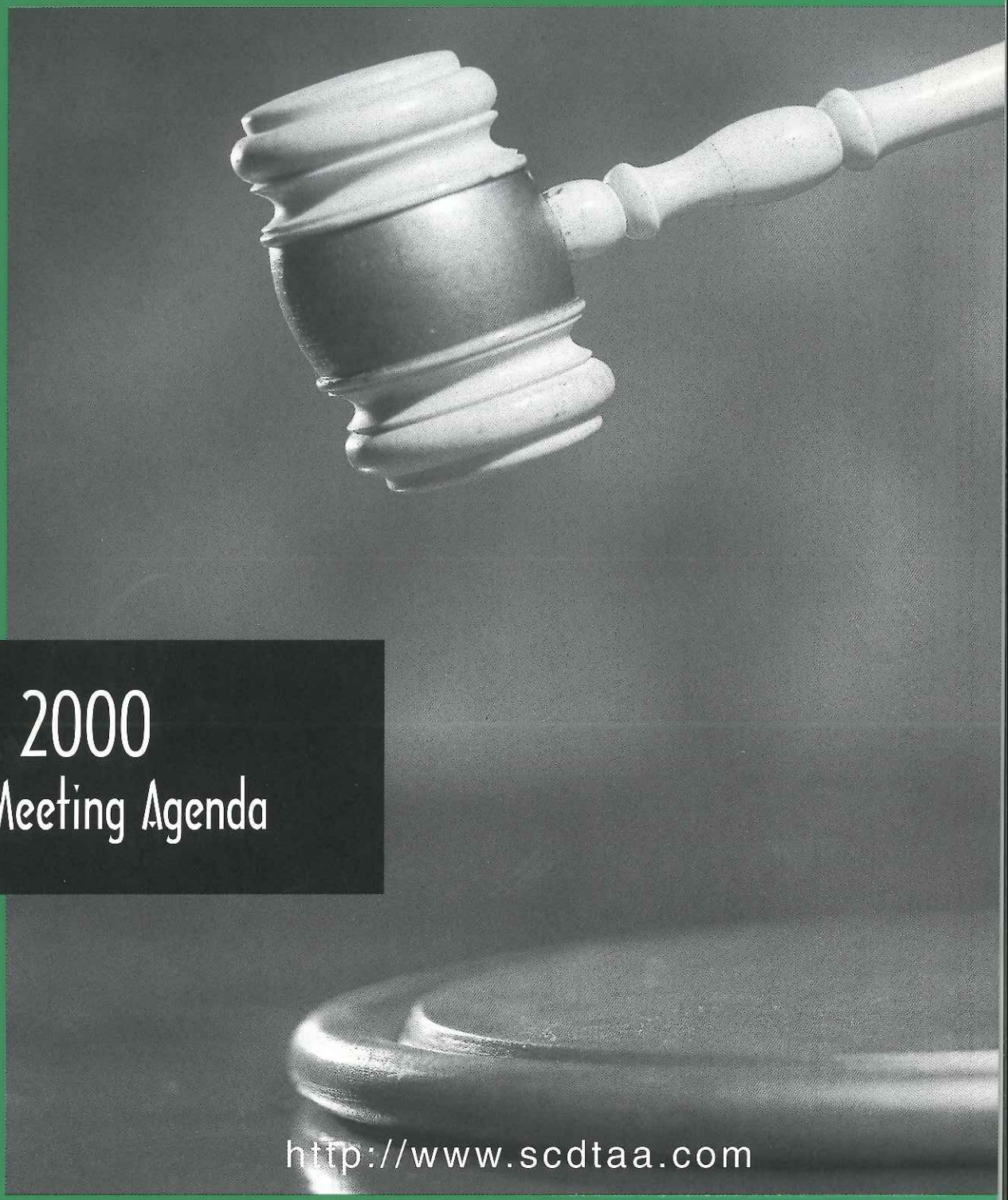
S.C. Defense Trial Attorneys' Association

Volume 28 Number 2 ▸ Summer, 2000

The DefenseLine



2000 Joint Meeting Agenda

http://www.scdtaa.com

2000 SCDTAA Trial Academy

USC School of Law • July 5-7, 2000

by Matthew H. Henrikson & John T. Lay, Jr., Co-Chairs

The goal of the Trial Academy is to provide basic to intermediate level trial training for defense lawyers. The program has been updated to include basic training for newer attorneys who have tried no cases or only a few cases. In addition, it will include training appropriate for attorneys who have participated in some trials or who have tried cases on their own, but who can benefit from intensive trial advocacy training to help them move "to the next level" in their ability to try cases. Students should be lawyers in your firm with one to five years' experience and who are ready to begin trying cases on a regular basis or who need to improve their courtroom skills.

Each of the participants will learn both by lectures from experienced defense lawyers and by practicing their own skills in small breakout sessions. The tentative agenda for the academy, is printed below and should give you a better idea of what will be offered. We anticipate that approximately 18 hours of CLE credits will be given for this program.

The registration fee is $600.00 exclusive of room and board. We have reserved a block of rooms at the Holiday Inn adjacent to the Law School at a rate of $74.00 single/double. Room charges will be paid directly by the participants to the hotel upon checkout. If you need a room at the Holiday Inn, please call (803) 799-7800 and identify yourself as being with our group to get this special rate. Reservations should be made by June 15, 2000 to ensure this rate.

We expect that we will again have an outstanding faculty. Enrollment will be limited to 24 students. In addition, Federal and State Court Judges have volunteered their time to preside over the mock trials to be held on July 7.

Please call SCDTAA Headquarters at (803) 252-5646 or (800) 445-8629 for more information.

Tentative Agenda

Wednesday, July 5, 2000

9:00-9:30	Welcoming remarks; introduction and overview of trial academy *Matt Henrikson and John T. Lay*
9:30-10:15	Discovery and trial preparation
10:15-11:00	Protecting the trial record
11:00- 12:00	Breakout session (theme of case and trial strategy)
12:00-1:00	Lunch - Holiday Inn
1:00-1:45	Introduction of and objections to exhibits
1:45-2:45	Direct and cross examination of lay witnesses
2:45-3:00	Break
3:00-4:15	Breakout session (exhibits and lay witnesses)
4:15-5:00	Opening statements
5:00-5:30	Remarks on ethics and professionalism for defense attorneys

Thursday, July 6, 2000

9:00-10:15	Breakout session (opening statements)
10:15-11:15	Direct and cross examination of expert witnesses
11:15-12:15	Breakout session (expert witnesses)
12:15-1:15	Lunch - Holiday Inn
1:15-2:00	Closing arguments
2:00-3:15	Breakout session (closing arguments)
3:15-3:30	Break
3:30-4:15	The trial of the MIST (minor impact - soft tissue) case
4:15-4:45	Post-trial motions
4:45-5:30	Prepare for mock trials (instructors available to assist)
6:00	Cocktail party - Summit Club

Friday, July 7, 2000

9:00-4:30	Mock trials - Richland County Judicial Center

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Ten Years Ago

President MARK H. WALL, of Charleston, reported that DAVID C. NORTON, a member of our Executive Committee, had been nominated by SENATOR THURMUND to fill the District Court seat being vacated by THE HONORABLE SOL BLATT, JR. The Joint Meeting with the Claims Managers was scheduled for the Grove Park Inn in Asheville, July 26th - 28th. MIKE WILKES, of Greenville, Chairman of the Social Committee, advised that our Annual Meeting in 1990 would be at the Mariner's Inn on Hilton Head Island, October 25th-28th. *THE DEFENSE LINE* noted that the York County Young Lawyers Association had awarded its Annual Community Service Awards to C.W.F. "CHARLIE" SPENCER, JR., and BEVERLY A. CARROLL, both of Rock Hill, SC.

Twenty Years Ago

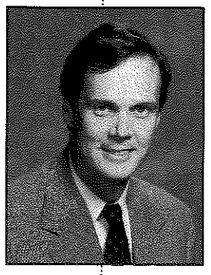
President F. BARRON GRIER, III, in February, 1980 issue reported several prominent members of our Association participated in the Law School Seminar entitled "Medical Proof in Workmens' Compensation Cases." They were HOOVER BLANTON, ROBERT GALLOWAY, BARRON GRIER, ERNIE NAUFUL, WILLIAM SHAUGHNESSY and VERNON SUMWALT. He also reported that the Legislature had started up and that he would be working with BRUCE SHAW, CARL EPPS and ED MULLINS to work with legislative matters. The Atlanta Claims Association reported ED KELLY had resigned his duties with the Association and the Association elected to name their Annual Educational Award as the EDWARD S. KELLY Award.

Thirty Years Ago

The Defense Line reported that GRADY KIRVEN, our President, and HUGH HARLESS, President of the Claims Managers, had presided over a joint meeting of the Defense Attorneys and Claims Managers at the Sheraton Fort Sumter, March 27th and March 28th. Program topics included excess liability, fees and billing. The group was entertained Friday evening with "gullah stories" by the renowned DICK REEVES.

President's Letter

by W. Francis Marion, Jr.



SUMMER AND REJUVENATION

When I looked up from my desk last week, spring had almost passed by and summer was just around the corner. Ah, summer I thought -- a time for rejuvenation, vacation, lying in a hammock, sipping pink lemonade, reading a book. Ha! If your vacations are like mine, I generally come home much more tired than when I left. Trying to pack a year's worth of pent up fun and relaxation into a week or two is exhausting. I have, however, found two great ways to rejuvenate myself in our practice - the Trial Academy and the Joint Meeting.

TRIAL ACADEMY

On July 5, 6, & 7th, our Association will conduct the annual Trial Academy. The stated purpose of the Trial Academy is to help younger lawyers gain courtroom experience, but in reality, it's a great three-day period in which to renew ourselves in the trial practice, whether as an instructor or student. It is a tremendous opportunity for both to learn.

Having been involved as an instructor in several Trial Academies, I have found that I learn much more than the students. As instructors, we are forced to rethink how and why we present cases the way we do. As an instructor, I may embellish successes (a little) but in reality I have had to focus on my bad habits and failures so others may avoid them (and help me not repeat them.) The Academy also gives us, who have been practicing for several years, the opportunity to see new and fresh ideas from the younger lawyers who may not have developed some of the habits that I have developed. Students have a tremendous respect for what we trial lawyers do. Without exception, all have expressed how beneficial it was for them to see older lawyers demonstrate some of the "tricks of the trade" to them. This aspect of the Trial Academy has been so well received that we have been asked by younger members to have a breakout at the Annual meeting for them to talk to older lawyers and judges about courtroom practices. At this year's Annual Meeting, we plan to have such a breakout.

If you cannot find time to help with the Academy, please send younger members of your firm as students. It is the most bang for your seminar buck that you will find anywhere.

THE JOINT MEETING

Thanks to the efforts of Jay Courie and his committee, this year's Joint Meeting plans to be a marked shift from prior years. While we have all enjoyed the Joint Meeting, this year's meeting will focus specifically on the electronic revolution that we all are having to deal with. Various sponsors have agreed to participate in the meeting so that you can experience hands on demonstrations of software and electronics that will directly affect your practice. Chief Justice Toal and Associate Justice Pleicones will be featured speakers to talk about our future with computers in the court system. In addition to this outstanding program and the opportunity to see cutting edge technology, you have the beautiful surroundings of Asheville and the Grove Park Inn to reflect on just how to use all this information.

After you come back exhausted from your vacation, plan to rejuvenate your professional self at one or both of these two outstanding events.

I look forward to seeing you there.

2000 Hemphill Award Call for Nominations

Deadline: Monday, July 24, 2000

Mail to SCDTAA Headquarters
3008 Millwood Avenue
Columbia, SC 29205

Fax to SCDTAA Headquarters
(803) 765-0860

Contact SCDTAA for more information: (803) 252-5646 or (800) 445-8629

2000 JOINT MEETING AGENDA SCDTAA AND CMASC

Grove Park Inn • Asheville, NC
July 27 - 29, 2000

THURSDAY, JULY 27

3:00 to 5:00 p.m	**Executive Committee Meeting**
4:00 to 7:00 p.m.	**Registration**
6:30 to 8:00 p.m.	**Welcome Cocktail Reception**
	DINNER ON YOUR OWN

FRIDAY, JULY 28

8:00 a.m. to 12 noon	**Registration** **Exhibit Hall Open**
8:15 to 8:45 a.m.	**Coffee Service**
8:15 to 8:30 a.m.	**Welcome** W. Francis Marion, Jr., Esq. – SCDTAA President John D. Jones – CMASC President
8:30 to 8:45 a.m.	**Opening Remarks, Announcements and Introductions** James R. Courie and Elbert S. Dorn, Program Chairs
8:45 to 9:30 a.m.	**Technological Advances in the State Court System** The Honorable Jean Hoefer Toal Chief Justice South Carolina Supreme Court
9:30 to 10:30 a.m.	**Advances in Jury Persuasion & Technology in the Courtroom** Rick R. Fuentes, PhD & Angela Rose - DecisionQuest
10:30 to 10:45 a.m.	**Coffee Break**
10:45 to 12:15 p.m.	**Workers' Compensation Breakout** Michael Chase
10:45 to 12:15 p.m.	**Insurance and Torts Breakout** Chuck Turner
10:45 to 12:15 p.m.	**Employment Law Breakout** Scott Justice & Grant Burns
12:15 to 1:15 p.m.	**Beverage Break**
12:15 to 6:00 p.m.	**White Water Rafting Trip**
12:30 p.m.	**Golf Tournament** Sterling Davies, Chair
2:15 p.m.	**Tennis Tournament** Bill Besley, Chair
6:30 to 10:00 p.m.	**Children's Program at Grove Park** (Dinner Included)
6:30 to 8:00 p.m.	**Cocktail Reception - Grove Park Inn**
	DINNER ON YOUR OWN

SATURDAY, JULY 29

7:30 to 8:30 a.m.	**Coffee Service**
7:30 to 1:15 p.m.	**Exhibit Hall Open**
8:00 to 8:30 a.m.	**SCDTAA Business Meeting & Announcements**
8:30 to 9:30 a.m.	**Ethical Consideration of Law Firm & Corporate Websites** Professor Gregory B. Adams
9:30 to 10:30 a.m.	**Internet Law Office 2000** Ford Douglass & Chris Cartrett - West Group
10:30 to 10:45 a.m.	Coffee Break
10:45 to 11:45 a.m.	**Digital Imaging, Virtual File Rooms & Cyber Discovery** John Schmidt – Ikon Legal Document Services Marjorie Simmons, Esq.
11:45 a.m. to 12:15 p.m.	**What I was doing on my Computer all those Years?** The Honorable Costa M. Pleicones Associate Justice South Carolina Supreme Court
12:15 p.m. to 1:15 p.m.	**Adjournment / Beverage Break**

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Out and About in Asheville, North Carolina

ASHEVILLE

Asheville boasts a 200-year tradition as a resort city. Hundreds of intriguing attractions and festivities prove it. The city has been attracting tourists long before its native son Thomas Wolfe wrote about it in his novel, Look Homeward Angel or George Vanderbilt thought about creating America's largest home, the 255-room Biltmore House. Whether you're looking for an adventure or a place to unwind, you'll discover that the mountains have more to offer than fabulous views.

Asheville is ideally located near the famous Blue Ridge Parkway on both banks of the French Broad River, near the French Broad Basin. The Blue Ridge Parkway is a 470-mile stretch of uninterrupted highway weaving its way through some of the most beautiful and inspirational mountain scenery this side of the Mississippi. With all its exciting attractions, the beauty of the land, and the year-round mild climate, Asheville is clearly a top choice for hosting successful meetings.

CLIMATE

Asheville has a temperate, but invigorating climate. Average temperatures for late July will be with highs in the lower 80s and lows in the high 50s.

THE GROVE PARK INN

When the Grove Park Inn opened in the summer of 1913, newspapers across the country christened her "the finest resort hotel in the world.". Through the efforts of owner Edwin W. Grove and architect Fred L. Seely, the Grove Park Inn drew the rich and famous to Asheville, North Carolina, where they basked amid the panoramic views and soothing climate of the Blue Ridge Mountains. In her early years, the Grove Park Inn served as a summer retreat for Presidents Woodrow Wilson, Calvin Coolidge, and Herbert Hoover, along with such noted personalities as Henry Ford, Harvey Firestone, Thomas Edison, Will Rogers, and John D. Rockefeller, Jr.

After struggling through the Great Depression and serving her country during World War II, when the United States government utilized it as an internment center for Axis diplomats, the Grove Park Inn teetered on the brink of obscurity. In 1955, Texas businessman Charles A. Sammons purchased the forty-two year old hotel and instituted a restoration and expansion program designed to both preserve the aura of the grand old inn and accommodate future generations of guests. When the Grove Park Inn celebrated her seventy-fifth birthday in 1988, she had risen once again to join the ranks of the finest resort hotels in the country. In doing so, she fulfilled the prophecy of William Jennings Bryan, who, at the inn's opening on July 12, 1913, had declared that the Grove Park Inn was "built for the ages".

The Grove Park Inn is a resort complex on 140 acres on Sunset Mountain. The Inn has 510 guest rooms, including 12 suites, located in the Main Inn and the Vanderbilt and Sammons wings. Deluxe and private accommodations provided on the club floor include oversized guest rooms with Jacuzzi, newspaper delivery and a private club lounge.

For our sports enthusiasts, the Inn has an 18-hole, par-72 championship golf course sculpted by Donald Ross, designer of Pinehurst #2. The indoor sports center offers two racquetball courts, an international squash court, a 10 station Nautilus fitness center, and an aerobics room. If you prefer, you can relax and enjoy the whirlpool sauna or indoor pool. There are 6 outdoor tennis courts (4 hard surface and 2 clay) and 3 indoor courts. You may also enjoy the outdoor pool at the country club.

CHECK IN, CHECK OUT

Check-in time at The Grove Park is after 4:00 p.m. and check-out is before 12 noon. If your travel arrangements do not coincide with these times, the bell staff will be happy to store your luggage.

Recent Decision

Unpublished

United States Court of Appeals for the Fourth Circuit

No. 98-1925

Patricia Cohen, as Administrator of the Estate of Mae Bell Cohen, deceased; Purnell Cohen,
Plaintiffs - Appellants,

v.

Winnebago Industries, Incorporated,
Defendant,-Appellee,

and

General Motors Corporation;
A & S Fiberglass, Incorporated,
Defendants,
New Jersey Manufacturers Insurance Company, Movant.

No. 98-2536

Patricia Cohen, as Administrator of the Estate of Mae Bell Cohen, deceased; Purnell Cohen,
Plaintiffs-Appellees,

v.

Winnebago Industries, Incorporated,
Defendant-Appellant,

and

General Motors Corporation; A & S Fiberglass, Incorporated, Defendants,
New Jersey Manufacturers Insurance Company, Movant.

Appeals from the United States District Court for the District of South Carolina, at Florence.
Cameron McGowan Currie, District Judge.
(CA-96-3312-4-22)
Argued: January 28, 2000
Decided: March 23, 2000
Before NIEMEYER, Circuit Judge, HAMILTON, Senior Circuit Judge, and Frederic N. SMALKIN, United States District Judge for the District of Maryland, sitting by designation.

OPINION

PER CURIAM:

This appeal follows a jury verdict for the appellee, Winnebago, in the second trial of a products liability case.[1] The appellants allege that the trial judge committed reversible error in her charge to the jury. We have considered the briefs and arguments of counsel and find no reversible error in Judge Currie's instructions to the jury. Accordingly, the judgment will be affirmed.

I.

This lawsuit stems from a fatal highway accident occurring on November 19, 1994, near Dillon, South Carolina. On that night, Purnell and Mae Bell Cohen were passengers in Kernell[2] and Jacqueline Cohen's Winnebago "conversion van," driving northbound on I-95 to their home in New Jersey. Also in the van were the younger Cohens' three minor children. The accident occurred late at night (approximately 11:30 P.M.). Jacqueline Cohen was driving, while the other passengers were asleep – Kernell in the front passenger seat, and Mae Bell and Purnell in back seats. It is undisputed that neither Purnell nor Mae Bell was wearing a seatbelt.

There was evidence to suggest that Jacqueline fell asleep at the wheel. In any event, the van veered off the road, crossed it again, rolled two and a quarter times, and smashed into a tree. At the time of the accident, evidence suggested the van had been traveling 75 MPH in a 65 MPH zone. Mae Bell Cohen was killed and Purnell was severely injured as a result of the accident. The other occupants of the vehicle, remarkably, were not injured.[3]

At some point during the accident, the fiberglass roof of the conversion van was stripped off. Mae Bell was ejected from the van, but there was conflicting evidence on whether she exited through the roof or through some other opening, like a door or window, and whether her fatal injuries were sustained as a result of the ejection or if they occurred during the van's rolling motion. Moreover, it is not clear whether

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Purnell was ejected from the van at all, or if his son pulled him out of it after the accident.

The appellants' theory of liability keys in on the factual premise of injury to the Cohen parents as a consequence of their ejection through the roof opening of the vehicle. Appellants claim that a through-the-roof ejection was made possible only because Winnebago's product was defective in terms of its roof construction.

Following the accident, Purnell Cohen, on his own behalf, and Patricia Cohen, acting as Mae Bell's Estate Administrator, brought suit against Winnebago, the van's converter, and G.M., the van's manufacturer. The first trial ended in a mistrial due to a hung jury. G.M. was thereafter dismissed as a defendant, and the Cohens went on to a second trial, against Winnebago alone. They claimed that the conversion van was defective due to the fact that Winnebago had taken off the welded steel roof which was on the van when G.M. delivered it for conversion, and replaced it with a fiberglass roof attached only with sheet metal screws. The appellants also alleged a failure to warn of the dangers associated with modifying the roof. The second trial resulted in a jury verdict for the remaining defendant, from which the appellants now appeal. Specifically, in answering a special verdict sheet, the jury found that Winnebago was not negligent in replacing the roof and that the conversion van was not defective.

II.

Appellants contend that the trial judge made four reversible errors in instructing the jury: 1) the trial court incorrectly charged the jury that the "conversion van industry" was the relevant industry for determining such issues as custom, state of the art and the existence of an alternative reasonable design; 2) it incorrectly defined "state of the art" as the "design customs and trade practices" of the industry; 3) it instructed, in contradiction of South Carolina law, that the plaintiff must present evidence of an alternative reasonable design practicable under the circumstances; and 4) it failed to instruct that the warning given must be "adequate."

An appellate court reviews a claim that jury instructions incorrectly state the substantive law *de novo*. *See Trimed, Inc. v. Sherwood Medical Co.*, 977 F.2d 885, 888 (4th Cir. 1992). Otherwise, jury instruction issues are reviewed for abuse of discretion. *See Chaudhry v. Gallerizzo*, 174 F.3d 394, 408 (4th Cir. 1999); *Hardin v. Ski Venture, Inc.*, 50 F.3d 1291, 1293 (4th Cir. 1995). "So long as the charge is accurate on the law and does not confuse or mislead the jury, it is not erroneous." *Hardin*, 50 F.3d at 1294; *see also Chaudhry*, 174 F.3d at 408. An appellate court should not "nit-pick jury instructions to death." *Hardin*, 50 F.3d at 1296. Instead, "jury instructions must...be viewed as a whole." *Id.* at 1294. Even if there was an error in a given instruction, "there can be no reversal unless the error seriously prejudiced the plaintiff's case." *Id.* at 1296.

With these standards in mind, we turn to the specific assignments of error made by the appellants.

III.

Appellants' trial theory was that Winnebago had produced an unreasonably dangerous product, because it tore out part of the welded steel roof that came on the van as built by G.M. and replaced it with a fiberglass roof attached only with sheet metal screws. In addition, appellants alleged, the defendant failed to warn consumers and users of the van that it was dangerous. Appellants now contend that the trial court incorrectly charged the jury on the law and, by its instructions, directed a verdict as to a disputed question of fact, errors which, they contend, effectively forced the jury to find for the defendant.

A.

Appellants' principal allegation of error is that the trial judge incorrectly instructed the jury that the relevant industry to be analyzed in addressing industry customs, "state of the art," and alternative design issues was the "conversion van industry." Appellants contend that there was a disputed question of fact on whether van converters form an industry of their own or should be considered part of the broader automotive industry for product liability purposes. The basis for the appellants' contention that the trial court improperly directed the jury to focus on the conversion van industry alone is a statement the judge made in charging the jury on the "consumer expectation test" for unreasonably dangerous products, *viz:*

> In addition, evidence of the state of the art – that is, evidence of the design customs and trade practices - of the conversion van industry at the time of manufacture and sale and evidence of such industry standards, if any, is relevant to whether the product is dangerous beyond the expectations of an ordinary consumer.

Jt. App. at 869. The appellants argue that, by instructing the jury that the relevant industry was the conversion van industry, the trial court directed a verdict on what they contend was a disputed question of fact.

We do not agree with the appellants' contentions. First, the quoted snippet is the only occasion in forty-two pages of jury instructions in which the trial court implied the jury should consider the "conversion van industry" as relevant for ascertainment of industry standards. When instructing the jury on the issues of strict liability and negligence, the district judge used the generic terms "industry" and "manufacturer" pervasively, almost exclusively. There is no basis to assume that the jury would interpret this isolated reference to the "conversion van industry" as an explicit direction to consider only that subset of vehicles when it was required to compare Winnebago's performance to industry norms. The consistent use of generic terms left the jury free to evaluate this issue on its own. In short, even if there were some error in the trial judge's reference to the conversion van industry, "construed as a whole, [the instructions here] adequately state[d] the controlling legal principle without misleading or confusing the jury." *Chaudhry v. Gallerizzo*, 174 F.3d 394, 408 (4th Cir. 1999) (citation omitted).

Furthermore, upon our review of the evidence introduced at trial, we are of the opinion that the trial judge could have appropriately instructed the jury explicitly that it should consider the "conversion van industry" as a distinct market or industry group to which Winnebago belongs. The undisputed evidence showed that GM delivered the shell of the van to Winnebago for conversion in accordance with a detailed agreement between the two companies. All of the major automobile manufacturers have similar arrangements with Winnebago and other van converters. At the time of the trial, there were approximately one million such conversion vans in use in the United States. They serve a very specific purpose compared to other automobiles, or even other full size vans, in that they are more like mini "motor homes" or "recreational vehicles" than stock vans. They can be equipped with "captain's chairs," bench seats that turn into beds, carpeting, and TVs and VCRs. As part of their intended use to facilitate comfortable travel and camping, conversion vans often have raised fiberglass roofs, as the Cohens' van did. Given the unique characteristics and uses of these vans, and the number of them on the roads, it is appropriate that they should be considered to form their own unique industry group and not be compared to the broader automobile market. *See Mears v. General Motors Corp.*, 896 F.Supp. 548, 552 (E.D.Va. 1995) (compare vehicle at issue to others which have the same uses, not the broad automotive market) (citing *Dreisonstok v. Volkswagenwerk, A.G.*, 489 F.2d 1066, 1075 (4th Cir. 1974)). It would not be a far stretch from appellants' argument to say that, for product liability purposes, a motorcycle should be grouped with a dump truck. This Court will not so say.

B.

The appellants' next contention is that the trial court, in the instruction quoted above, improperly defined "state of the art" to mean "design customs and trade practice."[4] Appellants argue that under South Carolina law these are two distinct issues: "state of the art" means that which is "scientifically and techno-

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logically feasible," while the term "design customs" refers to what industry standards are. *See* Brief of Appellant at 43. This distinction is important, appellants argue, because an entire industry may be negligent by not utilizing techniques which are feasible. Appellants contend this instruction was prejudicial because it, in effect, instructed the jury that if Winnebago conformed to the industry custom of installing a fiberglass roof with sheet metal screws, it was acting in accordance with both the state of the art and industry norms, which would constitute a defense to the negligence claim.

The Court agrees that this instruction, read in isolation, could engender some confusion as to the distinction between industry customs and the state of the art. Whatever error there might have been, however, was inconsequential, as the trial court gave this instruction explicitly in the context of the consumer expectation test. As such, the instruction was an accurate statement of South Carolina law. *See Bragg v. Hi-Ranger, Inc.*, 462 S.E.2d 321, 328 (S.C. App. 1995) ("The state of the art and industry standards are relevant to show both the reasonableness of the design and that the product is dangerous beyond the expectations of the ordinary consumer.") (citation omitted).

Moreover, the court later clearly instructed the jury on the importance of the distinction between compliance with industry norms and ascertaining what is technologically feasible:

> Evidence of compliance with custom and practice in an industry may be considered as evidence of due care. However, such compliance is not conclusive on this issue. *An entire industry may be negligent*, as there are precautions so imperative that even their universal disregard will not excuse their omission.

Jt. App. at 871-872 (emphasis added). This instruction captures succinctly the distinction that appellants argue is so important - that just because a manufacturer complies with industry norms does not mean it is acting with the appropriate standard of care if the entire industry is not utilizing scientifically feasible, safer methods of which the industry should be aware. Accordingly, taking the instructions as a whole, this Court concludes that they accurately reflected South Carolina law and did not mislead or confuse the jury on this issue. *See Bragg*, 462 S.E.2d at 330 ("If, as a whole, the [jury] charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error.").

C.

The next allegation of error is that the trial court incorrectly charged the jury that the appellants bore the burden of proving by a preponderance of the evidence that there existed an "alternative safer design practicable under the circumstances..." Jt. App. at 877. Appellants contend that this is not a required element of their claims. The argument lacks merit, because providing evidence of the existence of an alternative safer, feasible design *is* part of the plaintiff's products liability case under South Carolina law, and hence the instruction was appropriate. *See Bragg*, 462 S.E.2d at 327 (affirming the trial court's directed verdict on a strict liability claim because the appellants failed to introduce any evidence of a "feasible design alternative"), and at 330 (reiterating that the plaintiff had failed to introduce such evidence and noting that the alternative design must be feasible; appellants cannot "rely upon mere conceptual design theories") (citation omitted); *see also Sunvillas Homeowners Assoc., Inc. v. Square D Comp.*, 391 S.E.2d 868, 870 (S.C. App. 1990) (in affirming trial courts' directed verdict for defendant on product liability negligence claim, court noted and relied on the fact that plaintiff's expert failed to offer any evidence of an alternative design.)

Appellants argue that *Bragg* does not make evidence of design alternatives an additional *element* of the appellants' case; instead, they argue, *Bragg* merely stands for the proposition that such evidence must be offered in order for the case to go to the jury. The appellants' argument fails because they do not explain how it is possible that failure to introduce evidence on a certain issue dooms a case as a matter of law, but how an instruction that such evidence is required is erroneous. The clear import of *Bragg* is that, under South Carolina law, evidence of an alternative design is required; accordingly it is appropriate for the trial judge so to instruct the jury.[5]

Even if this portion of the charge had been an incorrect statement of South Carolina law, appellants have not demonstrated how they were prejudiced by the instruction. *See Hardin v. Ski Venture, Inc.*, 50 F.3d 1291, 1296 (4th Cir. 1995). As they readily admit in their brief, appellants presented ample evidence on alternative design options at trial through their expert's testimony on the possibilities of retaining the original steel roof or replacing it with another metal roof. *See* Brief of Appellant at 49. They are unable now to argue convincingly that charging the jury that such evidence was required was seriously prejudicial to the outcome of their case, when they in fact presented "sufficient evidence" on the issue. *Id.*

D.

Appellants' final contention is that, when charging the jury on the "failure to warn" claim, in one instance the trial court did not explicitly instruct that the warning had to be "adequate." This argument is without merit for two reasons. First, in the course of the instructions the court repeatedly used the terms "adequate" or "sufficient" to describe the type of warning which must be given. *See* Jt. App. at 866-872. Second, even if the trial court had never used the term "adequate," there is no indication that such omission would have made a substantive difference in the meaning of the instructions. The whole gist of the instruction was that it was for the jury to determine whether or not the warnings were adequate under the circumstances. Given that, there was no need to modify the word "warning" with the word "adequate" at every mention.

IV.

In conclusion, the Court has carefully considered each of the appellants' contentions and finds them to be without merit. As this Court stated in *Hardin*, "[a]t the end of the day, the fact is that this case went to a fair and impartial jury, and the jury simply found in favor of the defendant. An appellate court should respect that result," 50 F.3d at 1296, without nit-picking the instructions. Accordingly, the judgment in this case is

AFFIRMED.

Footnotes

[1] Winnebago appeals the denial of its Rule 50 motion for judgment as a matter of law following the first trial, which ended in a mistrial. Because we affirm the jury's verdict in favor of Winnebago at the second trial, Winnebago's appeal is dismissed as moot. Accordingly, the appellants' motion to dismiss Winnebago's appeal for lack of appellate jurisdiction is denied as moot.

[2] Kernell Cohen is the son of Purnell and Mae Bell Cohen.

[3] Jacqueline and Kernell were both wearing seatbelts at the time of the accident. It is not clear whether the children were also wearing seatbelts, but in any event they were not seriously injured.

[4] Specifically, the court began the instruction on the consumer expectation test: "In addition, evidence of the state of the art – that is, evidence of the design customs and trade practices..." Jt. App. at 869.

[5] Both sides cite the recent case of *Allen v. Long Mfg. NC, Inc.*, 505 S.E.2d 354 (S.C. App. 1998), but reach opposite conclusions as to its relevance to the question of whether a plaintiff is required to produce evidence of an alternative feasible design. In that case, the trial court had granted summary judgment for the defendant, in part because the plaintiff had failed to present any evidence of an alternative feasible design. *See id.* at 359. The South Carolina Court of Appeals reversed the trial court because, it held, the defendant had not provided an adequate warning. *See id.* at 358. In doing so, it stated, "[w]e need not address whether a feasible design alternative must be presented to survive summary judgment." *Id.* at 359. Appellants interpret this sentence to mean that the issue is still unsettled in South Carolina. Winnebago attempts to show that the opinion actually "validates" the *Bragg* holding, but concedes that the actual meaning of the sentence is just what it says – that the court need not reach the issue because the point is moot. *Allen* simply does not say one way or the other explicitly whether proof of an alternative feasible design is required. What is clear, however, is that it does not overrule *Bragg's* holding that such proof is required.

Evidence Matters

E. Warren Moise
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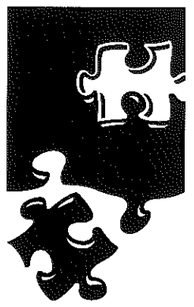
Party Admissions



There are some parties you'd just rather not attend. Fundraisers come to mind. Under Federal and South Carolina Rules of Evidence 801(d)(2),[1] however, party admissions are command performances. The use of party admissions ensures that just about every stupid statement, every asinine comment, and every malicious hand gesture made by your client in any way relevant to the case will be used against him. And because party admissions need not be made with any personal knowledge of the matter admitted, the rule allows your client to destroy the case with pompous "big talk" and palaver about which he knows nothing.

But suffice it to say that there is ignorance a plenty on both sides of the fence, and the other party frequently obliges with some damaging admissions too. Although party admissions (especially those involving conspiracies) as a topic is far too broad for this one column, a discussion of the basics and some wrinkles in this area of the law is as follows:

How May the Admissions Be Made?

Party admissions may be made by words or conduct, including silence. They are found virtually anywhere a party communicates, including in memoranda, discovery responses, affidavits, comments to news reporters, an insurance-claim form, letters, and beyond. Whether in the United States or South Carolina courts, a party admission need not have been made under oath to be admissible. Moreover, as stated by Justice Burnett in *State v. Johnson*,[2] questions are not "assertions" under rule 801 and thus not hearsay.

A party who verbally or by conduct expressly adopts or indicates a belief in a statement made by another person may be impeached by the statement.[3] For example, a premium notice sent by an automobile insurance carrier to a certain member of a household may be seen as an admission by the carrier that the household member owned the vehicle insured in the policy.[4] Also, a witness who signs or verbally agrees to the accuracy of an interviewing attorney's notes of their conversation may have adopted the notes, thereby converting them into a statement.[5]

The advisory committee note to federal rule 801(d)(2)(B) discusses admissions by silence: "When silence is relied upon, the theory is that the person would, under the circumstances, protest the statement made in his presence, if untrue. The decision in each case calls for an evaluation in terms of probable human behavior."[6] Under state law, a party may be impeached by the statement of a witness made in the party's presence[7] if: (a) the party remains silent and (b) the circumstances are such that the party can speak and naturally would or ought to respond to the statement.[8] (Rule 801(d)(2)(B) does not specifically limit adopted statements to those made in a party's presence.) In a pre-evidence-rules case, the South Carolina Supreme Court held that mere knowledge of an accident and the failure of a manager at the business where it occurred to comment are not enough to qualify the conduct as an admission.[9]

Who is the "Party?"

In a civil trial, the "parties" obviously are the persons named on the pleadings or their representatives. The government itself (such as the Justice Department or the Secretary of Veterans Affairs) is a party in both civil[10] and criminal[11] cases. Corporations, partnerships, associations, and individuals may speak through their employees and agents under rule 801(d)(2)(C) and (D). On the other hand, if the harmful statement is made by a mere fact witness, the admissions will have to fall within some other rule, such as a statement against interest (rule 804(3)), a prior-inconsistent statement (rule 801), the doctrine of curative admissibility, or such theories.

What Are the Foundation Requirements?

Unlike other witnesses, a party being cross-examined with a deposition generally need not be asked prior-inconsistent statement type foundational questions such as "Do you recall coming to my office on June 10, 2000 for a deposition?, Do you remember when I asked you . . . ," or similar introductory questions. In fact, the admissions may be read later at trial for impeachment without ever having been mentioned to the adverse party on cross-examination.[12] On the other hand, a party admission must be offered "against," not by, the party. Rarely is this a problem in most trials. When a party's out-of-court statement is introduced by one of its own witnesses *in support* of its claim, it is not used "against" the party and thus is hearsay, unless another exception permits its use.[13]

Some Wrinkles in the Rule

(A) Dealing With Vicarious Admissions From a Phantom Employee

Rule 801(d)(2)(D) defines as nonhearsay all statements by a party's agent or employee about a matter **within the scope of the agency or employment**.[14] One scenario which often arises in trials involves an unknown employee who comes to an accident scene, makes harmful admissions and disappears. The alleged admissions are usually something like: "We did it. We're at fault. We have these accidents all the time, and I can't believe it's happening again." The alleged employee usually was wearing the uniform or insignia of the business so there is little doubt that he works for the company in some capacity; however, the employee's identity, position, job duties, or other responsibilities are unknown. Thus, a defendant often is unable to identify and call as a witness the phantom employee to rebut the charge. A defense against such hearsay is difficult, if not impossible.

However, assuming that the res-geste exception or some other theory is inapplicable,[15] a party attempting to admit an admission by an alleged agent of another party has the burden of first proving the fact and scope of agency.[16] There must be some evidence shown to the judge from which to infer the fact and scope of agency or employment. An objection to this type evidence based upon a lack of foundation under rule 801(d)(2) will be useful in defending against such a hearsay problem.

(B) Refusal to Provide Evidence or Submit to a Physical Examination

A longstanding common-law rule involving personal-injury cases provides that a plaintiff who unreasonably refuses to undergo a physical examination may be impeached by this refusal. This was true under the common law even when the party seeking the examination had no legal right to an examination.[17] In *Welsh v. Gibbons* [18] the South Carolina Supreme Court quoted the United States Supreme Court for the proposition that: "If [a plaintiff] unreasonably refuses to show his injuries, when asked to do so, that fact may be considered by the jury as bearing on his good faith, as in any other case of a party declining to produce the best evidence in his power." [19] The *Welsh* court also quoted Wigmore for this same proposition: "The party's refusal to submit to a physical examination should likewise be open to inference, for he is virtually withholding evidence; and this is generally conceded."[20]

(C) Admissions v. Declarations Against Interest

Party admissions, which are "not hearsay," are different from admissions against interest. Party admissions are controlled by rule 801. Admissions against interest, or more properly called "statements against interest," are controlled by rule 804(3)[21] and involve statements by an unavailable witness. This "exception" to the hearsay rule is not limited to parties, but includes all witnesses. Moreover, there may be a single conversation which includes both (a) rule 801 party admissions and 804(3) statements against interest made by the defendant and (b) statements against penal interest uttered by the other person.[22]

(D) Admissions From a Criminal Trial Arising Out of the Same Facts

As a general rule, admissions in a pending criminal trial may be used in the adjoining civil case, whether they be guilty pleas or trial testimony. However, a civil litigant may not be charged with an admission by silence of a traffic violation merely by forfeiting bond.[23]

(E) The Defendant's Failure to Show Sympathy an Admission

Under the common law, a defendant in a

Continued on page 14

Continued from page 13

personal-injury case sued for money damages could not be cross-examined about a failure to show proper sympathy for an injured plaintiff.[24] It also is a due-process violation in a criminal trial to permit testimony that after his arrest, a criminal defendant did not inquire into the condition of his passengers after an automobile accident, as this would constitute a comment upon his post-arrest silence.[25]

On the other hand, in *Clark v. Cantrell*[26] the plaintiff in an automobile-accident case introduced evidence of the defendant's lack of remorse for the plaintiff's injuries.[27] The primary issue on appeal concerned whether the award of punitive damages was proper. The South Carolina Court of Appeals noted that the case was properly submitted to the jury on the issue of punitive damages, in part because of the defendant's lack of remorse.[28] There is no indication in *Clark* by Judge Anderson that the defendant objected to the evidence regarding a lack of sympathy. Moreover, centuries-old jurisprudence has attempted to guard against injection of passion and sympathy in jury trials.

(F) Admissions in a Signed Statement

If the admission was in a written statement and signed by the party, a copy of it must have been provided to the party at the time of signing under Section 19-1-100[29] as controlled by state evidence rule 613. Otherwise, any admissions in it are inadmissible in state courts.[30] Whether a federal court would be bound by this rule is unknown, but doubtful.[31]

(G) Attorney Admissions

The rule causing a client to be bound by his attorney's acts is especially applicable when a lawyer is at trial.[32] Admissions may arise in opening statement, closing argument, and any time in between. For example, when a party's attorney concedes in opening statement that the plaintiff suffered at least some injury, his client may suffer a directed verdict against him on the issue of damages if there is no other evidence disputing that the plaintiff was injured or the admission rises to the level of a judicial admission.[33]

In *Hanson v. Waller*,[34] an automobile-pedestrian personal-injury case, the trial judge admitted as a party admission a letter from the plaintiff's lawyer inviting the defense attorney to call if he wanted "to discuss the matter," appearing to refer to settlement, although no offer or demand was made. However, the letter did state that the defendant would not have been able to see the plaintiff when she had walked directly in front of his truck, which was helpful to the defense. The Eleventh Circuit Court of Appeals affirmed admission of the letter as clearly related to the management of the plaintiff's case and thus within the attorney/agent's authority.[35]

Footnotes

[1] This column discusses party admissions under rule 801. Judicial admissions, which rise above mere evidentiary admissions to the extent that they concede a portion of the adversary's cause of action, are the subject of another writing.

[2] 324 S.C. 38, 476 S.E.2d 681 (1996).

[3] See Fed. R. Evid. 801 (d)(2)(B); S.C. R. Evid. 801 (d)(2)(B). The rule has been broadly stated under the common law. *See State v. Sharpe*, 239 S.C. 258, 271, 122 S.E.2d 622, 629 (1961)("[S]tatements [made] in the presence of the accused by a third person are admissible as evidence when such accused remains silent and does not deny such statements."). *Sharpe* recently was quoted in a post-evidence rules case. *See State v. Smith*, 328 S.C. 622, 626 n.1, 493 S.E.2d 506, 508 n.1 (Ct. App. 1997)(also citing S.C. R. Evid. 801(d)(2)(B)).

[4] *See State Farm Mut. Auto. Ins. Co. v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 263 S.C. 391, 210 S.E.2d 613 (1974) (pre-rules case).

[5] *See In re: Convergent Technologies*, 122 F.R.D. 578 (N.D. Cal. 1988)(apparently assuming that the witnesses adopted their signed (and unsigned) notes).

[6] *See also Meinhard, Greeff & Co. v. Edens*, 189 F.2d 792 (4th Cir. 1951)(allowing ledger sheets as admissions); *Lever v. Lever*, 11 S.C. Eq. (2 Hill) 158 (1835)(admitting account book previously read to party with only few items objected to). *But cf. Mitchell v. Cleveland*, 76 S.C. 432, 57 S.E. 33 (1907)(not admitting failure to answer letter).

[7] *See State v. Nathari*, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1990); *see also State v. Smith*, 328 S.C. 622, 626 n.1, 493 S.E.2d 506, 508 n.1 (Ct. App. 1997)(citing S.C. R. Evid. 801(d)(2)(B) and noting statements made outside party's presence and without his knowledge were not "adopted").

[8] *See State v. McIntosh*, 94 S.C. 439, 78 S.E. 327 (1913). For another case discussing this issue, *see State v. Green*, 121 S.C. 230, 114 S.E. 317 (1922).

[9] *See McIntire v. Winn Dixie Greenville, Inc.*, 275 S.C. 323, 270 S.E.2d 440 (1980)(slip-and-fall accident).

[10] *United States v. Kattar*, 840 F.2d 118, 131 (1st Cir. 1988)(noting by analogy that government is party opponent in a formal civil defense); *United States v. Powers*, 467 F.2d 1089, 1097 n.1 (7th Cir. 1972)(Stevens, J., dissenting)(quoted in Kattar, 840 F.2d at 131).

[11] *See, e.g., Kattar*, 840 F.2d at 130 (quoting *United States v. Morgan*, 581 F.2d 933, 937 n.10 (D.C. Cir. 1978)); *see also United States v. Blood*, 806 F.2d 1218, 1221 (4th Cir. 1986)(statements by government attorney during voir dire may be an admission).

[12] Notice is required in the state courts when a party intends to read deposition excerpts for purposes other than impeachment. *See* S.C. R. Civ. P. 32(a)(5).

[13] *See Hamilton v. Bob Bennett Ford*, 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999), *aff'd*, S.C. Sup. Ct. Op. No. 25071, filed Feb. 22, 2000. *See generally* James F. Dreher, *A Guide to Evidence Law in South Carolina* 66-67 (1967)(discussing party admissions).

[14] Fed. R. Evid. 801(d)(2); S.C. R. Evid. 801(d)(2) (extending the rule to "authorized" persons, agents, servants, and co-conspirators in certain cases); *Marshall v. Thomason*, 241 S.C. 84, 127 S.E.2d 177 (1962).

[15] *See for example Van Boven v. F.W. Woolworth Co.*, 239 S.C. 519, 123 S.E.2d 862 (1962)(*W. Grimball v. J.W. Cabaniss*), cited with approval in *Bain v. Self Memorial Hosp.*, 281 S.C. 138, 314 S.E.2d 603 (Ct. App. 1984). A statement of past events may not be admissible under the res-geste exception.

[16] *See* 2 Kenneth S. Broun et al., *McCormick on Evidence*, Section 259, at 160 n.12 & accompanying text (1992)(discussing in context of representative admissions). Compare Restatement (Second) of Agency Section 288(2) (authority to do act does not in and of itself imply authority to make statements regarding the act); *id.* at Section 288(3) (authority to make statements of fact does not in and of itself imply authority to admit liability); *Preston v. Lamb*, 20 Utah 2d 260, 436 P.2d 1021 (1968)(waitress's admissions that fall caused by excessive waxing inadmissible) with *Friedman v. Premier Cruise Lines*, 966 F.2d 1456 (7th Cir. 1992)(authority to do act implies authority to make statements about act); *Partin v. Great Atl. & Pac. Tea Co.*, 102 N.H. 62, 149 A.2d 860 (1959)(manager's admissions that fall caused by employees admissible).

[17] *See Welsh v. Gibbons*, 211 S.C. 576, 46 S.E.2d 147 (1948)(cited in *Kershaw County Bd. of Educ. v. United States Gypsum*, 302 S.C. 390, 396 S.E.2d 369 (1990)). The defendant in a civil trial still has no absolute right to an independent physical examination of the plaintiff. Under Federal and South Carolina Rules of Civil Procedure 35, the examination only may be done upon court order for good cause shown.

[18] *Id.*

[19] *Id.* at 523, 46 S.E.2d at 150-51 (quoting *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 255 (1891)).

[20] *Welsh*, 211 S.C. at 523, 46 S.E.2d at 151.

[21] *See United States v. Bumpass*, 60 F.3d 1099 (4th Cir. 1995((discussing formidable burden on proponent of evidence); *State v. Doctor*, 306 S.C. 527, 413 S.E.2d 36 (1992)(construing the common-law rule).

[22] *See Neuman v. Rivers*, 125 F.3d 315, 320 (6th Cir. 1997).

[23] *See Samuel v. Mouzon*, 282 S.C. 616, 320 S.E.2d 482 (Ct. App. 1984).

[24] *See* 81 Am. Jur. 2d Witnesses Section 963, at 792 (1992); *see also Laidlaw v. Sage*, 158 N.Y. 73, 52 N.E. 679 (1899)(only purpose for cross-examination regarding defendant's failure to show proper attention to or sympathy for the plaintiff's alleged injuries was to prejudice and excite passions of jury).

[25] *See State v. Reid*, 324 S.C. 74, 476 S.E.2d 695 (1996).

[26] 332 S.C. 433, 504 S.E.2d 605 (Ct. App. 1998).

[27] Despite the severity of the accident, the first concern of the defendant in *Clark* was for her car rather than the injured plaintiff. When interviewed by the investigating officer, the defendant laughed repeatedly as she discussed the accident.

[28] *See Clark*, 332 S.C. at____, 504 S.E.2d at 610.

[29] S.C. Code Ann. Section 19-1-100 (Law. Co-op. 1976); S.C. R. Evid. 613; *Varnadore v. Nationwide Mut. Ins. Co.*, 289 S.C. 155, 345 S.E.2d 711 (1986). *But cf. State v. Mikell*, 257 S.C. 315, 185 S.E.2d 814 (1971)(similar statute inapplicable to oral statements).

[30] Arguably this statute does not apply to rule 801 admissions: unlike rule 613, rule 801 makes no cross-reference to Section 19-1-100. *Varnadore* does not indicate whether the statement was used as an admission or a prior-inconsistent statement.

[31] This writer could find no federal decisions interpreting Section 19-1-100. However, it appears to be a garden-variety Sibbach-type state evidence statute which would be "preempted" by Federal Rules of Evidence 613 and 801. *See Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941)(discussing analysis when federal rule is on point).

[32] *Collins v. Bisson Moving & Storage Inc.*, 332 S.C. 290,___, 504 S.E.2d 347, 354 (Ct. App. 1998)(Anderson, J.)(citing *Arnold v. Yarborough*, 281 S.C. 570, 316 S.E.2d 416 (Ct. App. 1984)(noting vast distinction between non-litigated and litigated matters)). Judge Anderson did note that the admission in opening statement went far beyond the defense lawyer's earlier admission of negligence. He did not definitely say that it rose past a standard rule 801 evidentiary admission to the level of a judicial admission, although there was the implication that the latter was true: "[The admission] may procedurally bar Bisson from raising this issue on appeal." *Collins*, 332 S.C. at____, 504 S.E.2d at 354 (emphasis added).

[33] *See Collins*, 332 S.C. at , 504 S.E.2d at 354- 55.

[34] 888 F.2d 806 (11th Cir. 1989).

[35] *See id.* 888 F.2d at 814 (citing *Williams v. Union Carbide Co.*, 790 F.2d 552, 555-56 (6th Cir. 1986); *United States v. Ojala*, 544 F.2d 940, 946 (8th Cir. 1976); *United States v. Dolleris*, 408 F.2d 918, 921 (6th Cir. 1969)).

Changes to By-Laws

EXECUTIVE COMMITTEE:

There shall be an Executive Committee which shall consist of the officers, the immediate past-president, one past president (referred to as "past president committee member") whose term of office expired more than five years prior to election and a minimum of fifteen executive committee members made up of two representatives from district as set forth herein and three at large executive committee members. For the purposes of the election of officers of the Executive Committee, the districts shall have those boundaries set forth in Appendix A. Each district shall have one additional member of the Executive Committee for each 100 members of the Association in the District. Sixty percent (60%) of the members of the Executive Committee shall constitute a quorum. The state chairman of the Defense Research Institute shall be an ex-officio member of the Executive Committee provided this person is a member of the Association in good standing.

ARTICLE VI

ELECTION OF OFFICERS AND TERMS OF OFFICE:

The election of officers shall take place at the Annual Meeting of the Association, the date to be determined by the Executive Committee. Officers shall be elected by a majority vote of the members present. The members of the Executive Committee who are not officers, or the immediate past-President or the past President committee member shall be elected in the same manner. The past President committee member shall be elected annually by majority vote of the Executive Committee and shall serve a one year term, not to exceed three consecutive terms.

Committee Reports

Amicus Curiae Committee

The amicus curiae committee of the South Carolina Defense Trial Attorneys' Association identifies those issues in current cases in the early stages of appeal which involve issues of particular concern or interest to the civil defense bar of South Carolina. If the Committee deems an issue to be one which fits into these parameters, the amicus committee members will make an appropriate motion to the appellate court of jurisdiction over the case to request permission to file a supporting brief on behalf of the "defense position", whether it be as appellant or respondent. Once the motion is granted, the amicus committee will actually draft an appellate brief, in the same format as the brief of the parties and submit the same to the court. If you or a member of your firm have an issue which you believe would be of particular concern or interest to the defense bar, contact the amicus committee chair by phone, fax or e-mail. The only reliable method for the committee to learn about such issues is by member contact.

Torts and Insurance Committee

The Torts and Insurance Committee is anticipating and planning for the continued challenge of representing corporations, insurance companies, and their insureds into the twenty-first century. The committee has three specific goals it intends to pursue and accomplish within the year 2000 and beyond.

First, the committee intends to enhance the membership of the South Carolina Defense Trial Attorneys Association (SCDTAA) regarding the areas of tort and insurance practice. The committee will continue to monitor and apprise its members of procedural and substantive changes in case law and legislation effecting the handling of the defense of corporations, insurance companies, and their insureds. Finally, the committee will encourage the ongoing dialog between defense attorneys and claims representatives to provide efficient, but zealous representation of insureds.

The committee hopes to accomplish these goals through the members' participation in writing articles and contributing to *The Defense Line*, as well as preparing and conducting breakout sessions at the yearly meetings to discuss substantive and procedural issues and topics effecting the areas of practice, including torts and insurance law. Also, it is the goal of the committee to, in the long range future, coordinate and conduct continuing legal education (CLE) sessions and programs regarding the areas of tort and insurance practice to benefit the members of the SCDTAA.

Maritime Law Committee

The Maritime Law Committee was formed in 1999 to encourage, foster and stimulate the exchange and dissemination of knowledge and ideas relating to the defense of admiralty and maritime claims, including current developments in case law and legislation in the field of admiralty and maritime law, and to educate the insurance claims industry concerning the specialized nature of admiralty and maritime law, and of the problems unique to admiralty and maritime claims.

South Carolina has one of the largest and busiest seaports on the Atlantic Coast (the Port of Charleston currently ranks as the fourth busiest containerport in the United States), with additional active ports in Georgetown and Port Royal. Additionally, South Carolina is among the leading recreational boating states, with numerous rivers and freshwater lakes, in addition to coastal areas. In 1998, for instance, nearly 47,000 recreational watercraft were registered in the four counties around Lake Murray alone. The continued popularity of personal watercraft, commonly known as jet skis, has resulted in an increase in boat traffic. All of this activity translates into maritime casualties, marine-related insurance claims and admiralty litigation.

The newly formed Maritime Law Committee will provide an educational forum for this area of the law, providing educational and networking opportunities for defense counsel specializing in this field and the general practitioner seeking to learn more about concepts which are particularly peculiar to admiralty law, such as limitation of liability, salvage, maritime liens, and admiralty jurisdiction. The Committee expects to present substantive law programs on admiralty law topics in conjunction with regular Association meetings. These will be geared to the general defense practitioner, as well as insurance claims personnel.

The Committee presently has approximately 20 members and welcomes participation by any who have an interest in this substantive law area. The Committee is chaired by Gordon D. Schreck, who heads the Admiralty & Maritime Practice Group of Buist, Moore, Smythe & McGee, P.A. in Charleston.

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