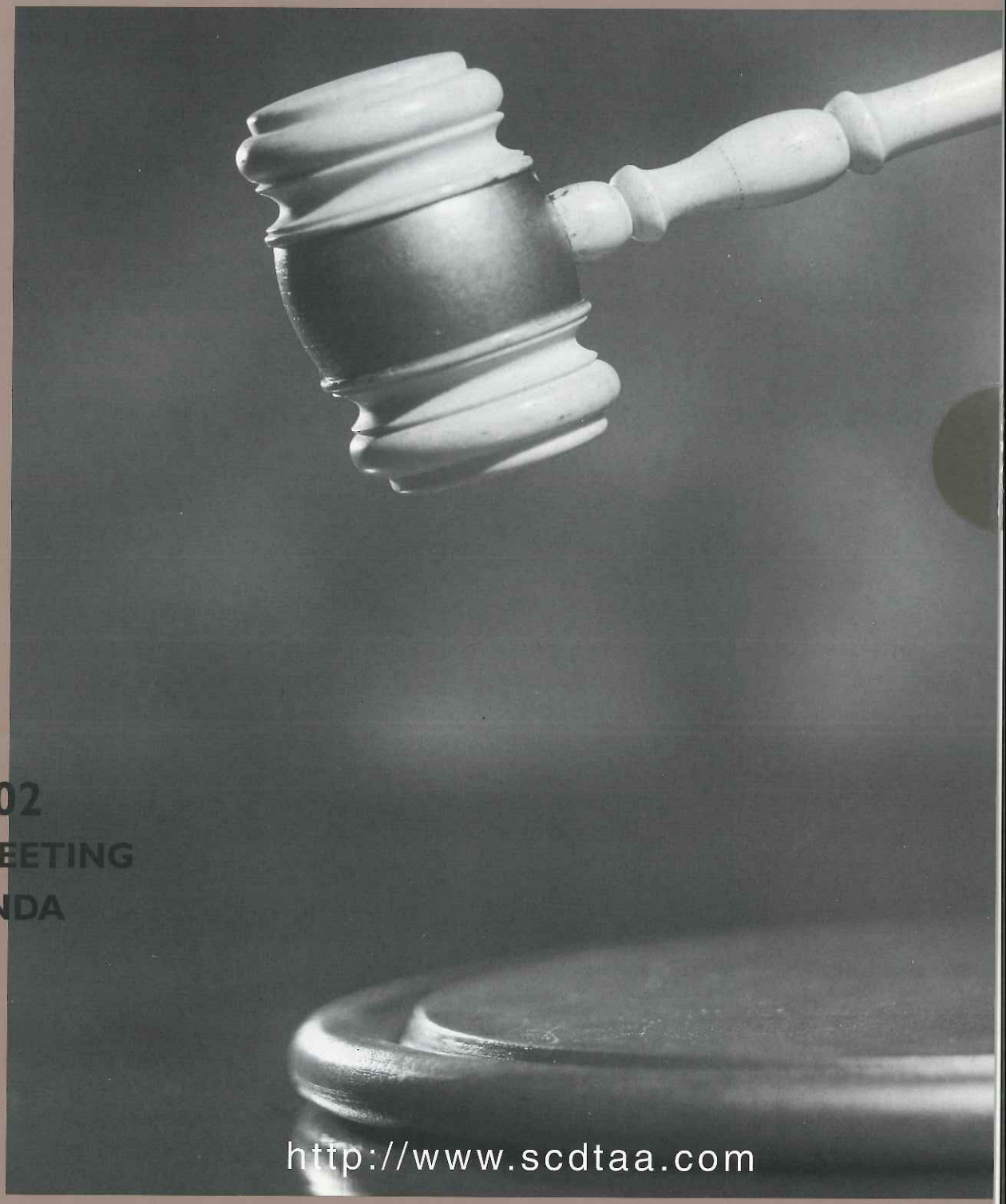
S.C. Defense Trial Attorneys' Association

Volume 30 Number 2 ▸ Summer, 2002

SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION

THE DefenseLINE



2002 Joint Meeting Agenda

http://www.scdtaa.com

2002 Trial Academy Recap

by Andrea Hawkins

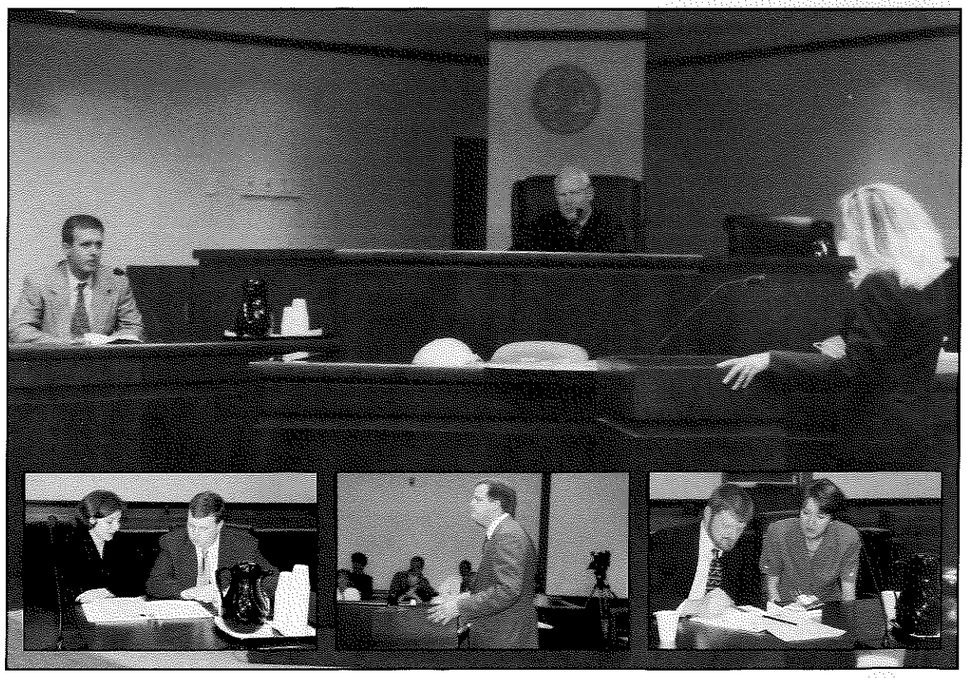
The SCDTAA Trial Academy is designed to provide practical litigation training to relatively new civil defense attorneys in a small group setting. In the 2002 class in which I took part, there were twenty-four participants in all. We broke into groups of four for workshops, allowing us to get valuable one-on-one advice from the experienced attorneys leading the break-out sessions.

Most participants had between two and five years post-law school work experience, but our actual litigation experience varied enormously. Some participants, particularly those in smaller firms and/or high volume practice areas, had already had a moderate amount of litigation experience. Others, myself included, had never tried a single case. Attending the Trial Academy was especially valuable for me personally because I work in an area – primarily complex litigation – where there are very few opportunities for a new lawyer to get early litigation experience.

I was really impressed that so many outstanding lawyers and judges were willing to spend the time teaching us and helping us develop our trial skills. The three-day program was extremely intensive. In addition to full days of lectures and workshops, we had to somehow find time to prepare for our mock trial on the last day of the program. Although I found the time constraints extremely frustrating, I think the limited preparation time was also part of the learning experience in that it helped simulate the stress of a real trial.

Participation in the Trial Academy allowed me to receive valuable training, culminating in a mock trial in front of a real judge and a mock jury. In some ways, participation in the mock trial was even more valuable than actual trial experience, because we received constructive feedback from our instructors, the judges, and even our juries. The comments from the jurors were particularly instructive. Most of all, participating in the mock trial allowed us to make mistakes, and learn from them, without risk of adverse consequences to a client.

Whether you've tried twenty cases or none, the SCDTAA Trial Academy is a great way for civil defense attorneys to develop their litigation skills and learn from accomplished attorneys in their field.



SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION

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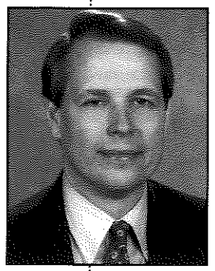
President's Letter

by H. Mills Gallivan



I recently read about a navy fighter pilot who had been shot down over Vietnam. He had parachuted to safety and a number of years later he had a chance meeting with the sailor who had packed his parachute. The pilot thanked him but was troubled because as an officer, he had probably never taken the time to speak to the sailor who ultimately was responsible for saving his life.

So who packed your parachute? Who is responsible for you being where you are today?

June and July are very busy months for the South Carolina Defense Trial Attorneys' Association, as we undertake two projects which significantly improve the legal skills of our members. These projects are successful because of the tremendous commitment of time and effort by some of our members. They do not normally receive enough recognition for helping us all to be better lawyers.

The 12th SCDTAA Trial Academy took place June 12th to the 14th in Greenville. This is the second year that the Trial Academy has been held in Greenville. We had a full complement of twenty-four students who participated in this outstanding three-day course. Our Trial Academy Chairs, Donna Givens, Matt Henrikson and Robbie Davis, worked hard with our volunteers to make this the best Trial Academy yet. We are also very thankful for our upstate judges, who graciously volunteered their time and talent to make this program a wonderful learning experience for the students. In the last twelve years the Trial Academy has improved the trial skills of over 200 young defense attorneys.

July 25th to the 27th we return to the Grove Park Inn for the 35th Joint Meeting, which promises to be one of the best ever. The invitation list has been expanded to include corporate counsel, risk managers, and out of state claims managers. This meeting has benefited thousands of attendees over the past thirty-five years. This summer we have an excellent conference planned, thanks to the hard work of the Joint Meeting Committee, chaired by Jeff Ezell, Phillip Kilgore and John T. Lay. The Grove Park Inn also offers unparalleled opportunities for relaxation and socializing with old friends.

The Pro Bono Committee is busy planning the Silent Auction for Friday night of the Joint Meeting. Last year's Pro Bono Silent Auction was a smashing success, as we were able to donate $2000.00 to the South Carolina Council for Conflict Resolution. The proceeds from this year's Silent Auction will be donated to the South Carolina Bar Foundation to be used exclusively for Pro Bono purposes. If you have any items that you would like to donate, please contact David Traylor, our Pro Bono Committee Chair, at DGT@nmrs.com, or Aimee Hiers the SCDTAA Executive Director at aimee@jee.com for more information. We need your assistance with donations for the auction and your generosity in purchasing items. With your help this year's silent auction will be even bigger and better.

So who packed your parachute? Who helped make you a better lawyer? Did the SCDTAA help you either directly or indirectly? Did an older defense attorney mentor you? You, too, can help another attorney by becoming more involved in the SCDTAA. Past President, Frankie Marion, recently said to me,

"The trial academy is the most satisfying experience I have participated in as a SCDTAA member and I feel like I always get more out of it than I give."

On behalf of the SCDTAA, I want thank all of our volunteers and speakers who make our programs and projects so successful. Through their service, they are fulfilling the words of Malcolm Forbes, " It's always worthwhile to make others aware of their worth".

I would encourage you to take some time to think about who packed your chute and thank them. Better yet, get more involved in the SCDTAA and pack a few chutes for some others; you will be glad that you did.

SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION

Visit your Website at: http://www.scdtaa.com

Suggestions on what you would like to see on the Website or how it could be more beneficial are welcome and appreciated.

2002 SCDTAA AND CMASC JOINT MEETING

The Grove Park Inn • Asheville, NC

July 25 - 27, 2002

THURSDAY, JULY 25

2:00 to 3:00 p.m.
Young Lawyers Division Inaugural Meeting

3:00 p.m.
Tennis Tournament –
Bill Besley, Chair

3:00 to 5:00 p.m.
Executive Committee Meeting

4:00 to 6:00 p.m.
Claims Managers 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 26

8:00 a.m. to 12 noon
Registration
Exhibit Hall Open

8:15 to 8:45 a.m.
Coffee Service

8:00 to 8:15 a.m.
Welcome
H. Mills Gallivan - SCDTAA President
Opening Remarks, Announcements and Introductions
John T. Lay - Program Chair

8:15 to 9:15 a.m.
Ethics: Discovery and Associate Supervision
The Honorable Costa M. Pleicones

9:15 to 9:30 a.m.
Coffee Break

9:30 to 11:30 a.m.
Crisis Management and Workplace Violence
Donald W. Lyon, Vice President
Risk Control Strategies, Marsh

10:30 to 11:30 a.m.
Worker's Compensation Breakout
Meet the Commissioners/Round Table Discussions

11:30 to 12 noon
Evidence: State Law Update
E. Warren Moise

12 noon to 1:00 p.m.
Beverage Break

12:15 to 6:00 p.m.
White Water Rafting Trip

12:30 p.m.
Golf Tournament
Johnston Cox & Scott Garrett, Co-Chairs
**To be played at the Broadmoor Golf Links

6:30 to 10:00 p.m.
Children's Program at Grove Park
(Dinner Included)

6:30 to 8:00 p.m.
Cocktail Reception/Silent Auction

DINNER ON YOUR OWN

SATURDAY, JULY 27

7:30 to 8:30 a.m.
Coffee Service

7:30 to 1:15 p.m.
Exhibit Hall Open

8:00 to 8:15 a.m.
SCDTAA Business Meeting & Announcements

8:00 to 8:15 a.m.
CMASC Business Meeting

8:15 to 9:15 a.m.
Federal and Local Rules Update
The Honorable Joseph F. Anderson, Jr.

8:15 to 9:15 a.m.
Breakout: Worker's Compensation
Medicare Set-Asides and other Settlement Issues

9:15 to 10:15 a.m.
State Tort Law Update
The Honorable J. Cordell Maddox, Jr.

9:15 to 10:15 a.m.
Breakout: Worker's Compensation
New Case Review and Round Table Discussion

10:15 to 10:30 a.m.
Coffee Break

10:30 to 11:00 a.m.
Relationship Between Carrier and Counsel
Jean Bergeron, Esq., Nationwide Mutual Insurance Co.

11:00 to 11:30 a.m.
Evidence: Discovery of Adjuster's File
E. Warren Moise

11:30 a.m. to 12 noon
Damages, Life Care Plans
Ramona Epps, Concentra

12:00 noon to 1:00 p.m.
Adjournment/Beverage Break

Amicus Curiae Committee Report

cason v. duke energy corporation[1]

by M. Scott Taylor

S.C. Code Ann. Section 42-5-250 (1976) is not an exception to the exclusive remedy provision of the Workers' Compensation Act

On March 4, 2002, the South Carolina Supreme Court provided a much anticipated answer to a workers' compensation matter certified by the Untied States District Court for the District of South Carolina. In doing so, the Court agreed with the position presented by the South Carolina Defense Trial Attorneys Association in their Amicus Curiae brief, written by Gray Culbreath and Brooks Shealy of Collins & Lacy, P.C.

The origins of *Cason v. Duke Energy Corporation* can be traced back to an accident in September of 1996, in which several employees of Duke Energy Corporation were injured when a steam pipe burst at the Oconee Nuclear Station. After receiving workers' compensation benefits, several of these employees brought a common-law tort action against Duke Energy Corporation seeking actual and punitive damages. The Plaintiffs contended that S.C. Code Ann. Section 42-5-250 provided an exception to the exclusivity provision of the South Carolina Workers' Compensation Act (S.C. Code Ann. Section 42-1-540). After Duke Energy Corporation removed the case to federal court, The Honorable G. Ross Anderson, Jr. certified the issue, which was a matter of first impression, to the South Carolina Supreme Court.

The Plaintiffs and the South Carolina Trial Lawyers Association both presented briefs to the Court that argued S.C. Code Ann. Section 42-5-250 created an exception to the exclusivity provision of the Workers' Compensation Act for losses caused by an explosion or other similar single catastrophic accidents. *Cason*, 348 S.C. at 547, 560 S.E.2d at 893. With this argument, the Plaintiffs and SCTLA hoped to create a new category of work-related injury in South Carolina that was outside of the Workers' Compensation Act. This argument was based upon their interpretation of the statute's language, which states:

> **Section 42-5-250 Title not applicable to insurance for single catastrophe hazards.**
> This title shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards. But nothing contained in this section shall be construed to relieve the employer from liability for injury or death of an employee as a result of such an explosion or catastrophe.

Duke Energy Corporation argued an alternative interpretation of this statute. Duke Energy Corporation argued that Section 42-5-250 created an exception to the requirement that Workers' Compensation insurance be coextensive with an employer's liability under the Act by relieving an insurer of the duty to cover injuries arising from such a catastrophe. Under this interpretation, which had been adopted by the Fourth Circuit Court of Appeals, an employer would remain liable to its employee, but the compensation insurer would not insure against this hazard. *Id.* at 548, 560 S.E.2d at 893.

However, the Supreme Court did not agree with either of these interpretations of the statute. Instead, the Court agreed with the position presented by the South Carolina Defense Trial Attorneys in their Amicus brief. SCDTAA pointed out to the Court that Section 42-5-250 must be viewed in the context in which it was originally enacted in 1935. This section, along with Section 42-5-60, were originally enacted as subsections A and B of Section 72 of Act 610 (1935). Subsection B, or Section 42-5-250, was meant to clarify what types of policies were subject to regulation by the "new" Workers' Compensation Act. Therefore, it was not the legislature's intent for the language in this subsection B to create an exception to the exclusivity provision of the Workers' Compensation Act.

The South Carolina Supreme Court agreed. Specifically, the Court found that when Section 42-5-250 is read with Section42-5-60, as it was originally enacted, "it is apparent that 42-5-250 is not concerned with the relationship between employer and employee, but with the applicability of the Act to certain types of insurance policies." Id. at 548, 560 S.E.2d at 893. The Court went on to explain that when the Workers' Compensation Act was originally enacted in 1935, this provision was meant to ensure that catastrophic loss policies were not transmuted into Workers' Compensation liability policies. The Court commented that "this language was inserted in the Act as a transitional provision, and has little or no present utility." *Id.*

Accordingly, due in part to the efforts of the SCDTAA, the South Carolina Supreme Court has shut the door to common-law tort claims by employees against their employers under South Carolina Code Ann. Section 42-5-250. Gray Culbreath and Brooks Shealy should be congratulated and commended for their excellent work on our behalf.

Footnotes

1 *Cason v. Duke Energy Corporation*, 348 S.C. 544, 560 S.E.2d 891 (2002).

Legislative Committee Report

by J. Michael Ey

The second session of the 114th General Assembly is set to end on Thursday, June 6, 2002. In the days leading to the statutory adjournment date, legislators have been rushing to complete their work on numerous legislative matters. While the state budget dominated legislators' attention this session, in the closing days and weeks significant attention was focused on Public Service Commission reform, campaign finance reform and truth-in-sentencing.

Much of the activity in the 2002 session was influenced by the upcoming elections. In addition to the gubernatorial election, all constitutional offices are up for election as is all seats in the House of Representatives. Currently, Republicans hold sixty-nine seats in the House and Democrats fifty-three. Fifteen House members (eleven Republicans and four Democrats) are not offering for re-election.

The predominant issue throughout the 2002 session has been the state budget. Faced with slow revenue growth due to the state of the economy and prior budget practices of funding recurring programs from non-recurring revenue sources, legislators faced budgetary needs that far exceeded available revenues. Legislators considered increasing revenues through the cigarette tax to meet Medicaid funding needs, however, the proposal was short-lived because of a threatened veto by Governor Hodges. Legislators made education (K-12) and Medicaid priority expenditure areas. Most all agency budgets were cut including higher education institutions. While not willing to raise tax revenues, the General Assembly did resort to various fee increases as a means of meeting budget needs.

Items of interest to the South Carolina Defense Trial Attorneys' Association included:

Structured Settlement Protection Act

R. 300, H. 3943, a bill to enact the Structured Settlement Protection Act was signed by the Governor on May 14, 2002. Among other things, the legislation provides limitations on and procedures for the transfer of structured settlements.

Verification of Tort Claims

The Governor vetoed R. 302, H. 4435, a bill to amend the South Carolina Tort Claims Act by deleting the requirement that a claim be verified. The House of Representatives sustained the veto by a vote of 79-8.

Commencement of Civil Actions

R. 357, H. 4656, provides that a civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing. R. 357, H. 4656, was signed by the Governor on May 24, 2002. The legislation takes effect upon approval by the Governor and applies to causes of actions filed on or after the act's effective date.

Railroad Venue

An amendment was offered during the final stages of consideration of H. 4656 by the House of Representatives to address the "railroad venue" issue. Among other things, the amendment provided that if the defendant is incorporated in South Carolina or if the defendant is an individual nonresident of South Carolina, or certain foreign corporations, then the action must be tried, at the option of the plaintiff, in the county where the cause of action arose or the county of the principal office for the entity in South Carolina as registered with the Secretary of State's Office. The amendment also repealed Section 58-23-90 which provides that an action may be brought against a motor carrier in any county through which the motor carrier operated. A point of order was raised that the amendment was not germane to H. 4656; the Speaker sustained the Point of Order and ruled the amendment out of order.

Fees

In the General Appropriation Act (R. 373, H. 4878), the General Assembly imposed a fee of twenty-five dollars for every motion made in the court of common pleas and family court (Proviso No. 30.16). Revenues from these fees are designated for the exclusive use of the Judicial Department. In addition, Proviso No. 30.18 imposes an additional fee of thirty dollars for the filing of a first complaint or petition, including application for a remedial and prerogative writ and bond on attachment or other bond, in a civil action or proceeding, in a court of record. Revenues from the additional fee is allocated between the county and state (for use by the Judicial Department).

Unborn Victim's Act

The purpose of this legislation is to provide that in certain causes of action a "person" includes "an unborn child at every stage of gestation in utero from conception until live birth." Both the House passed

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Legislative Committee Report

Continued from page 7

version, H. 3693, and the Senate version, S. 312, are in the Senate Judiciary Committee.

Study of Disposition of Civil Cases

In 2000 and 2001 (2001 S.C. Act No. 121) the General Assembly provided in legislation for the appointment of a task force to study, make recommendations, and report on methods for improving the disposition of civil cases in circuit courts and magistrate courts. A report from the task force was due no later than January 18, 2002, however, the task force was never appointed.

Tort Reform Legislation

Various bills were introduced during the 114th General Assembly, similar to, if not the same, as legislation introduced in prior General Assembly's, to provide tort reform. For example, H. 3058, H. 3132 – The South Carolina Noneconomic Damage Awards Act of 2001; H. 3059 – Establishing Standards and Procedures for the Recovery of Punitive Damages; and H. 3061 – The South Carolina Elimination of Double Recoveries Act of 2001. None of these bills were enacted.

Civil Jurisdiction of Magistrates

Act 184 (R. 200, H. 3107) expands the concurrent civil jurisdiction of Magistrate's Court to include interpleader actions arising from real estate earnest money disputes if the sum claimed does not exceed $7500. Act 184 became law without the signature of the Governor.

H. 3153 provides that Magistrate's Courts have jurisdiction for actions under the South Carolina Tort Claims Act seeking damages of $7500 or less. In addition, H. 3153 provides that in Tort Claims Act actions for $7500 or less, the state agency or political subdivision may be represented by a representative of the insurance carrier, department manager, staff person, or other official. H. 3153 remains in the House Judiciary Committee.

H. 4211 provides that Magistrate's Courts have concurrent jurisdiction for matters involving real estate restrictive convenants. At introduction, H. 4211 was referred to the Judiciary Committee where it remains.

Magistrate Court Practice

S. 687 provides that Magistrate Court civil actions must be filed in the Office of the Chief Magistrate who may assign the case to any magistrate in the county. The legislation also repeals certain statutes relating to the magistrates having separate and exclusive territorial jurisdiction. At introduction, S. 687 was referred to the Judiciary Committee where it remains.

Selection of Attorneys by the State: H. 3315 requires the Attorney General to use a competitive bid procedure for the selection of attorneys and law firms for the representation of the state in a legal matter involving the state. Budget and Control Board approval would be required for each contract for legal representation. At introduction, H. 3315 was referred to the Judiciary Committee where it remains.

H. 3376, the Private Attorney Retention Sunshine Act, among other things, requires a competitive solicitation process for the selection of outside attorneys. For legal service contracts of $450,000 or more, approval by the General Assembly is required. At introduction, H. 3376 was referred to the House Judiciary Committee where it remains.

Attorney's Fees in State Initiated Actions

H. 3420 modifies the procedure for the awarding of attorney's fees in state initiated actions and expands the statute to include administrative actions. At introduction, H. 3376 was referred to the House Judiciary Committee where it remains.

Unauthorized Practice of Law

H. 4114, the Unauthorized Practice of Law Consumer Protection Act, establishes a mechanism for attorneys to bring to the attention of the Attorney General a person engaging in the unauthorized practice of law. If the Attorney General does not prosecute, the reporting attorney may bring an action in the court of common pleas and the reporting attorney is granted immunity for bringing the action. At introduction, H. 4114 was referred to the Judiciary Committee where it remains.

Recent Order

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS
ORDER
Denying Plaintiff's Motion for Protective Order
C.A. No. 01-CP-11-335

John D. Pridemore,
Plaintiff,
vs.
John George, Jr.,
Defendant.

This is an admitted liability automobile accident case which was filed July 3, 2001. Plaintiff filed a "Motion for Protective Order" which is dated March 7, 2002. The motion was among those listed on a roster of non-jury matters prepared by the Clerk of Court and mailed to counsel of record. It came before me for hearing at a one-day non-jury term in Gaffney on April 1, 2002. Counsel for Defendant was present although counsel for Plaintiff was not.

Background

The accident date was May 5, 2000. Plaintiff's Complaint alleges that, as a result of the accident, Plaintiff sustained numerous serious extreme, agonizing and painful injuries including injuries, bruises, and contusions to his right lower leg. Plaintiff further alleges that he will have "permanent adverse effect for the rest of his life" and that he has incurred and will incur substantial medical and doctor bills. Plaintiff also alleges that he was subjected to extreme pain, mental anguish, suffering and discomfort over a long period of time.

At the hearing counsel for Defendant advised the court that, after the suit was filed, Interrogatories and Requests for Production were served upon Plaintiff. Also that some fifteen subpoenas had been issued to obtain Plaintiff's medical records. Counsel had obtained, without objection, the complete medical records on Plaintiff, copies of which were provided to Plaintiff's counsel.

Counsel for Defendant also advised the court that the case involved a complicated medical issue involving a condition with Plaintiff's right leg known as "lymphedema." Counsel advised that Plaintiff had been seen by a number of physicians including an orthopedist in Gaffney, an orthopedist in Spartanburg, and a pain specialist in Greenville. All of these physicians were listed by Plaintiff as witnesses in answers to interrogatories. Counsel advised that the physicians appeared to be at a loss to explain the cause of the lymphedema. According to counsel, he contacted Dr. Rubin's office by telephone and was advised that if he would write a letter to Dr. Rubin, then the doctor would try to answer any specific questions.

A letter was written to Dr. Rubin by defense counsel on February 20, 2002. A copy of the letter was attached to Plaintiff's motion. The letter contains a brief recitation about the nature of the lawsuit and a brief summary of the Plaintiff's medical treatment. A copy of Plaintiff's narrative medical records accompanied the letter. The letter read in part as follows:

"Since Mr. Pridmore's problem, lymphedema, lies within your field of specialty, I thought that you might be able to shed some light on the situation. Perhaps you can answer some or all of the following questions:

1. Are you still of the opinion that Mr. Pridmore's[1] lymphedema is a congenital problem?
2. Can lymphedema be caused by trauma?
3. Is there any further treatment that you can suggest?
4. Would it be a good idea to send the chart to someone else for review? Say, someone at a University? If so, can you suggest someone?"

Discussion

It is noteworthy that each of these questions bears directly upon a key issue in the lawsuit. None of these questions appear to be intended to lead Dr. Rubin into disclosing any confidences entrusted to him by his patient, or intended to lead to any improper disclosure infringing upon the Plaintiff's privacy.[2] Counsel's efforts appear to be nothing more than an attempt to investigate the truth of the matter sued upon.

Plaintiff's motion recites that it is made "pursuant to the provisions of Rule 37[3] of the South Carolina Rules of Civil Procedure and such other applicable rules of law." Plaintiff requests an order "directing Defendant's counsel to refrain from communicating directly with Plaintiff's physicians and/or other medical providers without Plaintiff's consent." The motion is totally silent as to the grounds for the motion, in contravention of Rule 7."[4] No statute or other legal authority is cited. The motion recites no claim of a privilege.

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Recent Order

Continued from page 9

The common-law rule that communications between physicians and patient are not privileged is in effect in South Carolina. *Peagler v. Atlantic Coast R. Co.*, 101 S.E.2d 821 (S.C. 1958). This situation was recognized by the court in *Felder v. Wyman*, 139 F.R.D. 85, (U.S.D.C., D.S.C. 1991). In *Brown v. Bi-Lo*, Inc., 535 S.E.2d 445 (S.C. App. 2000) the court held that the employer's representatives were entitled to contact claimant's treating physicians directly and that a physician does not breach his or her duty of confidentiality by providing medical information relevant to the claim to the employer or its representative. *Brown*, of course, is distinguishable from this case in that it involved a situation where there is a specific statute reciting that medical information **must** be provided to an employer, etc. The court noted that requiring employers to use formal discovery methods such as depositions would significantly delay the compensation process and increase the costs of coverage. Also, that allowing employers and their representatives the opportunity to interview physicians outside the presence of the employee merely provides employers and their representatives the same access to medical evidence as the employee.

In *Doe v. Orangeburg County School District*, 518 S.E.2d 259 (S.C. 1999) a female high school student and her mother brought a negligent supervision action against a school after alleging that she was raped by a male student. In that opinion the court recognized the following principle: "It is antithetical to principles of fair trial that one party may seek recovery from another based on evidence it selects while precluding opposing relevant evidence on grounds of prejudice," citing a 1992 Indiana decision, *Barnes v. Barnes*, 603 N.E.2d 1337. Footnote 7 in our court's opinion again cited Barnes for the following proposition: "The *Barnes* court analogized the case to that of a personal injury plaintiff who seeks to conceal evidence relevant to the claimed injury by invoking the physician-patient privilege. *'By placing one's mental or physical condition in issue, a party has done an act which is so incompatible with an invocation of the physician-patient privilege that the privilege is deemed waived as to that condition.*'" [Emphasis supplied.]

Plaintiff Pridmore, in filing his Complaint alleging serious permanent injury, etc., placed his medical condition in issue in this case. In doing so he waived any physician-patient privilege as to that condition. In the letter which Plaintiff complains of, Counsel seeks nothing more than information concerning that condition and its cause.

For the above reasons Plaintiff's motion is denied. AND IT IS SO ORDERED.

Gary E. Clary, Presiding Judge
April 3, 2002

Footnotes

1 The Plaintiff's name is misspelled in the Complaint. It is Pridmore, not Pridemore.

2 I am mindful of the *Hedgepath* and *McCormick* opinions. *S.C. State Board of Medical Examiners v. Hedgepath*, 480 S.E.2d 724 (S.C. 1997); *McCormick v. England*, 494 S.E.2d 431 (S.C. App. 1997).

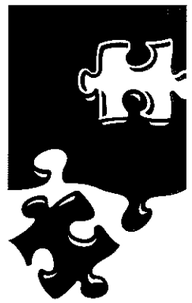
3 Rule 37 is entitled "Failure to Make or Cooperate in Discovery: Sanctions.

4 Rule 7, *Pleadings Allowed; Form of Motions, provides* in part, "An application to the court for an order shall be by motion which...shall state with particularity the grounds therefor."

Evidence Matters

E. Warren Moise
Grimball and Cabaniss, L.L.C.

Plaintiff's Lawyers



Freshman defense trial lawyers are often much like freshmen Republican congressmen: they tend to see litigation in black and white, right and wrong. They are young men and women with a mission, that being the use of truth and justice to protect their clients and to defeat the malingering, greedy plaintiffs. Some of this attitude spills over to paint the plaintiffs' lawyers in unflattering colors. Oh the adverse attorney might be seen as having some good qualities, albeit in a meretricious sort of way. But more often than not, merely because the plaintiff's lawyer is a hard-charging, zealous advocate who believes in her client's cause, she is described as overreaching, arrogant, or even unethical.

No longer a young lawyer, I nonetheless can relate to the mindset of new defense attorneys. I too was once one of them, bent on making a name for myself as a trial lawyer, hoping to be accepted by the well-known courtroom attorneys. Now, however, I have come to understand the two sides of the Bar: honest, hardworking, competent attorneys on one side, and shady, slothful, ineffective lawyers on the other.

Over the years, a clearer picture of law practice, and life, comes into focus. One comes to learn that, for the most part, we are all enjoying our hour upon the stage, dancing our dance, trying to feed our families, and trying to raise our children to be what we want them to be. One may earn a steady living as a defense lawyer, although getting rich is not easily done. But the same joys of balancing a small business, paying taxes, keeping the office staff happy, and ensuring that clients continue to knock on the door plague both sides of the Bar.

I have come to recognize the good things brought about by our brothers and sisters in the Plaintiffs' Bar. I also have learned how maligned are they in the media. It is much more politically acceptable to excoriate the greedy plaintiffs' attorney than to admit that cars, businesses, and even our children's toys are safer because the Plaintiffs' Bar has fought to establish higher safety standards. Their altruistic motives are mixed with the pursuit of fees, but so are ours. The annual Christmas toy drive is an excellent example of their good work in this area. Not to mention the fact that they keep us, and our friends in the claims industry, working.

And who is to say that we are always right when claims are denied based upon our recommendations? Defense lawyers are somewhat analogous to prosecutors. Prosecutors must use their discretion to decide whether to charge a suspect with a crime. So too must we in the Defense Bar decide whether to advise our clients whether to pay or to deny a claim. We are all human and subject to mistakes. No defense attorney is infallible in his judgment that the plaintiff was really uninjured in a personal-injury case and thus to deny the claim. No defense lawyer has always been correct when she successfully used her well-honed trial skills to defeat a claim in court. Who of us has not had a client that we eventually realized was lying about the facts? Who of us has not had a jury tell us with a verdict that our cause was not just and award the plaintiff a verdict?

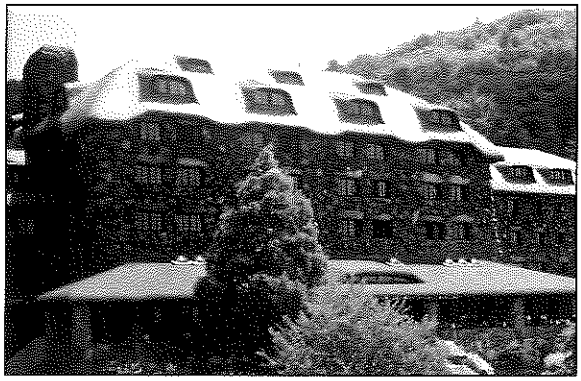
It often is said that there is no tangible difference between moderate Republicans and Democrats in the Legislature. I am unsure whether this is true, but I can say that there is very little difference between hard-working, honest attorneys on the plaintiffs' and defendants' sides of the Bar. We should try to look at our adversaries as people first and lawyers second. If the adversary is a decent person who works intelligently and competently for his client, that plaintiff's lawyer is on our side of the Bar - the honorable side.

From the mountains

JOINT MEETING

July 25-27, 2002

Grove Park Inn ☛ Asheville, NC



summer

TO THE VINEYARD

fall

ANNUAL MEETING

November 7-10, 2002

Château Élan ☛ Braselton, GA

For Additional Meeting Information Check Out SCDTAA's Website

http://www.scdtaa. com

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