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2021 Annual Meeting Recap The Sanctuary at Kiawah Island Golf Resort



2022 SUMMER MEETING: JULY 21-23, 2022



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**PRESIDENT'S
MESSAGE**



President
Graham P. Powell

Dear Friends,

It is a great privilege to be able to communicate with you on behalf of the SCDTAA and we are glad you are reading what we hope is a worthwhile, insightful, and interesting publication.

Members of the SCDTAA have certainly seized many opportunities in 2022 and outstanding events are upcoming. In January, we hosted an enjoyable reception for the judiciary and held a planning meeting in conjunction with the South Carolina Bar Convention. Our Legislative Reception in Columbia in April was well attended by many state senators, state representatives, and the bench, including our Court of Appeals and Supreme Court. As I write this, we are on the eve of our highly regarded Trial Academy in Greenville where a group of twenty-four young attorneys will participate in hands on trial instruction and develop their skills in mock trials involving live witnesses, judges, and juries. We also look forward to hosting a reception recognizing and honoring the Trial Academy attorneys and our judiciary in Greenville.

We are excited about events upcoming. We hope that we continue to have excellent attendance at our Summer Meeting July 21-23 in Asheville. We particularly hope that some of our younger attorneys will become involved in our esteemed Emerging Leaders Program. This program provides a substantive framework for the betterment of defense attorneys and involvement in our organization. The program has been recognized nationally as a model for development of attorneys within organizations such as the SCDTAA that works. We also have several seminars

and “boot camps” we will be announcing in the short term. You may visit our web site to learn more about SCDTAA events and other information about our organization.

We are glad to be able to say that the SCDTAA will hold a Day of Service this year where we will donate our time and labor towards the improvement of our communities. One of our organization’s key principles is to give back. We will provide you with information regarding the Day of Service when finalized and welcome the participation of all of you in this effort.

Finally, we would like to thank our sponsors that are so instrumental to the continued success of our organization. We are very fortunate to have your support.


Graham P. Powell 

Editors' Note

by J. Alexander Joyner and Jessica W. Laffitte



J. Alexander Joyner



Jessica W. Laffitte

Welcome to the Spring/Summer 2022 edition of *The DefenseLine*. Spring has officially sprung, and the country and this organization are officially back to normal after nearly two years of the COVID-19 pandemic. We have been able to gather with friends and family, attend concerts and sporting events, and most importantly for this readership, resume SCDTAA meetings and events, including the summer and annual meetings. This Spring also sees the return of the SCDTAA Trial Academy, a staple for our organization and a vital tool in building the next generation of great defense lawyers.

This edition of *The DefenseLine* has a bit of everything, as we continue our efforts to provide our valued members and readers with helpful practical tools to assist and grow in the practice of law, important updates in the law in South Carolina for both litigation and workers' compensation, and of course updates and information regarding SCDTAA and ways to become more involved in this great organization. Additionally, this edition features an article in honor of this being the 50th anniversary of *The DefenseLine*!

As always, we want to thank all our contributors, authors and staff for all of their excellent work in providing the content and assistance in getting this edition to publication. To our tremendous sponsors, we appreciate everything you have done and continue to do for SCDA, as your continued partnerships make many things possible for SCDTAA and its members.

With that, we hope you enjoy the Spring/Summer 2022 edition of *The DefenseLine*. 

50 years

of *The DefenseLine*: What Our Seasoned Vets Have to Say

This year marks the 50th volume of *The DefenseLine* Magazine. In honor of this milestone, we have reached out to some (but not all – some of you may hear from us in advance of the next issue!) of our great state’s best and most experienced and respected attorneys for comment on the state of our profession. These attorneys truly need no introduction, because their names are synonymous with the practice of law in South Carolina. Each has a sterling reputation for excellence, civility, and service, and we are excited to present their thoughts. Note that these contributors were not given a

specific prompt, which we hope and believe results in a very interesting array of topics and perspectives. Enjoy!

Costa Pleicones, Haynsworth Sinkler Boyd, P.A.

Owing to technological advances over my fifty-four years at the Bar, virtually every aspect of the practice has changed. Does any lawyer under the age of fifty know what carbon paper and whiteout are?

The practice is more sophisticated, expensive, and time-consuming. The stakes are higher, but so

thankfully, is attorney compensation. Hardly anyone tries cases these days as litigation has become too costly for clients to pursue to conclusion.

The thing that has not changed from my perspective, is the one factor that has motivated most good lawyers from the beginning of my career to this date: Abject fear. Whether it be fear of deadlines or fear of embarrassment due to lack of preparation, if you're not afraid, you're probably not doing it right. Get used to it young lawyers – it never goes away.

Becky Laffitte, Robinson Gray Stepp & Laffitte, LLC

While the landscape has changed since I graduated in 1983 relative to the percentage of women actively engaged in the legal profession (women comprised 40% of my law school class in 1983), women litigators are still in the minority. Litigation is demanding on one's time and energy! A schedule comprised of almost daily depositions, motions, and trial can be grueling and provides limited flexibility when trying to juggle personal and professional commitments. In my early years of practice, it was not unusual for me to finish a trial in Courtroom 2A in Richland County only to begin another one in 3B after the verdict was published! I thought this was a great accomplishment until I learned that Bob McKenzie tried a case almost every day without missing a beat!

My advice to younger attorneys would be not to measure success in terms of financial wealth or in the number of defense verdicts accumulated through the years. Maintaining true to one's virtues in everyday life is often more challenging than accumulating wealth, in my humble opinion. My patience is often tested after a long day in depositions when

the witness has been difficult by not responding to questions; my civility is often tested when opposing counsel is being arrogant and difficult just for the sake of being difficult; and my compassion is often tested when the witness is significantly exaggerating his/her injuries when there are no objective medical findings to substantiate his/her complaints of pain. Despite the hurdles you face every day, do not compromise your values for any professional or personal gain and always maintain your civility...to litigants, opposing counsel, court personnel and last, but certainly not least, the Judiciary. Finally, find time for fun and laughter as a sense of humor gets you through the toughest challenges and days!

Tom Wills, Wills Massalon & Allen, LLC

My transition from defense litigation to primarily mediation and arbitration took place gradually during the mid-1990's. In the early 80's there was less focus on settlement, in any structured way. One result was that we tried substantially more cases back then. The attorneys I encounter in mediation these days report being involved in mediations two or three times a week, but in trial only once or twice a year. In some ways the increased use of mediation has caused defense counsel and their insurance or corporate clients to become more closely involved. They participate together regularly in mediations working as a team. In the days before mediation was so prevalent, I can remember going for years without seeing my claims representative in person.

The reduced number of jury trials, however, has a number negative consequences. The lack of trial experience creates difficulty in producing and skilled trial lawyers. Fewer trials mean few appellate decisions which are needed to develop

our understanding of the law. Also, it is the threat of trial that makes mediation work. However, anyway you look at it, corporate and insurance clients have fully embraced mediation as the primary method of dispute resolution.

I confess that I miss trying cases, but with mediation I still have the opportunity to work with great lawyers on both sides. Each new day is like a free CLE. Unlike some of the populace, I thoroughly enjoy the company of lawyers. Interesting personalities and endless stories keep the day moving. I no longer experience the thrill of victory at the end of a hard fought court battle. On the other hand, I don't suffer the utter humiliation that follows when twelve (theoretically objective) people, after hearing everything I have to say, conclude I was completely wrong. Nowadays, if things work out right, we find a solution to a difficult problem. If not, my worst day is simply being ineffective. Hopefully not too often.

John Wilkerson, Turner Padgett Graham and Laney P.A.

I had the privilege of presiding over the Association during the early years of the imposition of strict billing guidelines and auditing of bills by insurance companies (1999-2000). This was a very tumultuous period for the defense bar and marked the beginning of the end of the trusting and mutually respectful relationship we had enjoyed with insurance carriers for decades. There was rarely a telephone conversation among defense attorneys during that period when the issue did not come up – we were all struggling to adapt to the “new normal” that we feared represented the future of the defense practice. Little did we know how pervasive the changes would become.

The issue had become such a point of interest, I devoted one of my “President’s Letter” articles in *The DefenseLine*

to the problem (Volume 27 Number 1, Spring 1999). The letter described the many billing conundrums a defense lawyer encounters while preparing for a Monday trial on a Saturday morning. Here are some excerpts from the letter: “The prohibition against ‘block billing’ requires me to specify each task as a separate entry. It is no longer acceptable to describe this Saturday away from my family as ‘trial preparation’ even though we all know exactly what that means. How many minutes did I spend on that phone call to a witness to remind him to be in court at 2:00 on Monday? How silly of me! That task is not billable: It is a ‘secretarial function.’ But I didn’t feel comfortable calling my secretary at home to ask her to place the call for me.”


After attempting to articulate the reasons for the new rules (“The auditors claim we did it to ourselves. . . .”) and the problems encountered trying to adjust major change (“Is there a future for me in litigation?”), I concluded the letter with the following observations: “These and other similar issues have invaded the relationship between defense lawyers and insurers across the nation. We seem to have five available responses: We can (1) change the way we practice; (2) look for different clients; (3) wait and hope the audit craze is just a passing fad; (4) fight the auditors; or (5) continue to do whatever it takes to represent our clients and worry later about whether or not we will be paid for our work. For the moment – on this Saturday before trial – I choose the last alternative. I would like to claim I chose this route out of a strong sense of professionalism and ethics. But in reality, I am simply afraid of being humiliated by the other side at trial if I am not prepared. Perhaps these auditors have us figured out. The fight will have to wait for another day.”

Remarkably, after this letter was published, I received dozens of written responses from lawyers near and far, judges, and even insurance company “directors of retained counsel.” Of course, there were many different points of view expressed, but I was gratified that the letter had promoted healthy discussion. If I had only known then what I know now, perhaps I (and many of us) would have taken a different career path.

Betsy Gray, Robinson Gray Stepp & Laffitte, LLC

What I have observed is the biggest catalyst for the change in the law practice has been technology. When I started practicing, we did not have computers, cell phones, email, fax machines (and now even they are obsolete), Fed Ex, UPS, scanners, digital files, etc. We did have mag card IBM typewriters (look them up) that allowed for minimal editing of a document without retyping the document. And lawyers only had phones and dictation equipment at their desks.

But that innovative technology has been both a blessing and a curse. It has in many ways made the practice more efficient and, in some ways, more cost effective for both the lawyer and the client. However, it has accelerated the law practice such that it has caused unintended consequences. Clients, lawyers, and judges require almost instantaneous responses to inquiries when often a more contemplated response would be better for all concerned. Lawyers cannot escape work because of smart phones with emails and internet at their fingertips, and the inability to unplug from these devices. Stress levels have risen to unsustainable levels, and thus depression, substance abuse and other downsides have become more prevalent. Also, I think these increased stress

levels have contributed to a less collegial bar. People have stopped taking time to foster their friendships in the bar. So frankly the practice isn't as fun as it used to be. Despite this bleak reflection, the law practice has provided me with a challenging and interesting career where I have met many talented lawyers all over the United States and had fascinating cases. I cannot imagine having done anything else all of these years. 

Post Hoc Review Of The Life Care Plan

by Michael Fryar & Betsy Keesler, InQuis Global, LLC



Michael Fryar



Betsy Keesler

A life care plan should be an evidence-based document that comprehensively identifies an evaluatee's current and future healthcare and other needs as related to a catastrophic injury or chronic health condition. Within the plan, these requirements may include healthcare, educational/vocational services, home modifications, living arrangements, attendant care, equipment, medications, supplies and community support services and/or facility placement, when indicated. The International Association of Rehabilitation Professionals (IARP), through its section titled the International Academy of Life Care Planners (IALCP), represents the largest national professional organization devoted entirely to the practice of life care planning. The IALCP has produced practice standards for the development of a life care plan. The standards are periodically updated to reflect best practice guidelines that are current and relevant to modern life care planning. In addition to practice standards, there are published consensus statements within the [Journal of Life Care Planning](#), derived from many years of life care planning summit meetings, which involved a diverse group of certified



life care planners and the direct application of a Delphi study to produce group consensus. The published consensus statements are applicable to all life care planners, regardless of their educational background. The current consensus statements were published in 2018. Finally, recognized treatises for this specialty practice include the Life Care Planning and Case Management Handbook (*fourth edition*) and the Pediatric Life Care Planning and Case Management (*second edition*) publication. The above noted published standards, consensus statements and treatise guidelines serve to define the developmental process necessary for a reliable and valid evidence-based life care plan.

In recent years, the authors have noted that some finalized life care plans have altered or transfigured the necessary procedural processes required. Specifically, it has been observed that some life care plans are being developed and released absent necessary medical foundation from licensed healthcare providers functioning within their designated scope of practice. Then, as if an afterthought, the invalid plan release is provided with a request to a licensed healthcare provider, such as a physician, for review and endorsement through signature. These post hoc activities are riddled with problems and life care planning methodological issues, which will be reviewed within this article.

Within the Life Care Planning and Case Management Handbook (*fourth edition*), a procedural table of the sequential steps required for life care plan development is outlined (i.e., Table 1.3, Page 12). This table explains that, in terms of linear sequence, consultation(s) with the therapeutic team member(s) to establish clinical and

medical foundation for the life care plan occurs even before preliminary life care planning opinions are formulated by the life care planner and should be accomplished before the release of the life care plan. Specifically, the sequential life care plan developmental steps found published within the treatise include the following:

Table 1.3 Step-by-Step Procedure for Life Care Planning

- 1. Case Intake:** When you talked with the referral source, did you record basic referral information? Time frames discussed? Financial/billing agreement? Retainer received (if appropriate)? Arrange for information release?
- 2. Medical Records:** Did you request a **complete** copy of the medical records? Nurse's notes? Doctor's orders? Ambulance report? Emergency room records? Consultant's reports? Admission and discharge reports? Labs/X-ray/etc.?
- 3. Supporting Documentation:** Are there depositions of the client, family, or treatment team that may be useful? Day-in-the-life videotapes? And if vocational issues are to be included in report, school records (including test scores), vocational and employment records, tax returns?
- 4. Initial Interview Arrangements:** Is the interview to be held at the client's residence? Have you arranged for all appropriate people to attend the initial interview (spouse, parents, siblings)? Did you allow 3 to 5 hours for the initial interview? (Some consultants or defense experts may not be permitted direct access to the client or treating health care professionals.)
- 5. Initial Interview Materials:** Do you have the initial interview

form for each topic to be covered? Supplemental forms for pediatric cases, CP, traumatic brain injury (TBI), spinal cord injury (SCI) as needed? Do you have a copy of the life care plan checklist? Example plan to show the client? Camera or camcorder to record living situation, medications, supplies, equipment, and other documentation useful for developing a plan?

6. Consulting with Therapeutic Team Members: Have you consulted with and solicited treatment recommendations from appropriate therapeutic team members (if appropriate or able to do so)?

7. Preparing Preliminary Life Care Plan Opinions: Do you have information that can be used to project future care costs? Frequency of service or treatment? Duration? Base cost? Source of information? Vendors?

8. Filling in the Holes: Do you need additional medical or other evaluations to complete the plan? Have you obtained the approval to retain services of additional sources from the referral source? Have you composed a letter outlining the right questions to assure you are soliciting the needed information, as appropriate?

9. Researching Costs and Sources: Have you contacted local sources for costs of treatment, medications, supplies, equipment? Or do you have catalogs or flyers? For children, are there services that might be covered, in part, through the school system?

10. Finalizing the Life Care Plan: Did you confirm your projections with the client and family (if appropriate)? Treatment team members (if appropriate)? Can the economist

project the costs based on the plan if one is used? Do you need to coordinate with a vocational expert?

11. Last But Not Least: Have you distributed the plan to all appropriate parties (client, if appropriate, referral source, attorney, economist, if there is one)?”

Also, the Pediatric Life Care Planning and Case Management (second edition) publication outlines the following steps to establish medical foundation for a life care plan (Page 847):

1. Establish direct links between the medical records and recommendations in the plan
2. Write the medical and allied health treatment team members with plan questions not answered in the existing records
3. Utilize consulting specialists
4. Utilize clinical practice guidelines
5. Utilize research literature

Of note, neither of the life care planning treatises suggest that life care planners should independently formulate all aspects of a plan, release their plans and then seek to establish foundational aspects thereafter. Such post hoc activities are illogical, given that healthcare consultations are a quintessential cornerstone that provide the structural underpinnings and foundational aspects necessary to arrive at valid and reliable life care planning conclusions. Moreover, by electing to pursue, as only a mere afterthought, the necessary foundational requirements, life care planners place themselves at risk of violating their scope of practice,

as well as an array of various life care planning consensus guidelines. Finally, such a flawed developmental course can create an unacceptable dynamic that potentially biases the post hoc licensed healthcare provider's review. In particular, it can distort towards agreement with pre-arranged care, treatment and services that may have originated from an individual without the proper education, training and credentials necessary for the determination.

Published consensus in the life care planning field indicates life care planners should utilize a reliable and consistent method to reach their conclusions. Moreover, the life care planner's conclusions need to rely upon the recommendations and opinions obtained from healthcare professionals and other appropriate data. In the end, an evidence-based life care plan should accurately reflect the long-term planning implications derived from the analysis of medical records, clinical practice guidelines, literature and completed healthcare consultations. A life care plan that is missing these necessary elements does not reflect best practice and it risks not being accepted as a reliable and valid account of long-term care and support for the evaluatee.

Published standards from the IALCP and consensus statements within the Journal of Life Care Planning require life care planners to remain within their scope of professional practice at all times when developing a life care plan (IALCP Standards 1-A. & 6-D & Consensus Statements 80 & 81). The IALCP standards specifically outline the following necessary parameters for life care plan construction (IALCP Standard 2-C): "Provides a consistent, objective, and thorough

methodology for constructing the life care plan, relying on appropriate medical and other health related information, resources, and professional expertise for developing the content of the plan."

Based upon IALCP standards and the noted treatise procedures, it is unacceptable to produce a life care plan that ventures beyond one's own scope of professional practice. It is equally unacceptable to establish the content and recommendations of the life care plan in isolation and then, after the plan's release, solicit others for medical foundation and endorsements for the same. A post hoc review of a life care plan by a licensed healthcare provider should not be utilized to circumvent the necessary developmental processes and procedures required to establish a valid and reliable life care plan for an evaluatee.

For illustration purposes, the following case scenario is offered to further explore the issue of a post hoc review:

A 45-year-old female was injured in an explosion and sustained a T-8 complete spinal cord injury and multiple fractures from the event. A Registered Nurse (RN) with life care planning certification was retained by the plaintiff attorney to complete a life care plan for the evaluatee. The evaluatee was treating with a spinal cord injury physiatrist, orthopedist and a urologist. The nurse life care planner did not make any requests or attempts to complete healthcare provider consultations during the development of her life care plan. Instead, she elected to independently compose her life care planning tables, which included all aspects of medical care, treatments and services for

the evaluatee, without first obtaining necessary medical foundation from licensed physicians and/or other healthcare providers. Depositions of the healthcare providers had not been completed. Also, the nurse life care planner did not gather any foundation from published clinical practice guidelines or empirical research relative to the evaluatee's diagnoses. Finally, the nurse life care planner did not make any direct connection between the information reviewed within the evaluatee's past treatment records and the type, frequency and duration of future medical care, as detailed within her life care planning tables. After releasing the life care plan, the nurse life care planner submitted to the treating spinal cord injury physiatrist, urologist and orthopedist a copy of her narrative report and life care planning tables with a request for those professionals to review and endorse her overall plan recommendations for their patient through signature.

The above life care planner breached her scope of professional practice as a Registered Nurse (RN) by independently determining all aspects of medical care and treatments for the evaluatee during plan development absent proper medical foundation for the same. Her attempts to solicit

post hoc endorsements by licensed treating physicians cannot erase the breach of professional scope displayed. Ultimately, the proposed medical care and treatments found within the life care plan originated from the nurse. Thus, the life care plan was not built upon the necessary medical foundation that published standards, guidelines and treatise procedures require.

Other circumstances observed by the authors include life care planners documenting partial foundation for their recommendations but attempting to “fill in the holes”, despite such being outside of their professional scope of practice. This inappropriate life care planning practice will, at times, be followed by a request for a post hoc review by a licensed healthcare provider. The same methodological problems and issues previously discussed apply to such circumstances. Importantly, when time deadlines limit options for obtaining additional necessary life care planning foundation, acknowledging such through labeling the item(s) as “to be determined” or with similar preliminary designation, would be a reasonable course of action. This is in alignment with the published definition of a life care plan from the IALCP, which refers to the plan as a “dynamic document.” Thus, update(s) and/or change(s) for the details and overall

The above life care planner breached her scope of professional practice as a Registered Nurse (RN) by independently determining all aspects of medical care and treatments for the evaluatee during plan development absent proper medical foundation for the same.

findings of a life care plan are to be expected over time.

In conclusion, the development of an evidence-based life care plan is intended to be a collaborative process that produces a detailed and comprehensive document of an evaluatee's future needs following a catastrophic injury or chronic health care condition. Necessary developmental processes, professional standards and field consensus require that medical and clinical foundation be established initially before any preliminary life care planning opinions are reached. Pursuing this necessary medical and/or clinical foundation as a mere afterthought once the life care plan has been developed and released violates the very framework and long-standing tenets upon which the entire life care planning process was built and validated.

ABOUT THE AUTHORS

Michael Fryar earned a Bachelor of Arts in Psychology from the University of North Carolina at Chapel Hill. He subsequently graduated Summa Cum Laude with a Dual Master's in Rehabilitation Counseling and Vocational Evaluation from East Carolina University. In 2005, he completed a 120-hour post-graduate training program in life care planning through Kaplan University with lead instructor, Dr. Paul Deutsch, the founder of the life care planning process. Finally, Mr. Fryar completed his Associate Degree in Nursing at Sampson Community College. Mr. Fryar is a Certified Rehabilitation Counselor (CRC), Registered Nurse (RN), Certified Case Manager (CCM) and Certified Life Care Planner (CLCP). He is also a registered Qualified Rehabilitation Professional (QRP) through the North Carolina Industrial Commission. Mr.

Fryar has worked as a rehabilitation charge nurse for the brain injury, spinal cord injury and general rehabilitation units of Wake Forest University Baptist Medical Center. He served as past Secretary for the International Association of Rehabilitation Professionals' (IARP) National Forensic Board. He is currently an active member of the Rehabilitation and Disability Case Management (RDCM) National Board and was appointed to the Education Subcommittee for the International Association of Rehabilitation Professionals (IARP). More recently, he was appointed Chair-Elect for the RDCM board. In total, Mr. Fryar has worked over 20 years within the rehabilitation and case management fields. He is a Senior Rehabilitation Consultant and Life Care Planner with InQuis Global, LLC.

Betsy Keesler earned a Diploma in Nursing from Presbyterian Hospital School of Nursing, Charlotte, NC, in 1987. She received an award for Clinical Excellence in Pediatric Nursing upon graduation. Ms. Keesler subsequently completed a Bachelor of Science in Nursing in 1990 with receipt of High Distinction through George Mason University. In 2021, she completed 120 hours of post graduate training in life care planning through the Institute for Rehabilitation Education and Training (IRET). Ms. Keesler is a Registered Nurse (RN) and a Certified Life Care Planner (CLCP). She has worked in the hospital setting as a Registered Nurse (RN) for pediatric and neonatal intensive care units and within the outpatient medical setting as a community health nurse, where she coordinated and provided care for a large and diverse patient population within the school system. Also, Ms. Keesler was a nursing manager for the Adult Evaluation and Review Service within the Maryland

Department of Health. Her clinical work there involved the coordination of medical and nursing services to support ongoing safe community living for persons with catastrophic diagnoses and chronic health conditions. Ms. Keesler has held numerous leadership positions throughout her nursing career and was the recipient of the *Maryland Nurse of the Year* award in 2009. She is an active board member of the Rehabilitation and Disability Case Management (RDCM) National Board for the International Association of Rehabilitation Professionals (IARP). Ms. Keesler is a Life Care Planner with InQuis Global, LLC.

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Changes in Trucking and Transportation Regulations

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David A. Nasrollahi

Changes in Trucking and Transportation:

Recently, I went to the grocery store to buy bread and milk. When I arrived at the store, the entire aisle was bare-boned. As a native South Carolinian, I thought to myself: Are we getting some snow? Unfortunately, that was not the case. The empty shelves of the grocery store were a result of the ongoing supply-chain disruptions that have been for some time. These disruptions have likely affected you in some way: from not being able to get avocados to not being able to buy a car because of a microchip shortage. Putting it simply, goods were/are not getting from point A to point B. Trucking and transportation have shown how important their role plays in our supply-chain issues that we are facing. As a result of these disruptions, the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) is grappling with getting more truck drivers on the road while regulating the standards and safety of the industry.

If you practice in the Trucking and Transportation litigation field, then you already know that being up to date on the FMCSA and state regulations is a must. Trucking litigation defense requires considerable knowledge of the regulations that each motor carrier and commercial driver are required

to follow. Knowing whether your client has met the basics can make or break the defense of a case. Given the updates and for the purposes of this article, I will highlight some of the changes that have recently occurred:

Executive Order No. 2021-40 and 2022-08:

Governor McMaster issued Executive Order No. 2021-40, which temporarily waived and suspended certain regulations related to commercial vehicles. Importantly, the Order waives the enforcement of certain state and federal requirements pertaining to registration, permitting, size, and house of service for commercial vehicles and operators. Further, on January 25, 2022, and March 1, 2022, Governor McMaster issued additional Executive Orders: Nos. 2022-08 and 2022-10, which continued the waiver of certain requirements. However, the Order states that this temporary waiver shall not be construed to require or allow an ill or fatigued driver to operate a commercial motor vehicle. Further, in accordance with 49 C.F.R. § 390.23, "a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least ten (10) consecutive hours off duty before the driver is required to return..." Note that Georgia and North Carolina have issued similar to the Orders signed by Governor McMaster.


Entry Level Driver Training (ELDT) rule:

For entry-level CDL trainees obtaining their Commercial Driver's License (CDL), the process has gotten tougher. On February 7, 2022, the FMCSA set a minimum for training requirements of drivers that want to a) obtain their CDL, b) upgrade their CDL, or c) obtain a passenger, school bus, or hazardous material endorsement. Under this new regulation for entry-level drivers to take the required skills or knowledge tests to obtain their CDL, applicants must have successfully completed applicable entry-level driver training program of theory and behind-the-wheel instruction. See 49 CFR 380 Subpart F. Importantly, this regulation is not retroactive. This is yet another item that attorneys representing trucking companies and drivers will need to ensure their newer drivers have completed.

Registered Apprenticeship Programs:

Currently, the truck drivers under the age of 21 can only drive on an intrastate basis. The U.S. Department of Transportation's FMCSA and Department of Labor have created and are expanding the Registered Apprenticeship Program which allows, under certain requirements, for apprentice drivers between the age of 18 to 20 years old to drive commercial vehicles interstate. Amongst other requirements of this Apprenticeship Program, the apprentice driver must complete a 120- and 280-hour probationary period, with specific requirements of on-duty time and training in specific areas. Additionally, the commercial motor vehicle (CMV) used by the apprentice driver must have specific technologies and equipment including, but not limited to, a forward facing video event capture system, active braking collision mitigation system, and a governed

speed of 65 miles per hour at the pedal and under adaptive cruise control.

As you can imagine, any of the above changes can have a drastic effect on whether a client was in or out of compliance with a mandated regulation. Further, it is likely that some or all of the above will be changed again. This article does not even touch the technological changes the trucking and transportation industry is going through. Given this, it is important for defense attorneys that practice in the Trucking and Transportation litigation field to stay hands-on and up to date on the ever-evolving industry and regulations that effect it. 



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

SCDTAA Coat Drive



SCDTAA held a coat drive last year at the Annual Meeting. The coats were donated to E.P. Todd Elementary School in Spartanburg (Spartanburg School District 7), the Oliver Gospel Mission and Transitions Homeless Center.

Pictured are SCDTAA Board members Amy Geddes (2nd from left) and Dan Atkinson (3rd from right) donating coats to these worthy organizations.

2021 Annual Meeting Recap

The Sanctuary at Kiawah Island Golf Resort

by Fred W. Suggs III

The board and membership were very excited to return to the Sanctuary for our Annual Meeting from November 18-21, 2021. As always, the location and amenities, as well as the company, were excellent. It was wonderful to reconvene in person after our 2020 meetings were a wash due to Covid.

Our meeting kicked off with a President' Welcome Reception on Thursday evening, followed by a breakfast honoring our wonderful judges on Friday morning.

The CLEs got off to a great start on Friday with a judicial panel which included Judges Stephanie McDonald, Carmen Mullen, Bentley Price, and Letitia Verdin. We also enjoyed hearing from our sponsor, Avalon, and receiving a primer on social media marketing for lawyers. Friday afternoon, participants enjoyed golf, fishing, and lazing about the premises. Our annual black-tie banquet and dancing was a hit, with a great band carrying us late into the evening.

Our CLE program wrapped up on Saturday



Fred W. Suggs III

SCDTAA EVENTS (cont.)

2021 Annual Meeting

morning with a marvelous presentation by Dr. Tonya Matthews with the International African American Museum. We also heard from another sponsor, SEA, followed by a presentation on the state of the judiciary by Chief Justice Donald Beatty. Jim Blackburn, author of *Flame Out*, closed out the session with our mental health presentation.

The weekend concluded with a lovely lowcountry dinner, followed by a nightcap at the hospitality suite. All in all, it was an excellent annual meeting. 🏛️

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



**SCDTAA
EVENTS
(cont.)**

**2021 Annual
Meeting**



SCDTAA EVENTS (cont.)

2021 Annual Meeting



SCDTAA EVENTS (cont.)

2021 Annual Meeting



SCDTAA EVENTS (cont.)

2021 Annual Meeting



SCDTAA EVENTS (cont.)

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Moore Medical Consulting LLC



Robson Forensic
THE EXPERTS



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MURPHY & GRANTLAND, P.A.



Litigation + Business



2022 Summer Meeting Preview

by Michael D. Freeman



Michael D. Freeman



The Summer Meeting Committee is hard at work nailing down an exciting panel of presenters for your 2022 Summer Meeting. We are currently vetting a slate of substantive topics we think the membership will find both informative and engaging on both the Workers' Comp and Litigation agendas. We'd like to thank our Diamond level sponsor, Applied Building Sciences, for their generous sponsorship and we look forward to another informative

presentation from their skilled team of engineers and professionals. We'd also like to thank Sapphire sponsor SEA and Platinum sponsor Exigent for their partnership and participation in this Summer's event. As always, we expect a great time to be had by all at the beautiful Omni Grove Park Inn so make sure to mark your calendars to join your SCDTAA friends and colleagues July 21-23 in Asheville, NC this Summer. We look forward to seeing everyone there! 🏠



Sarah
Wetmore Butler

Southeastern Women Litigators Conference

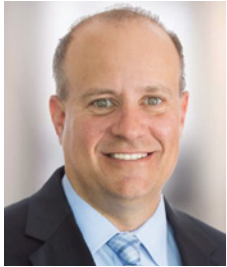
by Sarah Wetmore Butler

The Inaugural Southeastern Women Litigators conference was held on March 23rd and 24th in Atlanta. Attorneys from Florida, Georgia, South Carolina, North Carolina, Alabama and Tennessee attended and presented. There was a Welcome Reception on Wednesday evening at the Georgia State Bar Building, followed by group dinners at several local restaurants. The conference took place on Thursday at the Atlanta Zoo, which turned out to be a wonderful venue where elephants and giraffes were right outside of the meeting space. Marianne Trost, The Women Lawyers Coach, started off the day with a high energy presentation on Ten Tips to Excel in Your Legal Career. SCDTAA's Immediate Past President Sarah Butler was part of a panel discussion on Finding your Way to Partnership. NCADA President Sara Lincoln spoke on Issues Facing Female Managing Partners and there were also terrific panel discussions about Female Managing Partners, Owning Your Differences, Panel Counsel and Mentorship. Dr. Cindy McGovern, the author of "Every Job is a Sales Job" spoke to the group about client development. The plan is to continue this conference annually so watch for announcements in the future. 🏠



2022 Trial Academy


by Kenneth N. Shaw



Kenneth N. Shaw



After a two-year hiatus due to COVID, the SCDTAA is excited to be bringing back the Trial Academy again this year. It is scheduled to take place May 18-20 in Greenville. As always, Trial Academy provides the perfect opportunity for young attorneys to learn how to try a case. The Academy includes two days of classroom work during which experienced trial attorneys will

share their knowledge on each aspect of trying a case from jury selection to closing arguments and post-trial motions. The Academy concludes with the participants putting what they have learned into practice during a mock trial in a real courtroom in front of a real judge and actual jurors. To add to the excitement this year, the mock trials will be taking place in Greenville's brand-new Federal Courthouse. 

Judge P. Michael Duffy Inaugural Award Presented

by William W. Watkins, Jr.



William W.
Watkins, Jr.

On Thursday, April 28th, 2022, the SCDTAA held a reception honoring retired U.S. District Court Judge P. Michael Duffy. With approximately 100 judges, members, and guests in attendance at past president Molly Craig's home in Charleston SC, the award was presented to its inaugural recipient, Judge Patrick Michael Duffy. The Honorable David C Norton shared his thoughts on Judge Duffy's life on the bench and Jamie Hood presented Judge Duffy with a Jefferson cup as the inaugural award. The award was established in 2019 and is to be given from time to time to a state or federal trial or appellate judge who epitomizes civility and has demonstrated exemplary judicial independence in the performance of his or her duties. Nominations may be presented by any Board Member during a Board Meeting and the Board of Directors will consider such nominations. Future recipients will be honored as part of the SCDTAA Annual meeting.

As Brian Hicks of the Post and Courier stated so well: "Judge Duffy walked among legends, but he became one on his own" 



...additional photos follow

**SCDTAA
EVENTS
(cont.)**

**Judge
Michael P. Duffy
Inaugural Award
Presented**



**SCDTAA
EVENTS
(cont.)**

**Judge
Michael P. Duffy
Inaugural Award
Presented**



**SCDTAA
EVENTS
(cont.)**

**Judge
Michael P. Duffy
Inaugural Award
Presented**





SCDTAA 2nd Annual School Supply Drive

The SCDTAA will once again be collecting school supplies at the summer meeting to be held July 21st – 23rd at the Omni Grove Park Inn. Items will be donated to students in need. Can't donate items – you can send a donation to SCDTAA for the school supply drive.

Suggested items:

Three Ring Binders	Folders with pockets	spiral notebooks
composition books	notebook paper	graph paper
Number 2 pencils	glue sticks or glue	washable markers
rulers	packs of facial tissue	Clorox wipes
antibacterial hand soap	ink pens	compass
calculators	crayons	colored pencils
index cards	highlighters	book bags

Questions – contact Aimee Hiers at SCDTAA Headquarters ahiers@pmpamc.com.

SCDTAA Hosts Senate Judiciary Committee Event

by Jeffrey N. Thordahl



Jeffrey N. Thordahl



On Tuesday, April 19th the SCDTAA hosted an event with the Senate Judiciary Committee, the House Judiciary Committee, staff and members of the SCDTAA at the Oyster Bar. After a two-year hiatus due to COVID, the attendees were glad to be back in a warm

and relaxing environment. The legislative members were appreciative for the opportunity to eat and mingle around the “Oyster Bar” as a welcome change from the typical sit-down dinner. Both Committees were well represented with the last of the members there until 10 PM. 🏛️



SOUTH CAROLINA
DEFENSE TRIAL
ATTORNEYS'
ASSOCIATION



InQuis

**2022 SCDTAA
Golf Classic
Tournament
Sponsor**

Thursday, September 22nd – Orangeburg Country Club, Orangeburg, SC

**Sign up before September 12th and
SAVE \$150 per team!**

Orangeburg Country Club
2745 Griffith Drive
Orangeburg, SC 29118

For more information, call

Aimee Hiers at SCDTAA headquarters (803) 252-5646 or (800) 445-8629 or email

ahiers@pmpamc.com



Agenda:

10:00 a.m. Registration, Box Lunch & Putting Contest
11:00 a.m. Shot Gun Start
5:00 p.m. Awards

Sponsorships:

Sponsorship includes signage on the course, & recognition at the tournament. Check the appropriate sponsorship.

- Beverage Stations \$500
- Hole Sponsors \$500
- Cart Sponsors \$500
- Driving Range \$500
- Closest to Pin \$350
- Longest Drive \$350

Register at www.scdtaa.com

** A refund, less \$50.00 processing fee, will be given for cancellation requests received in writing by September 16th. NO REFUNDS will be granted after September 16th.

Registration:

Registration fee includes a golfer gift, greens fee, cart, lunch, range balls, beverages, prizes & awards. We encourage you to put in a foursome – guaranteeing play with those of your choice. If you choose not to submit a full team, please know that the committee will do its best at placing you on a mutually beneficial team.

Golfer/Company	Handicap/Avg. Score
1.	
2.	
3.	
4.	

Payment:

Contact _____
 Company _____
 Address _____
 Telephone () _____
 Cell No. () _____
 Email _____

Circle selection	Individual	Foursome
BEFORE 9-12-22	\$225.00	\$850.00
AFTER 9-12-22	\$250.00	\$1,000.00

Sponsorship	\$
Team Fee	\$
Total DUE	\$

Make checks payable to **SCDTAA**.

PAYMENT DUE on/before date of tournament.

MAIL TO: SCDTAA, 1 Windsor Cove, Suite 305,

Columbia, SC 29223

FAX TO: (803) 765-0860

EMAIL TO: ahiers@pmpamc.com



Legislative Update

by Jeffrey N. Thordahl, SCDTAA Lobbyist



Jeffrey N. Thordahl

The General Assembly is in the second year of its two-year session and as every session has its unique challenges and opportunities this one does as well. The main story line has become how to best allocate an unprecedented amount of surplus one-time state money, record state recurring revenues and almost \$2.5 Billion from federal funds related to the American Rescue Plan. In addition, there are remaining issues related to Covid 19 and the Medical Marijuana bill has finally passed one body, the Senate, after many years of effort by Senator Tom Davis.

Given the large amount of new money there has been broad bipartisan support from the Governor, and the both the House and Senate to reduce the state income tax and possibly reduce property taxes on manufacturing property. At the time of this article the House and Senate had different proposals but with a commitment to get something done to reduce the income tax. It may be late in session before the details are ironed out and incorporated into the annual state budget.

The House has adopted their version of the FY22-23 General Appropriations. The Senate is working on their version. With nearly \$1.5 billion in recurring funds added to the \$11 billion General Fund budget, there were significant increases in K-12, public safety and higher education. With one-time surplus revenue expected to top \$3.1 billion, many



needs will be met across the state. The budget includes:

- \$600 million for lowering income tax rates;
- \$72 million for a 3% across the board state employee pay raise;
- \$45 million for a one-time \$1500 bonus for all state employees;
- Increases starting teacher salary from \$36,000 to \$40,000;
- \$200 million for Medicaid Maintenance of Effort; and
- Significant funding for recruiting and retaining state employees.

Both chambers have passed their version of an authorization plan appropriating funds paid to the state from the federal American Rescue Plan Act (ARPA). They allocated the majority of the money but have held back roughly \$700 million to allocate at a later date. The Senate approved [S. 952](#):

- \$453 million for the Department of Transportation for reimbursement of lost revenue;
- \$900 million for the Rural Infrastructure Authority for the buildout of new water, wastewater and storm water systems; and
- \$400 million for the Office Regulatory Staff for broadband infrastructure.

The House adopted [H. 4408](#):


- \$453 million for the Department of Transportation for reimbursement of lost revenue;

- \$800 million for the Rural Infrastructure Authority for the buildout of new water, wastewater and storm water systems;
- \$400 million for the Office Regulatory Staff for broadband infrastructure.
- \$100 million for the Office of Resiliency; and
- \$8 million for the Department of Administration for grants management.

Legislation of direct interest to the membership of the SCDTAA has also received some attention. S. 366 dealing with medical evidence in Workers' Compensation cases has been the subject of debate for a few years. It has been amended by the Senate Judiciary Committee and will go to the Senate Floor for debate. Originally the bill was permissive in allowing medical evidence without regard to the rules of evidence. With a committee amendment, it has been somewhat narrowed to provide for cross examination for a wider range of medical evidence. S. 471, which allows the attorney/party to conduct voir dire, has also been reported out of the Senate Judiciary Committee. In its current form, the bill attempts to place time limits on the questions and limits the types of questions that can be asked. H. 4321, related to the notice requirements to file third party actions in workers' compensation cases, was passed by the House and must now go through the Senate process. As passed by the House, the bill eliminates the time limits in which a third party action must be filed. There is general agreement that the bill should be amended to not completely eliminate the time limits. S. 423 related to contributions to defense costs in actions involving more than one liability insurer has been sent

back to committee and will likely not receive any further action.

To avoid procedural challenges a bill needs to pass one body by April 10 to be considered by the other body before they adjourn. While they can call themselves back into session, the General Assembly is scheduled to adjourn May 12, 2022.

Finally, this year is an election year for all Constitutional offices including Governor and the Attorney General as well as all of the House Seats. Primaries are scheduled for June 14. 

New Releases from the South Carolina Bar Publications Department

Elements of Civil Causes of Action, Sixth Edition

Michael G. Sullivan (1945-2014)

Edited and Updated by Douglas S. MacGregor

Release Date: November 2021

Cost: \$105, plus S&H and tax (includes download of book and forms)

The Law of Legal Malpractice in South Carolina, Second Edition

Benjamin R. Gooding, Elizabeth Van Doren Gray,
William H. Jordan, Alexis K. Lindsay, Robert E. Stepp, J.
Calhoun Watson

Release Date: September 2021

Cost: \$55, plus S&H and tax (includes download of book)

South Carolina Business Torts

Cory E. Manning, Esquire

Release Date: October 2021

Cost: \$60, plus S&H and tax (includes download of book)

***The South Carolina Consumer Protections Code 2021
Cumulative Supplement***

Kathleen G. Smith

Release Date: February 2022

Cost: \$35, plus S&H and tax



***South Carolina Family Law Mediation: A Guide for
Attorneys and Mediators***

Sean F. Keefer, Esquire

Release Date: December 2021

Cost: \$55, plus S&H and tax

***The South Carolina Guardian ad Litem's Toolkit,
Second Edition***

Jenny R. Stevens, Esquire

Release Date: November 2021

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

The South Carolina Litigation Handbook, Second Edition

Charles “Charlie” E. Ipock, Esquire

Edited and Updated by Mary Cothonneau Eldridge, Esquire

Release Date: September 2021

Cost: \$50, plus S&H and tax

Traumatic Brain Injury Litigation

Principal Author and Editor: Kenneth E. Berger, Esquire

Contributing Authors: Russell Button, Esquire, Christopher

J. Finney, Esquire, Mark D. Herbst, MD, PhD, Gregory A.

Kendall, Esquire, Andrew M. Lehmkuhl, Esquire, Sarah

Lustig, RN, CLCP, CBIS, Taylor Messervy, BSN, RN, BSc

(Psych), CBIS, NLCP, Brandon A. Woodard, Esquire

Release Date: October 2021


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

***Trust Accounting for South Carolina Lawyers: An
Annotated Practice Manual***

Barbara M. Seymour, Esquire

Release Date: December 2021

Cost: \$50, plus S&H and tax

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



James B. Robey III

SCDTAA SOLACE Program


by James B. Robey III

Life can be hard. With the recent pandemic and countless other events that have occurred recently, it is safe to assume that we all know someone who has gone through a hard time. In an effort to assist those going through hard times, the SCDTAA started its SOLACE program in 2020. SOLACE is an acronym for “Support of Lawyers/Legal Personnel: All Concern Encouraged.” The purpose of the SOLACE program is to allow the SCDTAA community to reach out in meaningful and compassionate ways to our membership, their respective firms, their families, and all members of the legal community who experience a sudden calamity. Past President Johnston Cox started the program, which is modeled after a program 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 catastrophic loss.

The focus of the SOLACE program is to create a network, in South Carolina, to help those in need. The type of support provided by this network can vary. The support sought from our network can range from simply sending a family in need a card, to providing meals, transportation, help with child care, or other similar services. Though monetary support is a type of support that could be provided, it is not the primary initiative of the program and the SOLACE program will not make efforts to solicit money. However, SOLACE can support with contributions of gift cards, frequent flyer miles, and a myriad of other possible solutions.

The way our SOLACE programs work is simple and is intended to be anonymous. An individual with a need, or knowledge of a need, will contact Aimee Hiers (ahiers@pmpamc.com) via email. The email request should contain a brief description of the need. An email alert is then sent to all SCDTAA members with a request for help with the need, 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 and facilitated.

The SOLACE program continues to thrive due to our outstanding membership. If you are interested in further involvement with the SOLACE program, please contact the SOLACE Chair, James Robey at jrobey@richardsonplowden.com. 



SCDTAA Docket

William A. Coates appointed to South Carolina Ports Authority Board of Directors

Greenville, SC (February 23, 2022) – Roe Cassidy Coates & Price announces that William A. Coates has been appointed to the Board of Directors of the South Carolina Ports Authority. The South Carolina Ports Authority is governed by a nine-member Board of Directors, each appointed by the Governor and confirmed by the South Carolina Senate.

Bill Coates is a founding member of Roe Cassidy Coates & Price. He has over forty years of trial experience and practices in commercial, corporate, financial, real estate, and environmental litigation. As a former Assistant United States Attorney, his practice includes white collar criminal defense and governmental investigations.

Bill is a former chair of the South Carolina State Ethics Commission and the South Carolina Bar’s Judicial Qualifications Committee. He is also a recipient of the Order of the Palmetto.

Trey Suggs elected Secretary of South Carolina Defense Trial Attorneys’ Association

Greenville, SC (December 15, 2021) – Roe Cassidy Coates & Price announces that litigation attorney, Fred W. “Trey” Suggs III has been elected Secretary of the South Carolina Defense Trial Attorneys’ Association (SCDTAA) for 2022.

Suggs previously served two terms on the Board of Directors. The SCDTAA’s mission is to promote justice, professionalism and integrity in the civil justice system by bringing together attorneys dedicated to the defense of civil actions.

“It is my highest professional honor to be elected as an officer of SCDTAA and to follow in the footsteps of many of this state’s greatest trial lawyers and leaders of our profession. I look forward to four more years of serving the SCDTAA and its many members across South Carolina,” Trey said in a statement following the election.

Trey Suggs’ practice focuses on medical malpractice, professional malpractice, representation of professionals before licensing boards, and commercial and personal injury litigation. He makes regular appearances in South Carolina circuit courts, and has tried cases on behalf of defendants and plaintiffs to juries across the Upstate of South Carolina. He has also argued successfully in the South Carolina Court of Appeals and Supreme Court.

Roe Cassidy Regionally Ranked as 2022 U.S. News & World Report Best Lawyers® “Best Law Firms”

GREENVILLE, SC (December 1, 2021) – Roe Cassidy Coates & Price has been named a 2022 “Best Law Firm” in eight practice areas, including six Tier 1 and two Tier 2 rankings by U.S. News – *Best Lawyers in America*®.

The selection follows a rigorous evaluation process that includes client and peer evaluations. All practices designated within a certain tier reflect the reputation and knowledge from lawyers and input from the business community in which the firm has offices and provides legal counsel.

Roe Cassidy Tier Rankings:

Regional Tier 1 rankings

- Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law
- Commercial Litigation
- Employment Law – Management
- Insurance Law
- Litigation – Environmental
- Medical Malpractice Law – Defendants

Regional Tier 2 rankings

- Litigation – Banking & Finance
- Mediation

Best Lawyers® is compiled by conducting confidential peer-review surveys where attorneys confidentially evaluate their professional peers. *Best Lawyers*® “Best Law Firms in America” rankings are based on an evaluation process which includes client and lawyer evaluations, peer reviews and information provided by each law firm. A firm must have at least one lawyer recognized in the current edition of *The Best Lawyers*® list to be ranked in a specific location and practice area.

Bill Coates Recognized as Local Litigation Star by Benchmark Litigation

GREENVILLE, SC (October 5) – Roe Cassidy announces William “Bill” Coates has been named *Benchmark Litigation* “Local Litigation Star” for 2022. The firm was recognized in the “Recommended” category for dispute resolution in South Carolina. *Benchmark Litigation* is an annual guide that recognizes the leading litigation law firms and lawyers throughout the United States.

The *Benchmark Litigation* Dispute Resolution reflects only those individuals who were recommended consistently as reputable and effective litigators by clients and peers.

Roe Cassidy Lawyers Named to 2022 Best Lawyers List

GREENVILLE, SC (September 1, 2021) – Roe Cassidy Coates & Price announced that *Best Lawyers in America*® has honored five attorneys as *Best Lawyers*® in 2022.

Roe Cassidy *Best Lawyers*:

- William “Bill” Coates
- Jack D. Griffeth
- Ross B. Plyler
- V. Clark Price
- Fred W. “Trey” Suggs III

Best Lawyers® is compiled by conducting confidential peer-review surveys where attorneys confidentially evaluate their professional peers.

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A. is pleased to announce that Weldon L. “Luke” Coates has joined the firm as an associate attorney. Luke’s practice will be focused on insurance defense litigation including personal injury, premises liability, trucking accidents, and other general liability claims. He received his undergraduate degree from the University of South Carolina and his law degree from Campbell University. During law school Luke served on the Mock Trial Team and Honor Court.

Copeland, Stair Valz & Lovell, LLP - For more than 50 years, our firm has prided itself upon recruiting and training some of the most talented trial lawyers in the Southeast. In keeping with that tradition, we are excited to announce the change of our firm name to **Copeland Stair Valz & Lovell, LLP**. Further, CSVL’s vibrant team looks forward to continued relationships within the **Georgia, South Carolina and Tennessee** legal communities and as always, remains committed to providing the highest quality counsel and legal advocacy to our clients.

Copeland, Stair, Valz & Lovell, LLP Announces Election of Newest Partners in 2022

Copeland, Stair, Valz & Lovell, LLP is pleased to announce our newest elected partners. A handful of attorneys across all of our offices have achieved the honor of partnership in 2022, each showing profound talent and steadfast dedication to their practice, clients, and colleagues. Please help us congratulate Caroline R. Niland among this group.

Haynsworth Sinkler Boyd Recognized as a 2022 “Best Law Firm” by U.S. News – Best Lawyers®

COLUMBIA, SC (November 4, 2021) – Haynsworth Sinkler Boyd has been named a top-tier firm by U.S. News – Best Lawyers® in its 2022 “Best Law Firms” rankings for the 12th consecutive year.

The firm earned a national ranking in [Litigation – Construction](#) and was recognized regionally for 68 practice areas.

The following practice areas received Metropolitan Tier 1 Rankings:

Charleston

- Business Organizations (including LLCs and Partnerships)
- Commercial Litigation
- Corporate Law
- Economic Development Law
- Health Care Law
- Litigation - Real Estate
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Public Finance Law
- Real Estate Law
- Tax Law

Columbia

- Appellate Practice
- Banking and Finance Law
- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Bet-the-Company Litigation
- Commercial Litigation
- Corporate Law
- Insurance Law
- Litigation - Antitrust
- Litigation - Banking & Finance
- Litigation - Bankruptcy
- Litigation - Construction
- Litigation - Real Estate
- Litigation - Securities
- Mergers & Acquisitions Law
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Public Finance Law
- Real Estate Law
- Securities / Capital Markets Law
- Securities Regulation

- Tax Law
- Trusts & Estates Law

Greenville

- Bet-the-Company Litigation
- Commercial Litigation
- Construction Law
- Economic Development Law
- Health Care Law
- Immigration Law
- Litigation - Banking & Finance
- Litigation - Construction
- Litigation - ERISA
- Litigation - Intellectual Property
- Litigation - Mergers & Acquisitions
- Litigation - Real Estate
- Mass Tort Litigation / Class Actions - Defendants
- Medical Malpractice Law - Defendants
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Professional Malpractice Law - Defendants
- Public Finance Law
- Real Estate Law

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

E. Mitchell Griffith Becomes a Fellow of the American College of Trial Lawyers

E. Mitchell Griffith has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America.

The induction ceremony at which E. Mitchell Griffith became a Fellow took place recently during the Spring Meeting of the College in Coronado, California.

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

Membership in the College cannot exceed one percent of the total lawyer population of any state or province. There are currently approximately 5,800 members in the United States, Canada and Puerto Rico, including active Fellows, Emeritus Fellows, Judicial Fellows (those who ascended to

the bench after their induction) and Honorary Fellows. The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. The College is thus able to speak with a balanced voice on important issues affecting the legal profession and the administration of justice.

E. Mitchell Griffith is a partner in the firm of Griffith, Freeman & Liipfert, LLC and has been practicing law for almost 40 years. The newly inducted Fellow is a graduate of Wofford College and the University of South Carolina School of Law.

Richardson Plowden Names James Robey and Megan White as Shareholders.

Richardson Plowden is pleased to announce that attorneys Brandon C. Adams and Katherine E. “Katie” Engels have joined the Columbia office.

Wilkes Atkinson & Joyner, LLC.

Mike Wilkes, Dan Atkinson, and Alex Joyner are pleased to announce the creation of their new firm, Wilkes Atkinson & Joyner, LLC. With the same attorneys and staff from the prior Wilkes Law Firm, P.A., Wilkes Atkinson & Joyner looks forward to delivering that same outstanding level of service and results to its clients. Wilkes Atkinson & Joyner also announces the relocation of its Charleston office to 320 Broad St., Suite 220.

Fifteen Attorneys Selected for Inclusion in the 2022 Edition of Super Lawyers®

Greenville, S.C. – May 10, 2022 – Gallivan White Boyd (GWB) is pleased to announce that 15 attorneys from the firm’s Greenville and Columbia offices have been selected for inclusion in the 2022 edition of South Carolina *Super Lawyers*®.

Most notably, for the fifth time, *Super Lawyers* recognized GWB Partner John T. Lay as one of the Top 25 Lawyers in South Carolina.

Super Lawyers, published by Thomson Reuters, lists the top 5% of the attorneys in the state who have attained a high degree of peer recognition and professional achievement. *Super Lawyers* utilizes a multiphase selection process that includes peer nominations, independent third-party research, and peer reviews by other attorneys in their primary practice area.

The 12 GWB attorneys listed as *Super Lawyers* include:

Columbia

- Alfred Johnston Cox – Business Litigation
- Gray T. Culbreath – Class Action
- John E. Cuttino – Civil Litigation: Defense
- Amy L.B. Hill – Business Litigation
- John T. Lay – Business Litigation

Greenville

- H. Mills Gallivan – Alternative Dispute Resolutions
- Jennifer E. Johnsen – Insurance Coverage
- W. Duffie Powers- Creditor Debtor Rights
- T. David Rheney – Personal Injury General: Defense
- Zachary L. Weaver – Business Litigation
- Daniel B. White – Personal Injury – Products: Defense
- Ronald K. Wray, II – Transportation / Maritime

Outstanding attorneys who have been in practice for 10 years or less or attorneys who are 40 years old or younger may be recognized as **Rising Stars** by *Super Lawyers*®. No more than 2.5% of the attorneys in South Carolina are selected as Rising Stars each year. The three GWB attorneys listed as **Rising Stars** include:

Columbia

- Lindsay A. Joyner – Business Litigation
- Kyle D. McGann – Construction Litigation

Greenville

- Amity Edmonds – Workers’ Compensation 



David A. Anderson

Why DRI?

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

\$320—An Investment in Our Careers—An Investment in Our Clients—An Investment in Our Futures

About DRI

DRI is the leading organization for the civil defense community. We enhance the skills and promote the success of the civil defense bar through innovative programming, a vibrant membership community, and advocating on behalf of the legal profession. DRI is focused on business development and networking opportunities for more than 16,000 like-minded practitioners and industry representatives. DRI members come from diverse backgrounds and practice areas, working in firms of all sizes, as in-house counsel and as claims professionals. For over 50 years, DRI has been the recognized leader in providing the contacts, tools, resources and education needed to be successful in an ever-changing and competitive legal environment. Benefits of DRI membership are many and evolving. DRI is a community-like organization serving the civil defense community, where members can grow their practices, engage with others, network with colleagues, make new friends and learn from best-in-class education programs. DRI is not a membership by invitation only organization. Membership is open to those who wish to learn and benefit from the many opportunities we offer.

Growing Your Practice Is Made Much Easier

- **DRI invites in-house counsel to all of our educational events**, at no cost to them. This puts you in touch with business contacts at events that are focused on your area of law. It also provides you with the opportunity to develop business contacts at events that are focused on your area of law. If you're attending a DRI seminar sponsored by a particular committee, please consider contacting the committee chair or vice chair before attending. They will make sure that you enter a welcoming environment that can help facilitate your opportunities to meet other members and potential business referral sources.
- **DRI's online membership directory** allows you to create a profile, searchable by others. Last year nearly 10,000 people visited DRI's online directory of members looking for lawyers like you.
- **LegalPoint** and the **DRI Expert Witness Resources** are tools that enable you to find the articles you need and the information on witnesses you want, 24/7/365, with just a few clicks of a mouse. This resource is available to members only.

DRI Is a Community for You

- **Personalize your membership** by opting to join any of our 29 Substantive Law Committees, *at no additional cost*. These communities put you in touch with others and on a path to leadership. You may join as many committees as you like. From Aerospace Law, Insurance Law, Product Liability and Fidelity and Surety, to Drug and Medical Device, Toxic Torts and Environmental Law, Construction Law, Technology, and many more, there are abundant opportunities for committee participation through which you can learn and thrive.

DRI Connects You in So Many Ways

LegalPoint is a members-only service providing DRI members with exclusive access to a vast online library of DRI articles, books and materials. Members can search thousands of documents and filter them by practice area and resource. LegalPoint includes content from:

- *For the Defense*
- *In-House Defense Quarterly*
- Committee Newsletters
- Defense Library Series (DLS)
- Seminar Materials
- DRI Defense Wins Reporter In addition to searching all of DRI's LegalPoint content, you can also access Defense Library Series (DLS) books separately and review the table of contents and individual chapters.

- **Social Networking**—Be sure to connect with DRI online on Facebook, YouTube, Twitter, Instagram and LinkedIn.
- **DRI Mobile App**—Be sure to check out the latest DRI mobile applications (apps) for your smartphone, which allow you to connect with fellow members with just a few clicks. You can also enhance your seminar experience through personalized schedules, reminders and more.

Cost

- **Defense attorney**—\$320/year.
- **Young lawyer** (admitted to the bar five years or less)—\$185/year. Young lawyers also receive a certificate to attend one DRI seminar of their choice for free, by itself a value of over \$800.
- For more information on Membership offerings, please visit: <https://dri.org/membership/why-dri>


Additional Benefits

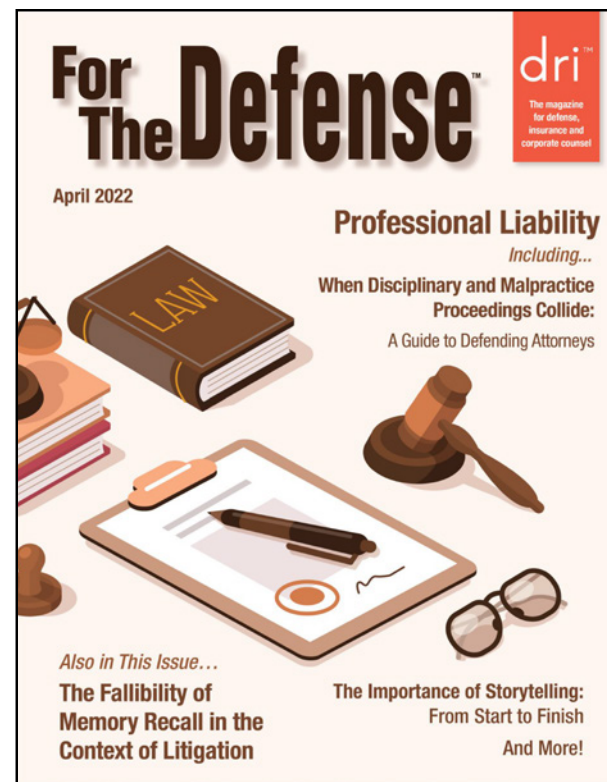
Below you will find a brief summary of all the great ways that members can engage in DRI.

[Visit us online](#) to learn more about how to make the most of your membership.

- Networking with potential clients and attorneys for business referral
- Members only savings on in person and virtual seminar registration
- Members only savings on the DRI Annual Meeting

DRI UPDATE (CONT.)

- Listing in DRI's member directory
- Exclusive access to LegalPoint's vast online library of DRI articles, books and materials.
- Discounts on DRI publications
- Opportunities to author articles and legal blogs
- Subscription to *For The Defense*, the nation's only monthly legal magazine focused on civil defense practice
- Discounts on timely webinarcast registrations
- Sponsorship opportunities available exclusively to members' firms
- Access to corporate and insurance company counsel meetings at seminars
- Speaking opportunities to demonstrate the expertise of you and your firm 



For The Defense –
the nation's only monthly legal magazine
focused on civil defense practice



Young Lawyers Division Update

by Nickisha M. Woodward




Nickisha M.
Woodward

YLD is really excited for 2022! Congratulations to George C. James, III of McAngus, Goudelock & Courie, LLC on being elected the new SCDTAA YLD President. Congratulations are also in order for Nicholas C. Stewart of Shumaker Loop & Kendrick on being elected Vice President. With new leadership in place the YLD is ready to kick off a productive 2022.

We will again be conducting our summer meeting in person at the always quaint Grove Park Inn, in Asheville, North Carolina. We are already looking for donation items for the silent auction. If you, your firm or someone you know want to donate an item or help with collecting items for the auction, please contact George James at George.james@mgclaw.com or Aimee Hiers at ahiers@pmpamc.com. We are looking forward to a summer annual meeting July 21-23, 2022.

Opportunities for Involvement: For the upcoming

year, the YLD is in the planning phase of conducting substantive CLE courses specifically designed for young lawyers. Do you need training on 30(b)(6) depositions, expert depositions, having problems with motions for summary judgment, or maybe there are practice areas you would like subject matter specific training by seasoned practitioners? If so, and you have topic ideas that you would like to see as a CLE for young lawyers, please contact George James or Aimee Hiers.

YLD Committee: If you are a young lawyer seeking greater involvement in the SCDTAA, opportunities are available. We always need help with planning the Trial Academy, article submissions for *The DefenseLine*, help with the silent auction and substantive law programming. We encourage you to get involved and continue the work of the YLD. If you are willing to serve with the leadership, again please contact George James or Aimee Hiers. 

Verdict Reports

TYPE OF ACTION:

Medical Malpractice

INJURIES ALLEGED:

Aspiration, sepsis, permanent lung injury, orthopedic injury, mental alteration

NAME OF CASE:

Ayres v. Diller and Trident Anesthesia Group, LLC

Leslie Ayres and Kevin Ayres, as Parents and Co-Guardians of Andrew Colin Ayres, an incapacitated person v. Kathleen M. Diller, M.D. and Trident Anesthesia Group, LLC

COURT:

Court of Common Pleas, Dorchester County

CASE #:

2018-CP-18-00451

TRIED BEFORE:

Jury

NAME OF JUDGE:

The Honorable Benjamin Culbertson

VERDICT AMOUNT:

Defense Verdict

DATE OF VERDICT:

2/04/2022

DEMAND: (REQUIRED IF DEFENSE VERDICT)

Several million dollars

HIGHEST OFFER:

\$0.00

MOST HELPFUL EXPERTS:

(NAME, TITLE AND CITY)

Paul Mitchell, DO – Anesthesiologist from Hilton Head;
Michael Garovich, MD – Radiologist from Charleston;
Toby Dawson, MD – Pulmonologist from Charleston

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Jamie Hood & Brian Kern
Hood Law Firm, Charleston, SC

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

Andrew Ayers was a severely autistic, morbidly obese adult at the time an oral surgery at Summerville Medical Center to remove several decaying teeth. The pre-operative chest x-ray was clear and no complications occurred intra-operatively. During the post-operative period, Andrew recovered but his oxygen saturations hovered in the mid-to-upper 80's and never above 93 on room air or supplemental oxygen. He was evaluated by multiple providers and had his recovery time extended for additional evaluation. He was ultimately

released from the PACU to be with his mother after exhibiting disruptive and distressed behavior.

The monitoring continued in the ambulatory care unit and a postoperative chest x-ray was ordered by Defendant Kathleen Diller, MD, to determine why his oxygen saturations were not recovering. The radiologist identified sub-segmental atelectasis and ruled out aspiration. Dr. Diller provided Andrew a small Percocet tab and he was discharged from the hospital (with his parents) pursuant to the surgeon's orders and in consultation with Dr. Diller, the surgeon, and the radiologist. Andrew suffered an aspiration event in the car on the way home which caused intubation, pneumonia, ECMO lung therapy, and transfer to MUSC for additional therapy.

The primary allegation in the case was that Dr. Diller improperly discharged Andrew Ayers from the phase 1 PACU and phase 2 ambulatory care unit because his oxygen saturations were low and that she improperly ordered a Percocet for him which contributed to an aspiration during the car ride home. The Defense established that, despite the low oxygen saturations, Andrew met ALDRETE score discharge criteria and that the evidence did not support the existence of an aspiration event at Summerville Medical Center. Instead, the aspiration was an unpredictable, unpreventable event, and a defense verdict was earned.

TYPE OF ACTION:

Engineering Professional Negligence and Breach of Contract

INJURIES ALLEGED:

Loss of approval of special exception permit for zoning for self-storage in the City of Greenville; lost profits for prospective business.

NAME OF CASE:

Rallis Holdings, LLC v. Seamon Whiteside & Associates, Inc.

Rallis Holdings, LLC, Plaintiff v. Seamon Whiteside & Associates, Inc., Defendant

COURT:

Court of Common Pleas, Greenville County

CASE #:

2019-CP-23-00601

TRIED BEFORE:

Jury

NAME OF JUDGE:

The Honorable G.D. Morgan, Jr.

VERDICT AMOUNT:

Defense Verdict

DATE OF VERDICT:

03/25/2022

DEMAND: (REQUIRED IF DEFENSE VERDICT)

Several million dollars

HIGHEST OFFER:

\$50,000.00 Offer of Judgment

MOST HELPFUL EXPERTS:

(NAME, TITLE AND CITY)


L.G. Lewis, Jr., P.E. – Engineering Standard of Care, Greenville, SC; and Woodrow Willard – Real Estate Appraiser, Spartanburg, SC.

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Dan Atkinson & Spencer Barrow
Wilkes Atkinson & Joyner, LLC, Spartanburg, SC

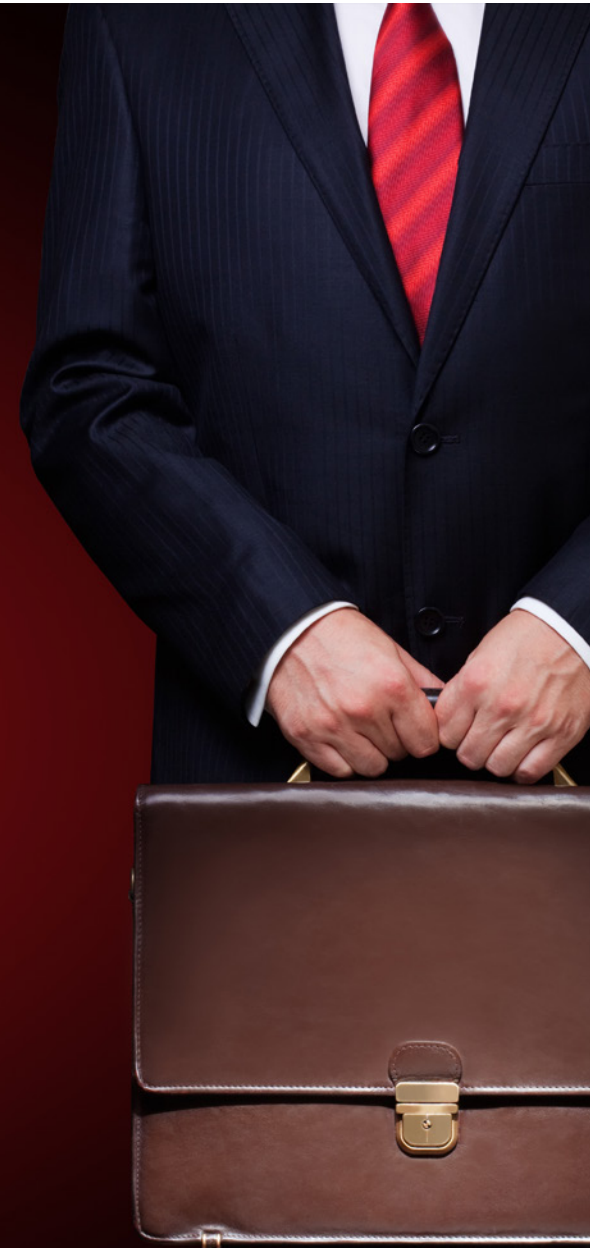
DESCRIPTION OF THE CASE, THE EVIDENCE PRESENTED, THE ARGUMENTS MADE AND/OR OTHER USEFUL INFORMATION:

Rallis Holdings is a real estate holding company. In October, 2016, Rallis contracted with SWA for assistance in obtaining a Special Exception Permit to allow construction of a climate-controlled self-storage facility. The SEP application was approved by the Greenville Board of Zoning Appeals, with conditions. On January 5, 2017, SWA received the permit, which was required to be recorded by Rallis with the RMC in Greenville. The same day, SWA had its office administrator email a copy to the client, with instructions regarding filing. SWA sent a follow up 11 days later, and 17 days prior to the SEP lapsing due to failure to timely file. Rallis never filed the document, despite explicit instructions to do so. Rallis discovered the permit lapsed when his contractor applied for a construction permit in March 2018. SWA reapplied for a special exception, but Rallis refused to conduct a required neighborhood meeting. The Board of Zoning Appeals denied the application, and the storage facility was never constructed.

The primary allegation in the case was SWA should have conducted further follow up than the two written communications. SWA introduced into evidence General Terms to the contract, which required the client to read and respond to all communications. SWA obtained a directed verdict on claims under the Unfair Trade Practices Act and claims for gross negligence. Plaintiff presented, over objection, a real estate appraiser, Richard Marchitelli, who quantified lost profits at \$3.525 million. SWA attacked the calculation as unreliable, and presented an expert appraiser, Woody Willard, who criticized the Marchitelli calculation, and who testified that the property, which Rallis still owns, has appreciated in valuation. The jury returned a defense verdict after a weeklong trial. 

Verdict Report Submissions Wanted!

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



Case Notes

by Stephanie G. Brown, Ford H. Thrift (Litigation), Helen F. Hiser & Campbell Plumblee (Workers' Comp)



Stephanie G. Brown



Helen F. Hiser



Campbell Plumblee



Ford H. Thrift

*Stoneledge at Lake Keowee Owners' Association, Inc.,
et al v. IMK Development Co., LLC, et al, –
Marick and Bostic*

Appellate Case No. 2019-000038; 2019-000041

Opinion No. 28071; 28070

Heard: October 14, 2002

Filed: December 8, 2021

In this appeal relating to a construction defect lawsuit, the South Carolina Supreme Court affirmed the Court of appeals on some points and reversed on others.

In particular, the Court affirmed the denial of Marick Home Builders' ("Marick") challenges to the jury charge and its motion for directed verdict as to the breach of implied warranty of workmanlike service and negligence claims. However, on the amalgamation/Single Business Enterprise Theory issue, the Court reversed the trial court's "decision" (in reality, the trial court did not actually decide this equitable issue as it should have done, but indicated there were factual issues for the jury to decide) to amalgamate IMK, Marick and Thoennes (Thoennes and his son each owned 50% of Marick; in turn, Marick and IK each owned 50% in IMK Development Co., a limited liability company). The Court noted its reluctance to ignore the corporate structure unless the plaintiff proves "bad faith, abuse, fraud, wrongdoing, or injustice" that results from "the blurring of the entities'

legal distinctions." Here, the Court concluded, the evidence did not rise to that level and did not support a finding of amalgamation of Thoennes with IMK. "In addition, we conclude the single business enterprise theory is not to be used to amalgamate an individual with a company. The single business enterprise theory exists as an equitable remedy for plaintiffs whenever they have been wronged by business entities with blurred identities."

The jury awarded \$3M for negligence against Bostic and IMK/Marick; \$1M for breach of the implied warranty of workmanlike service against Bostic and Marick; and \$1M for breach of fiduciary duty against IMK, IK, Thoennes, Lollis and Cox (the latter were individual investors in IK). The HOA questioned whether the verdicts were "cumulative" and the trial court agreed they were, without any discussion of what cumulative meant and without any query to jury as to its intentions. The Supreme Court admonished that "this entire problem and the appellate distress it has caused could have been avoided if just one party had requested the trial court to resubmit the verdicts to the jury with instructions to make them consistent." The Court held that the trial court erred because it did not seek clarification from the jury as to what it intended but, instead, reformed the verdicts on its own and raising the negligence, breach of warranty and breach of fiduciary duty awards to \$5M each.

The Court also upheld the Court of Appeals' reversal of a set off to Thoennes for the breach of fiduciary duty claim, noting that Section 15-38-20(G) provides "This chapter does not apply to breaches of trust or of other fiduciary obligation." However, a setoff can be applied to a breach of warranty award. The Court adjusted the amount of setoffs. Finally, because of the confusion over the jury's actual verdict, the Court also adjusted the apportioned amounts among the defendants.

In a separately issued "companion" opinion, the Supreme Court rejected Bostic's argument that the claims against it were barred, as a matter of law, by the 3-year statute of limitations, explaining that the Court is "equally mindful of the public policy informing the General Assembly's enactment of the 'discovery rule' set forth in section 15-3-535" and that the application of both the statute of limitations period and the discovery rule can present factual issues for a jury to resolve. Based on the standard of review and facts of the case, the Court determined there was a jury issue as to whether the statute of limitations had expired or not.

MacKenzie v. C&B Logging and Charles Brandon Barr

Appellate Case NO. 2018-001016

Opinion No. 5893

Heard December 8, 2020

Filed – February 9, 2022

The Court of Appeals affirmed a trial court ruling that excluded evidence of a commercial truck driver's (Barr) prior drug-related charges and convictions in Plaintiff's attempt to prove negligent hiring, training, supervision, retention and

entrustment by his employer, C&B Logging. The cross-appeal by C&B Logging and Barr asserting the trial court should have entered a directed verdict as to MacKenzie's employment related claims as Barr was within scope of his employment was not addressed as the Court of Appeals affirmed the trial court rendering the cross-appeal moot.

Barr was driving a company truck for C&B Logging when involved in accident with MacKenzie and another vehicle. MacKenzie sought to introduce at trial certain criminal drug related convictions of Barr. There was no evidence that Barr was under the influence at the time of the accident. Although the jury found for the plaintiff, they did not award her punitive damages so she sought a new trial based on her argument that the trial court committed error by excluding this evidence (the trial court did allow in evidence of Barr's prior moving violations). The Court rejected the MacKenzie's argument that the prior drug offenses were admissible as "crimes of moral turpitude," as well as her theory that the reason Barr had pulled off the road was to obtain drugs, as opposed to fix a deflated tire (the accident occurred as he was attempting to pull back onto the road). The Court of Appeals affirmed the trial court's determination that the prior drug offenses had no probative because "there was nothing about them that indicated an increased likelihood that Barr would not follow safety procedures in pulling to the side of the road." Furthermore, the Court emphasized that Rule 609(a), SCRE, changed prior law that suggested a crime of moral turpitude was admissible to attack the credibility of a witness. Noting that Rule 609 embodies the Rule 403 balancing test (i.e., probative value vs. unfair prejudice), the Court affirmed the trial court, noting the deference

applied to such evidentiary rulings. The Court then clarified that Rule 609(a)(2), which deals with crimes of dishonesty, include “crimes such as perjury, subornation or perjury, false statements, criminal fraud, embezzlement, or false pretense or any other offense in the nature of *crimen falsi*, the commission of which involves some element of deceit, untruthfulness, or falsification bearing on the [witness’s] propensity to testify truthfully.” “Narcotics convictions generally do not fall under this rule.”

Carla Denise Garrison and Clint Garrison
v. Target Corporation

Appellate Case No. 2020-000523

Opinion No. 28080

Heard May 26, 2021

Filed January 26, 2022

The Supreme Court held that (1) the cap on punitive damages provided by Section 15-32-530 of the South Carolina Code is not an affirmative defense that a defendant must plead in their answer and (2) interest awarded on offers of judgment includes punitive damages. The Court also upheld a finding of constructive notice based on circumstantial evidence of the dangerous object’s aged condition.

Denise Garrison’s daughter discovered a syringe in Target’s parking lot and Garrison punctured her hand while swatting it away from her daughter. She incurred medical expenses for treatment to prevent HIV or hepatitis. Garrison made a pre-trial offer of judgment in the amount of \$12,000 but Target did not accept it. An Anderson County jury awarded Garrison \$100,000 in compensatory damages and \$4.5

million in punitive damages. Target moved post-trial for a JNOV on liability and the award of punitive damages. The trial court denied the motion for a JNOV as to liability on the basis that testimony that the syringe was dirty and weather placed Target on constructive notice. The trial court granted the motion as to punitive damages because it was not supported by the evidence and exceeded the statutory cap. On cross-appeal, the Court of Appeals affirmed the finding of constructive notice but reversed the trial court’s ruling on punitive damages. The Court of Appeals held that the Defendant waived the right to apply the cap by failing to plead it as an affirmative defense but nonetheless found the award violated due process because the trial court did not consider the potential harm to Garrison and other customers. The Court of Appeals affirmed the trial court’s ruling that prejudgment interest should only have been awarded on the Plaintiff’s compensatory damages.

In reversing the Court of Appeals, the Supreme Court South Carolina Code Section 15-31-530 is a mandatory instruction to the trial court in every case and “is neither an affirmative defense nor an avoidance because it does not affect liability or require new matter to be asserted but instead limits the amount of damages a plaintiff can recover.” The Supreme Court further reasoned that the inquiries required by subsections (B) and (C) are inquires that the trial court must conduct and, thus, do not create a jury issue or shift the burden to the defendant to prove the cap’s application. As an “unambiguous intent” to limit the damages a plaintiff can recover, the statutory cap is available in all cases regardless of whether or not it is asserted as

an affirmative pleading. The Supreme Court upheld the Court of Appeals’ remand on the issue of constitutionality and instructed the trial court to consider potential harm to Garrison and other customers, even though Garrison did not ultimately contract a disease from the syringe. In holding that pre-judgment interest applies to punitive damages, the Supreme Court held that “the language of both [Rule 68, SCRPC] and [S.C. Code Section 15-34-500(B)] clearly and unambiguously provides that Plaintiff is entitled to eight percent interest on the entire amount of the verdict, including punitive damages.” Lastly, the Supreme Court held that testimonial evidence established Target’s awareness of a need to regularly clean its parking lot while photographs and testimony demonstrated the syringe was dirty and weather such that a jury could reasonably find the syringe had been in the parking lot long enough for Target to find it in the exercise of due care. The Supreme Court further held that the spoliation of the syringe supported a jury’s finding of constructive notice.

Brooks v. Benore Logistics Syst.

Appellate Case No. 2018-002087

Opinion No. 5891

Filed: January 19, 2022

The Court of Appeals reversed the Commission’s denial of benefits in a repetitive trauma case. The Court rejected the Full Commission’s requirement that a claimant must prove both a causal connection between the work and the injury, and also that the claimant’s specific job activities are repetitive. The Court of Appeals held that this two-part test was not supported by the language of Section 42-1-172. “The

intent of the statute is to require a commissioner to make a specific factual finding that medical evidence establishes a causal connection between the repetitive duties of claimant’s employment and the injury. The single commissioner did just that. In insisting the statute also requires the commissioner to make a separate factual finding that the employee’s job duties were repetitive, the Full Commission sees something in the statute that is not there.” The Court later characterized the two-part test applied by the Full Commission as “an improper, redundant condition” for recovery under Section 42-1-172.

Jordan v. The Hartford Fin. Group

Appellate Case No. 2019-001190

Opinion No. 5879

Filed: December 8, 2021

The Court of Appeals reversed the Full Commission’s denial of a motion to set aside the dismissal of an appeal dismissed for failure to timely file the brief. The Court of Appeals held the Commission’s regulations allow it to reinstate an appeal for good cause and the Court deemed the Commission’s denial of the motion to reinstate without explanation an abuse of discretion. “Rules are rules, and due dates matter. The rule of good cause is also a rule. A tribunal cannot strictly enforce due dates but ignore good cause. When that happens, the decision has left discretion’s range and wandered into the arbitrarily.” The Court concluded that “the practice of law is challenging enough without having to endure the overbearing enforcement of technicalities when prejudice is absent from the scene.”

Rummage v. BGF Industries

Appellate Case No. 2018-000359

Opinion No. 5822

Heard: September 23, 2020

Filed: May 19, 2021

The single commissioner denied the claim, largely based on Claimant's lack of credibility. She also gave greater weight to Defendants' expert opinion than to Claimant's experts because it "mirrored" her impressions and "matched the evidence." Claimant appealed, arguing mainly that the Single Commissioner ignored the greater weight of the medical testimony. However, Claimant did not raise in her Form 30 any argument that Defendants' expert opinion was not stated to a reasonable degree of medical certainty. Claimant first raised that issue during the hearing before the Appellate Panel, and prior to the Panel decision being issued, persuaded the Panel to mention the Michau case in its Order. Therefore, the Court, citing *SC Dep't of Transp v. First Carolina Corp of SC*, 372 SC 295, 641 SE2d 903 (2007), held the issue was not properly preserved for appellate review because it was not raised with sufficient specificity or in a timely manner.

With respect to expert evidence and the credibility determination, the Court cited *Crane v. Raber's*, 429 SC 636, 842 SE2d 349 (2020) for the interplay between credibility determinations and medical evidence in comp cases. In this case, Claimant's credibility was squarely at issue because, unlike the claimant in *Crane*, the deterioration in Claimant's psychological condition "was not objectively measurable like the employee's hearing loss in *Crane*." As a result, the Commission could have properly given less weight to

Claimant's experts "if it believed Claimant was untruthful in her self-reporting of symptoms or her presentation." The Court of Appeals upheld the denial of benefits. 