THE DEFENSE LINE

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EPPS RECEIVES AWARDS

Edward E. Poliakoff
Steering Committee Chairman
South Carolina Civil Justice Coalition

Edward E. Poliakoff presents Carl Epps with South Carolina Civil Justice Coalition Award.

The South Carolina Civil Justice Coalition presented an award to SCDTAA President-Elect Carl B. Epps, III, at the recent Joint Meeting in Asheville, recognizing Epps for "outstanding service and exemplary leadership in the cause of civil justice reform." The Coalition is comprised of more than 40 business and professional organizations, including South Carolina Chamber of Commerce, South Carolina Medical Association, etc. In presenting the award the Coalition expressed its appreciation for the efforts and leadership of Epps and other SCDTAA members in initiating the Coalition, drafting its legislative proposal, and serving as its Speakers Bureau.

In recognizing Epps for his **pro-bono** work at the State House and elsewhere in support of civil justice reform, the Coalition also wishes to recognize other members of SCDTAA who gave so generously of their time and professional talent. Among them are Harold W. Jacobs, Chairman of the Coalition Advisory Board and its principle public spokesman, and numerous SCDTAA members who responded, often on short notice, when the Coalition needed speakers at various civic clubs.

Whenever there was a hearing or a serious discussion at the State House concerning tort reform, Carl Epps was there to make the technical presentation in behalf of the Coalition.

As a result of SCDTAA activity on civil justice reform, most key legislators now understand that, to know the "trial lawyer" position, they must also hear from the Defense Attorneys. This in itself is a development with potentially significant long term importance.

The South Carolina Civil Justice Coalition has not yet succeeded in enacting its proposal, just as ultimately successful Coalitions in other states, such as Georgia and Alabama, did not achieve success in their first year. However, the Coalition has resolved to put forward its best efforts toward finishing the job during the 1988 Session of the General Assembly. As was the case during the Coalition's first year, the South Carolina business and professional organizations promoting civil justice reform take assurance from the fact that the South Carolina Defense Trial Attorneys' Association plays a leading role in the effort.

PRESIDENT'S LETTER

The 1987 Annual Meeting is just around the corner. I hope you plan to attend this meeting as our Convention Committee and Program Committee are working hard to make this a beneficial and enjoyable occasion. We again look forward to having many of the members of the State and Federal Trial and Appellate Judiciary attend the convention as guests of the Association.

Because of scheduling difficulties, Chief Justice Ness was unable to schedule an in chambers week to coincide with our meeting. However, Justice Ness has approved the Circuit Court Judges adjourning court on Thursday and Friday of that week if they attend the meeting. Also, if court is held on Thursday and Friday of that week, attorneys attending the Annual Convention will be excused from court.

I recently received a copy of a speech delivered by Governor Campbell to the Risk and Insurance Management Society, CPCU, and Columbia chapter of the Independent Insurance Agents on August 20, 1987. In that speech Governor Campbell addressed the issue of tort reform. He expressed the need for tort reform and stated that "tort reform has a clear-cut relationship with our quality of life." Governor Campbell further indicated that members of his staff are meeting with the chairman and members of the Tort Reform Subcommittee of the Senate Judiciary Committee in an effort to work out an acceptable compromise in the area of tort reform. Therefore, it appears that tort reform will be on the forefront during the next legislative session. (see page 15)

As you are aware, Carl Epps will assume the office of President of this Association at the Annual Meeting. This year has gone by in a hurry, and since my term will soon be coming to an end, I want to take this opportunity to thank all those who have contributed so much to making this year a success and giving me the opportunity to serve as your President.

I look forward to seeing you at Hilton Head.

Theron G. Cochran

TEN YEARS AGO

JACKSON L. BARWICK, JR., President, received the Defense Research Institute's Exceptional Performance Citation Award for the Association. 1977 marked the tenth annual meeting of the Defense Attorney's Association and the Claims Management Association. It was held at the Landmark Resort Hotel in Myrtle Beach where we had something resembling a hurricane during the meeting. JOHN J. McCAY, JR., Program Chairman, was planning the annual meeting of the Association out of state for the first time at the Savannah Inn and Country Club, Savannah, Georgia.

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.

OPINION

Experts, Pseudo-Experts Miracle Workers and Prostitutes

Richard W. Henderson
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Part I.

General Considerations

Most litigation today involves the use of consultants, who advise counsel with respect to matters generally outside the knowledge of the triers of fact. The consultant, if properly qualified, would be designated as an expert; meaning someone who has specific education, training and experience beyond that of a lay person. In theory, it shouldn't matter which side hires the expert; a given set of facts should lead to certain conclusions. In practice, however, it is a principle "more honored in the breach." Facts are sometimes subject to varying interpretations and legitimate differences of opinion can exist. But in virtually every case, the experts hired by the various parties arrive at completely different conclusions. One expert states that the data proves the sun comes up in the south, while another will opt for the east. What is even worse is that if there is a third side, its expert will prefer the west.

The field of fire investigation is an area that is definitely subject to the problems outlined above, especially since a great deal of interpretation is involved. How do you go about finding an expert who is competent and guided by the facts? Education, training and experience are key ingredients, regardless of whether the consultant is a fire investigator, chemist, engineer, or other type specialists. How do you determine this information? Do you merely ask the expert? Recently it came to light that a chemist (not myself) testified about flammable liquid analyses in a criminal case, and in several civil arson cases, did not have the education he claimed. The criminal conviction was reversed, and it appears likely that there will be comparable action in the civil cases. Even if a degree has actually been received, it may be a "diploma mill" certificate which requires the input of money, but little else. There have been instances where experts "fudged" on their qualifications. They claimed lectures and written materials that they weren't responsible for. While it may be impalatable to require your experts to document their credentials, it is certainly far superior to discovering deficiences during litigation.

Training is probably the most important aspect of a fire investigator's preparation. Attending lectures is instructive, but it is crucial that he also attend burn exercises. This provides calibration for the investigator since different types of fires, burn pattern characteristics and flammability properties of various materials are demonstrated. Thus, when he is at a fire scene he can utilize his knowledge of the patterns in different types of fires and interpret the instant fire properly. Each scene is unique. Factors such as construction, contents, wind speed and direction, and extinquishment procedures will never be duplicated. What the investigator should actually be doing is comparing the present fire scene with his prior training. The more scientific approach to the investigation would be to build a number of structures identical to the burned one. Next, set up different types of fires to mimic all the possible causes. Then see which one

comes closest to the actual scenario. Rarely is this procedure attempted, and even then it usually involves only limited portions of the overall scene. Computer simulations are generally not helpful due to the incredible complexity of fire scenes and the innumerable variables present.

Experience is the third major area by which an investigator's qualifications may be judged. The statement "I have investigated over a thousand fires sounds impressive, but by itself, what does it prove? Merely doing something doesn't mean you are good at it. The fire investigator, without prior training, could have arrived at the wrong conclusion in each of the thousand fires. It should be noted that investigations conducted under the guidance of qualified investigators would be an important factor in establishing qualifications.

Once the questions concerning education, training and experience have been resolved satisfactorily, how do you choose the right investigator? Recommendations can be helpful, especially where the investigator has completed investigations, given depositions, and testified in trials where the information was used as a basis for the assessment. From this a fairly clear picture will emerge concerning many aspects of that investigator. For example:

Does he appear competent?

Does he conduct thorough reviews of the fires, and acurately assess all pertinent factors?

Does he play devil's advocate with his own theories, and concede the weak points in his reconstruction as well as the strong points of alternate thoeries?

Is he an advocate?

Does he acknowledge that his conclusions would change if important facts were changed?

Is he candid with respect to problems with his conclusions, or state that he may make mistakes?

Has he made statements that are inconsistent with positions he has previously taken?

Does he always arrive at conclusions that are favorable to his client's position?

Does he make a good impression in court, or does he remind you of the expert who knows 30 ways to make love but doesn't know any women?

From time to time a company representative or counsel will state that they would not hire an investigator who "works for both sides." I agree that they shouldn't. The fire investigator should not be working for **any** side. He should be seeking the truth in the matter, and should arrive at the same conclusions regardless of who has retained him. I believe it provides a balanced overview for him to work with .the various sides, such as individuals, carriers and companies subrogating or being subrogated against. Working with just one side can lead not only to tunnel vision, but also to attacks in court with respect to credibility. But beyond that, if the investigator can be "bought" by the other side, how can you trust him not to be biased in your direction when you hire him? Clearly, if what you want is a thorough and honest appraisal of the case, you should request the assistance of an investigator whose integrity and ability are above questioning. If that's not what you're after, then you're wasting time reading this article.

These are some of the areas that need to be addressed prior to the retaining of an investigator. In other fields, such as playing a musical instrument or running a race, it is obvious as to which participants are qualified. But, in the area of fire expertise the assessment is more difficult, and requires thorough, careful, investigation.

RECENT DECISIONS

Underinsurance Coverage

The opinion of Ralph King Anderson on whether a insurer must comply with the provision of S.C. Code Ann §56-9-831 (Cum. Supp. 1986) upon each renewal. Relied on a series of Minnesota cases as set out in **Randall v. State Farm Mutual Antomobile Ins. Co.,** 335 N.W. 2d 247 (Minn. 1983), Judge Anderson held that once an insurer complied with §56-9-831 it was not required to comply with each renewal. Both cases stand for the proposition that the mandated statutory offers of insurance coverage need not be made at the time of each and every annual policy renewal or reinstatement. We see no reason not to extend the same rationale to seasonal policy renewals or reinstatements.

Was American Hardware Mutual Insurance Company required to comply with SC Code Ann. §56-9-831 (Cum. Supp. 1986) upon each subsequent renewal?

This is a question of first impression in South Carolina. Plaintiff argues that renewals are new contracts and that new offers of underinsurance coverage should be made with each renewal. However, recent case law supports the holding that only one meaningful offer of optional coverages is necessary.

In **Tibbals v. State Farm Mutual Automobile Insurance Company of Bloomington,** 370 N.W. 2d 679 (Minn. App. 1985), the Minnesota Court of Appeals dealt with the question of whether an insurer's offer of underinsurance was meaningful. The Court stated:

State Farm is only required to show that it made one "meaningful" offer of residual liability and underinsured motorist coverage to Tibbals. **Randall,** 335 N.W. 2d at 250.

In **Ritter v. Amica Mutual Insurance Company,** 633 F. Supp. 362 (D. Del. 1986), the United States District Court for the District of Delaware had before it the issue of whether the defendant satisfied the offer requirement pursuant to a Delaware statute so as to constitute an offer of higher limits of uninsured motorists coverage. The District Court stated:

Section 3902(b) is triggered only when "a new policy" is offered. This encompasses a change in the policy coverage, but not a renewal of the policy. "It is the change in the basic legal relationships between the parties which connotes a new policy, rather than a renewal, and thus triggers the offer requirement of section 3902(b)." **Arms,** 477 A. 2d at 1065.

In **Randall v. State Farm Mutual Automobile Insurance Company,** 335 N.W. 2d 247 (Minn. 1983), the Minnesota Supreme Court relied on **Hastings v. United Pacific Insurance Co.,** 318 N.W. 2d 849 (Minn. 1982) and **League General Insurance Co. v. Tvedt,** 317 N.W. 2d 40 (Minn. 1982) in holding that only one meaningful offer is necessary:

In **Hastings,** the insured was involved in an automobile accident in 1979. He sought to have underinsured motorist coverage benefits read into a policy purchased in 1979. The insurer claimed it had made an adequate offer of underinsured motorist coverage by mailing a letter and optional coverage form in both 1974 and 1975. We held that the mailed notices did not satisfy the "four concerns" of the courts in determining the sufficiency of mandatory offers. However, we clearly implied that had the notices mailed in 1974 and 1975 passed the "four concerns" test, they would have constituted adequate offers under the statute notwithstanding that they had not been reoffered at each subsequent policy anniversary renewal date.

League General Insurance arose out of a 1980 automobile accident. In 1978, at a time the policy was up for renewal, the insurer sent the insured material explaining the optional coverages available. The insured renewed his policy, after receiving the materials, purchasing only minimum statutory coverage. He renewed again in 1979 by purchasing the same limited coverage. The latter policy was in effect at the time of the accident. We held that the mailing sent to the insured in 1978 constituted an adequate offer under section 65B. 49, subd. 6.

[1,2] Thus, in both cases we examined the contents of alleged offers made to the insured during years previous to the purchase of the policies involved.

This Court holds that only one meaningful offer of underinsurance coverage is necessary to satisfy S.C. Code Ann. §56-9-831 (Cum. Supp. 1986). However, in this case, no meaningful offer of underinsurance coverage was made. Therefore, underinsured coverage is created by operation of law.

(continued on page 6)

WORKERS' COMPENSATION CARRIERS' LIENS

Two recent decisions by the Court of Appeals have considered the statutory lien provided to Workers' Compensation carriers against the proceeds of recovery made by the injured worker against a responsible third party. In **Garrett v. Limehouse & Sons, Inc.,** CA No. 0986, filed July 6, 1987, the Court dealt with the Section 42-1-560(f), which allows the Industrial Commission to reduce a Workers' Comp carrier's lien in the proportion that the settlement or judgment in a third-party action bears to the employee's "total cognizable damages at law." In doing so, the Court basically held that the term "total cognizable damages at law" does not encompass evaluations as to liability, but is a term which describes all available damages which the cause of action against the third party may provide, regardless of liability. Therefore, the case seems to stand for the proposition that the carrier's lien may be reduced regardless of the fact that questionable liability may be the reason for the reduced settlement in the case against the third party. The Court did not address the issue of whether or not the same rationale would be applied when the case was tried and reduced to judgment. This case did, however, give the Workers' Compensation Commission a wide discretion in reducing a carrier's lien, and provided that the Industrial Commission's opinion would not be disturbed absent clear showing of clear abuse of discretion. This case on petition for cert to the Supreme Court.

In **Hardy v. Ruth Dawson Trucking Co.,** CA Opinion No. 0989, filed July 20, 1987, the Court of Appeals again addressed the issue of the employer/carrier's lien against third-party recovery. In this case, the following holdings were made: (1) that once payments have begun to an injured worker, they cannot be terminated except by order of the Commission, even though the claimant has settled with the third party and has been paid the proceeds at the settlement; (2) that a Workers' Comp carrier may forfeit its rights to have the proceeds of a third-party case paid to it if it does not notify the third-party defendant of its interest in the case and its claim of a lien; and (3) that the Workers' Comp Commission can reduce the carrier's lien even though the recovery against the third party is in excess of the claimant's total entitlement to compensation.

EMPLOYEE EXCLUSION

In the case of **Canal Insurance Company vs. D.R. Ward d/b/a ABC House Moving,** the Master in Equity for Richland County recently held that there was no coverage under either of two insurance policies containing exclusions for "bodily injury to any employee of the insured arising out of and in the course of his employment by the insured." The named insured, in the business of moving houses, asked his nephew to climb onto the roof of a house they were moving and lift up some traffic signal wires so the house could pass under them. While attempting to lift the wires, the nephew came into contact with a high voltage electrical wire and was injured. The two insurers who had issued policies to the named insured asserted no coverage existed under either of their respective policies by reason of the "employee exclusion." They argued that at the time of injury, the nephew was an "employee" within the meaning of the exclusionary provisions.

Despite testimony from the nephew that he neither received nor expected to receive any compensation for his assistance, the Master held that the nephew was nevertheless an "employee" for purposes of the policy exclusions since he had been specifically requested to assist in the performance of the usual tasks required of employees in the house moving business and was injured while doing so. The Master relied upon the decision in **Clinton Cotton Oil Co. v. Hartford Accident & Indemnity Co.,** 180 S.C. 459, 186 S.E. 399 (1936), in which the Supreme Court held as a matter of law that an injured person was an "employee" for purposes of an employee exclusion contained in an automobile liability policy even though he was a mere gratuitous volunteer.

DOCTRINE UPHELD

A decision by the Honorable Karen Henderson, U.S. District Judge, granted a summary judgment in **Woodlee vs. K&S Welding & Steel Erectors and Crane Rental.** In this case, Woodlee, a construction worker, was employed by Armco, a division of Potter Shackleford. Potter - Shackleford contracted with Anchor Coupling Inc. to build an industrial site. Potter Shackleford subcontracted the installation of the sub-deck to K&S. K&S installed a metal subdeck, cutting ventilation holes covering them only with insulation. The plaintiff had fallen through the hole sustaining injuries which rendered him quadriplegic. K&S had completed their sub-contract and left the site five weeks before the injury occured.

The plaintiff's causes of action in strict liability, warranty and negligence. The Judge disposed of all of these issues and the United States Court of Appeals affirmed her decision, upholding the doctrine of **Clyde vs. Summeral** (104 Se2d 392(1958). Plaintiff's counsel had argued that **Clyde vs. Summeral was no longer the law of South Carolina.**

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(77) **Quinn, Brown, Arndt & Manning**
P.O. Box 73
Columbia, S.C. 29202
799-6365
Richland County

—R—

(78) **Rainey, Britton, Gibbes & Clarkson**
P.O. Box 10589FS
Greenville, S.C. 29603
271-9580
Greenville County

(79) **Allen L. Ray**
200 Elm Street
P.O. Box 115
Conway, S.C. 29526
248-4932 or 448-4711
Horry County

(80) **Richardson, James & Player**
P.O. Box 1716
Sumter, S.C. 29150
775-5381
Sumter County

(81) **Richardson, Plowden, Grier & Howser**
P.O. Drawer 7788
Columbia, S.C. 29202
771-4400
Richland County

(82) **Ridley, Ridley & Burnette**
P.O. Box 11763
Rock Hill, S.C. 29731-1763
324-4291
York County

(83) **Robert H. Hood & Associates**
155 King St.
P.O. Box 1508
Charleston, S.C. 29402
577-4435
Charleston County

(84) **Robinson, Craver, Wall & Hastie**
P.O. Box 1860
Charleston, S.C. 29402
577-9440
Charleston County

(85) **Robinson, McFadden, Moore Pope Williams, Taylor & Brailsford, P.A.**
P.O. Box 944
Columbia, S.C. 29202
799-8900
Richland County

(86) **Roddey, Carpenter & White P.A.**
P.O. Drawer 560
Rock Hill, S.C. 29731-6560
324-4500
York County

—S—

(87) **Sinkler & Boyd P.A.**
P.O. Box 11889
Columbia, S.C.
779-3080
Richland County

(88) **Sinkler & Boyd P.A.**
P.O. Box 340
Charleston, S.C. 29402
722-3366
Charleston County

(89) **Smoak, Moody, Buckner & Siegel**
P.O. Drawer 470
Walterboro, S.C. 29488
549-1593
Colleton County

(90) **Spencer & Spencer, P.A.**
P.O. Box 790
Rock Hill, S.C. 29731
327-7191
York County

—T—

(91) **Tompkins, McMaster & Thomas**
P.O. Box 7337
Columbia, S.C. 29202
799-4499
Richland County

(92) **Turner, Padget, Graham & Laney**
P.O. Box 1473
Columbia, S.C. 29202
254-2200
Richland County

(93) **Turner, Padget, Gramham & Laney**
P.O. Box 5478
Florence, S.C.
662-9008
Florence County

—W—

(94) **James F. Walsh, Jr.**
P.O. Box 627
Orangeburg, S.C.
Orangeburg County

(95) **The Ward Firm, P.A.**
P.O. Box 5663
Spartanburg, S.C. 29304
582-5683
Spartanburg County

(96) **Watkins, Vandiver, Kirven Gable & Gray**
P.O. Box 4086
Anderson, S.C. 29622
225-2527
Anderson County

(97) **Weinberg, Brown & McDougall**
P.O. Box 1289
Sumter, SC 29150
775-1274
Sumter County

(98) **Whaley, McCutchen, Blanton & Rhodes**
P.O. Drawer 11268
Columbia, S.C. 29211
799-9791
Richland County

(99) **Wheless & McInnis**
437 Main St.
N. Myrtle Beach, S.C. 29582
Horry County

(100) **Willcox, Hardee, O'Farrell, McLeod, Buyck & Baker, P.A.**
P.O. Box 1909
Florence, S.C. 29503
662-3258
Florence County

(101) **Wise & Cole, P.A.**
P.O. Drawer O
Charleston, S.C. 29402
577-7032
Charleston County

(102) **Wright, Powers & McIntosh**
P.O. Box 1831
Florence, S.C. 29503
662-4328
Florence County

(103) **Wyche, Burgess, Freeman & Parham, P.A.**
P.O. Box 10207
Greenville, S.C. 29603
242-3131
Greenville County

—Y—

(104) **Young, Clement, Rivers & Tisdale**
P.O. Box 993
Charleston, S.C. 29402
577-4000
Charleston County

SCDTAA MEMBER ATTORNEYS

( ) denotes Firm

—A—

Gene Adams (95)
Huel D. Adams, Jr. (44)
J. Boone Aiken, III (23)
James W. Alford (3)
J. Marshall Allen (68)
T. Eugene Allen, III (72)
Aubrey R. Alvey (101)
W.E. Applegate, III (40)
Warren W. Ariail (44)
W.H. Arnold (56)
James A. Atkins (83)
Jon L. Austen (101)

—B—

Stephen D. Baggett (18)
George S. Bailey (69)
Charles E. Baker (9)
Charles J. Baker, III (44)
Gordon Baker, J.r (100)
Mary Gordon Baker (72)
Martha D. Ballenger (44)
A. Parker Barnes, Jr. (4)
Robert Bryan Barnes (91)
Scott Y. Barnes (44)
Evans T. Barnette (98)
Robert M. Barrett (43)
Charles Barnwell (45)
Mark S. Barrow (24)
Jack Barwick (9)
William J. Bates (104)
Michael W. Battle (57)
Mary R. Baxter (61)
William S. Bean (7)
George C. Beighley (81)
Jessee C. Belcher, Jr. (38)
John U. Bell, III (69)
Howell V. Bellamy, Jr. (8)
Clinch H. Belser, Jr. (9)
Jay Bender (9)
Robert A. Bernstein (92)
A.L. Blackstone, III (91)
Joseph J. Blake, Jr. (38)
Hoover C. Blanton (98)
Sheryl C. Blenis (69)
William Bobo, Jr. (104)
Isadore Bogoslow (10)
Harold A. Boney (49)
Ronald E. Boston (92)
Timothy W. Bouch (104)
Thomas M. Boulware (15)
Glenn Bowers (72)
H. Michael Bowers (104)
William H. Bowman, III (12)
W. Howard Boyd, Jr. (78)
William C. Boyd, III (87)
J.W. Bradford (18)
John C. Bradley, Jr. (98)
Daniel T. Brailsford (85)
James M. Brailsford, II (85)
C. Michael Branham (104)
Wilburn Brewer, Jr. (72)
James D. Brice (78)
Saunders M. Bridges (13)
Saunders M. Bridges, Jr. (13)
Clay B. Brittain, III (69)
John P. Britton (78)
Joseph Brockington (101)
W. Harvey Brockinton, Jr. (14)
Lovic A. Brooks, III (25)
Carol S. Broome (92)
David A. Brown (41)
Deborah Casey Brown (78)
Henry W. Brown (77)
Robert C. Brown (16)
Robert W. Brown (97)
James L. Bruner (9)
John C. Bruton, Jr. (87)
Edward D. Buckley, Jr. (2)
Edward D. Buckley (2)
Perry M. Buckner (89)
Robert W. Buffington (87)
Thomas W. Bunch, II (85)
Russell T. Burke (72)
Phyllis B. Burkhard (87)
Homer Franklin Burroughs (57)
Mark W. Buyck, Jr. (100)
Robert C. Byrd (72)

—C—

J.W. Cabaniss (33)
C. Marshall Cain (81)
O.G. Calhoun (38)
John M. Campbell, Jr. (38)
Laura S. Campbell (69)
Charles Carpenter, Jr. (81)
Robert R. Carpenter (86)
Elizabeth A. Carpentier (87)
Beverly A. Carroll (86)
Stanley T. Case (19)
Lisa D. Catt (69)
W. Thomas Causby (69)
John R. Chase (23)
Kenneth L. Childs (20)
John L. Choate (69)
Michael S. Church (92)
Carol L. Clark (39)
Finley B. Clarke (21)
N. Heyward Clarkson, III (78)
Robert G. Clawson, Jr. (22)
Samuel R. Clawson (22)
Robert L. Clement, Jr. (104)
Sherwood M. Cleveland (39)
William C. Cleveland (40)
William A. Coates (56)
Betty J.G. Cobb (9)
Theron G. Cochran (56)
Donald A. Cockrill (73)
Thomas C. Cofield (3)
Thomas H. Coker, Jr. (38)
Yolanda Coker (24)
Michael T. Cole (101)
Alvin A. Coleman, Jr. (23)
Arthur L. Coleman (69)
Samuel M. Coleman (57)
Joel W. Collins (24)
David M.Collins (17)
Ronald H. Colvin (42)
L. Sidney Connor, IV (70)
M. Dawes Cooke (6)
Leslie A. Cotter, Jr. (81)
Fred D. Cox, Jr. (38)
William E. Craver, III (84)
Frederick A. Crawford (81)
Samuel F. Crews, III (81)
Danny C. Crowe (92)
Kay G. Crowe (3)
William W. Culp, III (78)
Cameron M. Currie (26)
Robert G. Currin, Jr. (69)
John E. Cuttino (93)

—D—

Joseph E. DaPore (104)
J. Reese Daniel (27)
Joel A. Daniel (56)
Michael R. Daniel (27)
Christopher J. Daniels (69)
Stephen E. Darling (88)
William H. Davidson, II (68)
William S. Davies, Jr. (69)
Ashby W. Davis (56)
Clarence Davis (66)
Hutson S. Davis, Jr. (4)
Jane T. Davis (69)
James R. Davis (11)
William P. Davis (86)
William E. Day, II (100)
H. Lane Denard, Jr. (73)
R. Markley Dennis, Jr. (28)
G. Conrad Derrick (13)
John R. Devlin, Jr. (56)
Robert W. Dibble, Jr. (66)
M. Susie Dickerson (78)
Paul A. Dominick (72)
Elbert S. Dorn (92)
Cary C. Doyle (29)
Dwight F. Drake (69)
Clarke W. Dubose (87)
T.W. Dubose (87)
David E. Dukes (69)
William Duncan (19)

—E—

John S. Egan (69)
Anne S. Ellefson (38)
Frank. R. Ellerbe, III (85)
E. Glenn Elliott (23)
F. Mattlock Elliott (38)
F. Earl Ellis, Jr. (68)
Frances D. Ellison (38)
Morris A. Ellison (17)
Forrest M. Emerson (86)
Carl B. Epps, III (92)
Andrew K. Epting, Jr. (101)
Jack W. Erter, Jr. (54)
Mark V. Evans (83)
Carol B. Ervin (104)
Gena Phillips Ervin (86)
Robert M. Erwin, Jr. (70)
Sue C. Erwin (87)
Larry D. Estridge (103)

—F—

Richard A. Farrier, Jr. (69)
Carl G. Ferguson (53)
Donald L. Ferguson (38)
Lawrence E. Flynn, Jr. (76)
George A. Folsom (81)
Paul J. Foster, Jr. (30)
Reginald L. Foster (43)
Robert P. Foster (30)
Ruskin C. Foster (63)
Robert W. Foster, Jr. (69)
Donald H. Fraser (65)
Robert F. Fuller (62)

—G—

W. Foster Gaillard (17)
Henry M. Gallivan (78)
Robert S. Galloway, Jr. (38)
Frank H. Gibbes, III (78)
C. Allen Gibson, Jr. (17)
James S. Gibson, Jr. (49)
Michael J. Giese (53)
Thomas A. Givens (64)
Terrell L. Glenn (31)
Mason A. Goldsmith (56)
Thomas R. Gottshall (87)
J. Russell Gouldelock, II (81)
William M. Grant, Jr. (38)
Jennings L. Graves, Jr. (56)
James C. Gray, Jr. (69)
Jeffrey E. Gray (38)
William D. Gray (96)
Harry B. Gregory, Jr. (68)
F. Barron Grier, III (81)
Manton M. Grier (87)
Jack D. Griffeth (56)
E. Mitchell Griffith (4)
William P. Griggs (32)
Frank E. Grimball (33)
Henry E. Grimball (33)
William H. Grimball, Sr. (33)
Stephen P. Groves (104)
Theodore B. Guerard (40)
W. Andrew Growder (101)
William U. Gunn (43)

—H—

B.A. Hagood, Jr. (17)
William M. Hagood, III (56)
Lucinda Jenkins Haley (83)
Elliott T. Halio (34)
William F. Halligan (85)
Herbert W. Hamilton (98)
William D. Hanna, Jr. (36)
Roy F. Harmon, III (38)
Donald A. Harper (38)
Donald W. Harper (86)
C. Anthony Harris (32)
Laura C. Hart (92)
William B. Harvey, III (35)
J. Drayton Hastie, Jr. (84)
John C. Hayes, III (37)
William C. Helms, III (6)
J. Christopher Henderson (69)
Matthew H. Henrikson (6)
Angela L. Henry (63)
William H. Hensel (81)
Louis P. Herns (83)
Bryan F. Hickey (38)
Thomas C. Hildebrand, Jr. (88)
Charles E. Hill (92)
J.M. Hillard (9)
Van D. Hipp, Jr. (40)
John W. Hoag, III (73)
Wallace G. Holland (104)
James M. Holly (41)
A. Baron Holmes, III (44)
Robert Holt (84)
Robert H. Hood (83)
Dorothy J. Hopko (69)
Michael P. Horger (46)
Robert R. Horger (45)
William A. Horger (46)
J. Wright Horton (47)
Ladson F. Howell (49)
Louis P. Howell (48)
Samuel W. Howell, IV (39)
R. Davis Howser (81)
Arthur L. Howson, Jr. (78)
William C. Hubbard (69)
James W. Hudgens (95)
J. Dwight Hudson (50)
Phillip Luke Hughes (70)
Stephen P. Hughes (49)
R. Walter Hundley (104)
T. Parkin Hunter (66)
S. Keith Hutto (92)

—I—

Marvin D. Infinger (88)
Russell T. Infinger (72)

—J—

Harold W. Jacobs (72)
Albert L. James, III (75)
George C. James (80)
George C. James, Jr. (80)
Kenneth Allan Janik (69)
Brenton D. Jeffcoat (69)
Lisa G. Jefferson (78)
Rodney C. Jernigan, Jr. (102)
E. Russell Jeter, Jr. (66)
Benjamin A. Johnson (86)
Brown W. Johnson (21)
Darrell T. Johnson, Jr. (51)
Maye R. Johnson, Jr. (38)
Pope D. Johnson, III (98)
R. Lewis Johnson (3)
Weldon R. Johnson (3)
Ellis M. Johnston III (38)
John E. Johnston, Jr. (53)
Thomas K. Johnstone, Jr. (38)
James D. Jolly, Jr. (96)
C. Roland Jones, Jr. (95)
Celeste T. Jones (66)
Marvin C. Jones (10)
William A. Jordan (66)
Arthur E. Justice, Jr. (93)

—K—

Thomas J. Keaveny, II (33)
William W. Kehl (103)
David Hill Keller (38)
Robert C. Kelly (85)
Trent M. Kernodle (44)
H. Spencer King (52)
Robert O. King (73)
R. Bentz Kirby (92)
H. Grady Kirven (96)
Steven C. Kirven (96)
G. Marcus Knight (72)
Henry S. Knight, Jr. (69)
R.Y. Knowlton (87)
Robert M. Kunes (0)

—L—

Stanford E. Lacy (24)
Rebecca Laffitte (69)
Edward W. Laney, IV (92)
Lewis C. Lanier (46)
Ernest G. Lawhorne (68)
James Terry Laws (69)
Wm. E. Lawson (61)
W. Jefferson Leath, Jr. (104)
Flo S. Lester (93)
George E. Lewis (92)
John P. Linton (88)
Susan B. Lipscomb (72)
James Logan, Jr. (96)
Wade H. Logan, III (44)
James G. Long, Jr. (95)
Richard M. Lovelace (57)
George K. Lyall (69)
Sherry A. Lydon (72)
W.G. Lynn, Jr. (41)

—M—

H. Sam Mabry, III (38)
Francis M. Mack (81)
Nina Reid Mack (81)
Joseph E. Major (53)
Elizabeth Mann (78)
John P. Mann (58)
Howard E. Manning, Jr. (59)
Andrew B. Marion (39)
W. Francis Marion (38)
W. Francis Marion, Jr. (38)
Bradford N. Martin (53)
Edwin P. Martin (92)
John F. Martin (83)
Charles Stuart Mauney (78)
W. Hugh McAngus (81)
Barbara H. McArthur (69)
C. Gordon McBride (60)
Duke McCall, Jr. (53)
David B. McCormack (17)
T. English McCutchen, III (98)
Thomas E. McCutchen (98)
John B. McCutcheon, Sr. (61)
John B. McCutcheon, Jr. (61)
J. Victor McDade (29)
M. Dale McDaniel (23)
Heyward E. McDonald (62)
James E. McDonald (18)
Charles E. McDonald, Jr. (38)
Moffatt Grier McDonald (38)
Helen T. McFadden (13)
Joseph H. McGee (17)
D. Laurence McIntosh (102)
Douglas McKay, Jr. (63)
Julius W. McKay, II (63)
Julius W. McKay (39)
Robert A. McKenzie (62)
Thomas A. McKinney (64)
Mark McKnight (33)
William M. McLean (84)
James C. McLeod, Jr. (100)
John B. McLeod (38)
Peden B. McLeod (65)
Frank Barnwell McMaster (91)
George Hunter McMaster (91)
H.D. McMaster (91)
John Gregg McMaster (91)
Marvin E. McMillan, Jr. (97)
Martha P. McMillian (66)
Susan P. McWilliams (72)
Ralph M. Mellom (73)
Antony M. Merck (17)
James A. Merritt, Jr. (69)
Steven G. Mikell (100)
Terry B. Millar (67)
Bruce E. Miller (6)
L. Michael Mills (24)
Michael A. Molony (104)
Mary M. Montgomery (6)
Francis P. Mood (87)
B. Allston Moore, Jr. (17)
David L. Moore, Jr. (56)
John T. Moore (69)
Richardo A. Moreno (92)
Elford H. Morgan (19)
G.D. Morgan, Jr. (98)
Terri J. Morrill (88)
David L. Morrison (68)
Stephen G. Morrisson (69)
Wm. Howell Morrison (44)
John H. Muench (38)
Thomas S. Mullikin (69)
Edward W. Mullins, Jr. (69)
Danny H. Mullis (44)
John Robert Murphy (16)
Royann Ross Murray (69)

—N—

James D. Nance (46)
Ernest J. Nauful, Jr. (68)
Deborah K. Neese (39)
William S. Nelson, II (69)
John L. Nettles (71)
Louis D. Nettles (71)
Julian J. Nexsen (72)
George S. Nicholson, Jr. (11)
Charles R. Norris (69)
David C. Norton (44)
J. Douglas Nunn, Jr. (69)
Michael M. Nunn (23)

—O—

George H. O'Kelley (74)
John M. O'Rourke (29)
James W. Orr (72)
Lawrence B. Orr (13)
Hailton Osborne, Jr. (87)
Samuel W. Outten (53)
Steven W. Ouzts (92)
G. Dewey Oxner, Jr. (38)

—P—

H. Fletcher Padget, Jr. (92)
Samuel F. Painter (72)
Susan C. Pardue (69)
Edwin B. Parkinson, Jr. (38)
E. Spencer Parris (44)
Dwight F. Patterson, Jr. (76)
Robert A. Patterson (6)
Jonathan P. Pearson (73)
G. Mark Phillips (83)
Aleta M. Pillick (72)
Carrol M. Pitts, Jr. (86)
Thomas E. Player, Jr. (80)
Charles N. Plowden, Jr. (81)
Russell Z. Plowden (81)
Edward E. Poliakoff (69)
Thomas B. Pollard, Jr. (72)
Adele J. Pope (39)
William L. Pope (85)
Charles Porter (66)
Warren C. Powell, Jr. (9)
C. Dexter Powers (102)
E. Douglas Pratt-Thomas (101)
James B. Pressly, Jr. (38)
Anne E. Price (84)
Gene V. Pruet (72)
Michael A. Pulliam (81)

—R—

J. Gail Rahn (101)
F. Dean Rainey, Jr. (78)
D. Cravens Ravenel (9)
Allen L. Ray (79)
Phillip E. Reeves (78)
Jeter E. Rhodes, Jr. (98)
Donald V. Richardson, III (81)
Charles B. Ridley, Jr. (82)
Edward P. Riley, Sr. (69)
Edward P. Riley, Jr. (69)
Nancy B. Riley (69)
Richard W. Riley (69)
James H. Ritchie, Jr. (38)
Claron A. Robertson, III (17)
W.D. Robertson, II (72)
David W. Robinson, II (85)
Frank E. Robinson, II (81)
Neil C. Robinson, Jr. (84)
Paul B. Rodgers, III (85)
Carroll H. Roe, Jr. (56)
Carolyn Woodruff Rogers (86)
Anne G.H. Rounds (40)
C. Alan Runyan (66)

—S—

Robert E. Salane (3)
Thomas C. Salane (92)
Julian B. Salley, Jr. (41)
T. Reeve Sams (55)
W. Toland Sams (55)
George Sands, Jr. (96)
Claude M. Scarborough, Jr. (69)
John E. Schmidt (69)
Gordon D. Schreck (17)
Lester S. Schwartz (40)
Eric C. Schweitzer (73)
H. Donald Sellers (38)
William E. Shaughnessy (38)
R. Bruce Shaw (69)
Miller W. Shealy, Jr. (3)
Cheryl D. Shoun (84)
Keating L. Simons, III (44)
William B. Simpson (39)
Lana H. Sims, Jr. (68)
E. McLeod Singletary (66)
G. Dana Sinkler (88)
Bachman S. Smith, III (14)
Franklin J. Smith, Jr. (81)
Joel H. Smith (69)
John C.B. Smith, Jr. (72)
Nina W. Smith (69)
Augustine T. Smythe (17)

Henry B. Smythe (17)
Henry B. Smythe, Jr. (17)
Amy M. Snyder (38)
David C. Sojourner, Jr. (68)
Thornwell F. Sowell, III (69)
James A. Spruill, III (32)
W. Duvall Spruill (92)
Timothy D. St. Clair (92)
Russell S. Stemke (101)
Harry R. Stephenson, Jr. (38)
Sam L. Stephenson (38)
Theodore S. Stern, Jr. (38)
Norman W. Stevenson (5)
Charles R. Stewart (69)
J. Hamilton Stewart, III (73)
Valentine H. Stieglitz (72)
Randall C. Stoney, Jr. (104)
Joseph M. Strickland (69)
Robert T. Strickland (3)
Donald H. Stubbs (69)
S. Markey Stubbs (9)
Fred W. Suggs, Jr. (73)
David B. Summer, Jr. (88)
William O. Sweeney, III (69)

—T—

John R. Tally (39)
H. Simmons Tate, Jr. (87)
Raymond Tate (29)
Ronald G. Tate, Jr. (78)
John M. Tatum, III (35)
Albert Q. Taylor, Jr. (53)
William R. Taylor (98)
Inez Tenebaum (87)
K. Lindsay Terrell (49)
John C. Thomas (61)
Richard C. Thomas (3)
Robert J. Thomas (91)
John C. Thomas (61)
Victoria Ann Thomas (57)
B.M. Thomson, Jr. (44)
Thomas S. Tisdale, Jr. (104)
Jean H. Toal (9)
J.D. Todd, Jr. (53)
Monteith P. Todd (69)
L. Water Tollison, III (69)
Harold E. Trask, Jr. (88)
David G. Traylor, Jr. (69)
Jane W. Trinkley (66)
J. Paul Trouche (40)
William H. Tucker (41)
Ralph E. Tupper (4)

—U—

Bert G. Utsey III (88)

—V—

Ralston B. Vanzant, II (69)
Gordon S. Vincent (72)
M. Jeffrey Vinzani (84)
John C. Von Lehe, Jr. (104)

—W—

Emil W. Wald (90)
G. Trenholm Walker (101)
H. Clayton Walker, Jr. (9)
Mark H. Wall (84)
Susan Wall (44)
Shawn D. Wallace (40)
James F. Walsh, Jr. (94)
Bradish J. Waring (104)
Thomas Waring (44)
William L. Watkins (96)
William W. Watkins (92)
James H. Watson (53)
Richard B. Watson (69)
M.M. Weinberg, III (97)
M.M. Weinberg, Jr. (97)
G. Edward Welmaker (1)
James Lynn Werner (86)
Thomas B. Whaley (98)
David B. Wheeler (44)
Albert E. Wheless (99)
Andrew J. White, Jr. (38)
Daniel B. White (78)
David A. White (86)
Knox H. White (38)
Forrest C. Wilkerson (86)
John S. Wilkerson, III (93)
Michael B.T. Wilkes (95)
Hugh L. Willcox, Jr. (100)
D. Reece Williams, III (85)
Daryl L. Williams (87)
William R. Williams (100)
Richard H. Willis (69)
Thomas J. Wills, IV (6)
Bonum S. Wilson, III (101)
Harry C. Wilson, Jr. (54)
Robert C. Wilson, Jr. (38)
Stephen S. Wilson (95)
Thomas D. Wise (101)
Deborah W. Witt (69)
George B. Wolfe (69)
Robert P. Wood (91)
William B. Woods (16)
Bradford W. Wyche (103)
M. Baker Wyche, III (73)
Steven M. Wynkoop (69)

—Y—

J. Rutledge Young, Jr. (104)

—Z—

B.T. Zeigler (87)

COMMITTEE REPORTS

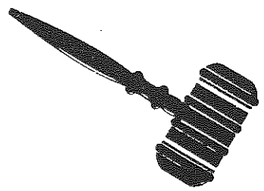
LEGISLATIVE COMMITTEE

The 1987 session fell short of producing the package we hoped for in tort reform but was a success in all other ways. Our Association brought together a diverse group of businessmen and professionals in forming the South Carolina Civil Justice Coalition. Our involvement within the legislature, in testifying before committees and in working with individual legislators, will benefit us in the future, and our speakers program with its related activities brought attention to our Asociation as spokespersons for the defense bar and its clients.

Our experiences this year reinforced our position that we must continue to be involved in the legislative process, and to work towards electing representatives who will listen to us on issues which directly affect our association or our clients.

The South Carolina Civil Justice Coalition recently provided the Association with a copy of the following remarks by Governor Carroll A. Campbell, which I thought were worth bringing to the attention of our membership. Governor Campbell and his staff have been heavily involved in legislative issues that affect our clients' interests.

Carl B. Epps, III
Chairman



REMARKS BY GOVERNOR CARROLL A. CAMPBELL, JR. RISK AND INSURANCE MANAGEMENT SOCIETY, CPCU, AND COLUMBIA CHAPTER OF THE INDEPENDENT INSURANCE AGENTS AUGUST 20, 1987

I appreciate your extending to me today the courtesy of appearing before you to discuss South Carolina's **insurance** climate.

One of the subjects I want to address today is tort reform. I think we can all agree that our liability situation has gotten out of hand. I heard a story the other day that illustrates how serious this crisis is.

In a first grade class here in Columbia last year, there was one young boy named Johnny. Now Johnny was a leader, a real ball of fire. He was always organizing his classmates in games and projects.

One day, the bell rang for the end of recess and all the children filed back into class. All of them, that is, except Johnny. He was squeezing the last bit of fun out of playtime.

Finally, he came running back into class and just as he crossed the doorway, he tripped on a loose piece of wood and sprawled in front of his classmates.

Johnny's teacher was sensitive to the boy's pride so she rushed up to him. "Don't cry, Johnny," she said, "We'll get your skinned knee fixed up in no time."

The boy looked up at his teacher with a scowl and said, "Cry, hell...I'm gonna sue!"

As you know I recently signed into law my automobile reform legislation which was designed to curb the neverending escalation of automobile insurance rates in South Carolina. Now, we need three additional pieces of legislation to finish the job: **Highway Safety Legislation,** which is pending in the Senate and House, **Tort Reform** and a bill to prohibit **stacking** of automobile insurance benefits.

The opponents of tort reform, and I do not need to tell you who they are, have insisted that we do not have a problem with the legal system in this state and that if it ain't broke, don't fix it. Friends, it is broke and if we're not careful, it'll make us **go** broke.

For instance, I took a look at the legal climate in this state and its connection to our high automobile insurance rates. I cannot draw this connection any plainer or simpler than the 1986 report of the Joint Legislative Automobile Liability Study Committee which states: "One of the most important criteria impacting upon rates is loss frequency and loss severity. In South Carolina, the loss frequency for 1983 was 7.67 while in North Carolina it was 5.15. The countrywide ratio was 5.03. The claims severity in South Carolina was $1,977, while in North Carolina it was $1,791, a difference of $186 per claim." The South Carolina Insurance Commission noted in 1986 that this difference in claims severity between South and North Carolina had risen to $238. The Automobile Liability Study Committee concluded its report as follows: "Stated simply, there are more claims in South Carolina than North Carolina, and the claims in South Carolina are more expensive to settle."

The South Carolina Insurance Commission may have had little Johnny in mind when it said that

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CAMPBELL

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"The prosperity to sue has an effect both on losses and expenses and ultimately is reflected in premiums paid by the policyholders."

The impact of our "sue 'til it hurts" mentality is far flung and negative. It affects education, health care, leisure activities, a whole plateful of government services. Quite frankly, tort reform has a clear-cut relationship with our quality of life.

And, of course, when I talk about quality of life, you know the subject of economic development is going to pass my lips. Those of you who read the Wall Street Journal may have seen something that caught my eye a few weeks ago. The State of Alabama was launched an advertising campaign for economic development. Their slogan reads "Alabama is open for business." And they are touting the passage of tort reform as a key factor in their improved economic climate.

I don't need to tell you that we can't afford to fall behind our fellow southern states in the fight for jobs and investment.

The true story of our legal climate can unfortunately not be told without quoting a lot of statistics. I had my staff examine the experience of the automobile insurance industry as a whole in South Carolina. These statistics showed a thirty six per cent increase in the number of paid claims from the fourth quarter of 1981 to the third quarter of 1986. The same data showed a 99% increase in the dollar value of paid losses.

We also took a look at the number of law suits filed in this state. We have been repeatedly assured by the opponents of tort reform that South Carolina has not experienced the explosion of litigation such as that suffered in other states. Nevertheless the 1985 report of the South Carolina Supreme Court is quite explicit when it states that not since 1979, when the caseload of the county courts was transferred to the circuit courts, has the court of common pleas realized a greater increase in the number of civil cases filed during the calendar year. This increase of 5,600 civil cases filed in 1985 represented a 14% increase over the filings for 1984.

A report on the number of case filings which was prepared by several professors at the University of South Carolina School of Law documented a 20% increase in the number of civil lawsuits, when discounted for inflation, from 1979 to 1985. That's outlandish.

In 1979 the Legislative Audit Council did a comparison of the insurance systems of South and North Carolina. It reported that the legal suit frequency for bodily injury claims arising out of automobile accidents was 7% in North Carolina versus 23% in South Carolina. The South Carolina Insurance Commission examined the situation again in 1982 and reported that "The conclusion to be drawn from these numbers is that South Carolina citizens, when they are involved in automobile accidents, are twice as likely to bring suit."

As I am sure you are aware, the House passed a tort reform bill which is currently in the Senate Judiciary Committee. The House bill contains many positive features and is a step in the right direction. However, since the House bill adopts comparative negligence it should be amended to modify or eliminate the rule of joint and several liability to protect the defendant who is only slightly at fault in the accident from having to pay the entire damages award. Under the current bill a defendant who was only 5% at fault would be liable for payment of the entire judgment in favor of a plaintiff who was 49% at fault. We are meeting with the chairmen and members of the Tort Reform Subcommittee of the Senate Judiciary Committee to come up with an acceptable compromise.

We are also examining the possibility of introducing workers' compensation reform legislation for next year. We have a real problem in South Carolina in that our sister state of North Carolina, with whom we compete so often for new industry, has the second lowest workers' compensation rates in the country. We often hear that the real problem in the past has not been so much in our system of laws but rather the method in which they have been applied by the Commission. We are all familiar with the horror systems about the State Fund. We now have an excellent new director of the state fund in Pete Parker who is well on the way to restoring the fiscal integrity of the fund.

I don't want to deny that we face an uphill battle as we try to straighten out our insurance problems. But I'm reminded of the story about one character who sued a large store claiming he had fallen on a slippery floor and become completely paralyzed from the waist down. The lawyer defending the store was sure the injury was fake and he tried his best to prove it. But the jury brought in an award of $10 million dollars.

After the trial, this lawyer went up to the plaintiff. "You got your money," he said. "But you'll never enjoy it, because I'm going to dog your every move until I prove you're a fake. You'll never be able to get out of that wheelchair, so you're not going to be any better off than if you really were paralyzed."

The plaintiff wasn't rattled at all by this. He said, "Listen,

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COMMITTEE REPORTS

DEFENSE LINE COMMITTEE

The Defense Line changed during 1986-87 to a quarterly newsletter. It was the Board's hope that bigger and better issues would be forthcoming. The jury is still out. Nancy Cooper continues to look for Recent Decisions for publication. These decisions need to be sent in **synopsis form.** Sharing these unpublished decisions can be of great benefit to the membership. Articles, ideas and suggestions should be sent to the association's headquarters.

Jack Barwick
Chairman

CAMPBELL

(continued from page 16)

counselor, now that we're being frank, let me tell you something. Tomorrow, the sleekest ambulance in town carries me to the airport. I take a plane first class to Paris. In Paris, another ambulance meets me with a pretty French nurse. That ambulance drives me, oh so carefully, down to the famous Shrine at Lourdes, in the South of France.

"And then you're going to see the greatest miracle take place there has ever been!"

Yes, folks, it may take a miracle for us to accomplish the reform we need, but until we get a miracle, we'll have to work very hard. With your help, we can make real progress.

Thank You.

AMICUS CURIAE COMMITTEE

The Committee has received requests to file briefs in several cases during the past year. At the time of this report, only one case has proceeded to the point where a petition to submit a brief has actually been filed.

On September 10, 1987, the Committee, on behalf of our Association, petitioned the South Carolina Supreme Court for leave to file a brief in the case of **Clarence Barnwell v. Barber-Coleman Company.** The case is before the Court, pursuant to Supreme Court Rule 46, to answer the following question, which was certified to the Court by The Honorable Sol Blatt, Jr., Chief Judge, United States District Court for the District of South Carolina:

> Under South Carolina law, are punitive damages recoverable in a cause of action based solely on the theory of strict liability?

The Committee expresses its appreciation to Timothy W. Bouch of Young, Clement, Rivers & Tisdale who has assumed responsibility for the handling of the brief in the above matter.

Glenn Bowers
Chairman

MEMBERSHIP COMMITTEE

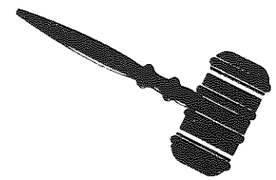
South Carolina Defense Trial Attorneys' Association now consists of a total membership of 605. Of this 488 are firm members and 117 individual members. This compares to the 1986 report where membership was at 577. Of that number 442 were members by virtue of firm memberships and 135 were individual members.

At the annual meeting of the Association on Saturday, November 1, 1986 at the Cloisters, Sea Island Georgia, the membership amended the by laws. Article III, Qualifications for membership now reads:

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 or (a) the representation of management in labor disputes.

With this amendment, SCDTAA should continue to expand, because a new potential growth area is now eligible for membership.

Mark Wall
Chairman



WORKERS COMPENSATION NEWS

OCCUPATIONAL DISEASE AND THE SECOND INJURY FUND UPDATED

At last year's annual meeting one of the presentations concerned claims presented to the Second Injury Fund. Occupational disease cases were discussed during that breakout session with Doug Crossman, the director of the Fund, explaining why such claims were being denied. In the update at this year's annual meeting developments in this area will be discussed. Employers have won a number of victories this year even though the Supreme Court has not yet considered the issue. Copies of the lower court and Commission decisions will be distributed at the meeting.

Since June 8, 1982, §42-9-400 of the Code of Laws of South Carolina has included pulmonary disease as a "listed condition." The change in the statute specifically indicated that this addition was not retroactive. However, claims could still be made against the Fund if the prerequisites for an "unlisted condition" were met for employees who last worked prior to the statutory change.

In **Dan River v. Second Injury Fund Re: Cleo J. Finley,** the employee was successful in requesting reimbursement through the circuit court level. Judge Owens T. Cobb, Jr. issued his Order affirming the single Commissioner and full Commission decisions in favor of the employer on February 18, 1987. In this case Ms. Finley had last worked in 1985 after the change in the statute. The Fund did not appeal from Judge Cobb's Order.

In **Springs Industries, Inc. v. Second Injury Fund In Re: Edna Vespers,** Judge Wade Weatherford over-ruled the individual Commissioner and the full Commission and awarded reimbursement to the employer from the Fund. Ms. Vespers last worked in 1976. The Fund is presently appealing this case to the Supreme Court with more emphasis on the facts of the case than the legal question of liability.

In **Commerce and Industry Ins. Co. v. Second Injury Fund In Re: Charles F. Hanks,** the full Commission affirmed the individual hearing Commissioner's decision that reimbursement was due the employer where Mr. Hanks last worked in 1979. The Second Injury Fund subsequently settled the case for 95% of the reimbursement claimed by the employer.

The Fund is presently appealing an adverse ruling from the single Commissioner in the case of **Liberty Mutual Ins. Co. v. Second Injury Fund in re Julia Likes.** Ms. Likes worked until after the 1982 amendment.

Finally, in the case of **Greenwood Mills v. Second Injury Fund In Re: John Howzell,** the hearing Commissioner allowed reimbursement to the employer where Mr. Howzell had worked beyond the statutory amendment which included pulmonary disease as a listed condition. The Second Injury Fund did not appeal that Order filed on August 25, 1987.

It appears that the contention of employers that they should be awarded reimbursement against the Fund in occupational disease cases is being accepted by both the Workers Compensation Commission and some of the circuit court judges. Hopefully the Supreme Court and the Court of Appeals will uphold the decisions in this area when these cases reach their courts. In the meantime defense counsel representing employers may use these decisions to support similar claims.

Twentieth Annual Meeting
South Carolina Defense Trial Attorneys' Association
Hotel InterContinental
November 5-8, 1987
Hilton Head, S.C.

IADC MEETING

South Carolina was well represented at the Annual Meeting of the International Association of Defense Counsel held at The Broadmoor in Colorado Springs this summer. Attending were BOBBY & BERNIE HOOD, JACK & NAN BARWICK, WELDON & KAREN JOHNSON, STEVE & GAIL MORRISON, BAM & ELEANOR MOORE, DONALD & BETTY ANNE RICHARDSON, BILLY & BETH HAGOOD and DEWEY & LOUISE OXNER. This group spoke well for our South Carolina association in this meeting of international defense lawyers.

MEDICINE AND LAW

The SCDTAA, the South Carolina Bar and the USC School of Law cosponsored a Video/CLE seminar Friday, September 18, 1987 on Medicine and Law. Eight video sites were available for attendees throughout the state. 60 persons pre-registered at the Columbia location with approval.

92 registered at the remote sites. The seminar featured various experts in the medical and legal professions addressing key issues of concern to each.

Timothy W. Bouch, a partner with Young, Clement, Rivers and Tisdale in Charleston and a member of SCDTAA, acted as Moderator.

Speakers throughout the day included John J. Marchalonis, M.D., Julian C. Adams, M.D., P. Michael Duffy, Esq., Charles R. Norris, Esq., Robert L. Galphin, M.D., Russell A. Harley, M.D., Douglas F. Patrick, Esq. and William E. Shaughnessy, Esq.

The program qualified for 6.25 credit hours under the Mandatory CLE Regulations.

LAW SCHOOL ASSOCIATION

The Eleventh Annual Weekend of the University of South Carolina Law School Association will be held October 30 & 31, 1987.

The weekend will begin at 9:00 a.m. on Friday, October 30, with a Continuing Legal Education seminar entitled "Recent Developments in State and Federal Courts." The seminar will be held in Room 333 of the School of Law. Speakers for the seminar include John E. Montgomery, Dean of the USC School of Law, and Professors James R. Burkhard, Katharine I. Butler, James L. Flanagan, F. Patrick Hubbard, Philip T. Lacy, William S. McAnich, Howard B. Stravitz, Eldon D. Wedlock, Jr., and Robert M. Wilcox. The seminar will qualify for six hours credit under the Mandatory C.L.E. Regulations set forth by the S.C. Commission on Continuing Lawyer Competence.

On Friday evening, a dinner and dance will be held at the Columbia Marriott Hotel, 1200 Hampton Street. The affair begins with cocktails at 7:00 p.m. (cash bar), dinner at 8:00 p.m. and dancing from 9:00 p.m. to midnight. Music will be provided by the Dick Goodwin Band. Optional black tie.

Tables will be reserved at the dinner for the reunion classes of 1947, 1952, 1957, 1962, 1967, 1972, 1976, 1977, 1978 and 1982.

The weekend concludes with the USC vs. N.C. State football game at 1:30 p.m. on Saturday, October 31.

The registration fee for the C.L.E. seminar is $45. Dinner & dance tickets are $35 per person. Reservations must be made by October 23, 1987. Registrants are responsible for securing their own football tickets. For further C.L.E. information, contact Pam Robinson, 777-3405. For dinner & dance information, contact James Hilliard or Catherine Bell, 777-6618.

Legal Logic

The worst that can happen if you are convicted for Driving While Intoxicated (DWI) in South Carolina is:

1st offense: $200 fine or prison for minimum of 48 hours to maximum of 30 days.

In many parts of the world it is more severe:

Australia — The names of convicted DWIs are published in the local news under "Drunk and In Jail."

South Africa — 10 year prison term. $10,000 fine, or both.

Turkey — DWI drivers are taken 20 miles out of town by the police and forced to walk back under escort.

Malaya — DWI driver is jailed, and if he is married his wife is jailed too.

Norway — 3 weeks in jail at hard labor, and license revoked for 1 year, 2nd offense within 5 years, license revoked permanently.

Finland — Automatic 1 year in jail at hard labor.

England — 1 year in jail, 1 year license suspension, and $250 fine.

Russia — Driver's license revoked for life.

France — 1 year in jail, license revoked for 3 years, and $1000 fine.

Poland — Jail and fine determined by the Judge.

Bulgaria — 2nd conviction of DWI, punishment by execution.

El Salvador — 1st offense DWI, execution by firing squad.

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CALENDAR OF EVENTS

1987

SCDTAA Annual Meeting	November 5-8	InterContinental Hilton Head, SC

1988

International Association of Denfense Counsel Surety Trial Practice Program	January 29-30	The Plaza New York, New York
American Bar Association (Mid Year)	February 3-10	Philadelphia, Pennsylvania
International Association of Defense Counsel (Mid Year)	February 14-20	Westin LaPaloma Tucson, Arizona
Defense Research Institute (Annual)	February 15-17	Westin LaPaloma Tucson, Arizona
Federation of Insurance Counsel (Summer)	February 17-21	Hyatt Regency Maui, Hawaii
American College of Trial Lawyers (Spring)	March 6-9	Marriott's Desert Springs Resort Palm Desert, California
S.C. Bar-(Annual)	June 17-19	Omni Charleston, SC
Association of Insurance Attorneys	April 6-10	Sunburst Hotel Scottsdale, Arizona
Defense Research Institute (Mid Year)	July 4-6	The Greenbrier White Sulphur Springs, WV
SCDTAA Joint Meeting	July 21-24	Grove Park Inn Asheville, NC
Defense Counsel Trial Academy	July 23-30	College Inn Conference Center Boulder, Colorado
Federation of Insurance and Corporate Counsel	August 3-7	Southampton Princess Southhampton, Bermuda
American Bar Association (Annual)	August 4-11	Toronto, Canada