



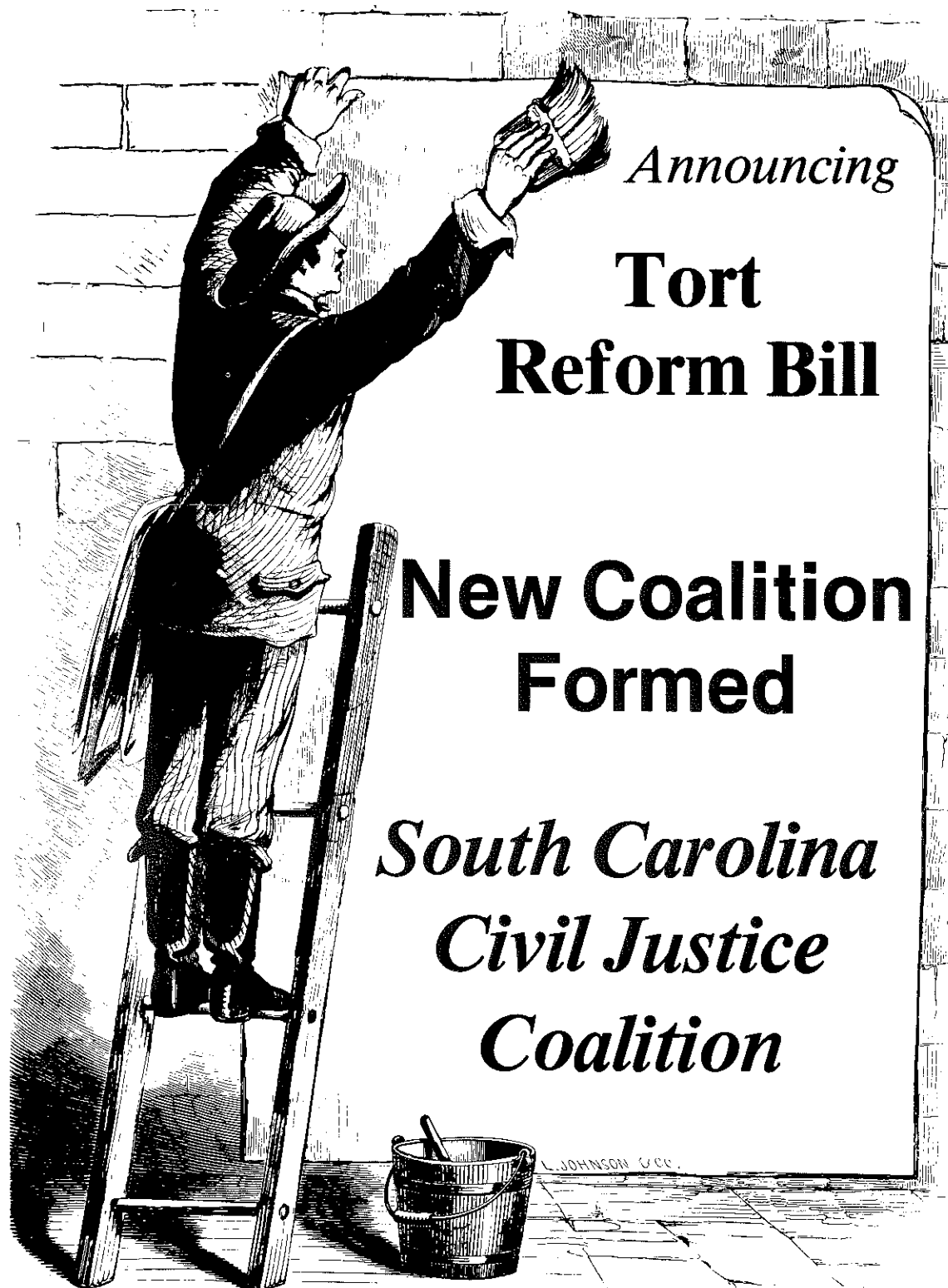
THE DEFENSE LINE

APRIL-MAY 1986

VOLUME 14

THE SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION

NO. 2



Announcing

Tort Reform Bill

New Coalition Formed

*South Carolina
Civil Justice
Coalition*

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President's Letter T. Eugene Allen, III

The year is passing all too quickly, and your association officers have been devoting substantial amounts of time to improve our Association and the services offered to its members.

Theron Cochran, Convention Chairman for the Asheville meeting, has plans for that convention well laid out. I think you will find it the best meeting yet and urge you to be on the lookout for the pre-registration materials which you will be receiving around the end of May. Last year we had a record attendance. Don't wait too late to make your reservation.

The Membership Committee, under the capable leadership of Hugh McAngus, has been hard at work. Hugh's report appears elsewhere in this issue. It looks like we may be headed for an all time high in membership.

Glenn Bowers and Tim Bouch and their Programs and Seminars Committee are to be commended for the degree of advanced planning they have demonstrated. Programs for both of our meetings are laid out. Through the efforts of Bill Coates and Senator Thurmond, we have received commitments from U.S. Senator Howell Heflin (formerly Chief Justice of the Alabama Supreme Court) and Lee Thomas, Administrator of the Environmental Protection Agency (and a native South Carolinian) who will be keynote speakers at the Friday and Saturday program sessions at our annual meeting at Sea Island.

Glenn and Tim should also be given credit for the work they have done in organizing the upcoming products liability seminar which we are co-sponsoring with our colleagues, the South Carolina Trial Lawyers. I hope each of your will attend this excellent presentation.

The 1986 session of the South Carolina General Assembly is past its midway point, and it has certainly been an interesting year for matters of interest to our Association. Carl Epps, as Chairman of our Legislative Committee, has done yeoman service and deserves the thanks of each of us. We have announced the formation of a coalition of business and professional groups whose aim will be to seek passage of civil litigation/tort reform legislation in the General Assembly.

Our expert witness file continues to be available to every member and is a tool which each of you should use. Simply contact Association headquarters to verify if the file contains anything on the particular expert with whom you are dealing. Copies of transcripts and other materials can be obtained for just the cost of the copies. You make this an even better service by continuing to send copies of transcripts to our Executive Director.

T. Eugene Allen III

Ten Years Ago

C DEXTER POWELS, our President in 1976, announced that the Joint Meeting of the Defense Attorneys and Claims Managers would be held August 20th and 21st at the Landmark Hotel in Myrtle Beach. The Joint Meeting funds of \$2,034.06 exceeded our association's bank balance of \$1,369.81.

The Defense Line is a regular publication of the South Carolina Defense Trial Attorneys' Association. All inquiries, articles, and black and white photos should be directed to Nancy H. Cooper, 3008 Millwood Avenue, Columbia, SC 29205, 252-5646.

TORT REFORM BILL UPDATE

By Carl Epps, Esq.

A press conference was held in Columbia on April 21, 1986 announcing the formation of the South Carolina Civil Justice Coalition and the introduction in the South Carolina Senate of a Tort Reform Bill drafted by our organization. In addition to the Defense Attorneys, members of the coalition as of the date of this writing are The South Carolina Oil Jobbers Association, The South Carolina Hotel and Motel Association, The Home Builders Association of South Carolina, The South Carolina Society of Professional Engineers, Associated General Contractors, Carolina Lumber and Building Supply Dealers, Petroleum Council of South Carolina The South Carolina Merchants' Association, The National Federation of Independent Businesses, and other trade and business associations. The press conference was conducted by Gene Allen and Senator John E. Courson, who is co-sponsoring the Bill along with Senator W. Doar, Jr. Both Senators have been extremely cooperative and deserve any assistance our Association can provide them.

The Bill provides the following changes in our current tort system:

1. Reduces the six year statute of limitations to three years;
2. Reduces the statute of limitations for persons operating under a disability from either one year after the disability expires, or five years beyond the usual statute, whichever first occurs;

3. Limits the granting of new trials on the issue of damages only to instances where the only reasonable inference from the evidence shows that the Plaintiff was entitled to a verdict as a matter of law;
4. Abolishes the collateral source rule
5. Limits recovery for non-economic damages to \$250,000;
6. Restricts recoveries of punitive damages to cases involving malicious and willful acts, as those words are commonly used, and provides that ninety-five percent of the recovery is received for the benefit of the State; and

7. Abolishes joint and several liability
No one expects the Bill to receive any action this year. It is being introduced in the Senate to generate discussion with the intention of pre-filing it for the 1987 session. We expect the coalition to grow substantially by next year.

The Medical Tort Reform Bill has apparently stalled. The Senate Judiciary Committee revamped it substantially. It now mainly provides for a shortened statute of limitations for minors, requires that the Plaintiff have a certificate of meritorious case before it is filed, that the Defendants health care provider similarly file a certificate of meritorious defense within a specified period, and provides that punitive damages cannot exceed actual damages. We do not anticipate the House taking any action on the Bill during this year's session.

The Tort Claims Act should receive some action this year. The House and Senate are still working out the details of the act, with the main area of discussion being whether it will provide a cap on damages of \$100,000/\$300,000 or \$250,000/\$500,000.

Several bills have a chance of passing dealing with proceedings before the Industrial Commission. Senate Bill S-354 provides for expedited appeals of Industrial Commission rulings. Senate Bill S-407 increases the minimum weekly wage from \$25 to \$75. Senate bill S-341 allows third party claims to be approved by a single Commissioner. Additional, a retaliatory firing bill is in the works and has a good chance of passing during this session or the next. Overall, however, it has been relatively quiet this year legislatively in workers compensation.

July 24 - 26 Joint Meeting Asheville, NC

The Joint Meeting of the South Defense Trial Attorneys' Association and the South Carolina Claims Managers Association will be **ROLLING AROUND** before we know it and Chairman THERON COCHRAN doesn't want to be **CAUGHT** holding the **BALL**. He has been **BOUNCING** right along planning a well **ROUNDED** Convention. All the **BASES** are being covered. It is now time to **GET ON THE BALL** and **THROW** in your support. Don't **STRIKE OUT** just as the Convention **PLAY** begins. Make plans to join the **SCDTAA TEAM** at its 1986 Joint Meeting. Don't miss this **GRAND SLAM EVENT** at the Grove Park Inn in Asheville, N.C., July 24-26.



S.C. Defense Trial Attorneys' Association Membership Report

By W. Hugh McAngus, Esq.

In response to a membership report from the South Carolina Defense Trial Attorneys' Association, please be advised that to date, the Association has 104 individual members and 448 firm members, comprising 33 firms. This is an increase from last year's membership of 537 members, which included 104 individual members and 443 mem-

bers who were in firm memberships comprising 30 firms.

In addition, I anticipate that, before we begin this year's membership drive, we will have approximately 567 members. **All members who have not paid this years dues encouraged to do so now.**



Joint Seminar - May 9

The South Carolina Defense Trial Attorneys' Association, under the direction of the Program & Seminars Committee Co-Chairmen, GLENN BOWERS and TIM BOUCH will jointly sponsor a Video/CLE Seminar, Friday May 9, 1986 in the U.S.C. School of Law Auditorium. The Seminar, "Practical Products Liability" has been designed to highlight problems, encountered in the preparation and trial of a products liability case. Through a cooperative effort of the SCDTAA, the South Carolina Trial Lawyers Association and the South Carolina Bar, a faculty of experienced trial attorneys from both the plaintiff and defense bars will participate in the program. The program which qualifies for 6.5 credit hours under the mandatory C.L.E. regulations, will be presented live at a

number of TEC centers around the state via a teleconferencing network of closed circuit television, dedicated telephone lines and special two way conference phone units. The morning session will feature a Welcome by TIMOTHY W. BOUCH, Esq. Charleston and Barney O. Smith, Esq. Greenville followed by STEPHEN G. MORRISON, Esq.- "Rules of Evidence; Motions in Limine; Proof of other Accidents", MARK H. WALL, Esq. - "Warning Cases: Proof, Defenses, and Trial Strategy" and WILLIAM M. GRANT, JR., Esq.- "Expert Witnesses-Selection; The afternoon session will include sessions on Farm Products Cases, David F. Groose, Esq., Defective Medical Products, Barney O. Smith, Esq. and Use of Demonstrative Evidence in Products Liability Cases, J. Kendall Few, Esq.

EXPERT WITNESS INDEX

South Carolina Defense Trial Attorneys' Association
3008 Millwood Avenue, PO Box 11187
Columbia, SC 29211
(803) 252-5646

Name of Expert _____

Address _____

City _____ State _____ Zip _____

Phone _____

Area of Expertise/Specialty _____

Type of Case _____

Case Name _____

Did you consult _____ or confront _____ this expert?

If you consulted this expert, would you consult him/her again? Yes _____ No _____

Do you have a file on this expert? Yes _____ No _____

Anything significant and/or unusual about expert and/or testimony? _____

Name of Submitting Attorney _____

Telephone _____

Recent Decision Cases



Charlie Mumford v. Louis Malinow Court of Common Pleas for Spartanburg County C.A. No. 84-CP-42-1819. This was an automobile accident case in which the lower Court granted summary judgement to Plaintiff on the issue of liability. Defendant timely filed and served a Notice of Intent to Appeal the Order of the lower Court.

The case was called for trial at the next succeeding term of Court. Defendant argued to the Court that the case could not be tried under the decision of the South Carolina Supreme Court in **Naful v. Milligan**, 187 S.E.2d 511 (1972) and §14-3-330, South Carolina Code of Laws, 1976. Judge E.C. Burnett, III, issued an Order holding that Rule 72, South Carolina Rules of Civil Procedure, overruled **Naful** and restricted the appealability of intermediate Orders. In making his ruling, Judge Burnett relied in part upon Federal precedent holding that summary judgment on the issue of liability is not immediately appealable. Judge Burnett further found that there was no prejudice to Defendant in calling the case for trial and that, in any event, Defendant's right to appeal was fully reserved and protected and could be asserted with the final judgment in the case.

Defendant immediately applied to the South Carolina Supreme Court for a Writ of Supersedeas. After hearing oral arguments, Justice George T. Gregory, Jr., ruled that the Court's ruling in **Naful v. Milligan, supra.**, still applies and that Orders for summary judgement based solely upon liability are immediately appealable to the South Carolina Supreme Court. Justice Gregory, in an extremely brief Order, affirmed that there was no need for the issuance of a Writ of Supersedeas, since the stay pursuant to **Naful** is automatic.

In **2000 Watermark Association, Inc. vs. Celotex Corporation**, Opinion No. 85-1387 (4th Circuit, February 28, 1986), the Fourth Circuit Court of Appeals held that under South Carolina law one cannot recover for an intangible economic loss in negligence action, joining the majority of courts which require personal injury or property damage before imposing liability in tort.

Celotex manufactured asphalt shingles which were installed on a condominium project. The homeowner's association subsequently learned that blisters had appeared on many of the shingles, admittedly shortening the life expectancy of the roof and arguably destroying its aesthetic appeal. Watermark never alleged, however, that the shingles actually leaked.

The jury found for Watermark on implied warranty and negligence theories, returning a verdict of \$40,679 in actual damages and \$250,000 in punitive damages. The Fourth Circuit court of Appeals reversed and remanded the case for a new trial solely on the implied warranty theory.

Although the court found no South Carolina law on this point, it concluded that South Carolina would adopt the majority view.

The court first noted that economic interests historically were not entitled to protection against mere negligence. Secondly, the court concluded that to allow recovery under a negligence theory for solely economic loss would constitute an unwarranted infringement upon the comprehensive statutory scheme fashioned by the UCC.

While there is no South Carolina case directly in point, the court of appeals found the decision in **Gray v. Southern Facilities, Inc.**, 256 S.C. 558,

183 S.E.2d 438 (1971) to be authoritative. In **Gray**, the South Carolina Supreme Court refused to allow an action for negligence where the plaintiff sustained no physical damage to his property and suffered no personal injury, despite expert testimony that his property diminished in value.

It is hoped that state courts will find the **Watermark** decision persuasive. Furthermore, the courts must ultimately determine what exactly is encompassed by the term "economic loss" which the Court in **Westmark** did not undertake to define.

H. Lee King, Jr., Administrator of the Estate of Hugh Brady King vs. Providence Hospital. The plaintiff, in both wrongful death and survival actions, sought recovery against the defendant hospital, alleging that the deceased had been a victim of child abuse and had been treated in the hospital's emergency room on a number of occasions. The complaints alleged that the hospital had failed to notify the appropriate authorities of the child abuse as alleged by Sections 20-7-510 and 20-7-560, **Code of Laws of South Carolina**, (1976). The complaints alleged that the decedent had committed suicide as a result of the abuse. The defendant hospital moved to dismiss both complaints on the basis that no civil cause of action for violation of these statutes exists in South Carolina and that there is no other non-statutory cause of action for failure to detect and report child abuse. After briefs and argument, the motion was granted by the presiding circuit judge of the Richland County Circuit Court. Following a Rule 59 motion by the plaintiff, the court re-affirmed its earlier ruling.

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CALENDAR OF EVENTS

1986	International Association of Insurance Counsel (Annual)	June 29-July 5	The Greenbrier, White Sulphur Springs, West Virginia
	Defense Research Institute, Inc.	June 29-July 1	The Greenbrier, White Sulphur Springs, West Virginia
	Joint Defense Conference SCDTAA and Claims Managers	July 24-27	Grove Park Inn, Asheville, NC
	Federation of Insurance Counsel	July 30-August 3	Ritz Carlton, Laguna, CA.
	American Bar Association (Annual)	August 7-14	New York, New York
	American College of Trial Attorneys (Annual)	August 8	New York, New York
	SCDTAA Annual Meeting	October 30-November 2	The Cloister, Sea Island, GA.
1987	Federation of Insurance Counsel	February 25-March 1	Rancho Las Palmas, Palm Springs, CA.
	S.C. Bar Association	June 13-15	Asheville, NC
	Joint Defense Conference SCDTAA and Claims Managers	July 30-August 2 (Tentative)	Grove Park Inn, Asheville, NC
	Federation of Insurance Counsel	August 5-9	Broadmoor, Colorado Springs, Colorado