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2024 SUMMER MEETING: JULY 18–20 • 2024 ANNUAL MEETING: NOVEMBER 7–10



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Giles M. Schanen, Jr.

Message from the Immediate Past President

By Giles M. Schanen, Jr.

With our 56th Annual Meeting (and thus the end of my term as president) behind us, it is a fitting time to reflect on some of our association's major accomplishments and highlights of the second half of 2023, and to look ahead to what's in store.

Our Annual Meeting, which was held at The Sanctuary at Kiawah from November 16-19, was a great success. Thanks to the work of our Annual Meeting Committee, chaired by Jay Thompson, and our Executive Director, Aimee Hiers, our attendees enjoyed a fantastic CLE program, a variety of recreational activities, and great food and drink, all while enjoying the amazing amenities that The Sanctuary provides. The meeting provided our SCDTAA members and their guests an invaluable opportunity to network with friends and colleagues across the state, and with the many members of the state and federal judiciary who attended.

On October 27, the SCDTAA was presented with the Rudolph A. Janata Outstanding SLDO Award. This award is presented annually to one "outstanding state or local defense bar organization that has undertaken innovative programming that contributes to the goals and objectives of the organized defense bar." It was a tremendous honor to accept this award on behalf of the SCDTAA at the Closing Celebration of the DRI Annual Meeting in San Antonio, Texas. Our receipt of this prestigious award is a strong testament to the hard work and dedication of our Board members and Aimee Hiers, and to the support of our SCDTAA members and their law firms.

On September 28, we held our annual Golf Classic, where 22 teams competed for a variety of prizes on an unseasonably cool day at the Orangeburg Country Club. Congratulations to the Richardson Plowden team, consisting of Hunter Adams, Zach Hayden, Katie Engels, and Sam Key (on loan from McAngus Goudelock & Courie) who took home first place! We appreciate the support of our sponsors InQuis Global; Juris Medicus; SEA Ltd; Rimkus; Young & Associates, Spurgeon Medical and McCory Construction. Also, we thank InQuis Global for sponsoring our Judicial Reception and Member Social at the Oyster Bar in Columbia the evening before the Golf Classic. We always have a strong turnout for our events at the Oyster Bar, and this year's reception was no different.



On September 21, we hosted our Trial Practice Seminar in Columbia, which was organized by SCDTAA Board Members Claude Prevost and Danielle Payne. The seminar was led by a top-notch faculty consisting of members of the judiciary, plaintiff bar, and defense bar. Multiple attendees reported that the seminar was one of the most informative and insightful CLEs they have attended. Thanks to SEA Ltd. and Juris Medicus for sponsoring the seminar, and to Richardson Plowden for hosting us.

Finally, on July 20-22, we held our 56th annual Summer Meeting at the historic Omni Grove Park Inn in Asheville. As always, the Summer Meeting, which was chaired by SCDTAA Board Member Alex Joyner, was a hit. There is nothing like the idyllic mountain setting that the Grove Park Inn provides, and we look forward to returning to the Omni Grove Park Inn in the summer of 2024.

I am grateful for the opportunity to have led the SCDTAA, and proud of what our association has accomplished this year. As evidenced by DRI recognizing the SCDTAA as 2023's outstanding SLDO, we continue to be one of the best civil defense organizations in the country. The benefits we offer our members, from the quality and location of our meetings, to the strength of our CLE programming, to the opportunity to network with members of the judiciary and colleagues across the state, are unmatched. Our success would not be possible without the support of our membership and their law firms, the hard work and vision of our Board of Directors and Officers, and the support of our many loyal sponsors. And, of course, we are fortunate to have the best executive director in the business in Aimee Hiers. Aimee handles countless tasks with the highest level of professional excellence and is truly the "straw that stirs the drink" for the SCDTAA.

Because of the dedication of our leadership and the support of our members, the SCDTAA's future is bright. Following our Annual Meeting, Mark Allison of McAngus, Goudelock & Courie began his term as president. Our association is in great hands with Mark, a talented and visionary leader who has served on the SCDTAA Board for nearly 15 years.

It has been a true privilege to serve the SCDTAA this year. I am grateful for your support, and I look forward to seeing you and your families at our events for years to come!

Thank you, Giles M. Schanen, Jr. 



EDITORS' NOTE



Adam Ribock



Robert E. Tyson, Jr.

Editors' Note

By Adam Ribock and Rob Tyson


Celebrating over 50 year years of the SCDTAA, this edition of *DefenseLine* pays homage to the wisdom of past presidents. Their invaluable advice enriches the pages with insights that transcend time. Lessons from President Lincoln offer additional wisdom. A recent case that is analyzed may also assist defense attorneys as they argue a motion for summary judgment. And, in the legislature, the Judicial Merit Selection Commission may have some changes coming next year. We hope you will explore these articles to glean from a wealth of experience and commemorate the enduring legacy of the SCDTAA, while looking ahead to an exciting future. Please do not hesitate to reach out with any ideas you may have for the next edition! 



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Perspective from Past Presidents



The South Carolina Defense Trial Attorneys' Association has benefited from great leadership since the beginning in November, 1968. The vast knowledge and experience of our past presidents hopefully will help shape the future of this organization. As such, a few past presidents shared their wisdom with us.

William "Bill" S. Davies, Jr., 1997-1998

H. Mills Gallivan, 2001-2002

James "Jay" R. Courie, 2004-2005

Sarah W. Butler, 2020-2021

What were some of the main lessons you learned during your time in SCDTAA and as president?

One of the main lessons I learned during my time as an active

member was the importance of creating and maintaining personal relationships with lawyers and judges across the state and even out of state. You have to make those connections before a lawyer will consider referring matters to you. – *Bill Davies*



That leading a defense bar organization requires a lot of time and attention to detail. You have to be flexible and nimble as unexpected things happen during your term. – *Mills Gallivan*

The SCDTAA provided many lessons on leadership and working together as a team. The organization is very diverse in services provided to our members. – *Jay Courie*

I have learned, and continue to learn, so much from the SCDTAA that it's tough to even put it into words. I am ultimately so proud to practice law with and be friends with everyone associated with the organization, and I'm so appreciative of everyone who lends a hand to help make us so successful. – *Sarah Butler*

Do you think SCDTAA helped your practice and/or your career?

While I learned much about our profession and the practice of law by attending the presentations at our meetings, the opportunity to get to know the state and federal judges was outstanding and is somewhat unique across the country. – *Bill Davies*

Without a doubt, I learned how to be a better lawyer and how to try better cases. – *Mills Gallivan*

I certainly believe the organization benefited both me personally and our law firm through the relationships we built with other members and member firms. – *Jay Courie*

The SCDTAA has absolutely helped my career. I have connections all across the state and the country because of the relationships built with the association. I have had business referred to me and I've referred it to others. A lot of our practice is based on reputation and trust. The CLE content that we provide is also superb. – *Sarah Butler*

What advice would you give to young lawyers in SCDTAA or those who are thinking about joining?

As with any organization, you will get out of it what you put into it. Enter membership with a positive attitude. Get involved. Do something. Get on a committee. Get to know the staff. Write articles. Work with your firm so you can attend the meetings. Have a goal of being president and work toward that goal. The entire process will benefit you. – *Bill Davies*

Join, get involved, stay involved and if you take on a project or leadership role then give it your very best. – *Mills Gallivan*

Don't just join—be active. Don't just attend meetings once or twice a year. Join a committee, write an article for *The DefenseLine*, volunteer to speak at a meeting or lead a breakout session, work toward leadership opportunities. – *Jay Courie*

Bottom line, get involved. The friendships you will build and the professional connections you will make are invaluable. Plus, it can be a lot of fun! – *Sarah Butler*

What message do you have to leaders in defense firms about SCDTAA?

If the young people in your law firm are trying to be active in the litigation side of the law, there is no better way to do that than exposure to other good lawyers and the opportunity to understand and meet the judges of our state. Presentations by the judges at meetings reveal the different approach of the judiciary to legal issues from that normally taught in law school. Active participation in professional organizations by young lawyers help create good resumes and good contacts in the search for new clients. – *Bill Davies*



Training time is hard to provide given the economic pressures of the 21st century defense firm. Send your young lawyers to the SCDTAA for cutting edge training on depositions, discovery, trial work, mediations and leadership. The ROI for the firm in promoting a young lawyer in the SCDTAA is limitless. – *Mills Gallivan*

I realize there is lot of competition for dollars. Since Covid, more firms are using virtual CLE programming to save cost. Although that might be an effective way to save time and money, it cannot replace the friendships and professional relationships of being involved in the SCDTAA. South Carolina is a small state with a small Bar. We are fortunate to have an organization such as SCDTAA that allows lawyers to get to interact and build lifelong relationships. – *Jay Courie*

Candidly, some attorneys or law firms may not understand that the return on investment is not immediate. It's the long term rewards that are immeasurable. Additionally, some firms don't understand the incredible respect that our particular state defense organization has nationally. Go to any conference and mention that you're from South Carolina and find out. Our state led defense organization takes the cake. It will create opportunities and relationships for you and your law firm. – *Sarah Butler*

Here is a nice list of the opportunities and benefits of SCDTAA involvement:

Membership

- A place to gain cutting edge knowledge on SC defense trial practice; provided/taught by the best trial lawyers in the state

- Mentoring for young lawyers by great seasoned SC lawyers, perhaps more organic than planned
- Access to SC Judges to develop relationships, something no other defense organization offers
- Lifelong friendships with colleagues and their families
- Networking and referral sources
- A place to get published and noticed by potential clients and firm management
- Unlimited opportunities to present on substantive legal topics

Leadership

- A great place to start honing leadership skills
- You will gain peer and intrafirm recognition as a leader and excellent lawyer
- A real opportunity to improve the profession of law in SC

National Exposure

- Stepping stone to national leadership opportunities in DRI, LCJ, NFJE, FDCC, IADC, ADTA, ABOTA and the ABA
- DRI views the SCDTAA as one of the premier SLDO's in the country which provides incredible national access and opportunities
- National organizations provide even greater networking opportunities
- Friendships with lawyers and their families across the US and internationally



Setting the Standard and Planning Ahead after *Kitchen Planners*

By Keely McCoy and Chris Wray



Keely McCoy



Chris Wray

Introduction

On August 23, 2023, South Carolina’s Supreme Court published an opinion that clarified and explicitly defined the standard of review in this state for summary judgment motions. The matter of *The Kitchen Planners, LLC v. Samuel E. Friedman and Jane Breyer Freidman and BB&T*, Op. No. 28173 (“*Kitchen Planners*”), established the “mere scintilla” standard is not to be applied under Rule 56(c), SCRCP. In doing so, this opinion provided the consistency needed for litigants to argue from the same page at a crucial juncture in a case. It also provided guidance to practitioners on what kind of facts (rather the lack thereof) will not satisfy what is required to overcome a summary judgment motion. The *Kitchen Planners* case sets the standard and hopefully makes summary judgment less of a guessing game.

The *Kitchen Planners* Case

This case arose out of a mechanic’s lien filed by Kitchen Planners after Kitchen Planners delivered cabinets to the Friedmans as part of a their contract to procure and install

cabinets. The Friedmans refused the cabinets and refused to pay the final one-third percentage of their contract with Kitchen Planners. Kitchen Planners served the statutorily required “statement of just and true account of amount due” on the Friedmans and then filed suit to enforce its mechanic’s lien. The Friedmans filed a motion for summary judgment on the grounds Kitchen Planners failed to perfect its lien within ninety days of ceasing to provide labor or materials to the Friedmans’ home. The sole issue before the court was whether Kitchen Planners presented sufficient evidence to create a genuine issue of material fact that it met the statutory requirement for serving the statement of account (*See* § 29-5-90 of the South Carolina Code (2007)).

Kitchen Planners presented the following evidence:

- The cabinets were delivered to the Friedmans’ home on May 20, 2015.
- Kitchen Planners were at the Friedmans’ home to install the cabinets on May 21, 2015; however, the cabinets were not installed.



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- Kitchen Planners learned on June 18, 2015 the Friedmans did not want its involvement any further.
- Kitchen Planners learned on August 18, 2015 the cabinet company was removed from the Friedman job.
- Kitchen Planners wrote a check to the cabinet company on September 29, 2015 for “parts of the cabinets...ordered on an unknown previous date.”
- Kitchen Planners served is statement of account on November 17, 2015.

Writing for the Court, Justice Few used the facts and evidence of *Kitchen Planners* to unequivocally establish the standard of review for summary judgment and abolish the “mere scintilla” language that has muddied the waters for too long.

“In most cases applying Rule 56(c), this Court and our court of appeals have applied the “genuine issue of material fact” standard set forth in the Rule, requiring the party opposing the motion show a “reasonable inference” to be drawn from the evidence, and we have rejected the “mere scintilla” standard. (Citations omitted for brevity of article but worth the review).

.....

In 2009 in *Hancock*, however, this Court made the statement quoted by the court of appeals in this case, “that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” 381 S.C. at 330, 673 S.E.2d at 803. In other cases even after *Hancock*, we continued to impose the

“genuine issue of material fact” and “reasonable inference” standard that appears inconsistent with the “mere scintilla” standard *Hancock* purported to set. (Citations omitted).

....

We acknowledge there may be disagreement as to whether the “mere scintilla” standard is inconsistent with the Rule 56(c) “genuine issue [of] material fact” standard. *See Taylor v. Atl. Coast Line R. Co.*, 78 S.C. 552, 556, 59 S.E. 641, 643 (1907) (“A *scintilla* of evidence is any material evidence that if true would tend to establish the issue in the mind of a reasonable juror.”). The position that the two standards are the same would explain this Court’s recitation of both at various times since 1985. In the minds of many, however, the standards are inconsistent. (Citations omitted).

....

We now clarify that the “mere scintilla” standard does not apply under Rule 56(c). Rather, the proper standard is the “genuine issue of material fact” standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” 403 S.C. at 477, 744 S.E.2d at 166. To the extent what we said in *Hancock* is inconsistent with our decision today, *Hancock* is overruled.”

After clarifying the standard of review, Justice Few applied it to the evidence presented by Kitchen Planners:

“The only event within ninety days before November 17 is the September 29 check Comose [sole owner/member



of Kitchen Planners] wrote to pay for cabinet parts she previously ordered.

[W]hile the writing of the check on September 29 is some evidence—a scintilla—of when she ordered the parts, it does not provide a meaningful factual basis on which a factfinder could determine if the parts were ordered within or before the ninety-day time frame. Comose specifically testified she did not remember why she wrote the check on September 29, and she did not know the date the parts were ordered. The writing of the check on September 29 does not create a reasonable inference that she ordered the parts within ninety days of the service of the section 29-5-90 statement. Thus, the factfinder would be required to speculate to determine whether Kitchen Planners perfected its lien in a timely manner. Under this circumstance, Kitchen Planners failed to establish a genuine issue of material fact, and the Friedmans were entitled to summary judgment as a matter of law.” (emphasis added).

Here Justice Few does an artful job of contrasting the two standards of evidence and shows how a scintilla is not enough to carry the burden on summary judgment. There must be a material fact upon which a jury could rely in order to determine Kitchen Planners satisfied its burden. There was no such material fact presented (e.g. specific order date, an invoice, a P.O. for parts, etc.) and Kitchen Planners’ case will not reach a jury.

Potential Implications of *Kitchen Planners*

We believe that this case will have a noticeable impact on the defense bar’s ability to argue motions for summary judgment moving forward. The “mere scintilla” standard has


been the bane of any defense attorney with a solid summary judgment argument. The Court noted that “scintilla” has been defined as “a gleam, a glimmer, a spark, the least particle, the smallest trace”. This has led to many instances in which denials would be predicated on the tiniest bit (or scintilla) of evidence from the Plaintiff.

After *Kitchen Planners*, it seems likely that our courts will have to analyze the record more closely to determine if the Plaintiff has presented enough evidence to clear the “genuine issue of material fact” standard present in Rule 56(c). The Court (quoting its previous decision in *Town of Hollywood v. Floyd*) reiterated that “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine”. The Court also outlined other ways in which it has previously analyzed cases under Rule 56(c). Those include:

- Requiring the party opposing the motion to show a “reasonable inference” to be drawn from the evidence and that the evidence must be “susceptible to more than one reasonable inference” (quoting *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006).
- Holding that a party opposing summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts” and “must come forward with specific facts showing that there is a *genuine issue for trial.*” (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).
- Finding that “when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted”. (quoting *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).



Practical Applications of *Kitchen Planners*

So how can defense attorneys use *Kitchen Planners* to our advantage? Practically, before getting to the summary judgment stage of a case, we too get to analyze the facts and evidence more closely to see if the underlying material facts are sufficient (and not just a glimmer or smallest trace). This work is worth the effort as details often matter most with cases that are statutorily driven and can, as in *Kitchen Planners*, be won at the summary judgment stage. Then of course, it would be prudent to include quotations from this case in the “Standard of Review” sections of briefs moving forward, as it is the most recent example of the Court’s examination of Rule 56(c) and a rare example of a pro-summary judgment ruling. In briefing or at oral arguments, it would also be useful to combat an argument based on purely speculative evidence, as *Kitchen Planners* has expressly rejected the idea that pure speculation is sufficient to overcome summary judgment. Finally, it would probably be useful to kick the “mere scintilla” standard while it’s down, including language in our briefs moving forward referencing the fact that the Court has rejected that standard so that it is firmly on your judge’s mind when they are ruling on your motion. By taking these steps, we can hope that defense summary judgments will be a useful tool going forward. 

About The Author

Keely McCoy is a partner in the Columbia office of McAngus Goudelock & Courie. She focuses her practice on insurance defense litigation. She has too many children to have free time but enjoys hanging with her family and friends. She hopes to one day win a summary judgment motion! Chris

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Trial Lessons From Honest Abe

By Timothy J. Caiello



Timothy J. Caiello

Abraham Lincoln’s legacy is so far-reaching – a war time presidency, the Emancipation Proclamation, the Gettysburg Address, the Lincoln/Douglas debates, and the list goes on – that it would be easy to lose sight of what he may have been the very best at: standing on his feet, in a courtroom, arguing a case to a jury verdict. Before the fame that accompanied Lincoln’s political rise, he spent more than a decade and a half as a jack-of-all-trades attorney in Springfield, Illinois handling “every kind of business that could come before a prairie lawyer.”¹ Lincoln was a self-educated lawyer who started by “reading the law” entirely on his own before taking the Bar. For sixteen years, his trial practice included “riding the circuit” for 10 consecutive weeks, twice a year, trying cases in the various county seats around Springfield. It is estimated that Lincoln tried over 3000 jury trials² and appeared before the Illinois Supreme Court around 250 times³ (as sole counsel in 51 cases, winning 31 of those⁴). He also famously argued both *Lewis v. Lewis*⁵ and *Hurd v. Rock Island Bridge Company*⁶ to the Supreme Court of the United States. I’ll leave quantifying Lincoln’s political legacy to more qualified historians and biographers, but I will try to

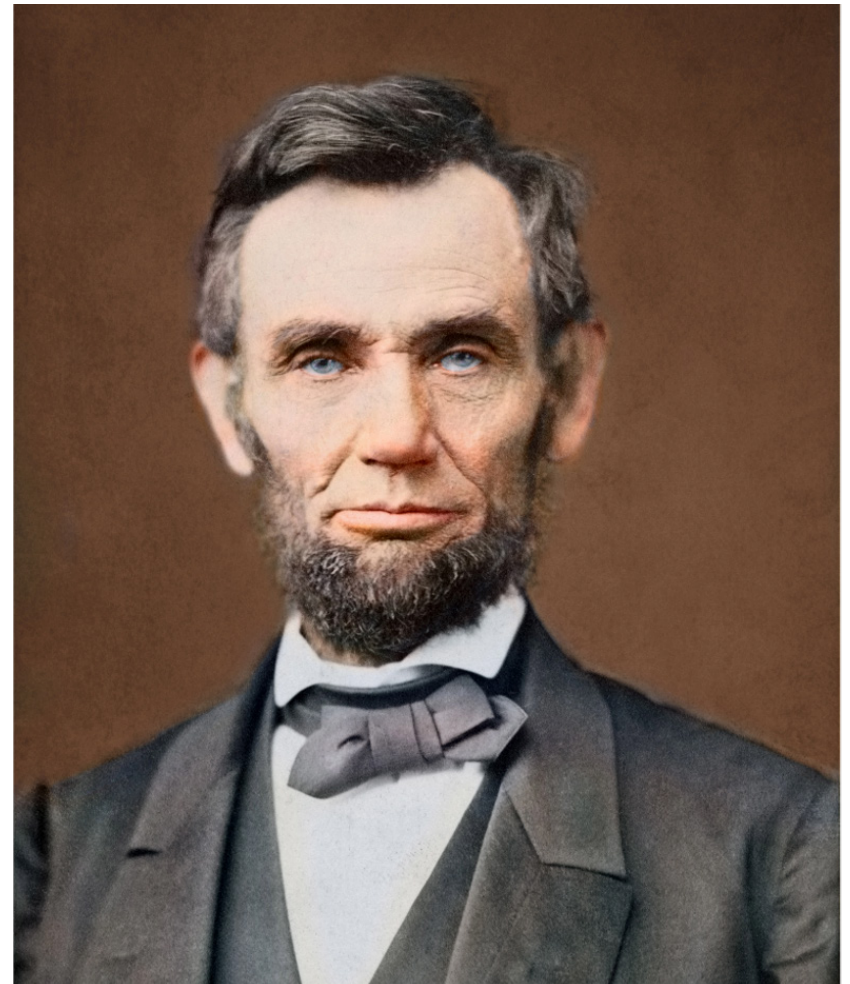


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draw several practical trial advocacy lessons from Lincoln's days as "the strongest jury lawyer we ever had in Illinois."⁷

1. Focus Arguments Around A Compelling Theme

Lincoln was known for focusing his trial presentations from start to finish on his one or two most important arguments. When closing arguments came, you'd find Lincoln looking the jurors in the eye, referring them to his established theme, and, in a straight-forward unexaggerated tone, telling them exactly what he wanted them to do. His pre-trial preparation largely focused on relentless narrowing of his arguments to just his trial theme. A colleague of Lincoln's said of him:

"Clarity, conciseness, and simplicity of statement were his forte in the trial of a case. His mind was orderly. He could marshal facts in such an orderly sequence and reduce a complicated problem to such simple terms that even the dullest layman could not fail to understand."⁸ Another of Lincoln's colleagues similarly described his jury trial approach as follows: "However complicated [a trial argument], he would disentangle it and present the turning point in a way so simple and clear that all could understand. Indeed, his statement often rendered argument unnecessary, and often the court would stop him and say, 'If this is the case, we will hear the other side.' He had, in the highest possible degree, the art of persuasion and the power of conviction."⁹

Lincoln himself put his focused trial approach like this: "When I have a particular case in hand, I...feel an interest in the case, feel an interest in ferreting out the questions to the

bottom, love to dig up the question by the roots and hold it up and dry it before the fires of the mind."¹⁰ Lincoln's clarity and focus made him a juggernaut in front of Illinois juries, and his trial record was one of the best of his day. A great example of this is Lincoln's famous defense of Duff Armstrong.

Case Study: Duff Armstrong Defense

Lincoln defended the 1858 murder trial of William "Duff" Armstrong, who had killed James Preston Metzker. The case is famous for Lincoln's use of the then untested judicial notice doctrine to challenge the credibility of eyewitness testimony. The Lincoln Presidential Library summarizes the trial as follows:

"Duff" Armstrong, a son of Lincoln's New Salem friends Hannah and Jack Armstrong, had attended a religious camp meeting in rural Mason County, Ill. After an evening of heavy drinking, Armstrong engaged in a fight with another inebriated attendee, Preston Metzker, during which Armstrong allegedly hit Metzker in the head with a "slung-shot," a blackjack-type weapon that was essentially a heavy weight on the end of a short rope. Metzker managed to ride his horse home, where he died three days later.

At the trial, the prosecution's main witness claimed that the moon had been overhead shining "bright as day," illuminating the fight so that he clearly saw Armstrong strike Metzker with the slung-shot. Dramatically, Lincoln then produced an almanac showing that the moon had been on the horizon, nearly set, when the fight took place, crushing the witness's credibility.



After Lincoln delivered an eloquent, emotionally moving closing argument, the jury delivered a unanimous verdict of not guilty.¹¹

While law review articles could be written about Lincoln's contribution to the development of the judicial notice doctrine by convincing the trial judge to let him use the Farmer's Almanac as an impeachment aid, the tactical lesson for us is to focus trial arguments around our one or two most compelling arguments or themes rather than taking a scatter plot approach trying to touch on everything in close. Lincoln tailored his entire trial preparation, open, direct examinations, cross examinations, and close around his one best fact – the one glaring inconsistency in the testimony of the prosecution's most important fact witness. And the jury connected with that and acquitted Lincoln's client.

2. Read Your Jurors & Educate the Court

Lincoln was a famously skilled storyteller who loved to entertain people with engaging stories everywhere he went. In the court room, jurors resonated instinctively with his arguments because they connected with the stories he told. Part of what made Lincoln such an effective communicator in the court room was his ability to read his audience, the jury, and tailor his presentation to the people who were actually in the box.¹² This was in stark contrast to the approach of many of the opposing counsel Lincoln defeated. The style of the day among many of the best-educated lawyers was to present in as grand and eloquent a style as possible utilizing pre-written arguments replete with pompous Latin phrases and obscure legal jargon. Lincoln, on the other hand, intentionally talked like a farmer when he had a jury of Illinois

farmers. One of Lincoln's colleagues described him as follows:

He was a quick and accurate reader of character, understood, almost intuitively, the jury, witnesses, parties and judges, and how best to address, convince, and influence them. He had a power of conciliating and impressing every one in his favor. A stranger coming into court, not knowing him, or anything about his case, listening to Lincoln a few moments would find himself involuntarily on his side, and wishing him success. His manner was so candid, so direct, the spectator was impressed that he was seeking only truth and justice... His illustrations were often quaint and homely, but always clear and apt, and generally conclusive. He never misstated evidence, but stated clearly, and met fairly and squarely his opponent's case. His wit and humor, and inexhaustible stores of anecdote, always to the point, added immensely to his power as a jury advocate.¹³

This was not a coincidence. Lincoln himself knew the importance of his connection with the normal people in the jury box and would often work to hone his storytelling and communication skills when he wasn't at trial with strangers who happened to be around his offices in Springfield.

Lincoln was also famously well liked by the other most important people in the courtroom - the presiding trial judges he appeared before hundreds of times. He was deferential to the bench as an unbending rule, which placed him in good stead when he had to press a matter of law on behalf of a client or challenge rulings he believed were in error. Lincoln himself famously said: "*I dared not*



trust the case on the presumption that the court knows everything... In fact, I argued it on the presumption that the court didn't know anything."¹⁴ This manifested itself in a "show don't tell" approach to his argumentation before the judges. A lawyer who observed Lincoln extensively in the courtroom described his style like this: *"His law arguments addressed to the Judges were always clear, vigorous and logical; seeking to convince rather by the application of principle than [just] citation of authorities and cases."*¹⁵

The intersection of Lincoln's compelling thematic argumentation cloaked as storytelling and his parallel rapport with the court were on clear display in his famous defense of Peachy Harrison. Interestingly, more than a hundred years after Lincoln argued this case, a handwritten transcript was discovered – still sealed – from the court reporter who attended the trial.¹⁶ This transcript sheds light on Lincoln's advocacy style in one of his most famous cases.¹⁷

Case Study: Peachy Harrison Defense:

Leading up to his presidential campaign, Lincoln defended "Peachy" Harrison (a third cousin) who was charged with the murder of Greek Crafton. Greek, as he lay dying of his wounds, confessed to his grandfather Rev. Peter Cartwright (one of Lincoln's political opponents), that he had provoked Harrison. The New York Times described the trial as follows:

More than 100 prospective jurors were examined before Judge Edward Y. Rice. Early in the case, Lincoln made much of the exact place where the two men had fought. He asked if the struggle had occurred on a counter bar or on an iron railing, as if this was of great importance. The

prosecution objected to Lincoln's leading questions and the judge ruled against him several times.

The transcript shows that Lincoln cross-examined John Crafton, Greek Crafton's brother, who was a witness to the knifing, to show that Mr. Harrison was unwilling to fight.

"You can't remember Harrison saying to your brother that he would not fight or didn't want to fight?" Lincoln asked.

"No sir, I don't remember any such thing," the victim's brother testified. "I think I said the first thing spoken in the room. I told Mr. Short to let them loose - that Greek could whip him."

"You did not add that Greek should whip him?" Lincoln continued.

"No, sir, but told him he could whip him," Mr. Crafton said.

Lincoln then asked for a demonstration of exactly what took place, with himself and a prosecutor acting as if they were participants in the fracas. In one of the few touches of humor in the transcript, Lincoln said of the prosecutor, "I don't know whether it will do to risk myself, but I'll go in if he will."

All this time, Preacher Cartwright sat in the courtroom. Now, in the trial's dramatic high point, he was called to the witness stand.

Over the strong objections of the state prosecutors, Lincoln addressed the preacher: "State whether



you were with Greek Crafton shortly before he died and at the time he was expecting death, and if so, state what you heard, if you heard anything.”

The judge said evidence of dying declarations should be heard and discussed without the jury present. The transcript then reads: “Mr. Lincoln said he had never heard of such law.”

Finally, after listening to Preacher Cartwright’s testimony and the legal arguments of defense lawyers about deathbed statements, Judge Rice was persuaded to let Peachy Quinn Harrison’s jury hear the preacher give his hearsay evidence.

He told the court that he went to see the dying man, held his hand and expressed regret. Then, he said, Greek Crafton told him: “Yes, I have brought it upon myself, and I forgive Quinn and I want it said to all my friends that I have no enmity in my heart against any man. If I die, I want it declared to all that I die in peace with God and all mankind.”

After calling several more witnesses, Lincoln announced that his evidence was all in.

On the fourth day, Mr. Hitt wrote: “The jury retired at 11 minutes after 4 o’clock and returned in an hour and nine minutes, handing the Court the following verdict: The Jury find the defendant Not Guilty as charged in the indictment.”¹⁸

It could be argued that some of the most important work Lincoln did to secure a good outcome for his client at trial

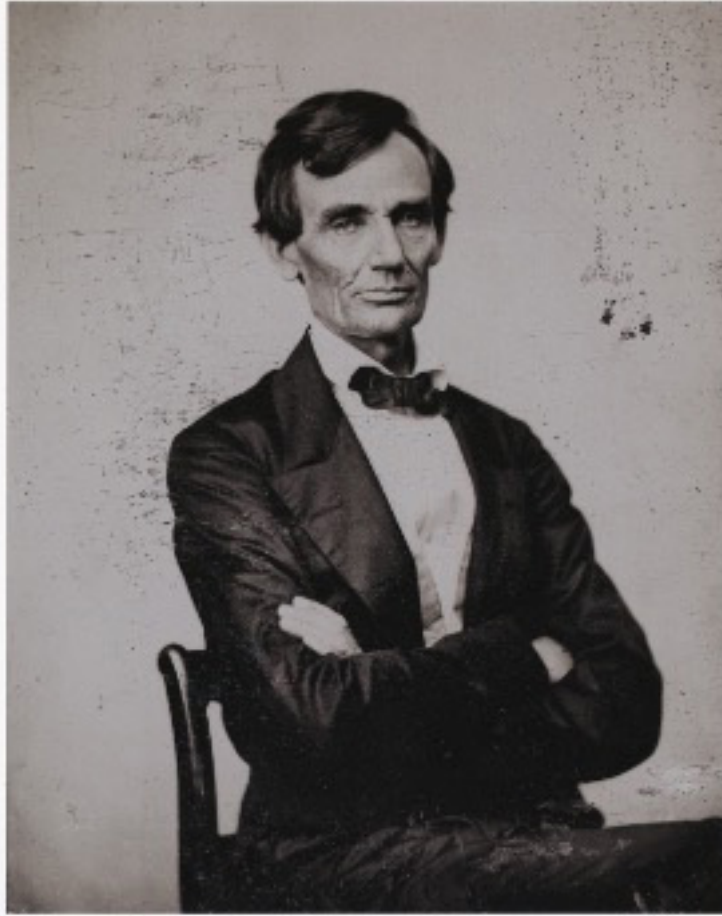
occurred before any evidence was entered. By culling through the 100+ jurors who might have heard the case, he read each prospective juror in turn and was able to cull dozens of them who would not have been favorably inclined to his client’s defense.

Once the trial started, Lincoln was at times forced to hotly protest the rulings from the bench on the admissibility of the dying declarations of the victim, and it was only after several rulings against his client that he was able to persuade the trial judge that the then-uncommon dying declaration exception to the hearsay rule should be followed. Lincoln was then able to leverage the open-minded jury he had picked, present the evidence he had convinced the court to admit, and tell a powerful story in closing about a victim who admitted he had provoked the fight that led to his death. If Lincoln had failed in his jury selection, his evidentiary arguments to the court, or his focused thematic argumentation to the jury, he would not have been able to get his client acquitted in a very difficult case.

Diligent Preparation As The Foundation Of Success In The Court Room

Lincoln was famously effective in the court room, but it was not just because of raw talent or immense experience. He was one of the hardest working lawyers in Illinois and invariably seemed to enter the court-room better prepared, and with a better command of the law and the facts, than his opponents. He famously said this about his approach to handling the demands of litigation and trial practice: *“The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for tomorrow*





*which can be done today. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can then be done.*¹⁹ While much has changed in the practice of law since Lincoln rode the circuit trying cases, the time pressures and “tyranny of the urgent” in day-to-day practice have not. Lincoln knew that there was no shortcut for hard work in diligently representing his clients and went the extra mile to ensure he did so. Lincoln wrote the following letter in response to an inquiry from a young lawyer seeking advice

from him on how to be successful in the practice of law:

J. M. Brockman, Esq.,

Dear Sir:

Your [letter] of the 24th. asking “the best mode of obtaining a thorough knowledge of the law” is received. The mode is very simple, though laborious, and tedious. It is only to get the books, and read, and study them carefully. Work, work, work, is the main thing.

Yours Truly,


*Abe Lincoln*²⁰

On another occasion, Lincoln remarked on the reality that, though the ability to be persuasive in the court room is crucial: *“and yet there is not a more fatal error to young lawyers than relying too much on speech-making. If anyone, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance.”*²¹ Lincoln knew that, no matter how many cases he tried, if in any one of them he failed to adequately prepare, all his oratory could be for naught. And it was this ceaseless diligence – spending the time in advance necessary to try a case well – that was the foundation of his reputation as the greatest trial lawyer of his day.

Conclusion

Abraham Lincoln was a monumentally persuasive and successful courtroom advocate because he took the time to prepare meticulously for every trial, focused his arguments narrowly in advance and educated the trial judge thoroughly on the evidentiary questions in play, and then communicated



his trial themes in an accessible, straightforward way that resonated with the jurors sitting in the box in front of him. But even beyond his legendary success at trial, Lincoln also strived to maintain high ethical standards in representing his clients. He gained his now famous moniker “Honest Abe” from his clients and colleagues in the Bar, and that translated to a credibility in front of a jury that could not be manufactured or faked. The same high standards of personal conduct that led juries to implicitly believe his closing arguments apply every bit as much to us today. I think it fitting to let Lincoln have the last word on trying cases with integrity. In one of his most famous quotes on the practice of law, he observed: “*Let no young man choosing the law for a calling for a moment yield to the popular belief — resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer.*”²² 

About The Author

Timothy J. Caiello is a Senior Associate with Murphy & Grantland. His practice covers a variety of insurance defense matters. Tim earned his Bachelor’s Degree in Humanities from Columbia International University where he was elected student body president. Tim then earned his Juris Doctorate from the University of Alabama School of Law. Tim has also worked as a professional fishing guide in the Alaskan wilderness, and enjoys hunting, fishing, tennis, golf, surfing, backpacking, rock climbing, and playing the guitar. He lives in Columbia with his wife Sarah Caiello.



ENDNOTES

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- ² Herbert Mitgang, *Lincoln as Lawyer: Transcript Tells Murder Story*, N.Y. Times, Feb. 10, 1989, <https://www.nytimes.com/1989/02/10/nyregion/the-law-lincoln-as-lawyer-transcript-tells-murder-story.html>.
- ³ *Id.*
- ⁴ *Id.*
- ⁵ *Lewis v. Lewis*, 48 U.S. 776 (1849).
- ⁶ *Hurd v. Rock Island Bridge Co.* (1857) (unrep.).
- ⁷ Michael L. Stern, *Lawyer Lincoln’s Trial Tactics*, Advocate, July 2018.
- ⁸ *Id.*
- ⁹ Isaac N. Arnold, *Reminiscences of the Illinois Bar: 1840*, Illinois Bar Journal, Feb. 1959.
- ¹⁰ Recollected Words of Abraham Lincoln, 242 (Don E. Fehrenbacher & Virginia Fehrenbacher eds., Stanford University Press 1996).
- ¹¹ Kelley Clausing, *People v. Armstrong*, Lincoln Presidential Library (July 20, 2020), <https://presidentlincoln.illinois.gov/Blog/Posts/9/Abraham-Lincoln/2020/7/People-v-Armstrong/blog-post/>.
- ¹² Isaac N. Arnold, *Reminiscences of the Illinois Bar: 1840*, Illinois Bar Journal, Feb. 1959.





¹³ *Id.*

¹⁴ Recollected Words of Abraham Lincoln, 242 (Don E. Fehrenbacher & Virginia Fehrenbacher eds., Stanford University Press 1996).

¹⁵ Isaac N. Arnold, *Reminiscences of the Illinois Bar: 1840*, Illinois Bar Journal, Feb. 1959.

¹⁶ Herbert Mitgang, Lincoln as Lawyer: Transcript Tells Murder Story, N.Y. Times, Feb. 10, 1989, <https://www.nytimes.com/1989/02/10/nyregion/the-law-lincoln-as-lawyer-transcript-tells-murder-story.html>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Notes for a Law Lecture*, in The Collected Works of Abraham Lincoln, Volume II 81 (Roy P. Basler ed. Rutgers Univ. Press 1953) (July 1, 1850).

²⁰ *Letter to John M. Brockman*, in The Collected Works of Abraham Lincoln, Volume IV 121 (Roy P. Basler ed. Rutgers Univ. Press 1953) (Sept. 25, 1860).

²¹ *Notes for a Law Lecture*, in The Collected Works of Abraham Lincoln, Volume II 81 (Roy P. Basler ed. Rutgers Univ. Press 1953) (July 1, 1850).

²² *Id.* at 82.



Adversary Profile – Bettis C. Rainsford, Jr., Of Doumar Rainsford

BY Jack Theodore



Jack Theodore

Bettis C. Rainsford, Jr., is a native of Edgefield, South Carolina and has represented clients throughout South Carolina and Georgia for nearly a decade. He practices at Doumar Rainsford in Augusta, Georgia. He has been recognized by Super Lawyers® as a “Rising Star” for the past five years. Prior to attending law school, Bettis graduated cum laude from the University of South Carolina with a bachelor’s degree in Political Science and graduated from the University of South Carolina School of law in 2015. While in law school, Bettis received multiple CALI awards for excellence and was a member of the American Bar Association Real Property, Trust, and Estate Journal.

Upon graduating from law school, Bettis clerked for Judge Joe Anderson in Columbia, South Carolina where he discovered his passion for litigation and especially trial work. Afterwards, Bettis practiced at Turner Padgett Columbia and Augusta offices (the latter of which he founded). At Turner Padgett, he defended large manufacturers and insurance companies in a variety of catastrophic personal injury cases. In 2019, Bettis switched to the Plaintiffs’ bar and joined Ray Doumar in Augusta. He now devotes his time to representing



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individuals in wrongful death and catastrophic personal injury cases. Outside of the courtroom, Bettis is active in his community, as he is on the vestry of the Episcopal Church of the Ridge and a Board Member on the Edgefield County Historical Society. Bettis and his wife, Melissa, have four children Beau, Vann, Phin, and Anne Catherine, and split their time between Augusta and their Edgefield farm. Melissa believes Bettis hunts entirely too much.

Q: What were the biggest takeaways from your experience clerking for Judge Anderson?

A: It was a tremendous opportunity to clerk for Judge Anderson, and I am grateful for the experience. Judge Anderson loves to try cases, and I was able to watch so many great lawyers navigate the court room during my clerkship. In my opinion, watching seasoned litigators operate is one of the best ways for a young lawyer to learn. In addition, Judge Anderson knows so much about how to be effective at litigation; and I tried to absorb as much of his knowledge as I could. Judge Anderson’s appreciation for the trial process, especially the art of understanding and using the rules of evidence to your advantage, instilled a respect for the jury system that I carry with me every day in practice. Judge Anderson’s passion for trial work was contagious; and it led me down the path I ultimately chose.

Q: What made you want to join Ray Doumar’s practice after deciding to make a career change?

A: In short, I joined Ray because I like Ray as a person and respected the way he carries himself as a lawyer. Ray likes to say, “treat folks right” and “being the nicest

guy in the room will get you a long way.” He truly embodies that sentiment. That attitude drew me to Ray in spite of having several other opportunities. I’ve tried to fit that mold and emulate this approach in my own practice. It seems to have served me well thus far.

Q: Who has had the greatest influence on your legal career?

A: I have been very fortunate to work with great people who have made a tremendous impact on me, such as both Judge Anderson and Ray. In addition, my first job after clerking for Judge Anderson was with Turner Padget. There, I got to travel the state with Ken Carter, defending automobile manufacturers in high stakes products liability litigation. These were multi-week, complex trials, and I was able to watch Ken and our adversaries operate in a court room, which was an excellent way to learn the ropes. Ken set as good of an example for me as anybody could have, and I can’t imagine a better way to begin my career as a practicing attorney. I had a great experience while working with Ken, and I greatly appreciate his guidance and willingness to teach me during my time at Turner Padget.

Q: What advice would you give a law student or young lawyer beginning their career?

A: Just to treat people well, regardless of the size of the case or who is on the other side. Even in our adversarial system, you are able to do your job to the best of your ability while also treating all people, from witnesses to opposing counsel, with respect and kindness. A story that illustrates that advice: early in my career an old high school friend of mine got cited for animal cruelty when he had to shoot



**ADVERSARY
PROFILE
(cont.)**

a donkey that escaped from his farm. As it turned out, he only shot the donkey because it had wandered on to a public road and almost caused a school bus to crash. My friend was charged, and I represented him in Edgefield’s Magistrate’s court. There was no prosecutor - only the citing police officer. Although we were adversarial in this case, the officer and I treated each other with respect and kindness, which led to a friendship we have maintained to this day. (By the way, I got all charges dropped). Anyway, that police officer has now referred me three cases that all resolved in the six or seven figures. Long story short, you never know where future business will come from – and to Ray’s point, being the nicest guy in the room gets you a long way there. ⚖️

About The Author

Jack graduated from the University of Georgia and is currently enrolled at the the University of South Carolina Joseph F. Rice School of Law.



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**3RD ANNUAL
SOUTHEASTERN WOMEN LITIGATORS
CONFERENCE**

FEBRUARY 29 - MARCH 1, 2024
HUTTON HOTEL | NASHVILLE, TN

**"Find out who you are,
and do it on purpose"**
- Dolly Parton

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**Tennessee Defense
Lawyers Association**



2023 Annual Meeting Recap

By Jay T. Thompson



Jay T. Thompson



The SCDTAA Annual Meeting occurred November 16-19 at The Sanctuary at Kiawah Island Resort. With more than seventy attorneys and thirty-five judges registered in attendance, the event was a success.

This was the first Annual Meeting without immediate past president Graham Powell, whom we lost in December 2022. We miss him greatly and honor his memory.

Those in attendance at the Annual Meeting benefitted from high quality CLE programming, including keynote presentations on Artificial Intelligence in the Law and a perspective from Luke Kissam on what business leaders are looking for from their outside counsel. Justice James



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SCDTAA EVENTS (cont.)

2023 Annual Meeting Recap



delivered an engaging presentation on practical challenges the courts and litigants are facing and how we can all work together to address those challenges. We also heard from J.R. Murphy on how to develop the next generation of leaders within a law firm. The panel discussion on the mental health and wellness issues of burnout, depression,

and anxiety impacted many in the audience in a significant way, prompting healthy discussions that are still ongoing. The panel discussion on obtaining post-trial juror feedback was also thought provoking and informative, providing insight and ideas from the bench and from the perspective of multiple experienced trial lawyers.



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SCDTAA EVENTS (cont.)

2023 Annual Meeting Recap



On Friday evening, we enjoyed a black-tie dinner and dance with musical entertainment provided by Men of Distinction. William Brown presented past president Sam Outten with the Hemphill Award, the highest honor

SCDTAA can bestow for lifetime achievement and dedication. Outgoing president Giles Schanen passed the baton to Mark Allison as the newly elected president of SCDTAA for 2023-24.



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SCDTAA EVENTS (cont.)

2023 Annual Meeting Recap



In addition to the educational events, the afternoon activities brought much needed recreation and camaraderie. In addition to the mainstay golf and fishing excursion, the inaugural pickleball tournament provided entertainment

to attorneys and judges of all experience levels. The “Name That Tune” themed trivia contest was a smashing success and promises to return in the future, although savants Anthony Livoti and Dan Atkinson may be required to



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SCDTAA EVENTS (cont.)

2023 Annual Meeting Recap



accept a handicap due to their dominance in the ability to name that tune in two notes.

Finally, the Annual Meeting would not be a success without the support of our sponsors. Special thanks go out to the Platinum Sponsors of the event, Elliott Davis and SEA Ltd., and the Gold Sponsor, Avalon

Health Economics. Please remember each of our valued sponsors when you have a need for their services.

We look forward to the 2024 Annual Meeting, to be held November 7-10, 2024 at the Ritz Carlton in Amelia Island, Florida. Please save the date! 🗓️



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2023 Summer Meeting

By J. Alex Joyner



J. Alexander Joyner



Members, judges, commissioners, sponsors, and guests enjoyed another fantastic Summer Meeting at The Grove Park Inn in July. After Thursday's Young Lawyers' Happy Hour, kids enjoyed the Children's Program while the rest of us bid the night away at a silent auction.

Kent Stair kicked off Friday's CLE session, speaking on lessons learned during his extended career of trying cases. Breakouts covered the State of the Workers' Compensation Commission, practical lessons for young attorneys in insurance defense, and stormwater suit capabilities of SEA, Ltd. Mark Joye and Jay McDonald provided a powerful insight into substance abuse, and Jen Owens presented



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SCDTAA EVENTS (cont.)

2023 Summer
Meeting



on supporting in-house counsel. Our contingent then enjoyed food, drink, fun, and laughs at the golf tournament, waterfall hike, and bluegrass BBQ dinner.

Saturday's CLE session began with a panel discussion (Johnston Cox, Brett Bayne, Mary Linton, and Adam Ribock) on the Tyger River Doctrine and Applied Building



Sciences' presentation on construction defects. Judge Manning and Mitch Griffith spoke to young lawyers on succeeding in the courtroom and in mediation, while a panel (Sen. Michael Johnson, Shannon Poteat, Sterling Davies, Alex Joyner) spoke on recent caselaw regarding the statutory employer doctrine. Judge Manning closed



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SCDTAA EVENTS (cont.)

2023 Summer
Meeting



the meeting out with a discussion of lessons he learned from 28 years on the bench.

As always, we thank our sponsors for their continued support of our association, including our Diamond Sponsor,

Applied Building Sciences, Platinum Sponsor, SEA, Ltd., and Gold Sponsor, Forvis. We look forward to seeing everyone again in 2024! 🏛️



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SCDTAA EVENTS (cont.)

2023 Annual Meeting Recap and 2023 Summer Meeting

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Robert W. Hemphill Award

By William S. Brown



William S. Brown

The Robert W. Hemphill Award is the highest honor that the South Carolina Defense Trial Attorneys' Association can confer upon someone. At the 2023 Annual Meeting, the SCDTAA presented the Hemphill Award to Sam Outten.

The Hemphill Award is not given every year. It had not been awarded since 2018 and Sam Outten is only the 18th honoree, since the award was created in the early 1980's. Per the written criteria for the award, the Hemphill award is based upon distinguished and meritorious service to the legal profession and/or the public. It is given to one who has been instrumental in developing, implementing, and carrying through the objectives of the South Carolina Defense Trial Attorneys' Association. It recognizes one who has been an active, contributing, and supporting of the SCDTAA.

Distinguished and meritorious service to the legal profession is an ideal description of Sam Outten's career. Sam has been an active member of the defense trial bar in South Carolina since his graduation from the University of South Carolina School of Law in 1985. He has been an active and supportive member of the SCDTAA his entire legal career. He began service on the SCDTAA Board in 1996 and served as



The 2023 Robert W. Hemphill Award presented to Samuel W. Outten by Past President and current DRI Representative William Brown.



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SCDTAA EVENTS (cont.)

Robert W. Hemphill
Award

President in 2003-2004. He has been an active participant at meetings and in the nominating committee since his service as President. He also served as the DRI State Representative for South Carolina and as the DRI Regional Director serving on the DRI Board representing the Mid-Atlantic Region and South Carolina.

Sam's service to the Bar and the legal community has not been limited to activities through the SCDTAA. He has also demonstrated his leadership skills as a board member and officer of the South Carolina chapter of the American Board of Trial Advocates ("ABOTA"). He served as president of the SC chapter of ABOTA in 2012.

Sam has a particular passion for trial advocacy skills. He is a premier trial attorney. He is collaborative and has mentored and trained younger lawyers in his firms to enhance the trial skills of those younger lawyers. He has also served as faculty and a trainer in trial programs sponsored by ABOTA, as well as the trial academies of the SCDTAA and the International Association of Defense Counsel ("IADC").


Sam Outten carries on a distinguished tradition of leadership and dedication to the SCDTAA, to the Bar as a whole, and to the law. He is an outstanding addition to the ranks of the recipients of the Robert W. Hemphill Award. 



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SAVE THE DATE

**2024
ANNUAL MEETING:
NOVEMBER 7-10, 2024
AT THE
RITZ CARLTON IN
AMELIA ISLAND,
FLORIDA**





OCC'S GOLF COURSE CHOSEN "BEST OF THE BEST"



OCC's golf course recently added another accolade to its long list of awards. We are proud to announce the course was chosen "Best of the Best" by readers of the Times and Democrat. Thanks to all who voted!

Call the Golf Shop at 803-534-6069 today to schedule a tee time to play this outstanding course!



DRI HAPPENINGS

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



William S. Brown

Get ready for Texas. The DRI Annual Meeting is October 25 -27, 2023 in San Antonio, Texas. Please consider attending the Annual Meeting or any of the many great seminars presented by DRI. The DRI Annual Meeting provides great CLE content and outstanding networking opportunities with defense counsel from across the nation. The meeting will be held right along the beautiful San Antonio River Walk and a highlight will be a networking reception held at the Alamo. A full calendar of DRI seminars, including the Annual Meeting, can be found at <https://www.dri.org/education-cle/seminars>.

DRI's focus is to help you better represent your clients and support the businesses of your clients. DRI is committed to:

- Enhancing the skills, effectiveness, and professionalism of defense lawyers;
- Anticipating and addressing issues germane to defense lawyers and the civil justice system;
- Promoting appreciation of the role of the defense lawyer;
- Improving the civil justice system and preserving the civil jury; and
- Seeking out and embracing the innumerable benefits and contributions a diverse membership provides.

The DRI Annual Meeting is October 25 -27, 2023 in San Antonio, Texas. Please consider attending the Annual Meeting or any of the many great seminars presented by DRI. The DRI Annual Meeting provides great CLE content and outstanding networking opportunities with defense counsel from across the nation.

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. DRI is not just a part of your career. DRI is 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.

If you are not a member of DRI, you should be. I encourage you to investigate how DRI can aid you in your practice and help you better serve your clients. If you need more information about DRI, feel free to contact me or go to

[DRI.org](https://www.dri.org). 




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Emerging Leaders

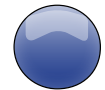
By James B. Robey III

The Emerging Leader's Program is the SCDTAA's premier training program for young lawyers, as it provides specialized training and career development opportunities not available anywhere else.

Do you know a young lawyer who has the potential to be a leader? If you do, we encourage you to nominate that young lawyer for the SCDTAA's Emerging Leader's Program. The Emerging Leader's Program is the SCDTAA's premier training program for young lawyers, as it provides specialized training and career development opportunities not available anywhere else. Please contact Aimee Heirs for nominations to the Emerging Leaders Program or more information. 



James B. Robey III



Legislative Update

By Jeffrey N. Thordahl

Judicial Merit Selection Commission Reform

Is 2024 the year we will see some level of reform to the Judicial Merit Selection Commission (JMSC)? The conversation around reform has been ongoing for years but it has really ramped up over the course of 2023. While a wholesale change in how we elect judges is highly unlikely, there is a push from various elected officials to change the makeup of the JMSC and the process of electing judges.

Half way through the current two-year Legislative Session, there are roughly 25 legislative bills that have been introduced to address JMSC reform in some fashion. Some proposals have one or two sponsors, some have many sponsors, and some have bipartisan sponsors.

Senate Bill 693 has nine sponsors consisting of 8 Republicans and one Democrat. The primary sponsor is Senator Chip Campsen (R-Charleston). This bill does not change the number of current members of the JMSC (10) or the qualifications of those members. Instead, it creates a role in the process for the Governor. Under this proposal, all judicial applicants through the JMSC for a particular seat would have their application sent to the Governor. After a review of the applicants, the Governor would then return one name to the JMSC. The JMSC would then conduct its usual candidate investigation and screening. If the JMSC finds the candidate qualified, the name of the candidate



Jeffrey N. Thordahl




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will be forwarded to the General Assembly for election. If the JMSC finds the candidate selected by the Governor not qualified, then the Governor would recommend another candidate from the pool of applicants. This process would be repeated until a candidate is found qualified and then elected.

H. 4487 has 40 sponsors with the lead sponsor being representative Russell Ott (D- Calhoun). This bill is a more evenly balanced, bi-partisan sponsored bill. Notably, none of the sponsors are attorneys. Under this bill, the JMSC membership is reduced from 10 members to 7. The bill would also eliminate the current 6 members from the General Assembly – three appointed by the Speaker and three appointed by the Chairman of the Senate Judiciary Committee. In fact, under Rep. Ott’s proposal, there would be no members of the General Assembly on the JMSC. Instead, two members of the general public would be appointed by the Governor and the other five members would be retired judges (Supreme Court, Court of Appeals, Circuit Court or Family Court) each one appointed by various legal related organizations. The JMSC review and investigation process would remain largely the same. However, instead of the formal report on qualifications being released no less than 48 hours after the list of qualified candidates is released to the General Assembly, the time would be extended to ninety-six hours. In addition, the bill eliminates the limitation on the JMSC to recommend no more than three qualified candidates. Finally, the bill creates a conflict of interest provision for members of the General Assembly, barring them from voting on a judicial candidate, if they have business before the courts of this state “on a regular basis”.

Adding even greater attention to the issue of reform, Attorney General Alan Wilson has hosted two panel discussions this year on the need for reforming the JMSC and continues to make the case wherever he speaks. He believes the executive branch should have a role in selecting judges. He maintains that there should be no legislators on the JMSC, the Governor should make the appointments to the JMSC, and that a move should be made to eliminate the 3 candidate cap. He believes this would be a more proper balance of power in the selection of judges thereby instilling greater confidence by the public in the judicial system. Continuing to publicly advocate for change, Attorney General Wilson has been meeting with many sheriffs and solicitors to discuss his views. In addition, House Speaker Pro Tem Tommy Pope (R-York) has said “it may be working fine – and I’m about to tell you I don’t think it is – but it may be working fine, but if people don’t think it is, then you’ve got to do something about it.”

As can be seen by the growing number of bills on the topic, the growing number of sponsors, the creative ideas, the bipartisan nature of the support for JMRC reform, and the public engagement by the Attorney General, attention on JMSC reform is significant. Since none of the bills have seen legislative movement yet, it is hard to imagine a bill passing both the House and the Senate by May of 2024. If reform doesn’t move this year, there is no question it could become an even hotter topic once the 2026 Gubernatorial and Attorney General races heat up. 



SCDTAA Docket

CASSIDY COATES PRICE

Suggs Recognized by South Carolina Association For Justice

Cassidy Coates Price is pleased to announce that litigation attorney, Fred W. “Trey” Suggs III, has been recognized on the South Carolina Lawyers Weekly 2023 Power List in Business Defense. Each year, only ten lawyers are recognized, and Trey is the only upstate Lawyer who was named to this prestigious list for 2023. Further, Trey has received the annual Worthy Adversary Award from the South Carolina Association For Justice. Each year, the Association honors a defense attorney who displays exemplary professionalism, honesty and ethical behavior in their practice of law.

Trey was honored at the 2023 SCAJ Annual Convention, which took place August 3-5, 2023 at the Marriott Resort and Spa on Hilton Head Island.

“This award is a credit to Trey’s reputation as a tough but collegial advocate for his clients.” Founding Partner Clark Price said. “We appreciate SCAJ recognizing Trey as a worthy adversary.”

Trey Suggs’s practice includes defending healthcare professionals, assisting companies and business owners in navigating business breakups, negotiating and litigating contract disputes, enforcing and defending non-competition

agreements, and representing businesses, from local to international, in complex litigation matters. Trey graduated from Washington & Lee University and received his Juris Doctorate from the University of South Carolina School of Law in 2002.

Cassidy Coates Price announces the addition of Lillian K.H. Keeling to the litigation practice.

Cassidy Coates Price secures 2024 *Best Lawyers*® recognition by *Best Lawyers in America*® in Greenville, SC. Recognized lawyers include William Coates, Ross Plyler and Fred W. “Trey” Suggs III.

South Carolina Super Lawyers® recognizes three Cassidy Coates Price attorneys as 2023 *South Carolina Super Lawyers*® in their respective practice areas. Attorneys recognized include Bill Coates, Ross Plyler, and Trey Suggs.

GALLIVAN WHITE BOYD

GWB Celebrates 75 Years

Gallivan White Boyd (GWB) is pleased to share that the firm is celebrating 75 years of productive and progressive client service. With a heritage dating to 1948, attorneys and support staff at GWB have worked tirelessly to build a progressive and productive law firm focused on providing high quality client service and the preservation of justice.

With over 65 attorneys representing clients across the



nation, GWB strives to showcase our excellence in the legal community with the firm's successes rooted in attorney experience and client dedication. "We are thrilled to share this landmark milestone with our community and look forward to the continued successes for both our attorneys and our clients as our firm continues to grow," remarks Lindsay Joyner, attorney with GWB. For more information about GWB visit the firm's website www.gwblawfirm.com.

GWB is pleased to announce that the firm and five of its attorneys have been selected for inclusion in the *2024 Edition of Benchmark Litigation – United States*.

Local *Litigation Stars* for each state reflect only those individuals who were recommended consistently as reputable and effective litigators by clients and peers.

GWB is honored to announce its Litigation Stars:

Gray T. Culbreath – Appellate, Product Liability

John T. Lay – Product Liability, Commercial

David Rheney – Insurance, Product Liability, Commercial, Personal Injury, Transportation

Ronald Wray – Product Liability, Commercial, Transportation

Additionally, *Future Stars* are *Ones to Watch*. These are lawyers who are building their reputations in the market.

GWB is happy to announce that **W. Duffie Powers** has been honored as a *Future Star*.

"GWB is proud of its selection into this elite listing of law firms, and we are excited for Gray, John T., David, Ron,

and Duffie on their individual recognition. GWB has outstanding trial lawyers who work tirelessly for their clients every day." – *C. William McGee, CEO and Partner*

GWB has been listed in *Best Lawyers*® 2024 edition of *Best Law Firms*®. The firm was recognized regionally in 19 practice areas, including eleven First-Tier Rankings. Firms included in the 2024 Best Law Firms list are recognized for professional excellence which are based on ratings from clients and peers.

GWB received the following Tier-1 rankings in the *2024 Best Lawyers*® - *Best Law Firms*®:

Metropolitan Tier 1

Columbia, SC

Appellate Practice

Bet-the-Company Litigation

Commercial Litigation

Insurance Law

Litigation – Insurance

Mass Tort Litigation / Class Actions – Defendants

Personal Injury Litigation – Defendants

Product Liability Litigation – Defendants

Greenville, SC

Commercial Litigation

Insurance Law

Litigation – Insurance

Mediation

Personal Injury Litigation – Defendants

Product Liability Litigation – Defendants



Professional Malpractice Law – Defendants
Workers’ Compensation Law – Employers

GWB is pleased to announce its inclusion as a ranked law firm in the 2023 edition of *Chambers USA*. GWB is ranked in South Carolina for Litigation: General Commercial (Band 2). With four offices across the Carolinas, the firm frequently represents businesses and individual clients in business and commercial disputes, insurance matters, arbitration, and litigation.

Gray T. Culbreath (ranked in Band 2) is a well-regarded trial and appellate lawyer who regularly handles complex commercial litigation and class actions on behalf of individual and corporate clients, as well as major insurers. He is a Fellow of the prestigious American College of Trial Lawyers. He is a past president of the South Carolina Defense Trial Attorneys’ Association (SCDTAA) and a member of the American Board of Trial Advocates, Federation of Defense and Corporate Counsel, and Lawyers for Civil Justice, in which he has also served in several leadership roles. According to *Chambers and Partners*, sources say, he “is a very strong attorney” and “has a nice and calm demeanor. He is good at taking the emotion out of cases.”

John T. Lay, Jr. (Ranked in Band 2) regularly acts for clients on complex litigation related to financial services, insurance and product liability, as well as professional malpractice claims. He also has considerable experience in handling appeals. *Super Lawyers*®, a Thomas Reuters publication, has named Lay as one of the Top 25 Lawyers in South Carolina for more than five years consecutively.

He is a Fellow of the prestigious American College of Trial Lawyers. He is also a past president of the International Association of Defense Counsel (IADC), SCDTAA, and the South Carolina Chapter of the American Board of Trial Advocates, as well as a former member of the Boards of Directors of IADC, the Defense Research Institute, and Lawyers for Civil Justice.

Lindsay A. Joyner (Ranked as Up and Coming) focuses her practice on complex business and commercial litigation, financial institution litigation including lender liability, professional negligence, and trust litigation. As a result, she regularly handles a wide variety of matters concerning contractual disputes, business torts, shareholder disputes, and other complex litigation arising out of business transactions. She currently serves as the chair of the South Carolina Bar’s House of Delegates, a position she will hold until 2024, and she is the chair-elect of the Bar’s Trial and Appellate Advocacy Section Council. She is a past president of the South Carolina Bar’s Young Lawyers Division. She has been named a *Rising Star* in the in *South Carolina Super Lawyers*® listing since 2018, and she has been included in the U.S. News & World Report – *Best Lawyers*® editions since 2020 for either Commercial Litigation or Litigation—Business & Finance.

“Gallivan White Boyd celebrates this commendable achievement. Congratulations to our partners for continuing to excel in the legal industry.”—C. William McGee, CEO



Johnsen Receives Leadership in Law Recognition

GWB is pleased to announce that partner **Jennifer Johnsen** was named a Leadership in Law honoree by South Carolina Lawyers Weekly.

Johnsen was one of 34 honorees at the SC Leadership Awards event held in Columbia, South Carolina. Honorees are selected by a panel of judges. Nominations, applications and letters of recommendation are evaluated based on professional accomplishments, bar leadership, community service, pro bono work and mentoring.

Johnsen is not only a leader at GWB, but also in the legal profession and community at large. Within GWB, she leads the firm's Insurance practice group. Within the broader legal community, she has held numerous leadership positions in the Federation of Defense & Corporate Counsel (FDCC), where she currently serves as a senior director for the board of directors, member of the executive committee, chair of the membership development committee and as a vice chair on numerous other committees. She is also a past-president of the Greenville County Bar Association and has served on the board of trustees for the United Way of Greenville County, including as the chair of the United Way of Greenville County's 2016 Campaign, which raised more than \$16.5 million dollars for the community.

"We are honored to have Jennifer as part of the GWB team. She works tirelessly for her clients, the community, and the legal profession at large, and that dedication is on display each and every day. We believe she is incredibly

deserving of this great honor," said *C. William McGee*, GWB's Chief Executive Officer.

GWB partners **A. Johnston Cox**, **Curtis L. Ott**, **Gray T. Culbreath**, and **John T. Lay, Jr.** were named 2024 Lawyers of the Year by *Best Lawyers in America*® in Columbia, South Carolina. Each year, only one lawyer in each practice area and designated metropolitan area is honored as the *Lawyer of the Year*. These lawyers are selected based on voting averages received from peer-review assessments.

A. Johnston Cox was named *Lawyer of the Year* for Insurance Law in the Columbia, SC area. He is listed in the 2024 edition of *The Best Lawyers in America*® in Insurance Law and Personal Injury Litigation – Defendants.

Gray T. Culbreath was named *Lawyer of the Year* for Mass Tort Litigation / Class Actions – Defendants in the Columbia, SC area. Culbreath is listed in the 2024 edition of *The Best Lawyers in America*® in the following practice areas: Appellate Practice, Bet-the-Company Litigation, Commercial Litigation, Mass Tort Litigation / Class Actions – Defendants, Personal Injury Litigation – Defendants and Product Liability Litigation – Defendants.

John T. Lay, Jr. was named Lawyer of the Year for Bet-the-Company Litigation in the Columbia, SC area. Lay is listed in the 2024 edition of *The Best Lawyers in America*® in the following practice areas: Bet-the-Company Litigation, Commercial Litigation, Insurance Law, Mass Tort Litigation / Class Action – Defendants,



Personal Injury Litigation – Defendants, and Product Liability Litigation – Defendants.

Curtis L. Ott was named *Lawyer of the Year* for Product Liability Litigation - Defendants in the Columbia, SC area. Ott is listed in the 2024 edition of *The Best Lawyers in America*® in the following practice areas: Commercial Litigation and Product Liability Litigation – Defendants.

31 Nominated and Selected as 2023 Legal Elite

31 **GWB** attorneys have been nominated and selected by their peers for inclusion in *Columbia Business Monthly*, *Greenville Business Magazine* and *Charleston Business Magazine*'s 2023 Legal Elite.

Legal Elite winners are chosen by area attorneys that are members of the South Carolina Bar Legal Elite is the only regional awards program that gives every active attorney the opportunity to participate. The magazine lists the top recipients in 50 categories.

Five of Gallivan White Boyd's attorneys are recognized as a Top Vote Winner in one or more of their recognized practice areas:

Ian Conits – Estates & Trust – Litigation

A. Johnston Cox – Personal Injury – Defendant

Gray Culbreath – Product Liability – Defendant

John T. Lay, Jr. – Business Litigation, Professional Liability

W. Duffie Powers – Construction

Congratulations to the following attorneys who have been recognized:

Debbie Brown – Employment- Defendant

Ian Conits – Business Litigation, Estates & Trust – Litigation, Personal Injury – Defendant

A. Johnston Cox – Insurance, Personal Injury – Defendant

Gray Culbreath – Mediation, Product Liability – Defendant

Natalie Ecker – Insurance

Amity Edmonds – Workers' Compensation – Defendant

T. Cory Ezzell – Workers' Compensation – Defendant

Amelia Farmer – Business Litigation

H. Mills Gallivan – Workers' Compensation – Defendant

Casey Gonyea – Workers' Compensation – Defendant

Jennifer Johnsen – Insurance

John A. "Jay" Jones – Construction, Mediation

Laura Jordan – Appellate, Employment – Defendant

Lindsay Joyner – Bankruptcy and Creditor Rights

John T. Lay, Jr. – Business Litigation, Professional Liability

Carter Massingill – Business Litigation, Construction, Insurance

Stuart Mauney – Mediation, Professional Liability

William Maurides – Personal Injury – Defendant, Product Liability – Defendant

Kyle McGann – Construction



Shelley Montague – Construction, Insurance

Paige Ornduff – Business Litigation, Personal Injury – Defendant

Curtis Ott – Personal Injury – Defendant

Makenzie P. Segars – Insurance

W. Duffie Powers – Bankruptcy and Creditor Rights, Construction

Michael Rabb – Personal Injury – Defendant

Phil Reeves – Insurance, Personal Injury – Defendant, Product Liability – Defendant

David Rheney – Insurance, Personal Injury – Defendant, Product Liability – Defendant

Ron Tate – Construction

Daniel White – Business Litigation, Environmental, Insurance, Medical Malpractice – Defendant, Personal Injury – Defendant, Product Liability – Defendant

Hunter Williams – Professional Liability

Ron Wray – Product Liability - Defendant

GWB is pleased to announce the selection of attorneys, **Jordan Crapps**, **Jessica W. Laffitte**, and **Thomas Twehues**, as 2024 *Ones to Watch* by *Best Lawyers in America*®.

Attorneys Crapps and Laffitte have been named to this list since 2021. Twehues is named to the list for the second year in a row.

Jordan Crapps (Columbia) was named *Ones to Watch* for Commercial Litigation and Litigation-Securities.

Jessica W. Laffitte (Columbia) was named *Ones to Watch* for Product Liability Litigation - Defendants.

Thomas Twehues (Greenville) was named *Ones to Watch* for Workers' Compensation Law - Employers.

Rheney Inducted into the American College of Trial Lawyers

GWB is thrilled to announce that partner **T. David Rheney** was inducted into the American College of Trial Lawyers at its annual meeting held in San Diego, California, on September 23, 2023.

A native of Orangeburg, Rheney is located in **GWB's** Greenville, South Carolina, office and is one of the firm's most experienced trial lawyers. During his more than thirty-year career, he has tried hundreds of trials to verdict, including three of the most significant trucking/transportation cases tried in South Carolina in 2018 and 2019, obtaining very favorable results for his clients. He is also called upon to provide global legal counsel as the South Carolina representative and past president of Insuralex – a worldwide network of lawyers specializing in insurance and reinsurance matters. He is also a past president of the South Carolina Defense Trial Attorneys Association.

“Gallivan White Boyd is proud to congratulate David Rheney on his induction into this elite group of legal professionals. David is an outstanding trial lawyer and



will be a tremendous addition to the ACTL. – *C. William McGee, CEO and Partner*

HAYNSWORTH SINKLER BOYD

Haynsworth Sinkler Boyd, P.A. has been named a top-tier firm by *Best Lawyers*® in its 2024 “Best Law Firms” rankings for the 14th consecutive year.

The firm earned a national ranking in Litigation – Construction and 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

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 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 - 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

Best Lawyers®, a legal peer-review guide, has selected 22 Haynsworth Sinkler Boyd attorneys for inclusion in The 2024 *Best Lawyers in America*®, including six attorneys as “Lawyer of the Year” and nineteen attorneys as *Ones to Watch*.

The following attorneys have been recognized as “Lawyer of the Year” for their respective practice areas:

Greenville

W. David Conner – Mass Tort Litigation / Class Actions – Defendants

W. Francis Marion, Jr. – Product Liability Litigation – Defendants

Sally McMillan Purnell – Professional Malpractice Law – Defendants

J. Derrick Quattlebaum – Insurance Law

The following attorneys are listed in The 2024 *Best Lawyers in America*® for these specific practice areas:

Charleston

Stephen E. Darling – Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants

Wm. Howell Morrison – Bet-the-Company Litigation; Commercial Litigation; Professional Malpractice Law – Defendants

Adam N. Yount – Commercial Litigation; Personal Injury Litigation – Defendants

Columbia

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

Greenville

J. Ben Alexander – Medical Malpractice Law – Defendants; Professional Malpractice Law – Defendants

Thomas H. Coker, Jr. – Litigation – Construction

W. David Conner – Mass Tort Litigation / Class Actions – Defendants

H. Sam Mabry III – Litigation – Banking and Finance; Litigation – Intellectual Property; Litigation – Labor and Employment; Litigation – Mergers and Acquisitions; Litigation – Real Estate; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants

W. Francis Marion, Jr. – Bet-the-Company Litigation; Commercial Litigation; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants



Sally McMillan Purnell – Medical Malpractice Law – Defendants; Personal Injury Litigation – Defendants; Professional Malpractice Law – Defendants

J. Derrick Quattlebaum – Insurance Law; Litigation – ERISA

Kenneth N. Shaw* – Medical Malpractice Law – Defendants; Professional Malpractice Law – Defendants

Sarah Spruill – Commercial Litigation

Lawyers earlier in their careers are recognized as *Ones to Watch* for their outstanding professional excellence in private practice. The following attorneys have been recognized as *Ones to Watch*:

Greenville

J. Patrick Bradley – Construction Law; Insurance Law; Litigation – Construction; Personal Injury Litigation – Defendants

Cameo Joseph – Medical Malpractice Law – Defendants

Jonathan Klett – Commercial Litigation; Litigation – Construction; Product Liability Litigation – Defendants

Jordan W. Peeler – Family Law

Demetrius Pyburn – Personal Injury Litigation – Defendants

Mackenzie C. Ruroede* – Family Law

** Lawyers who are listed for the first time*

MURPHY & GRANTLAND

Murphy & Grantland founding shareholder, John Grantland, was awarded “Lawyer of the Year” for Personal Injury Litigation-Defendants in Columbia, SC by *Best Lawyers*®. Inclusion in *The Best Lawyers in America*® is based on a comprehensive peer-review survey, with almost 25,000 voters this year.

Murphy & Grantland is also excited to welcome Andrew Balcerzak and Tradd Stover as new associate attorneys at the firm. Andrew will primarily work on the transportation teams and Tradd with the insurance coverage team. The firm continues to experience tremendous growth as four new attorneys will be joining the firm in 2024. It has never been a more exciting time at M&G.

MCANGUS GOUDELCK AND COURIE

McAngus Goudelock & Courie (MGC) is pleased to announce the inclusion of 20 attorneys in *The Best Lawyers in America*® list. Two of those attorneys were named “Lawyer of the Year”: in Charleston, SC, Amy Jenkins was named Litigation – Employment “Lawyer of the Year”; in Greenville, SC, Erroll Anne Hodges was named Workers’ Compensation Law – Employers “Lawyer of the Year”. 15 attorneys were also named to the *Best Lawyers*®: *Ones to Watch* 2024 list.

The Best Lawyers in America®

Charleston

Mark Davis – Workers’ Compensation Law – Employers



Amy Jenkins – Employment Law – Individuals; Employment Law – Management; Litigation – ERISA; Litigation – Labor & Employment (“Lawyer of the Year”)

Allison Nussbaum – Workers’ Compensation Law – Employers

JD Smith – Litigation – Construction; Litigation – Insurance; Product Liability Litigation – Defendants

Columbia

Chad Abramson – Workers’ Compensation Law – Employers

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

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

Scott Garrett – Workers’ Compensation Law – Employers

Mundi George – Workers’ Compensation Law – Employers

Rusty Goudelock – Workers’ Compensation Law – Employers

Jason Lockhart – Workers’ Compensation Law – Employers

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

Stuart Moore – Workers’ Compensation Law – Claimants; Workers’ Compensation Law – Employers

Julie Moose – Commercial Litigation

Greenville

Mark Allison – Workers’ Compensation Law – Employers

Haylea Carter – Personal Injury Litigation – Defendants

Vernon Dunbar – Workers’ Compensation Law – Employers

Erroll Anne Hodges – Workers’ Compensation Law – Employers (“Lawyer of the Year”)

Shayne Williams – Workers’ Compensation Law – Employers

Myrtle Beach

Dominic Starr – Litigation – Insurance

Best Lawyers®: Ones to Watch

Charleston

Shawn Bevans – Personal Injury Litigation – Defendants

Madelyn Dukes – Construction Law and Litigation; Personal Injury Litigation – Defendants

Jonathan Lane – Labor and Employment Law – Employee and Management;

Columbia

Brett Bayne – Product Liability Litigation – Defendants

Riley Bearden – Insurance Law; Personal Injury Litigation – Defendants

Sarah Guthrie – Workers’ Compensation Law – Employers

Justin Hunter – Workers’ Compensation Law – Employers



Matt Moser – Workers’ Compensation – Claimants;
Workers’ Compensation Law – Employers

Adam Ribock – Commercial Litigation; Construction Law;
Personal Injury Litigation – Defendants

Michael Trask – Insurance Law; Personal Injury Litigation
– Defendants

Greenville

Kristie Commins – Workers’ Compensation Law –
Employers

Ashley Forbes – Workers’ Compensation Law – Employers


Katie Grove – Workers’ Compensation Law – Employers

Allison Mabbs – Insurance Law; Litigation – Construction;
Personal Injury Litigation – Defendants

Amanda Neely – Workers’ Compensation Law – Employers

Ribock Graduates from 2023 Leadership Columbia

MGC Columbia attorney, and SCDTAA Board Member, **Adam Ribock** is a graduate of Leadership Columbia’s 2023 class. Offered through the Columbia Chamber, this skills-building program aims to develop emerging community leaders, while providing an educational experience with a strong emphasis on social and community awareness. “This year marks a historic moment for the Leadership Columbia program,” says Columbia Chamber President and CEO, Carl Blackstone, in a Columbia Chamber press release. “For 50 years, over 2,200 leaders have made their impact on the greater Columbia region. The class of

2023 is poised to continue that legacy.” With a decade of legal experience, Adam Ribock’s practice focuses on civil litigation, including personal injury, premises liability, construction defect claims, automotive and HOA litigation. Adam is a graduate of the University of Mississippi’s School of Law and the University of South Carolina. He is a member of the Augusta Bar Association, Richland County Bar Association and is board member of the South Carolina Defense Trial Attorneys’ Association. Adam has been named to *Best Lawyers*®: *Ones to Watch* since 2021 and *Columbia Business Monthly’s Legal Elite of the Midlands* since 2020. The Columbia Chamber is a private, non-profit, Partner-driven organization comprised of 1,200 business enterprises, civic organizations, educational institutions and individuals in Calhoun, Fairfield, Kershaw, Lexington, Newberry and Richland counties. The Columbia Chamber serves as the voice of its Partners and the business community at large on matters of economic, educational, social, cultural and political concern, as well as supports and promotes the success of its Partners through networking, professional development, advocacy and leadership. The organization has represented the interests of the local business community since 1902. 



Verdict Reports

TYPE OF ACTION:

Auto Accident

INJURIES ALLEGED:

Torn posterior tibial tendon, spinal radiculopathy, permanent injuries

NAME OF CASE:

Deloris Campbell vs. Cole Collins

COURT: (INCLUDE COUNTY):

Court of Common Pleas, Dorchester County

CASE #:

2021-CP-18-01966

NAME OF JUDGE:

The Honorable Maite Murphy

VERDICT AMOUNT:

Defense Verdict

DATE OF VERDICT:

4/11/23

DEMAND:

\$600,000.00

HIGHEST OFFER:

\$100,000.00

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Penn W. Ely (Clawson & Staubes, Charleston, SC)

ATTORNEY(S) FOR PLAINTIFF (AND CITY):

Johnny F. Driggers (Driggers Law Firm, Charleston, SC)

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

On 6/19/18, Defendant rear-ended and totaled Plaintiff’s van. Plaintiff declined EMS transport, rode to the ER with her sister, and saw a chiropractic the next day. A podiatrist repaired the posterior tibial tendon in her left foot. The parties disputed the mechanism of her foot injury. Additionally, Plaintiff received injections for radiating neck and back pain. Then 63 years old, she never returned to her job as a home-health aid or worked elsewhere.

Her podiatrist, anesthesiologist, and chiropractor related all treatment to the accident. The defense relied on cross-examination and did not call an expert. Plaintiff had reported left foot pain 40 days before the accident. The parties disputed whether a pair of sandals caused the same (“reports arch tenderness after a change in shoes to a sandal”). Further, the parties disputed whether high blood pressure caused foot and leg swelling beforehand. There was no record of neck or back pain within four years of the accident.

In closing, Plaintiff asked for \$600,000: about \$100,000 in medical bills, plus \$200,000 for lost wages, plus \$300,000 in non-economic damages. After 30 minutes of deliberation,



the jury found that Defendant did not proximately cause her injuries.

(Any result the lawyer or law firm may have achieved on behalf of a client in one matter does not necessarily indicate similar results can be obtained for other clients.)

TYPE OF ACTION:

Motor Vehicle Collision

INJURIES ALLEGED:

Face, facial laceration, fracture, leg, fracture, patella, hand, hardware implanted, internal fixation, knee, dislocation, open reduction, physical therapy

NAME OF CASE:

Mikeya Anderson v. Amanda Burke

COURT: (INCLUDE COUNTY)

Richland County Court of Common Pleas

CASE #:

2021CP4001414

TRIED BEFORE:

A jury

NAME OF JUDGE:

Jocelyn Newman

VERDICT AMOUNT:

§0 – Defense Verdict

DATE OF VERDICT:

1/23/2023

DEMAND: (REQUIRED IF DEFENSE VERDICT)

§100,000 (liability policy limits)

HIGHEST OFFER:

§5,000

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Riley Bearden & Brett Bayne of MGC Columbia

ATTORNEY(S) FOR PLAINTIFF (AND CITY):

Rebecca Raynard – Anastapoulo of Columbia

DESCRIPTION OF THE CASE, THE EVIDENCE PRESENTED, THE ARGUMENTS MADE AND/OR

OTHER USEFUL INFORMATION:

On Aug. 22, 2019, plaintiff Mikeya Anderson, 29, a school bus driver, was driving on North Woodrow Street, at its intersection with Broad River Road, in Irmo. As she entered the intersection, the front of her sedan struck the front of a minivan driven by Amanda Burke. Burke was driving on Broad River Road and allegedly drove through a red light. Anderson suffered leg fractures and a facial laceration.

Anderson sued Burke. She alleged that Burke was negligent in the operation of a vehicle. Anderson's counsel argued that Anderson had a green light as she entered the intersection, and that Burke drove through a red light, thereby causing the collision.

The defense maintained that Anderson was solely liable for causing the accident. In addition to Burke's assertion that her light was green, the defense relied upon the testimony of an independent witness. The witness, who was traveling on Broad River Road in the opposite direction of Burke, confirmed that Burke had a green light upon entering the intersection, and Anderson's light was red.

The defense contended that Anderson caused the accident by illegally entering the intersection on a red light.



TYPE OF ACTION:

Negligence/MVA

INJURIES ALLEGED:

Broken wrist, broken nose, lacerated scrotum, lacerated perineum

NAME OF CASE:

Grady Gaddy v. George Harrison

COURT: (INCLUDE COUNTY)

Fairfield County Court of Common Pleas

CASE #:

2020CP2000339

TRIED BEFORE:

Jury

NAME OF JUDGE:

Brian Gibbons

AMOUNT:

\$55,737.29

DATE OF VERDICT:

02/21/23

DEMAND: (REQUIRED IF DEFENSE VERDICT)

\$200,000

HIGHEST OFFER:

\$120,000

ATTORNEY(S) FOR DEFENDANT (AND CITY):

Carson Shealy and Brett Bayne, Columbia, SC

ATTORNEY(S) FOR PLAINTIFF (AND CITY):

Creighton Coleman, Winnsboro, SC

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

Defendant stopped at stop sign before pulling out in front of Plaintiff motorecyclist. Plaintiff broke wrist and nose and had lacerated scrotum and perineum. Plaintiff treated at ER and had a few follow-ups. Plaintiff missed 8 weeks of work. Total economic damages around \$40,000. Plaintiff's witnesses included himself, his mother, and an eye-witness. Defendant was the only defense witness. Plaintiff claimed his scrotum was ripped open so badly that his testicles were hanging out. Defense argued medical records indicated he suffered only a superficial laceration with no testicular involvement. Defendant admitted liability and apologized. Plaintiff has a pending Motion for New Trial.

TYPE OF ACTION:

Negligence/MVA

INJURIES ALLEGED:

Broken wrist

NAME OF CASE:

Shaun W. Thompson v. Robin Laquan Jones and Robert Q. Gantt

COURT: (INCLUDE COUNTY)

Richland County Court of Common Pleas



CASE #

2020CP4002412

TRIED BEFORE:

Jury

NAME OF JUDGE:

Jocelyn Newman

AMOUNT:

\$17,500.00

DATE OF VERDICT:

03/13/23

DEMAND: (REQUIRED IF DEFENSE VERDICT)

\$18,000

HIGHEST OFFER:

\$8,000


ATTORNEY(S) FOR DEFENDANT (AND CITY):

Carson Shealy and Mike Trask, MGC, Columbia, SC

ATTORNEY(S) FOR PLAINTIFF (AND CITY):

Todd Lyle, Columbia, SC

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

Defendant Gantt rear-ended Plaintiff resulting in Plaintiff's wrist breaking. Plaintiff treated with an orthopedist and received a splint with no other medical treatment. Total medical bills of \$1,540. He missed 8 weeks from work, lost out on a scholarship opportunity, and had other compensable damages. Total economic damages of \$15,000. Plaintiff was the only witness. Defendant did not appear for trial. 



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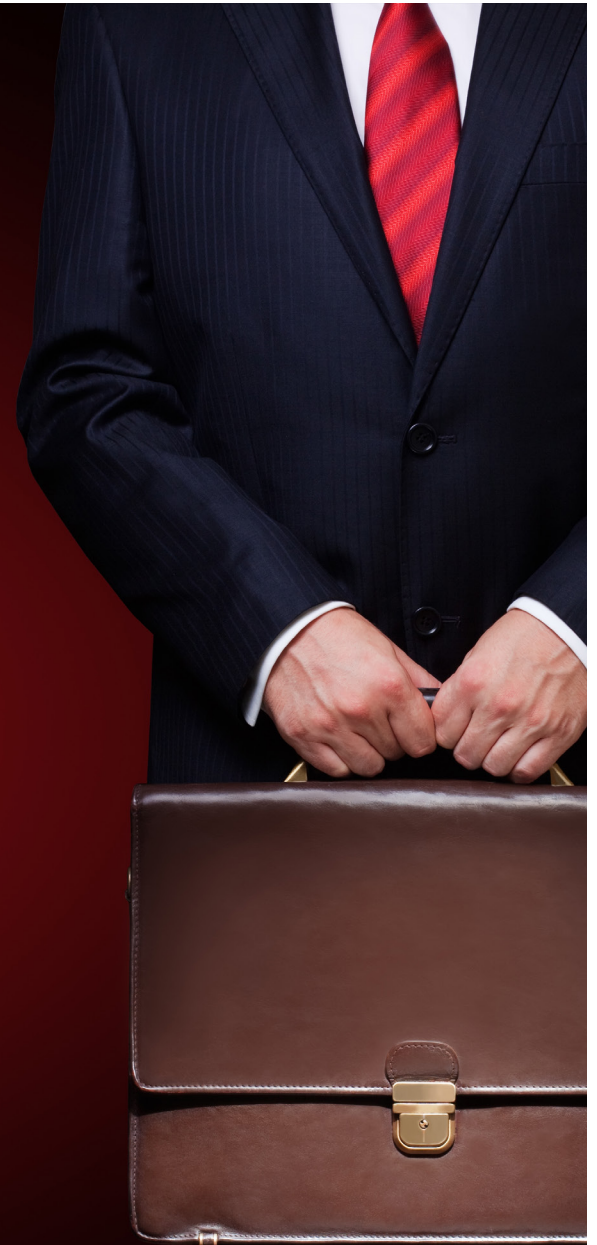
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Helen F. Hiser

Case Notes

By Helen F. Hiser

Hicks Unlimited, Inc. v. UniFirst Corp., SC Supreme Court Opinion No. 28158, June 14, 2023

Hicks Unlimited was another decision from the SC Supreme Court setting out the parameters governing enforcement of arbitration provisions. The contract (between a Massachusetts company and a South Carolina company) stated that the Federal Arbitration Act applied, but did not contain the notice on the first page that is required under the SC Arbitration Act, SC Code Ann §§ 15-48-10 to 240. When a dispute arose, UniFirst moved to compel arbitration, which Hicks, the South Carolina company, resisted. The circuit court denied the motion to compel, ruling that the contract did not involve interstate commerce and did not comply with the SCAA's notice provisions. The Court of Appeals reversed, finding the contract did involve interstate commerce.

The Supreme Court reversed. First, it held that simply stating that the FAA applies to a contract does not make it so. The contract must actually involve interstate commerce, a fact that must be proven by the moving party. In this case, the moving party failed to submit any evidence that the contract involved interstate commerce. Although UniFirst's counsel argued on rehearing that the uniforms were made in Kentucky and shipped to South Carolina, and payment was made to and deposited in Massachusetts, that was insufficient because argument of counsel is not evidence and, moreover, it was raised for the first time on rehearing.

Lucinda Ruh v. Metal Recycling Services, LLC, SC Supreme Court Opinion No. 28163, June 21, 2023

In *Ruh*, the South Carolina Supreme Court addressed a certified question from the Fourth Circuit regarding the liability of a principal who hires an independent contractor, who, in turn, injures a plaintiff. Although the Court affirmed the rule that a principal is not vicariously liable for the negligence of an independent contractor, that principal may be held liable for failing to exercise reasonable diligence in **selecting** a competent independent contractor. Although the Court stopped short of adopting all of Section 411 of the Restatement (Second) of Torts, it found the "comments to subsection 411(a)" which provides that "An employer [or principal] is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor: (a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done." The Court rejected arguments that its ruling will "open the flood gates" and impose unlimited liability on shippers who transport goods through South Carolina, pointing out:

1) that the plaintiff will still need to prove the principal did not exercise reasonable care under the circumstances, pointing out that most principals already exercise care in the selection of independent contractors such their ruling will not "place any significant additional burden on



the vast majority of principals to investigate a potential independent contractor”;

2) that “Subsection 411(a) contemplates liability of the principal only when the work of the contractor involves a ‘risk of physical harm unless it is skillfully and carefully done’” noting that “a more risky job,” such as hauling toxic chemicals on a public highway, “generally requires a higher level of competence and care”;

3) the question of reasonable care relates only to selecting a “competent and careful contractor,” which in turn means the contractor “possesses the knowledge, skill, experience, and available equipment” to do the job “without creating unreasonable risk of injury to others, and who also possesses the personal characteristics which are equally necessary,” citing comments to § 411(a); and,

4) the plaintiff still has to prove proximate cause between any negligence on the part of the principal in selecting a contractor and the resulting injuries.

***Palmetto Pointe at Peas Island v. Island Pointe, LLC,
SC Ct. of Appeals, Opinion No. 5996, June 28, 2023***

The South Carolina Court of Appeals addressed the issue of set-offs in a condominium construction case alleging various defects including water intrusion. The appellant, Tri-County Roofing (TCR), whose scope of work included installing siding, roofing, siding, trim and waterproofing decks, as well as soffits, gutters and downspouts, appealed the denial of or the amount of setoffs for various settlements, both pre-trial (some of which removed certain issues from trial) and post-trial. The claims against both the general

contractor, Complete Building Corp. (CBC) and TCR went to the jury, which awarded actual damages in the amount of \$6.5 million, and punitive damages against each of CBC and TCR in the amount of \$500,000 apiece. After allocating a total of 10% of the damages to TCR’s two subcontractors, CBC and TCR were held jointly and severally liable for the remaining \$5,850,000.

After affirming the premise that a nonsettling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action, the Court of Appeals went through the various categories of settlements:

1. During the post-trial motions, the Plaintiff settled with CBC for \$2,137,500. The parties allocated \$1 million of the settlement (paid by CBC’s insurer) to “items not discussed at trial” and \$637,500 to items covered at trial, with \$500,000 earmarked for the punitive damages award against CBC. Of the \$637,500, Plaintiff conceded TCR was entitled to a credit of \$137,500, but not the remaining \$500,000 of actual damages. First, the Court affirmed the proposition that a plaintiff is entitled to allocate settlement funds in whatever way is most advantageous to it while, at the same time cautioning trial courts that “allocations in settlements are not simply to be accepted but are to be examined to ensure a measure of fairness to all parties”—without any guidance as to what that means or how it is to be achieved.

a. The Court then rejected TCR’s claim that it was entitled to any of the \$1 million insurance settlement because those issues were not presented to the jury at trial.




b. The Court also rejected TCR's claim that it was entitled to a setoff for the \$500,000 allocated to the punitive damages award against CBC, because there were two separate punitive damages awards, one against CBC and one against TCR (the Court suggested that "if the jury's verdict evidenced a single punitive damages award against TCR and CBC jointly and severally," TCR might be entitled to a setoff).

c. However, the Court agreed with TCR that it was entitled to a setoff of the entire \$637,500, and not just the \$137,000 conceded by Plaintiffs, because CBC and TCR were found to be jointly and severally liable for all injuries submitted to the jury. The Court rejected the Plaintiff's argument that, because it settled with CBC during post-trial motions and before a final judgment was entered, TCR was not entitled to the setoff. The Court reversed and remanded for a setoff of the entire \$637,500 portion of the settlement with CBC.

2. The Court then moved to pre-trial settlements, noting that only some of them removed issues from trial. The Court rejected TCR's argument that, because CBC was the general contractor and ultimately responsible for all the construction, "any area not covered by an issue release was necessarily included." Although these pre-trial settlements did not allocate the settlement funds to various issues, the Plaintiff conceded small portions of each of the settlements were appropriate for setoff, which the trial court ordered. The Court went through

each of the pre-trial settlements at issue and found the trial court did not abuse its discretion with each.

*The Kitchen Planners v. Friedman, SC Supreme Court
Opinion No. 28173, August 23, 2023*

The South Carolina Supreme Court clarified the standard for summary judgment in *The Kitchen Planners*, rejecting the formerly applied "mere scintilla" in favor of "the genuine issue of material fact" that actually is set forth in Rule 56(c). After quoting from case law both applying and eschewing the "mere scintilla" standard, the Court appears to have adopted a requirement that the party opposing summary judgment present evidence that "provide[s] a meaningful factual basis on which a factfinder could" find for the non-moving party. The Court cited prior case law that holds the standard to that required to defeat a motion for a directed verdict under Rule 50(a), SCRCP, *i.e.*, that "the evidence support a 'reasonable inference' in favor of the non-moving party." . 



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