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2019 Summer Meeting - July 26, 2019 The Sonesta Resort • Hilton Head Island • SC





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**PRESIDENT'S
MESSAGE**




President
James B. Hood

2019 marks the 51st year for the South Carolina Defense Trial Attorneys' Association. As we embark on the next fifty years, the Officers and Board of Directors are committed to ensuring that we capitalize on the momentum and energy that the SCDTAA has enjoyed over the last year. It is going to be an exciting and busy year! Before highlighting what you can expect over the course of this year, I would like to commend our immediate past president Anthony Livoti on a fantastic year. Under his leadership, the SCDTAA launched the digital version of The DefenseLine which was seamless and has provided our readers with convenient access and the ability to share our content with ease. Board members Trey Suggs and Breon Walker hosted our annual Trial Academy in Columbia which produced another class of graduates of one of the only trial training seminars that includes a full day trial before a trial judge and jury. Anthony took our Summer Meeting to the beach for the first time in thirty years. Our members enjoyed cutting edge CLE content combined with family friendly social activities which including an afternoon of beach games. Our 50th year was capped off with a wonderful Annual Meeting at the Sanctuary where we had the pleasure of hosting members of our judiciary. In 2018, we began an exciting and new program: The Emerging Leaders Program. This is designed to provide our younger members with the opportunity to become actively engaged in our organization and a path towards leadership.

Turning to 2019, we will continue to build on the success from last year by continuing to promote our Emerging Leaders program as a way to promote those members who have a

desire to be actively involved in our organization and by including those Emerging Leaders in many of the events that we host each year. We are excited to tap into their energy and ideas as we continue to grow as an organization.

We are planning for a busy 2019 with the launch of a new diversity initiative that will include two new events over the course of the year focusing on diversity and inclusion. Our Diversity Committee is working towards a single day CLE focusing on diversity and inclusion in Columbia and another event in Charleston. On April 12, 2019 we will put on Trial Superstars at the USC School of Law. Bre Walker and Jesse Waller are busy working on populating a faculty of ten of the top plaintiffs and defense trial attorneys in the state. They will square off to try our trial academy problem before juries drawn from Lexington and Richland in a one-day trial demonstration CLE presided over by Justice George C. James. Like the first Trial Superstars in 2012, this will be an event that you can't afford to miss! Our Trial Academy will follow in May, and we will return the Royal Sonesta in Hilton Head for our Summer Meeting in July. We will be heading back to the Ritz Carlton on Amelia Island for our Annual Meeting in November.

I hope that you will make plans to join us as we race into 2019 with a host of offerings aimed to meet the varied needs of our members! 

A handwritten signature in blue ink, which appears to read "J.B. Hood". The signature is fluid and cursive.

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2018 SPRING GOLF CLASSIC SPONSORS



2018 TRIAL ACADEMY SPONSOR

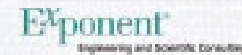


2018 SUMMER MEETING EXHIBITORS & SPONSORS

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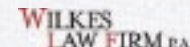
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**EDITORS'
NOTE**

Editors' Note

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



Geoffrey W. Gibbon



Michael D. Freeman



C. Daniel Atkinson

Welcome to the Winter 2019 edition of *The DefenseLine*. For those wondering, no, you did not miss the Fall 2018 edition. Unfortunately, due to circumstances out of our control, this latest edition was a little delayed getting to publication. We apologize and hope everyone enjoys this latest edition.


2018 was a very busy year for the SCDTAA and 2019 looks to be even busier and filled with great programs and meetings. We had a blast in Hilton Head at our Summer Meeting and a great time at The Sanctuary on Kiawah Island for our Annual Meeting in November.

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 substantive article related to punitive damages in light of a recent Supreme Court opinion, a profile on the Honorable A. Marvin Quattlebaum, Jr., 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 an acknowledgement of the SCDTAA's most recent Hemphill Award recipient, John S. Wilkerson.

We plan to release our Spring edition in May and will have even more updates on some of the excellent programs the SCDTAA has coming up in 2019 like our annual Trial Academy, and the return of Trial Superstars.

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 Quattlebaum 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. Lastly, we would be remiss if we didn't thank our SCDTAA members, board, and officers that make our organization so strong and so enjoyable to be a part of. If you are reading this issue and are not a member of the SCDTAA we encourage you to join. 

SCDTAA Docket

South Carolina Workers' Compensation Educational Association Honors Gray, Stepp & Laffitte's Grady Beard

The South Carolina Workers' Compensation Educational Association (SCWCEA) is pleased to announce the newest recipient of the Lifetime Service Award, Grady L. Beard, Esq. of Robinson, Gray, Stepp & Laffitte, LLC. The SCWCEA Lifetime Service Award is given by the SCWCEA Board to individuals who have contributed significantly to the success and betterment of the SCWCEA and/or the South Carolina workers' compensation system. The Board unanimously determined Mr. Beard completely fit the criteria of this designation. The Lifetime Service Award is not an annual event. It is given sparingly and only to those individuals who have made it their life's work to enhance the SCWCEA and/or the SC workers' compensation system. It is the highest honor bestowed by the organization.

Four Barnwell Whaley attorneys named as *Legal Elite* by *Charleston Business Magazine*

Barnwell Whaley attorneys M. Dawes Cooke, Jr., David S. Cox, Barbara J. Wagner and Jeffrey Bogdan have been named to the 2018 "*Legal Elite*" list as published by *Charleston Business Magazine*. This is the second year *Charleston Business Magazine* has recognized lowcountry area attorneys with a peer nominated *Legal Elite* list of leading attorneys in 20 practice areas. Member attorneys Dawes Cooke and David

Cox are both profiled in the publication this year, Cooke for his work in insurance law and Cox for his work in business litigation, intellectual property, products liability law. Both Cooke and Cox are also recognized by Chambers USA and Benchmark Litigation. Barbara Wagner is recognized for her work in construction law and Jeffrey Bogdan is listed for his work with tax and estate matters.

Four Barnwell Whaley attorneys selected for 2019 *The Best Lawyers in America*® list

Four Barnwell Whaley attorneys: M. Dawes Cooke, Jr., Randell C. Stoney, Jr., K. Michael Barfield, and Christopher M. Hinnant have been named to the 2019 *The Best Lawyers in America*® list. For the Charleston, South Carolina geographical area, Dawes Cooke is recognized for this work in Commercial Litigation, Bet-the-Company Litigation, Mediation, Arbitration, Personal Injury Litigation - Plaintiffs, Personal Injury Litigation - Defendants, and Medical Malpractice Law – Defendants. Recognized in Best Lawyers since 2014, Barnwell Whaley managing member attorney Randell C. Stoney, Jr. is named for his efforts in the areas of Construction Law, Personal Injury Litigation - Defendants, and Product Liability Litigation - Defendants. Barnwell Whaley Charleston member attorney K. Michael Barfield is recognized for his handling of insurance law matters. In the Wilmington, North Carolina geographical area, Barnwell Whaley member

attorney Christopher M. Hinnant, is recognized for his work in Personal Injury Litigation – Defendants as well as in Litigation - Insurance.

Barnwell Whaley names Jeremy Bowers and Barbara J. Wagner, PhD as Member attorneys, and John Fletcher as Special Counsel

Barnwell Whaley is pleased to announce the promotion of three attorneys in the firm’s Charleston office, effective immediately: Jeremy Bowers and Barbara Wagner have been elevated to the position of Member Attorney and John Fletcher as Special Counsel. “We are delighted to promote these three talented and dedicated attorneys in our growing firm,” commented Randell Stoney, Jr., Barnwell Whaley’s managing member. “Their diverse skills, experience and dedication to client service are the foundation of future successes.”

Four Barnwell Whaley attorneys chosen for 2018 South Carolina Super Lawyers list Dawes Cooke listed as the number two attorney in South Carolina

Barnwell Whaley member attorneys M. Dawes Cooke, Jr., Randell C. Stoney, Jr. and David S. Cox have been chosen for the 2018 South Carolina Super Lawyers list, and Jeffrey Bogdan has been listed as a 2018 South Carolina Super Lawyers Rising Star. 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. As part of the Top 25 and Top 10 recognitions, M. Dawes Cooke, Jr. has been chosen as the number two attorney

in the State of South Carolina for the second consecutive year. Randell C. Stoney, Jr. has been selected 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. David S. Cox is listed for his work in personal injury-products, business litigation and intellectual property litigation. He has been recognized by Super Lawyers annually since 2014. Jeffrey Bogdan is 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.

Collins & Lacy Co-Founder Receives the State’s Highest Civilian Honor

Collins & Lacy, P.C. is honored to announce that co-founder, Joel W. Collins, Jr., has received the Governor’s Order of the Palmetto award, the state’s highest civilian honor. Since 1971, it has been awarded to citizens for remarkable service and contribution to South Carolina and her people. Collins co-founded the law firm of Collins & Lacy in 1984 along with Stan Lacy, and he has devoted his practice to professional liability law, white-collar criminal defense and complex civil litigation. Collins has been consistently honored by South Carolina Super Lawyers® and Best Lawyers in America®, two of the oldest and most respected peer-reviews in the legal profession. He has volunteered his time to numerous professional associations and community causes, and has held leadership positions in local and national civic organizations including Rotary, the National Safety Council, and the American Board of Trial Advocates (ABOTA) Foundation.

Seven Collins & Lacy Attorneys Selected as 2018 South Carolina Super Lawyers® and Rising Stars®

Seven Collins & Lacy attorneys have been named 2018 South Carolina Super Lawyers® and South Carolina Rising Stars® for work in their respective practice areas. In Columbia, attorneys recognized are Andrew Cole (Construction Litigation), Joel Collins (Civil Litigation: Defense), Peter Dworjanyn (Insurance Coverage), Stan Lacy (Workers' Compensation), and Christian Stegmaier (Personal Injury General: Defense). Claude Prevost, III (Construction Litigation) and Amy Neuschafer (Personal Injury General: Defense) of the Columbia and Myrtle Beach offices, respectively, were also honored as Rising Stars.

Elmore Goldsmith Attorneys Recognized in The Best Lawyers in America® for 2019

The law firm of Elmore Goldsmith is pleased to announce that Frank Elmore has been selected for inclusion in The Best Lawyers in America for 2019 in the categories of Construction Law and Litigation- Construction. *Best Lawyers®* is one of the oldest peer-review publications in the legal profession and is regarded by many as the definitive guide to legal excellence. Rankings are based on an exhaustive peer-review process in which attorneys from across the country provide feedback on the legal abilities of other lawyers in their respective practice areas.

Elmore Goldsmith Attorneys Recognized as South Carolina 'Super Lawyers'

Two attorneys from Elmore Goldsmith have been named by South Carolina Super Lawyers Magazine for 2018. 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. Frank Elmore is being recognized as a Super Lawyer in the area of Construction Litigation and Bryan P. Kelley is recognized as a Rising Star, also in Construction Litigation.

2018 Chambers & Partners Rank Gallivan White Boyd and Three Attorneys as Leaders in Law

The law firm of Gallivan White Boyd, is pleased to announce that the firm has been selected for inclusion in the 2018 edition of Chambers USA, Leading Lawyers for Business as a Leading Law Firm in Commercial Litigation. Additionally, firm attorneys Daniel B. White, Gray T. Culbreath, and John T. Lay, Jr. were chosen as leading business attorneys in the field of Commercial Litigation. White, Culbreath, and Lay have years of experience in the handling of complex high-stakes corporate and commercial litigation matters. Daniel B. White's legal practice focuses on mass torts and complex commercial litigation. He is a former President of the South Carolina Bar and former Chairman of the SC Bar House of Delegates. With over 30 years of legal experience, Gray T. Culbreath concentrates his law practice on products liability, business and commercial litigation, transportation, class actions, and professional negligence. He is a member of American Board of Trial Advocates, Federation of Defense and Corporate Counsel, and Lawyers for Civil Justice. John T. Lay is the immediate past President of the International Association of Defense Counsel (IADC), the preeminent invitation only legal organization for attorneys who represent corporate and insurance interests throughout the world.

John T. is a member of the Board of Directors of the IADC, the Defense Research Institute (DRI), and Lawyers for Civil Justice (LCJ) and was honored in 2017 as Columbia Lawyer of the Year for 2017 Mass Torts and Class Actions, Best Lawyers. He is also a Fellow of the prestigious American College of Trial Lawyers (ACTL). In July 2016, John T. was named President of the International Association of Defense Counsel (IADC), the preeminent invitation only legal organization for attorneys who represent corporate and insurance interests throughout the world. He served as President until July 2017. John T. is a member of the Board of Directors of the IADC, the Defense Research Institute (DRI), and Lawyers for Civil Justice (LCJ) and was honored in 2017 as Columbia Lawyer of the Year for 2017 Mass Torts and Class Actions, Best Lawyers. He is also a Fellow of the prestigious American College of Trial Lawyers (ACTL). In July 2016, John T. was named President of the International Association of Defense Counsel (IADC), the preeminent invitation only legal organization for attorneys who represent corporate and insurance interests throughout the world. He served as President until July 2017. John T. is a member of the Board of Directors of the IADC, the Defense Research Institute (DRI), and Lawyers for Civil Justice (LCJ) and was honored in 2017 as Columbia Lawyer of the Year for 2017 Mass Torts and Class Actions, Best Lawyers. He is also a Fellow of the prestigious American College of Trial Lawyers (ACTL).

Gallivan White Boyd Announces 2018 Super Lawyer Honorees and Rising Stars

Twenty Gallivan White Boyd attorneys were named to the 2018 Super Lawyer and/or Rising Stars list. The firm is proud

of and congratulates H. Mills Gallivan, Daniel White, Howard Boyd, Gray Culbreath, John Cuttino, John T. Lay, Curtis Ott, Phil Reeves, David Rheney, Amy Hill, John Hudson, Ronald Wray, Johnston Cox, Breon Walker, Rob Corney, Zachary Weaver, Bill Young, Nick Farr, Batten Farrar and Lindsay Joyner on their inclusion in this prestigious group.

Gallivan White Boyd Attorney Selected to Who's Who Legal Edition

Gallivan White Boyd, is pleased to announce that Columbia attorney John T. Lay, Jr. has been listed in the 2018 edition of the well-respected Who's Who Legal (WWL) publication. Since 1996 Who's Who Legal has identified the foremost legal practitioners in multiple areas of business law. Lawyers are selected for the publication as a result of a detailed and independent survey of general counsel and private practice attorneys worldwide. Entry into this publication must be earned through years of exceptional legal practice. Lay is listed in the Life Sciences – Product Liability practice area where he earns praise from Who's Who Legal stating, "Lay is an experienced and tenacious trial lawyer." Lay focuses his law practice on business litigation, professional malpractice, insurance bad faith and coverage, false claims act, financial services litigation and product liability. Lay is the immediate past president of the International Association of Defense Counsel (IADC) and a member of the Board of Directors of the IADC, the Defense Research Institute and Lawyers for Civil Justice.

Haynsworth Sinkler Boyd Attorneys Named to 2019 Best Lawyers® List

Best Lawyers®, a legal peer-review guide, named 18 Haynsworth Sinkler Boyd attorneys to *The 2019 Best Lawyers in America*® list and selected three firm attorneys as “Lawyer of the Year” for 2019. In particular, J. Ben Alexander (Professional Malpractice Law- Defendants), John H. Tiller (Product Liability Law- Defendants) and John C. Bruton, Jr. (Litigation- Construction), were listed as Best Lawyers 2019 “Lawyer of the Year” for their respective practice areas.

The following SCDTAA members were listed in *The 2019 Best Lawyers in America*®:

Stephen E. Darling (Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants), John H. Tiller (Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants), James Y. Becker (Litigation – Banking and Finance), John C. Bruton, Jr. (Insurance Law; Litigation – Construction; Litigation – Real Estate; Personal Injury Litigation – Defendants), Clarke W. DuBose (Mass Tort Litigation / Class Action – Defendants; Product Liability Litigation – Defendants) Robert Y. Knowlton (Bet-the-Company Litigation; Commercial Litigation; Litigation – Intellectual Property; Litigation – Securities), J. Ben Alexander (Medical Malpractice Law – Defendants; Professional Malpractice Law – Defendants), Thomas H. Coker, Jr. (Litigation – Construction), W. David Conner (Mass Tort Litigation / Class Actions – Defendants), H. Sam Mabry III (Litigation – Banking and Finance; Litigation – Intellectual Property; Litigation – Labor and Employment; Litigation – Mergers and Acquisitions; Litigation – Real

Estate; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants), W. Francis Marion, Jr. (Bet-the-Company Litigation; Commercial Litigation; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants), J.W. Matthews (Commercial Litigation), Moffatt G. McDonald (Litigation – Environmental), Sarah M. Purnell (Medical Malpractice Law – Defendants; Personal Injury Litigation – Defendants; Professional Malpractice Law – Defendants), J. Derrick Quattlebaum (Insurance Law; Litigation – ERISA), and Sarah Spruill (Commercial Litigation).

McKay Firm Partners Selected to *The Best Lawyers in America*®

The McKay Firm is pleased to announce that two of the firms’ Partners, Julius W. “Jay” McKay, II, and Daniel R. Settana Jr., have been selected for inclusion in the 25th Edition of *The Best Lawyers in America*. Mr. McKay was selected for inclusion in the 2019 Best Lawyers® list in the area of medical malpractice law - defendants and litigation - insurance. He 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 2019 Best Lawyers® in the area of litigation - insurance. He also practices in transportation law, civil rights defense, governmental defense, premises liability, and general insurance defense litigation.

McKay Partner Receives Midlands Legal Elite Award

The McKay Firm is pleased to recognize Firm Partner Brandon Jones as a recipient for the 2018 Midlands Legal Elite in the category of Insurance. Brandon Jones’s law practice focuses

primarily on civil litigation defense, including trucking and transportation law, governmental law, construction defects litigation and general insurance law. He is an active member of multiple industry and professional organizations, including the South Carolina Defense Trial Attorneys' Association, Defense Research Institute, Claims and Litigation Management Alliance, American Bar Association, and the Richland County Bar Association. He serves as the Secretary of the CLM SC Chapter, is on the Commercial Transportation Committee of the ABA TIPS Section, is on the Trucking Law Committee of the SCDTAA, and is involved in numerous other industry committees. He is a Clemson University and University of South Carolina School of Law graduate. 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.

Richardson Plowden Attorneys Win Defense Verdict

Richardson Plowden is pleased to announce that Employment Law Attorneys Gene Matthews and Cliff Rollins recently won a defense verdict in federal court on behalf of their client, the South Carolina Department of Corrections. The case involved a Title VII employment action against the client, alleging retaliation and unlawful race harassment. Following a week-long trial, the jury returned a unanimous defense verdict after one hour of deliberations.

McKay Firm Welcomes New Associate

The McKay Firm is pleased to announce the addition of Kyle McGann as the newest associate at the firm. Mr. McGann

practices in the areas of general insurance defense litigation, employment defense, and civil litigation defense. He graduated from Furman University with a degree in Political Science and continued his education at the University of South Carolina School of Law. During second and third years there, Mr. McGann clerked for a local plaintiff's firm, focusing on employment litigation, real estate litigation, and workers' compensation cases. Additionally, he earned the CALI Award for his work in the Liberty Seminar. Mr. McGann is actively involved in several community organizations including Relay for Life, Harvest Hope Food Bank, and Honor Flight. He is a member of the South Carolina Bar Association and resides in Irmo with his wife, Lorraine.

The McKay Firm Welcomes Rachel G. Peavy

The McKay Firm is pleased to announce the addition of Rachel G. Peavy as the newest lawyer at the firm. Ms. Peavy practices in the area of medical malpractice defense. She also maintains a litigation practice in bad faith and coverage matters, and handles a select number of personal injury and employment cases each year. In addition to her trial practice, Ms. Peavy also has experience in appellate matters, having argued before the South Carolina Court of Appeals and briefed cases in both the South Carolina Supreme Court and the Fourth Circuit Court of Appeals. Ms. Peavy graduated with honors from Colgate University and was awarded her juris doctor degree in 2001 from the University of South Carolina School of Law. While in law school, she was an associate editor of the South Carolina Environmental Law Journal. Prior to joining The McKay Firm, Ms. Peavy was special counsel for several years at a local personal injury firm.

Previously, she practiced at one of South Carolina's oldest law firms, where her practice focused on commercial litigation and life insurance matters. Ms. Peavy is admitted to practice before all courts in the State of South Carolina, the United States District Court for South Carolina, and the United States Court of Appeals for the Fourth Circuit. She and her husband, also an attorney, reside in Columbia with their two children.

Brett Bayne Included in Columbia Business Monthly's 2018 "Best and Brightest 35 and Under"

McAngus Goudelock & Courie is pleased to announce the inclusion of Brett Bayne in Columbia Business Monthly's 2018 "Best & Brightest 35 and Under." Bayne focuses his practice on general litigation, including automobile negligence, premises liability, products liability and construction defects. Bayne earned his Juris Doctor from the University of South Carolina and his Bachelor of Arts 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 the Claims & Litigation Management Alliance. In addition, he was recently recognized in Columbia Business Monthly's 2018 "Midlands Legal Elite" as the Insurance Law Top Attorney Vote and South Carolina Super Lawyers 2018 "Rising Star." He also serves as an adjunct professor of Trial Advocacy at the University of South Carolina School of Law and as the faculty advisor and coach of the USC School of Law Mock Trial Program.

17 MGC Attorneys Included in the 2019 Edition of *The Best Lawyers in America*®

McAngus Goudelock & Courie is pleased to announce the inclusion of 17 attorneys in the 2019 edition of *The Best Lawyers in America*®. Several attorneys were named *Best Lawyers*® "Lawyer of the Year." In Charleston, SC, Amy Jenkins was named *Best Lawyers*® Employment Law-Individuals "Lawyer of the Year." In Columbia, SC, Sterling Davis was named *Best Lawyers*® Insurance Law "Lawyer of the Year" and Mundi George was named *Best Lawyers*® Workers' Compensation Law-Employers "Lawyer of the Year." In Greenville, SC, Doc Morgan was named *Best Lawyers*® Insurance Law "Lawyer of the Year" and Shayne Williams was named *Best Lawyers*® Workers' Compensation Law-Employers "Lawyers of the Year."

Other listed attorneys include Chad Abramson (Workers' Compensation Law – Employers), 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 II (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), 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), William Shaughnessy (Workers’ Compensation Law – Employers) Shayne Williams (Workers’ Compensation Law – Employers) Mark Davis (Workers’ Compensation Law – Employers), Carl Edwards (Litigation – Insurance; Personal Injury Litigation-Defendants), and Amy Jenkins (Employment Law – Individuals; Employment Law – Management; Litigation – ERISA; Litigation – Labor & Employment).

Six MGC Attorneys Named in 2018 South Carolina Super Lawyers Magazine

McAngus Goudelock & Courie is pleased to announce that five attorneys have been selected by their peers to the 2018 South Carolina Super Lawyers and Rising Stars lists. Five attorneys were selected to the 2018 South Carolina Super Lawyers list and one attorney was selected to the 2018 South Carolina Super Lawyers Rising Stars list. Those selected for the 2018 S.C. Super Lawyers listing include Rusty Goudelock (Workers’ Compensation), Amy Jenkins (Employment & Labor), Tommy Lydon (Business Litigation), Hugh McAngus (Workers’ Compensation), and Bill Shaughnessy (Workers’ Compensation). In addition Brett Bayne (Personal Injury-Products: Defense) was selected to the 2018 S.C. Super Lawyers Rising Stars list.

Five Ogletree Deakins Attorneys Ranked in *Chambers USA*

Ogletree Deakins is pleased to announce that five attorneys in the firm’s South Carolina offices have been included in the 2018 edition of *Chambers USA*, an annual ranking of the top U.S.-based law firms and lawyers in an extensive range of

practice areas. Those from the South Carolina offices include Mike Shetterly, Mark Stublely, Katherine Dudley Helms, Leigh Nason and Charles T. Speth II. Ogletree Deakins’ South Carolina offices also earned a Band 1 ranking, the highest possible, in the Labor & Employment practice area. In total, the firm’s offices in 26 states and the District of Columbia, as well as 86 of the firm’s attorneys, have been included in the 2018 edition.

Wall Templeton Attorney Wins Client Award

Graham Powell of Wall Templeton was recently honored with an award by a client at its National Panel Counsel Meeting for his outstanding contributions as their insurance coverage counsel.

Robinson Gray attorneys listed in 2019 edition of *Best Lawyers in America*[®]

Bill Metzger has been named Banking and Finance Law Lawyer of the Year in Columbia, SC. These designations are presented to a single attorney within each practice area and city. *Best Lawyers in America*[®] recognized Robinson Gray attorneys in the following practice areas: Grady Beard (Workers’ Compensation Law – Employers), Nick Haigler (Workers’ Compensation Law – Employers), Becky Laffitte (Insurance Law, Litigation – Construction, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants, Transportation Law), Bill Metzger (Banking and Finance Law, Bankruptcy and Creditor Rights / Insolvency and Reorganization Law, Business Organizations (Including LLCs and Partnerships), Michael Montgomery (Personal Injury Litigation – Defendants), Kerk Spong (Real

Estate Law), Bobby Stepp (Bet-the-Company Litigation, Commercial Litigation), Monty Todd (Personal Injury Litigation – Defendants), and Cal Watson (Bet-The-Company Litigation, Commercial Litigation, Professional Malpractice Law – Defendants).

***Columbia Business Monthly* Names Robinson Gray Members to the 2018 Legal Elite of the Midlands**

Columbia Business Monthly recently recognized Robinson Gray Members Becky Laffitte (Health Care, Insurance), Bill Metzger (Commercial Real Estate), and Bobby Stepp (Business Litigation) as 2018 Legal Elites of the Midlands. Robinson Gray congratulates them on their individual achievements.

Graham P. Powell Selected for 2018 Legal Elite

The firm congratulates shareholder, Graham P. Powell, for being selected by *Charleston Business Magazine* for the 2018 Legal Elite designation. He will be featured in the August issue of the magazine for Construction Law. *Charleston Business Magazine* is the go to resource for Charleston area business leaders, entrepreneurs, and any people or groups that have a vested interest in the success of the Charleston Business Industry.

Wall Templeton Attorneys Recognized in *Best Lawyers in America*® 2019

The firm commemorates Neil Haldrup, Graham Powell, Morgan Templeton, and Mark Wall who have earned the title of *The Best Lawyers in America*® 2019. Wall Templeton honors Graham P. Powell, a founding shareholder, for his award in

Insurance Law. Other founding shareholders awarded in Insurance Law, include Neil Haldrup (since 2015), Mark Wall (since 2010), and Morgan Templeton (since 2011).

Robinson Gray Honored Among Nation’s Best in Commercial Litigation

The 2018 edition of *Chambers USA* has ranked Robinson Gray among the nation’s best in general commercial litigation. Robinson Gray was one of four SC firms named in *Chambers USA*’s “Band 1” listing in the practice area. *Chambers USA* in particular recognized the following Robinson Gray attorneys: Bobby Stepp, and Cal Watson.

Robinson Gray Attorneys Selected as Super Lawyers

Robinson Gray is proud to announce the following attorneys from among their ranks who have been selected to the prestigious Super Lawyers: Becky Laffitte (PI – Products: Defense), Bill Metzger (Creditor/Debtor Rights), Beth Richardson (Business Litigation), Bobby Stepp (Business Litigation), Monty Todd (PI Medical Malpractice: Defense), and Cal Watson (Business Litigation).

Super Lawyers also recognized the following “Rising Stars”: Ben Gooding (Appellate), Nick Haigler (Workers’ Compensation) and Michael Montgomery (General Litigation).

Six Roe Cassidy Attorneys Selected for Inclusion in 2018 South Carolina Super Lawyers and Rising Stars

Roe Cassidy Coates and Price, P.A. is pleased to announce that six of its attorneys have been recognized in the 2018 *South Carolina Super Lawyers*® and *Rising Stars*® lists. *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” and a mere 2.5% designated as “Rising Stars.” The Roe Cassidy attorneys selected for inclusion in these exclusive lists are: Bill Coates (Business Litigation), Jack Griffeth (ADR), Ross Plyler (General Litigation), Trey Suggs (Professional Liability Defense), Pete Roe (Real Estate: Business), and Rising Star Josh Smith (Business Litigation).

Richardson Plowden Attorneys Honored in 2019 Edition of *The Best Lawyers in America*®

The 2019 edition of *The Best Lawyers in America*® features nine Richardson Plowden & Robinson, P.A. attorneys who were selected by their peers: Leslie A. Cotter, Jr., for legal malpractice law; Frederick A. Crawford for health care law; Emily R. Gifford for construction law; Steven W. Hamm for administrative and regulatory law; Steven J. Pugh for product liability litigation; Anthony E. Rebollo for tax law; Frank E. Robinson II for real estate law; and Franklin J. Smith, Jr. for construction law. Scalise was also selected as a 2019 “Lawyer of the Year” in Medical Malpractice Defense for the Charleston, S.C. area.

Drew Hamilton Butler of Richardson, Plowden & Robinson, PA selected as a Charter Fellow for the Construction Lawyer Society of America

Richardson Plowden’s Leslie A. Cotter, Jr. Re-elected to SC Bar House of Delegates

Richardson Plowden & Robinson, P.A. is pleased to announce that attorney Leslie A. Cotter, Jr. has been re-elected to the


South Carolina Bar House of Delegates, which establishes policy for the Bar. Mr. Cotter has served in this capacity since 1992. His most recent election will be a two-year term from 2018-2020. Mr. Cotter has been recognized as a *Best Lawyer in America*® since 2010 for Legal Malpractice Law. In 2012, *Best Lawyers* recognized Mr. Cotter as a “Lawyer of the Year” for Columbia, SC, in Legal Malpractice Law. In 2013, Mr. Cotter was distinguished with the Judge Matthew Perry Civility Award for exemplary professional civility. He is a member of the South Carolina Bar, American Bar Association, South Carolina Defense Trial Attorneys’ Association, Defense Research Institute, Fourth Circuit Judicial Conference, Professional Liability Defense Federation, *Lawyers of Distinction*®, and much more.


Seven Richardson Plowden Attorneys Named to 2018 South Carolina Super Lawyers, Two Attorneys Named “Rising Stars”

Richardson Plowden & Robinson, P.A. is pleased to announce that seven of its attorneys have been selected to the 2018 *South Carolina Super Lawyers* listing: 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. Additionally, two attorneys were selected as 2018 South Carolina “Rising Stars:” Caleb M. Riser, and Joseph E. Thoensen. This is the seventh consecutive year Mr. Beighley has been recognized as a *South Carolina Super Lawyer*. He was recognized for his work in Medical Malpractice Defense. This is the first year that Mr. Cotter has been selected as a *South Carolina Super Lawyer*. He was selected for his work in Civil Litigation Defense. Mrs. Lucey

**MEMBER
NEWS
(CONT.)**

has been recognized as a *South Carolina Super Lawyer* for the last four consecutive years. She's been recognized for her work in Construction Litigation. This marks the tenth consecutive year that Mr. Matthews has been recognized as a *South Carolina Super Lawyer*. Mr. Matthews was selected for his work in Employment and Labor Law. This is the sixth consecutive year that Mr. McDow has been recognized as a *South Carolina Super Lawyer*. He was recognized for his work in Medical Malpractice Defense. Mr. Pugh has been recognized as a *South Carolina Super Lawyer* for the last three consecutive years. He has been selected for his work in Civil Litigation Defense. This is the third time Mr. Rebollo has been selected as a *South Carolina Super Lawyer*. He was chosen for his work in Tax Law. Mr. Smith has been selected as a *South Carolina Super Lawyer* for the last 11 consecutive years. He was recognized for his work in Construction Litigation.


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. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at *Super Lawyers* to receive this honor. This is the seventh consecutive year that Mr. Thoensen has been selected as "Rising Stars," and this is the third year that Mr. Riser has been selected for the honor. 



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The 2018 Summer Meeting Wrap-Up

by J. Andrew Delaney

The 2018 summer meeting was held on July 27th through July 29th at The Sonesta Resort in Hilton Head, South Carolina. This was the first time in a number of years that the meeting was held away from Asheville, North Carolina. The beach was a welcome change in scenery. The event kicked off with a reception and silent auction on Friday night.

SCDTAA President, Anthony Livoti, welcomed everyone on Saturday morning. The education program began with an eye opening presentation from Mark Lanterman on the dark web. It scared many of us into scrubbing our personal data from the internet in hopes to avoid identity theft.

The workers' compensation substantive law committee held a break out session featuring a panel of the workers compensation commissioners. For the first time, we held a meeting of the emerging leaders with a presentation from Henry Deneen on emotional intelligence and professional responsibility.

Frank Ellerbe did his best to explain the various intricacies involving the failed SCANA project and what is to come.


Jay Courie presented on the future of law and what it means for law firms as we move forward.

The golf tournament was held at the Shipyard Golf Club. Those not playing golf enjoyed a beautiful day on the beach where we played various beach games and enjoyed some refreshing adult beverages.

Democratic candidate for governor, James E. Smith, Jr. presented on what South Carolina needs now and in the future. Judge Hood spoke on his experiences as the Chief Administrative Judge for the Fifth Judicial Circuit and how he has successfully made changes in the management of the trial docket.

Applied Building Services, a Platinum Sponsor of the meeting, presented on court room successes through human factors testimony as well as the use of liquid applied membranes in current construction practices.

The worker's compensation substance committee had a break out session on the lessons learned from the Clemmons case. Our president, Anthony Livoti, moderated a panel discussion to the emerging leaders group featuring Jay Courie, David Holler, and Lucy Grey McIver.

Finally, we concluded our meeting with a discussion from Malissa Burnette on civility, civil rights and workplace relationships. 





2018 Annual Meeting Wrap-Up

by Lucy Grey McIver

The South Carolina Defense Trial Attorneys' Association held our 51st Annual Meeting at the Sanctuary Hotel on Kiawah Island. The Kiawah kick-off to our next 50 years was an exciting few days that provided opportunities and programming for members at every level, from seasoned litigators to young lawyers and Emerging Leaders.

On Thursday following business meetings, President Anthony Livoti hosted a Welcome Reception to provide attendees with an opportunity to connect with old and new friends. Once we eased into island mode, we took advantage of Kiawah's many acclaimed restaurants.

After a night of fine dining, some early birds beat the sun to the beach Friday morning for a laid back run followed by breakfast honoring the judiciary. We welcomed Craig Thompson, president of the International Association of Defense Counsel, who gave us pointers on taking the next step to "Next Level Leadership." David Cobb shared thoughts after [Sentry Select Ins. Co. v. Maybank Law Firm](#), and R&D Strategic Solutions presented on the effective use of trial and jury consultants. Our Emerging Leaders participated in their own breakout panel and Molly Craig moderated a stellar federal judicial panel. The weather

was perfect for the outside Women in Law Reception which many attendees enjoyed before heading out to various activities. Friday evening began with a cocktail reception followed by a banquet and dancing where we all tried to keep pace with our own presidential Fred Astaire.

For those who missed the run Friday, or just needed more steps, some returned to the beach bright and early Saturday for Beach Run II. Then the Honorable Justice John C. Few shared some of his experiences from the bench and Giles Schanen provided an overview of employment law and told us what to expect in 2019. Author Denise Kiernan took us from South Carolina to North Carolina as she discussed her *NY Times* bestseller, *The Last Castle*, leading us on a private tour of the Vanderbilts' lives in the Biltmore House in the Gilded Age, traveling through world wars, financial crises and unimaginable tragedy. William Brown then guided us through a presentation to help avoid conflicts and unimaginable tragedy and Lee C. Weatherly advised us on defending foreign born clients. After the program we engaged in tennis, yoga and other afternoon adventures and concluded our meeting with a Lowcountry oyster roast and dinner.

Plans are underway for the 2019 Annual Meeting which will be at the Ritz Carlton, Amelia Island, Florida. Please

**SCDTAA
EVENTS
(cont.)**

mark your calendars and join us November 14-17, 2019 at Amelia Island. 🏏



SCDTAA EVENTS (cont.)

2018 Annual
Meeting Photos



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Mavericks
Seminar**

March 15th
Columbia, SC

**Trial
Superstars**

April 12th
Columbia, SC

**Trial
Academy**

May 8-10th
Charleston, SC

**Summer
Meeting**

July 26-28th
The Sonesta,
Hilton Head, SC

**Golf
Classic**

Fall
Columbia, SC

**Annual
Meeting**

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

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2019

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NEW ORLEANS

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OCTOBER 16-19, 2019

NEW ORLEANS MARRIOTT

The Honorable A. Marvin Quattlebaum, Jr.

by Geoffrey W. Gibbon



A Marvin Quattlebaum, Jr. is a judge on the United States Court of Appeals for the Fourth Circuit. He was nominated by President Donald Trump on May 7, 2018, and confirmed by the Senate on August 16, 2018. Prior to his appointment to the Fourth Circuit Court of Appeals, Judge Quattlebaum was a United States District Court judge for the District of South Carolina. For that position, he was nominated by President Trump on August 3, 2017, and confirmed by the Senate on March 1, 2018.

Before joining the Federal bench, Judge Quattlebaum was a partner of the regional law firm of Nelson Mullins Riley & Scarborough. He practiced in the areas of products liability litigation, commercial and other complex civil litigation.

Judge Quattlebaum was active in professional organizations while in private practice. He served as President of the South Carolina Bar. Judge Quattlebaum is a judicial Fellow of the American College of Trial Lawyers and a judicial member of the American Board of Trial Advocates.

In addition to his private practice, Judge Quattlebaum previously served as an interim in-house counsel for an international company for which he managed litigation throughout North America, and as General Counsel and Secretary for a technology company for which he was responsible for all legal affairs.



Judge Quattlebaum received his B.A. degree with honors in History in 1986, cum laude from Rhodes College. At Rhodes, he was a member of Phi Beta Kappa, Mortar Board, Omicron Delta Kappa, and was President of his fraternity.

Judge Quattlebaum received his J.D. degree in 1989 from the University of South Carolina School of Law where he was a member of the South Carolina Law Review, the Order of Wig and Robe, the Order of the Coif, and was a Legal Writing Instructor.

Interview with Judge Quattlebaum

What led you to get into the legal profession?

I come from a family of lawyers. Before I joined the profession, my great-grandfather, my father, my uncle and a cousin were all lawyers. From their examples, I was drawn to the profession. So becoming a lawyer was something that I grew up hoping and somewhat expecting to do.

What do you miss the most about your private practice?

I love my new job, but I thoroughly enjoyed being a lawyer. I miss my great partners and friends at my former firm. I miss seeing and communicating with other lawyer friends as much as I used to. I miss interacting with my former clients (or at least some of them) many of whom became good friends. I miss the competition of litigation and specifically the courtroom. No job is perfect, but, to me, being a lawyer is a great way to make a living and serve the public.

What do you miss the least about private practice?

There is no major burdens that I miss. It is nice, however, that I have more control over my schedule.

What have you enjoyed most about your time as a federal judge?

I have really enjoyed delving into so many different areas of the law. With the specialization that developed during my time as a lawyer, I saw only a sliver of the issues that the profession addresses. I see all sorts of issues now and it has been both fun and a challenge to tackle so many different areas of the law.

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

The most challenging part of the job so far is also the most rewarding. There is a profound sense of responsibility to do all we can to get the decisions right.

What is your biggest pet peeve that you see from lawyers with cases assigned to you?

I have not had enough time to develop too long a list. But briefs that assert a case holds one thing when it does not are frustrating. We read behind the briefs and occasionally find cases cited for something they do not say. Fortunately, South Carolina has great lawyers and that does not happen often. But when it does, it impacts credibility.

Do you have any recommendations for young lawyers preparing to come before you?

First, be prepared. There are not as many opportunities to be in court as there used to be so don't waste them by not doing

your best. Second, as mentioned in the prior answer, candor is important. Do not misstate the law. Third, concede points when you need to. Sometimes the facts and/or law are not in your favor. If confronted with those, some lawyers denying the obvious when it is better to admit your weaknesses and argue why you should prevail anyway. Fourth, find a way to serve the public and/or profession. It will keep you grounded and help you appreciate the importance of what we do. Fifth, devote time to things besides your practice. Being a lawyer can be consuming and we all need to have other things to keep our minds fresh. The last two have nothing to do with appearing before me, but I think they are important.


What are your hobbies when you are not sitting on the federal bench?

I like to exercise. It helps keeps me sane. I also like to read. And as weird as it may sound, I like to work in the yard. The gratification of yard work is more immediate than the work we do as lawyers and judges. I used to play golf, hunt and fish. But with work and family, I have not done much of that lately. Maybe I will pick some of those hobbies back up.

What is your favorite movie?

Seabiscuit

10. What was the last book you read?

I recently finished a re-read of Atlas Shrugged. It was a bear. Next book will be lighter. 



YLD 2018 Update

by Derek M. Newberry

2018 was a great year for the Young Lawyers Division (“YLD”), with young lawyers participating in the Trial Academy, assisting with and attending the Summer and Annual Meetings, coordinating a very successful winter coat drive and serving the organization and defense bar in countless other ways.

TRIAL ACADEMY: The Trial Academy was a great success, with young lawyers participating as litigators, jurors and witnesses. After two days of engaging lectures and breakout sessions with decorated faculty, the 24 participants tried their cases before six judges from the Circuit bench, Court of Appeals and Supreme Court. In the end, there were five defense verdicts. 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.

CHARITABLE AUCTION: This year, the YLD Silent Auction at the Summer Meeting raised \$4,700, which will be donated to the National Foundation for Judicial Excellence, the South Carolina Bar Foundation, and Kids Chance of South Carolina. Hot items included an “All In” Clemson helmet signed by Dabo Swinney, which generated quite a bidding war. Thank you to all who participated by either donating or purchasing an item.

WINTER COAT DRIVE: This year, the YLD coordinated a winter coat drive with resounding success. All together, we donated 139 coats to four separate charities located in Charleston, Columbia, Greenville and Myrtle Beach.

Thank you to all who donated and to Nick Stewart, Megan White, Alex Davis, Stephanie Mascella, James Robey, Emily Bridges and Jeanmarie Tankersley for their hard work as committee members for this initiative.

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

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

DRI: Invest in Your Professional Life

by James R. Courie



As we begin a new year, one goal I hear more and more is that lawyers need to invest in their professional life. That might mean broadening your business in hopes of being a better rainmaker, it might mean attending more substantive CLE programming to become more knowledgeable in your field of practice, it might mean attending trial and appellate programs to hone your advocacy skills or maybe it means writing articles or accepting speaking engagements to become more of a thought leader in your industry. The challenge for firms and attorneys in this business environment is the number of organizations competing for our time and money. As defense attorneys, we can only commit to involvement in so many organizations or activities. Although I admit to being a little biased, I think DRI can easily make the case as the forum to provide the best return on investment. Here are a few examples that I believe support that argument:


- DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation
 - The DRI network consists of over 20,000 like-minded defense practitioners
 - DRI is host to 29 substantive committees and substantive law groups whose focus is to develop ongoing and critical dialog about areas of practice
 - DRI provides access to resources and tools to grow your practice – members can search a database of more than 65,000 experts and attend renowned CLE seminars, conferences and webcasts
- I have said many times DRI involvement starts with the Annual Meeting. If you haven't attended in the past, I can assure you it is well worth the investment. In addition to outstanding speakers and programming, the Annual Meeting provides a great opportunity for networking with colleagues and potential clients. I would encourage you to save the date of the 2019 Annual Meeting in New Orleans on October 16-19, 2019.
- As for programming, there are many opportunities over the next several months to expand your knowledge in your given practice area. DRI is known for its CLE programming, and this year's agenda is as good, or better, than ever. Upcoming substantive programs include:
- Toxic Torts and Environmental Law – March 14, 2019 – New Orleans, Louisiana
 - Medical Liability and Healthcare Law – March 20, 2019 – Nashville, Tennessee
 - Trial Skills and Damages – March 20, 2019 – Las Vegas, Nevada
 - Life, Health, Disability and ERISA – April 3, 2019 – Chicago, Illinois

- Insurance Coverage and Claims Institute – April 3, 2019 – Chicago, Illinois
- Construction Law – April 10, 2019 – Las Vegas, Nevada
- Retail and Hospitality – May 8, 2019 – Orlando, Florida

If your goal is to become more of a thought leader in your practice area and industry, you may want to explore DRI's Center for Public Policy. The Center acts as a think tank and the public voice of DRI on issues of importance to the Defense Bar. The Center offers:

- Scholarship: The Center's activities and products are based upon a sound scholarship of the law, the Constitution and the judicial system.
- Expertise: The Center draws upon the collective expertise of its leadership and 29 substantive law committees, composed of the finest defense attorneys in the country.
- Education: A primary function of the Center is to provide balanced and impartial educational materials and stimulate discussions with policy makers and the general public on judicial issues.
- Advocacy: Where appropriate, the Center will take formal positions on substantive law, judicial processes and judicial reform from the Defense Bar perspective and work to communicate those opinions with the intention of affecting public opinion and public policy.

There are many opportunities to get involved with the Center including the Amicas Committee, External Policy and Alliance Committee, Issues in Advocacy Committee and Legislation and Rules Committee.

As you begin to think through how you will invest in your personal and professional growth in 2019, I hope you will consider putting DRI at the top of your list. If you have any questions or would like additional information, please do not hesitate to contact me at jcourie@mgclaw.com. 

Legislative Update

by Jeffrey N. Thordahl, SCDTAA Lobbyist




2019 is the start of a new two year session of the South Carolina General Assembly. On the election front of course Governor Henry McMaster was sworn in as Governor after his election in November 2018 to a four year term. Senator Dick Harpootlian was elected to fill the remaining two years of Senator Courson's term. State Senator William Timmons was elected to Congress from the Fourth Congressional District. That then triggered a special election for his Senate seat where current Representative Dwight Loftis was elected in the Republican primary. The General Election for that race is on March 26, 2019. If Dwight wins the special election then there will be a special election for his House seat.

In the House of Representatives there have been some leadership changes. Two lawyer legislators have taken over the Chairmanship of two significant standing committees. Representatives Peter McCoy from Charleston was elected Chairman of the House Judiciary Committee. Representative Murrell Smith from Sumter was elected as the new Chairman of the House Ways and Means Committee. While it is typical and expected that the Chairman of the Judiciary Committee is an attorney it is not typical for the Chairman of the Ways and Means committee to be an attorney. Certainly Chairman Smith brings a great understanding of the Judicial Department to this role in addition to his deep commitment to a healthy court system and issues affecting the practice of law.


While already there have been over 1200 bills filed this year, I will focus on three bills of interest. The first two are related to proposed changes to the Tort Claims Act. S.7 has been reported out of the Senate Judiciary Committee and being held on the Senate Calendar for further debate. https://www.sestatehouse.gov/sess123_2019-2020/bills/7.htm. This bill proposes to raise the caps on the recovery limits. It would raise the cap on a single person from \$300,000 to \$1,000,000 and for an occurrence from \$600,000 to \$2,000,000. As amended by the Senate Judiciary Committee it adds an annual increase or decrease based on the CPI. The amendment also changes the effective date to causes of action with a date of loss arising on or after July 1, 2020. There is ongoing research on what this will do to the rates charged by the Insurance Reserve Fund to governmental bodies. The second bill S. 386 adds S. 7 to it and deals with related issues to the Tort Claims Act such as what constitutes bad faith, what is an occurrence, recovery of attorney's fees, the creation of the State Catastrophic Fund and other items. https://www.scstatehouse.gov/sess123_2019-2020/bills/386.htm. These items are not found in the online version of the bill at his time but the SCDTAA can make the proposed language available to you. These two bills have been the subject of much debate and further debate will be had in the Senate Judiciary Committee and the Senate floor before they go to the House for debate if they pass the Senate.

A bill seeking to correct language in the joint and several liability statute to codify the public policy intent and compromise reached by the General Assembly in 2005 to properly allocate fault to all parties in a civil action to recover damages has been introduced. H. 3758, (https://www.sctestatehouse.gov/sess123_2019-2020/bills/3758.htm) has 58 cosponsors with Chairman Davey Hiott the lead sponsor along with all the Chairs of the House standing committees except for Peter McCoy the Chairman of the House Judiciary Committee who removed his name as a sponsor. A subcommittee hearing on this bill should be held soon.

The General Assembly held judicial elections on February 6th. In a close race Blake Hewitt won the South Carolina Court of Appeals Seat 1 over Circuit Court Judge Allison Lee. This fills the vacancy resulting from the retirement of Judge Paul Short. There was only one other contested Judicial race, Family Court Judge Thirteenth Judicial Circuit Seat 6, where in another close election Jessica Salvini won over Kimaka Nichols-Graham. All sitting Judges who were up for re-election were elected. 

John Wilkerson Wins Hemphill Award

by William A. Coates



On November 16, 2018, the South Carolina Defense Trial Attorneys' Association presented John S. Wilkerson with the Association's highest honor, the Robert W. Hemphill Award. The Hemphill Award is presented in recognition of "Distinguished and Meritorious Service to the Legal Professional Public." John is a former president of the Association (1999), who has remained active, having served in the Past President's position on the SCDTAA board.


In addition to his service to the Association, John has served as State Representative for the Defense Research Institute (2004 – 2007). His service to DRI includes membership on the Insurance Law Committee, ADR Committee, Commercial Litigation Committee, and as Chair of the Professional Liability Committee. He is a member of the Federation of Defense and Corporate Counsel where he is a member of the Commercial Litigation Section. He has also served as Vice-Chair of the Extra Contractual Section, and of the Admissions Committee and Chair of the Professional Liability Section. He is a Past-President of the Florence County Bar Association.

He is a Fellow of the American College of Trial Lawyers and the American College of Coverage Counsel. He has been recognized in South Carolina Super Lawyers, Best Lawyers of America (Lawyer of the Year – twice), Chambers & Partners, USA, and by Benchmark Litigation as a Litigation Star.



John's litigation practice includes the areas of Professional Liability, Employment, Drug and Medical Devices, Business, Product Liability, and Insurance Coverage. He is known both within and without his firm, Turner Padgett Graham & Laney, as an excellent mentor of young lawyers. He is available to answer any question; however, the questioner must be prepared to respond to *John's* questions regarding the issue ("Have you really *read* the rule?")

John and his lovely wife have Sharon have two daughters and one grandchild. Sharon often remarked that she married an extremely smart man... with absolutely no common sense. Examples include swimming in the ocean without securing the room key, leaving them dripping wet in a hotel lobby. Also, thinking that the company providing a helicopter tour in Hawaii was going to bring the helicopter to the hotel to pick them up...

Common sense or no, John spends his spare time on his avocation of woodworking. He has a basement full of equipment that is the envy of any woodworker. John feels that as he spends his days trying to deconstruct the cases of his opponents, the process constructing something both useful and beautiful is both fun and therapeutic. The South Carolina Defense Trial Attorneys' Association and his many friends congratulate John on his receipt of the Robert W. Hemphill Award. 

Emerging Leaders

by Immediate Past President Anthony W. Livoti

Greetings!

As 2019 begins, I'm still reflecting on the outstanding year the SCDTAA experienced in 2018. The events the SCDTAA put on, the participation from the bench and bar, and the hard work of the officers and board made it a very special year. I was very honored and proud to have served as your President in 2018.

I'm especially proud of the new program we started in 2018, the Emerging Leaders program. We invited over 100 young lawyers to participate at the beginning of 2018 and had 35 commit to participate this year. Of those 35, we had roughly 18 participate in either the Summer Meeting, Annual Meeting, Trial Academy, or contribute an article for *The DefenseLine*. This was a fantastic response for a first-year program and the feedback we received from the participants was very encouraging. President Jamie Hood has asked that I continue working with this program in 2019 and I'm excited to build off our great start. Our goal is to identify additional lawyers who show leadership potential and a desire to deepen their involvement in the SCDTAA. If you have young lawyers in your firm that you believe would be good candidates please provide those names to me or our Executive Director, Aimee Hiers. We will be looking for speakers for our Emerging Leader breakout sessions at the Summer and Annual Meetings so contact me if you are interested in that as well. Finally, if you have lawyers

participating in this program in your firms, please do all you can to support their participation this year by sending them to our meetings and events. We promise to invest in them and develop them as future leaders of their firms and the SCDTAA.

Finally, let me congratulate the three lawyers who achieved their designation as Emerging Leaders in 2018: Alex Joyner of the Wilkes Law Firm, Jeanmarie Tankersly of Clawson and Staubes, and Emily Bridges of Fox Rothschild. These three lawyers completed the program requirements in their first year of participation and we are excited to continue their involvement in the SCDTAA in the years to come.

Thanks again for all your support this year. Please contact me at awlivoti@murphygrantland.com with any questions or areas where we can plug you in. 🏛️



The Life and Legacy of Justice Jonathan Jasper Wright

by La'Jessica Stringfellow



The life of Jonathan Jasper Wright epitomizes what can happen when an individual is afforded opportunity. Wright, the son of a runaway slave, became the nation's first Black American to sit on any state's highest court. Associate Justice Jonathan Wright served on the South Carolina Supreme Court from February 1, 1870 until December 1, 1877. Wright's election to the South Carolina Supreme Court made him the first black man to ever be elected to a state or federal appellate judgeship in the United States.¹ Until recently, the life and legacy of Justice Wright had been forgotten and buried in history. Thanks to several researchers of the Reconstruction period, Justice Wright's life and legacy is once again a part of South Carolina History and Black History.

Born in Pennsylvania in 1840, Wright was raised on his family's farm in Luzerne County. Wright initially attended common schools before receiving private tutoring by Dr. William Wells Pride.² Wright continued his schooling in 1860 at Lancasterian Academy and in 1862, he began reading law in the office of Bentley, Fitch, and Bentley.³ In 1864, Wright made an informal application for admission to the Pennsylvania Bar that was declined by Judge

Ulysses Mercur. After the disappointing response to his application of admission to the Bar, Wright accepted a position with the American Missionary Association. He was assigned to organize schools for the Black federal units enlisted on the Sea Islands near Beaufort, South Carolina.

In April of 1865, Wright arrived in Beaufort, South Carolina and immediately set to work opening schools at Camp Stanton and on Paris Island. Although Wright encountered inadequate books and school supplies, he was increasingly encouraged and enthusiastic about his pupils' zeal for learning.⁴ Wright also began providing legal assistance to newly freedmen as they navigated freedom in South Carolina. Wright later returned to Pennsylvania, and after learning Judge Mercur was no longer on the bench, he reapplied for admission to the Pennsylvania Bar. Wright's application to the Pennsylvania Bar was approved by Judge B.F. Streeter upon Wright successfully completing his examination. Wright became the first Black attorney licensed in Pennsylvania.⁵ Thereafter, Wright accepted a job in Beaufort, South Carolina with the Freedmen's Bureau assisting free people with their legal affairs.⁶ As a result of returning to South Carolina to assist freedmen with their legal affairs, Wright

became the first Black practicing attorney in the state.⁷

Upon Wright's return to South Carolina in 1867, Reconstruction was well underway. Wright became a popular figure for both his political and legal work. Wright and William Whipper, another Black attorney, petitioned the commanding general of troops in South Carolina to prosecute a white man for assaulting and violating the civil rights of a black man.⁸ The proceeding, *United States v. William T. Bennett* is the first historical record of a Black attorney practicing before a legal tribunal in South Carolina.⁹ Wright became heavily involved with the South Carolina Union Republican Party and urged participation from both Black and White Republicans. Wright was elected as a delegate to the state convention in November 1867. At the state convention, Wright was selected as one of the five vice chairs. Wright ardently supported public education and the creation of a funding system to support public education in South Carolina. As a result of Wright's efforts, the state convention created the state's first public school system.¹⁰ During the state convention, Wright was also a strong opponent against slave contracts. Wright believed that any contracts for the sale of slaves were unenforceable because no man could now be considered property, thus no consideration for the contract existed. Wright also served on the state convention's judiciary committee and proposed election of judiciary by the general assembly—a system we still utilize today. The Charleston Daily News reporting on the state convention noted that Wright "could out talk any man on the floor of the convention and had the assurance to attack any subject."¹¹

In 1868, Wright ran an unsuccessful bid for the office of

South Carolina Lieutenant Governor. However, Wright was selected as the Republican candidate for the senate from Beaufort County. Wright's election in April 1868 made him and nine other Black men, the first Black senators in the state's history. On February 1, 1870, two years into Wright's stint as a state senator, he was elected to the South Carolina Supreme Court to fill the unfinished term of Associate Justice Solomon Hoge. During Wright's seven year tenure on the South Carolina Supreme Court, he authored approximately ninety reported decisions.¹² In one of his most notable decisions, *Redding v. South Carolina Railroad Company*, Wright declined to allow the railroad company to avoid liability for violently removing a Black woman from its railroad car because of her race.¹³ Wright, in his decision, reversed the lower court order that dismissed the case.

By 1876 South Carolina Democrats began campaign efforts to elect Confederate hero Wade Hampton as the next governor and to utilize rifle clubs around the state to disenfranchise the Black vote in the next election. On Election Day in 1876, there was wide spread reports of Black voter suppression, intimidation, and ballot-box stuffing.¹⁴ Hampton emerged as the election winner due particularly to Edgefield and Laurens Counties—both of which had thousands more men vote than were registered in the respective counties. The State Board of Canvassers, consisting of all Republicans, refused to certify the election results from Edgefield and Laurens Counties due to the reports of rampant fraud. The State Board of Canvassers refusal to certify the results in those counties sent South Carolina politics into a tailspin both locally and nationally. The outcome of the South Carolina Governor's race, several South Carolina House seats, as

well as the Tilden-Hayes presidential bid hung precariously in the balance. The matter eventually reached the South Carolina Supreme Court in their original jurisdiction. While the South Carolina Supreme Court Justices ruminated the best course of action, chaos ruled the streets of Columbia. President Ulysses S. Grant called in federal troops to monitor the statehouse due to Democrats brazenly brandishing firearms and threatening to overtake the statehouse.¹⁵ To add additional angst for the South Carolina Supreme Court, both contenders for the Governor's House –Hampton and Chamberlain –each pardoned prisoners to bolster their claims to the Governor's seat. Hampton, in an effort to press the issue before the state supreme court, issued another pardon to Tilda Norris. Norris petitioned for review by the state supreme court in its original jurisdiction –to ultimately determine whether Hampton had the power as the duly elected Governor to issue a pardon. Wright initially agreed to concur with Associate Justice Willard to rule the pardon legitimate –effectively acknowledging Hampton's power as Governor. However, Wright later sought to revoke his concurrence and delivered his own opinion and a memorandum revoking his earlier concurrence to the clerk of the supreme court.¹⁶


Ultimately, the South Carolina Democrats did take control of the Governor's seat and a majority in the general assembly. Immediately after taking control of power, the Democrats began proceedings to remove Wright from his position as associate justice –ostensibly due to his failure to support the pardon granted by Hampton and Democrats. The allegations used to support the impeachment held little substantive weight and were likely highly fabricated.¹⁷ The maligning allegations appeared to be so farfetched that even

Governor Hampton expressed no confidence in the validity of the allegations expressed against Wright.¹⁸ In August of 1877, Wright tendered his letter of resignation as associate justice of the South Carolina Supreme Court, effective December 1, 1877.

Wright continued to practice law in South Carolina and began working with Claflin College to build a Law Department to provide formal training for aspiring Black attorneys. Wright opened a law office at 84 Queen Street in Charleston and allowed students registered with the Law Department at Claflin access to his law library. Wright was officially designated as Claflin College's Chair in Law. Wright spent the remainder of his life practicing law and ushering in the next generation of young Black attorneys in South Carolina.

In 1985, one hundred and eight years after Justice Wright resigned; Ernest A. Finney would be elected as an associate justice on the South Carolina Supreme Court. Justice Finney became the first Black man to sit on the South Carolina Supreme Court since Reconstruction. In 1994, Justice Finney was elected chief justice of the South Carolina Supreme Court. In 2007, Justice Donald Beatty became the third Black man in South Carolina's history to be elected to the state's highest court. And in 2017, Justice Beatty was elected as Chief Justice of the South Carolina Supreme Court.

Although Wright's legacy was momentarily forgotten due to the exploits of the Jim Crow era, many thanks and gratitude are owed to those that sought to reinstate Justice Jonathan Jasper Wright as the important piece of South Carolina History that he is. Richard and Belinda Gergel discovered a photograph of Jonathan Wright, which led to the creation of the South Carolina Supreme Court Historical Society

and a commissioned portrait of Wright. The portrait can be viewed in the lobby of the South Carolina Supreme Court. Most recently, Professors Ross and Leonard of Illinois State University and Florida Gulf Coast University respectively, highlighted the legacy of Justice Wright and the South Carolina Supreme Court in their twitter campaign entitled #52States52Weeks. Justice Wright’s accomplishments epitomize the groundbreaking strides that can be made when an individual is given freedom, opportunity, and equal treatment afforded each of us under the United States Constitution. His life provides examples of the brilliant statesmen, attorney, and jurist any person can aspire to be given quality education and a will to exceed. Justice Wright’s life is important not only to Black History, but to South Carolina History. His life highlights some of the brightest moments of our state’s history. His life also underlines some of the strides we still have to make to ensure education, equality, and opportunities are afforded to everyone so that they too may reach their full potential. Justice Wright once said that South Carolina was “a field of opportunity spread wide to ambition.”¹⁹ That same sentiment still rings true in 2019. 

Endnotes

¹ The South Carolina Encyclopedia, edited by Walter Edgar, University of South Carolina Press, 2006

² Gergel, Richard, and Belinda Gergel, “To Vindicate the Cause of the Downtrodden At Freedom’s Door’: Associate Justice Jonathan Jasper Wright and Reconstruction in South Carolina.” In *At Freedom’s Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina*

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ The South Carolina Encyclopedia, edited by Walter Edgar, University of South Carolina Press, 2006

⁸ Gergel, Richard, and Belinda Gergel, “To Vindicate the Cause of the Downtrodden At Freedom’s Door’: Associate Justice Jonathan Jasper Wright and Reconstruction in South Carolina.” In *At Freedom’s Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina*

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ *Black Over White: Negro Political Leadership in South Carolina During Reconstruction* by Thomas Holt, University of Illinois, 1977

¹⁸ Id.

¹⁹ Gergel, Richard, and Belinda Gergel, “To Vindicate the Cause of the Downtrodden At Freedom’s Door’: Associate Justice Jonathan Jasper Wright and Reconstruction in South Carolina.” In *At Freedom’s Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina*

Take It To The Limit: Punitive Damages and Property Damage Limits in the Wake of *GEICO v. Poole*

by Zachary S. Brown and Alan G. Jones

SCENE:

INT. SPACE – OFFICE

FADE IN:

The sound of copiers, telephones, and a small desk radio playing Phil Collins’ “In the Air Tonight” fills the office space.

PARALEGAL

“Our response to the time limit demand is due today, Mr. Belvedere.”

ATTORNEY BELVEDERE

“I know, I’ve already got the authority, the check, and everything. We’re good to go.”

PARALEGAL

“So the carrier is paying the UIM bodily injury limits and the property damage limits on this case that has what can only be described as painfully obvious punitive exposure?”

ATTORNEY BELVEDERE

“Of course not! The insured on this claim only sustained \$300 in property damage. The punitive damages aren’t linked to the property damage. I consider the demand for

the property damage limits to be malarkey, and I will not entertain it.”

END SCENE.

Scenes almost exactly like the above have played out many times over the years. Policy limit demands were thought of as an analysis of the risk to the bodily injury limits of a split limits underinsured motorist (“UIM”) policy. The risk of a punitive damages award impacted the exposure of the claim, but only as it related to the bodily injury limits. To the extent property damage came into play, the availability of coverage was at issue only as to the extent of actual underinsured property damage. This analysis changed dramatically with the recent decision of *GEICO v. Poole*.

In *GEICO v. Poole*, Jack Poole and his wife Jennifer were riding a vehicle owned by Jennifer’s mother, when a drunk driver crossed the center line and struck them.¹ The Pooles both sustained serious injuries and Jennifer Poole died several days after the accident.² The Pooles did not own the vehicle so the total value of the Pooles’ property damage in the collision was approximately \$1,250.³

The at-fault driver’s liability carrier tendered its policy limits



Zachary S. Brown



Alan G. Jones

and Farm Bureau, the carrier for Jennifer’s mother, tendered its underinsured motorist (“UIM”) policy limits for bodily injury to Jack Poole and to Jennifer Poole’s estate. The Pooles then sought recovery from their insurer, GEICO. The Pooles had a split limits UIM policy with bodily injury coverage of up to \$100,000 per person and \$50,000 for property damage. GEICO tendered UIM bodily injury limits of \$100,000 to Jack and to Jennifer’s estate. The Pooles requested the \$50,000 from the UIM policy’s property damage coverage in anticipation of a large punitive damages award, but GEICO refused. GEICO then initiated a declaratory judgment action in the District of South Carolina to establish that it was not liable to pay any amounts for punitive damages under the property damage provision of the UIM policy because the source of the Pooles’ UIM damages was traceable only to bodily injury.

After cross-motions for summary judgment from the parties, the federal court certified the following question to the Supreme Court of South Carolina: “Under South Carolina law, when an insured seeks coverage under an automobile insurance policy, must punitive damages be apportioned pro rata between those sustained for bodily injury and those sustained for property damage where the insurance policy is a split limits policy?” The Supreme Court framed their analysis under the four grounds GEICO raised in support of apportionment.

I. Statutory Scheme

First, GEICO argued that because the insurance code allows for split limits policies then apportionment is required by the plain language of the statutory scheme. GEICO argued that the statutory definition of “damages” includes punitive damages, but it must be applied within a split limits context.⁴ In

other words,[t]o collect actual and punitive damages they must be traceable to bodily injury, and likewise property damage.”⁵ The Court rejected this analysis and leaned heavily on non-binding precedent from a similar case decided by the District of South Carolina in *State Farm Mut. Auto. Ins. Co. v. Hamilton*, 326 F. Supp. 931 (D.S.C. 1971). Emphasized in both the District Court’s opinion in *Hamilton* and the Supreme Court’s opinion in this case, the statutory definition of “damages” includes both actual and punitive damages.⁶

The statutes are silent with regard to the apportionment of punitive damages. The trigger for UIM coverage is an event that causes damages – actual and punitive – which exceed the liability limits of the at-fault motorist. The Court outlined that punitive damages are not meant to compensate an injured party for underlying injuries or property damage but are meant to punish the Defendant or deter similar conduct by others in the future. Actual damages are clearly traceable to a bodily injury or property damages, but punitive damages are not always tied to an underlying injury. According to the Court, apportionment would require additional language in the statutes and specify that if the legislature intended to require apportionment of punitive damages they would have done so with clear, express language in the statutes.

II. Due Process

Next, GEICO raised failure to apportion punitive damages would violate constitutional due process citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). The Court is quick to point out that the issue in this case is GEICO’s contractual responsibility to pay punitive damages to which its insureds are entitled. The punitive award

in *Gore* deals with a grossly excessive punitive award that is clearly contrary to BMW's constitutional due process as there was not fair notice of the possible severity of the penalty imposed. The Court differentiates the facts of this case from *Gore*, in that GEICO was on notice at the time it entered into the contract to provide UIM coverage to the Pooles. It was at that point that GEICO knew it may have to pay actual and punitive damages up to the policy limits.

The Court continued by stating that, “[h]aving accepted payments from the Pooles for UIM coverage up to the agreed upon policy limits, GEICO cannot persuade us that fulfilling its contractual duty to pay those limits would somehow result in a violation of due process.”⁷ The Court struck down GEICO's argument that punitive damages must be bifurcated according to the type of damages and emphasize the constitutionality of a punitive damages award is measured against (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm to the victim caused by the Defendant's actions; and (3) the sanctions imposed in other cases for comparable misconduct.⁸ The Pooles' GEICO policy was clear that coverage included punitive damages. The issue in this case was not fairness or foreseeability of punitive damages, because GEICO contracted with the Pooles' to pay punitive damages and due process limitations do not require apportionment.

III. Contractual Language

The Supreme Court did not address GEICO's argument that faithful adherence to the insurance contract between the parties requires pro rata apportionment of punitive damages. Judge Joseph Anderson will ultimately decide


whether the policy language of GEICO's insurance contract requires apportionment. The Court may have indirectly addressed the contract issue in their analysis of GEICO's due process argument when they state, “GEICO's exposure to punitive damages is limited by the terms of the policy.”⁹

GEICO's attorney, J.R. Murphy of Murphy & Grantland, P.A., who argued this case to the Supreme Court, emphasized that the Court merely states that South Carolina law does not *require* apportionment as the statute is currently constructed. According to Mr. Murphy, in the wake of the Supreme Court's decision, “[i]nsurance carriers will look closely at the policy language of their insurance contracts, and could contractually provide for apportionment.” Policy language will be crafted to allow for apportionment by clearly defining when specific coverage is triggered.

IV. Public Policy

Finally, GEICO argued that failure to require apportionment of punitive damages under South Carolina law offends public policy. The Supreme Court dismissed this argument as a matter for the General Assembly, outlining their unique authority to make policy determinations/decisions. Earlier in the opinion the Court stated that “[i]f the General Assembly intended to require the allocation of punitive damages, it could have done so with clear, express language.”¹⁰

Ultimately, the Supreme Court held that South Carolina insurance law does not require punitive damages be apportioned pro rata between bodily injury and property damage in a split limits automobile insurance policy. The Supreme Court noted that their holding does not eliminate the viability of split limits

policies.¹¹ Split limits policies benefit carriers by limiting their risk, and they benefit consumers by lowering their premiums. Insurance carriers are now tasked with crafting policy language in accordance with South Carolina laws to control when property damage limits may be triggered. 

Endnotes

- 1 *Geico v. Poole*, Opinion No. 27821 (July 5, 2018).
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 *State Farm Mut. Auto. Ins. Co. v. Hamilton*, 326 F. Supp. 935-36 (D.S.C. 1971) and *Geico v. Poole* citing S.C. Code Ann. § 38-77-30(4)
- 7 *GEICO v. Poole* citing *O'Neill v. Smith*, 388 S.C. at 255
- 8 *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 434-35 (2001)
- 9 *GEICO v. Poole*
- 10 *Id.*
- 11 *GEICO v. Poole*, footnote 3

Verdict Reports

TYPE OF ACTION:

Liability/Auto Accident

NAME OF CASE:

Cheryl Spence v. Aountwannque McCoy

COURT: (INCLUDE COUNTY)

Newberry County, SC Circuit Court

CASE #:

2016-CP-36-0220

TRIED BEFORE:

Judge Alexander Macaulay

AMOUNT:

§0, Defense Verdict

DATE OF VERDICT:

March 21, 2018

DEMAND: (REQUIRED IF DEFENSE VERDICT)

§55,000

HIGHEST OFFER:

§50,000

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Robin Foster, Spartanburg, SC

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

Plaintiff was a backseat passenger in a car driven by her daughter (Elease Spence). Defendant rear-ended car in front of her on I-26 when traffic came to a rapid stop. Elease Spence was following behind Defendant “about 1 car length” at 70 MPH and crashed into the back of Defendant. Elease Spence was uninsured and Plaintiff’s daughter so Plaintiff filed suit against the driver her daughter hit (Defendant). Plaintiff suffered multiple compression fractures but had not treated following recovery. Her medical bills totaled approximately §20,000. Jury deliberated for about 45 minutes and returned a defense verdict in favor of Defendant.

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

DATE OF VERDICT:

May 11, 2018

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. 

Case Notes

by Michael D. Freeman




Michael
D. Freeman

*Aiken Hospitality Group, LLC v.
HD Supply Facilities Maintenance, Ltd.*

Order of United States District Court Judge J. Michelle
Childs, filed March 16, 2018

This order resolves the motion of Defendant HD Supply Facilities Maintenance, Ltd. (“HD Supply”) against third-party defendant N3A Manufacturing, Inc., d/b/a Hotelure Inc. (“Hotelure”) seeking sanctions for Hotelure’s failure to properly participate in mediation. Mediation was mandated by court order in the case and was convened by the parties on April 27, 2017. Prior to mediation, on April 11, 2017, Hotelure filed an application for permission to appear at the mediation telephonically or by electronic means. Hotelure’s counsel ultimately did appear at the mediation telephonically. It appears that Hotelure’s corporate representative also appeared telephonically to the mediation however, it appears that the representative did not call into the mediation until two and one-half hours after it began, without prior notice or consent of the parties, his own counsel, the mediator or the court.

HD Supply filed the Motion for Sanctions asserting that the failure of Hotelure’s corporate representative to attend the full mediation violated Local Civil Rule 16.08(A)(2), which requires that a corporate party must have “an officer, director,

or employee having full authority to settle the claim” available at mediation. While it appears that Hotelure was represented telephonically by counsel during the mediation, the Court held that counsel did not satisfy the participation of the corporation as required by the Local Civil Rule. Despite Hotelure’s argument that counsel was fully authorized to speak on the corporation’s behalf, the Court held that the participation of an actual corporate representative in the mediation was mandated by the Rules, and the failure of the representative to be present for the full duration of the mediation violated the Rule. The court specifically ordered that Counsel’s attendance did not negate the corporate attendance requirement. Therefore, the court granted HD Supply an award of fees and costs. 

Case Notes II

by Helen F. Hiser and James B. Robey III



Helen F. Hiser



James B. Robey III

Hazel, v. Blitz U.S.A., Inc.

Op. No. 5604, filed November 7, 2018

The South Carolina Court of Appeals considered whether certain negligence claims were subject to an injunction established by a bankruptcy court. The case involved a minor who was injured severely when a plastic gas container, manufactured by Blitz and sold by Fred’s (a chain store operating in SC), exploded. Fred’s exclusively sold Blitz gas cans under an Indemnity Agreement under which Blitz agreed to indemnify Fred’s from claims arising out of death or injury to any person “resulting or claimed to result in whole or in part from any actual or alleged defect in [Blitz’s] Products.” In addition, Fred’s was a certificate holder on a number of Blitz’s insurance policies (a CGL policy, a products liability policy and an excess liability policy). As a result of “an onslaught of” claims against Blitz due to its faulty gas cans, it filed for Chapter 11 Bankruptcy and was liquidated and reorganized. In that process, a Trust was created and funded, in part, by Blitz’s liability insurers, deemed Participating Insurers. The Bankruptcy Court also issued a “Channeling Injunction” which permanently enjoined and channeled all Blitz personal injury claims to the Trust. Plaintiffs filed a claim with the Trust and received a substantial amount to settle. They then amended their complaint against Fred’s by removing all claims except a negligence claim alleging Fred’s

continued to sell the Blitz gas cans even after it knew of their propensity to explode. Fred’s sought to enjoin that claim alleging it was really a products liability claim disguised as a negligence claim, and subject to the Channeling Injunction.

The Court of Appeals disagreed, ruling that, under the terms of the Bankruptcy order, a Blitz vendor is “protected by the release and injunction only to the extent a claim is covered by a Participating Insurer policy or as to which a Vendor could seek indemnity against Blitz.” Although Fred’s was a certificate holder on Blitz’s CGL policy, and that insurer was a Participating Insurer, Fred’s own CGL insurer was not a Participating Insurer under the Bankruptcy Plan. The Court concluded Plaintiff’s negligence claim was based on Fred’s actions, not the product itself and, as a result, was outside of the Channeling Injunction. In addition, the Court rejected Fred’s argument that Plaintiff’s claims were subject to the injunction because, citing A.H. Robins Co. Inc. v. Piccinin, 788 F.2d 994 (4th Cir. 1986), the lawsuit would expose Blitz’s estate by Fred’s for indemnification under an “identity of interest” theory.

*Stoneledge at Lake Keowee Owners’ Assoc., Inc., et al.,
Respondents v. IMK et al., Appellants*
Appellate Cases No. 2015-000392 and 2015-000417, filed
October 10, 2018

The Court of Appeals issued two decisions arising out of

the Stoneledge development at Lake Keowee. In the first (Stoneledge v. IMK Dev) the Court held:

- 1) the jury instructions were adequate and proper;
- 2) a jury charge that referenced a claim (breach of implied warranty of habitability) that previously had been dismissed was harmless error because it was not included on the verdict form;
- 3) affirmed the jury charge on the fiduciary duty a developer owes to an HOA, based on Concerned Dunes West Residents v. Georgia-Pacific Corp., 349 SC 251, 562 S.E2d 633 (2002);
- 4) affirmed the circuit court’s denial of the builder’s motion for directed verdict on a) breach of implied warranty of workmanlike service, and b) proximate cause (the builder took over some of the construction after it already was partially built);
- 5) held that, although the circuit court lacked the benefit of the Supreme Court’s decision in Pertuis v. Front Roe Restaurants, Inc, 423 SC 640, 817 SE2d 273 (2018) (also attached), and failed to conduct a meaningful analysis in deciding whether to amalgamate Marick’s interests with IMK’s interests, the Court of Appeals found sufficient “evidence of a unified operation between Marick and the amalgamated parties as well as evidence of self-dealing that resulted from a blending of their business enterprises”;
- 6) the trial court erroneously amended the jury’s verdict in the way it apportioned the damages among the causes of action after first determining that each cause of action

supported the total damages award (even though the jury’s \$5M award specifically stated \$3M was for the negligence claim, and \$1M was for breach of implied warranty against some defendants and \$1M was for breach of fiduciary duty against other defendants)

The second Stoneledge Decision (Stoneledge at Keowee v. IMK Dev) involved an appeal by the first developer of the project. The only issue raised in this appeal that was not addressed in the first Stoneledge Decision (above) was whether the court improperly denied the developer’s motion for directed verdict based on the statute of limitations. The Court concluded that, while some of the defects were known by some of the owners as early as 2003, other owners did not become aware of water intrusion issues until the regional “drought” ended in 2008 and 2009, and that some of the defects were latent. As a result, it was a jury question as to when the owners were on notice of the damages.

Group III Management, Inc., Respondent v. Suncrete of Carolina, Inc., Appellant
Appellate Case 2015-002584, Filed Sept. 19, 2018

The Court of Appeals affirmed a circuit court order that affirmed an arbitration award in a construction defect case. Group III’s contract with Suncrete contained an arbitration clause and also specified that it was governed by NC law. After problems arose during construction, Group III terminated Suncrete and filed a demand for arbitration, seeking damages in the amount of \$252,314 and fees. The final arbitration award in Group III’s favor was for \$197,304, of which \$116,166 represented attorney’s fees. Suncrete appealed the award to

the circuit court arguing that the arbitrator failed to apply NC law (which Suncrete argued only allowed attorney’s fees to be awarded where the prevailing party recovered at least 50% of the damages sought). The circuit court ultimately affirmed. Specifically, the Court held that an arbitrator exceeds his authority only when “he attempts to resolve an issue that is not arbitrable because it is outside the scope of the arbitration agreement,” even if the court believes the arbitrator misapplied or misinterpreted the applicable law. Next, the Court explained that, while a court can reverse or modify an arbitration award where the arbitrator evidences a manifest disregard of the law, such manifest disregard is shown “only where the ‘arbitrator understands and correctly states the law, but proceeds to disregard the same.’”

*Buchanan v. S.C. Property and Casualty
Ins. Guaranty Ass’n*

Appellate Case 2016-002156, Filed Sept. 5, 2018

The Supreme Court confirmed that, while the offset provisions of the SC Property and Casualty Insurance Guaranty Association Act are ambiguous, any offset is taken from the injured party’s total damages, and not from the \$300,000 statutory cap. The case involved a multi-vehicle truck accident in which Mr. Buchanan died. His estate brought suit against a number of parties, including the insurer of the logging truck that caused the accident. That insurer went bankrupt during the proceedings, so the case went to the Guaranty Association. The Plaintiff, whose damages were set at \$800,000, settled with other parties for a total of \$376,622. The Guaranty Association argued that the offset should be taken from its \$300,000 cap, which would mean

it owed nothing. The Court confirmed, however, that the offset should be taken from the injured party’s total damages, leaving \$423,378 unpaid of which the Guaranty Association had to pay \$300,000.

Silva v. Allstate Property and Casualty Ins. Co.
Opinion No. 27838, Filed August 29, 2018

The Supreme Court confirmed that, in order to obtain UM coverage under Section 38-77-170, where there was no physical contact with the “phantom driver’s” vehicle, the requirement that a witness sign an affidavit must be an actual eyewitness to the accident. In the attached, Silva was shot to death while riding his motorcycles. There were no eyewitnesses; however, police officers investigated the scene, recovered bullet casings and reviewed surveillance video from a nearby church that showed a vehicle following Silva 90 seconds prior to a 911 call reporting a motorcycle accident. The police officers filed an investigative report, which the deceased’s wife argued satisfied the affidavit requirement in Section 38-77-170(2), which provides that “the injury or damage was caused by physical contact with the unknown vehicle, **or the accident must have been witnessed by someone other than the owner or operator of the insured vehicle**; provided however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit.” Noting that “[w]e have reportedly noted the purpose of this statute is to protect against fraudulent claims,” the Court held that the term “witnessed” as used in Section 38-77-170 means a witness who actually saw the accident, or at least part of the accident.

Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson
Appellate Case No. 2017-000681, Filed August 29, 2018

Pee Dee’s lawyer was disqualified because he was a necessary fact witness. Nonetheless, the court found that he “engaged in a pattern of ‘abusive, manipulative, and disrespectful’ conduct,” and awarded monetary damages under Rule 11. The sanctions motion was filed after the case had been appealed to the Court of Appeals on three different issues, including the attorney’s disqualification, and remitted back from the Court of Appeals. Pee Dee argued that the sanctions motion was untimely under both the FCPSA and Rule 11.

The Supreme Court disagreed, finding that, while the circuit court properly denied Thompson’s motion under the SC Frivolous Civil Proceedings Sanctions Act, which requires that a FCPSA motion be filed within 10 days of notice of entry of a judgment, a Rule 11 sanctions motion does not have any hard and fast time limit. First, Rule 11 itself contains no time limit. While a person cannot sit on his/her rights indefinitely, the Court held that, under the facts of this case, waiting until the circuit court’s orders had been upheld on appeal was not unreasonable. The Court looked at the purposes of Rule 11, including compensating the victim of abuse, punishing litigation abuse and streamlining dockets and facilitating court management. Explaining that, requiring a party to file a Rule 11 motion while the litigation is proceeding often draws “return fire” and only serves to bog down and exacerbate “already contentious litigation,” the Court explained that waiting until after the appeal may facilitate the collegial, civil atmosphere among attorneys in SC. The Court also accepted Thompson’s attorney’s

explanation that he waited until after the appeal because that strategy was in his client’s best interest, both in terms of outcome and in terms of legal fees.

Justice Kittredge filed a concurrence, agreeing that the timing was reasonable in this case, but arguing that some “outer limit” should be imposed on Rule 11 motions.

The Court also clarified that, while it reviews a circuit court’s decision to impose sanctions under the lenient abuse of discretion standard, because “[t]he decision to impose sanctions is one in equity ... the appellate court reviews the circuit court’s factual findings *de novo*.”

Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.
Appellate Case No. 2016-001459, Filed August 22, 2018

The Supreme Court clarified the test for successor corporate liability in a products liability case. The case involved windows, manufactured and sold by Eagle & Taylor, that leaked and caused property damage. At the time the windows were manufactured and sold, Eagle & Taylor was a wholly-owned sub of AAPC, which later went bankrupt. AAPC sold its assets, including Eagle & Taylor at auction where Linsalata was the successful bidder. Linsalata changed the name of the purchased entity to Eagle Window & Door, and brought on 5 officers from Eagle & Taylor, adding 3 new officers. The Plaintiffs argued that the successor liability test set forth in a prior Supreme Court case, Simmons v. Mark Lift Indus., Inc., 366 SC 308, 622 SE2d 213 (2005), only required them to show “commonality of officers, directors, or shareholders between the predecessor and successor corporations.” The key quote from Simmons stated, “courts interpreting

the mere continuation exception have found it applicable only when there is commonality of ownership, *i.e.*, the predecessor and successor corporations have substantially the same officers, directors, or shareholders. We decline to extend the exception to cases in which there is no such commonality of officers, directors and shareholders.” The lower courts focused on the first phrase in the quote, looking at whether the two corporations had the officers, directors, *or* shareholders; however, the Supreme Court held that the intent of Simmons was to focus on the “commonality of ownership,” which requires “commonality of officers, directors *and* shareholders.” The Court reasoned that, “[i]n the corporate context, without commonality of shareholders, there is no commonality of ownership.” Recognizing that the rule is “a strict one,” the Court noted that “it is not completely inflexible. While commonality of ownership is a keystone of the analysis and almost always sufficient to establish mere continuation when paired with common directors and officers, we stress control is an essential consideration as well. Typically, ownership and control are found in tandem; however, there may be instances where directors of officers – lacking ownership – exert such control and influence over a corporation that their continued presence after a corporate acquisition is sufficient to establish successor liability.” Although it is unclear where such a situation might arise, the Court comment that such control did not exist in the case before it, as the asset sale was engineered by Linsalata while the officers who continued to work for the new Eagle entity “were merely along for the ride, rather than the drivers.”

Superior Constr. Corp. v. The Muhler Co.

Opinion No. 5585, Filed August 8, 2018

The S.C. Court of Appeals affirmed the grant of summary judgment in favor of Muhler in a contractual indemnification case. In the underlying case involving the Concord & Cumberland condominiums in Charleston, the owners sued Superior, the general contractor, and various subcontractors, including Muhler. Both Superior and Muhler settled with C&C and then Superior sued Muhler and others for indemnification under the various construction subcontracts. The indemnification provision in the Muhler subcontract provided, in pertinent part, that Muhler would indemnify Superior “to the fullest extent permitted by law” for any claims and including attorney’s fees, “arising out of or resulting from the performance of the Subcontractor’s Work to the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of the Subcontractor ... regardless of whether it is caused in part by a party indemnified hereunder.” Once some of the defects became apparent, Superior and Muhler entered into another agreement (the 2007 Agreement) in which Muhler agreed to “unconditionally indemnify” Superior if claims were brought against Superior alleging that the windows or doors were non-compliant with the contract documents or negligently installed. Superior acknowledged that it was at least in part responsible for some of the defects. The circuit court granted Muhler’s motion for summary judgment, holding that neither the subcontract’s nor the 2007 Agreement’s indemnification provision clearly and unequivocally provided indemnification for Superior’s own negligence and, to the

extent the 2007 Agreement purported to indemnify Superior “unconditionally” it was unconscionably broad. Superior appealed.

The Court of Appeals affirmed that, where a party is seeking indemnification for its own negligence, regardless of whether it was solely or concurrently negligent, the indemnification provision must be clear and unequivocal. The provision in the subcontract did not meet that standard. The Court agreed with Muhler that the phrase “to the extent” limited the indemnification obligation to Muhler’s own negligence. Citing cases from other states evaluating substantively similar indemnification provisions, the Court also found that the phrase “regardless of whether it is caused in part by a party indemnified hereunder” was insufficient to extend that obligation to Superior’s own negligence.

The Court also found that the 2007 Agreement did not alter the subcontract; Superior had mounted an odd argument that the court should “merge” the two indemnification provisions to produce a third, new provision. The Court agreed with the circuit court that the 2007 Agreement did not express unequivocally an intent to indemnify Superior for its own negligence. Although there is no specific language that has to be used in an indemnification provision to show that intent, it must be clear and unequivocal. 