

IN THIS ISSUE

- Remembering
SCDTAA Member
Bill Besley
- Judicial Profile of
The Honorable
Carmen T. Mullen
- *Wickersham
v. Ford Motor
Company*
- Annual Meeting
Preview
- DRI Update

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



TENTH ANNUAL SCDTAA GOLF CLASSIC – SEPTEMBER 19, 2019 – ORANGEBURG COUNTRY CLUB

TABLE OF CONTENTS

Officers and Board of Directors.....	3	Young Lawyers Division Update	51
President’s Message	5	Emerging Leaders Update	53
Editors’ Note.....	7	SCDTAA Officers Attend DRI Super Regional Meeting.....	54
SCDTAA Docket	9	William George (Bill) Besley	56
2019 Summer Meeting Recap	26	<i>Wickersham v. Ford Motor Company: Crashworthiness, Comparative Negligence, and a New Era in Product Liability</i>	58
Make Plans Now to Attend the 51st Annual Meeting.....	31	Verdict Reports.....	62
Trial Superstars Recap	32	Case Notes	68
2019 Trial Academy	37		
Women in Law Update	44		
The Honorable Carmen T. Mullen	46		

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

OFFICERS 2018-2019

PRESIDENT**James B. Hood**

Hood Law Firm
P.O. Box 1508, 172 Meeting St.
Charleston, SC 29401
(843) 577-1223
Fax (843) 722-1630
James.Hood@hoodlaw.com

PRESIDENT-ELECT**A. Johnston Cox**

Gallivan, White & Boyd
PO Box 7368
Columbia, SC 29202
(803) 724-1728
Fax (803) 779-1767
jcox@gwblawfirm.com

TREASURER**Sarah Wetmore Butler**

Carlock Copeland & Stair
40 Calhoun St., Ste 400
Charleston, SC 29401
(843) 266-8230
Fax (843) 727-2995
swetmore@carlockcopeland.com

SECRETARY**Graham P. Powell**

Wall Templeton & Haldrup
Post Office Box 1200
Charleston, SC 29402
(843) 329-9500
Fax (843) 329-9501
graham.powell@walltempleton.com

IMMEDIATE PAST PRESIDENT**Anthony W. Livoti**

Murphy & Grantland
PO Box 6648
Columbia, SC 29260
(803) 454-1209
Fax (803) 782-4140
awlivoti@murphygrantland.com

BOARD OF DIRECTORS 2018-2019

TERM EXPIRES 2019

David S. Cobb
J. Andrew Delaney
Ryan A. Earhart
Michael D. Freeman
David C. Holler
Giles M. Schanen, Jr.
Breon C. M. Walker
Richard H. "Dick" Willis

TERM EXPIRES 2020

Mark A. Allison
Jared H. Garraux
Geoffrey W. Gibbon
James T. Irvin III
Elizabeth M. McMillan
Claude T. Prevost III
Kenneth N. Shaw
Todd W. Smyth

TERM EXPIRES 2021

C. Daniel Atkinson
Walter H. Barefoot
Peter E. Farr
Amy H. Geddes
Fred W. "Trey" Suggs III
Jay T. Thompson
Robert E. Tyson, Jr.
William "Trey" W. Watkins, Jr

**CORPORATE COUNSEL
REPRESENTATIVE**

Lucy Grey Mclver

LEGISLATIVE REPRESENTATIVE

A. Shane Massey

EX OFFICIO**PAST PRESIDENT**

John T. Lay, Jr.

DRI REPRESENTATIVE

James R. Courie

YOUNG LAWYERS PRESIDENT

Derek M. Newberry

YOUNG LAWYERS**VICE PRESIDENT**

Nickisha M. Woodward

AD HOC PAST PRESIDENT**COMMITTEE MEMBERS**

Molly H. Craig
Sterling G. Davies
Curtis L. Ott
Michael B. T. Wilkes

HEADQUARTERS OFFICE

1 Windsor Cove, Suite 305
Columbia, SC 29223
(803) 252-5646
Fax (803) 765-0860

EXECUTIVE DIRECTOR

Aimee L. Hiers
aimee@jee.com

❧ SCDTAA Board of Directors Positions ❧

The SCDTAA Nominating Committee is now accepting applications for the SCDTAA Board of Directors. Anyone wishing to be considered must submit a Potential Board Information Sheet along with a current biography. The information sheet can be downloaded from the SCDTAA website.

There are currently eight (8) seats that will be filled by the Nominating Committee at the Annual Meeting:

District 1 - 2 seats

District 2 - 2 seats

District 3 - 1 seat

District 4 - 1 seat

At large - 2 seats

Forms must be completed and returned along with a current biography Aimee Hiers at SCDTAA Headquarters by Friday, October 11, 2019. Please contact Aimee Hiers at SCDTAA if you have any questions (803) 252-5646 or aimee@jee.com.

PRESIDENT'S MESSAGE



President
James B. Hood

I think NFL legendary quarterback Roger Staubach had it right when describing football and business he said, “It takes a lot of unspectacular preparation to have spectacular results...” Each year that I have served on the Board and as an officer of the SCDTAA, I am struck by the enduring commitment of the leaders of our organization to the mission of the SCDTAA. This commitment is reflected in the preparation and hard work needed to deliver the events that we host each year.

I took a few minutes at the Trial Academy in May to share with the attendees just how much work and effort was involved in providing them with the incredible opportunity to learn from some of the top trial attorneys in this state and to conduct a full day trial, heard by a jury and presided over by a sitting judge. Between the speakers, trial observers, judges, jurors and witnesses, there is almost 1000 hours of volunteered time that is completely directed to the 24 attendees’ experience at the Trial Academy. Of course, this does not include the many hours the entire Trial Academy Committee and Aimee Hiers spend preparing for and executing the event. There is no doubt that this is one of the best values and returns on investment available and demonstrates just one of the many things that we, as an organization, offer you and your colleagues.

It is also a great reminder of how much work takes place each year and the commitment of so many people in the legal community to the development of our up-and-coming lawyers. On behalf of the SCDTAA Board, I want to personally thank each of our judges, speakers, witnesses and jurors for their participation. And I would also like to thank Todd Smyth who chaired the committee, Ken Shaw who was vice chair, and

committee members David Cobb, Geoff Gibbon, Jim Irvin, Derek Newberry and Nickisha Woodward for a job well done.

Additionally, in April, Bre Walker and Jessica Waller organized and hosted Trial Superstars in Columbia. Dean Willcox graciously allowed us to use the incredible Karen Williams Courtroom at the USC School of Law. This full day mock trial showcased leading trial lawyers from across South Carolina and beyond. In fact, this faculty was hands-down the broadest and most diverse of any CLE hosted by the SCDTAA. I want to thank both Bre and Jesse who both spent countless hours populating the faculty, organizing the teams, the witnesses and the experts. I would also like to extend a special thank you also to Judge Manning who served as the father/plaintiff in the mock trial and Justice James who presided over the trial.

You can read more about both the Trial Superstars and the Trial Academy in the pages that follow. But, I wanted to take this opportunity to thank those involved and to share with our members some of the programming that is available so you can make sure you and your colleagues take advantage of the SCDTAA’s offerings and for their commitment to embracing my challenge to the Board to make diversity a priority in all we do.

Along those lines, our Women in Law Committee hosted a packed house at the Historic Charleston Courthouse for a CLE titled “Can We Really Have It All?” which focused on the challenges female attorneys face in today’s legal industry with a productive discussion of suggestions and recommendations to make the work-balance more attainable.

In July, we hosted our Summer Meeting on Hilton Head Island. Andy Delaney and his committee worked tirelessly

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

to ensure the programming was top-notch and the activities were family friendly. In addition to the CLEs and the networking opportunities, we saw increased family attendance and participation which is a continuing trend at our family-friendly summer meeting. Next year we will be heading back to the Omni Grove Park Inn in Asheville so keep that in mind as you start making plans for next year.

Our Emerging Leaders program is in full swing in its second year and immediate past president Anthony Livoti continues to lead by example as he chairs this committee again to help provide opportunities for involvement in our organization and cultivate the future leaders of our firms and the defense bar. This program has been recognized across the country as an innovative and effective way to increase engagement and participation, and it will promote the continued success of our organization by cultivating motivated and capable leaders.

Plans are now being finalized for our Annual Meeting at the Ritz-Carlton on Amelia Island. Lucy Grey McIver and her committee are diligently working to ensure that the programming and social functions will exceed your expectations! Please be on the lookout for the registration materials in the coming weeks. The Annual Meeting dates are November 14-17 so please mark your calendars now.

As you can see, now is the time to take advantage of the opportunities that the SCDTAA has to offer. Whether you are a young lawyer in need of CLEs, speaking opportunities or networking among peers, a seasoned attorney who can give back and train tomorrow's first chair trial lawyers or a managing member of a firm responsible for the allocation of CLE dollars, the SCDTAA is committed to meeting the needs

of all of our members, and we offer some of the best training available for tomorrow's leaders. If you would like to get involved or have a lawyer in your office that you would like to become active in the SCDTAA, please email me (james.hood@hoodlaw.com) or any Board member and we will make it happen. I hope to see many of you in November! 🏠



EDITORS' NOTE



Geoffrey W. Gibbon



Michael D. Freeman



C. Daniel Atkinson

Table of Contents


Editors' Note

by Geoffrey W. Gibbon, Michael D. Freeman and C. Daniel Atkinson

Welcome to the Summer 2019 edition of *The DefenseLine*. It is hard to believe we are over half way through 2019. 2019 has been a productive year for the SCDTAA filled with great programs and meetings. We had a blast in Hilton Head at our Summer Meeting, had a great turnout for our Trial Superstars CLE, and had another successful Trial Academy earlier this Spring. We are also looking forward to our Annual Meeting at the Ritz-Carlton in Amelia Island, Florida in November.

As always, in this edition we continue our efforts to provide our SCDTAA members and other readers with important information about the SCDTAA, helpful practical tools to assist in your practice, and important updates to the law in South Carolina. We also strive to provide information to help SCDTAA members learn how they can get more involved.

This edition includes a profile on the Honorable Carmen T. Mullen, an update on the happenings of the DRI, a look at some recent legislation impacting the defense bar, an update on recent decisions from South Carolina's appellate courts, and some touching words about the loss of SCDTAA member Bill Besley.

As always, we want to thank all of our contributors, authors, and staff for all of their excellent work in providing our content and assistance in getting this edition to publication. We want to thank Judge Mullen for taking time to answer our questions and being willing to share some of his wisdom to our readership. For our great sponsors, we appreciate everything you do and much of what we do wouldn't be possible without you. We hope you enjoy this edition of *The DefenseLine*. 



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

SCDTAA Docket

Barnwell Whaley named to 2019 U.S. News – BestLawyers® “Best Law Firms” list

Barnwell Whaley Patterson & Helms, LLC has been included in the 2019 U.S. News-Best Lawyers® “Best Law Firms” list for the ninth consecutive year. Firms included in the 2019 Edition of “Best Law Firms” are recognized for professional excellence with consistently impressive ratings from clients and peers. Ranked firms, presented in three tiers, are listed on a national and regional-based scale. Firms that received a tier designation reflect the high level of respect a firm can earn among other leading lawyers and clients in the same communities and practice areas. For the Charleston, South Carolina regional area, Barnwell Whaley is recognized as a Tier 1 law firm in the areas of: Commercial Litigation, Intellectual Property Litigation, Mediation, Personal Injury Litigation – Defendants, Personal Injury Litigation – Plaintiffs, and Trademark Law.

In addition, Barnwell Whaley is listed in the areas of Arbitration and Construction Law on Tier 2 and is included for its work on Corporate Law and Product Liability Litigation – Defendant matters on Tier 3.

Barnwell Whaley Attorney D. Summers Clarke, II, Receives AV Preeminent® rating from Martindale-Hubbell®

D. Summers Clarke, II, has received an AV Preeminent®

rating from Martindale-Hubbell® Peer Review Ratings™, the gold standard in attorney ratings for more than 140 years. An AV rating by Martindale-Hubbell represents the highest level of professional excellence and professional legal ability in five key areas: legal knowledge, analytical capabilities, judgment, communication ability and legal experience—specific to their practice areas. Ms. Clarke has eleven years of experience in the areas of business and civil litigation, insurance coverage and defense, personal injury, construction law, appellate practice and restaurant and hospitality law. Summers Clarke is a member of Defense Research Institute, the Professional Liability Underwriting Society and the South Carolina Defense Trial Attorneys’ Association, where she is also a Trial Academy graduate. She is also a member of the Charleston County Bar Association and the South Carolina Bar, where she has served on the Judicial Qualification and Special Olympics committees. Ms. Clarke earned her Juris Doctor at the University of South Carolina School of Law, and her Bachelor of Science in Business Administration from the University of North Carolina at Chapel Hill Kenan-Flagler Business School. As the thirteenth Barnwell Whaley attorney to receive an AV Preeminent rating, Summers Clarke joins attorneys M. Dawes Cooke, B.C. Killough, Randell C. Stoney Jr., Phillip Ferderigos, K. Michael Barfield, David S. Cox, Chris M. Hinnant, Barbara J. Wagner, Ernest “Lip” Lipscomb, Justin Novak, Jeffrey Bogdan and Bradley Banias in this honor.

Four Barnwell Whaley Attorneys Named to 2019 South Carolina Super Lawyers List – Dawes Cooke Listed as a Top Ten Attorney in South Carolina

Barnwell Whaley attorneys M. Dawes Cooke, Jr., Randell C. Stoney, Jr., and David S. Cox have been chosen for the 2019 South Carolina Super Lawyers list, and Jeffrey Bogdan has been listed as a 2019 South Carolina Super Lawyers Rising Star. Member attorney Dawes Cooke has once again been named to the top ten list for attorneys in South Carolina, coincidentally his tenth year holding that honor. Each year, no more than five percent of the more than 10,000 lawyers in the state are selected by the research team at Super Lawyers to receive the Super Lawyers honor, and 2.5 percent are selected for the Rising Stars honor. Member attorney Dawes Cooke adds another accolade to his many legal awards. This year he is recognized by South Carolina Super Lawyers as a top rated civil litigation attorney in Charleston, SC, and for his work in the areas of business litigation, personal injury-general, and alternative dispute resolution. In 2011 he was featured in the publication, and in the years 2014, 2015 and 2016, Cooke was listed as the number one attorney in the state. Randell C. Stoney, Jr. has been selected as a top rated civil litigation attorney and is recognized for his work in the areas of civil litigation, personal injury-general and alternative dispute resolution. Stoney is a certified mediator as well as a certified arbitrator and has been named to the list for eleven years, twice in the top 25 listings. David S. Cox has been named a top rated products liability attorney for the Charleston, SC area. A graduate of the Duke University School of Law, Cox is also recognized

by Chambers USA, Benchmark Litigation and Charleston Business Magazine for his work in products liability, business litigation and intellectual property litigation matters. This is his fifth year on the Super Lawyers list. Recognized as a top rated business litigation attorney, Jeffrey Bogdanis listed as a South Carolina Super Lawyers Rising Star for his work in business litigation, insurance coverage, personal injury - general, personal injury - medical malpractice and civil litigation. This is his fourth year of recognition

Attorney Laura Baer Joins Collins & Lacy

Laura Baer has joined Collins & Lacey's Columbia office as an associate in the Retail & Hospitality Practice Group. Baer joins the firm from the State Treasurer's office.

Laura R. Baer graduated from Clemson University with a political science degree. She earned her J.D. from the University of Baltimore School of Law. Baer was staff counsel for the Office of the South Carolina State Treasurer before joining Collins & Lacy, and she has also worked for the South Carolina Commission on Indigent Defense in its Division of Appellate Defense.

Collins & Lacy Co-Founder Inducted into SC Lawyers Hall of Fame

South Carolina Lawyers Weekly inducted Collins & Lacy co-founder Joel W. Collins, Jr., into its' Hall of Fame at a luncheon in West Columbia. This is SCLW's inaugural Hall of Fame class. The hall honors attorneys who are aged 60 and older who have had significant impacts on the legal profession in the Palmetto State. Collins was one of 22 honorees who were profiled by the legal publication. Editors selected

the class of inductees based on career accomplishments, contributions to the development of the law, and efforts to increase access to justice. Service to others has been at the heart of Collins' 50+ year career, from his role as a JAG in the Army during Vietnam, to representing businesses and professionals in complex litigation, and teaching honors students at the University of South Carolina.

His Lawyers Weekly profile included a fun anecdote about service as a young boy growing up in Chester, South Carolina. "My father was the head football coach of Chester High School and I served as team mascot. I had a little uniform ... players thought I brought them good luck, so they would come to my elementary school class and get me so I could be on the bus for all the away games."

In 1984, he co-founded Collins & Lacy law firm along with Stan E. Lacy. Over the course of 50 years, the accolades have been numerous. Earlier this year, Collins received the Order of Palmetto, the state's highest civilian honor. However, it is service that makes Collins proud. He told Lawyers Weekly that his proudest professional accomplishments involve serving the American Board of Trial Advocates (ABOTA) where he has been a foundation trustee, president of the foundation trustees, and national president of ABOTA.

Elmore Goldsmith, P.A., Receives Tier One Rankings in U.S. News – Best Lawyers® 2019 "Best Law Firms"

U.S. News - Best Lawyers® released the 2019 "Best Law Firms" rankings and Elmore Goldsmith, P.A., has been recognized in three areas. For the Greenville metropolitan area, the firm has received tier one rankings for Construction

Law, Litigation–Construction, and Litigation–Securities.

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

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

Elmore Goldsmith Attorneys Recognized as South Carolina 'Super Lawyers' Greenville, SC

Two attorneys from Elmore Goldsmith have been named by South Carolina Super Lawyers Magazine for 2019. Super Lawyers recognizes attorneys who have distinguished themselves in their legal practice and less than five percent of lawyers in each state are selected to this exclusive list.

Elmore Goldsmith attorney recognized as Super Lawyer is:

L. Franklin Elmore – Construction Litigation

Elmore Goldsmith attorney recognized by Super Lawyers as a Rising Star:

Bryan P. Kelley – Construction Litigation

The selection process for the Rising Stars list is the same as the Super Lawyers selection process, with one exception: to be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. Super Lawyers is an independent lawyer rating service that selects attorneys using a rigorous, multilevel rating process. Through peer nominations, evaluations, and third-

party research, outstanding attorneys are selected based on their professional accomplishments.

C. Stuart Mauney Receives the Greenville Bar Association's Tommy Thomason Award

The Greenville County Bar Association has honored attorney C. Stuart Mauney of Gallivan White Boyd with the prestigious Tommy Thomason Award. Thomason was a distinguished member of the Greenville Bar Association who practiced law for over 40 years. The award was established in 1993 to recognize the Greenville lawyer who best exemplifies compassion, unshakeable integrity, strong personal values, and dedication to the community, humility, and diplomacy.

The award celebrates those who are admired by peers, dedicated to improving the legal system, and committed to resolving disputes in ways that minimize conflict.

Greenville Bar President Kirby Mitchell commented that “Stuart is a deserving recipient of the Greenville Bar's Tommy Thomason Award. He has long practiced with care, integrity, professionalism, and a sense of humor and humanity that makes it a pleasure to know him and work with him. On behalf of the Greenville Bar: Congratulations.”

Mauney has been practicing law for over 31 years. Mauney focuses on the defense of business and commercial clients in the professional negligence and transportation law practice areas. He is a long time mental health advocate, currently serving as Chair of the Board of Directors for Gateway House. Mauney is the former chair of the board for the Upstate Mediation Center and the Mental Health Association of Greenville County. He has also served as a volunteer with

the SC Bar Lawyers Helping Lawyers program and previously served on the Advisory Committee for the ABA Commission on Lawyer Assistance Programs. He is a graduate of Furman University.

Murphy & Grantland Shareholder Anthony Livoti elected to American Board of Trial Advocates

Murphy & Grantland is proud to announce that Shareholder Anthony Livoti was recently elected to membership in the South Carolina Chapter of the American Board of Trial Advocates (ABOTA). ABOTA is an invitation-only organization that has worked since 1958 to preserve and promote the right to a civil jury trial provided by the Seventh Amendment to the U.S. Constitution. Election to ABOTA is based on “personal character, honorable reputation and proficiency as a trial lawyer.” Livoti concentrates his practice in the areas of insurance defense, trucking and automobile defense, and premises liability. He is also a certified circuit court mediator.

Three McKay Firm Partners Named to 2019 South Carolina Super Lawyers

Three of the The McKay Firm partners, Mr. Julius W. “Jay” McKay, II, Daniel R. Settana Jr., and Mark D. Cauthen have been selected for recognition in the 2019 edition of “South Carolina Super Lawyers” magazine. Mr. McKay was selected for inclusion in the South Carolina Super Lawyers List in the area of medical malpractice law–defendants. He also practices in health care law, products liability, commercial litigation, government defense, appellate law, and professional licensure disputes. His grandfather, Douglas McKay, Sr., started the McKay Firm in 1908.

Mr. Settana was selected for inclusion in the South Carolina Super Lawyers List in the area of transportation law. He also practices in insurance defense and government defense.

Mr. Cauthen was selected for inclusion in the South Carolina Super Lawyers List in the area of Workers' Compensation. He also practices in insurance defense, construction litigation and general civil litigation.

The Super Lawyers list is published annually by Thomson Reuters. It recognizes the top 5% of South Carolina attorneys who have achieved a high level of recognition from their peers as well as professional achievements. The list is compiled using a thorough selection process based off 12 points of criteria, including independent research, nominations for peers and peer reviews from other attorneys.

R. Keith Taylor Joins The McKay Firm

The McKay Firm is pleased to announce the addition of Mr. R. Keith Taylor, Jr. as the newest attorney at the firm.

Mr. Taylor practices in the areas of civil litigation defense and workers' compensation defense. As a Columbia native, he graduated with a B.A. in Political Science from the University of South Carolina. He earned his Juris Doctor from the University of South Carolina School of Law. During his time in law school, Keith worked for both the South Carolina House of Representative's Education and Public Works Committee and the South Carolina Senate Oversight Committee. Keith then earned his Juris Doctorate from the University of South Carolina School of Law.

Keith is an active member of Shandon Baptist Church, where

he is a teacher of a Sunday school class. He is also a member of the South Carolina Bar Association, the Richland County Bar Association, and the American Bar Association. Keith is admitted to practice in South Carolina and before the United States District Court of South Carolina.

Bayne Honored by SC Lawyers Weekly; Named "Lawyer of the Year"

McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce that attorney Brett Bayne was honored at an event hosted by SC Lawyers Weekly at the Francis Marion Hotel on March 15 with a "Leadership in Law" Award. The Leadership in Law event recognizes attorneys from across the Palmetto State who have achieved success in their law practice, made contributions to society and had an impact on the legal profession. Bayne was also selected out of the class of honorees as the "Lawyer of the Year."

"We are extremely proud of Brett. Not only is he an outstanding trial lawyer, but he devotes significant personal time to the betterment of our profession," said Jay Courie, managing member of MGC. "He gives much of his personal and family time to coach the USC School of Law Mock Trial Team. Under his leadership, they have won numerous regional and national championships."

Bayne, a litigation attorney and certified Circuit Court Arbitrator based in the firm's Columbia office, is extremely involved in the legal community. His practice focuses on general civil litigation defense, including automobile negligence, premises liability, products liability and construction defects. In his spare time, Bayne teaches Trial

Advocacy at the University of South Carolina School of Law and has served as the Faculty Advisor and Head Coach of the USC School of Law Mock Trial Bar since 2013. During this time, the Mock Trial Bar has won nine regional and national championships, repeatedly placed as finalists or semifinalists in numerous competitions and his students have won multiple outstanding advocate awards.

He was recently honored by the South Carolina Bar with the Trial and Appellate Advocacy Award. He has also been recognized by Columbia Business Monthly's "Legal Elite of the Midlands" and "Best & Brightest 35 & Under," as well as South Carolina Super Lawyers "Rising Star." Bayne earned a Juris Doctor from the University of South Carolina School of Law and a Bachelor of Arts degree from Baylor University. He is a member of the South Carolina Bar Association, Richland County Bar Association, South Carolina Defense Trial Attorneys' Association, Defense Research Institute and Claims & Litigation Management Alliance.

Brown Joins MGC's Florence Office

McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the addition of attorney Joshua Brown to the firm's Florence office. Brown represents insurance adjusters in workers' compensation matters. Brown earned a Juris Doctor from the University of South Carolina School of Law and a Bachelor of Arts from Newberry College. He is a member of the South Carolina Bar Association. Prior to joining MGC, he was a Judicial Law Clerk for the Honorable Roger E. Henderson in the South Carolina 4th Judicial Circuit

Towle Joins MGC's Columbia Office

McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the addition of attorney Monica Towle to the firm's Columbia office. Towle focuses her practice on litigation. Towle earned a Juris Doctor from the University of South Carolina School of Law and a Bachelor of Arts from the University of South Carolina. She is a member of the South Carolina Bar Association's Young Lawyers Division, Richland County Bar Association and the South Carolina Women Lawyers Association. Prior to joining MGC, she defended clients in professional liability and insurance coverages matters at a firm in South Carolina. Monica is an Alumni Coach for the Mock Trial team at the University of South Carolina School of Law.

Nelson Mullins Names Sally Caver Columbia Office Managing Partner

Nelson Mullins Riley & Scarborough LLP has named Sally H. Caver as managing partner of the Columbia office. She has assumed the day-to-day leadership of the office of more than 115 attorneys and more than 230 support staff.

"With the significant growth of the firm and my personal focus on leading our expanded firm, our Executive Committee recognized that appointing Sally as the managing partner of the Columbia office would be helpful to provide local office leadership," said firm managing partner Jim Lehman, who will continue to oversee all of the firm's 25 offices. "Sally has served the firm in a variety of leadership roles over the years and will do a great job in leading the Columbia office."

Caver joined Nelson Mullins in 2007 and is a member of the Columbia Corporate, Real Estate, and Tax team. Her corporate practice includes mergers and acquisitions, complex commercial contract negotiations, and general corporate matters. She was a member of the firm's inaugural class of the High Potentials Program, a business development program for women attorneys, and is currently a Fellow with the Leadership Council on Legal Diversity. She earned her JD, cum laude, from the University of South Carolina School of Law and a BA in Political Science and Psychology, magna cum laude, from Clemson University.

Ed Mullins Honored as United Way of the Midlands 2018 Humanitarian of the Year

United Way of the Midlands honored Edward W. Mullins, Jr. as the 2018 Humanitarian of the Year at its annual dinner and award ceremony on Thursday, February 21, 2019 at the University of South Carolina Alumni Center.

“Ed has been a champion for United Way and our community for many years,” said United Way President and CEO Sara Fawcett. “We were delighted to have the opportunity to recognize him for his generosity, his passion and his commitment to making the Midlands and the state of South Carolina a better place for everyone.”

The Humanitarian of the Year Award is given each year to individuals who clearly demonstrate extraordinary leadership in philanthropic and human services. It is the highest single honor of philanthropic achievement in the Midlands.

“The annual Humanitarian of the Year dinner and award celebration is an occasion for us to come together and

celebrate the tireless efforts of our community's most prolific philanthropists, and I'm thrilled that this year's recipient is Ed Mullins,” said Andy Folsom, Chairman of the United Way of the Midlands Board of Directors. “It was a great honor to celebrate his tremendous impact on the Midlands.”

Mullins recently retired after 58 years with Nelson Mullins, where he was among the firm's leaders who began the growth that would lead to offices in other cities and states, an expansion of legal practice areas, a more diverse work environment, and a significant commitment to pro bono and community service. Mullins came to the firm in 1959 as the fifth lawyer, and it now consists of more than 750 attorneys in 25 offices across 11 states and the District of Columbia.

“Ed will be remembered as a razor-sharp litigator with an encyclopedic knowledge of the law who brings out the best in others,” said U.S. District Court for South Carolina Judge Joe Anderson. “It's been said that what you leave behind is not what's engraved on stone monuments, but what has been woven into the lives of others. Ed's been a strong goldthread in the brilliant tapestry of our lives.”

Ogletree Deakins Named A “Law Firm of the Year” For Eighth Consecutive Year: In addition, the Firm's Greenville Office Earned Seven Metropolitan “Tier 1” practice Area Rankings

Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Ogletree Deakins), one of the largest labor and employment law firms representing management, is pleased to announce that the firm has been named a “Law Firm of the Year” for the eighth consecutive year. Only one law firm in each practice area receives the “Law Firm of the Year” designation. In the 2019

edition of the U.S. News–Best Lawyers® “Best Law Firms” list, Ogletree Deakins is named the “Law Firm of the Year” in the Employment Law-Management category.

Additionally, Ogletree Deakins’ Greenville office earned metropolitan “First Tier” practice area rankings in seven categories: Commercial Litigation, Employee Benefits (ERISA) Law, Employment Law-Management, Labor Law-Management, Litigation-Environmental, Litigation-ERISA, and Litigation-Labor & Employment. Nationally, the firm earned “First Tier” practice area rankings in six categories: Employee Benefits (ERISA) Law; Employment Law-Management; Labor Law-Management; Litigation-ERISA; Litigation-Labor & Employment; and Construction Law.

Four Roe Cassidy Attorneys Selected For Inclusion in 2019 South Carolina Super Lawyers and Rising Stars

Roe Cassidy Coates and Price, P.A. is pleased to announce that four of its attorneys have been recognized in the 2019 South Carolina Super Lawyers® list. Super Lawyers® creates an exclusive listing of attorneys who have obtained a high degree of peer recognition and professional achievement in particular practice areas. Only 5% of all attorneys in South Carolina are selected as “Super Lawyers”.

The Roe Cassidy attorneys selected for inclusion in these exclusive lists are:

Super Lawyers

Bill Coates – Business Litigation

Jack Griffeth –Alternative Dispute Resolution

Pete Roe – Real Estate: Business

Trey Suggs–Professional Liability Defense

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

Richardson Plowden Names Anthony E. Rebollo as New Managing Shareholder

Benjamin P. Carlton named a Shareholder

Richardson Plowden & Robinson, P.A., has named attorney Anthony E. Rebollo as the Firm’s new managing shareholder. The Firm has also elected attorney Benjamin P. Carlton from associate to shareholder.

An accomplished tax attorney, Mr. Rebollo has 30 years of experience. He focuses his practice on tax litigation, tax malpractice defense and financial litigation. He represents taxpayers and tax professionals in civil and criminal tax matters in both state and federal cases. Mr. Rebollo has been recognized as the 2018 Lawyer of the Year, Columbia, S.C., in Tax Law by Best Lawyers in America®. He was also selected in 2018 as one of the Midlands Legal Elite for Tax Law by Greater Columbia Business Monthly. As Richardson Plowden’s managing shareholder, Mr. Rebollo will be responsible for leading the Firm’s Executive Committee, executing its client retention and growth strategies, and providing managerial oversight for internal operations of the offices in Columbia, Myrtle Beach, and Charleston.

Mr. Rebollo succeeds Steven J. Pugh who served as Richardson Plowden's managing shareholder during 2018. Mr. Pugh is continuing his law practice in the Firm's Columbia office with his focus in litigation.

The Firm has also named Mr. Carlton as a shareholder in the Firm. Mr. Carlton joined Richardson Plowden in the Columbia office 2013. He is a member of the Firm's Business and Corporate Law Practice Group. He earned his Juris Doctor from the University of South Carolina (USC) School of Law in 2013, graduating in the top 15% of his class. He focuses his practice on contract and corporate law, estate planning and probate administration, financial transactions, hospital/healthcare law, and asset acquisitions.

Richardson Plowden recognized as a 2019 "Best Law Firm"

Richardson Plowden is pleased to announce the Best Lawyers in America and U.S. News & World Report have recognized our Firm with a "Best Law Firm" Metropolitan First-Tier Ranking for Columbia, SC in the areas of Administrative/Regulatory Law, Construction Law & Litigation.

Zachary B. Hayden Joins Richardson Plowden's Columbia Office

Richardson Plowden & Robinson, P.A. is pleased to announce that Zachary B. Hayden has joined the Firm in the Columbia office as an associate attorney. Mr. Hayden will focus his practice in Medical Malpractice Defense.

Prior to joining Richardson Plowden, Mr. Hayden worked at the Supreme Court of South Carolina Staff Attorneys' Office. Mr. Hayden also clerked for a local law firm while attending

law school. He is a member of the South Carolina Bar and the South Carolina Defense Trial Attorneys' Association. He earned his Juris Doctor from the University of South Carolina School of Law in 2017.

Robinson Named as Hall of Fame Attorney

Richardson Plowden is pleased to announce that attorney Frank E. Robinson II was recently selected by SC Lawyers Weekly to be included in its inaugural class of Hall of Fame attorneys. This recognition honors some of South Carolina's most significant senior lawyers.

Eight Richardson Plowden Attorneys Named to Super Lawyers

Richardson Plowden & Robinson, P.A., is pleased to announce that eight of its attorneys were selected to the 2019 listing of *South Carolina Super Lawyers*: George C. Beighley, Leslie A. Cotter, Jr., Emily Gifford Lucey, Eugene H. Matthews, William C. McDow, Steven J. Pugh, Anthony E. Rebollo, and Franklin J. Smith, Jr. Two attorneys were selected as "Rising Stars" by *South Carolina Super Lawyers*: Caleb M. Riser, and Jasmine D. Wyman.

Super Lawyers is a national listing of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The magazine is published in all 50 states and features articles about attorneys named to the *Super Lawyers* list. The patented selection process includes independent research, peer nominations and peer evaluations.

This is the eighth year Mr. Beighley has been recognized

as a *South Carolina Super Lawyer*. He was recognized for his work in Personal Injury Defense: Medical Malpractice. He earned his Juris Doctor from the University of South Carolina (USC) School of Law.

This is the second year that Mr. Cotter has been selected as a South Carolina Super Lawyer. He was selected for his work in Civil Litigation Defense. Mr. Cotter earned his Juris Doctor from the USC School of Law

This is the fifth year that Mrs. Lucey has been selected as a *South Carolina Super Lawyer*. She was previously listed as a *South Carolina Rising Star* in 2012 and 2013. She was selected for her work in Construction Law. She earned her Juris Doctor from the USC School of Law.

Mr. Matthews has been honored as a *South Carolina Super Lawyer* for the last 11 consecutive years. He was recognized for his work in Employment and Labor Law. Mr. Matthews earned his Juris Doctor from the University of Virginia School of Law.

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

Mr. Pugh has been recognized as a *South Carolina Super Lawyer* for the last four consecutive years. He was selected for his work in Civil Litigation Defense. Mr. Pugh earned his Juris Doctor from the USC School of Law.

This is the fourth time Mr. Rebollo has been selected as a *South Carolina Super Lawyer*. He was chosen for his work in Tax Law. Mr. Rebollo earned his Juris Doctor from the Boalt

Hall School of Law at the University of California, Berkeley.

Mr. Smith has been recognized as a *South Carolina Super Lawyer* for the last 12 consecutive years. He was honored for his work in Construction Litigation. Mr. Smith earned his Juris Doctor from the USC School of Law.

The “Rising Stars” addition to *Super Lawyers* highlights the top up-and-coming attorneys in the state who are 40 years old or younger, or who have been practicing for 10 years or less. This is the fourth year that Mr. Riser has been selected for the honor. This is the first year Ms. Wyman has been selected for the “Rising Star” distinction.

Laura J. Evans Recognized as a 2019 Woman Leader in The Law

Shumaker, Loop & Kendrick, LLP is pleased to announce that Charleston managing partner, Laura J. Evans, was recognized by ALM Media’s Legal Leaders, in conjunction with Martindale-Hubbell®, as a 2019 Woman Leader in The Law. The Women Leaders in The Law recognizes top women in leadership within the legal industry with AV Preeminent® ratings and are featured in the March 2019 issues of The American Lawyer and Corporate Counsel magazines.

Laura focuses her practice in the health care practice group. In addition to providing counsel to a wide variety of health care providers, Laura is dedicated to pro bono service and was previously named the South Carolina Bar Pro Bono Lawyer of the Year. She is also certified as a mediator/arbitrator in the State of South Carolina and a certified neutral by the American Health Lawyers Association (AHLA).

Shumaker, Loop & Kendrick, LLP Attorneys Selected To 2019 South Carolina Super Lawyers

Shumaker, Loop & Kendrick, LLP is pleased to announce that Charleston Partners Mike Bowers and Bennett Crites, III have been selected to the 2019 South Carolina Super Lawyers. A Super Lawyers selection is an honor reserved for those attorneys who exhibit excellence in practice.

Clients turn to Mike for his representation both inside and outside the courtroom. Practicing law for more than 43 years, he also has more than 20 years of mediation experience serving clients outside the courtroom, achieving successful results through arbitrations, mediations, and all forms of alternative dispute resolution. As a certified circuit court mediator (2000), certified circuit court arbitrator (1998), and an approved federal court mediator, Mike has conducted numerous mediations focusing on the mediation of state court, federal court, pre-lawsuit, complex, and multi-party disputes, involving a wide range of issues. Mike's legal and technical experience has made him a logical choice for parties searching for an experienced and knowledgeable neutral to help resolve their disputes, whether through mediation or arbitration.

In practice for 15 years, Bennett is a member of the firm's Litigation group, advising businesses and individuals on complex legal issues. His practice focuses on transportation and commercial trucking law, products liability, professional liability, and retail and hospitality where he is experienced in litigating cases from minor injury to wrongful death and catastrophic injury. In Bennett's products liability work, he represents clients in industries as diverse as: heavy

**THE NATIONAL ACADEMY OF
DISTINGUISHED NEUTRALS**

SOUTH CAROLINA CHAPTER

*Check available dates or schedule
appointments online with the
state's top-rated civil mediators*

FEBRUARY 2019						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25		27	28		

www.SCMEDIATORS.org

NADN is proud creator of the
DRI Neutrals Database
www.DRI.org/neutrals

The Voice of the **Defense Bar**

equipment, consumer products, chemicals, firearms, food products, and sporting goods.

In addition, Bennett is also a Circuit Court Mediator in the State of South Carolina.

Sweeny Wingate Barrow Names New Member

Sweeny, Wingate & Barrow, P.A. is pleased to announce that Richard E. McLawhorn has become a member of the firm. McLawhorn joined the firm as an associate in 2012 and practices in the areas of construction, professional malpractice and transportation.

Driggers Becomes Of Counsel at Sweeny Wingate Barrow

Sweeny, Wingate & Barrow, P.A. attorney Benson Driggers has been named of counsel to the firm. Driggers joined Sweeny, Wingate & Barrow as an associate in 2006 and practices in the areas of transportation, premises liability and products liability.

Sweeny Wingate & Barrow Partner Named 2019 “Rising Star”

Sweeny, Wingate & Barrow partner Ryan Holt has been named to Super Lawyers Magazine’s 2019 South Carolina “Rising Stars” list. Holt was named a “Rising Star” in the area of Civil Litigation Defense for the fifth consecutive year. Every year, “Super Lawyers®” recognizes outstanding lawyers from around the United States who have attained a high degree of peer recognition and professional achievement.

Barrow Joins Wilkes Law Firm, P.A.

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

Spencer earned his law degree in 2018 from the University of Georgia School of Law. At Georgia Law, Spencer received several awards and scholarships in recognition of his academic excellence, and he served as a Notes Editor of the Journal of Intellectual Property Law and as the Closing Argument Director of the Mock Trial Executive Board. In addition, Spencer was one of the few law students selected for membership in the E. Wycliffe Orr, Sr. American Inn of Court. Prior to attending law school, Spencer graduated from the University of Georgia’s Terry College of Business with a B.B.A. in Finance and a B.B.A. in Management.

Spencer is married to the former Hailey R. Wilson of Spartanburg, and lives in Spartanburg. Apart from practicing law, he enjoys fly fishing, golf, and trying to master the Big Green Egg. Spencer is a member of the South Carolina Bar, the South Carolina Defense Trial Attorneys Association, the Defense Research Institute, and the Spartanburg County Bar Association.

Mark Phillips Appointed to the Clemson University Foundation Board

G. Mark Phillips, a partner in Nelson Mullins Riley & Scarborough LLP’s Charleston office, has been elected to the Clemson University Foundation Board, a group of elected and appointed members who promote the university’s growth, development, and welfare.

Greenville partner David Wilkins, a former U.S. Ambassador to Canada, serves on the university’s Board of Trustees, as does Columbia partner David Dukes, who serves as board liaison to the Foundation Board.

Phillips is a trial attorney whose litigation practice focuses on product liability cases. He is a first-chair trial lawyer who has tried personal injury cases to verdict in 11 states and has participated in trials in 9 other states. He is currently state chair of the American College of Trial Lawyers and is a past president of the American Board of Trial Advocates - Charleston Chapter and the South Carolina Defense Trial Attorneys' Association.

Collins & Lacy Announces Workers' Compensation Inn of Court

Stanford E. Lacy American Inn of Court holds banquet & business meeting in Columbia

Collins & Lacy launched the Stanford E. Lacy American Inn of Court on Tuesday evening in Columbia. The law firm's founding partner Stan Lacy has taught workers' compensation law at the University of South Carolina School of Law since 1981. An inn of court is an association of lawyers, judges or commissioners, and legal professionals who work to improve the practice of law in its jurisdiction. This is South Carolina's first inn devoted to the state's workers' compensation system. "Establishing the Stanford E. Lacy American Inn of Court is our firm's way of recognizing Stan's contributions to our legal profession for more than forty years," said Joel Collins, who founded the firm with Lacy in 1984. "Stan is a stalwart of Palmetto State jurisprudence and this is an appropriate recognition of his impact." Collins & Lacy shareholder Ellen Adams is the inaugural president of the new inn of court. She conducted a business meeting during this week's event at The Palmetto Club. About American Inns of Court Across the United States, there are hundreds of inns and the membership of each is divided

into "pupillage teams." The teams combine younger, less-experienced associates and students with veteran attorneys and judges or commissioners. Through this mentorship and learning, attorneys become better advocates and counselors.

Barnwell Whaley's John Fletcher revises *AM Best's Insurance Law Digest* for South Carolina

Barnwell Whaley Special Counsel John Fletcher is now serving as the official South Carolina contributor of the *AM Best Insurance Law Digest*. *The Insurance Law Digest* serves as a summary of the insurance laws for each state and several Canadian Provinces. It serves as a reference source, providing some of the general insurance principles in leading case decisions. Mr. Fletcher reviewed and updated South Carolina case law for over 40 insurance related topics for this annual publication.

AM Best is the oldest and most widely recognized provider of ratings, financial data and news with an exclusive insurance industry focus. Since 1929, AM Best publications have been the premier insurance reference tools for locating client-recommended attorneys, adjusters, and expert service providers. They are the leading publications in the insurance industry and are used primarily by key decision makers and claims personnel at both insurance companies and non-insurance companies, for professional reference and outsourcing needs. Best's Recommended Insurance Attorneys, Adjusters and Expert Service Providers remain at the forefront of the industry by maintaining a client reference system to ensure that users have access to providers with a proven track record of insurance industry service and

expertise. Barnwell Whaley Patterson & Helms is proud to have been listed as a client recommended Best's insurance firm for over 50 years.

Special Counsel John Fletcher is a member of Barnwell Whaley's civil litigation and appellate practice groups, representing a variety of clients including contractors, colleges and fellow attorneys, in matters in state and federal trial and appellate courts. He is an accomplished litigator and certified mediator. In addition to serving as the South Carolina revisor of *AM Best Insurance Law Digest*, Fletcher also serves as an annual contributor to *Thomson Reuters' Practical Law, Intellectual Property and Technology*, and his article "Employees Behaving Badly – What liabilities do employers potentially face?" was the South Carolina Bar's South Carolina Lawyer magazine cover story in November of 2016.

Mark D. Cauthen recognized in 2019 Midlands Legal Elite

Mr. Cauthen practices mainly in the areas of workers' compensation defense, civil litigation, construction law, subrogation and appeals. For nearly two decades, Mark has represented employers, insurance carriers, self-insure and governmental entities at every stage of the Workers' Compensation process. Mark has achieved an AV-Preeminent Rating, the highest standard for his legal abilities and ethical standards, from Martindale-Hubbell. After receiving his B.A. from Wofford College, he went on to get his J.D. from the Cumberland School of Law. He is a member of the South Carolina Bar Association, American Bar Association, Richland County Bar Association, South Carolina Defense Trial Attorneys' Association, South Carolina Workers'

Compensation Educational Association, Defense Research Institute, South Carolina Chamber of Commerce. He was selected for inclusion into *SuperLawyers* in 2018 and 2019.

The Midlands Legal Elite honorees, presented by Columbia Business Monthly, are attorneys nominated by their peers in one of twenty different practice areas. The top attorneys in each area are then selected.

Michael Burchstead serves on Council of Government Law Section

Government, Ethics and Compliance attorney Michael R. Burchstead began service as a council member for the South Carolina Bar Government Law Section on July 1st. His term expires in 2022.

Burchstead is one of six council members who work to keep section members informed, support continuing education and professional development as well as contribute to the SC Bar Foundation's Children's Fund and Disabled Lawyers Fund.

Burchstead leads the Collins & Lacy Government, Ethics, and Compliance Practice in Columbia. Elected leaders, candidates, professionals, gov't entities and agencies call on him regarding issues pending before various courts and regulatory agencies as well as for sensitive issues of a political nature. Burchstead is a former General Counsel for the state ethics commission.

15 MGC Attorneys Recognized Among the 2019 Legal Elite

McAngus Goudelock & Courie is pleased to announce the inclusion of fifteen attorneys in *Columbia Business Monthly's* 2019 Legal Elite of the Midlands and *Greenville Business*

Magazine's 2019 Legal Elite of the Upstate. Recognized attorneys in MGC's Columbia and Greenville offices include:

Legal Elite of the Midlands

- Brett Bayne – Insurance Law (Top Attorney Vote)
- Sterling Davies – Construction Law (Top Attorney Vote)
- Mundi George – Workers' Compensation Law (Top Attorney Vote)
- Rusty Goudelock – Workers' Compensation Law
- Jason Lockhart – Workers' Compensation Law
- Tommy Lydon – Business Litigation Law (Top Attorney Vote)
- Stuart Moore – Workers' Compensation Law
- David Ross – Residential Real Estate Law (Top Attorney Vote)

Legal Elite of the Upstate

- Brad Easterling – Workers' Compensation Law
- Geoff Gibbon – Construction Law (Top Attorney Vote)
- Randy Hedlund – Workers' Compensation Law
- Erroll Anne Hodges – Workers' Compensation Law
- Beth McMillan – Insurance Law (Top Attorney Vote)
- Doc Morgan – Business Litigation Law (Top Attorney Vote)
- Charles “Bo” Williams – Business Litigation Law

The listed attorneys have had the pleasure of being included within the Legal Elite ranks in prior years as well.

For almost 10 years, *Columbia Business Monthly* and *Greenville Business Magazine* have honored Midlands and Upstate attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for

the 2019 Legal Elite are featured in the August 2019 editions of *Columbia Business Monthly* and *Greenville Business Magazine*.

22 MGC Attorneys Recognized in the 2020 Edition of *The Best Lawyers in America*®

McAngus Goudelock & Courie, a regional insurance defense firm, is pleased to announce the inclusion of 22 attorneys in the 2020 edition of *The Best Lawyers in America*®. Four attorneys were named *Best Lawyers*® “Lawyer of the Year” as well. In Columbia, SC, Sterling Davies was named the Litigation – Insurance “Lawyer of the Year”, and Thomas Lydon was named the Litigation – Banking and Finance “Lawyer of the Year.” In Greenville, SC, Erroll Anne Hodges was named the Workers' Compensation Law – Employers “Lawyer of the Year”, and Doc Morgan was named the Product Liability Litigation – Defendants “Lawyer of the Year.”

Recognized attorneys include:

Charleston, SC

Mark Davis: Workers' Compensation Law – Employers

Carl Edwards: Litigation – Insurance; Personal Injury Litigation-Defendants

Amy Jenkins: Employment Law – Individuals; Employment Law – Management; Litigation – ERISA; Litigation – Labor & Employment

Allison Nussbaum: Workers' Compensation Law – Employers

JD Smith: Product Liability Litigation - Defendants

Columbia, SC

Chad Abramson: Workers' Compensation Law – Employers

Trippett Boineau: Litigation – Construction; Product Liability
Litigation - Defendants

Sterling Davies: Commercial Litigation; Insurance Law;
Litigation – Insurance; Litigation – Construction; Product
Liability; Litigation – Defendants

Scott Garrett: Workers' Compensation Law – Employers

Mundi George: Workers' Compensation Law – Employers

Rusty Goudelock: Workers' Compensation Law – Employers

Jason Lockhart: Workers' Compensation Law – Employers

Tommy Lydon: Bet-the-Company Litigation; Commercial
Litigation; Litigation – Banking & Finance

Hugh McAngus: Workers' Compensation Law – Employers

Julie Moose: Commercial Litigation

Greenville, SC

Mark Allison: Workers' Compensation Law – Employers

Vernon Dunbar: Workers' Compensation Law – Employers

Erroll Anne Hodges: Workers' Compensation Law – Employers

Doc Morgan: Commercial Litigation; Insurance Law; Litigation
– Insurance; Personal Injury; Litigation – Defendants; Product
Liability Litigation – Defendants

Bill Shaughnessy: Workers' Compensation Law – Employers

Shayne Williams: Workers' Compensation Law – Employers
Myrtle Beach, SC

Dominic Starr: Litigation – Insurance

Since it was first published in 1983, *Best Lawyers*® has become universally regarded as the definitive guide to legal excellence. *Best Lawyers*® lists are compiled based on an exhaustive peer-review evaluation. Over 79,000 leading attorneys globally are eligible to vote. Lawyers are not required or allowed to pay a fee to be listed; therefore, inclusion in *Best Lawyers*® is considered a singular honor.

Seven Richardson Plowden Attorneys Selected to *The Best Lawyers in America*®

Richardson Plowden is pleased to announce the following lawyers have been named to *The Best Lawyers in America*®:

Leslie A. Cotter Jr. – Legal Malpractice Defense

Fred A. Crawford – Healthcare Law

Emily Gifford Lucey – Construction Law

Steven J. Pugh – Product Liability Defense

Anthony E. Rebollo – Tax Law

Frank E. Robinson II – Real Estate Law

Frank J. Smith, Jr. – Construction Law

Special Congratulations to Franklin J. Smith, Jr. who was named “*Lawyer of the Year*” in the area of Construction Law, Columbia, SC.

Columbia Attorney Anthony Livoti Named 2019 Fred H. Sievert Award Recipient


Murphy & Grantland, PA is pleased to announce that Shareholder **Anthony W. Livoti** has been awarded the **2019 Fred H. Sievert Award**. This nationwide award is presented by the Defense Research Institute (DRI) to an individual who “has made a significant contribution towards achieving the goals and objectives of the organized defense bar.” All nominees “must be the current or past president of a State and Local Defense Organization, who have initiated innovative projects for the betterment of the organization and exercised strong leadership.”

Livoti was the 2017-2018 President of the South Carolina Defense Trial Attorneys’ Association (SCDTAA), having previously served as the SCDTAA Secretary, Treasurer and President-elect. While President, Livoti focused his initiatives on developing the “SCDTAA Emerging Leaders Program.” The goal of the program is to identify young lawyers in member firms as potential future leaders of the SCDTAA, and equip them, through training and mentoring, to take on leadership roles in the SCDTAA, their firms, and communities. Participants in the Emerging Leaders program are required to accomplish several milestones over a two-year period, including taking part in specific leadership training during meetings of the SCDTAA. In the program’s inaugural year, many young lawyers were identified and actively participated in the Emerging Leaders program and the growth of the program continues today.

In addition to being a member of the SCDTAA and DRI, Livoti is also an active member of the


International Association of Defense Counsel (IADC) and the American Board of Trial Advocates (ABOTA).

Livoti concentrates his practice in the areas of personal injury defense. As a certified circuit court mediator, much of his practice is also dedicated to alternative dispute resolution and mediations. He has presented numerous continuing legal education seminars on mediation and leadership.

The Fred H. Sievert award will be presented at the 2019 DRI Annual Meeting October 16-19, 2019 in New Orleans, LA. 

2019 Summer Meeting Recap

by Mark A. Allison



The Sonesta Resort in Hilton Head, South Carolina hosted the 2019 summer meeting from July 26 to July 28. The Young Lawyers' Division opened the event with a happy hour on Friday afternoon. On Friday evening, more than 100 attorneys, guests, and workers' compensation commissioners attended the Full Moon Rising Reception at the resort pavilion.

The meeting portion of the weekend commenced on Saturday morning. President Jamie Hood welcomed attendees and conducted a membership meeting. Following the meeting, Jack Pringle, of Collins and Lacy, offered a thought-provoking and engaging presentation titled: Check your Head: Some Observations on Space and Resilience. State Representative Justin Bamberg followed with a Section 1983 case law update. Workers' compensation attorneys convened for a breakout session attended by four commissioners: Chairman Scott Beck, Melody James, Aisha Taylor, and Gene McCaskill. Mark Allison, of MGC, conducted a separate breakout session on ethics for the Association's Emerging Leaders Program. Following the breakouts, Todd Smyth, of Smyth Whitley, presented on arbitration agreements in nursing home litigation. Sarah Wetmore Butler, of Carlock Copeland, concluded the educational session with a recap of the ultra-successful Women in Law seminar conducted earlier in the spring.



SCDTAA EVENTS (cont.)

Attendees took advantage of great weather in the afternoon with activities including golf, swimming, and beach games. The Women in Law enjoyed an afternoon happy hour. On Saturday evening, the Association hosted the Seafood Dinner, Silent Auction, and S'mores event, raising money for various charitable organizations.

Sunday morning offered workers' compensation attorneys another opportunity to enjoy time with the commissioners over breakfast prior to a second workers' breakout, led by Ashley Forbes, of MGC, and TJ Twehues, of Gallivan White



& Boyd. The meeting continued with a presentation from our Diamond-Level sponsor, Applied Building Sciences, on post-litigation repairs. Former Chief Justice Costa Pleicones updated the attendees on legislative changes related to apportionment and tort reform. Jay Thompson, of Nelson Mullins, presented an overview of product safety and recall. Past President Anthony Livoti, of Murphy Grantland, delivered an engaging address on leadership for young lawyers. Past President David Anderson, of Richardson Plowden, concluded the meeting with an examination of ethics and civility in claims handling and insurance defense work.

Ten participating attorneys in the Emerging Leaders Program attended the meeting, including eight first-timers. The program continues to offer young lawyers top-notch education in the areas of leadership and practice growth, as well as opportunities to develop relationships with other lawyers and judges.

Hilton Head and the Sonesta Resort again proved to be an excellent site for a family-friendly and relaxing weekend among our lawyers, commissioners, and sponsors. We hope to see a huge turn-out for our return to The Omni Grove Park Inn in Asheville, North Carolina next summer. 🏠



SCDTAA EVENTS (cont.)

2019 Summer
Meeting Photos



Table of Contents

THANKS TO OUR 2019 SUMMER MEETING SPONSORS

DIAMOND LEVEL



SILVER LEVEL



EXHIBITORS




LAW FIRM SPONSORS



Make Plans Now to Attend the 51st Annual Meeting

by William W. Watkins, Jr.



This November 14 -17 we return to the Ritz-Carlton at Amelia Island, Florida for the 2019 Annual meeting of the SCDTAA. This five star resort is set on 13 miles of pristine coastline. So, come join us for some excellent continuing legal education and networking with colleagues while enjoying Florida's beautiful weather and spectacular sunsets.

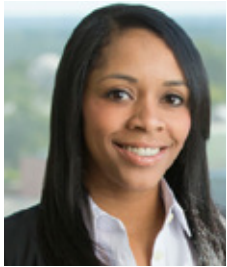
Amelia Island is the southernmost of the Sea Islands, a chain of barrier islands along the eastern U.S. seaboard. Once a vibrant Victorian village by the sea, Amelia Island also owns the unique distinction of being the only U.S. city to have been under the domain of eight different nations, and is still known as the Isle of 8 Flags.

The Island is steeped in history and natural beauty that is home to museums, forts, nature paths, eco-tours, golf courses and more. Today, this luxury resort in North Florida is perfect for nature lovers and those who thrive on sun, sand and outdoor sports. The resort's location offers an abundance of things to discover, including a wealth of Amelia Island fine dining and a variety of interesting shops and museums to browse along the cobblestone streets in the heart of historic Fernandina Beach, Florida.



As in year's past, a highlight of the Annual Meeting is the continuing legal education provided at the meeting. Your annual meeting committee this year is comprised of Lucy Grey Melver, Rob Tyson, Dick Willis, Claude Prevost, and Trey Watkins. The committee, along with the help of Aimee Hiers, is hard at work putting together this year's program that will include updates on ethics and substantive areas of the law.

So, bring your significant other and mark your calendars for November 14 to 17 to enjoy all that Amelia Island and the 51st Annual Meeting has to offer. 🏠



Trial Superstars Recap

by Breon C. M. Walker

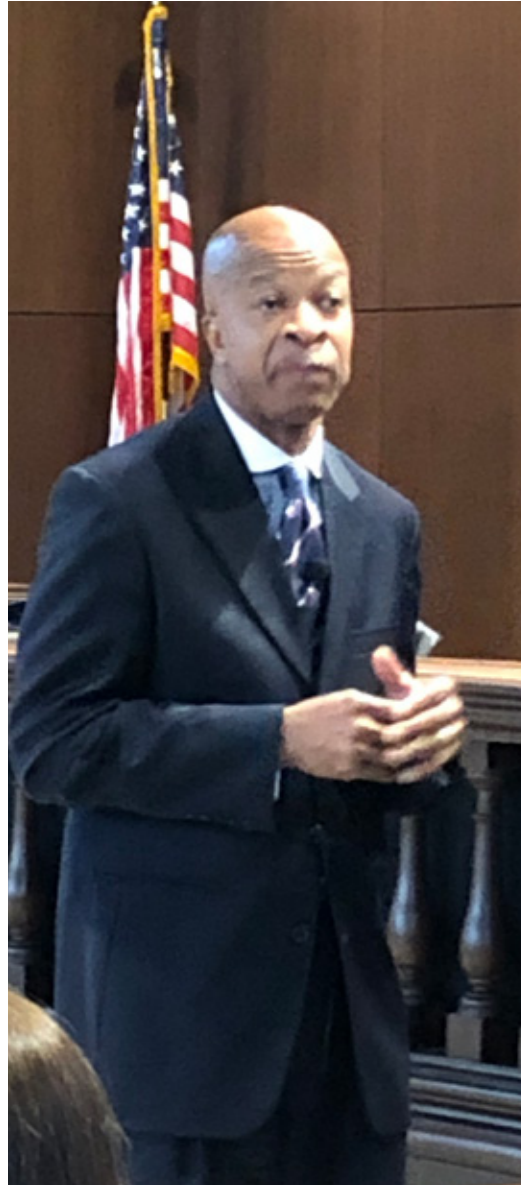
Trial Superstars was held in Columbia at the University of South Carolina School of Law on April 12, 2019. We had 20 “Superstars” from South Carolina, Georgia and Florida go head-to-

head in this must-see mock trial. The Honorable George C. James, Jr., served as the presiding judge and the Honorable L. Casey Manning put on an Oscar-worthy performance as the Plaintiff. Participants were able to see an entire trial



from opening to jury deliberations in this day-long CLE, including a live-feed of the jury deliberations. We would like to extend a special thank you to R&D Strategic Solutions for leading the jury deliberations and AWR for providing the

technical audio and visual support during trial. A special THANK YOU to our event sponsor, SEA Limited, who also hosted the opening reception. 🏛️



**SCDTAA
EVENTS
(cont.)**

Trial Superstars
Photos



Table of Contents

**SCDTAA
EVENTS
(cont.)**

Trial Superstars
Photos

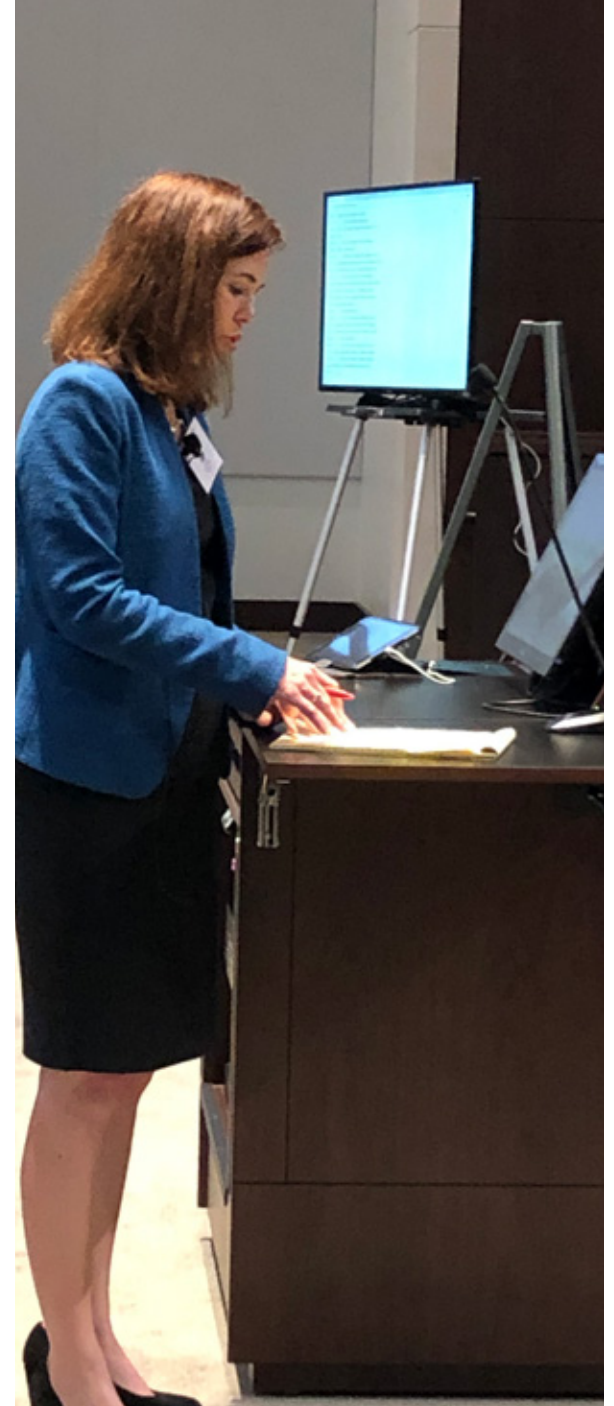
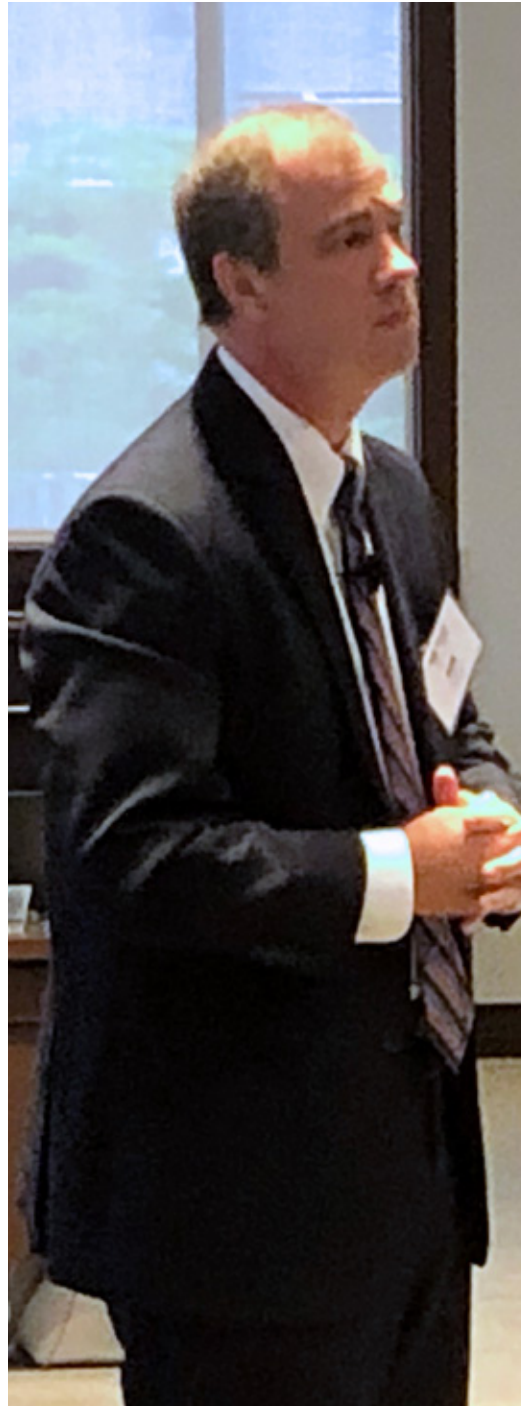


Table of Contents

SCDTAA EVENTS (cont.)

Trial Superstars
Photos



Table of Contents

2019 Trial Academy

by Todd W. Smyth



The 2019 SCDTAA Trial Academy was held in Charleston on May 8-10, 2019 and I am happy to report it was another great success. We hosted a class of 23 outstanding young lawyers from across the state for the three-day event.

We had an exceptional line up of speakers, including a former SC Supreme Court Chief Justice, SC Bar President, managing partners and preeminent trial lawyers, who taught on all facets of trial work, from pretrial preparation and professionalism, preparing and presenting lay and expert witness testimony, opening statements and closing arguments, as well as jury selection, jury charges and post-trial motions. I am personally thankful to the men and women who gave of their time to share their knowledge and experience with this next generation of lawyers.

In addition to the scheduled presentations, 18 seasoned trial



SCDTAA EVENTS (cont.)

lawyers from all across the state volunteered their time to work closely with participant teams during three scheduled break-out and practice sessions over the two-day classroom time. They shared their knowledge and experience and helped to coach the trial teams as to how best to present their cases. The students took full advantage of this and really appreciated the opportunity to learn from their coaches.

We also held a judicial reception on Thursday night at the beautiful home of Molly and Steven Craig. The reception was well attended by several members of the judiciary, our students, SCDTAA leadership and members, as well as our sponsors. Not only were we all treated to a wonderful night of good food and camaraderie, but many of the students were able to get to know some of our judges and network with many of our members in a relaxed setting.

Finally, the Trial Academy culminated with six mock trials on Friday. Six sitting judges from the Circuit Court and Court of Appeals selflessly gave of their time and experience and presided over the trials for our students. Additionally, six seasoned trial lawyers served as Trial Observers in each courtroom and provided invaluable and constructive feedback to the participants following the trial. Witnesses circulated throughout the trials and some even did their very best to test the lawyers, in order to simulate the unexpected nature of real trials, of course. Juries comprised of attorneys, law students, paralegals, and other citizenry carefully considered the attorney arguments and witness examinations and testimony in rendering their verdicts at the close of the trials. Interestingly, there were 2 hung juries, 2 Plaintiff verdicts and 2 Defense verdicts. At the conclusion, all of our students commented how much this experience meant to them and how appreciative they were to have their firms make this incredible investment into their careers.



We are especially thankful to SEA Limited for once again sponsoring the Trial Academy this year. We are also incredibly thankful to Charleston County Clerk of Court, Julie Armstrong, and her fabulous staff for hosting us and making sure the trial experiences were top-notch. Thank you to everyone who made it a success. It is not too early to start thinking about which young lawyers you would like to send to next year's Trial Academy. 🏛️



SCDTAA EVENTS (cont.)

Trial Academy
Photos



Table of Contents

**SCDTAA
EVENTS
(cont.)**

Trial Academy
Photos



Table of Contents

SCDTAA EVENTS (cont.)

Trial Academy
Photos



Table of Contents

SCDTAA EVENTS (cont.)

Trial Academy
Photos



Women in Law Update

by Sarah Wetmore Butler



On May 9th, the SCDTAA Women in Law Committee held a roundtable discussion titled “Can We Really Have it All?” The event took place at the Charleston Historic Courthouse and was a terrific success! SCDTAA Treasurer Sarah Wetmore Butler, Esq. led a dynamic discussion with The Honorable Stephanie Pendarvis McDonald, Laura Johnson Evans, Esq., Adriane Malanos Belton, Esq., Katy Stebbins Yahr, MA, LPC, NCC and Rachel A. Eigen, CSP, AEP, MISE. The topics covered ranged from how today’s working woman defines “having it all” to the myth of “work-life balance” to

how businesses are changing, or need to change, to adapt to today’s employees. The audience jumped right into the talk and offered invaluable insight and ideas. Everyone appreciated the candid personal accounts from the speakers. The takeaways included : women need to lift one another up, speak up and ask, firms needs to listen to their younger lawyers who will be leading the firm into the future, put your phone down and enjoy your off time, be open to opportunities, be yourself and be happy, not perfect. Thank you to Charleston County Clerk of Court, Julie Armstrong, for joining the group and to all of the speakers and attendees. Big thanks also to ESi for sponsoring the event! 🏛️





2019 SCDTAA Golf Classic

September 19
11:00 AM - 5:30 PM
Orangeburg
Country Club

2019 Annual Meeting

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

2020 Summer Meeting

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

2020 Annual Meeting

November 12 - 15
The Ritz-Carlton Reynolds,
Lake Oconee,
Greensboro, GA

The Honorable Carmen T. Mullen

by Michael D. Freeman



Carmen T. Mullen is a resident sitting judge for South Carolina's Fourteenth Circuit. Raised in Southern California, Judge Mullen received her B.A. in English and Speech Communications from Indiana University in 1990. After living and working in the Indianapolis and Chicago areas in outside sales for a short time, Judge Mullen attended Clemson University where she obtained her M.A. in English with an emphasis in Southern Literature. She went immediately thereafter to attend the University of South Carolina, School of Law where she received her juris doctorate in 2 ½ years.

Following her graduation, Judge Mullen began a clerkship with the Honorable L. Casey Manning of the Fifth Judicial Circuit. Thereafter she worked for a time as an assistant public defender in Charleston County and then as staff attorney for the South Carolina House of Representatives Labor, Commerce and Industry Committee. In 1998 Judge Mullen entered private practice and by 2000 was a partner at Berry, Tevis and Jordan on Hilton Head Island.

In 2006, she was elected by the General Assembly to fill a vacancy left by retiring Judge Jackson V. Gregory, as Resident Circuit Court Judge Seat 2. She currently lives on Hilton Head Island with her husband, attorney George Mullen and their children.

What led you to the legal profession?

Originally, my ultimate goal was to be an English professor. After college I ended up working in sales in Chicago. My father



was working for a company outside of Clemson at the time, and he became aware of an opening for an assistantship in the English department grad program at Clemson a week and a half before school was scheduled to start. I remember he called me and I faxed my resume from the fax machine I had for work in my car. I ended up getting accepted and found myself teaching English 101 and 102, Freshman Composition and Elements of Argument. I really enjoyed the faculty there, but ultimately came to the conclusion that academia wasn't for me. I realized I wanted a career where success could be measured in my own hard work and merit as opposed to simply putting myself through the paces and checking boxes on a career track. The law appealed to me because of the analytical and research based nature of the practice and because it is a profession that tends to reward hard work. I don't know a successful lawyer who doesn't work hard. If you work hard and smart, do a good job, and it's your passion, you can be successful. So, I graduated from my program at Clemson early, and meanwhile had applied to the University of South Carolina School of Law.

My original plan after graduating law school was to return to Illinois and practice in Chicago. I took and passed the Illinois bar, but ultimately realized that there were just too many lawyers up there. After my experience as a judicial clerk, I knew every judge, their spouses' names, and how old their children were. Where else can you go where you know every single judge in the state? I'm so grateful I stayed. I always count myself lucky to have landed in South Carolina, and especially the Lowcountry.

After law school you clerked with The Honorable L. Casey Manning in Columbia. How did your experience with Judge Manning inform your approach to the bench?

At the time, [Judge Manning] was a new judge; he had only been on the bench for a year. I didn't expect him to hire me, but during the interview we sat and talked for 3 hours about a range of things, including my background being from California, where he had spent two years. I was very pleased a couple weeks later to get the call from him that I had gotten the job.

I really credit him with getting me comfortable with a courtroom. He has been so instrumental in my life and has opened so many doors that wouldn't have otherwise been available to me. He was the one who ultimately convinced me to take the position as a staff attorney for the South Carolina Legislature, which was a pivotal stepping stone to my decision to stay in South Carolina to practice.

First and foremost, what I took away from watching him on the bench is that he is gracious to everyone. He makes a real effort to put everyone in court at ease. He understood that it's scary when you start practicing law. He told me- Don't embarrass anyone, and always be generous with advice. A good case shouldn't suffer at the hands of a less experienced attorney. He wasn't activist judging, but he was and always has been focused on justice.

The other thing I admired about him as a trial lawyer is: he would run trial issues by his father for advice. I did the same thing while practicing law. My father was a business man who was skeptical of lawyers, so he would always give me a good non-legal perspective.

You were involved in one of the more famous cases in recent history, a 1944 civil rights case involving the murder conviction and subsequent execution of a fourteen year-old African-American. What led you to reopening the Stinney case?

The case was assigned to me by Chief Justice Toal. My first

question to her was; why isn't the SC Supreme Court taking this up? However, an application for Writ of Coram Nobis, has to be in front of the judge the matter was originally tried. The original trial judge, Judge [Phillip H.] Stoll was obviously deceased but the case was still properly before the Circuit Court. Well, why me? Why not a retired judge? I was told they were looking for someone with new eyes.

Your ruling in that case has generated a lot of interest, not merely because of the weight of the underlying issues, but also because of the unique procedural mechanisms which once again brought it before the Court. What about the case did you find troubling?

Well, as you know, there was absolutely no record with respect to the original investigation and trial. Where I ended up on the case is not at all where I was when I started. I heard two days of argument and testimony, and had to piece together the rest from historical documents and newspaper articles from the time to try and get a sense for what happened, reading all of it with a critical eye.

It's since been reported in the media that I found Stinney innocent; which is not at all what I ruled. I don't know whether he was guilty or not; I don't think anyone alive does. However, he clearly was not afforded the constitutional protections to which he was entitled. It's been hard to make non-lawyers understand that my role wasn't to determine guilt.

I also had, from a fundamental standpoint, a hard time re-judging another Circuit Court judge's trial with absolutely no transcript or evidence. I certainly didn't take that lightly. I have respect for all judges, past and present, and it's hard

to go back and look at what another judge did to determine whether it was right or wrong when you have no record. You don't become a judge if you don't want to get it right. I think Judge Stoll did what they did back in 1944. It may not be what would be normal now, but it was normal for the time. Obviously there was an all-white jury. There were also political considerations taken into account. For example, the defense attorney for Stinney was planning a run for the legislature and it was an unpopular case to be attached to while campaigning. But my decision came down to fundamental constitutional rights which George Stinney was not afforded, not differences in the societal norms of the era. I don't think the original trial could have gone the way it did even a year after it happened. So much was changing during this Jim Crow era, but unfortunately that change was just a bit slow in coming for this young man.

So, going into the case I had no idea what I was going to do. We had one hearing that lasted two days. The defense team essentially tried to retry the case. Stinney's living relatives came in to offer testimony, video deposition for those who had passed or could not travel were shown. What I thought was most interesting was the proffer of a child psychiatrist who talked about whether the confession allegedly given by Mr. Stinney could have been legitimate. Ultimately though, I simply didn't have to get to the issue of guilt or innocence because the constitutional violations were so clear. [Stinney] wasn't afforded a fair and impartial trial and was not afforded adequate legal assistance by counsel in his defense.

What's been your takeaway from your involvement in the case?

The decision garnered nationwide and international interest,

which has been somewhat of a surprise. People call me all the time to come speak at law schools, write articles, student organizations and the like. I recently had a young child contact me about a school project they were doing on the case.

When I was told the case needed someone with “new eyes” I think they were looking for a judge unlike those who would have normally tried the original case. Someone without the historical background of the South and the ingrained prejudices of the era which occurred during that time. Growing up in California, I didn’t frequently hear of the Jim Crow era like people who grew up in the South. Looking back at this case has been a great history lesson for me; learning where we were, how far we’ve come and how much farther we have left to go.

Navigating the legal precipice on the case was difficult. I went through the whole thing and completely swung from one way to the other in my ruling. My original order was ninety-five pages long, which I ultimately managed to pare down. It was an encompassing academic exercise, that aspect of which I enjoyed. So much of Circuit Court jurisprudence is “rule and go,” which can be unnerving because we have to make quick decisions from the bench instead of taking the time to do the research we might otherwise want to do.

You’ve been one of the Fourteenth Circuit’s sitting judges since 2006. What’s on the immediate horizon for you?

I’ve been the Chief Administrative Judge for General Sessions Court for the circuit for a year, and it looks like that will be the case for the next year as well. Chief Justice Beatty recently assigned me to assist on the business court. While an order hasn’t been issued yet, I understand I’ll

also be helping Judge Toal on the asbestos court. I really look forward to getting back to trying more civil cases.

You are one of twelve sitting female Circuit Court judges. Does your position come with it a weight of responsibility for mentoring women upcoming in the profession?

As a female judge, I definitely feel a weight of responsibility in mentoring and supporting the female bar. We, as women lawyers, need to be better at supporting each other. Especially judges. Being a judge is a lonely job because you lose friends and you can’t socialize with other female attorneys like you could prior to taking the bench. I think women lawyers and particularly judges need to support the women coming up with a mind to assume a position on the bench. I look at the “Jean Toals” and “Betsy Grays” who paved the way for us, who were the real groundbreakers for women in this profession in South Carolina. I try to encourage the women I talk to to go to law school.

I believe that now there are enough successful women in the law that, as long as we support each other and are not competing with each other, we can lift each other up. I have had a group of beautiful, strong, smart and career driven law clerks who have gone on to become great attorneys, but they still have to deal with gender related issues in their practice. I think we all still see areas where improvements can be made. I had a recent experience where a female expert, a PhD at the top of her field was being referred to by an examining attorney at trial as “dear” and “young lady”. I had to stop and explain to this attorney that the witness was not a child and that the way he was addressing her was demeaning, especially in front of a judge. He simply didn’t understand why it wasn’t

acceptable to address a woman in her 50s in that manner. He said he meant it as a “term of endearment.” But he didn’t understand the import, both to this female professional and to the jury before which she was testifying. So I suppose while I try to mentor, I do a little bit of protecting as well.

In general though I’ve found that young female attorneys are better at addressing these issues and standing up for themselves than perhaps generations past. In the past, women in this profession used to just put up with that sort of behavior. It may be more difficult for younger women to take it in stride or laugh it off, but I’ve found that they are better equipped to deal with it head on when they need to.

What do you tell the young lawyer looking for some practical advice prior to appearing before you?

[Judge Manning] told me- don’t ever say you’re not ready for trial. I pass that along to all my law clerks before they leave to enter private practice. Also, don’t get up and stomp and scream on a motion you know is ridiculous. Of course it’s your job as an attorney to go after the good ones and the bad ones alike, but you lose respect throwing a tantrum about a losing position. I’m also shocked by how many lawyers misquote the law. I know the rules, and I generally know the law. What I don’t know I can look up. It’s astounding how often lawyers will cite a case for an opposite proposition for which the case actually stands. And when citing cases, give me a copy. Hand it up. It saves the trouble of my clerk having to hunt down the full cite and opinion. Because I am going to read it.

What can we find you doing in your time off?

I just returned from a trip to Tanzania with my daughter


[Tevi, age 11], where we were working with a children’s home for orphans. The home houses twenty-two boys and girls between the ages of 6 and 12. We are working on expanding it to 100 beds. It was a real eye opener for my daughter.

I also enjoy reading. The last book I read was “Cutting for Stone” by Abraham Verghese. It was recommended to me by a friend since we had just returned from our trip to Tanzania. It takes place in Ethiopia about physicians and mission work. I find that I enjoy reading fiction because it’s a nice break from reading law.

What do you want attorneys from outside the Lowcountry to know about the Fourteenth Circuit?


We’re a really close and friendly bar. We’re not contentious like so many of them are. We recognize this is a small state and a small bar, and the attorneys here are careful how they treat people because it’ll come back to bite you. Everyone who learns that lesson learns it the hard way. You can do a good job for your client and be gracious about it.

What is something you’ve learned about the practice of law since you took the bench?

What you think is an issue in your case, is not what the jury is back in the jury room arguing about. You would be surprised about what a jury latches on to. 

Young Lawyers Division Update

by Derek M. Newberry



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

29TH ANNUAL TRIAL ACADEMY: The Trial Academy was a great success, with young lawyers participating as litigators, jurors and witnesses. After two days of engaging lectures, breakout sessions with decorated faculty and a reception at the home of past-President Molly Craig, the participants tried their cases before six judges from the Circuit bench and Court of Appeals. In the end, there were two hung juries, three defense verdicts and a plaintiff’s verdict. It was clear from the participants’ enthusiasm, determination and skill that the defense bar is well-positioned for continued client service and success in the future.

CHARLESTON HAPPY HOUR: The YLD held a happy hour sponsored by Clark & Associates at Edmunds Oast Brewery in Charleston, which was well-attended. Moving forward, we are working to schedule additional happy hours in our other regions. If you are interested in assisting with these efforts, please reach out to incoming YLD President Nickisha Woodward.

SILENT AUCTION: The YLD had a strong turnout at the Summer Meeting at the Sonesta Resort. The

silent auction raised \$4,700 to benefit the National Foundation for Judicial Excellence, the South Carolina Bar Foundation and the Kids’ Chance of South Carolina. Thanks to all who donated items and to the members of of the YLD Auction Committee (James Robey, Megan White and Virginia Floyd) for their hard work.

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

All members of the Association who are thirty-five years of age or less or have been engaged in the practice of law for 10 years or less are eligible for membership in the Young Lawyers Division. To be eligible to be an officer on the Division, a member must meet the requirements for membership in the Division for at least the first two-year term in which he or she holds an office in the Division.

With Nickisha Woodward moving into the position of President of the YLD, we will be holding elections shortly for the Vice President position. If you are interested in running or wish to nominate one of your peers, please contact Aimee Hiers. 🗳️



Accepting Names for the YLD President Elect!

The SCDTAA is now accepting names for the President Elect position of the Young Lawyers. The President-Elect's term is two years and at the end of those two years, that person will become President of the Young Lawyer's Division for two years. As President of the Young Lawyers Division, you will serve as an ex-officio member of the Board of Directors of the SCDTAA.

The Young Lawyers division includes "All members of the Association who are thirty-five years of age or less or have been engaged in the practice of law for 10 years or less are eligible for membership in the Division."


To be eligible to be an officer on the division, a member must meet the requirement for the membership in the division for at least the first two-year term in which he or she holds an office in the division. The election will take place via an online vote in the next few weeks.

For those that are interested in this position, please send Aimee Hiers, aimee@jee.com, an email with a brief bio asking that she add your name to the ballot.

Emerging Leaders Update

by Anthony W. Livoti, SCDTAA Immediate Past-President

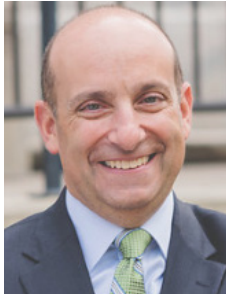


Our Emerging Leaders program continues to reap great benefits. At our Summer Meeting, we recognized three lawyers who completed the program requirements and received the designation as a SCDTAA Emerging Leader. Those lawyers are Alex Joyner of the Wilkes Law Firm (pictured), Jeanmarie Tankersly of Clawson and Staubes, and Emily Bridges of Fox Rothschild. The leadership breakouts at the Summer Meeting were very informative and we had 11 Emerging Leaders participate. This program is getting recognition nationwide and we are very proud of the lawyers who are participating in our program. Please support us by sending your young lawyers to our upcoming Annual Meeting in November and nominate lawyers in your firm that you believe would be interested in participating in our program. Interested in speaking at the Annual Meeting for our leadership breakout? Contact Aimee Hiers aimee@jee.com or Anthony Livoti, awlivoti@murphygrantland.com. 



SCDTAA Officers Attend DRI Super Regional Meeting

by Anthony W. Livoti, SCDTAA Immediate Past-President



The Homestead Resort in Hot Springs, Virginia hosted the DRI Super Regional Meeting April 25-April 26. The SCDTAA is part of the Mid-Atlantic Region in DRI, along with North Carolina, Virginia, Maryland, and District of Columbia.

The April meeting brought together the Mid-Atlantic Region, the Central Region (Ohio, West Virginia, and Michigan), and the Atlantic Region (Pennsylvania, Delaware, New York, Philadelphia, and New Jersey). These meetings are a great way for leaders of the state and local defense organizations (SLDOs) to come together to share ideas, challenges, and successes. The goal is for all of these organizations to learn from each other to improve the defense bar across the country.

Once again, the SCDTAA lead the way in talking about the outstanding programming put on year in and year out. SCDTAA is a model organization for others and we were able to share our successes as well as our challenges. Immediate Past-President Anthony Livoti gave a presentation entitled “So You’re An Officer In An SLDO: Now What? Setting A Vision for Your Organization Out of Your Leadership Values”

and shared the recent success SCDTAA has had with the Emerging Leaders program. Treasurer Sarah Wetmore Butler talked about the Women in Law and Diversity initiatives underway for this year. This two-day leadership exchange provided an opportunity for the leaders of the SCDTAA to improve on what we already do well and to see areas where we can grow and provide better value for our members. Bringing together leaders from defense bars in other states is incredibly valuable and is one of the many benefits of being a part of DRI. DRI provides tremendous resources for defense attorneys across the country and the SCDTAA is proud of its long-standing support and affiliation with such an outstanding organization. Indeed, our two recent past DRI Presidents, John Kuppens and John Cuttino, attest to the outstanding leaders for DRI that South Carolina produces. Thanks also to State Representative Jay Courie for his leadership and contributions on behalf of the SCDTAA for these past three years. We are excited about the continued partnership between DRI and the SCDTAA in the years to come. 🏛️

dri™

2019

ANNUAL MEETING

Save the date! OCTOBER 16-19

Check dri.org for updates.

NEW ORLEANS

The Past and Present
Define the Future.



OCTOBER 16-19, 2019

NEW ORLEANS MARRIOTT

William George (Bill) Besley

by Geoffrey W. Gibbon

The SCDTAA lost one of its brightest stars this past year. On November 24, 2018 William George (Bill) Besley passed away after a courageous battle with cancer. Bill was a very active member of the SCDTAA. His roles included serving on the SCDTAA Board of Directors for nearly a decade as well as chairing and co-chairing numerous committees. Needless to say, Bill was a valuable asset to the SCDTAA and, by all accounts, a great lawyer. But exceedingly more important is his legacy as a great husband, father, and friend. To that end, Bill is survived by his wife of 28 years, Sharon, and two children, William and Carolina. Words can never truly capture what someone meant to those left behind. However, Bill's law partner, Ben McCoy, recently spoke at the Richland County Bar Association 2019 Memorial Service on behalf of Bill and did an excellent job capturing what Bill meant to so many. Ben has been kind enough to allow the SCDTAA to share those remarks with the readers of *The DefenseLine*.

When I was a little fellow in kindergarten and elementary school, adults would ask, what do you want to be when you grow up. Had I known then what I know now, I would've said, I want to be a lawyer and a man like bill besley.

I met bill in the summer of 1991. Bill was a third year associate and I was a law clerk. Bill enjoyed test driving cars at lunch, the andy griffith show, sports and competition. We hit it off.



William George (Bill) Besley

We worked in a firm filled with brilliant, remarkably talented and accomplished attorneys. Although young, Bill was already a star among them. Stacking the deck further, god made Bill tall, handsome and athletic while also extraordinarily kind, generous and humble. Bill was a leader of the south carolina defense trial attorneys association and the east minister presbyterian church. In

1996 Bill founded the law firm of howser, newman and besley with dave howser and jamie newman. Our work together at howser, newman and besley continued for the next twenty-two years. Over those years, I also had the privilege to see countless ways Bill loved and cherished his wife, sharon. What a christian soldier she is. Bill also loved and was so proud of his son william, and daughter caroline. Bill and sharon had grown them god's way.

Oh, and then there's tennis. What a fabulous tennis player he was. At his alma matter, presbyterian college, and in tournaments after college, Bill shared with them how he grew up practicing tennis in the summer heat here in columbia. He would hit balls for hours into a wall at the tennis courts. It was too hot for anyone else to be out there, so that wall was it.

After hearing from so many how good he was, I asked him about his game and how he played. Bill told me some described his game as boring, others described it as patient, and according to his wife sharon, it was described as careful. Bill explained his thought was if he could just return everything hit to him, he'd never lose a point. I want you to know in the hundreds of cases, thousands of witnesses, demanding clients, stressful situations, complex circumstances, conflicting duties, juries, judges, colleagues and coworkers, I never saw Bill drop the ball on a thing, not one time.

He returned everything hit to him in bounds, strong, true. In our challenging and demanding legal profession, Bill mentored and motivated me. He encouraged and supported me to the point that on occasion he actually had me believing I was his peer. And it was that belief, he could talk some trash, he would say, "mccooy, you're gonna have to work

hard to get the gold medal from me this year." I'd respond, "the only award you have a shot at is sportsmanship."

I'd walk in Bill's office and with my best barney fife impression and I'd say, "ah, gotta new client in this morning." without hesitation, Bill would respond, "just one?"

You may be thinking y'all sound like a couple of kids on the playground. Exactly. May you be lucky enough to practice with someone that makes you feel that way.

I was very thankful for the opportunity to share with Bill and sharon's pastor what Bill meant to me at our law firm. Bill set the standard for character, integrity, talent, professionalism, grit, work ethic, kindness, generosity and love. Bill would fight a vendor for five more cents off a ream of paper and then an hour later give every dollar in his wallet to someone who needed it, usually that same vendor.

I also let the pastor know that I didn't want him or anyone else to be confused or misunderstand, the day Bill went to heaven god did not save Bill from cancer, god saved cancer from Bill. Bill fought, hit strong and returned everything in extreme heat. Bill fought so well that even in year two and three of the fight, folks had no idea. I would tell those who asked, "if you didn't know, you wouldn't know." Bill had become that wall he practiced against in the summers before. No holds, no weakness, tall, silent.

Also, like many years before when I was a little fellow, the street lights came on too soon and I used to tell my dad, "I know it got dark, but we were playing good." I sure wasn't ready for Bill to be called home by our father, but I'm just as sure he made it there. 🏏

Wickersham v. Ford Motor Company: Crashworthiness, Comparative Negligence, and a New Era in Product Liability

By Kevin J. Malloy and Derek D. Tarver



Kevin J. Malloy



Derek D. Tarver

On July 24, 2019, the South Carolina Supreme Court issued an opinion in *Wickersham v. Ford Motor Company*, 2019 WL 3311057 (2019), and with it concluded an eventful chapter in the development of our state’s automotive product liability law. *Wickersham* arose by way of certified questions from the 4th Circuit, one of which the Supreme Court had invited in *Donze v. General Motors* 420 S.C. 8, 800 S.E.2d 479 (2017).

Donze and *Wickersham* both focused on whether comparative negligence¹ can be used to apportion liability in a “crashworthiness” action. Crashworthiness refers to the protection a motor vehicle provides its occupants; a vehicle is defective under South Carolina law if it fails to provide reasonable safety in a collision. A plaintiff in such cases is entitled to recover the damages associated with his or her “enhanced injuries,” meaning those that would not have occurred had the vehicle been crashworthy.

When South Carolina judicially adopted comparative negligence², thorny product liability questions arose: (1) could common law comparative negligence serve as a defense to the statutory product liability causes of action³; and (2) could a plaintiff’s accident-causing fault be raised to offset

recovery for enhanced injuries in a crashworthiness case.

In *Donze*, the court held that a plaintiff’s accident-causing negligence cannot be compared to a defendant’s failure to provide a crashworthy vehicle. The court reasoned that because an accident is the predicate for a crashworthiness defect, the cause of the accident is irrelevant to, and legally remote from, whether a vehicle provided reasonable safety in the accident. However, the court was careful to limit its holding only to accident-causing fault. The court explained, “[C]omparative negligence related to the defective component itself—tying a door shut for example—*could* still be a defense, if a factual basis existed[.]” *Donze*, 420 S.C. at 20, 800 S.E.2d at 485 n.4 (emphasis added).

While this footnote seemed to signal how the court might rule in regard to that type of comparative negligence, questions remained because the *Donze* opinion made two other points. First, after noting that the plaintiff’s strict liability and breach of warranty claims were statutory, the court stated: “If the General Assembly intends for comparative negligence to constitute a defense under either of these theories, it is unquestionably capable of amending these statutory schemes accordingly.” *Donze*, 420 S.C. at 19, 800 S.E.2d at 485.

Then, it said that permitting consideration of comparative negligence would “conflate” the three distinct product liability causes of action. The significance of this language was not entirely clear, and the stage was thus set for *Wickersham*.

The plaintiff in *Wickersham*⁴ argued that a defective airbag system enhanced the decedent’s injuries by deploying late. Ford argued that the decedent was out of position in the vehicle, such that he struck and was injured by the gear shifter, not the airbag. The jury found for the plaintiff on her product liability claims, but also found the decedent was 30% at fault. However, the district court refused to reduce the verdict, concluding, with reference to *Donze*, that the South Carolina Supreme Court would “not recognize comparative fault as a defense to strict liability or breach of warranty.” *Wickersham v. Ford Motor Co.*, 2017 WL 3783122*16 (D.S.C. 2017). This decision was appealed to the 4th Circuit, which certified the question: “Does comparative negligence in causing enhanced injuries apply in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty and is seeking damages only to the plaintiff’s injuries?” *Wickersham*, 738 Fed. Appx. at 129

The court held that a plaintiff’s comparative negligence must be considered in all three product liability causes of action. The court relied upon principles of proximate cause to reach this conclusion, though it acknowledged that comparative negligence is commonly considered to be a defense rather than part of the proximate cause analysis.⁵ The court also confirmed that *Donze*’s holding had been based on the remoteness of accident-causing fault and not the separation of powers concerns noted in that opinion; it stated:

We now hold—under a standard proximate cause analysis—even though the cause of the accident itself is legally remote, comparative principles must apply in a crashworthiness case in determining who caused the enhancement. This is a different question than who caused the initial collision. A plaintiff’s actions that do not cause the accident, but cause enhancement of his injuries, must be compared to the fault of the manufacturer in determining the manufacturer’s share of liability for the enhanced injuries.

Id.

By grounding its decision in a proximate cause analysis, and retroactively clarifying that *Donze*’s outcome had also been dictated by proximate cause principles, the court harmonized the differing rules of law created by the two decisions and side-stepped the separation of powers concerns that had led the district court to conclude that the *Wickersham* verdict should not have been reduced by the decedent’s comparative negligence. In so doing, the court provided clarity that will significantly simplify the assessment of crashworthiness cases.

Before turning to its implications for comparative negligence in non-automotive settings, it should be noted that *Wickersham* also answered a second certified question related to proximate cause. The decedent had survived the subject crash but later committed suicide, which the plaintiff argued was a result of an “uncontrollable impulse” caused by the injuries sustained in the crash. The 4th Circuit asked whether such an “uncontrollable impulse” was an exception to South Carolina’s “general rule that suicide breaks the

causal chain for wrongful death claims[.]”

The Supreme Court answered that South Carolina does not have a general rule that suicide is an intervening act that breaks the causal chain. “Rather, our courts apply traditional principles of proximate cause.” *Wickersham*, 2019 WL 3311057, at *4. The court then how to perform this case-by-case analysis:

First, the court must decide as a matter of law whether the suicide was unforeseeable. If the suicide was not unforeseeable as a matter of law, the jury must consider foreseeability. The jury must also consider causation-in-fact, including whether the defendant’s tortious conduct caused a decedent to suffer from an involuntary and uncontrollable impulse to commit suicide.

Id.


Looking forward, the defense bar will still have plenty to consider in regard to comparative negligence, despite *Wickersham*’s having put to rest questions concerning the interplay between common law comparative negligence and the statutory product liability causes of action that previously puzzled litigants. Collectively, *Donze* and *Wickersham* are likely to encourage the plaintiffs’ bar to argue that the logic undergirding crashworthiness applies in non-automotive settings.

For example, one could argue that just as it is foreseeable that cars will get into crashes, it is foreseeable to a manufacturer that some factory workers’ hands will be crushed by metal-stamping presses. As such, it could be argued that there is a

duty to guard against that foreseeable event and, therefore, that foreseeability would make the plaintiff’s actions in exposing himself to injury as irrelevant and legally remote as a driver’s accident-causing negligence. Alternatively, though, if that same plaintiff had modified a design feature intended to mitigate the risk of such injury, the defendant could argue the situation is analogous to *Wickersham* and thus that the jury should be permitted to consider whether the injured worker’s negligence was a proximate cause of his harm.

It would seem the admissibility of comparative negligence in these non-automotive contexts will most often turn on the nature of the alleged defect. Consider this fact pattern: (a) a child ingests a medication that has dangerous side effects and arguably resembles a popular candy; (b) the medication is sold in a bottle with a safety cap; and (c) the child accessed the medication because a parent had improperly placed the safety cap on the bottle. If the alleged defect were that the medication looked like candy and, therefore, was appealing to children, the plaintiff would have an argument under *Donze* that the parent’s failure to properly close the bottle should not be considered by the jury. On the other hand, if the plaintiff alleged that the safety cap was defective, the defendant would have an argument under *Wickersham* that the way the parent closed the cap should be considered.

Wickersham’s crashworthiness holding is grounded in sound reasoning that will undoubtedly benefit automotive defendants. The opinion resolved questions that have troubled litigators for decades, but the decision can also be expected to lead to future disputes involving other products,

such as those sketched above. For this reason, it would be wise for all members of the product liability defense bar to begin considering its lessons and implications. 

Endnotes

- ¹ The term “comparative negligence” is used in South Carolina for what is commonly known elsewhere as “comparative fault.” See *Berberich v. Jack*, 392 S.C. 278, 292, 709 S.E.2d 607, 614 (2011)
- ² See *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991)
- ³ South Carolina has three product liability causes of action: negligence, strict liability, and breach of implied warranty, the latter two of which are statutory. There are three elements common to all three causes of action, but recovery under negligence requires proof of a fourth element. See *Branham v. Ford Motor Co.*, 390 S.C. 203, 210, 701 S.E.2d 5, 8-9. (2010). Savvy plaintiffs’ lawyers have often dismissed the negligence cause of action just before trial in order to argue against the admission of evidence that tended to show comparative negligence.
- ⁴ This summary is drawn from *Wickersham v. Ford Motor Co.*, 738 Fed. Appx. 127 (4th Cir. 2018).
- ⁵ The court noted that comparative negligence “is normally thought of as a defense,” specifically referencing *Donze’s* statement that “the defense of comparative negligence does not apply in crashworthiness cases[.]” *Wickersham v. Ford Motor Co.*, 2019 WL 3311057,*4 n. 2.

Verdict Reports

TYPE OF ACTION:

42 U.S.C. § 1983 Excessive Force

NAME OF CASE:

Kareem Risher and Tameka Venning v. Jason Chapman

COURT:

United States District Court, District of South Carolina –
Charleston Division

CASE NUMBER:

Civil Action No. 2:16-CV-00292-DCN-MGB

NAME OF JUDGE:

The Honorable David C. Norton

AMOUNT:

Defense Verdict

DATE OF VERDICT:

May 8, 2019

ATTORNEYS FOR DEFENDANTS:

E. Mitchell Griffith and Kelly D. Dean of Griffith, Freeman
& Liipfert, LLC, Beaufort, SC

DESCRIPTION OF THE CASE: Plaintiffs alleged that excessive force was used by a police officer, after the Plaintiff

was shot several times during a foot pursuit. The Plaintiff initially fled a traffic stop, and engaged officers in a vehicular pursuit through a residential neighborhood. After exiting the vehicle, the Plaintiff fled on foot. The Plaintiff claimed that he was unarmed and was shot while fleeing arrest. The officers were not equipped with body cams, and the incident was not captured on video, although there was limited audio available through an officer’s body mic. The gun that was recovered near the scene several days after the subject incident was not forensically linked to the Plaintiff.

The defense presented testimony from several law enforcement officers. The Defendant officer testified that he observed the Plaintiff running with a firearm, and, during the chase, the Plaintiff turned and pointed the weapon at him. A second officer also observed the firearm, but was behind in the chase and did not see the Plaintiff point his weapon. A third officer, from his vantage point, did not see the weapon, but saw the Plaintiff extend his right arm in direction of the Defendant officer. The defense also presented testimony from the SLED agent that obtained a voluntary statement from the Plaintiff after the shooting, which was inconsistent with the Plaintiff’s trial testimony. The defense also presented expert testimony that the Defendant officer followed policy and procedures and did not use excessive force in apprehending the Plaintiff. Prior to closing arguments, the Plaintiffs dismissed the

state law claims against the sheriff's department, and the case proceeded to verdict on the §1983 claim against the Defendant officer only.

The jury returned a verdict in favor of the Defendant officer.

TYPE OF ACTION:

Medical Malpractice

NAME OF CASE:

Diane Adams v. David W. Vormohr, MD and Serendipity A Medical Spa, Inc.

COURT:

Beaufort County Circuit Court

CASE NUMBER:

2016-CP-07-02650

NAME OF JUDGE:

The Honorable Diane Goodstein

VERDICT:

Defense Verdict

ATTORNEYS FOR THE DEFENDANT:

Chilton Grace Simmons and Elizabeth W. Ballentine of Buyck, Sanders, & Simmons, LLC, of Beaufort and Mt. Pleasant

ATTORNEYS FOR THE PLAINTIFF:

Douglas MacNeille of Ruth & MacNeille, LLC of Hilton Head Island

EXPERTS FOR DEFENDANTS:

Amanda Parks, MD (infectious disease) of Charleston and Edward "Eddie" O'Dell, MD (family practitioner and gynecologist) of Florence

EXPERTS FOR PLAINTIFF:

Gary Culbertson, MD, FACS (plastic surgeon) of Sumter. Notably, Dr. Culbertson is the Disciplinary Commissioner for the SC Board of Medicine, 5th district, 1999 to present.

TREATING PHYSICIANS THAT TESTIFIED AT TRIAL:

David Reid, MD (plastic surgeon) of Hilton Head Island

DESCRIPTION OF THE CASE: Plaintiff Ms. Adams alleged that Defendant Dr. Vormohr negligently caused an infection in her face from an injection of Voluma, which is a filler for aesthetic purposes and is somewhat similar to a more commonly known injection, Botox. The infection eventually caused an abscess and required debridement at a local hospital including a five night admission to the hospital. Plaintiff alleged Dr. Vormohr negligently performed the injection and/or did not use proper sterilization techniques and also failed to diagnose the infection in a timely manner. Defendants alleged Dr. Vormohr did properly perform the procedure, Plaintiff failed to meet her burden of proof without any evidence of

improper conduct (*res ipsa* argument), and importantly, the amount of time between the injection and the first signs and symptoms of infection precluded the possibility that the infection was caused by the Voluma injection.

A key component to the defense was the successful utilization of Plaintiff's past medical records and social media to undermine her credibility. The medical records showed she was seeing multiple other providers for various facial injections despite her deposition testimony that her treatment by Dr. Vormohr was the only such treatment of its kind in numerous months, hence her argument that the infection had to be caused by his injection. Social media, specifically Plaintiff's own FaceBook posts, showed her smiling, posing and enjoying social events in the weeks that she testified she was in debilitating facial pain from the infection, which was also the time period that she alleged Dr. Vormohr should have diagnosed the infection.

The jury deliberated for approximately 15 minutes and returned a defense verdict.

TYPE OF ACTION:

Defamation

NAME OF CASE:

William McFarland and Jennifer McFarland v. David K. Hannemann and Thomas O. Morris, Jr.

COURT:

Dorchester County Court of Common Pleas

CASE NUMBER:

2018-CP-18-01015

NAME OF JUDGE:

The Honorable Maité Murphy

AMOUNT:

Dismissal with Prejudice; Defense Verdict

DATE OF VERDICT:

July 24, 2019

ATTORNEYS FOR DEFENDANTS:

William W. Watkins, Jr. and John J. Dodds, IV of Wall Templeton & Haldrup, P.A., Charleston, SC

DESCRIPTION OF THE CASE: This libel action arose from a dispute between residents of the Live Oak Village subdivision located in Summerville, South Carolina. The Plaintiffs alleged that the Defendants committed libel through the publication of two letters by the Defendants to the Plaintiffs and other members of the Live Oak Village Homeowners' Association. Plaintiff William McFarland, a board member for the HOA, and his wife, Jennifer McFarland, claimed that the letters falsely accused them of criminal conduct with respect to the use of HOA funds. The Defendants, who were also board members for the HOA, claimed that the statements made in the letters were true and simply expressed the Defendants' concern about how the funds were being used as Plaintiff William McFarland refused to provide access to financial records or involve the Defendants in any way concerning management of the HOA.

TYPE OF ACTION:

Liability/Auto Accident

NAME OF CASE:

William Beard Sr. v. William Celis

COURT:

Greenville County, SC Circuit Court

CASE #:

2017-CP-23-06141

TRIED BEFORE:

Judge Letitia Verdin (May 29, 2019)

VERDICT:

Comparative Negligence – 35% - Plaintiff, 65% - Defendant. Verdict for the Plaintiff in the amount of \$6,500. (Reduced to \$4,225.00 based on comparative negligence finding)

ATTORNEY FOR DEFENDANT:

Zachary S. Brown (McAngus Goudelock & Courie, LLC - Greenville, SC)

ATTORNEY FOR PLAINTIFF:

Jimmy Segura (Varner and Segura – Greenville, SC)

DESCRIPTION OF THE CASE, EVIDENCE, ARGUMENTS, INFORMATION:

On Nov. 6, 2014, plaintiff William Beard Sr. was operating his vehicle traveling on a street in Greenville County when he became involved in a motor vehicle collision. Beard claimed a vehicle beind

driven by William Celis suddenly and unexpectedly made an illegal u-turn into his lane of traffic, and caused a rear-end collision. Beard sued Celis claiming he was negligent in the operation of his vehicle. Celis denied negligence, arguing that Beard was the cause of the collision. Beard claimed neck and back injuries, in addition to pain and suffering and loss of enjoyment of life. Plaintiff's medical bills totaled approximately \$4,000 but were not presented to the jury.

TYPE OF ACTION:

Auto Accident

NAME OF CASE:

William Chase Love v. Meaghan Elizabeth Heath

COURT:

Anderson County, SC Circuit Court

CASE #:

2017-CP-04-00047

TRIED BEFORE:

Judge Cordell Maddox (2/25 – 2/26/2019)

VERDICT:

Defense Verdict

ATTORNEY FOR DEFENDANT:

Geoff Gibbon (McAngus Goudelock & Courie, LLC (Greenville, SC)

ATTORNEYS FOR PLAINTIFF: Field Dunaway (Dunaway Law Firm – Anderson, SC) and Jerry “Jam”

Meehan (Crantford Meehan – Charleston, SC)

DESCRIPTION OF THE CASE, EVIDENCE, ARGUMENTS, INFORMATION:

Plaintiff was operating a motorcycle on Clemson Boulevard in Anderson County, SC when he crested a hill and observed the Defendant stopped in Plaintiff's lane of travel. There was a dispute as to whether Defendant was turning left or preparing to attempt a U-turn. There was also a dispute as to Plaintiff's speed and available sight distance after cresting the hill. Plaintiff attempted to pass the Defendant's vehicle on the left by going into oncoming traffic. Defendant struck Plaintiff as she began her turn. Plaintiff suffered undisputed personal injuries and property damage as a result of the accident. Plaintiff's last demand before trial was \$25,000. Defendant's last offer was \$500.

TYPE OF ACTION:

Auto Accident

NAME OF CASE:

Robert Gamble, Kenya Gamble, and Kenya Gamble as GAL for minor v. Julie Jack Bellu and James O'Dell Osterkamp

COURT:

Sumter County, SC Circuit Court

CASE #:

2017-CP-43-00910, 2017-CP-43-00912, 2017-CP-43-00913

TRIED BEFORE:

Judge George M. McFaddin (February 19, 2019)

VERDICT:

Directed Verdict for Defendant Osterkamp and verdict for Plaintiffs against Defendant Bellu

ATTORNEY FOR DEFENDANT OSTERKAMP:

Adam Ribock (McAngus Goudelock & Courie, LLC- Columbia, SC)

ATTORNEY FOR DEFENDANT BELLU:

Robb Brown (Wilson Jones- Columbia, SC)


ATTORNEYS FOR PLAINTIFFS:

Ron Talbert (Law Offices of Ronald J. Talbert, PA- Andrews, SC)

DESCRIPTION OF THE CASE, EVIDENCE, ARGUMENTS, INFORMATION:

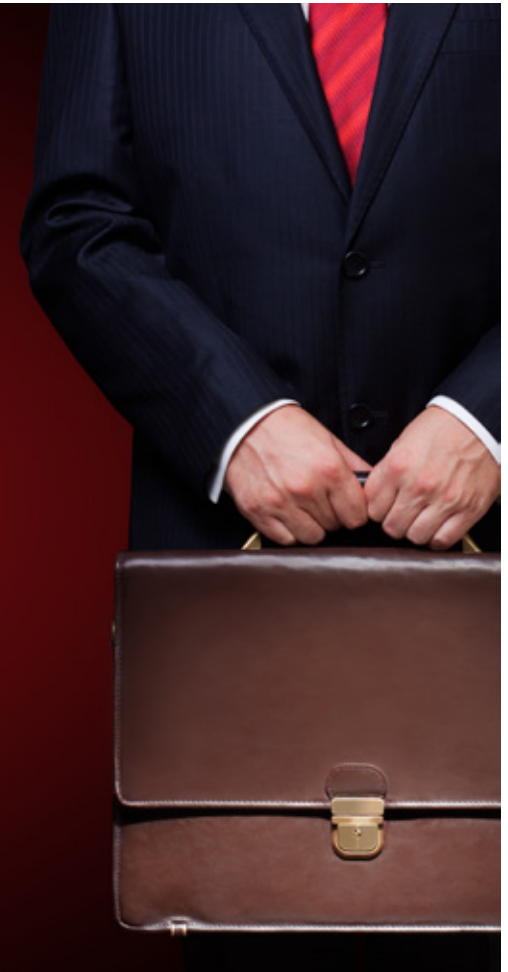
Plaintiffs (mom, dad, and their minor daughter) were stopped in traffic on April 1, 2016 due to another incident ahead on South Pike West in Sumter. The road was wet from a previous rain. Defendant Osterkamp was stopped, about a car length behind Plaintiffs. Defendant Bellu, crashed into the rear of Osterkamp, causing him to be "knocked out" and pushing his car into the Plaintiffs' vehicle. Bellu admitted liability. Osterkamp denied liability. Plaintiff's last demand before trial to Osterkamp was \$7,500. The last demand to Bellu is unknown. Defendant Osterkamp's last offer was \$2,500. Defendant Bellu's last offer was \$16,000. Plaintiffs claimed medicals of: Robert Lee Gamble- \$3,120.25; Kenya Gamble- \$3,489.91; and Kenya Gamble as GAL for minor- \$1,002.00.

After Plaintiffs presented their case, a directed verdict was granted for Osterkamp as there was no evidence to dispute he was at a complete stop. The testifying officer stated she was not aware of any statute requiring a certain distance between two stopped cars. Trial proceeded against Co-defendant Bellu. The following verdicts were returned: Robert Lee Gamble- \$2,362.25; Kenya Gamble- \$1,862.64; and Kenya Gamble as GAL for minor- \$736.00.

During pre-trial motions, the Defendants moved to dismiss with prejudice Plaintiff William McFarland's cause of action for failure to prosecute, which was granted by Judge Murphy. Plaintiff Jennifer McFarland's case proceeded to trial and was ultimately sent to the jury, who returned a verdict in favor of the defense. 

Verdict Report Submissions Wanted!

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



CASE NOTES

Case Notes

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

Nationwide Mut. Fire Ins. Co. v. Walls

Op. No. 5653, filed June 5, 2019

Here the Court of Appeals reviewed an Anderson County circuit court ruling that held an automobile insurance policy that reduced the policy limits (\$100,000/\$300,000) to the statutory minimum where injury was caused while committing a felony or while fleeing law enforcement was unenforceable. The car was owned and insured by one of the injured passengers, and was being driven by another individual. When an officer attempted to stop them for speeding, the passengers apparently told the driver to pull over, but, instead, he led the police on a high-speed chase that ended in a catastrophic accident. The circuit court held that the exclusion was unenforceable because it reduced the coverage provided on the face of the policy without adequate notice to the policyholder and because it violated public policy. The circuit court read *Williams v. GEICO*, 409 SC 586, 762 SE2d 705 (2014) to mean that *any* exclusion that reduced the policy limits to the statutory minimum violated section 38-77-142.

The Court of Appeals disagreed, distinguishing between the exclusion in *Williams*, which was a step-down provision that reduced coverage when the injured party was a family member, and the provision here, which did not affect a *class* of insureds but reduced coverage based on certain activities of the driver (committing a felony or fleeing law enforcement). “It follows then that an insurer may choose not to insure above the minimum limit against conduct that is inherently more dangerous than what is attendant to the regular operation of a vehicle.” The Court also held that the provision did not violate public policy, in that it discourages “certain undesirable behavior while at the same time preserving [minimum] coverage for innocent victims in the amount deemed appropriate by the General Assembly...”

Stott v. White Oak Manor, Inc.

Op. No. 5644, filed May 1, 2019

In *Stott*, the Court of Appeals affirmed that a durable power of attorney for finance must be recorded in order for it to be effective (under both the SC Uniform Power of Attorney Act (eff. 1/1/2017) and the



Helen
F. Hiser



C. Daniel
Atkinson



Michael
D. Freeman



W. Spencer
Barrow

prior statutory provisions). In addition, the Court held that a durable healthcare power of attorney that complies with the form language set out in SC Code 62-5-5-4 is effective only during periods when the grantor is mentally incompetent.

Wilson v. Willis

Op. No. 27879, Filed April 10, 2019

In this case, the SC Supreme Court considered whether an arbitration clause can be enforced against non-signatories to the contract containing the provision. In this case, the plaintiffs were insureds (and two competing insurance agents) who claimed that the defendant insurance agents engaged in fraudulent conduct, converting cash payments to their personal use resulting in the insureds having reduced coverage or no coverage, unfair and illegal insurance trade practices, and that the defendant insurers failed to properly train/supervise the named agents, among other claims. The contract that contained the arbitration clause was the agency agreement between the defendant insurers and the defendant agents.

Overtaking the Court of Appeals, which had ruled that they could be bound, the Supreme Court explained that, “[a]lthough arbitration is viewed favorably the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts.” Furthermore, the presumption in favor of arbitration goes to the scope of an arbitration agreement, and not “to the existence of such an agreement *or to the identity of the parties who may be bound* to such an agreement.” In fact, there is a presumption *AGAINST* arbitration when one of the parties is a non-signatory to the contract. While acknowledging the

five theories recognized in *Mallow v. Thompson*, 409 SC 557, 762 SE2d 690 (2014) and *Pearson v. Hilton Head Hosp.*, 400 SC 281, 733 SE2d 597 (Ct. App. 2012), under which non-signatories may be bound by an arbitration clause (including 1) incorporation by reference, 2) assumption, 3) Agency, 4) veil piercing/alter ego, and 5) estoppel), the Court also noted that some courts also recognize that “a third-party beneficiary of a contract containing an arbitration clause may be compelled into arbitration as a nonsignatory,” citing *Malloy*. In essence, the theory provides that a party may be estopped from refusing to comply with an arbitration clause when it has received a direct benefit from the contract containing the provision. The Court distinguished the facts of this case from those in *Pearson*, (where the non-signatory physician was bound by the arbitration clause in a contract between the hospital and staffing agency), noting that here, the plaintiffs were not even aware of the existence of the contract until they filed their tort claim, did not take advantage of the contract and then try to repudiate the arbitration clause during litigation, and had alleged violation of state law, not breach of contract. The Court distinguished between a party claiming *direct benefits* (flowing directly from the agreement) and a party claiming *indirect benefits* (flowing from the existence of the contractual relationship), noting that “the distinction between direct and indirect benefits is not always readily discernable.”

The Court also confirmed that state law, rather than federal law, is binding on the issue of whether equitable estoppel can bind nonsignatories to a contract containing an arbitration clause.

Myat v. Tuomey Reg. Med. Ctr.
Op. No. 5636, Filed April 3, 2019

The Court of Appeals held that the circuit court did not err in allowing the hospital to amend its Answer, right before trial was to commence, in order to assert the affirmative defense that it was entitled to the protections of the SC Solicitations of Charitable Funds Act (Act) (which limits recovery of actual damages to the limits set out in the TCA). As a result, although the jury awarded Myat \$2.5 million (Myat, a physician employed by the hospital, slipped and fell as a result of liquid on the floor and suffered a broken patella and torn tendon), the trial court reduced the award to the \$300,000 damages cap. The Court held that Myat had not been prejudiced by the late amendment because he asserted in his complaint that Tuomey is an eleemosynary corporation and knew that it was (at least potentially) entitled to the charitable cap on damages, but failed to allege gross negligence.

The Court of Appeals also upheld the court's decision to allow Tuomey to reopen its case and offer evidence to support its charitable affirmative defense. At the end of the trial, Myat moved for a directed verdict on Tuomey's status as a charitable organization because it had presented no evidence on that issue. In response, Tuomey moved to reopen its case to present new documents and witnesses as to its 501(c)(3) status. The Court of Appeals rejected Myat's arguments that the hospital should be bound to its choice at trial to focus solely on its liability defense, and that allowing the hospital to reopen its case provided it with a second bite at the apple; instead, both sides were allowed to conduct discovery and present evidence on the issue so Myat was not prejudiced.

Finally, the Court upheld the lower court's finding that Tuomey was entitled to the protections of the Act because of its Section 501(c)(3) status, despite the fact that a 2013 federal district court case, *United States ex rel. Drakeford v. Tuomey Healthcare Sys, Inc*, 976 F. Supp 2d 776 (D.S.C. 2013), had found the hospital violated the Stark Law and the False Claims Act through improper contracts and arrangements with physicians employed by the hospital. The Court noted that the IRS had not revoked Tuomey's 501(c)(3) status and, as a result, it was entitled to protections of the Act.

Marshall v. Dodds
Opinion No. 27873, Filed March 27, 2019

In this case, the SC Supreme Court considered whether, in a medical malpractice case, "where evidence exists that doctors breached the standard of care on multiple occasions, does the statute of repose begin to run with each breach, resulting in recent breaches being actionable even though older ones are barred?" The circuit court answered that question in the affirmative but the Court of Appeals and Supreme Court reversed and remanded for trial. Both Defendants had missed a diagnosis in early testing that was barred by the statute of repose, (Section 15-3-545(A)), and then missed and failed to order further testing on dates that were not barred. The Court both affirmed its prior rejection of the "continuous treatment rule and continuous tort doctrine" in medical malpractice cases, and rejected any suggestion that it was reviving either of those doctrines in its ruling in this case. The Court found "it wholly inconsistent to immunize serious

malpractice under the guise that the legislature intended an ‘absolute time limit’” because that would provide immunity where there was ongoing acts of malpractice. In addition, the Court pointed out that the med mal statute of repose does not state that it begins to run on the “first occurrence.”

Justice James dissented, expressing his opinion that the majority was resurrecting the continuous treatment rule/continuing tort doctrine rejected in *Harrison v. Bevilacqua*, 354 SC 129, 580 SE2d 109 (2003).

Wright v PRG Real Estate Management, Inc.
Op. No. 27868, Filed March 10, 2019

In this case, the SC Supreme Court reversed a grant of summary judgment in the apartment complex’s favor, holding that there was sufficient evidence that Wellspring Apartments undertook a duty to provide safety to its tenants to require submission of the case to a jury. The Plaintiff, who was attacked, abducted and robbed at gunpoint one night as she was returning to her apartment, alleged that the lack of security, failure to trim bushes and maintain lighting caused or contributed to her attack. While the Court agreed with the lower courts that her claims relating to landscaping and lighting had been properly disposed of on summary judgment, the Court pointed to the facts that, at the time the Plaintiff signed her lease, a Wellspring manager had told her there were security officers on duty, which was one reason she moved into the apartment complex; and that the monthly tenant newsletter noted that “security is also a very top priority with us.” Internal memos and policy indicated Wellspring did not provide security for residents and, although the apartment complex had a security officer program (under which residents affiliated with law

enforcement could receive reduced rent for providing periodic security services), it had lapsed at the time of the attack. Tenants allegedly were unaware of either the internal policy or the lapse in the security officer program.

While affirming the general rule that a landlord has no duty to provide security to protect tenants from the criminal acts of third parties, the Court noted that “a landlord who undertakes to provide security measures may be liable if the undertaking is performed negligently.” The Court cited Section 323 of the Restatement (2d) of Torts as the standard applicable to the landlord’s voluntary undertaking in this case, and disagreed with the Court of Appeals’ more narrow focus on the affirmative acts exception to the general rule. While the Court of Appeals (and Justice Kittredge in his dissent) focused on the lapsed security officer program, the majority looked to the manager’s “broad” representation to the Plaintiff that Wellspring provided security officers, which was one reason the Plaintiff moved in (although there also was evidence that Plaintiff was aware that the program had lapsed because she had not seen a security officer on site for some years). In the end, the Court determined there were questions of fact that a jury had to answer in order to ascertain whether a duty arose under the “narrow” facts of the case. The Court also held there was conflicting evidence as to breach and proximate cause such that summary judgment should not have been granted.

Skydive Myrtle Beach, Inc. v. Horry County
Opinion No. 27867, Filed March 13, 2019

Here, the SC Supreme Court held that, when a trial court dismisses a complaint under Rule 12(b)(6) for failure to state

a claim, the court must at least consider allowing the plaintiff the opportunity to amend the complaint pursuant to Rule 15. After a dismissal pursuant to Rule 12(b)(6), a plaintiff may choose to stand on its filed complaint and file a Rule 59(e) motion (or appeal the dismissal) *or* it may decide the complaint as filed is not worth pursuing and, instead, seek permission to amend the complaint. A court always can deny a motion to amend if the other party can show a valid reason for denying the motion (*i.e.*, bad faith, undue delay, or prejudice). Although in this case the trial court did not rule that amendment would be futile, the Court of Appeals came to that conclusion. The Supreme Court reviewed the record and determined amendment would not be “clearly futile,” which is the proper standard. Here, the Supreme Court noted that the trial court had not even seen the proposed amended complaint and admonished that courts should not deny a motion to amend on the basis of futility without first reviewing the proposed amended complaint.

Justice Hearn’s dissent pointed out that Skydive never formally moved to amend but only sought that as alternative relief in its cover letters. She also found the Court’s criticism of the circuit court for not reviewing the proposed amended complaint unfair because Skydive did not submit a proposed amended complaint to the lower court. Apparently Skydive submitted a proposed amended complaint as part of the record on appeal but it had never been filed with the trial court.

Personal Care, Inc. v. Theos
Op. No. 5628, Filed February 20, 2019

In this matter, the SC Court of Appeals applied the Supreme Court’s prior ruling in *Stokes-Craven Holding Corp. v.*

Robinson, 416 SC 517, 787 SE2d 485 (2016) as to **when the statute of limitations begins to run in a legal malpractice case**. The Court distinguished between the outcome in *Stokes-Craven*, which involved a complaint regarding the outcome of the underlying case, with the case before it, which involved a client alleging its attorneys had subjected it to a libel claim.

The underlying facts are a bit complicated, but involve a former employee of Personal Care, a medical transport company, who it believed was using proprietary information to set up a competing company. Personal Care hired Jerry Theos and Cheryl Shoun (“Counsel”), who first sent the former employee a letter demanding she refrain from wrongful activity, which included allegations of insurance fraud. Counsel also sent the letter to a third-party medical provider that used medical transport. Counsel later filed an action against the former employee and, in March 2010, the former employee filed an Answer and Counter-Claim alleging defamation, based on the Theos letter having been sent to a third-party. Counsel provided Personal Care with a copy of the Answer & Counter-claim and advised them to notify their insurer in order to obtain a defense to same. The claims between Personal Care and the former employee were later settled, after Personal Care obtained different counsel and also after Personal Care sued Theos and Shoun for malpractice.

In March 2013, Personal Care sued Counsel for malpractice over handling of the lawsuit, including allegations that the 2009 Theos letter subjected it Personal Care to a defamation claim. The parties agreed to 40(j) the claim on August 28,

2013. Although Personal Care obtained Theos' agreement to restore the case in August 2014, it failed to successfully file a Consent Order to restore the case to the docket. Instead, it filed a motion to restore on Sept 22, 2014 which Counsel opposed on the basis that the SOL was not tolled because Personal Care failed to restore within the 12-month period. The circuit court agreed and, relying on *Epstein v. Brown*, 363 SC 372, 610 SE2d 816 (2006), which the Supreme Court overruled in *Stokes-Craven*, held that the claim was barred by the statute of limitations, which began to run in March 2010, when Personal Care was advised of the Counter-Claim.

First, the Court stated that it does not believe “the *Stokes-Craven* decision eliminated the discovery rule in favor of a separate bright-line rule that all legal malpractice claims accrue on the date an adverse judgment is entered against the client.” The Court distinguished the outcome in *Stokes-Craven*, where the basis of the legal malpractice suit was an unfavorable outcome of the lawsuit, to the instant case, where the basis was, at least in part, the filing of the Counter-Claim alleging defamation. The Court held that the SOL began to run when Personal Care had notice of the defamation claim against it. It was clear Personal Care was not suing based on the outcome of its case against the former employee, because it filed the malpractice suit before it settled with the former employee.

The case also discusses a **procedural aspect of restoring a case that has been removed from the active docket pursuant to Rule 40(j)**. The Court rejected Personal Care's argument that the circuit court could not on its own inquire as to the running of the SOL in response to a motion to restore.

Instead, the Court explained, the language of Rule 40(j) “naturally requires an inquiry into the date a cause of action accrued and when it will expire” and that “the procedure under Rule 40(j) for restoring a case is not automatic; the rule contemplates the filing of a motion and a hearing before the case can be reinstated.” In this case, because the motion was filed more than a year after the case had been stricken from the active docket, Counsel “were no longer bound by the agreement not to challenge the timeliness of the claim.”

Nestler v. Fields

Op. No. 5621, Filed January 30, 2019

In *Nestler v. Fields*, a man sued a motorist for negligence to recover damages for personal injuries the man sustained in a car wreck with the motorist. The motorist admitted he was at fault in causing the wreck and the man's injuries. At trial, the man attempted to prove his damages by introducing evidence of his pain of suffering. Specifically, the man's doctor testified he prescribed extensive physical therapy, a nerve conduction study, and several other treatment options. The doctor testified the man attended part of the physical therapy and did not use any other option. The motorist introduced the man's \$7,117.50 of medical bills in response. In addition, the trial court charged the jury on mitigation of damages and denied the man's motion for new trial. The jury awarded the man for \$7,117.50 actual damages. The man appealed on three grounds: (1) the trial court improperly admitted the amount of his medical bills; (2) the trial court improperly charged the jury the man had a duty to mitigate his damages; and (3) the trial court improperly denied his motion for new trial.

The Court of Appeals affirmed. First, the Court held the trial court did not abuse its discretion in admitting the amount of the man's medical bills because: (1) whether a party seeking actual damages for personal injury can prevent the other party from introducing his medical bills is a novel legal issue in South Carolina; and (2) under the specific facts of the case, the risk of unfair prejudice did not substantially outweigh the probative value of the billed amount.

Second, the Court held the trial court properly charged the jury the man had a duty to mitigate his damages. The man argued the trial court improperly charged the jury that the man had a duty to mitigate his damages because the record contained no evidence any mitigation would have been successful. The man argued: (1) the court should not have charged the jury on mitigation unless an expert testified that his failure to complete the prescribed treatments would have reduced his pain and suffering or other damages because to do so would license the jury to speculate; and (2) there was no expert testimony that his failure to complete the prescribed treatments would have reduced his damages. The Court held the record contained expert testimony that his failure to complete the prescribed treatments would have reduced his pain and suffering or other damages because: (1) the man's doctor testified he prescribed extensive physical therapy, a nerve conduction study, and several other options; (2) that testimony was an expert opinion; and (3) that testimony carried with it the inference the doctor believed to a reasonable degree of medical certainty it would have helped.

Third, the Court held the trial court properly denied the man's motions for new trial. The man argued the trial court

improperly denied his motions for new trial because: (1) the record contained evidence regarding his permanent impairment, pain and suffering, and other non-economic damages; and (2) the jury only awarded him the amount of his medical bills.

The Court held the trial court properly denied the man's motions for new trial absolute and new trial under the thirteenth-juror doctrine because the verdict was neither inadequate nor unjust because the jury could have found serious credibility gaps in the man's damages evidence because there was evidence in the record that, if believed, undercut the man's testimony because: (1) even though he has a semi-photographic memory, he could not recall a prior lawsuit had brought alleging permanent injuries to his neck and back arising from a different car wreck; (2) he did not disclose the law suit in discovery, and the trial court instructed the jury they could infer the information withheld would have been unfavorable to the man; (3) the doctor's initial 8% impairment rating for the entire person shot up to 32% after the man asked the doctor to revisit it in an effort to resolve the case; and (4) the doctor was the man's good friend.

The Court held the trial court properly denied the man's motion for new trial nisi additur because: (1) the trial court found no compelling reason to impose its will on the parties and invade the jury's domain; and (2) the Court of Appeals must accord the trial court's decision great deference and respect its superior position to gauge credibility and the field of evidence, especially in the area of intangible damages.

Sentry Select Ins. Co. v. Maybank Law Firm, LLC
Op. No. 27865, Filed March 6, 2019

In *Sentry Select Insurance Company v. Maybank Law Firm, LLC*, an insurance company brought a legal malpractice action in federal district court against a lawyer for negligently defending a trucking company it insured in a state court personal injury case arising out of an automobile accident. The insurance company alleged the lawyer failed to timely answer requests to admit served on the trucking company in that case, which resulted in the insurance company settling the case for \$900,000 – over \$700,000 more than the case’s actual value. The district court certified two questions to the South Carolina Supreme Court: (1) whether an insurer may maintain a direct malpractice action against counsel hired to represent its insured where the insurance company has a duty to defend; and (2) whether a legal malpractice claim may be assigned to a third-party who is responsible for payment of legal fees and any judgment incurred as a result of the litigation in which the alleged malpractice arose.

The Court held an insurer with a duty to defend its insured can bring a malpractice action directly against a lawyer the insurer hires to represent its insured where the insurance company has a duty to defend. Additionally, the Court held an insurer can succeed on a malpractice action against a lawyer the insurer hires to represent its insured pursuant to its duty to defend that insured if the insurer proves two elements by clear and convincing evidence: (1) the lawyer breached the lawyer’s duty to the insured; and (2) by doing so, the lawyer proximately caused the insurer to incur damages. But, the Court noted an insurer cannot prevail where the

client’s interests are even the slightest bit inconsistent with the insurer’s interests. The Court indicated whether a client’s interests are consistent with an insurer’s interests is a question of law which depends on the circumstances of each case, and a trial court should independently determine based on all the facts and circumstances of the case whether allowing the insurer to sue the lawyer may place the attorney in a conflict position or create any undivided loyalty. The Court also set other limits on its holding: (1) its holding only enables insurers to sue attorneys who the insurers hire to represent their insureds; (2) there can be no double recovery.

The court saw no evidence in the record to find any of the limitations would be violated in this factual scenario. Notably, the Supreme Court did not rule on whether a legal malpractice claim may be assigned to a third-party who is responsible for payment of legal fees and any judgment incurred as a result of the litigation in which the alleged malpractice arose. 