

IN THIS ISSUE

- Graham Powell Memorial
- Aimee Hiers – Executive Director of the Year
- Judicial Spotlight: Judge Price
- Defending Day-In-The-Life Videos
- Indemnification Clauses in Construction Cases
- Capping Property Damage Claims
- Diversity & Adversary Profiles
- DRI, YLD, and Legislative Updates



**Remembering
Graham Powell**

2023 SUMMER MEETING: JULY 20–22 • 2023 ANNUAL MEETING: NOVEMBER 16–19

TABLE OF CONTENTS

| | | | |
|---|-----------|--|-----------|
| Officers and Board of Directors..... | 3 | 2022 Annual Meeting Recap..... | 33 |
| In Memory of Past President Graham Powell..... | 4 | SCDTAA Golf Tournament Summary | 45 |
| Editors' Note | 6 | 2023 Summer Meeting Preview | 51 |
| Who's Covering Who Again? South Carolina Indemnification Clauses in Construction Defect Cases After <i>Concord and Cumberland</i> | 7 | DRI Happenings..... | 52 |
| Lights, Camera, Action: Defending the New Age Day-in-the-Life Video | 12 | YLD Update | 54 |
| Capping Property Damage Claims | 17 | Legislative Update | 56 |
| Judicial Profile: The Honorable Bentley D. Price..... | 19 | SCDTAA Docket..... | 58 |
| Diversity Profile: Truc Tran | 21 | Verdict Reports | 70 |
| Adversary Profile – Breon C. M. Walker..... | 23 | Case Notes | 74 |
| 2022 Summer Meeting Recap..... | 25 | New Releases from the South Carolina Bar Publications Department..... | 80 |

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

Officers and Board of Directors

OFFICERS 2022-2023

PRESIDENT

Giles M. Schanen, Jr.
Nelson Mullins
2 W. Washington Street
Suite 400
Greenville, SC 29601
(864) 373-2296
Fax (864) 373-2375
giles.schanen@nelsonmullins.com

PRESIDENT-ELECT

Mark A. Allison
McAngus Goudelock & Courie
55 East Camperdown Way
Greenville SC 29601
(864) 242-1713
Fax (864) 242-3199
mallison@mgclaw.com

TREASURER

Fred W. Suggs III
Roe Cassidy Coates & Price
1052 N Church Street
Greenville, SC 29601
(864) 349-2616
Fax (864) 349-0303
tsuggs@roecassidy.com

SECRETARY

William "Trey" W. Watkins, Jr.
Wall Templeton & Haldrup
145 King Street, Suite 300
Post Office Box 1200
Charleston, SC 29402
(843) 329-9500 Ext. 211
Fax: (843) 329-9501
Trey.Watkins@WallTempleton.com

IMMEDIATE PAST PRESIDENT

Graham P. Powell

ACTING IMMEDIATE PAST PRESIDENT

Sarah Wetmore Butler
Copeland, Stair, Valz & Lovell
40 Calhoun Street; Ste. 40
Charleston, SC 29401
(843) 266-8230
sbutler@csvg.law

BOARD OF DIRECTORS 2022-2023

TERM EXPIRES 2023

Stephanie G. Brown
Elizabeth M. McMillan
Curtis L. Ott
Claude T. Prevost III
J. Adam Ribock
Kenneth N. Shaw
Chilton G. Simmons
Todd W. Smyth

TERM EXPIRES 2024

C. Daniel Atkinson
Walter H. Barefoot
Peter E. Farr
Amy H. Geddes
Danielle F. Payne
Jay T. Thompson
Robert E. Tyson, Jr.
Nickisha M. Woodward

TERM EXPIRES 2025

K. Michael Barfield
Ryan A. Earhart
Michael D. Freeman
Rogers E. Harrell III
Alan G. Jones
J. Alexander Joyner
Jessica W. Laffitte
James B. Robey III

CORPORATE COUNSEL REPRESENTATIVE

Lucy Grey Mclver

LEGISLATIVE REPRESENTATIVE

A. Shane Massey

PAST PRESIDENT REPRESENTATIVE

Sterling G. Davies

EX OFFICIO

DRI REPRESENTATIVE

William S. Brown

YOUNG LAWYERS PRESIDENT

George C. James III

YOUNG LAWYERS

VICE PRESIDENT

Nicholas C.C. Stewart

PAST PRESIDENT ADVISORY COMMITTEE

Molly H. Craig
William S. Davies, Jr.
Anthony W. Livoti
T. David Rheney

HEADQUARTERS OFFICE

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

EXECUTIVE DIRECTOR

Aimee L. Hiers
ahiers@pmpamc.com

In Memory of Immediate Past President Graham Powell



The SCDTAA and the South Carolina legal community lost a valued leader on December 2, 2022, when our Immediate Past President, Graham Powell, passed away unexpectedly at the age of 47. Graham, a native of Greenville, North Carolina, practiced law in Charleston for over 20 years. He served on the SCDTAA's Board of Directors since 2010, became an officer of the Association in 2018, and led the Association as president in 2021-2022.

**IN
MEMORIAM
(CONT.)**

Graham worked tirelessly on behalf of the SCDTAA, and made many contributions to the Association. Graham also was a great friend to many, and we will dearly miss his sense of humor, creativity, and passion for life.

While Graham is no longer with us, his impact on our Association is everlasting. Please join us in celebrating Graham's life and honoring his memory. Donations in Graham's memory can be made to the Junior Appalachian Musicians (www.jamkids.org/GrahamPowell) or the charity of your choice. 🎵



Editors' Note

By J. Alexander Joyner and Jessica W. Laffitte



J. Alexander Joyner



Jessica W. Laffitte

As important as our profession is, and it is incredibly important, we are occasionally reminded of perspective; we would be wrong not to recognize and appreciate it. Our association has been shaken by the untimely passing of immediate past president, Graham Powell. Graham was an excellent attorney, but, through a vastly more important lens, he was an excellent person. He will be sorely missed by all those who knew him. Recognizing our place as mere editors of a magazine, we refer our readership to more appropriate sources for a true remembrance of Graham's life, but doing our small, heartfelt part, we dedicate this issue of *The DefenseLine* to his memory.

On the opposite end of the spectrum, we are thrilled to publish in this issue a recognition of Aimee Hiers, who rightfully (if not tardily) earned the Executive Director of the Year Award from DRI. This issue also contains articles touching on indemnification provisions, plaintiffs' Day in the Life videos, and valuation of property damage claims. We also have profiles on Judge Bentley D. Price, Truc Tan, Breon Walker, and updates and recaps from our committees and events.

Thank you to our contributors, authors, and Aimee for their assistance, without which this magazine would not exist. We also thank our incredible sponsors for their critical support of our association and purpose.

Please enjoy this issue of *The DefenseLine*, dedicated to the memory of our friend, Graham Powell. 🏛️

Who's Covering Who Again? South Carolina Indemnification Clauses in Construction Defect Cases After *Concord and Cumberland*

By John Douglas "J.D." Elliott and Richard Cameron Stephenson



John Douglas
"J.D." Elliot



Richard Cameron
Stephenson

When hiring a subcontractor for a construction project, the last thing on any general contractor's mind is costly, prolonged litigation. Unfortunately, however, South Carolina's climate and significant weather history combine to make construction defect claims a reality. While general contractors can (and should) take steps on the jobsite to limit liability, the most important way to limit liability occurs before construction even begins. Therefore, it is imperative for a practitioner to advise its general contractor clients to have enforceable indemnity clauses in their contracts with subcontractors.

Indemnification reallocates the general contractor's liability for construction defect claims and apportions it amongst the subcontractors. South Carolina law defines indemnification as a "form of compensation in which a first party is liable to pay a second party for loss or damage the second party incurs to a third party."¹ Essentially, indemnification allows



a general contractor to recoup some of its losses in litigation from a subcontractor when the subcontractor's work was the impetus of the lawsuit. While indemnification may arise by operation of law, in construction defect cases, it is commonly contractual in nature.² If a general contractor (the indemnitee) does not have an enforceable indemnification clause in its contract with its subcontractors (the indemnitors), it could be liable for the joint negligence of the subcontractor.

While indemnification clauses are construed in a manner consistent with the general rules of contract provisions,³ some legal issues are specifically applicable to indemnification clauses. For instance, any contract that seeks to indemnify an indemnitee for its own sole negligence is forbidden under South Carolina statute.⁴ Further, if the indemnification clause purports to relieve an indemnitee of its own negligence (meaning not just sole negligence, but its joint negligence with the indemnitor), then the clause is strictly construed.⁵ In order to survive strict construction, an indemnification clause must utilize clear and unequivocal terms to manifest its intent.⁶

The S.C. Court of Appeals addressed the requirements for "clear and unequivocal terms" to create a valid indemnification clause in *Concord and Cumberland Horizontal Property Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018). This case involved a common construction defect issue: water intrusion from the windows and doors of the condominium units. In 2010, the plaintiff property regime (referred to simply as "the Regime" in the case) sued numerous entities involved in construction of a condominium complex, including the General Contractor and a window installer (the "Subcontractor"). The

General Contractor claimed its 2006 Contract with the Subcontractor (a standard Associated General Contractors (AGC) subcontract) required the Subcontractor to indemnify it against the Regime's claim. This clause read:

12.1 SUBCONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries) and other contractors and subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work provided that:

(a) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontractor's Work itself) including the loss of use resulting there from, to the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

(b) such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this [a]rticle [12.1].⁷

In 2007, after water intrusion around windows and doors began, the General Contractor and the Subcontractor entered into a second contract. This 2007 Contract acknowledged that several doors and windows already installed in the construction project did not conform to particular warranties, but it stated that it did not amend or affect any of the parties' prior rights and obligations to one another not specifically addressed in the 2007 Contract. The 2007 Contract, which was drafted by the parties, also contained another indemnification clause:

11. In the event either (the General Contractor or the Regime) sued hereafter by or on behalf of any subsequent owner, alleging that one or more of the windows and/or doors do not comply with the original and amended [c]ontract [d]ocuments, or are defectively installed[,] (the Subcontractor) agrees to unconditionally indemnify both (the General Contractor and the Regime) against these allegations and will pay all damages (including reasonable [attorney's] fees) incurred by either or both, as determined by a court of competent jurisdiction or award of arbitration, liability incurred by either or both as consequence including, but not limited to, costs and [attorney's] fees, any remedial costs of expert witnesses, cost of arbitration and all other damages incurred.⁸

Eventually, after multiple years of litigation, the General Contractor and the Subcontractor reached separate settlements with the Regime. The General Contractor then brought indemnification claims against the Subcontractor and filed for partial summary judgment as to its contractual indemnification claims. The General Contractor claimed

the two contracts, or the combination of both, required the Subcontractor to provide indemnification for liability for the Regime's claims. The trial court denied the motion for summary judgment, holding that the clauses were not clear and unequivocal. The trial court found that the term "unconditionally" in the 2007 Contract was too broad and contrary to South Carolina's public policy.

The Court of Appeals affirmed the decision of the trial court, holding that the "clear and unequivocal" standard applies "any time an indemnitee is seeking indemnification for its own negligence, whether sole or concurrent." The Court utilized two cases to reach its conclusion. The first case, *Federal Pacific Electric v. Carolina Production Enterprises*, 298 S.C. 23, 378 S.E.2d 56, (Ct. App. 1989), involved a company leasing a building to a commercial entity. The lessor manufactured and installed an electrical switchgear in the building that exploded and injured the lessee's employee. The employee sued only the lessor, and, in turn, the lessor sought indemnification from the lessee. The second case, *Laurens Emergency Medical Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003), involved a hospital contracting with a medical staffing company. The medical staffing company would hire physicians for the hospital, and the hospital supplied supper personnel and administrators. One of the hospital's employees stole money from the medical staffing company, which it sought to recoup from the hospital via an indemnification clause in the contract.

In both cases, the Court of Appeals noted that the indemnification clauses were held not to be unequivocal or clear in their terms. The *Federal Pacific Electric* indemnification clause provided:

[The appellant] shall indemnify [the respondent] and hold it harmless from and against any damage suffered or liability incurred on account of bodily injury to any person or persons . . . or any loss or damage of any kind in connection with the [I] eased [p]remises during the term of this lease.¹⁰

The *Laurens* clause read:

The [h]ospital will indemnify and hold EMS . . . harmless from and against any and all claims, actions, liability, or expenses . . . caused by or resulting from allegations of wrongful acts or omissions of [h]ospital employees, servants, [and] agents.¹¹


The Court of Appeals first analyzed the 2006 Contract's indemnity clause held that the key phrase "to the extent" in Article 12.1(a) limited the broad and comprehensive language in the first paragraph of the Article. The Court reasoned that the language "to the extent" limited the Subcontractor's liability to payment of damages attributable only to its own negligence, not negligence it may share with the General Contractor. The court ruled that the final phrase, "regardless of whether it is caused in part by a party indemnified hereunder," failed to adequately apprise the subcontractor that it might become liable for the general contractor's own negligence. The Court determined that the indemnity provisions at issue, while "broad, comprehensive and general," did not meet the clear and unequivocal standard.¹² Instead, the Court held that "there must be some language in an indemnity clause that clearly shows the parties' intent to absolve the indemnitee of the consequences of its own concurrent negligence."¹³ The Court noted that the General Contractor would have

a viable contractual indemnification claim if the language in the 2006 Contract read, "[Subcontractor] agrees to indemnify for all damages, regardless of whether the damages are caused in part by a party indemnified hereunder."¹⁴

The Court of Appeals did not delineate in *Concord and Cumberland* what language would be sufficient to show "clear and unequivocal" intent to create an indemnification contract. However, it did provide for what *does not* constitute clear and unequivocal language. The court hinted that the subcontract must flatly state that the subcontractor assumes liability for the general contractor's own negligence to satisfy the "clear and unequivocal" standard. Thus, to protect the general contractor's interests, any valid indemnification clause will need to specify that the indemnitor holds the indemnitee harmless for the indemnitee's own concurrent negligence.

In addition to construction defect litigation, *Concord and Cumberland* is important for general business litigation where an indemnification contract is at issue. The Court of Appeals' holding makes it more rigorous for the indemnitee to be afforded indemnity. At the same time, the holding makes it easier for the indemnitor to avoid indemnity. Practitioners would be wise to analyze their clients' contracts for similarities to the clauses in *Concord and Cumberland*, so they can promptly mount a proper argument and to inform their clients about the impact this may have on their case.

The holding in *Concord and Cumberland* underlines the importance of drafting clear indemnification clauses. Counsel would be wise to craft careful, specific language that provides in clear and unequivocal terms the intent of the indemnitor to hold the indemnitee

harmless for the indemnitee’s concurrent negligence. In addition, in litigation, it is imperative for practitioners to study the nuances of the *Concord and Cumberland* holding and how it relates to the client’s interests. 

Endnotes

- ¹ *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 109, 584 S.E.2d 375, 377 (2003) (quoting *Campbell v. Beacon Mfg. Co.*, 313 S.C. 451, 454, 438 S.E.2d 271, 272 (Ct. App. 1993)).
- ² *Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999).
- ³ *Campbell*, 313 S.C. at 453-4, 438 S.E.2d at 272 (citing *Federal Pac. Elec. v. Carolina Prod. Enter.*, 298 S.C. 23, 378 S.E.2d 56 (Ct.App.1989)).
- ⁴ S.C. Code Ann. § 23-2-10.
- ⁵ *Fed. Pac. Elec. v. Carolina Prod. Enters.*, 298 S.C. 23, 26, 378 S.E.2d 56, 57 (Ct. App. 1989).
- ⁶ *Id.*
- ⁷ *Concord & Cumberland Horizontal Prop. Regime*, 424 S.C. 639, 643-44, 819 S.E.2d 166, 169 (Ct. App. 2018).
- ⁸ *Id.* at 644, 819 S.E.2d at 169.

- ⁹ *Id.* at 649, 819 S.E.2d at 172 (finding that there is no “distinction between sole and concurrent negligence with regard to our supreme court’s policy basis for applying the clear and unequivocal standard.”).
- ¹⁰ *Id.* at 651, 819 S.E.2d at 172-73 (quoting *Federal Pac. Elec. v. Carolina Prod. Enters.*, 298 S.C. 23, 25, 378 S.E.2d 56, 57 (Ct. App. 1989)).
- ¹¹ *Id.* at 651, 819 S.E.2d at 173 (quoting *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003)).
- ¹² *Id.* at 657, 819 S.E.2d at 176.
- ¹³ *Id.*
- ¹⁴ *Id.* at 654, 819 S.E.2d at 175.

Lights, Camera, Action: Defending the New Age Day-in-the-Life Video

By Jessica W. Laffitte



Jessica W. Laffitte

Day-in-the-life videos are a mainstay tool in personal injury jury trials. Such demonstrative items are “often desired because films illustrate, better than words, the impact the injury had on the plaintiff’s life.”¹ As defense attorneys, we all can recognize a day-in-the-life video that is properly limited and straightforward, and one that is . . . not. And while there is an exception to every rule, the growing trend in personal injury litigation is the attempted admission of expensive, highly-edited documentaries, perhaps even narrated, under the guise it is a “typical day-in-the-life video.” One federal court case recognized this trend years ago, stating

Reality reveals to us that, unfortunately, some day-in-the-life videos are no longer being used for their proper purposes but instead, are being introduced solely for the purpose of eliciting sympathy from the jury. While courts recognize that day-in-the-life videos are often appropriate if they merely provide the jury with a true and accurate visual depiction of the plaintiff’s daily activities, courts are also careful to exclude



them when they go beyond that limited purpose and contain hearsay statements or other elements plainly designed to evoke sympathy or gain an unfair advantage, or when the plaintiff testifies at trial and is capable of presenting the same type of evidence in the standard method: through her own testimony.²

While typical day-in-the-life videos still should prompt an objection, they often are admitted, as courts have become increasingly comfortable with the probative value of a traditional day-in-the-life depiction. Thus, in the new age of heavily-produced, often dramatized videos professing to be a traditional day-in-the-life video, how do we defend against admission of this proverbial wolf in sheep's clothing?

Arousal of Sympathy or Emotion

Pursuant to Rule 403 of the South Carolina Rules of Evidence, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. SCRE 403. "Evidence should be excluded if it is calculated to *arouse the sympathy* or prejudice of the jury or is irrelevant or unnecessary to substantiate the facts."³ Videos proffered for admission are unfairly prejudicial when they unduly suggest an improper basis for a decision, usually based on emotion.⁴

While probative value vs. prejudicial effect is the classic mainstay of Rule 403 and argued in nearly every motion in limine, defense counsel would be wise also to draw the Court's attention to the portions of the video intended to arouse

sympathy or influence a jury to rule based on emotion. These will typically include narration and interviews with family and friends.

Cumulative

Rule 403 also prohibits admission of evidence which is cumulative. Often, a living plaintiff and his/her family members will be present at trial and will be able to testify as to the facts including what might comprise a typical day for the plaintiff. Thus, the defense should argue that there is nothing depicted or stated in the video by persons who will be witnesses at trial which they could not instead depict or state live on the witness stand.⁵

Hearsay

Hearsay is perhaps the biggest danger in the new generation of "day-in-the-life videos, wherein numerous family and friends are "interviewed" about the plaintiff. In these highly-edited videos, there are numerous concerns about hearsay. For example, the viewer does not know the question asked (if any) of the person talking, who the interviewer is (if any), who the narrator is, or whether the answer itself was edited. Moreover, often plaintiffs attempt to use these videos in their opening statements, and these videos contain out-of-court statements from persons who either have not been identified as witnesses for trial or who, for whatever reason, may ultimately not testify at the trial despite being identified.

If these videos are admitted, the jury would be barraged with out-of-court statements offered to prove the truth of the matters asserted. And while plaintiffs may argue these within-the-video statements are offered for present sense impressions or to show the plaintiff's state of mind,

it is safe to bet that most of the narration and interview responses within these expensive, highly-produced videos still should not be admitted because they are not statements describing or explaining events as they are being perceived or immediately thereafter.⁶ Additionally, be cognizant of Rule 803(5), as it does not afford any basis for a plaintiff to assert his or her *own* recorded recollection.

Moreover, these interviews or narrations deprive the defendant of its opportunity for a contemporaneous cross-examination, rendering these staged, out-of-court interviews more prejudicial than probative in that present format. SCRE 403.


Lessen the Impact

In the event the trial judge does not exclude the video, look for ways to lessen its impact. As discussed above, argue that portions of the video must be excluded for the foregoing reasons even if other portions appear to be appropriate demonstrative evidence of a plaintiff's injuries or present sense impression. Courts often desire a compromised solution.⁷ Additionally, to draw the distinction between the traditional day-in-the-life video and the new-generation documentaries, request that the video be played without audio, reaching back to the arguments of hearsay and sympathy.

Finally, while such a strategy has had mixed success at best, request that the plaintiffs play the video (if it is to be admitted over your objections) during *voir dire*. As stated by one court in allowing such procedure:

Certainly such films are able to inform and promote a better understanding of the extent of injury or circumstances of the condition involved in the

litigation, as no other evidence can do. For this same reason such films also carry a high potential for arousing sympathy, passion and prejudice for the injured plaintiff. Thus, because litigants have a right to examine prospective jurors to enable them to select a jury that is qualified and competent to determine the facts in issue without bias, prejudice, or partiality, it seems only fair that defendants should be allowed to make prospective jurors aware of the condition or injury, which may be graphically exposed to them during the course of trial. This affords them a meaningful opportunity to “probe an important area of potential bias and prejudice” during *voir dire*.⁸

In short, the new iteration of the day-in-the-life video, which far exceeds the boundaries of the Rules of Evidence, is here to stay. As a defense bar, we must attempt to make every effort to preclude their use at trial. And, if successful, we must share the manner and method for doing so—we and our clients will all benefit. 

Endnotes

- ¹ *Bannister v. Town of Noble, Oklahoma*, 812 F.2d 1265, 1269 (10th Cir.1987).
- ² *Thompson v. TRW Auto. U.S., LLC*, No. 2:09-CV-1375-JAD-PAL, 2014 WL 2612271, at *1 (D. Nev. June 11, 2014).
- ³ *State v. Stokes*, 339 S.C. 154, 159, 528 S.E.2d 430, 432 (Ct. App. 2000) (internal citation omitted) (emphasis added).
- ⁴ *State v. Jackson*, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005); see also *State v. Holder*, 382 S.C. 278,

290, 676 S.E.2d 690, 697 (2009) (“Photographs pose a danger of unfair prejudice when they have an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.”).

⁵ *Bolstridge v. Central Maine Power Co.*, 621 F.Supp. 1202, 1204 (Mn. 1985) (excluding day-in-the-life video as cumulative of testimonial evidence where plaintiff “appears to be able to testify on her own behalf” and “can demonstrate to the jury in open court the activities similar to those depicted in the videotape” and her “relatives and physicians” could “offer similar testimony”).

⁶ SCRE 803(1).

⁷ *TRW Auto. U.S., LLC*, No. 2:09-CV-1375-JAD-PAL, 2014 WL 2612271, at *1 (D. Nev. June 11, 2014) (excluding lengthy day in the life videos, but entertaining possibility of admitting some appropriate video footage without audio).

⁸ *Roberts v. Sisters of Saint Francis Health Services, Inc.*, 556 N.E.2d 662, 668 (Ill. App. 1990).



THE NATIONAL ACADEMY OF
DISTINGUISHED NEUTRALS

SOUTH CAROLINA CHAPTER

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

FEBRUARY 2023

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

www.SCMEIDIATORS.org

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





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

Capping Property Damage Claims

By J. Alexander Joyner



J. Alexander Joyner

Most of us probably recall from law school the basic principle that property damage claims are measured by the tort's or event's impact on the value of that property; however, South Carolina law is a bit more nuanced than this. The good news is that the long history of South Carolina cases on point have been quite consistent.

For nearly a century, South Carolina has recognized two classes of property subject to damage:

1. That which is essentially connected with a premises and has value only by reason of that connection, such as fruit trees, ornamental and shade trees and shrubs; and
2. That which has a value independent and separate from the premises, such as buildings, fences, merchantable timber.¹


Our courts have struggled to value the first class of property damage, initially resorting to the “cumbersome and uncertain method of ascertaining the difference in the value of the premises before and after” the tort.² South Carolina's Supreme Court recently clarified this process, holding that a plaintiff may recover the costs of restoring the land, if either: (1) those costs are less than the diminution in value; or (2) the



“landowner has a personal reason relating to the land for restoring the land to its original condition and when the cost of restoration is reasonable in relation to the damage inflicted.”³ In no event may the plaintiff recover “restoration costs which exceed the market value of the entire parcel prior to the loss.”⁴

Courts apply a different formula to value the second class of property damage claims – those to property improvements and/or other marketable or appraisable items. In these cases, one is to “determine the independent and separate value of the property actually destroyed or damaged and the injury beyond replacement [of that property], if any, to the premises as a whole.”⁵ A 1989 South Carolina Supreme Court opinion generally affirmed this first prong, in stating the “[c]ost of repair or restoration is a valid measure of damages for injury to a building although compensation may be limited to the value of the building before the damage was inflicted.”⁶ Without a better explanation from our courts, the facts of each case likely will dictate what the second prong of additional damages may consist of (i.e., Additional physical damages to the property? Additional consequential damages resulting from the tort?).

In any event, understanding the class under which your case falls and the associated measure of damages will better inform your initial evaluation of the case and direction to your consulting appraiser. Before you stake yourself out too much, though, know that the overarching policy behind calculating a plaintiff’s damages is stated as “restor[ing] the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury

occurred.”⁷ This policy, as understandable and commendable as it is, creates some uncertainty in this otherwise well-defined framework. 

Endnotes:

- ¹ *Hall v. Seaboard Airline Railway. Co.*, 126 S.C. 330 (1923).
- ² *Id.*
- ³ *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475 (2005).
- ⁴ *Id.*
- ⁵ *Hall v. Seaboard Airline Railway. Co.*, 126 S.C. 330 (1923).
- ⁶ *Scott v. Fort Roofing and Sheet Metal Works, Inc.*, 299 S.C. 449 (1989) (distinguishing a Colorado opinion allowing repair costs exceeding the pre-tort building value when the property had personal or special value).
- ⁷ *Hall v. Seaboard Airline Railway. Co.*, 126 S.C. 330 (1923).

Judicial Spotlight: The Honorable Bentley D. Price

By Stephanie G. Brown



Stephanie G. Brown

Judge Bentley D. Price was born in Conway, South Carolina in 1976 and lived in Conway through high school. He is the son of Jimmy and Judy Price of Conway, South Carolina. His father is a retired OBGYN, and his mother is a retired nurse.

Judge Price attended the public schools of Conway, South Carolina. Upon graduation from high school, he attended Wofford College, where he graduated in 1999 with a B.A. in English. While at Wofford College, he lettered in soccer all four years.

After Wofford College, he attended the Stetson University School of Law and received his Juris Doctor in 2002. After graduating from law school, he worked as an Assistant Solicitor for the 9th Circuit Solicitor's Office. Following leaving the Solicitor's Office he was a partner at Query, Sautter, Price, and Forsythe, LLC. He then started his own private practice, The Bentley Price Law Firm, until being elected to the Bench in 2019. He was also a part-time municipal judge for the City of Folly Beach for twelve years.

Judge Price is a member of the South Carolina Bar and admitted to practice in the Fourth Circuit Court of Appeals, the U.S. District Court for the District of South



Carolina, and all South Carolina State Courts. He is also a member of the Charleston County Bar Association.

Judge Price was elected by the South Carolina General Assembly on February 6th, 2019. Judge Price resides in Charleston and is married with two children.

1. Who has been biggest influence on your legal career?

Definitely Grady Query. When I left the Solicitor's Office, we were law partners from 2005-2013 and he made a huge impact in those 8 years. I believe all young lawyers should have a mentor, and in the moment, I didn't realize how much I needed his guidance. In hindsight it made me the Judge I am today.

2. What are mistakes you most often see lawyers making that can be easily corrected?

The biggest mistake lawyers make is not knowing when to stop arguing their point and wrap things up. Sometimes saying the least is the best. This goes equally in trial and their motions practice. Back and forth banter can sometimes lead attorneys to lose track of their strongest arguments, confusing the Judge. The lawyers must remember that they have been married to their case for years and in most cases the Judge is hearing it for the first time.

3. How has use of technology, including remote access capabilities, affected Court operations?

The Virtual access has been extremely effective for the Court system. The ability for lawyers to complete mediation, depositions, status conferences, settlements, etc., remotely has been beneficial, especially for out-of-town counsel and clients.

4. What advice do you have for young lawyers preparing for trial (or court appearance)?


My advice would be to be mindful of not over-trying your case. Attorneys put in so much time preparing for trials and really get to know the facts and issues, but they need to be mindful that the jury is not versed in the law or the

facts of their case, and too much evidence or too many witnesses doesn't always translate well to a jury, and they simply become confused. I meet with every jury after trial and allow my law clerks to ask questions to the jurors and the overwhelming responses are that the trial went on way too long and they were confused as to what role certain witnesses even played. The moral is that less is more.

5. What is something you've learned about the practice of law being on the bench?

As an attorney I rarely had the opportunity to speak to jurors post trial. Since I became a Judge, I made it a practice to allow my law clerks and myself to meet with the jurors after the verdict. I have learned that in all cases jurors consistently understand a lot more about the issues than the lawyers expect. After almost every trial the jurors have indicated that they felt as though a portion of their time had been wasted by the attorneys. On several occasions, my law clerk and I have discussed that the verdict reflects which attorney they wanted to punish.

6. Last book read or current podcast you're enjoying?

As anyone who knows me well will tell you, I do not do a whole lot of extracurricular reading. Since I am not sure what Podcasts are available aside from the Murdaugh Podcasts, I can assure you I've never listened to any. I enjoy spending free time with my family and friends. 

Diversity Profile – Truc Tran, Gallivan White & Boyd

Truc Tran is currently an associate at Gallivan White & Boyd, practicing Workers' Compensation defense.

Upon graduation from The University of South Carolina School of Law in 2013, Truc served as a judicial law clerk to the Honorable D. Craig Brown. Following completion of her clerkship, Truc served as an assistant solicitor for Charleston County in the Ninth Judicial Circuit. She also practiced family law for a short period of time.

What might people be surprised to learn about you?

I was born in Vietnam and I am fluent in Vietnamese.

I am the child of Vietnamese immigrants. I was born in Vietnam and came to the United States with my family when I was three years old. My family was able to come to the United States through a sponsored program. My parents left their lives and families behind to give their



children a chance to have a better life. The sacrifices that they made is the reason why I strive to be the best version of myself and to make sure that other people are given the opportunities that my parents gave me.

Why did you decide to become a lawyer?

It may sound cliché, but I wanted to become a lawyer because I enjoyed reading, writing, and arguing. While at the College of Charleston, I completed internships with both the Solicitor's and Public Defenders' Office and those two experiences solidified my decision to go to law school. Prior to my internships and law school, I had no knowledge of or experience with the law. My parents weren't lawyers, they were hardworking factory workers. I didn't know any lawyers. Growing up, I never needed a lawyer (thankfully!). It may sound stereotypical, but Vietnamese kids in my small community didn't strive to be lawyers, they strived to be doctors. During


my internships, I was able to observe multiple attorneys in the courtroom and realized that the courtroom was where I would be able to put my love for arguing to good use.

Do you think your diversity and experiences affect the way you practice law?

I absolutely believe that my diversity and experiences affect the way I practice law. Growing up, I was very aware that I wasn't like the majority of my classmates and friends. My life was different, my parents spoke a different language, and there were different cultural expectations and practices. As such, I learned from an early age that not everyone was alike, nor did they have to be. I learned everyone had different experiences and viewpoints, and that was okay. As an attorney, I take that knowledge into my practice. I'm able to set aside my own experiences and beliefs to try and see the other side's perspective. I'm able to see that a lot of times, issues are not just black and white, and that there can be gray areas. I truly believe this makes a better attorney.

How do you think the South Carolina defense bar could attract more diversity?

During my time practicing, I have had the privilege of meeting so many great people, including clients, attorneys, and judges; however, what I found was that there are not a lot of people in the legal community who look like me. Similarly, although I had amazing law school classmates, I cannot honestly say that I had a lot of diverse law school classmates. Quite simply, there are not many Asian attorneys in South Carolina, and diversity as a whole is limited in this profession. This is something that we can all work together

to change. The South Carolina Defense Bar can attract more diversity by actively participating in and recruiting in areas that have diverse candidates. If we continue recruiting from the same areas and schools that we have regularly recruited from, our diversity will stay the same. We can participate in more community outreach programs in areas that are not typically served. We can educate the younger generation about the opportunities available in the legal field. 

Adversary Profile – Breon C. M. Walker, The Stanley Law Group

When did you first develop an interest in the practice of law?

As a little kid, my sister, Meghan, and I would play “court” with our grandfather. He was always the witness and Meghan and I would take turns playing lawyer and judge. I have no idea where this game came from other than watching tv and our imaginations. Needless to say, we both ended up being lawyers, so I guess the game served its purpose.

You used to be very involved in the SCDTAA as a defense attorney at Gallivan White & Boyd, PA – what were some benefits of the organization you’ve taken with you to the plaintiff’s side?

The friendships I made with other defense attorneys in SCDTAA have helped immensely on the plaintiff’s side. Being able to pick up the phone and resolve a case or a litigation dispute because I know opposing counsel and we have mutual respect is irreplaceable. Another major benefit is the SCDTAA Annual Meeting and the opportunity to spend one-on-one time with members of our judiciary. I found those experiences to be invaluable as I have navigated my career.

What made you want to transition to the plaintiff’s side of the law?

I got to a point where I became frustrated with the insurance



industry...the constant restructuring, the excessive cutting of bills, the treatment of all claims as if they fit into a calculator to determine their value. I ultimately decided that I would be happier taking my years of experience representing these companies and, instead, advocating for personal injury clients.

How did you come to join forces with your current firm?

I have known the Stanleys my entire life and have always respected them personally and professionally. Once I decided I wanted to make the switch, it was just a matter of finding the firm that was the best fit for me, which was The Stanley Law Group.

From the plaintiffs' perspective, what phase of litigation is typically most frustrating?

Probably moving the case along and managing the client's expectations. Once you have done everything you can to get a case ready, there is really nothing you can do but wait until it appears on a trial roster. The personal injury client does not always understand that aspect because this is typically their first time involved in litigation.

When was the last time you tried a case and how did it turn out?

Summer 2021 in front of Judge J. Michelle Childs. It ended up being a defense verdict, but I have the honor of being able to say I tried a case in front of Judge Childs before she was appointed to the D.C. Circuit.


With trials becoming relatively scarce, mediation has obviously become one of the biggest aspects of civil litigation.

What are some of the most effective mediation techniques you've seen employed by defense attorneys?

This is a tough question becomes it seems like more and

more cases are NOT being resolved at mediation (or maybe it's just me!). That being said, familiarizing the adjuster with the intricacies of SC venues is extremely important. We are typically dealing with an adjuster who is out of state and unfamiliar with how things operate here. It is a lot more effective when defense counsel has properly prepared his/her adjuster on the particular venue and how it will affect the case value.

Do you think your time at the defense firms made you a better a plaintiffs' lawyer?

Absolutely! From case evaluation to preparing clients for depositions, I'm constantly thinking about it from the defense perspective since that is where I spent most of my career. I have also found that it puts clients at ease and builds trust when I tell them I used to practice defense and can let them know what to expect from the other side. Having both perspectives has been invaluable to me and I wouldn't have it any other way. 

2022 Summer Meeting Recap

By Michael D. Freeman



Michael D. Freeman



The state's best defense trial attorneys once again ascended upon the city of Asheville, North Carolina this past July to take over the Omni Grove Park Inn and convene the organization's 55th Annual Summer Meeting

with their families. Amidst the camaraderie, outdoor activities, golfing, spa appointments and general revelry, most of us also attended a few hours of CLE courses, which ended up being the highlight of the entire weekend.

SCDTAA EVENTS (cont.)

2022 Summer Meeting Recap

Following the membership meeting on Friday morning, we were honored to have with us former South Carolina Circuit Court Judge, SC State House Representative, USAF Lt. (Ret.) and current Chief Deputy Attorney General Jeff Young. Jeff provided a fascinating deep dive into the many services the South Carolina Attorney General's office provides the citizens of the Palmetto State including such efforts as protection of victims' rights, fighting internet crimes against children, and combating human trafficking. He outlined the tireless efforts of Attorney General Alan Wilson and his office to protect the rights of South Carolinians and gave us some insight into how we can utilize their services in our own civil defense practices.

We were then treated to two dynamic breakout sessions. Jennifer Newman (Collins & Lacy) presented some valuable perspective on "Being a Workers' Compensation Defense Attorney in 2022." Meanwhile, Ken Shaw (Haynsworth Sinkler Boyd) provided an overview of settlement approval procedures, including some more complex issues that arise involving minors, incapacitated individuals, and the complicated intersection between our state approval statutes and the Medicare, Medicaid, and SCHIP Extension Act of 2007. Ken then joined a panel of some of our most outstanding legal mentor role-models including Dr. Barbara Wagner (Barnwell Whaley Patterson & Helms LLC), Sarah Wetmore Butler (Copeland, Stair, Valz & Lovell, LLP) and David A. Anderson (Richardson Plowden & Robinson, PA), moderated by Dan Atkinson (Wilkes Atkinson & Joyner, LLC). This diverse panel of experienced practitioners discussed what has worked, what hasn't, and what might be overlooked in advancing the next generation of defense trial lawyers in a firm setting.



After the breakout sessions, Jason Barefoot with SEA Linted joined us to present his "Examining Potential Ignition Sources in a Flammable Gas Mixture: A Case Study" which centered around an arson murder investigation conducted by Jason and others while he was a special agent with the South Carolina Law Enforcement Division. Jason detailed the investigative and scientific methods involved in eliminating environmental ignition sources during the investigation, leading to the conclusion that the fire was set intentionally. With a history of supporting our organization and programming, SEA was our 2022 Summer

SCDTAA EVENTS (cont.)

2022 Summer Meeting Recap

Meeting Sapphire Sponsor and we were pleased to have them back as an industry partner for this event.

We ended our first day of CLE sessions on a high note with Boeing Vice President & ODA Ombudsperson Mark Fava, sharing lessons in civility, humility and humanity he learned during his time as a naval officer, a law clerk to a U.S. District Court judge, a private practitioner, and as a corporate attorney. The presentation was based upon his recent SC Lawyer Weekly article “What I Learned from the Judge: Reflections on Civility, Professionalism, and the Practice of Law.” This presentation was so well received by the membership that Mark has since created an on-demand CLE presentation with the South Carolina Bar. I highly encourage anyone who missed this life-changing live presentation to go watch Mark’s recording through the Bar’s online course offerings.

At the conclusion of the Friday sessions, the membership scattered across Asheville in the pursuit of fun and adventure. The association offered its perennially popular and highly competitive golf tournament, as well as an axe throwing and beer tasting lunch and a guided electric bike tour of the city of Asheville. Some of us closed the evening with the annual Bluegrass, Blue Jeans and Barbecue dinner on the Grove Park’s terrace overlooking the Blue Ridge Mountains. Many others of us lasted well into the early morning hours enjoying all the fun that the Grove Park and the city of Asheville’s night-life have to offer.

Our Saturday morning session began with a SA/MH CLE led by SCDTAA member Mike Ethridge (Ethridge Law Group). Many of you know that, along with being a highly skilled litigator, Mike is the founding chair of the South Carolina Bar’s Attorney Wellness Committee and a member



of the South Carolina Bar’s Lawyers Helping Lawyers Commission. However, you might not know that in his free time, Mike is also an accomplished artist and photographer. Mike presented his labor of love, “Lawyer Mind/Artist Mind: A Place Where Two Worlds Meet” a showcase of attorneys who engage in artistic outlets, in part, as an effort to find balance between the rule driven rigid confines of their profession and the font of creativity and passion that exists, to one degree or another, in all of us. The exhibition of his work, premiering at the upcoming South Carolina Bar Annual Meeting, will show attorneys engaged in their artistic

SCDTAA EVENTS (cont.)

2022 Summer Meeting Recap



medium of choice, and discusses the impact such endeavors have on balancing mental health and overall happiness for members of the profession. Mike previewed photographs of several lawyer artists, including SCDTAA's past president John Wilkerson who finds joy and inspiration through woodworking. Mike's insights on mental health and our profession were profound, both in their magnitude and simplicity. It is incumbent upon all of us as members of the profession to recognize the signs of substance abuse and mental health issues in ourselves and our friends and



colleagues. There is an epidemic within the profession, but there is hope and help available to those who need it.

Following Mike was a presentation by SCDTAA partner and Summer Meeting Platinum Sponsor Exigent Group Limited. Jeffrey Jannarone gave a quick and thorough discussion on issues in dram shop liability evidentiary standards. Central to his discussion was current evidentiary trends in bartender/server liability for negligence and the "or otherwise" language relating to service of intoxicated patrons.

SCDTAA EVENTS (cont.)

2022 Summer Meeting Recap



Our generous diamond level sponsor this year was longtime SCDTAA supporter Applied Building Sciences, Inc. We were honored to have ABS principal and professional engineer Jason Gregorie with us providing an insightful update of recent construction cost escalations and their projected impact on construction trends in the immediate future, a case study of the Harmon Tower construction defect litigation out of Las Vegas, and an overview of his recent peer-reviewed publication “Investigation of Constructed Facilities, Sampling Methodologies” written for the American Society of Civil Engineers, which is a guide on the topic of sampling size and methods for construction defect investigations.

We closed the Summer Meeting with a final breakout session. SCDTAA board member and current President-Elect Mark Allison (McAngus Goudelock & Courie) gave our workers’ compensation practitioners a legal update on comp law for 2022, while Jessica Laffite (McAngus Goudelock & Courie)

moderated an engaging panel discussion including Nickisha Woodward (Turner Padgett Graham & Laney, P.A.), Chilton Simmons (Rogers Townsend, LLC), David Rheney (Gallivan, White & Boyd), and veteran mediator Frank Smith (FJS ADR Services, LLC) which examined the increasing prevalence of staged “Day in the Life” videos, their use and effectiveness in ADR proceedings, their admissibility at trial, and effective tactics for mitigating their potential impact through targeted discovery and motions practice.

It was an honor to chair the 55th Annual Summer Meeting, and I want to once again thank our generous sponsors for making the event possible. I also want to thank the SCDTAA members who answered the call to donate their time and wisdom to address cutting edge issues facing today’s defense litigation practice. Our programming continues to be successful due to the collaborative willingness of our active membership to share knowledge and experience for the advancement of the defense bar.

SCDTAA EVENTS (cont.)

2022 Summer Meeting Recap

I first attended the Summer Meeting as a young attorney shortly after beginning my career as a defense attorney. This meeting, all those years ago, was one of my first opportunities to engage and socialize not only with my young lawyer peers, but with the seasoned veterans in the profession, forging lasting, valuable relationships that have survived the nearly two decades since. This meeting in particular is a chance for defense bar colleagues to gather at a meal table with families instead of a conference table with clients. I urge everyone to consider sending your firms' young attorneys to the 56th Annual Summer Meeting in 2023 and beyond to forge their own relationships and learn defense practice from the best in our business. 🏛️



SUMMER MEETING

EXHIBITORS

DIAMOND



**APPLIED
BUILDING
SCIENCES**

SAPPHIRE



Know.

PLATINUM

exigent

GOLD

FORV/S

EXHIBITORS

SILVER



EXHIBITOR



SPONSORS



2022 Annual Meeting Recap

By C. Daniel Atkinson



C. Daniel Atkinson



SCDTAA convened for its Annual Meeting on November 3-6, 2022, at the Ritz-Carlton in Amelia Island, Florida. Attendees, judges, and exhibitors had a great weekend with informative sessions, great weather, and fellowship. On Friday night, Giles Schanen took office as SCDTAA's President for 2023. Highlights included golf, fishing, football, and the annual oyster roast. Members

were updated on current issues regarding evidence and issue preservation in our trial courts, and we received updates on best practices in depositions of life care planners. Ashley Braithwaite, President of the North Carolina Association of Defense Attorneys, joined to provide insight into lawyer-led voir dire, to help SCDTAA determine the best means of addressing anticipated bills in the South Carolina General Assembly. Our goal

SCDTAA EVENTS (cont.)

2022 Annual Meeting

for this year's meeting was a return to a traditional meeting after years of Covid-required changes, and this year's committee focused on substance-heavy topics, to allow our members to more effectively represent clients.

The Committee is grateful to all of our speakers, but I wish to extend a special thank you to Hoot Gibson, who dazzled all of us with his life story as a test pilot and astronaut, and how that experience informed his work as an expert witness. We also wish to thank Jack Kennedy and Drew Bazemore of Young and Associates, who taught us about the use of technology in investigations, as well Michael Fryar of InQuis, who gave us helpful tips on how to question Life Care Planners in depositions and at trial. Finally, we wish to thank Judge Dan Coble and Judge Paul Burch for offering us helpful information on evidentiary issues and best practices for jury selection.

As always, we thank Aimee Hiers and her team for helping to plan and conduct an excellent meeting. We hope all members will plan to attend the 2023 Annual Meeting November 16-19th at The Sanctuary at Kiawah Island. 🏠



Enjoy additional photos on the following pages

**SCDTAA
EVENTS
(cont.)**

**2022 Annual
Meeting**



**SCDTAA
EVENTS
(cont.)**

**2022 Annual
Meeting**



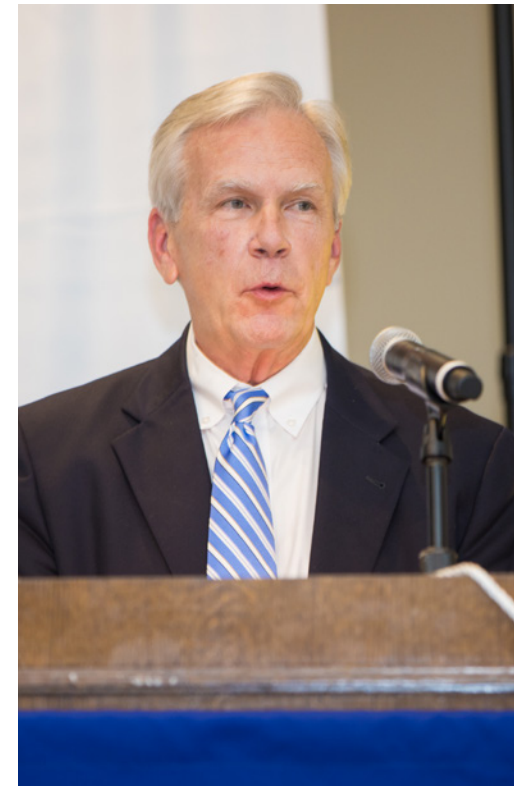
SCDTAA EVENTS (cont.)

2022 Annual Meeting



**SCDTAA
EVENTS
(cont.)**

**2022 Annual
Meeting**



**SCDTAA
EVENTS
(cont.)**

**2022 Annual
Meeting**



SCDTAA EVENTS (cont.)

2022 Annual Meeting



**SCDTAA
EVENTS
(cont.)**

**2022 Annual
Meeting**



SCDTAA EVENTS (cont.)

2022 Annual Meeting



**2023
ANNUAL MEETING
NOVEMBER 16-19TH**

**AT THE
SANCTUARY AT
KIAWAH ISLAND**

SPONSORS

DIAMOND LEVEL EXHIBITOR

InQuis

Evidence-Based Rehab Experts

SAPPHIRE LEVEL EXHIBITOR



GOLD LEVEL EXHIBITORS



**SCDTAA
EVENTS
(cont.)**

**2022 Annual
Meeting**

SPONSORS

SILVER LEVEL EXHIBITORS



JURIS MEDICUS



Know.



LAW FIRM SPONSORS



SCDTAA Golf Tournament Summary

By Elizabeth McMillan



Elizabeth McMillan



On 09/22/22, the SCDTAA held its annual golf tournament at the Orangeburg Country Club. We had a great turnout and put together twelve teams for the field. Although the weather set a record-breaking temperature (at least it felt like it) for September, the course was beautiful and we enjoyed various wildlife spectacles while playing. Gallivan

SCDTAA EVENTS (cont.)

Golf Tournament Summary

White & Boyd took home the primary honors for the tournament, but all teams appeared to have a great time. As always, we appreciated the numerous sponsors who supported the tournament, including our primary sponsor, Inquis Global, LLC. We look forward to getting back out there next year. 🏌️



Table of Contents

Enjoy additional photos on the following pages

SCDTAA EVENTS (cont.)

Golf Tournament Summary



SCDTAA EVENTS (cont.)

Golf Tournament Summary



**SCDTAA
EVENTS
(cont.)**

**Golf
Tournament
Summary**



SCDTAA EVENTS (cont.)

Golf Tournament Summary



Table of Contents

2023 Summer Meeting Preview

By J. Alexander Joyner




J. Alexander Joyner



SCDTAA's Summer Meeting will return to The Omni Grove Park Inn on July 20-22, 2023. In addition to the usual and welcomed panoramic views and escape from the heat, we look forward to presenting another excellent slate of speakers and social events.

Thursday will include a Young Lawyers and Emerging Leaders Happy Hour and a Silent Auction. After

Friday morning's presentations, a golf tournament and local adventures are available to entertain attendees before the dinner event. We will close out the event with additional speakers Saturday morning.

Be sure to join us in Asheville for the summer's best CLE offering! 

DRI HAPPENINGS

By William S. Brown, DRI State Representative for South Carolina



William S. Brown

DRI is the largest and leading organization of civil defense attorneys and in-house counsel in the world. Membership provides access to resources and tools for attorneys seeking to provide high-quality, balanced and excellent service to clients and corporations. DRI has the specialized relationships, resources, and programs to help expand your network, grow your career, and build your business. We are not just a part of your career; we're a partner in your career. As your State DRI Representative, I urge you to renew your existing membership or sign up to be a part of this exciting organization. Get involved and it will pay off in your practice and practice development.

The DRI Annual Meeting was held in the last week of October 2022 in Philadelphia, Pennsylvania. The Annual Meeting provided great opportunity for networking and education. It is also the occasion on which DRI presents awards and elects new leaders. At the Annual Meeting, the following individuals were elevated and elected to lead DRI over the next year:

President, Lana A. Olson with Lightfoot, Franklin & White LLC in Birmingham, AL;

President-Elect, Patrick J. Sweeney with Sweeney & Sheehan in Philadelphia, PA;

First Vice President Anne M. Talcott with Schwabe Williamson & Wyatt PC in Portland, OR;

Second Vice President, R. Jeffrey Lowe with Kightlinger & Gray LLP in New Albany, IN;

Immediate Past President, Douglas K. Burrell, with Chartwell Law in Norcross, GA; and

Secretary/Treasurer, Kathleen J. Maus with Butler Weihmuller in Tallahassee, FL.

The DRI Board of Directors also elected four individuals to join them as national directors (each serving three-year terms) and four new regional directors (also serving three-year terms):

NATIONAL DIRECTORS

Marie E. Chafe with Conn Kavanaugh Rosenthal Peisch & Ford LLP, in Boston, Massachusetts;

Dessi N. Day with Greene & Roberts LLP, in San Diego, California;

Catherine Ava Leatherwood with Rogers Townsend, LLC, in Columbia, South Carolina; and

Barclay Wong with Drewry Simmons Vornehm LLP, in Carmel, Indiana.

REGIONAL DIRECTORS

Michael L. Dailey with Schmidt Dailey & O'Neill LLC, in Baltimore, Maryland, Mid-Atlantic Region;

Renée Welze Livingston with Livingston Law Firm, in Walnut Creek, California, Pacific Region;

Christopher J. Pyles with Sulloway & Hollis PLLC, Concord, in New Hampshire, Northeast Region; and

Tanner Walls with Moye White LLC, in Denver, Colorado, Mid Region.


Additionally, we are proud to share that our Executive Director, Aimee Hiers, received DRI's Executive Director Award at DRI's Annual Meeting. This national award is presented to the DRI State or Local Defense Organization Executive Director who best fosters a relationship between their Organization and DRI.

Aimee, who has served as SCDTAA's Executive Director since 1999, is exceptionally deserving of this recognition. Aimee oversees all day-to-day activities of the Association, including, but certainly not limited to, coordinating our Summer and Annual Meetings, Trial Academy, golf tournament, and various seminars and CLE events, managing our relationships with members and sponsors, and representing our Association at DRI and SLDO meetings around the country. The high quality of the SCDTAA's offerings is a direct result of Aimee's hard work, which she always performs with enthusiasm and professionalism. We are elated that Aimee's remarkably loyal and devoted service to our Association was recognized by DRI through the Executive Director Award, and we congratulate

Aimee for this tremendous accomplishment.

Shown in the photo is Past DRI President Douglas Burrell and the current DRI President Lana Olson during the DRI Annual Meeting in Philadelphia, PA.

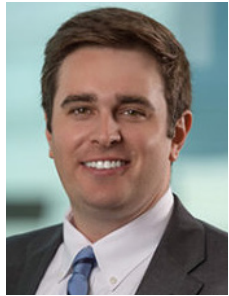


The DRI regional meeting for the Mid-Atlantic Region (the region of which South Carolina is a member) is slated to be held during the last week of April in New Orleans. Please consider attending the regional meeting or any of the many great seminars presented by DRI. If you need more information about DRI, feel free to contact me or go to DRI.org. 



Young Lawyers Division Update

By George C. James III



George C. James III

As we move into 2023, the organization currently has 851 members, which is up from 824 last year. As membership increases, I would like to address and discuss the opportunities provided to young attorneys in the organization. The Defense Trial Attorneys have a separate designation for young attorneys. All members of the Association who are thirty-five years of age or less or have been engaged in the practice of law for 10 years or less are eligible for membership in the Division. We really appreciate young lawyers, and there are a number of ways you can be involved further.

A great way to get involved is to enter the Emerging Leader Program. This program requires an individual participate in 1) Trial Academy; 2) A Stand Alone Seminar/CLE or write an article for *The DefenseLine*; 3) Complete the “Emerging Leaders” programming and breakout at Either the Summer

or Annual Meeting; 4) Serve on a Committee; and 5) Be a current member of the SCDTAA.

Taking these opportunities in order, please be on the lookout for an invitation to sign up for the Trial Academy that will take place in Greenville, South Carolina in either May or June 2023. With the decline of actual jury trials, this CLE is one of the best this organization offers. Participants attend two days of instruction from members of both the Plaintiffs’ and Defense bar on all topics from opening statements to closing arguments, and on the final day of the program, participants conduct a mock trial in front of sitting South Carolina (State or Federal) judges. It is a great opportunity to meet other attorneys that you will practice with in the future and to gain valuable insight from those that have tried cases.


Second, various seminars are offered that range from a

variety of topics. Please be on the lookout for invitations to these events. Third, the next meeting will be the Summer Meeting that will be held in July 2023 at the Grove Park Inn in Asheville, North Carolina. While at the Summer Meeting, there are a variety of CLEs and speakers available in addition to other activities offered by the hotel. Also, the organization holds a silent auction with items provided by the members that can range from gift baskets of various kinds to autographed sports memorabilia to vacations at destinations such as the Sanctuary in Kiawah. If you would like to assist with the Silent Auction and/or provide an item or items to be auctioned off, please contact Aimee Hiers or myself.

As for the last requirement to become an Emerging Leader, we are always in need of people to assist on the various committees within the organization, and if you would like to assist, please contact us to get involved. *The DefenseLine* is always looking for content for its semi-annual publications. If there is an interesting issue that you have recently researched or have observed a national trend that may impact South Carolina law, write an article to explain its significance to the defense bar, and it may be selected.

To date, 8 people have graduated from the program, and 21 people are currently participating in program. For your information, a number of the graduates (including myself) are on the SCDTAA Board of Directors. Again, if you would like to join this program, or just learn more about it, please contact Aimee Hiers.

Finally, a Vice President for the Young Lawyers Division will need to be elected for 2024-2025. Part of the responsibilities of this position are attending the Summer and Annual Meetings, obtaining items for the silent auction, and assisting with the Trial Academy. This role is a four year commitment as the Vice President moves into the Presidency after two years. If you are interested in this position, please contact Aimee Hiers, and we will likely have elections on the position in the late summer or fall of this year.

I hope that this has been informative, and I hope that you are encouraged to get more involved in this great organization. Virtual attendance for depositions and hearings appears to be here to stay, and I am not complaining—leaving Charleston at 3:00 after an expert deposition only to be welcomed by Friday traffic is not something I want to relive. But with these virtual options, you miss interacting with other attorneys at roster meetings, motion hearings, and depositions. However, the ability to participate in this organization and interact with peers and potential mentors outside of a work environment has been invaluable to my own practice. I would like for you to have the same experience. 

Legislative Update

By Jeffrey N. Thordahl, SCDTAA Lobbyist



Jeffrey N. Thordahl

Happy New Year. Legislatively, 2022 ended with a bang which sets up a busy 2023. When the dust settled after the elections in November, the House of Representatives saw many changes. The House Republican Caucus increased their majority to 88 Republicans with 36 Democrats. Overall there are 27 new House members out of 124. Almost all of the House Committee are now Chaired by a different Representative than last session.

Lawyer Legislators continue to Chair several of the Committees including the two with the most influence over the legal community. Representative Bruce Bannister, Greenville, was elected Chairman of the House Ways and Means Committee. Chris Murphy's moving to the Ways and Means Committee opened the door for Representative Weston Newton, Bluffton, to be elected Chairman of the House Judiciary Committee. Jeff Johnson, Conway, was elected Chair of the House Oversight Committee. Jay Jordan, Florence, remains Chairman of the Ethics Committee. Of course Representative Murrell Smith, Sumter, stepped away as Chair of the Ways and Means Committee and was elected speaker of the House.


The new two-year legislative session begins in January. Already almost 1000 bills have been prefiled by the House and Senate. The bills introduced so far include the Voir Dire bill reintroduced from the last session; several bills laying out different ways to reform the Judicial Merit Selection



**LEGISLATIVE
UPDATE
(cont.)**

Commission; Judicial Election; Tort Reform (apportionment of damages); Workers Compensation legislation; Tort Claims Act and more. Not all of these bills will receive hearings in 2023 and some will move faster than others. Stay tuned for updates.

Among the big legislative efforts next year is how the state will allocate the significant budget surplus in both one-time money and in new recurring money. With close to \$3 billion in one-time money, available there are many needs that the state can address. In addition, there will be almost \$1 billion in new recurring money. Other topics that are likely to be dealt with in 2023 are the reform of the Certificate of Need program, creating an Education Scholarship Account and Medical Marijuana authorization.

Governor McMaster was sworn in with the other Constitutional Officers on January 10th. The legislative session began on January 9th. With this election cycle over, the next one begins. In two years not only will all the House seats be up for reelection, but all the Senate Seats will be as well. 

Save the Date

SOUTHEASTERN WOMEN LITIGATORS CONFERENCE



MARCH 22-23, 2023
HILTON HEAD, SC
THE SONESTA RESORT

Registration is Open



SCDTAA Docket

Mulbry and Peters join Wilkes Atkinson & Joyner

Wilkes Atkinson & Joyner, LLC, is pleased to announce that Reed Mulbry has joined its Charleston office, and Brian Peters has joined the Spartanburg office.

Mulbry is a Charleston native, and he is a graduate of Wofford College and the University of South Carolina School of Law, where he graduated *magna cum laude*. He is licensed to practice in South Carolina and North Carolina. He joins the firm after having served as law clerk for Judge Perry Gravely in South Carolina's Thirteenth Judicial Circuit and having spent four years practicing in the Charleston County's Public Defender's Office. Reed practices in the areas of construction litigation, professional negligence defense, and general civil litigation.

Peters is a native of Mechanicsburg, Pennsylvania, and a graduate of Messiah University. He is a *magna cum laude* graduate of the Florida International University School of Law, and he is licensed to practice in South Carolina and Florida. He previously worked with a Florida-based regional defense firm after in/externships with Judge Adalberto Jordan of the U.S. Court of Appeals for the Eleventh Circuit and Judge Kathleen Williams of the U.S. District Court for the Southern District of Florida. Brian practices in the areas of construction litigation, aviation litigation, business law, and general civil litigation.

Atkinson appointed Town Attorney

The Town Council of the Town of Lyman, South Carolina, has voted to appoint Dan Atkinson, of Wilkes Atkinson & Joyner, LLC as Town Attorney. Dan's background includes work in administrative law, governmental liability, construction law, and real estate law.

Richardson Plowden *Best Lawyers in America*®

Richardson Plowden is pleased to announce that *Best Lawyers in America*® and *U.S. News & World Report* has recognized the firm a "Best Law Firm" Metropolitan First-Tier Ranking for Columbia, S.C., in the areas of Construction Law; Litigation; Product Liability Litigation – Defendants & Tax Law.

Haynsworth Sinkler Boyd Recognized as a 2023 "Best Law Firm" by U.S. News – Best Lawyers®

Haynsworth Sinkler Boyd has been named a top-tier firm by U.S. News – Best Lawyers® in its 2023 "Best Law Firms" rankings for the 13th consecutive year.

The firm earned a national ranking in [Litigation – Construction](#) and was recognized regionally for 67 practice areas.

The following practice areas received Metropolitan Tier 1 Rankings:

Charleston

- Business Organizations (including LLCs and Partnerships)

- Commercial Litigation
- Corporate Law
- Economic Development Law
- Litigation - Real Estate
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Public Finance Law
- Real Estate Law
- Tax Law

Columbia

- Appellate Practice
- Banking and Finance Law
- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Bet-the-Company Litigation
- Business Organizations (including LLCs and Partnerships)
- Commercial Litigation
- Corporate Law
- Insurance Law
- Litigation - Banking & Finance
- Litigation - Bankruptcy

- Litigation - Construction
- Litigation - Real Estate
- Litigation - Securities
- Mass Tort Litigation / Class Actions - Defendants
- Mergers & Acquisitions Law
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Public Finance Law
- Real Estate Law
- Securities / Capital Markets Law
- Securities Regulation
- Tax Law
- Trusts & Estates Law

Greenville

- Bet-the-Company Litigation
- Commercial Litigation
- Construction Law
- Economic Development Law
- Health Care Law
- Litigation - Banking & Finance
- Litigation - Construction

- Litigation - ERISA
- Litigation - Intellectual Property
- Litigation - Mergers & Acquisitions
- Litigation - Real Estate
- Mass Tort Litigation / Class Actions - Defendants
- Medical Malpractice Law - Defendants
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Professional Malpractice Law - Defendants
- Public Finance Law
- Real Estate Law

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

H. Mills Gallivan of Gallivan White Boyd awarded the Richard Boyette Award

The Richard Boyette Award is presented to an individual who has:

- Demonstrated a commitment to excellence in judicial education;
- Shown exceptional creativity and dedication in program development;

- Excelled in fundraising activities on behalf of NFJE; and
- Exemplified professionalism in promoting the case for a well-educated, independent judiciary.

Over his many years of dedication and service to the NFJE, Mills has not only met each criteria, but exceeded them and demonstrated true commitment to the NFJE and its mission.

Best Lawyers® Lists Twenty-Six Gallivan White Boyd Attorneys For 2023

Twenty-three attorneys have been included in the 2023 edition of *The Best Lawyers in America*®. With an almost 40-year history of highlighting top legal talent in America, *Best Lawyers*® has become an important resource for finding experienced lawyers nationwide. Peer-reviewed listings by *Best Lawyers*® are now published in almost 75 countries around the world.

Gallivan White Boyd congratulates the following attorneys included on the 2023 *Best Lawyers*® list:

CHARLESTON

- **A. Grayson Smith**
Personal Injury Litigation - Defendants

COLUMBIA

- **A. Johnston Cox**
Insurance Law
Personal Injury Litigation - Defendants

- **Gray T. Culbreath**
Appellate Practice
Bet-the-Company Litigation
Commercial Litigation
Mass Tort Litigation / Class Actions - Defendants
Personal Injury Litigation - Defendants
Product Liability Litigation - Defendants
- **John E. Cuttino**
Litigation - Construction
Personal Injury Litigation - Defendants
Product Liability Litigation - Defendants
- **Lindsay A. Joyner**
Commercial Litigation
Litigation – Banking and Finance
- **John T. Lay, Jr.**
Bet-the-Company Litigation
Commercial Litigation
Insurance Law
Mass Tort Litigation / Class Actions - Defendants
Personal Injury Litigation - Defendants
Product Liability Litigation - Defendants
- **Shelley S. Montague**
Construction Law
Insurance Law
Litigation - Insurance
Personal Injury Litigation - Defendants
- **Curtis L. Ott**
Commercial Litigation
Product Liability Litigation - Defendants

GREENVILLE

- **Deborah C. Brown**
Employment Law - Individuals
Employment Law - Management
Workers' Compensation Law - Employers
- **Amity S. Edmonds**
Workers' Compensation Law - Employers
- **T. Cory Ezzell**
Workers' Compensation Law - Employers
- **H. Mills Gallivan**
Arbitration Mediation
Workers' Compensation Law - Employers
- **Jennifer E. Johnsen**
Commercial Litigation
Employee Benefits (ERISA) Law
Insurance Law
- **Carter Massingill**
Litigation - Construction
- **C. Stuart Mauney**
Mediation
Medical Malpractice Law - Defendants
Personal Injury Litigation - Defendants
Professional Malpractice Law - Defendants
- **C. William McGee**
Personal Injury Litigation - Defendants
Product Liability Litigation - Defendants

- **Duffie Powers**
Commercial Litigation
- **Jared M. Pretulak**
Workers' Compensation Law - Employers
- **Phillip E. Reeves**
Insurance Law Litigation - Insurance
Personal Injury Litigation - Defendants
Product Liability Litigation - Defendants
- **T. David Rheney**
Insurance Law Litigation - Insurance
Personal Injury Litigation - Defendants
Product Liability Litigation - Defendants
- **Ronald G. Tate, Jr.**
Commercial Litigation Construction Law
- **Zachary L. Weaver**
Commercial Litigation
- **Ronald K. Wray II**
Commercial Litigation
Product Liability Litigation - Defendants
Railroad Law

30 Gallivan White Boyd Attorneys Have Been Listed To The 2022 Legal Elite Of SC

30 Gallivan White Boyd attorneys have been nominated and selected by their peers for inclusion in *Columbia Business Monthly*, *Greenville Business Magazine* and *Charleston Business Magazine's 2022 Legal Elite*.

Legal Elite winners are chosen by area attorneys

that are members of the South Carolina Bar. This is the only regional awards program that gives every active attorney the opportunity to participate. The magazine lists the top recipients in 26 categories.

Congratulations to the following attorneys who have been recognized:

- Blakely Bellamy- Workers' Compensation
- Debbie Brown- Employment
- Ian Conits - Business Litigation, Estate & Trust - Litigation
- A. Johnston Cox- Personal Injury
- Jordan Crapps- Business Litigation
- Gray Culbreath- Product Liability
- Natalie Ecker- Insurance
- Amity Edmonds- Workers' Compensation
- T. Cory Ezzell- Workers' Compensation
- H. Mills Gallivan- Workers' Compensation
- Casey Gonyea - Workers' Compensation
- Jennifer Johnsen- Insurance
- Laura Jordan - Appellate
- John T. Lay- Business Litigation, Professional Liability
- Carter Massingill- Business Litigation, Construction, Insurance
- Stuart Mauney - Mediation, Professional Liability

- William Maurides – Product Liability
- Kyle McGann– Construction
- Shelley Montague–Insurance
- Duffie Powers– Bankruptcy & Creditors Rights, Bankruptcy & Debtor Rights, Construction
- Jared Pretulak–Workers’ Compensation
- Michael Rabb- Personal Injury
- Phillip Reeves– Business Litigation, Insurance, Product Liability, Personal Injury
- David Rheney– Insurance, Personal Injury
- Makenzie Polston Segars– Insurance
- Ronald Tate, Jr- Construction
- T.J. Twehues– Workers’ Compensation
- Zach Weaver– Corporate Law – Business Organizations, Estate & Trust – Litigation, Business Litigation, IP, Labor & Employment
- Daniel White– Business Litigation, Product Liability
- Ronald Wray – Products Liability

6 Haynsworth Sinkler Boyd Columbia attorneys recognized by *Best Lawyers*®

Haynsworth Sinkler Boyd, P.A. announced that *Best Lawyers*®, a legal peer-review guide, has selected 30 attorneys for inclusion in *The 2023 Best Lawyers in America*®, including three attorneys as “Lawyer of the Year” for the Columbia metro area and five attorneys as “Ones to Watch.”

The following have been recognized as “Lawyer of the Year” for their respective practice areas in the Columbia metro area:

[Clarke W. DuBose](#) – Mass Tort Litigation / Class Actions – Defendants

[Robert Y. Knowlton](#) – Litigation – Intellectual Property

The following attorneys are listed in *The 2023 Best Lawyers in America*® for these specific practice areas:

[John C. Bruton, Jr.](#) – Insurance Law; Litigation – Construction; Litigation – Real Estate; Personal Injury Litigation – Defendants

[Clarke W. DuBose](#) – Mass Tort Litigation / Class Actions – Defendants; Product Liability Litigation – Defendants

[Robert Y. Knowlton](#) – Bet-the-Company Litigation; Commercial Litigation; Litigation – Intellectual Property; Litigation – Securities

[Roopal S. Ruparelia](#) – Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants

* Lawyers who are listed for the first time

Murphy & Grantland Super Lawyers

Congratulations to Super Lawyers® E. Raymond Moore, III, Anthony W. Livoti, John M. Grantland, J.R. Murphy, and Wesley B. Sawyer. The prestigious award is given to the top 5% of attorneys in the state, representing 70 different practice areas, after a four-part selection process. John Grantland celebrates 10 years as a Super Lawyer and Wesley Sawyer was selected in the top 2% as a Rising Star.

Alan Jones Joins MGC's Greenville Office

McAngus Goudelock & Courie (MGC), a regional insurance law firm, is pleased to announce the addition of attorney Alan Jones to their Greenville office. He has over 10 years of experience handling bad faith, general litigation, miscellaneous professional liability, nursing home liability, premises liability, products liability, professional liability, slander/defamation, and transportation claims, with a primary focus on commercial litigation, insurance coverage and construction.

Jones graduated with a Juris Doctor from the University of Georgia School of Law, a Master of Arts from the University of South Carolina and cum laude with a Bachelor of Arts from Clemson University. He serves on the board of directors for the South Carolina Defense Trial Attorneys' Association and is also member of the American Bar Association and the construction section of the South Carolina Bar. Jones previously served as co-editor of The DefenseLine magazine and has co-authored amicus curiae briefs on behalf of the South Carolina Defense Trial Attorneys' Association for the Supreme Court of South Carolina.

Eight MGC Attorneys Recognized in 2022 Legal Elite of the Lowcountry

McAngus Goudelock & Courie (MGC), an insurance law firm, is pleased to announce the inclusion of eight attorneys in *Charleston Business Magazine's* 2022 Legal Elite of the Lowcountry. Recognized attorneys in MGC's Charleston office include:

- **Shawn Bevans:** Insurance
- **Ben Davis:** Insurance

- **Mark Davis:** Workers' Compensation – Defendant
- **Madelyn Dukes:** Employment – Defendant; Insurance; Personal Injury – Defendant; Workers' Compensation – Defendant
- **Amy Jenkins:** Employment – Defendant (“Top Vote-Getter”); Labor (“Top Vote-Getter”); Employee Benefits
- **Brian O’Keefe:** Workers' Compensation – Defendant
- **Danielle Payne:** Business Litigation (“Top Vote-Getter”)
- **JD Smith:** Construction

Since 2017, *Charleston Business Magazine* has honored Lowcountry attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for the 2022 Legal Elite are featured in the August 2022 edition of *Charleston Business Magazine*.

11 MGC Attorneys Recognized in 2022 Legal Elite of the Midlands

McAngus Goudelock & Courie (MGC), an insurance law firm, is pleased to announce the inclusion of 11 attorneys in *Columbia Business Monthly's* 2022 Legal Elite of the Midlands. Recognized attorneys in MGC's Columbia office include:

- **Brett Bayne:** Insurance

- **Riley Bearden:** Construction
- **Trippett Boineau:** Construction
- **Mundi George:** Workers' Compensation – Defendant
- **Rusty Goudelock:** Workers' Compensation – Defendant
- **George James:** Construction
- **Tommy Lydon:** Business Litigation
- **Julie Moose:** Insurance
- **Adam Ribock:** Insurance
- **Drew Richardson:** Insurance
- **Michael Trask:** Insurance; Personal Injury – Defendant

Since 2010, *Columbia Business Monthly* has honored Midlands attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for the 2022 Legal Elite are featured in the August 2022 edition of *Columbia Business Monthly*.

9 MGC Attorneys Recognized in 2022 Legal Elite of the Upstate

McAngus Goudelock & Courie (MGC), an insurance law firm, is pleased to announce the inclusion of 9 attorneys in *Greenville Business Magazine's* 2022 Legal Elite of the Upstate. Recognized attorneys in MGC's Greenville office include:

- **Amanda Bradley:** Insurance; Mediation
- **Zach Brown:** Business Litigation; Insurance; Personal Injury – Defendant
- **Kristie Commins:** Workers' Compensation – Defendant
- **Vernon Dunbar:** Insurance; Workers' Compensation – Defendant
- **Katie Grove:** Workers' Compensation – Defendant
- **Tyler Hembree:** Workers' Compensation – Defendant
- **Erroll Anne Hodges:** Workers' Compensation – Defendant
- **Robert Mebane:** Construction
- **Bo Williams:** Insurance

Since 2012, *Greenville Business Magazine* has honored Greenville attorneys by publishing their Legal Elite feature. Winners are chosen by the votes of area attorneys, and the top vote-getters are highlighted in 20 categories. Legal Elite is the only award program in the region that gives every active attorney the opportunity to participate. The selections for the 2022 Legal Elite are featured in the August 2022 edition of *Greenville Business Magazine*.

Richardson Plowden *Best Lawyers in America*®

Richardson Plowden is pleased to announce that *Best Lawyers in America*® and *U.S. News & World Report* has recognized the firm a "Best Law Firm" Metropolitan First-Tier Ranking for Columbia, S.C., in the areas of Construction Law; Litigation; Product Liability Litigation – Defendants & Tax Law.

A total of 13 attorneys with Robinson Gray are being recognized for the quality of their practice in Columbia in the 2023 edition of *The Best Lawyers in America*®

Four of them have also been named Lawyers of the Year. Best Lawyers® gives this award to individuals with the highest overall peer-feedback for a specific practice area and geographic region. Only one lawyer is recognized as the “Lawyer of the Year” for each practice area and location.

Here is the full Best Lawyers® list for Robinson Gray for 2023, with the practice areas in which they were named:

- **Grady Beard** – Workers’ Compensation Law-Employers
- **Benjamin Gooding** – Commercial Litigation
- **Becky Laffitte** – Insurance Law; Litigation-Construction; Personal Injury Litigation-Defendants; Product Liability Litigation-Defendants; Transportation Law
- **Gibbs Leaphart** – Workers’ Compensation Law-Employers
- **Michael Montgomery** – Litigation-Insurance; Personal Injury Litigation-Defendants
- **Kelly Morrow** – Workers’ Compensation Law-Employers
- **Shannon Till Poteat** – Workers’ Compensation Law-Employers
- **Beth Richardson** – Commercial Litigation; Litigation-Securities

- **Bobby Stepp** – Bet-the-Company Litigation; Commercial Litigation
- **Monty Todd** – Personal Injury Litigation-Defendants
- **Rob Tyson** – Administrative/Regulatory Law; Commercial Litigation; Litigation-Trusts and Estates
- **Cal Watson** – Bet-the-Company Litigation; Commercial Litigation; Professional Malpractice Law-Defendants

Rob Tyson was further honored as Lawyer of the Year.

Two attorneys were placed on the “Ones to Watch” list. They are:

- **La’Jessica Stringfellow** – Commercial Litigation; Medical Malpractice Law-Defendants; Personal Injury Litigation-Defendants
- **Lisle Traywick** – Appellate Practice; Commercial Litigation; Insurance Law; Product Liability Litigation-Defendants

The “Ones to Watch” list recognizes attorneys who have shown outstanding excellence in private practice early in their careers. Typically, “Ones to Watch” attorneys have been in practice for 5-9 years.

“This is wonderful to receive such respect from our local professional peers,” said Cal Watson, who is the law firm’s managing member. “We’re all deeply proud of our colleagues, from Becky Laffitte, who is marking her 20th year on the list, to Lisle Traywick, who made the ‘Ones to Watch’ list for the first time.”

The *Best Lawyers in America*®, which thousands of

lawyers and corporations use annually, is regarded as a definitive guide to the legal profession in the United States.

Recognition by Best Lawyers® is based entirely on peer review. The methodology is designed to capture, as accurately as possible, the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area. For more information, go to <https://www.bestlawyers.com/methodology>.

Four Roe Cassidy Lawyers recognized as 2023 *Best Lawyers in America*®

Roe Cassidy Coates & Price announced that *Best Lawyers in America*® has honored four attorneys as Best Lawyers® in 2023 and two attorneys as “Lawyer of The Year.” Roe Cassidy Coates & Price has a long tradition of lawyer recognitions in *Best Lawyers of America*®.

Roe Cassidy Coates & Price Best Lawyers®:

- **William Coates**
Government Relations Practice
Litigation – Banking and Finance
Litigation – Environmental
- **Jack D. Griffeth**
Employment Law – Management
Insurance Law
Mediation
- **Ross B. Plyler**
Employment Law – Management
Insurance Law

- **Fred W. “Trey” Suggs III**
Medical Malpractice Law – Defendants

Roe Cassidy Coates & Price Best Lawyers® “Lawyer of The Year” award recipients:

- **Ross B. Plyler**
Insurance Law
- **William Coates**
Litigation – Environmental

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

Bill Coates Recognized as Local Litigation Star

Roe Cassidy is pleased to announce that William “Bill” Coates has once again been recognized as a Benchmark Litigation “Local Litigation Star” in Dispute Resolution. Bill has over forty years of trial experience and practices in commercial, corporate, financial, real estate, and environmental litigation. He is a founding member of Roe Cassidy Coates & Price.

In addition, the Roe Cassidy law firm has been recognized in the “Recommended” category for dispute resolution in South Carolina. The Benchmark Litigation Dispute Resolution recognition reflects only those individuals who were recommended consistently as reputable and effective litigators by clients and peers.

Benchmark Litigation is an annual guide that recognizes the leading litigation law firms and lawyers throughout the world.

Roe Cassidy Coates & Price attorneys recognized as 2022 “Legal Elite.”

Roe Cassidy Coates & Price congratulates the firm attorneys who were named to the “2022 Legal Elite” by Greenville Business Magazine. Roe Cassidy attorneys are consistently nominated in their respective practice areas by their peers.

The Roe Cassidy lawyers recognized as “2022 Legal Elite” include:

- **Bill Coates**
Environmental
- **Jack Griffeth**
Education
Mediation
- **Trey Suggs**
Healthcare
Medical Malpractice – Defendant

Roe Cassidy Lawyers Recognized as 2022 South Carolina Super Lawyers®

Roe Cassidy is pleased to announce that three of the firm’s attorneys have been selected as 2022 South Carolina Super Lawyers® in their respective practice areas:

- **Bill Coates**
- **Jack Griffeth**
- **Trey Suggs**

Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Super Lawyers, a Thomson Reuters

business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area.

The Super Lawyers lists are published nationwide in Super Lawyers Magazines and in leading city and regional magazines and newspapers across the country. Super Lawyers Magazines also feature editorial profiles of attorneys who embody excellence in the practice of law. For more information about Super Lawyers, visit SuperLawyers.com.

8 Richardson Plowden Attorneys Selected to 2023 Best Lawyers®

- **Leslie A. Cotter, Jr.**
Legal Malpractice Defense
- **Frederick A. Crawford**
Healthcare Law
- **Jared H. Garraux**
Construction Law
- **Emily Gifford Lucey**
Construction Law
- **Steven J. Pugh**
Product Liability Defense
- **Anthony E. Rebollo**
Tax Law

- **Frank E. Robinson II**
Real Estate Law
- **S. Nelson Weston, Jr.**
Corporate Law

Congratulations to Caleb M. Riser who was selected to the 2023 list of “Ones to Watch” by Best Lawyers®.

U.S. News has named SMITH | ROBINSON Law Firm among the Best Lawyers “Best Law Firms” for 2023. In addition, this year’s Best Lawyers® ranking includes two experienced SMITH | ROBINSON litigators.

“We are honored to be recognized for the work we do here at SMITH | ROBINSON,” said Jon Robinson, Managing Partner, SMITH | ROBINSON. “We proudly serve our clients, and we are excited that these rankings reflect the level of excellence for which we strive every day.”

SMITH | ROBINSON ranked in the National Tier 1 Best Law Firms. Additionally, Partners Jon Robinson and Murrell Smith are ranked among the 2023 Best Lawyers® in the categories of Commercial Litigation and Litigation - Insurance.

“It is truly an honor to receive these national recognitions,” said Murrell Smith. “The firm’s overall practice, and particularly the work we do in commercial and insurance litigation, bring us all a great deal of pride and I am honored that we’re being recognized on this scale by our peers.”


The U.S. News – Best Lawyers® “Best Law Firms” rankings are based on nominations from leading attorneys in their fields, and a rigorous evaluation process that includes peer reviews and submissions. Best Lawyers® awards are published

in leading local, regional and national publications across the globe.

Grove Elected President of Greenville County Bar Association

Attorney [Katie Grove](#) in MGC’s Greenville office was named president of the Greenville County Bar Association and will serve as one of the four officials elected into office for 2023. For over five years, she has been heavily involved in the organization, serving as the membership committee chair from 2016-2019, treasurer in 2020, pro bono association board in 2021 and president-elect in 2022. Grove is also a member of the South Carolina Bar Association, South Carolina Trial Attorneys’ Association, and the Haynsworth-Perry American Inn of Court.

Grove has more than 10 years of experience defending clients in workers’ compensation matters. She received a Juris Doctor and Bachelor of Science from the University of South Carolina. Grove has been recognized locally and nationally for her workers’ compensation practice; she was named a Rising Star in 2019 and 2020 by South Carolina Super Lawyers, Legal Elite of the Upstate by Greenville Business Magazine from 2020-2022 and Best Lawyers®: Ones to Watch from 2021-2023.

The purpose of the Greenville County Bar Association is to promote the common business and professional interests of lawyers practicing in Greenville County. Each year, the Bar elects four officers: president, vice president, secretary, and treasurer. These attorneys and numerous committee chairs volunteer their time to the organization. 

Verdict Reports

TYPE OF ACTION:

Civil

INJURIES ALLEGED:

Breach of Contract and Bad Faith against SCWH, Defamation against SCWH and Halliwell Engineering. As specifically to defamation, Plaintiffs claimed that Defendants accused them of the crime of presenting a false claim for payment to an insurance company under Section 38-55-170 of the South Carolina Code.

NAME OF CASE:

Bruce and Kathy Hawkins v. South Carolina Wind and Hail Underwriting Association, Crawford & Company, and Halliwell Engineering Associates, Inc.

COURT:

In the Court of Common Pleas, Fourteenth Judicial Circuit, County of Beaufort

CASE #:

2017-CP-07-01696

TRIED BEFORE:

Jury

NAME OF JUDGE:

The Honorable Bentley Price

VERDICT AMOUNT:

\$0

DATE OF VERDICT:

May 13, 2022

DEMAND: (REQUIRED IF DEFENSE VERDICT)

Plaintiffs' counsel requested up to \$1.5 million in their closing argument presented to the jury

HIGHEST OFFER:

Confidential

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Halliwell Engineering: Kent T. Stair and Jordan N. Teich of Copeland, Stair, Valz & Lovell, LLP in Charleston, SC

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

Halliwell focused throughout trial on the only action brought against them, one for defamation and educated the jury that the case was not one of professional negligence. Plaintiffs were the owners of a home located on Harbor Island which experienced damage when Hurricane Matthew struck the coast of South Carolina on October 8, 2016. Plaintiffs claimed that their insurer, SCWH, improperly refused to indemnify their physical loss to property caused by wind under the policy terms. Halliwell was

hired by SCWH to assess Plaintiffs' home and provide a professional engineering opinion by way of written report as to whether the claimed damages were wind-related and, thus, potentially covered under Plaintiffs' insurance policy. Plaintiffs' sole grievance against Halliwell stemmed from statements regarding damage to the home contained within that report. Plaintiffs claimed that the statements inferred that they committed a crime of presenting a false claim for payment to an insurance company under Section 38-55-170 of the South Carolina Code. SCWH and Plaintiffs entered a settlement prior to closing arguments; thus, the only issue for the jury's consideration was the defamation claim against Halliwell.

The jury returned a defense verdict finding Plaintiffs failed to prove the statements were defamatory. In other words, Plaintiffs could not satisfy the elements of a defamation cause of action. First, the Court, by way of a reconsideration of Halliwell's motion for summary judgment, ruled at the commencement of trial that a contractual arrangement/business relationship existed between SCWH and Halliwell; therefore, the statements were protected as a qualified privilege and could not be defamatory under the law. Second, the author of the report testified that Halliwell was called upon by SCWH to provide an opinion (not capable of being a verifiable fact) as to the cause and origin of the claimed damages to Plaintiffs' residence and he did so pursuant to a reasonable degree of certainty as a professional engineer. Third, SCWH, the only recipient of the report (publication), testified that SCWH never assumed Halliwell was accusing the Plaintiffs of insurance fraud. Fourth, Plaintiffs admitted that the statements at

issue were not directed to any ascertainable person, and specifically do not identify the Plaintiffs. And finally, there was no evidence of how the statements by themselves damaged the Plaintiffs.

TYPE OF ACTION:

Medical Malpractice

NAME OF CASE:

Della Rivers v. Paula Orr, MD and Charleston Women Wellness Center, LLC

COURT:

Dorchester County Court of Common Pleas

CASE #:

2019-CP-18-01425

TRIED BEFORE:

Jury

NAME OF JUDGE:

The Honorable Maite Murphy

VERDICT AMOUNT:

Defense Verdict

DATE OF VERDICT:

May 19, 2022

ATTORNEY(S) FOR DEFENDANT (AND CITY):

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

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

The Plaintiff alleged that the Defendant physician was negligent in providing care and treatment during an oophorectomy when the physician inadvertently injured the Plaintiff's bowel during the procedure. Although a bowel injury is a known and accepted complication of the surgery, the Plaintiff claimed the physician should have diagnosed the injury during the procedure if she properly inspected the bowel prior to closure of the abdomen. The bowel perforation was diagnosed five days later resulting in an extensive repair surgery for a 1 cm defect in the bowel and contamination of the abdomen requiring a wound vacuum for several months.

NAME OF CASE:

Rachael Whitmer v. Blake Drummond

P COUNSEL:

Rick Hall

D COUNSEL:

Johnston Cox

COURT:

Richland County Court of Common Pleas

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

Admitted liability auto accident with airbag deployment and total loss of plaintiff vehicle. Plaintiff had cervical disc

replacement surgery by Dr. Jason Highsmith following the accident, who related the surgery to the accident. Plaintiff asked for \$600,000+. Verdict \$15,000

NAME OF CASE:

Genell Washington v. Allstate

P COUNSEL:

William Booth


D COUNSEL:

Johnston Cox

COURT:

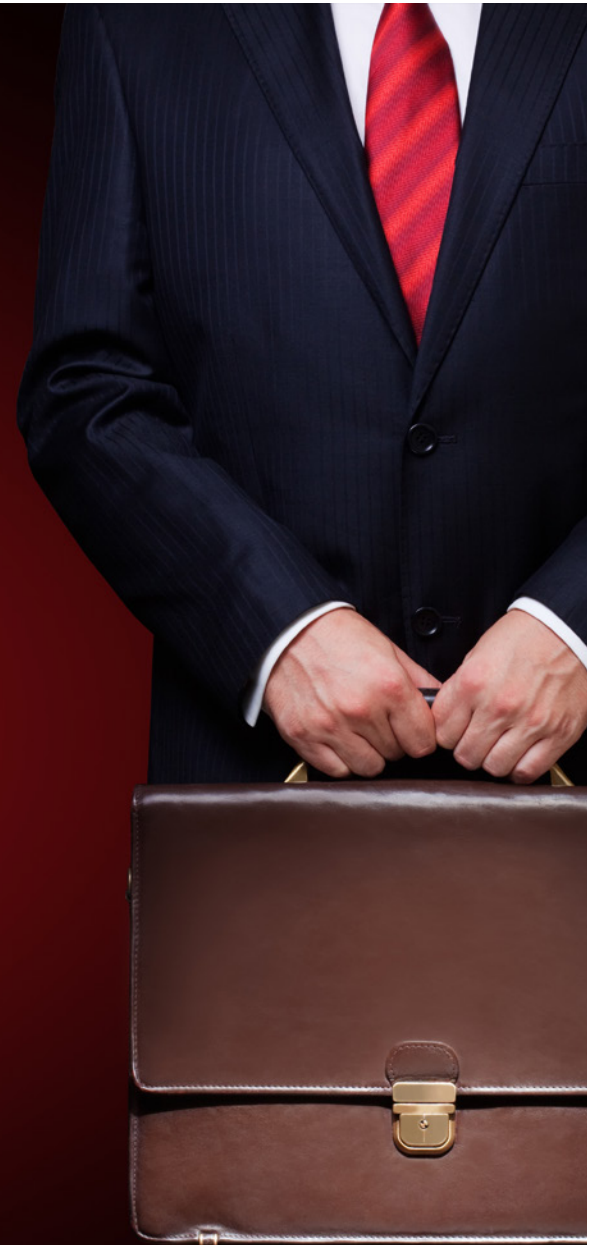
Richland County Court of Common Pleas

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

Plaintiff alleged that Allstate breached its contract and acted in bad faith for denying her claim that her car was stolen from her yard and burned by an unknown individual. Allstate denied the claim for fraud. Defense verdict. 

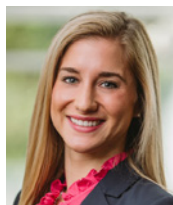
Verdict Report Submissions Wanted!

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



Case Notes

By Kendall Crawford and Eleanor L. Jones



Kendall Crawford



Eleanor L. Jones

Progressive Direct Insurance Co., and USAA General Indemnity Insurance Company, Petitioners, v. Shanna Groves as the Personal Representative of the Estate of Lynn Harrison, Respondent.

Case Number: 2020-001337

Opinion Number: 28115

Filed: September 21, 2022

In this case, the South Carolina Supreme Court clarified previous jurisprudence in the state regarding whether injuries arising from the intentional firing of a gun are foreseeably identifiable with the normal use of an automobile and whether the act of firing a gun constitutes an act of independent significance breaking the causal chain, such that underinsured motor vehicle coverage would apply.

Here, while two vehicles were at a stoplight, the driver of one vehicle shot and killed the driver of the other vehicle (“Harrison”). Harrison was insured under USAA and Progressive and both policies contained similar language that underinsured motorist coverage would apply to damages sustained by an insured or covered person because of an accident arising out of the ownership, maintenance or use of an uninsured motor vehicle.

Immediately, the Court focused on uninsured motorist statutes (S.C. Code Ann. § 38-77-140 (2015)), the three-prong test established in *State Farm Fire & Casualty Company v.*

Aytes, 332 S.C. 30, 33, 503 S.E.2d 744, 745 (1998), and the three subparts required under the first *Aytes* requirement established in *State Farm Mutual Automobile Insurance Company v. Bookert*, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999).

Because there was no allegation that the vehicles were not being used for transportation at the time of the accident, coverage would apply if the party seeking coverage could establish the three subparts established in *Bookert* – requiring the party seeking coverage to establish a causal connection between the injury and the uninsured vehicle by showing “a) the vehicle was an ‘active accessory’ to the assault; and b) something less than proximate cause but more than mere site of the injury; and c) that the ‘injury must be foreseeably identifiable with the normal use of the automobile.’” – and that an act of independent significance did not break the causal connection between the injury and the uninsured vehicle.

The Court reviewed previous jurisprudence interpreting whether injuries were “causally connected” to the use of a vehicle and noted a distinct shift of the interpretation of whether injuries were related to the use of a vehicle after the decision in *Aytes*. See *Wausau Underwriters Insurance Company v. Howser*, 309 S.C. 269, 422 S.E.2d 106 (1992); *Home Insurance Company v. Towe*, 314 S.C. 105, 441 S.E.2d 825 (1994). Most recently, in *Peagler v. USAA Ins. Co.*, the Court surveyed appellate decisions nationwide and noted

that generally “courts have held no causal connection exists between gunshot injuries and the use of a motor vehicle.” 368 S.C. 153, 162-63, 628 S.E.2d 475, 479-80 (2006). The Court agreed and also considered that it isn’t reasonable that parties would have considered gunshot injuries to be covered by an automobile policy at the time of contracting. Finally, the Court also reasoned that the “deliberate act of pointing a loaded shotgun out a window” was an act of independent significance. Thus, the Court concluded the three-prong test and three-prong subparts were not met as established in *Aytes* and *Bookert* and gunshot injuries do not arise out of the use of an automobile.

Sullivan Management, LLC, Plaintiff v. Fireman’s Fund Insurance Company, and Allianz GLOBAL Risks, US Insurance Company, Defendants.

Case Number: 2021-001209

Opinion Number: 28105

Filed: August 10, 2022

In this case, the Supreme Court answered a certified question from the United States District Court:

Does the presence of COVID-19 in or near Sullivan’s properties, and/or related governmental orders, which allegedly hinder or destroy the fitness, habitability or functionality of property, constitute “direct physical loss or damage” or does “direct physical loss or damage” require some permanent dispossession of the property or physical alteration to the property?

Sullivan Management, LLC operated several restaurants in South Carolina and argued that the presence of COVID-19

and associated government orders prohibiting indoor dining constituted “direct physical loss or damage” such that the commercial property insurance policies issued by Fireman’s would provide coverage. Fireman’s asserted that “the loss or damage must be more than mere loss of use or economic use,” rather it must be actual or physical damage. Because the policy did not expressly define “direct physical loss or damage,” the Court referred to Merriam Webster and Black’s Law dictionary to determine the common meanings of the terms. While noting that courts around the country are considering similar cases, the Supreme Court found that under South Carolina law the “contention that a government shut-down order caused direct physical loss or damage is meritless. . . . [as] mere loss of access to a business is not the same as direct physical loss or damage.”

Further, the Court quickly dispensed of Sullivan’s other argument that “the presence of virus particles in its facilities constituted physical loss or damage” by noting the differences between COVID-19 and other cases relating to contamination by radiation and chemical dust which may “persist and damage the covered property” or other substances which may “alter the appearance, shape, color, structure, or material dimension of the property.” COVID-19 did neither.

Finally, the Court considered other policy provisions, such as the “restoration period provision”, which would be rendered superfluous if “direct physical loss or damage” did not contemplate the need for repairs, rebuilding or replacements. Without tangible damage, there would be no need for this clause to exist, as there would be no repairs, rebuilding or replacements necessary.

Therefore, “because neither the presence of the coronavirus nor the government order prohibiting indoor dining constitutes ‘direct physical loss or damage,’ the policy’s triggering language [was] not met.”

Martha Foster Watts, Appellant, v. Ricky W. Chastain, Sheriff Laurens County, South Carolina, Respondent.

Case Number: 2019-001514

Opinion Number: 5952

Filed: November 23, 2022

In this case, the Court of Appeals considered whether a video was properly admitted into evidence and whether defense counsel’s closing argument unfairly prejudiced the outcome.

Here, two automobile collisions occurred. The first accident was between an automobile driven by an unnamed driver and a trooper with the Laurens County Sheriff’s Office. After a disputed period of time, Watts collided with the automobile driven by the unnamed driver. Watts alleged personal injuries and asserted a negligence claim against the Sheriff of Laurens County, Ricky Chastain. The driver of the first vehicle stated the second accident occurred two seconds after the first, while the trooper stated the second accident occurred five to ten seconds after the first.

The video at issue came from a nearby private recycling business’ surveillance system and contained numerous faults according to Watts. Watts filed both a motion in limine prior to trial, objecting to Chastain’s use of the video for eight different reasons, one of which was that the video did not show the collisions at issue, and a motion to suppress the video during trial. However, the trial court found the

video admissible because the probative value outweighed any unfair prejudice. The jury found Chastain was not negligent and Watts filed a motion for a new trial or judgment notwithstanding the verdict. Again the trial court found no issue with the video, and cited Rules 1001 to 1004 of the South Carolina Rules of Evidence for support, stating that the video presented at trial was a duplicate of images shown on the surveillance video, there was no question raised as to the authenticity of the original video, and the original video was never in the possession of Chastain and is no longer available for reasons fully explained at trial. Further, the court found the video was relevant because it provided information relating to the position of the vehicles, the timing of the two collisions at issue, the roadway conditions, and whether the motorists had their lights on.

The Court of Appeals agreed with the trial court’s analysis of the video with respect to Rules 1001 to 1004, SCRE, noting that the testimony at trial from the owner of the recycling business provides evidence supporting the trial court’s conclusions relating to the video as a “copy” of the original. The video was considered a “copy” of the original because the system did not record on a cassette to be preserved and automatically records in a loop over itself every six months. Thus, the “copy” was a video of the screen playing the original video taken by a separate camera.

The Court of Appeals also agreed with the trial court that the video complied with Rule 901, SCRE, relating to authenticity. Using *State v. Brown* as justification, the Court reasoned the witness testifying to the authenticity does not need to be an expert. 424 S.C. 479, 490, 818 S.E.2d 735, 741 (2018).

Rather, the testimony must come from someone who has experience with the system used. As such, the testimony from the owner of the business was sufficient.

Finally, relating to the video, the Court considered Rule 403, SCRE, in analyzing whether the video was more prejudicial than probative. Again, the Court affirmed the trial court's reasoning, noted the abuse of discretion standard, and found that while the video did not show the collisions, it still showed other information relevant to the collisions.

Watts also argued defense counsel's closing argument improperly suggested that the jury consider themselves detectives as to the content of the video and to look for evidence which was not on the video. However, again relying on the standard of review, the Court reasoned that South Carolina courts have allowed considerable latitude to counsel in closing arguments and the comments made by defense counsel were not prejudicial.

Amy Kovach v. Joshua S. Whitley and Karen Whitley, in her Individual Capacity and Joshua S. Whitley v. Amy Kovach and Joshua S. Whitley v. Rodney Thompson

Appellate Case No. 2021-00174

Opinion No. 28109

Heard May 18, 2022

Filed August 31, 2022

In this opinion, the Supreme Court considered whether a sanctions motion against an attorney's client under South Carolina Rule of Civil Procedure Rule 11 was proper. The Court found that the trial court's imposition of a \$48,000 sanction against the Petitioner Amy Kovach ("the client")

was an abuse of discretion. The Court did not evaluate the trial court's sanction of \$17,000 against the client's attorney because the client's attorney did not appeal.

By way of brief factual background, after the client was fired from her job with Respondent Berkeley County School District ("Respondent"), she hired an attorney to file both a grievance with and civil lawsuit against Respondent, whom she believed was responsible for her firing. Client's firing took place after she plead guilty to misconduct in office and misuse of public funds. Respondents filed a Rule 11 sanctions motion against both the client and the client's lawyer alleging that the client's Complaint was contrary to her guilty plea.

While Rule 11, SCRCP allows for sanctions against a client, the rule is primarily directed and intended to be used in promoting professional responsibilities and duties. The Court further noted that the use of Rule 11 sanctions motions are generally "intended to foster lawyer responsibility, rather than curb a client's inappropriate behavior." The Court ultimately held that sanctions were justified against the client's lawyer and not the client because the lawyer investigated the client's claims prior to filing suit and because there was no showing that the client coerced the lawyer into filing the Complaint.

Jeanne Beverly, individual and on behalf of those similarly situated v. Grand Strand Regional Medical Center, LLC

Appellate Case No. 2020-000710

Opinion No. 28084

Heard June 15, 2021

Filed February 23, 2022

The Supreme Court affirmed the Court of Appeals opinion

reversing a Rule 12(b)(6) dismissal regarding a party's right to sue under a contract to which she claims she is a third-party beneficiary. The agreement at issue between Blue Cross Blue Shield of South Carolina ("BCBS") and Grand Strand Medical Center ("Grand Strand") contradicted itself, as it expressly excluded third party beneficiaries, yet at the same time the terms of the contract clearly provided a direct benefit to third parties. The Court held that under the Rule 12(b)(6) standard, Jeanne Beverly's claim should not be dismissed because, after interpreting the agreement, the agreement does not clearly and unambiguously strip Beverly of her status as a third-party beneficiary.

In this case, BCBS, a mutual insurance company providing health care coverage through Member Benefits Contracts, contracted with Grand Strand in an agreement whereby Grand Strand became a PPO Provider. The incentive to become a PPO Provider is to gain access to more customers. Section 16.16 of the agreement provides "[t]his Agreement is not intended to, and shall not be construed, to make any person or entity a third party beneficiary." Through this agreement, Grand Strand promises it "shall seek payment for Covered Services solely from" BCBS and "will not solicit any payment from [BCBS] Members" while also providing covered services at a discounted rate.

Beverly, a BCBS Member, filed several claims, including breach of contract, against Grand Strand as a third-party beneficiary following treatment at Grand Strand for injuries sustained from a car accident. Following her treatment, Beverly was billed directly from Grand Strand at the full rate for her medical care rather than at the reduced rate for an

insured who attended a PPO.

The Supreme Court, found that (1) the motivating purpose of the agreement was to provide BCBS Members with a direct benefit; (2) the agreement also directly benefits BCBS members; (3) other terms of the agreement also indicate a mutual intent between Grand Strand and BCBS to benefit BCBS Members; and (4) it is incomprehensible for the agreement not to grant members a right to defend a lawsuit on the bases of Grand Strand's promise to BCBS to bill only BCBS.

The Court concluded that section 16.16 of the Institutional Agreement attempts to change the legal consequences of the parties otherwise clearly expressed intent, and it should have clearly and specifically limited the remedies available for a breach if it wanted to limit third-party's rights.

Poly-Med, Inc. v. Novus Scientific Pte. Ltd., Novus Scientific, Inc.; Novus Scientific AB

Appellate Case No. 2021-000027

Opinion No. 28111

Heard September 22, 2021


Filed September 14, 2022

Answering a certified question from the United States Court of Appeals for the Fourth Circuit, the South Carolina Supreme Court held that South Carolina does not recognize the continuing breach theory.

This dispute concerns two contractual provisions within an agreement, whereby Poly-Med was to develop a surgical mesh for Novus's exclusive use in hernia-repair products.

**CASE
NOTES
(CONT.)**

Poly-Med sued Novus for breach of contract alleging that Novus violated two separate provisions of the contract on multiple and separate occasions. Poly-Med conceded that its claims relate to breaches which have occurred over a lengthy period of time and thus its claims regarding “older breaches” (breaches that would be barred by the three year statute of limitations period) are time-barred, but the “fresh” breaches are still viable causes of action. The application of the continuing breach theory would therefore allow Poly-Med to maintain its claims relating to the “older breaches”. In analyzing this question, the Court analyzed two prior South Carolina cases, *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 414 S.C. 33, 777 S.E.2d 176 (2015) and *Marshall v. Dodds*, 426 S.C. 453, 827 S.E.2d 570 (2019) and held that those two cases did not support a finding that South Carolina recognized the continuing breach theory and instead concerned the application of statutory language and intent of the South Carolina legislature.

The Court also went a step further in answering the question presented and provided a framework for determining whether separate breaches trigger separate limitations periods. This framework analyzes whether the contracting parties intended for multiple alleged breaches to constitute a single breach or separate breaches. 



Save The Date

**FOR THE TRIAL
ACADEMY - MAY 3-5TH,
GREENVILLE, SC**

New Releases from the South Carolina Bar Publications Department

How to Try a Simple Auto Wreck Case: The Basics from Start to Finish

R. Allyce Bailey, Esquire & S. Venus Poe, Esquire

Released: November 2022

Cost: \$70, plus shipping and handling, including downloadable PDF of book text and forms

South Carolina Rules Annotated 2022

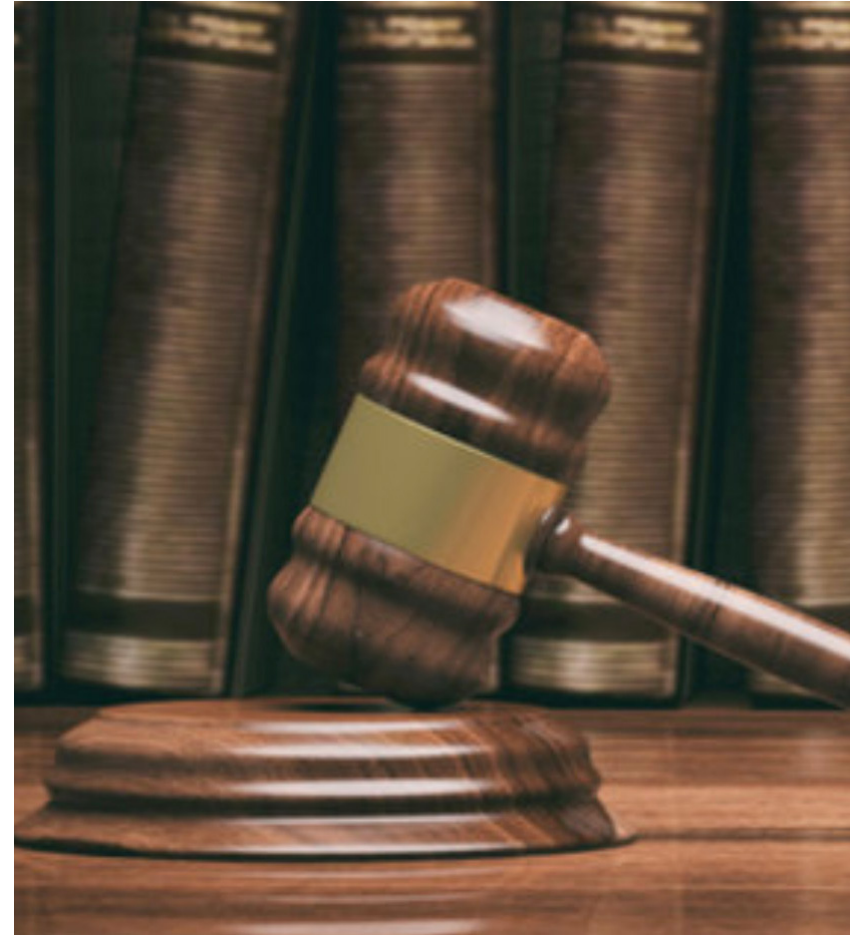
Justin S. Kahn

Released: October 2022

Cost: \$85, plus shipping and handling, including downloadable PDF of book text

South Carolina Construction Law Desk Book, Second Edition

K. Michael Barfield, Alexandra B. Breazeale, Stephanie G. Brown, Matthew E. Cox, W. Kyle Dillard, John J. Dodds IV, Adam J. Floyd Mason, A. (Andy) Goldsmith, Jr., Neil S. Haldrup, M. Stokely Holder, Tracy T. James, Bryan P. Kelley, Wesley (Wes) B. Lambert, W. Greyson Land, Bonnie A. Lynch, Carmela E. Mastrianni, J.W. (Jay) Matthews III, Keith C. McCook, John T. Merrell, David A. Nasrollahi, Tara E. Nauful, Boyd B. (Nick) Nicholson, Jr., Paige C. Ornduff, F. Lee Prickett III, Joshua D. Shaw, Franklin J. Smith, Jr., R. Patrick Smith, Joshua D. Spencer, Taylor H. Stair, Ford H. Thrift, William R. Warnock, Jr.



Released: September 2022

Cost: \$125, plus shipping and handling; purchase includes downloadable PDF of book text

***Insurance Bad Faith: A Primer on the Law in
South Carolina***

Principal Authors: David B. Yarborough, Jr., and Reynolds
H. Blankenship Jr.

Contributing Authors: Molly H. Craig, James B. Hood, and
Virginia R. Floyd

Released: September 2022

Cost: \$55, plus shipping and handling; purchase includes
downloadable PDF of book text

***South Carolina Equity: A Practitioner's Guide,
Second Edition***

Randolph R. Lowell, and The Honorable Robert L. Reibold

Released: July 2022

Cost: \$75, plus shipping and handling

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