



THE DEFENSE LINE

OCTOBER 1986

VOLUME 14

THE SOUTH CAROLINA DEFENSE TRIAL ATTORNEY'S ASSOCIATION

NO. 5

SCDTAA ANNUAL MEETING October 30 - November 2 The Cloister, Sea Island, Georgia

NOTICE OF PROPOSED AMENDMENTS TO BY-LAWS

The following amendment to the By-Laws of the South Carolina Defense Trial Attorneys' Association will be voted on at the Annual Meeting of the Association at 8:30 a.m. on Saturday, November 1, 1986 at the Cloister Sea Island, Georgia:

ARTICLE III QUALIFICATIONS FOR MEMBERSHIP:

Those persons shall be qualified for membership who (1) Are members in good standing of the South Carolina State Bar; (2) Are actively engaged in the private practice of civil law, or employed by governmental bodies; and (3) Individually devote a substantial portion of their time in litigated matters to the defense of damage suits on behalf of individuals, insurance companies and corporations, private or governmental.

Application for membership must be made upon a form provided by the Secretary and submitted to the Secretary, who shall then refer the application to the Membership Committee. A check for annual dues, in an amount fixed by the Executive Committee, shall accompany the application.

CHANGE TO:

ARTICLE III QUALIFICATIONS FOR MEMBERSHIP:

Those persons shall be qualified for membership who (1) Are members in good standing of the South Carolina State Bar; (2) Are actively engaged in the private practice of civil law, or employed by governmental bodies; and (3) Individually devote a substantial portion of damage suits on behalf of individuals, insurance companies and corporations, private or governmental, or (b) the representation of management in labor disputes.

Application for membership must be made upon a form provided by the Secretary and submitted to the Secretary, who shall then refer the application to the Membership Committee. A check for annual dues, in an amount fixed by the Executive Committee, shall accompany the application.



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NANCY H. COOPER

**PRESIDENT'S LETTER**

Writing this last President's Letter evokes conflicting feelings for me. Serving as President of our Association has meant a great deal to me for I value our Association above all others. On the other hand, I now understand why several of my recent predecessors have told me that the job of Immediate Past President is the best one they have held.

We are completing our first full year of working with J. Edgar Eubanks & Associates in the daily management of our Association. I am pleased to report that we have received excellent service from them. Carol Davis, Nancy Cooper, Donna Welle and Sandra Babson have all been ready and willing to help on the various projects and services of our Association. I hope each of you has the occasion to call on these folks for assistance. You should consider them your primary contact for the Defense Line, membership information, the expert witness file and assistance with our various meetings.

I hope we will all remember 1986 as a year of momentum for our Association. Our Association can be proud of its efforts to organize the South Carolina Civil Justice Coalition. It has been my pleasure to receive, on behalf of all of you, appreciation from many people for the efforts of our Association. I hope each of you will actively support the Coalition's efforts during the coming legislative year.

The Asheville Joint Meeting was well attended as usual, offered a record number of speakers and seemed to be enjoyed by all. The Annual Meeting later this month should be the best ever. At this writing, 37 state and federal judges have registered for the meeting. Special breakout sessions for workers compensation have been planned for the first time. Along those lines, we are considering a by-law change which would allow labor lawyers specializing in management representation to join our Association.

I am completely confident that the momentum of our Association will continue with even greater acceleration during 1987 under my successor, Theron Cochran. Let's all work to keep our Association at the top. Thanks for allowing me the privilege of serving you.

Gene Allen

TEN YEARS AGO

President C. DEXTER POWERS, announced the program for the Ninth Annual Meeting of the South Carolina Defense Attorneys at Hilton Head Inn, Hilton Head Island, November 4th - 6th, 1976. Other officers were, JACKSON L. BARWICK, JR., President-Elect, MARK W. BUYCK, JR., Secretary-Treasurer, JAMES W. ALFORD, Immediate Past President; Executive Committee, PLEDGER M. BISHOP, JR., H. SPENCER KING, SAUNDERS M. BRIDGES. Program Chairman for the Ninth Annual Meeting was DONALD V. RICHARDSON.

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.

SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION**ANNUAL MEETING**

October 30 - November 2, 1986

The Cloister • Sea Island, Georgia

Thursday, October 30, 1986

ARRIVALS

3:00 P.M.

3:30 P.M.

5:00 P.M.

6:00 P.M.

6:30 P.M.

7:00 P.M.

8:00 P.M.

9:30 P.M.

8:00 A.M.-10:15 A.M.

8:45 A.M.-8:50 A.M.

8:50 A.M.-9:20 A.M.

9:20 A.M.-10:20 A.M.

10:20 A.M.-10:30 A.M.

10:30 A.M.-11:00 A.M.

11:00 A.M.-12:00

10:00 A.M.-11:00 A.M.

12:30 P.M.

7:00 P.M.

8:00 P.M.

8:30 A.M.-9:00 A.M.

9:00 A.M.-10:30 A.M.

10:30 A.M.-10:40 A.M.

10:40 A.M.-11:10 A.M.

11:10 A.M.-12:10

Afternoon Free

6:30 P.M.

7:30 P.M.

9:00 P.M.-1:00 A.M.

Farewells

1:00 P.M.

Executive Committee Meeting.

Registration desk opens - Plantation Lounge.

Nominating Committee Meeting

Registration desk closes.

Cocktail Reception for first time attendees - Cumberland Room (First Time Attendees, Officers and Executive Committee)

Cocktail Reception - Plantation Lounge.

Dinner in Main Dining Room.

Bingo in Cloister Clubrooms BY RESERVATION WITH CLOISTER.

Friday, October 31, 1986

Registration desk open - Plantation Lounge.

WELCOME - Ballroom

T. Eugene Allen, Esquire, President SCDTAA

STATE OF THE JUDICIARY

The Honorable J.B. Ness, Chief Justice, South Carolina Supreme Court

BREAKOUT SESSIONS

A. PRODUCT DISTRIBUTION: THE ANTITRUST, UNFAIR TRADE PRACTICES AND WRONGFUL TERMINATION ISSUES.

James Lynn Werner, Esquire

J. Rutledge Young, Jr. Esquire

Harold W. Jacobs, Esquire, Moderator

Panel Discussion By United States District Court Judges.

B. WORKER'S COMPENSATION

1. Retaliatory Discharge and Its Affect Upon Workers' Compensation Practice.

2. Medical Reports v. Depositions Under the Administration Procedures Act.

3. The Second Injury Fund - Making and Processing Claims

COFFEE BREAK

BREAKOUT SESSIONS CONTINUED

The HONORABLE LEE M. THOMAS

Administrator, Environmental Protection Agency

Mr. Thomas will speak on the scope of liability under current environmental laws, including the Superfund.

He will be introduced by The Honorable Alexander M. Sanders, Jr., Chief Judge of the South Carolina Court of Appeals.

Spouses' Program (Coffee at 9:45)

Golf and Tennis Tournaments

Cocktails at Ocean Grove

Seafood Buffet Dinner at Ocean Grove.

Saturday, November 1, 1986

BUSINESS MEETING - Ballroom

BREAKOUT SESSIONS

A. THE ELOQUENT BRIEF: HOW TO WRITE IT

The Honorable Randall T. Bell, Judge, South Carolina Court of Appeals

B. APPELLATE PRACTICE AND WORKERS' COMPENSATION APPEALS

1. For the Defense

2. The Full Commission Speaks

3. The First Court (Circuit Court)

4. The Final Stop (Court of Appeals/Supreme Court)

COFFEE BREAK

USE OF MAGISTRATES IN FEDERAL CIVIL LITIGATION

Robert R. Carpenter, Esquire, Moderator

Panel Discussion By United States District Court Judges

THE HONORABLE HOWELL T. HEFLIN

United States Senator (D. Ala.)

Senator Heflin is a former Chief Justice of the Alabama Supreme Court and is presently a member of the Senate Committee on the Judiciary. He will speak on current congressional matters of interest involving the civil justice system. Senator Heflin will be introduced by The Honorable J.B. Ness, Chief Justice of the South Carolina Supreme Court.

Cocktail Reception - Plantation Lounge.

Dinner in Main Dining Room.

Dance - "Band of Oz" (Open Bar)

Sunday, November 2, 1986

Check-out time.

EXPERT WITNESS INDEX

South Carolina Defense Trial Attorneys' Association
3008 Millwood Avenue, P.O. 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 DECISIONS

ATHLETIC ELIGIBILITY RULE — UPHELD

The Court of Common Pleas set a hearing for the State Board of Education's decision not to allow the plaintiff, Tony Cook, to participate in interscholastic sports under Section 59-39-160 of the South Carolina Code of Laws and under the guidelines and regulations promulgated by the State Board of Education. Here, the plaintiff passed only two of three required units of math.

The issue in this case is the student's requirements for participation in interscholastic activity in a given year. The Board, pursuant to Section 59-5-65, is authorized to regulate student activities with respect to graduation and eligibility for interscholastic activities. Judge Field found that both defendants, the State Board and the South Carolina High School League, correctly applied the statute. He also determined that the legislature's intent to encourage and require a minimum standard of academic performance was clear on its face. Finally, the Court found that interscholastic athletics is a privilege and not a right and only exercised after compliance with the statute and regulation for participation, **Bruce v. The South Carolina High School**, 258 S.L. 546, 189 S.E. 817 (1972).

The Court's primary function is to interpret and give effect to the intent of the legislature, **Belk v. Nationwide Mutual Insurance Company**, 277 S.C. 24, 244 S.E. 2d 744. Applying this principal and the subsequent South Carolina Supreme Court decision in **Bruce**, Judge Field found the statute's intent clear on its face and that no right was denied. Thus, Tony Cook's privileges to participate in interscholastic athletics was rightfully denied.

Help!

Enclosed you will find a form to be filled out concerning the expert witnesses' files. SCDTAA Headquarters in Columbia will act as a clearing house to aid Association Defense Attorneys statewide in quickly locating needed expert witness information. The bi-Monthly **Defense Line** issues will carry a form to remind you to keep sending in the necessary updated information. Additional forms will be available upon request. Ideally a form should be filled out for each file your firm obtains, this can then be put on computer and cross referenced as to person or subject. A call to the Association could then give a quick answer as to what is available statewide on CV's and expert witnesses.

Please return the form(s) and support this important association project.

OSSIE ANDERSON V. GOVERNMENT EMPLOYEES INSURANCE COMPANY

Case No. 86-CP-38-135, Orangburg County Court of Common Pleas.

FACTS:

The Plaintiff was injured when involved in a single car accident on January 26, 1985 while riding as a passenger in a nonowned vehicle. The Plaintiff was not a member of the driver's family or household. The Plaintiff incurred medical related expenses in the amount of \$6,182.75. The automobile was insured through GEICO with economic loss (EL) and supplemental economic loss (SEL) benefits in the amount of \$1,000.00 and \$4,000.00 respectively. The driver of the automobile had another insurance policy with GEICO covering other automobiles which provided \$4,000.00 SEL coverage. The Plaintiff did not have personal EL or SEL insurance coverage.

The Plaintiff claimed that she should be allowed to stack the SEL coverage on both policies. GEICO paid \$5,000.00 and denied the Plaintiff's stacking claim.

The Plaintiff brought suit against GEICO alleging a breach of the insurance contract and bad faith failure to pay.

GEICO moved for summary judgement.

DISPOSITION:

The Honorable Richard E. Fields held that GEICO was entitled to summary judgement based upon the following rationale:

The Automobile Reparation act of 1974, as amended, set forth in the South Carolina Code Sec. 56-11-10, etc., controls the applicability of EL and SEL benefits. Sec. 56-11-110 sets forth those classes of persons who may receive EL benefits. These classes are: (1) the named insured and any member of his family residing in his household, (2) other persons injured while occupying the insured motor vehicle, (3) pedestrians injured in an accident involved the insured motor vehicle. Both **Belk v. Nationwide**, 244 S.E.2d 744 (1978) and **Easler v. USAA**, 255 S.E.2d 676 (1979) allowed stacking of SEL coverage but in each of the claimant was the named insured. **Esler** justified stacking of SEL benefits upon the rationale that the claimant had contracted and paid for additional protection from the insurer and should be allowed to reap the benefits of its bargain. In this case Anderson was a passenger in the insured's vehicle and had neither bargained nor paid for EL or SEL benefits.

In **Garris v. Cincinnati Insurance Company**, 311 S.E.2d 723 (1984), the court established factors to consider when deciding whether or not stacking of UIM or UM coverage will be allowed. The court set forth two classes of insureds: (1) the named insured, his spouse and relatives residing in his household, and (2) any person using the vehicle with the consent of the insured and guests in the motor vehicle. The court stated that members of the first class would be allowed to stack the coverage and members of the second class would not.

Applying the doctrine of **Esler** and **Garris** Judge Fields concluded that only named insureds or members of their household (class one insureds) may stack SEL coverage.

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**SOUTH CAROLINA
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CALENDAR OF EVENTS

	SCDTAA Annual Meeting	October 30 -November 2	The Cloister, Sea Island, GA
	S.C. Bar Association (Mid-Year)	January 23-25	Omni Hotel, Charleston, SC
1987	Federation of Insurance Counsel	February 25- March 1	Rancho Las Palmas, Palm Springs, CA
	S.C. Bar Association (Annual)	June 5-7	Inter-Continental, Hilton Head Island, SC
	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

The Cloister - October 30-November 2, 1986 Spouses and Guests Program

Plan to come to the Solarium from 10:00 - 11:00 a.m. on Friday. After a brief introduction, "About Your Cloister Visit", Nica Sweeny will tell us about "Jewelry - Myths and Facts." On Saturday at 11:00 a.m., you will enjoy listening to Alabama Senator Howell Heflin, a very entertaining speaker.