the Emerging Leaders session as part of our continuing effort to grow leaders within SCDTAA. We also heard from the Federal Bureau of Investigation's Cindy Starns on cyber warfare and learned about who is attacking us and how to prepare. Remaining with this theme, Dixon Hughes Goodman, LLP provided us with tips and pitfalls in digital forensics. Justice Kaye Hearn delivered an update from our state's highest court and kept us entertained with stories about some of our friends. And we wrapped up our Saturday learning with perspectives from our corporate counsel panel. The weather forced us to cancel the tennis tournament, but we were able to move ahead with the low country dinner and oyster roast indoors. While we would have preferred to be overlooking the ocean outside, no one complained about an evening inside the Ritz.

Plans are underway for the 2020 Annual Meeting which will be at the Ritz Carlton Reynolds, Lake Oconee, Georgia. Please mark your calendars and join us November 13-15th at Lake Oconee. 🏠



SCDTAA 2019 Annual Meeting The Ritz Carlton, Amelia Island, FL

Event Photos



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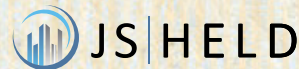


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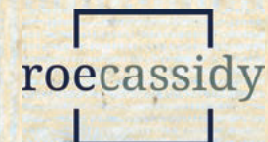
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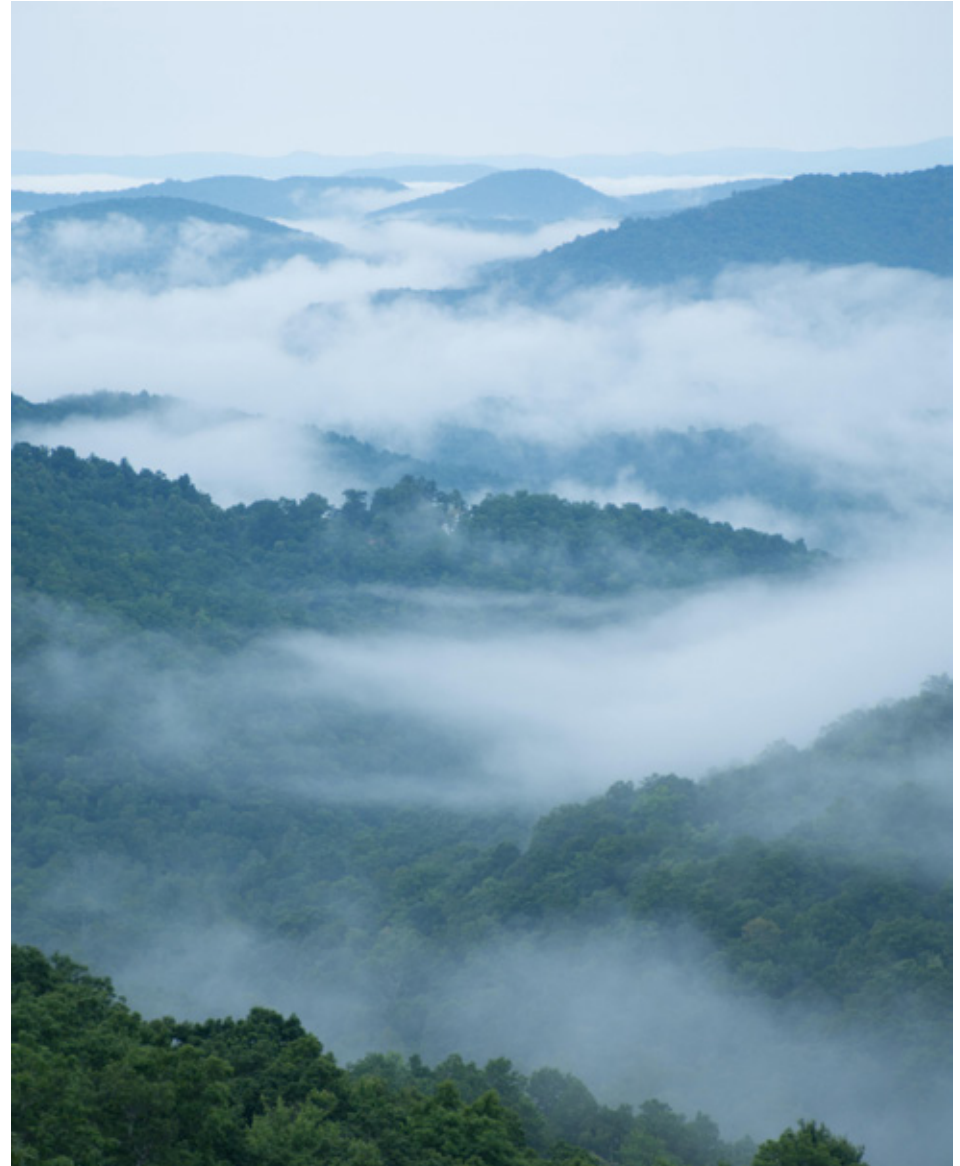
Summer Meeting Preview

by Fred W. Suggs, III



The SCDTAA is excited to return to the Omni Grove Park Inn for its 2020 Summer Meeting, scheduled for July 23rd – 25th. As always, we have an exciting program planned for the attendants and guest Commissioners. Attendants will have an opportunity to earn 6.5 hours of CLE credits while hearing from iconic trial lawyers and seasoned judges, as well as Boeing Chief Counsel Mark Fava, who will present to us on managing a company through crisis.

In addition to a robust CLE program on Friday and Saturday, we will also have social events for attendants and family members, including an exciting kids program on Thursday and Friday evening from 6-10pm, our annual silent auction and reception on Thursday evening, and Bluegrass, Blue Jeans and Barbeque on the Blue Ridge Friday evening. 🏹



Blue Ridge Mountains, Asheville, North Carolina



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Livoti Limelight

by Peter E. Farr

Legendary dancer, occasional crooner, loving husband and father, mediator extraordinaire – these are but some of the ways to describe Anthony Livoti. Whether quoting *The Godfather* (no, not a line, the entire movie) or singing loudly in the hallways of his office building, Anthony lives and works with an infectious joy and effortless magnetism no matter the sphere in which he finds himself.

Graduation from the Citadel launched Anthony upon the world through a career with the United States Navy. The Navy threw him back after 4 years and 2 deployments, and he attended USC Law to begin his next career. Through hard work or a few well-placed horses, Anthony piled up accolades to include Law Review, Order of the Wig and Robe, and Order of the Coif. He married his wonderful wife, Jill to whom he has been married over 25 years and counting.

1997 found Anthony in practice as a defense attorney in Columbia. His current firm, Murphy & Grantland, soon successfully persuaded Anthony to join its ranks, and he has now been with that group for twenty years. He maintains a robust statewide trial practice and is one of a dwindling number who can discuss any area of the state from personal experience, a resource that aids him immensely in his ever-growing mediation practice. Not content to merely practice law, Anthony fills valuable



“Professional development through legal organizations has characterized much of Anthony’s practice. He joined DRI and the SCDTAA early in his career, eventually offering to serve as a member of the board for SCDTAA and ultimately rising to President of the organization. His tireless work, his endless passion, and his creative thinking fueled the creation of an emerging leaders program within SCDTAA that seeks to equip and involve young lawyers to step forward in their firms, the legal profession, their families, and their communities.”

roles in both firm management and firm entertainment.


Professional development through legal organizations has characterized much of Anthony’s practice. He joined DRI and the SCDTAA early in his career, eventually offering to serve as a member of the board for SCDTAA and ultimately rising to President of the organization. His tireless work, his endless passion, and his creative thinking fueled the creation of an emerging leaders program within SCDTAA that seeks to equip and involve young lawyers to step forward in their firms, the legal profession, their families, and their communities. DRI recognized Anthony in 2019 with the prestigious Fred H. Sievert Award for exemplary leadership of SCDTAA.

A big believer in professional networking, Anthony has built his practice and close friendships through valuable memberships in SCDTAA, DRI, IADC, and ABOTA.

Anthony continues to lead through service in areas of law firm personnel, the SCDTAA emerging leaders program, and mediation work. He teams with law partner Henry Deneen to provide emotional intelligence

and leadership presentations and seminars to firms and professional organizations in and out of South Carolina.

A look around Anthony’s office (just before it was packed up and converted to a storage room due to his new affinity for working remotely) reveals his love for his family, the Red Sox, and golf. He lives out his faith in servant leadership by serving as an elder at Northeast Presbyterian Church, where he also strums his guitar with the band.

Anthony is an experienced lawyer who is approachable, engaging, knowledgeable, and caring. These character traits make him an ideal sounding board for seasoned attorneys and an excellent resource for younger attorneys looking to network, get involved, or gain wisdom to aid in their careers. Anthony is always thinking of others, is often looking for new and creative ways to better himself and any organization of which he is a part, has served admirably as leader of SCDTAA, and is worthy of this brief spotlight recognizing his work and introducing him to others who have not yet had the pleasure of getting to know him more. 



Derham Cole

by C. Daniel Atkinson

Derham Cole served on the SCDTAA Board, from 2012 to 2018, representing the Fifth District. During that period, he served as an attorney at Wilkes Law Firm, P.A., in Spartanburg, participating in defense and business litigation. He is the son of Seventh Circuit Resident Judge J. Derham Cole. From 2009 to 2018, Cole represented the 32nd District in the South Carolina House of Representatives. In 2018, Cole assumed the position of Associate Vice Chancellor for Finance and Administration at the University of South Carolina Upstate. He assumed the office of Interim Chancellor, his current position, in February 2020.

Cole sat down with the DefenseLine, a publication he previously edited, to provide insight as to how a former defense litigator moved into the world of higher education.

Q: What led you to move to higher education from your defense practice?

I was fascinated by the opportunity to be involved in the education and preparation of the next generation of citizens and leaders in our region. My interest further developed through learning more about higher education during my service as the Chairman of the Higher Education Subcommittee of Ways and Means while I was in the General Assembly.



Q: What lessons from your practice do you apply in your work at Upstate?

The skills I developed as a lawyer in private practice have been invaluable in my work at Upstate, particularly in light of the tremendous uncertainty created by the COVID-19 pandemic. The ability to identify issues and analyze them quickly and thoroughly are critical to a fast-paced and complex organization such as Upstate.


Q: What advice do you have for lawyers seeking careers in higher education, particularly in administration?

Be open to career opportunities that do not fall squarely within the office of general counsel at an institution of higher education. At Upstate, we have several lawyers in leadership positions besides myself, including our Athletics Director; our Director of Institutional Equity, Inclusion and Engagement; and a member of our Faculty Senate. They all make valuable contributions to the life of the university, even though not serving in traditional lawyer roles.

Q: Do you work with outside counsel in your current position? If so, what do you look for in outside counsel, and what would you like to see outside counsel do differently?

We do work with outside counsel, although it is often the Office of General Counsel initially engaging outside counsel. Where we work directly with counsel, we are usually looking for someone with specialized experience in a particular area. I have generally been pleased with the outside lawyers with whom I have worked.

Q: What would you like to see SCDTAA to help you educate college students?


I could envision SCDTAA engaging with our students in the form of mentorships for students interested in law, or serving as guest speakers at programs geared toward pre-professional students. 



Young Lawyers Division Update

by Nickisha Woodward



Young Lawyers will be hosting a virtual Happy Hour sponsored by JS Held on Thursday, May 28th at 5:00pm. You can register for the Happy Hour on the website www.scdtaa.com. Additionally, the Young Lawyers Division is currently getting ready for the July Summer Meeting at the Omni Grove Park in Asheville, North Carolina. The YLD is currently looking for young lawyer participation in the summer planning as well items for the annual charity auction. If you are interested in helping, please contact Nickisha Woodward at nwoodward@turnerpadget.com. 





DRI Leadership Conference

by David A. Anderson

On January 8-10, DRI held their annual Leadership Conference in Chicago, IL. DRI is the Nations leading organization tailored to those who defend civil actions. Attendees included the DRI Board of Directors, State Representatives, State Membership Chairs, State Local Defense Organization Leaders to include their Executive Directors, Substantive Law Committee Chairs and Vice Chairs and the DRI Membership Committee as well as the Presidents of the sister defense organizations, FDCC, ADTA and IADC.

Workshop topics included the following:

“How to Hold your Leaders Accountable”

“How to Effectively Communicate and Inspire Performance”

“Effective Team Building Strategies Among your Leadership Team”

“How to Enhance Creative Thinking Among your Leadership Team”

A Philanthropic/Networking event was held where teams were formed to assemble 18 10-speed Schwinn bicycles to be donated to a local charity providing bikes for young children. Those in attendance from South Carolina were myself as the DRI State Representative for South Carolina; Aimee Hiers, Executive Director of SCDTAA; Sarah Wetmore Butler, President Elect for SCDTAA; Catherine Ava Kopiec, Membership Chair and Second Vice Chair for Young Lawyers; Christine Stegmaier, Vice Chair Retail & Hospitality and James Weatherholtz, Chair Product Liability.

The Conference concluded with an overview of this years annual meeting which is being billed as “The Summit between Business and their Counsel” to be held in Washington, DC October 21-24, 2020. Some of the Industry Leaders who have made pledges to attend are: The Hartford Insurance Company; Equifax; COSTCO; Honeywell; Starbucks; UBER; Eaton; Nutrisystem, to name just a few. Business leaders and General counsel are coming to the Summit, are you? 🏠





DRI Update

by Jon Berkelhammer, Mid-Atlantic Regional Director, DRI

Hi everyone,

I am Jon Berkelhammer, the Mid-Atlantic Regional Director for DRI. Aimee asked if I would provide a brief update on what is happening at DRI during these trying times, and I was happy to do so.

First, we hope you, your families, and your colleagues are all healthy and safe. I have found a need to reach out and virtually touch someone on a regular basis. I hope you are all staying in touch with your friends and colleagues, and it need not be by Zoom. I hope you will make a point to reach out to someone, you both will feel better for doing so.

And, as far as staying connected goes, although all DRI seminars at least through May 15 are cancelled, most committees are actively putting on webinars or hosting calls. This is a great time to get involved. If you are unsure if your favorite seminar is cancelled, the DRI home page has a link to a list of all cancellations. If your favorite one is not on there, check back for updates. Notwithstanding the cancellations, DRI has been putting on webinars for members and non-members. For example, DRI recently hosted a webinar on how to reopen your office, which identified some of the issues you may need to confront as we begin to resume our more normal lives. We are


hoping to get the first part to the SLDOs for repeat showing. Part two of this webinar is coming. The first webinar was free, and I am hoping the second part will be as well.

In addition, the DRI home page has a coronavirus information link. It includes health information, stay at home orders, and some court information. It also has a direct link to DRI for Life.

Next, as many of you know, John Kouris, DRI's long-time executive director, recently stepped down. After a nationwide search, DRI has hired Dean Martinez as the new Chief Executive Officer. Dean started Monday, April 27. What a time to start, right?

DRI service projects continued this month with a virtual 5-K through DRI Cares. In this time of crisis, many food banks have been wiped out. What better time to have a food drive, fund-raising challenge, or other fund raiser for food banks or similar deserving organizations.

Finally, I would be remiss if I did not mention the Summit, formerly known as the annual meeting. It remains scheduled for October 21-24 in Washington, DC. If it happens, we will have a regional dinner and hope you can attend.

Please be safe. 



Hemphill Award

CALL FOR NOMINATIONS

1. ELIGIBILITY

- (a) The candidate must be a member of the South Carolina Bar and a member or former member of the South Carolina Defense Trial Attorneys' Association. He or she may be in active practice, retired from active practice or a member of the judiciary.
- (b) The current officers and members of the South Carolina Defense Trial Attorneys' Association Executive Committee at the time the award is made are not eligible.

2. CRITERIA/BASIS FOR SELECTION

- (a) The award should be based upon distinguished and meritorious service to legal profession and/or the public, and to one who has been instrumental in developing, implementing and carrying through the objectives of the South Carolina Defense Trial Attorneys' Association. The candidate should also be one who is or has been an active, contributing member of the Association.
- (b) The distinguished service for which the candidate is considered may consist either of particular conduct or service over a period of time.
- (c) The candidate may be honored for recent conduct or for service in the past.

3. PROCEDURE

- (a) Nominations for the award should be made by letter, with any supporting documentation and explanations attached. A nomination should include the name and address of the individual, a description of his or her activities in the Association, the profession and the community and the reasons why the nominee is being put forward.

Nominations are due to Aimee Hiers at SCDTAA Headquarters by July 1st.

For more information contact Aimee at aimee@jee.com.

SCDTAA – One Windsor Cove • Suite 305, Columbia, SC 29223





Legislative Update

by Jeffrey N. Thordahl, SCDTAA Lobbyist

Needless to say this is not the typical spring legislative update. The General Assembly met in session on April 8 due to the COVID-19 pandemic and then not again until a one-day session on May 12. Among many cancelled events this spring, the annual Oyster Bar legislative function was cancelled. The current legislative session adjourned *Sine Die* on May 14. On May 12 the General Assembly did adopt the annual *Sine Die* Resolution that would allow the bodies to return to Columbia under the terms of the Resolution. Also, on that day they adopted a Continuing Resolution to allow state Government to continue to operate after July 1 at the existing level of funding thus avoiding a government shut down. It is expected that they will come back in September to finish the annual budget based on what is and will continue to be a drastically reduced state revenue estimate. Since we are in the second year of the two-year session, legislation that is pending will die at the end of the year and will need to be reintroduced when the next two-year session begins in January 2021. Given the narrow limitations set by the *Sine Die* Resolution, only bills that have passed one body or the other or deal with COVID-19 in some fashion may be taken up. Therefore, bills that are unlikely to see further activity this year include the bill that was unexpectedly introduced dealing with attorney conducted *voir dire*, reform to the



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Tort Claims Act and the Joint and Several Liability Bill.

In addition, it is anticipated that the General Assembly will reconvene in Columbia sometime in June to appropriate and authorize the expenditure of the Federal COVID-19 funds that total almost \$2 Billion for South Carolina. The Governor and his accelerateSC committee will make detailed recommendations on how the money should be used and will ask the General Assembly to approve the recommendations. As has been widely publicized, Governor McMaster has issued a number of Executive Orders related to the pandemic. These orders can be found at <https://governor.sc.gov/executive-branch/executive-orders>. As mentioned, Governor McMaster announced the creation of accelerateSC, a coordinated economic revitalization plan involving small and large business leaders, healthcare professionals, local government officials and education professionals. The accelerateSC participants will make immediate, intermediate and long-term recommendations to the Governor for revitalizing and expanding South Carolina's economy while protecting the health of South Carolina citizens. Much of the discussion will be related how to best use the \$1.9 Billion the State received from the Federal CARES Act to be used for COVID 19 related expenses.

State officials have commented on the effects of the pandemic in South Carolina. Tourism Director Duane Parrish noted that last year South Carolina's tourism industry generated over \$24 billion. This year that number is expected to be half of that at \$12 billion. He said 571 hotels, more than half of all hotels in our state, were closed at one point. Per the SC Department of Workforce, from March 15, 2020 to May 12, 2020, the

agency has paid more than \$1.09 billion in a combination of state UI benefits, Pandemic Unemployment Assistance (for the self-employed and others) and the Federal Pandemic Unemployment Compensation (\$600 per week). The two hardest-hit employment sectors are tourism and healthcare.

A topic of legislative discussion that is beginning now and will continue into the next session is what type of legal liability reform should be debated and passed in light of the pandemic. During the meeting of the Response committee of the accelerateSC committee, Ted Pitts, the CEO of the SC Chamber of Commerce, discussed a survey that they are conducting of small and large business to understand their needs and concerns in the short and long term as they reopen. One item that immediately surfaced is the need to adopt civil liability reform. The discussion was that while businesses want their employees and customers to feel safe the businesses themselves need to feel like they will not be subject to frivolous lawsuits. Senator Davis spoke to the possibility of developing Best Practices that if they are adhered to then businesses would be protected from civil liability claims. He understands the trial bar is likely to oppose such liability limits so they may need to be temporary in nature. This will be an area that needs close monitoring and input from the Defense Bar. The main points of the business community lead concept are as follows:


1. Safe Harbor – Temporary and limited immunity from liability is needed to protect a business or industry from a person alleging exposure to COVID-19 if it followed public health guidance at the time. The standard of care should be a reasonable attempt



to comply with public health guidance at the time.

2. Temporary – The safe harbor should begin at the start of the pandemic and should be effective only until the end of the pandemic or the end of 2022 whichever is earlier
3. Products liability – a limited and temporary safe harbor from liability for manufacturers making PPE is needed, except for an injury that results from reckless or intentional conduct.
4. Workers Compensation claims – need to clarify that on-the-job claims of exposure to COVID-19 by employees are exclusive to the workers compensation system
5. No protection for bad actors – the protection does not apply if conduct was intentional or reckless and the employer did not reasonable attempt to follow public health guidance.

Other reforms with legal repercussions will also be debated going forward. When the General Assembly met on April 8, Senate Bill 1188 was introduced, which seeks to retroactively mandate insurance coverage for business interruption claims related to COVID-19 – regardless of existing policy terms, limitations, and exclusions. The future is uncertain but you can count on these issues and others to require your constant awareness and participation.

On a final note, the June primaries are still expected go forward as planned on June 9th. As a reminder all House and Senate seats are up for election this year. 



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Conducting Mediation through Video Conferencing

by Virginia R. Floyd



While many of the “normal” aspects of the legal practice may be suspended due to the COVID-19 outbreak, those willing to use remote communication technologies such as video conferencing may find that they are able to participate productively in mediations, as well as depositions and other types of meetings.¹

Several mediators in South Carolina are willing to conduct mediations via video conferencing and have achieved productive results. Recently, three members of the Dispute Resolution Section of the South Carolina Bar promoted the use of video conference mediations and demonstrated the mechanics of the same.² Among video conferencing



Can a positive result be achieved through video conference mediation? Florence, SC Mediator Karl Folkens notes, “Early anecdotal results reveal that online mediations conducted by mediators knowledgeable in how to seamlessly conduct the sessions result in similar resolution rates as in-person mediations, assuming all persons necessary to reach agreements actively participate in the online mediations.”

platforms, these presenters reported that they prefer Zoom because it offers a “breakout room” feature which can be used by mediators to group and privately conference with mediation participants. A mediator familiar with Zoom (or any other video conferencing platform) will be sure to utilize appropriate features of the software to ensure that a mediation is secure and uninterrupted.

Can a positive result be achieved through video conference mediation? Florence, SC Mediator Karl Folkens notes, “Early anecdotal results reveal that online mediations conducted by mediators knowledgeable in how to seamlessly conduct the sessions result in similar resolution rates as in-person mediations, assuming all persons necessary to reach agreements actively participate in the online mediations.”

If your client is willing to participate in a mediation via video conference, there are several items which you should consider and address, in addition to your normal preparation for mediation.

Practice Tips: Prior to a Video Conference Mediation

Attorneys should prepare for a video conference mediation as if the mediation were being conducted in person. This would include preparing the client, coordinating with any others who may need to be present for the mediation, and

providing any requested pre-mediation submissions to the mediator. In addition to normal preparations, consider addressing the following areas specific to video conferencing:

- **Remote Mediation is Voluntary.** Clients should be advised that they are not required to mediate via video conference. While there is an opportunity to move their case along, they can always choose to wait for normal business to resume and attend an in-person mediation.
- **Check Your Tech.** For video conferencing, each participant will need a device which can connect to the internet and which has a working camera and microphone. If such a device is unavailable, but a person still wishes to participate in a video conference mediation, most platforms also provide a call-in number for telephonic participation.
- **Test Your Tech.** In advance of the video conference mediation, make sure that all technology is in working order. If a client or other attendee is not familiar with the video conferencing platform which will be used for the mediation, consider offering them an opportunity to test it out with your assistance.
- **Pick Your Location.** Participants (including attorneys) should consider the physical location from which they



will participate in the video conference mediation. Folkens describes this as an “Interruption Free Zone” and recommends that participants log on from secure locations with secure internet connections. If the client wishes to attend from their home, are they able to identify a location which will offer minimal interruptions? Could an office conference room be utilized while appropriate social distancing measures are maintained? Does the selected location offer a reliable internet connection? If a portable device such as a laptop or tablet is being used to video conference, does the user have a power cord and a reliable power source?

- **Anticipate Glitches.** Technology can fail despite our best preparations. All participants should know that they may lose a connection or inadvertently be “dropped” of a meeting. Participants should be prepared to find their login information and try to reconnect if a glitch occurs. This may take longer than normal if the meeting is “locked” and the meeting host (the mediator) must re-admit the participant.
- **Update Software.** Make sure that participants are using the latest version of the video conferencing software available. Zoom, for example, issued an update in January and mid-April 2020 which added features and security enhancements.
- **Confirm Security Measures.** Confirm the mediator is familiar with the selected video conferencing platform and that appropriate protections for the mediation will be used. If using Zoom, make sure you have received a unique Meeting ID and password in advance.

- **Provide Contact Information.** If the mediator plans to send email invitations directly to all participants enclosing login information for the mediation, provide contact information for your attendees in advance. As technology may be interrupted or fail, an email and a telephone number for each attendee will be helpful.
- **Mediation Agreement.** If the mediator is able to provide the mediation agreement in advance, obtain the signatures of all participants prior to the start of the video conference mediation.

Practice Tips: During the Mediation Conference

The video conference mediation will follow the same general form as an in-person mediation. Below are a few areas for consideration during a mediation process specific to video conferencing:

- **Opening Presentations.** If you are planning on giving an opening presentation with visual aids, be sure you are familiar with the screen sharing tools of the video conferencing platform and let the mediator know in advance. Folkens recommends that presenters set their video conference software to “gallery mode” in order to view all participants while giving their presentation; Folkens also notes, “Reading from depositions and the like isn’t as effective as looking straight into the camera and taking advantage of the captive audience you have”, particularly because a video conference mediation may enhance counsel’s ability to talk directly to the opposing party.
- **Screen Sharing, Generally.** There may be benefits to sharing your computer screen with the mediator, your



“As we know, glitches or tech failures are always a possibility. There may also be participants in a video conference mediation who are not as familiar with the platform and may manipulate its features with less ease. If something does not run smoothly during your video conference mediation, have patience and give grace. A solution or a workaround will present itself.”

mediation group, or even with all of the participants in the video conference mediation. Screen sharing can be a great way to show a piece of key evidence, play a recording, or draw attention to a particular document or report. If you are going to share your screen at any point during a video conference mediation, it is always a good idea to minimize unrelated windows, such as your email, and disable desktop notifications during the time you are sharing your screen.

- **In-Platform Chatting.** Many video conferencing platforms have an area in which meeting participants can type messages to one another, either to the whole group or individually. The mediator, as the meeting host, is typically able to enable or disable the chat feature. Even if a chat feature is enabled, in order to avoid a potential inadvertent disclosure of client confidences it is better to use a different mechanism for client communication during the mediation.
- **Settlement Agreement.** In Circuit Court cases, if a resolution is reached, ADR Rule 6(f) requires that the parties reduce the settlement to writing and sign the same, along with their attorneys. However, the traditional in-person signatures are not possible

during a video conference mediation. There are several possible options which may provide a workaround for the video conference mediation. If the parties all have access to a printer, they can each print, sign, and provide a photo or scan their signature page to the settlement agreement. Alternately, the mediator may circulate an email to the parties and their counsel containing the settlement terms and request that the parties reply or reply all accepting the same. Some mediators may use Adobe Sign or DocuSign to obtain digital signatures from the participants. As an additional method to memorialize the agreement, the mediator may ask the parties to agree to acknowledge their agreement to the settlement in a brief recording on the video conferencing platform.

- **Grace.** As we know, glitches or tech failures are always a possibility. There may also be participants in a video conference mediation who are not as familiar with the platform and may manipulate its features with less ease. If something does not run smoothly during your video conference mediation, have patience and give grace. A solution or a workaround will present itself.

Folkens also notes that in video conference



mediations, unless it is a “speed mediation”,

Be mindful that many of the same mediation techniques that are used in a live, in-person mediation also occur in an online mediation. Even one nationally renowned mediator who uses Zoom regularly is reporting that non-lawyers are finding the online process more engaging than the lawyers. I think lawyers tend to be more impatient, and we old lawyers are especially thinking, “Can’t we just move on!” For the clients, this is their entire life and most likely their first real encounter with the judicial system. As some of you have heard me say before, mediation is like baking a cake, and you don’t want to take it out of the oven too early or else it will fall. The online version of mediation seems to accentuate that.

We are all experiencing a new way of doing business and all wondering what the next days, weeks, and months may bring. While video conference mediations may feel different than traditional in-person mediations, they still provide an opportunity to explore a potential resolution for a client.

The author would like to extend particular thanks to Karl A. Folkens and J. Blanton O’Neal, IV for their assistance and input in this article. 🏛️

ENDNOTES

- ¹ Normally, South Carolina’s ADR Rule 6(b) requires in-person attendance at mediation settlement conferences, absent agreement or court order. On March 19, 2020, the Chief Justice issued an administrative order requiring the Chief Administrative Judge of a Circuit to issue an order adjusting ADR Rule 6(b) to permit attendance at mediation settlement conferences by video conferencing, upon the request of a required attendee. Order, March 19, 2020 (<https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-03-19-01>).
- ² Using Zoom for Online Mediations – The Tips, Tricks and Traps, S.C. Bar Continuing Legal Education Live Webcast, April 8, 2020 (Karl A. Folkens, Richard L. Hinson and Eric K. Englehardt, presenters). This two-hour presentation is now available On Demand from the S.C. Bar website: <https://www.sebar.org/shop-cle/ondemand/using-zoom-for-online-mediations-the-tips-tricks-and-traps/>.



SOLACE Program – Support of Lawyers/ Legal Personnel All Concern Encouraged

by Jay T. Thompson



We all have either known someone or personally experienced a time where it was necessary to ask for help. While there are countless fundraising websites for various tragedies that have hit our communities, there is still an unmet need for hands-on help, care, and support. In this vein, the SOLACE program was created.

SOLACE stands for “Support of Lawyers/Legal Personnel: All Concern Encouraged.” The SOLACE Program began in Louisiana, developed by U.S. District Court Judge Jay Zainey and attorney Mark Surprenant, where members of the legal community volunteered to assist each other after a sudden catastrophe. Now, we are bringing SOLACE to SCDTAA with hopes of expanding it throughout the legal community in South Carolina.

Our goal with SOLACE is to provide a support network for all members of the legal community in times of need. While it can include monetary needs, that is not the core focus. The program is geared toward connecting individuals experiencing hands-on needs with others who have the ability to assist. Assistance can range from simply sending a family clothing after a fire to providing contributions of frequent flyer miles for travel




to doctor appointments, a rare blood type donation, transportation, medical community contacts and referrals, and a myriad of other possible solutions. One person may have a fallen tree, and another may have a chainsaw. One person may need a COVID-19 facemask. The goal is to provide connections between members of the legal community facing any sort of need and others who may be able to meet that need or make recommendations.

SOLACE is also designed to be almost completely anonymous. The only people who know the identity of the person making the request are the volunteers who receive the request and those who respond with their offers of help. The requesting person merely sends an email identifying the need to aimee@jee.com. An email alert is then sent to all SCDTAA members with a request for help, without identifying the person making the request. When another individual responds that he or she



may have the ability to help, connections will be made. If you, a family member, or anyone in the legal community needs assistance, we encourage you to take advantage of this resource. Please also pass this information along to your entire law firm (including lawyers and non-lawyers) and anyone else connected with the legal community.

Unlike fundraising, SOLACE will not request money. Rather, SOLACE seeks to make connections between those with a specific need and other who may have talents and resources to meet that need. There is absolutely no cost to participate in the program. You also have the option to “opt-out” of receiving notices with a request to aimee@jee.com.

If you would like more information about the program, please contact Jay Thompson at (803) 255-9300 or jay.thompson@nelsonmullins.com. 



Verdict Reports

TYPE OF ACTION:

Medical Malpractice

NAME OF CASE:

Genevieve Washington v. Matthew O'Steen, M.D.; and Coastal Cardiology, P.A.

Court: (include county):

CHARLESTON COUNTY COURT OF COMMON PLEAS

CASE NUMBER:

2016-CP-10-0335

NAME OF JUDGE:

The Honorable Bentley Price

AMOUNT:

Defense Verdict

DATE OF VERDICT:

October 10, 2019

ATTORNEYS FOR DEFENDANT:

Molly H. Craig, Brian E. Johnson and Virginia Floyd of Hood Law Firm, LLC, Charleston, SC

DESCRIPTION OF THE CASE:

Plaintiff alleged the Defendant physician was negligent in

providing care and treatment during an elective cardiac catheterization resulting in the Plaintiff's quadriplegia. Plaintiff alleged that during the cardiac catheterization, the physician carelessly manipulated the catheter into an unintended vessel in the course of attempting to get to the heart. Once the catheter was allegedly in the wrong vessel, the doctor injected contrast dye which entered the spinal arteries of the C5-C7 vertebrae. Following the procedure, the Plaintiff had neck pain, back pain and hand weakness. A cervical MRI revealed acute ischemic injury to the spinal cord and ischemic injury to the cervical spine.

The defense proved the physician complied with the standard of care during the catheterization procedure and the Plaintiff, unfortunately, experienced a known complication of the procedure which is a stroke. Additionally, the Plaintiff's tortuous anatomy made it difficult to perform the cardiac catheterization which was the reason for the complication.



TYPE OF ACTION:

Medical Malpractice

INJURIES ALLEGED:

Death

NAME OF CASE:

Charles Rees Simonds, as Personal Representative of the Estate of Josephine Miller Simonds vs. Roper St. Francis Physicians Network

COURT: (INCLUDE COUNTY):

Court of Common Pleas, Charleston County

CASE #:

C/A 2016-CP-10-3555

TRIED BEFORE:

The Honorable Roger M. Young, Sr.

AMOUNT:

Defense Verdict

DATE OF VERDICT:

February 27, 2020

DEMAND: (REQUIRED IF DEFENSE VERDICT):

Defense counsel refused to engage in settlement negotiations

HIGHEST OFFER:

Defense counsel refused to engage in settlement negotiations

MOST HELPFUL EXPERTS:

(NAME, TITLE AND CITY):

Defense experts were Robert Vyge, M.D. of Beaufort, SC (Internal Medicine) and March Seabrook, M.D. of Columbia, SC (Internal Medicine and Gastroenterology)

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Hugh W. Buyck, Esquire and H. Lucius Laffitte, III, Esquire of Buyck & Sanders, LLC in Charleston

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

Plaintiff argued that Defendant deviated from the standard of care by not seeing decedent Mrs. Simonds on February 22, 2013, when she contacted his office complaining of a 2-day history of nausea and vomiting and ordered a prescription for the anti-emetic Phenergan (Promethazine). Plaintiff claims that if Defendant had physically examined Mrs. Simonds it would have become obvious that she needed further work up to evaluate the cause of her symptoms (bowel obstruction). Plaintiff argues that this delay in evaluation resulted in Mrs. Simonds death.

The Defendant offered testimony at trial from internal medicine and gastroenterology physicians who explained that Defendant practitioner and the staff at his practice acted within the standard of care at all times as related to this patient. Further, nothing Defendant allegedly did and/or failed to do was the cause of Mrs. Simonds' death by aspiration. Defendant reasonably addressed the common symptoms of a "stomach bug" complained of by his patient



on February 22, 2013. Defendant had a history with this patient and it was within his reasonable judgment whether to prescribe Promethazine to her without calling back for even further discussions and/or requiring her to come to his office for an appointment despite her not wishing to do so. It is within the standard of care to prescribe Phenergan over the telephone and it would not have been reasonable to require this patient to come to his office or rush her to the

ER based on her complained of stomach bug on February 22, 2013. Mrs. Simonds more likely than not could have aspirated had the small bowel obstruction been present and identified on that Friday and Defendant cannot be blamed for this death by aspiration. This patient would have required the CT with contrast regardless and her unfortunate unexpected aspiration during this imaging led to her death rather than any alleged delay in treatment. 🏛️

Verdict Report Submissions Wanted!

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



CASE NOTES

Case Notes

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

Fountain v. Fred's, Inc.

Op. No. 5714, filed February 12, 2020



Helen
F. Hiser



C. Daniel
Atkinson



Michael
D. Freeman



W. Spencer
Barrow

The SC Court of Appeals upheld a lower court's order awarding equitable indemnity to a store owner (Fred's) and the property owner/developer (Wildevco) against the GC (Tippins-Polk) who built a Fred's store in Williston, SC. Wildevco hired the GC to construct a Fred's store on a site it owned. Fred's had a 10-year lease with Wildevco for the store, which opened in 2006. Ms. Fountain tripped and fell over the curb ramp, sustaining injuries for which she sued Fred's and Wildevco, who in turn, filed 3P claims against the GC. Fred's and Wildevco settled with Plaintiff and her husband and sought equitable indemnification from the GC. The court awarded the cost of the settlement paid by Fred's and Wildevco, as well as their attorney's fees. The GC appealed, raising a number of issues:

1. First, the court held that there was a **sufficient special relationship** between Fred's and the GC, even though Wildevco hired the GC. The Court based its decision on the fact that Fred's had recommended the GC to Wildevco for the project because the GC had experience constructing Fred's stores previously and, in fact, owned a Fred's store in a neighboring county.
2. The Court rejected the GC's argument that, in arguing they had acted reasonably in settling with the Plaintiffs, i.e, showing they had **potential liability**, Fred's and Wildevco had somehow admitted fault. The Court clarified that "potential liability actually means nothing more than that the indemnitee acted reasonably in settling the underlying suit."
3. The Court also rejected the GC's argument that its finding that Plaintiff was injured from a **latent fault** in the construction meant Fred's and Wildevco were at fault for not discovering the defect. The Court held that Fred's and Wildevco relied on the GC to construct the premises in accordance with the plans and free of latent defects.
4. Similarly, the Court rejected the GC's argument that either Fred's or Wildevco breached any standard of care they owed to Plaintiffs because they had no duty to inspect the premises for hidden design and construction defects.



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5. Although the GC argued that the architectural plans were defective, the Court held the plans were not defective simply because they contained some discrepancies and, in addition, it was the GC's responsibility to request clarification of the plans if it encountered discrepancies.
6. The Court rejected the GC's argument that Wildevco assigned an individual to oversee construction who was not "a qualified construction overseer – in addition to the general contractor – to manage the construction of a property." The Court said it found no authority imposing such duty.
7. The Court also rejected the GC's argument that Fred's and Wildevco were **bound by the relief sought in their pleadings**, which included any "judgment or verdict" but didn't include the word "settlement." After reciting case law standing for the proposition that pleadings should be construed liberally, the Court pointed out that the Court issued a Form 4 granting a continuance in which it noted the settlement with Plaintiffs, which the Court of Appeals construed as "a statement of judgment for the Fountains from which Fred's can recover against Tippins-Polk." While I find that statement somewhat novel, the Court also held that pleadings, which requested "any such other relief as the occur would deem just and proper," were broad enough to include a settlement payment.
8. However, the Court did agree with the GC that **attorney's fees awarded in an equitable indemnification case are limited to the fees incurred in defending the underlying action and do not include the fees incurred**

in pursuing the indemnification. The Court noted that South Carolina has not directly addressed this issue previously.

Garrard v. Charleston Cty. Sch. Dist.
Op. No. 5691, filed November 6, 2019

This decision from the Court of Appeals addresses a defamation suit arising out of the 2014 incident involving the Academic Magnet HS football team and the coach, Walpole. This particular decision only involves one defendant, Jones Street Publishers, publisher of Charleston's City Paper, which published two opinion articles concerning the teams' post-game ritual of painting caricature "faces" on a watermelon, naming it "Bonds Wilson" – after the "formerly segregated African-American school" that previously occupied the land where Academic Magnet is now located, and which was named in honor of two African-American educators from Charleston – smashing it and making "ritualistic" animal sounds. Following a press conference by the School District Superintendent, McGinley, concerning this post-game ritual, Walpole was fired as head coach. The next day, McGinley reversed the decision and reinstated Walpole, in the midst of heightened publicity, after which McGinley resigned her position as School Superintendent. The City Paper, published one opinion article concerning the ritual and what the writer deemed its racist overtones, and the second article titled, "Mob rules: School district forces out superintendent who fired coach who condoned racist ritual." Several members of the football team and Walpole sued and the circuit court granted summary judgment to Jones Street.



On appeal, the Court of Appeals upheld summary judgment, finding that:

1. The statements of fact in the articles were protected by the “fair report privilege,” which extends to reports of judicial and other governmental proceedings – here, the facts had been taken from the press conference held by then-Superintendent McGinley. Jones Street also submitted two affidavits from editors that stated they had no reason to not believe the statements made by McGinley.
2. The remaining statements in the articles – such as use of the terms “racist” and “racist douchebag” were part of “opinion, ideas, and rhetorical hyperbole” on an issue of public concern, that were protected by the First Amendment. Because these were matters of public concern, in order to prove that the statements were fact, as opposed to opinion, the plaintiffs had to prove the statements were “provably false” – which the Court of Appeals held they could not. The plaintiffs had conceded during their depositions that determining whether something or someone was racist was a matter of opinion.
3. Although the plaintiffs failed to prove defamation, the Court of Appeals also confirmed that they failed to prove injury to reputation. The students failed to prove any general or special damages arising from injury to their reputations as a direct result of the published opinions. In fact, the students could not show that anything they experienced in the aftermath was attributable to the City

Paper articles, as opposed to the numerous other reports of the incident, by both local and national news sources.

4. In addition, the individual student plaintiffs were not named in the City Paper articles, which discussed the activities as a team activity, and were not “reasonably ascertainable.”
5. Walpole, as a public school official (which includes teachers and coaches), had to prove Jones Street acted with actual malice (i.e., knowledge that the statement is false or with reckless disregard of the truth), which he failed to show, again based in part on the two affidavits by the editors.

Garrison v. Target Corp.

Op. No. 5711, filed January 15, 2020

The Court of Appeals affirmed in part and reversed in part the circuit court in a premises liability case. The Plaintiff had parked her car in a Target shopping lot, preparing to go shopping with her 8-year-old daughter. The daughter picked up a dirty and somewhat worn syringe that had been lying in the parking lot – the Plaintiff swatted it away from her daughter’s hands and, in the process, the needle punctured her skin. She subsequently had to undergo blood testing for HIV and hepatitis, and took medications to prevent both conditions as well. She became “ill” from the medications which caused her husband to have to quit work to care for her. The jury awarded the Plaintiff \$100,000 in compensatory damages and \$4.5 million in punitive damages (along with \$3,500 to the husband for lost wages and \$5,000 for loss of consortium).



The majority decision by Geathers is long (48 pages in all), but these are the highlights:

1. Constructive Notice – The majority held that, because there was testimony that the syringe (the syringe itself had been lost by Target, and photographs of the syringe had been lost by Plaintiff’s team) was “dingy, dirty and gross” and bore a “weathered” look, the jury could reasonably infer it had been in the parking lot for a sufficient length of time that Target should have discovered it. Note that, because Target lost the syringe, the court properly gave a spoliation charge – even though *Plaintiff’s side also lost photographs* of it.
2. Punitive Damages (Part I) – The circuit court granted Target’s JNOV with respect to the punitive damages award, holding there was no evidence that Target engaged in a pattern of reckless, willful or wanton conduct. The Court of Appeals reversed this finding, based on evidence that Target’s employees were aware of the importance of keeping the parking lot clean and safe; that the employees should have been aware of the syringe; that a third-party vendor swept the parking lot only once a week; and photographs of the parking lot taken by Plaintiff’s husband and his mother showed trash. Viewing this evidence in the light most favorable to the non-moving party (the Plaintiff), the Court of Appeals held it was sufficient to raise an issue as to whether Target’s conduct constituted “an invasion of the plaintiff’s rights.”
3. Punitive Damages (Part II) – Although the Court reversed the JNOV, it held that the amount of punitive damages violated Target’s due process rights because they possibly

were excessive. However, the Court of Appeals reversed the circuit court’s resolution of this issue in Target’s favor based on the 45:1 ratio alone, finding that the proper measure was not the compensatory damages awarded to Plaintiff (\$100,000) but the *potential* damage to Plaintiff *and to other customers* (apparently, after this incident, Target did not increase the frequency with which it surveilled and/or cleaned the parking lot, leading the Court to conclude other customers potentially were at risk). The Court of Appeals remanded to the circuit court for a determination of the proper amount of punitive damages based on the *potential* actual harm to Plaintiff and other customers, which the Court of Appeals believed was “much less than 45:1.”

4. Punitive Damages (Part III) – The Court of Appeals held that entitlement to the statutory cap set forth in S.C. Code Ann. § 15-32-530 is waived unless a defendant specifically pleads it as an affirmative defense. After a long analysis of federal and other state court decisions, the majority held that to allow a defendant to raise it where it has not been affirmatively pled would unfairly surprise plaintiffs, who would not be alerted to the need to conduct discovery or other investigation in order to obtain proof to overcome the statutory limit. Because Section 15-32-530 is not an automatic cap but, instead, applies at different levels depending on the nature of the defendant’s conduct, the Court held it has to be affirmatively pled or “at the very least, [the defendant must] raise the defense prior to the conclusion of discovery so that the [Plaintiff] would have had prior notice of the additional evidence they needed to lift



the punitive damages limit.” For now, it may be good practice to raise Section 15-32-350 as an affirmative defense whenever punitive damages are pled.

5. Issue Preservation – Where there is a question as to whether an issue is properly preserved on appeal, where the other side does not raise the issue of preservation in their brief, “the silence of an adversary should serve as an indicator to the court of the obscurity of the purported procedural flaw” such that the Court can resolve any doubt as to preservation on the side of the party raising an issue.
6. New Trial Absolute – Target’s post-hearing motion apparently sought a JNOV and, as alternative relief, a new trial or new trial nisi remittitur, stating it preferred the JNOV. Because Target expressed a preference for the JNOV, and that is what the circuit court granted (while denying the requests for a new trial), the Court of Appeals held Target had to file a Rule 59(e) motion in order to have the circuit court address the issue. Because Target did not, however, that issue was not preserved for appellate review.
7. Prejudgment Interest – The Court affirmed the circuit court’s award of prejudgment interest on only the \$100,000 (before trial, Plaintiff had submitted an offer of judgment for \$12,000, which Target rejected). Plaintiff argued on appeal that prejudgment interest should have been awarded on the punitive damages amount also, but the Court of Appeals clarified that prejudgment interest is only available on the amount of the final judgment, not the jury verdict itself if it is later reduced.

8. Dissent – Judge Hill dissented with the majority’s resolution of issue #4 above – arguing that nothing in Section 15-35-350 requires that it be pled at all, noting that federal courts were deeply split over the issue of whether it needed to be affirmatively pled, and that the list of affirmative defenses in Rule 8(c), SCRCF, does not include damage caps. In fact, Hill distinguished an affirmative defense, which bars liability itself, from a damages cap, which does not. Hill pointed out that construing the damages cap as an affirmative defense places the burden of proof on the defendant, which the statute itself does not do. Citing the circuit court’s mandatory duty to review a punitive damages award to ensure it comports with due process, that duty should not depend on whether a party pled the statute or not.

Lefont v. City of Myrtle Beach

Op. No. 5715, filed March 11, 2020

In this premises liability action, the Court of Appeals reversed a directed verdict in favor of Defendant Myrtle Beach. The Plaintiff alleged she tripped and fell in a parking lot behind the Myrtle Beach Convention Center, which is owned by the City of Myrtle Beach. Plaintiff and her husband were vendors participating in a trade show at the Convention Center. During the process of unloading their boxes of product, Plaintiff asked for permission to park in the employee parking lot for a short while, which was granted. She fell walking across this lot, tripping on a shallow pothole. The Circuit Court granted a directed verdict on three bases: 1) the Plaintiff was a licensee, 2) there was no evidence that the City breached any duty owed to a licensee, and 3) there was



no evidence the City had constructive notice of the pothole.

The Court of Appeals disagreed that Plaintiff was a licensee, finding instead that the evidence supported a finding she was an invitee because, 1) her presence at a trade show as a vendor provided a benefit to the City, 2) she entered the premises as the result of an express and implied invitation, and 3) she was on the Convention Center premises in connection with a purpose for which the Convention Center was held open. Given the conflicting evidence, directed verdict was improper on this point.

The Court of Appeals also reversed the Circuit Court's finding that there was no evidence that the City had constructive notice of the pothole. The Court found expert testimony by Dr. Brian Durig – that the injury occurred in a loading zone that receives frequent traffic from employees, vendors and also tractor trailers that cause wear and tear; the pothole was in violation of the International Property Maintenance Code adopted by the City; Convention Center employees were in the parking lot on a regular basis and *could have detected* the hole; the City had procedures in place for fixing potholes; and, the pothole contained dirt and debris, suggesting it had existed for some time – sufficient to infer the City had constructive notice.

PCS Nitrogen, Inc. v. Cont'l Cas. Co.
Op. No. 5699, filed December 18, 2019

In a coverage dispute, involving PCS Nitrogen, Inc's liability as successor to Columbia Nitrogen Corp ("Old CNC") for superfund liabilities arising out of Old CNC's operation of phosphate fertilizer plants in Charleston (the Site),

the Court of Appeals affirmed the circuit court's grant of summary judgment in favor of the insurers. Old CNC had several policies in place from 1966-1985, during its fertilizer operations. The policies provided that any assignment of the policy "shall not bind the company until its consent is endorsed hereon." In 1986, Old CNC sold a number of its assets to CNC Corp in a transaction that included an Assignment of Insurance Benefits, which purported to assign all of Old CNC's rights and benefits under its policies to CNC Corp. However, with the exception of one policy, no consent was obtained from the insurance companies and the remaining policies were terminated. CNC Corp eventually merged into what is now PCS Nitrogen and, in *PCS Nitrogen, Inc. v. Ashley II of Charleston, LLC*, 714 F.3d 161 (4th Cir 2013), the Fourth Circuit held PCS liable for Old CNC's pollution liabilities at the Site. In the instant case, the Court of Appeals rejected PCS's argument that it was not required to obtain consents from the insurers for the assignment to be effective "because these were **post-loss** assignments made after the environmental contamination of the Charleston Site occurred during the policy terms." The Court set out the distinction between a pre-loss assignment, which involves "a transfer of a contractual relationship," and "the assignment after loss [which] is the transfer of a right to a money claim." The Court then looked to the policy language to determine when the "occurrence" triggering coverage occurred. The policies explicitly stated that Old CNC was not entitled to coverage "until the amount of the insured's obligation to pay shall have been finally determined by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company." The Court held



that, because no claims had been filed prior to the asset sale to CNC Corp, “the loss insured against ... had not yet occurred, and thus, no vested claims existed.” As a result, this was not a post-loss assignment and consent was required for an effective assignment.

State Farm Mut. Auto. Ins. Co. v. Goyeneche
Op. No. 5697, filed December 18, 2019

In this automobile insurance coverage case with tragic facts, the Court of Appeals affirmed a declaratory judgment holding State Farm owed no duty to defend or to provide liability coverage under the UIM provisions of several auto policies for the death of an unattended child in a hot vehicle. The 13-month-old child’s father had placed her in her car seat, intending to take her to daycare in May 2014 but forgot she was with him and left her in the car seat parked outside of his work for over 7 hours. The child died from complications of hyperthermia. Applying the 3-part test set forth in State Farm v. Aytes, 332 SC 30, 503 SE2d 744 (1998) (“[f]irst, the party seeking coverage must establish a causal connection between the vehicle and the injury. Second, there must exist no act of independent significance breaking the causal link, [Third,] it must be shown the vehicle was being used for transportation at the time of the assault”), the Court of Appeals first found that the Appellants (the Mother and Grandmother) had established a causal connection between the use of the vehicle and the child’s death. Finding the “Father’s truck was an active accessory to [the child’s] death,” the Court pointed to the fact that “it is well known that vehicles trap heat and the vehicle itself was the producing cause of the onset of [the child’s] hyperthermia.” In other

words, the truck “was not merely the site of the injury, it caused the injury; the very nature of the vehicle produced the excessive heat that concentrated inside, causing [the child’s] fatal injury.” In light of S.C. Code Ann. § 15-3-700, which grants immunity to a person who breaks into a car to remove a minor or vulnerable adult, the Court also concluded that the Legislature “has recognized that the intentional or unintentional act of leaving a child inside a locked vehicle is foreseeably identifiable with the normal use [of] a vehicle.”

However, the Court held that the Father’s act of abandoning the child in the truck for over 7 hours, however unintentional, “was an act of independent significance that broke any causal connection between” the truck and the death. Furthermore, the Court concluded that the truck was not being used for transportation at the time of the injury. 