THE DEFENSE LINE

SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION

South Carolina Workers' Compensation Commission

South Carolina Department Of Insurance

VOL 17 NO.1
WINTER 1989

RECENT DECISIONS

COURT PROHIBITS DISCOVERY OF HOSPITAL OCCURRENCE REPORTS

The South Carolina Supreme Court was recently presented with the novel question of whether S.C. Code Ann., Section 40-71-20 (1986) prohibited the discovery of occurrence reports prepared by a South Carolina acute care hospital. The occurrence report documented an alleged incident in the case of *Sherman v. Lexington County Hospital and John Doe,* which is presently before the Eleventh Judicial Circuit. The issue came before the South Carolina Supreme Court by way of Defendant Lexington County Hospital's Petition for Writ of Certiorari or, in the Alternative, for Writ of Mandamus or Prohibition. Defendant is represented by the law firm of Nauful & Ellis, P.A.

Pursuant to Plaintiff's Notice of Motion and Motion for the Production of the occurrence report, the Eleventh Judicial Circuit Special Court Judge ordered the Lexington County Hospital, pursuant to Respondent's Notice of Motion and Motion for Production, to tender the occurrence report to the Plaintiff. The Defendant petitioned the Supreme Court, arguing that S.C. Code Ann., Section 40-71-20 (1986) provided that all data and information acquired by the medical staff committees formed to maintain professional standards are cloaked with privileged confidentiality. The occurrence report sought was compiled for review by the Quality Assurance Committee of the Lexington County Hospital. That Committee, which is composed of members of the Hospital's medical staff, reviews occurrence reports to evaluate, monitor, and maintain high standards of medical care and peer review. Petitioner contended that it was the intent of S.C. Code Section 40-71-20 (1986) to preserve both the quality assurance and peer review programs in the medical centers of South Carolina. In addition, Petitioner argued that the Order of the Eleventh Judicial Circuit requiring the production of the occurrence report compiled by the medical staff committees organized to monitor and maintain quality standards and peer review would place a chilling effect on the ability of any medical center to have a reporting system to supervise and maintain quality patient care and professional standards.

The Court, in *Sherman v. Lexington County Hospital and John Doe,* Memorandum Opinion No. 88-MO-189 submitted September 20, 1988 and filed September 22, 1988, granted Petitioner's Writ of Certiorari and reversed the Circuit Court's Order compelling production of the occurrence report.

WHISTLEBLOWER CASE DISMISSED BECAUSE OF NO VIOLATION OF PUBLIC POLICY

John B. McLeod
Haynsworth, Marion, Mckay & Guerard

On December 23, 1988, United States District Judge G. Ross Anderson, Jr. entered an Order granting summary judgment in favor of a company sued by an alleged "whistleblower." Judge Anderson concluded that summary judgment was appropriate because of the "Plaintiff's failure to identify any *clear* mandate of public policy allegedly violated by the Defendant." *Frances Smalley v. Fast Fare, Inc.,* C.A. No. 8:88-2185-3.

The plaintiff, a former store employee, asserted that she had discovered that another employee was taking money from the cash register and that she reported this to her supervisor. According to the plaintiff, the supervisor performed only one audit of the cash and did not detect the shortage. Therefore, the plaintiff brought this situation to the attention of a company auditor and the co-employee was fired. The plaintiff alleged that her reports to corporate management caused embarrassment to her supervisor who was not accused of wrongdoing

(Continued on page 14)

SURVIVAL ACTION DISMISSED UNDER SOUTH CAROLINA GOVERNMENTAL TORT CLAIMS ACT

William H. Davidson, II
Nauful & Ellis, P.A.

On January 3, 1989, on Order of Dismissal was filed in the Richland County Court of Common Pleas in the case of *Edward M. Younginer, Jr., et al. vs. The South Carolina Law Enforcement Division.* The Honorable Ernest J. Kinard granted Defendant's Motion to Dismiss the Plaintiff's survival action brought pursuant to the S.C. Code Section 15-5-90 (Survival Statute). The Plaintiff's Complaint alleged that the South Carolina Law Enforcement Division by and through one of its employees was liable for his wife's death as a result of an automobile accident which occurred on or about November 6, 1987.

The Defendants moved before the Court to dismiss the action on the grounds that the Court lacks subject matter jurisdiction to hear this action pursuant to Section 15-78-10 et seq. in the Code of Laws for the State of South Carolina, 1976 as amended.

In reviewing the South Carolina Governmental Tort Claims Act, the Court noted that the Act provided the exclusive remedy for injury and death of a person.

The Court in this case examined the case of *Reed vs. Medlin*, 238 S.E.2d 115 (1985) wherein the Court of Appeals found that under what was commonly referred to as the Highway Defect Statute, a Survival Action could not be maintained against the Highway Department. In analyzing this case in light of the Reed case and the Governmental Tort Claims Act, the Court found that the general Survival Statute does not apply to causes of actions created under Section 15-78-10 et seq. and that the exclusive remedy for the death of an individual as a result of a tort on the part of the State, its political subdivision or their employees is vested solely in Section 15-78-170.

VOLUME 17, NO. 1 WINTER 1989

CONTENTS

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, 1-800-445-8629.

TEN YEARS AGO

In December, 1978, we had concluded our eleventh annual meeting at Kiawah Inn. This marked the end of the term of Mark W. Buyck, Jr. as President and the "ascention of R. Bruce Shaw as President." Bruce's first report stated "our annual meeting was one of the biggest and best yet." One of the hot topics at that meeting had been PIP address by Gerald Garnet then State Claims Manager for the Farm Bureau. The legislature was looking at comparative negligent, statutes of limitation, punitive damages, abolitioning collateral source rule. In December, 1978, we celebrated our tenth anniversary as an association.

PRESIDENT'S LETTER

Frank H. Gibbes, III
SCDTAA President

At our annual meeting at Kiawah, I was impressed with the number of defense attorneys that I saw who either had not previously attended our annual meeting or who had done so only infrequently. I was equally impressed with the number of newer defense attorneys who approached me and asked how they might become more involved in the work of our Association. A number inquired enthusiastically about the long-range goals of the Association.

I left the annual meeting convinced that we should pursue two broad but specific objectives in 1989: First, to involve more of our members in the active work of our Association; and, second, to identify and evaluate appropriate long-range goals for the Association. As a first step to accomplishing these two objectives, we asked the members of our Association to complete a membership survey whose purpose was to identify committee preferences, long-range goals, and potential new members of the Association. The response was excellent; over 150 members of our Association responded.

Since receiving the completed survey forms, we have assigned everyone who responded to a committee. In most cases we were able to assign everyone to their committee of choice. Committee assignments are listed elsewhere in *The Defense Line.* We received 10 or 12 completed survey forms that did not include the name of the member submitting the form. If you submitted a form but have not been assigned to a committee, you probably fall in this category. If you do, or if you did not submit the form but now want to be assigned to a committee, please simply give me a call or drop me a note.

I have asked each of the committee chairmen, where appropriate, to conduct a full committee meeting prior to our second executive committee meeting which will be held on February 24, 1989. The primary reason for the meeting is to have each committee assist the Executive Committee in identifying appropriate goals for the Association for 1989 and beyond.

In this regard, our membership, in responding to the survey, identified the following, in relative order of priority, as appropriate goals for the Association:

(1) Educational Programs for Members
(2) Legislative Efforts
(3) Liaison with Court System
(4) Public Relations for Defense Attorneys
(5) Seminars for Bar
(6) Amicus Briefs
(7) Publication of Substantive Articles in *Defense Line*
(8) Social Functions

To avoid undue concern, let me assure everyone that I have always admired the Associations' bar-related activities, and we will continue to accord high priority to providing superior social functions at our joint and annual meetings.

The survey form also included a place for members to comment on what they felt to be the most pressing concern for the Association in 1989. Almost without exception those who commented underscored the long felt need to clarify and improve the public image of defense attorneys as a whole. Given this expression of concern, I have asked our Public Information Committee, chaired by Charles Ridley and John Wilkerson, to come up with a comprehensive plan for addressing this problem.

On a less pleasant note, most of you will have noticed a slight increase in your dues when you received your dues notice. Let me assure you that your Executive Committee studied the Association's budget carefully before deciding that a dues increase was necessary. Let me further assure you that the Executive Committee will continue to explore alternative sources of income as the year progresses. We must, however, keep the Association on a sound financial footing.

Finally, on behalf of the Association as a whole, let me again express our thanks to Carl Epps for the many contributions that he made to the Association during his year as President. Thanks also to Tim Bouch and Rusty Weinberg, both of whom devoted a great deal of time and effort to the work of our Executive Committee. And, of course, let me express our continued thanks to Carol Davis and Nancy Cooper for the many services that they render our Association.

CHANGES BEFORE THE COMMISSION

H. Mills Gallivan

South Carolina Workers' Compensation Commission. Front Row: (L to R) Thomas M. Marchant III, Virginia L. Crocker, Acting Chair, William Clyburn. Back Row: Vernon F. Dunbar, A. Victor Rawl. Absent: Holmes C. Dreher.

On July 11, 1988, the South Carolina Workers' Compensation Commission published an "Annual Update." This memorandum from the Executive Director of the Commission announced some significant changes in the procedures of the South Carolina Workers' Compensation Commission. Part of this update simply announced changes in personnel and summarized legislation enacted in 1987. However, this update also announced substantive changes in practice and procedure before the Commission which heretofore were accomplished through the rule-making power of the Commission.

On page two of the "Annual Update," the Commission reiterated existing policy that a Form 50 is a request for a hearing and "indicates that the moving party is ready to be heard at the earliest possible date." As a practical matter, the Commission has taken the same position with regard to an Application to Stop Payment.

Despite this policy, the Commission has not established a procedure for withdrawal of a Form 50 or an Application to Stop Payment. Some Commissioners have recently taken the position that once a Form 50 or Form 21 is filed, it cannot be withdrawn. This position creates a real problem where there is a change in the claimant's medical condition just prior to a hearing. The Commission needs to develop a procedure for withdrawal similar to the provisions of the South Carolina Rules of Civil Procedure, 41(a) and 40(c)(1) for withdrawing a complaint.

The Commission further advised attorneys that a letter to the Commission will toll the statute of limitations for the filing of a claim and a suggested form letter was appended. The form letter attached to the "Annual Update" is similar to the notice requirement of Section 42-15-30 which was repealed on April 14, 1976.

The actual filing of a claim is controlled by Section 42-15-40 which requires that the claim be filed within two years of an accident. That section states: "The filing required by this section may be made by registered mail, and such registry within the time period set forth above, shall constitute timely filing." The "Annual Update" fails to mention the registered mail language set forth in Section 42-15-40. Notwithstanding, the "Annual Update" of July 11, 1988, it appears that there is still some question as to exactly what constitutes a "filing of a claim" within the two-year statute of limitations and this point needs further clarification.

In the "Annual Update," the Commission stated that all Applications to Stop Payment must be accompanied by "a proper medical certificate to certify that the employee is able to return to the same or other suitable job" (Rule 67-10). It is also required that evidence indicating that the claimant refused suitable employment and refused to sign a Form 17 must accompany the Application to Stop Payment. The Commission now also requires that a copy of a Form 15 (Agreement as to Compensation) or an Order of the Commission awarding temporary total compensation accompany the Application. Notwithstanding the practical difficulties in accumulating these forms in most cases, the Commission is routinely rejecting numerous Applications to Stop Payment. In those cases where the carrier has paid the claimant temporary total compensation but has neglected to enter into a Form 15 Agreement, the Commission has refused to process the Application to Stop Payment, even though the claimant has received timely and proper benefits.

The Commission has also refused to process an Application to Stop

(Continued on page 6)

Commission

(Continued from page 5)

Payment without evidence that the claimant has been offered a job by the employer. There are many cases where a claimant has reached maximum medical improvement but cannot return to the same employment and/or no job is available for the employee. Oftentimes, the offer of employment is beyond the control of the defense attorney. The Commission needs to review the requirements of an Application to Stop Payment as set forth in Section 42-9-260 and existing Rule 67-10. If modifications are appropriate, these modifications need to be made by amendment of either Rule 67-10 or Section 42-9-260. Neither one of these provisions requires that a Form 15 or Commission Order accompany an Application to Stop Payment nor is there any requirement in either the statute or the rule that a Form 21 be accompanied by evidence indicating that the claimant refused suitable employment and refused to sign a Form 17.

One of the more significant changes announced in the "Annual Update" relates to final releases and settlement agreements. The Commission states: "The Commission has become increasingly concerned over the use of inappropriate assertions of fact used in releases and agreements, i.e. Clinchers, *Atkins* releases or Utica-Mohawk releases." The Commission goes on to suggest standard language for inclusion in all settlement agreements.

Significantly, the Commission will no longer approve Clinchers that find:

> "That there is a *bona fide* dispute concerning liability, that the settlement fully protects the interests of the claimant, that it is in the best interest of the claimant, that it is fair, reasonable and equitable or any other language other than the parties agree to consent to a liquidated sum of compensation in exchange for a full and final release of all liabilities as provided for under the terms of the South Carolina Workers' Compensation Act."

The Workers' Compensation Act requires Commission approval of all settlement agreements. See Section 42-9-390. In *Mackey v. Kerr-McGee Chemical Co.*, 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984) the court held that any party to a workers' compensation case may repudiate a settlement agreement at any time prior to Commission approval. In that case, the court stated the purpose of this requirement as being:

> "'to make sure that such agreements entered into in pais would not only be of. . .binding force, but also they would not be detrimental to the rights of the injured workman. . . .'" [114 S.E.2d at 843.] Thus, the requirement of approval injects two procedural safeguards—first, that the interests of the claimant would be considered by an objective official, and second, that the status of the agreement would be elevated to that of a judicial decree, for enforcement purposes. . .If one purpose of the approval requirement is to ensure that the settlement agreement equitably protects the interests of the injured employee, then how could those interests be protected if the settlement agreement is held binding prior to its approval?
>
> [J]udicial approval of compensation settlements is necessary to protect the parties from unwise actions which may cause them serious detriment, and as that requirement appears to us to contemplate a proposed settlement to which all parties must agree at the time of the verifying and filing of the joint petition, we are satisfied that any party may unilaterally withdraw from the agreement prior to that time.
>
> 312 S.E.2d at 567-568.

The statutory and case law requires the Commission to review and approve settlement agreements. This requirement implies that the Commission shall scrutinize the facts and circumstances surrounding each case to protect the claimant from overreaching and to find that each agreement is fair. This change in the practice of Clincher approvals represents a substantial departure from the Commission's past practice and one that may not be in the best interests of workers' compensation in this state.

The Commission "Update" also summarizes the Workers' Compensation legislation enacted in 1988. While these changes are important, the proposed legislative changes for 1989 are much more significant. The "Annual Update" does not discuss proposed legislation, much of which is being proposed in response to the Legislative Audit Council "Review of the South Carolina Workers' Compensation System," dated March 16, 1988. Some of the more significant proposals include: a bill to remove the presumption of permanent and total disability for 50% or more loss of use of the back and to change the scheduled value of the back from 300 weeks to 500 weeks; a bill to repeal all five sections referring to medical board panels; a bill to extend lifetime benefits to cases involving "loss of both hands, arms, feet, legs or vision in both eyes or any two thereof"; a bill to exempt the Commission from the Administrative Procedures Act thirty-day notice of hearing requirement; and a bill to eliminate from Section 42-9-400 (Second Injury Fund claims) the unknown and concealed conditions.

These bills are only a few of the proposed legislative changes for 1989, however, any one or all of these changes would dramatically impact the workers' compensation system. The procedural changes announced by the Commission in its "Annual Update" are intended to enhance and improve the efficiency of the Commission. The proposed legislative changes will also have a substantial impact on the operation of the Commission, but whether these changes constitute improvements is debatable. There is also an unsubstantiated rumor that the Commission will submit to the General Assembly new rules for approval or amendments to the existing rules. If this is true, a copy of these proposed rules has not yet been made available by the Commission. Any new rules or changes to existing rules should be scrutinized and where appropriate, comments should be submitted to the Commission and/or the legislature.

Defense attorneys practicing before the Commission need to review the proposed legislative changes and become involved in the legislative process. It is equally important to make sure that employers and insurance carriers are aware of this proposed legislation. Now is the time to offer input to assure that any legislation passed by the General Assembly in 1989 is reasonable and fair.

Defense Bar Issues

Reprinted from the DRI's Newsletter for and about State and Area Defense Associations December 1988

Tort Reform Nationwide

Many of your organizations have been involved in drafting, reviewing, and lobbying for tort reform legislation. 1986 and 1987 saw the most significant gains made in this area. 1988 saw the focus shift to defending those gains in state court. Most successful plaintiffs' attacks have been on early medical malpractice legislation. Such legislation has been struck down in Texas, Kansas, and Wyoming. Since it only affects plaintiffs suing doctors and hospitals, foes of such legislation have been able to portray it as a violation of equal protection guarantees. On the other hand, medical malpractice legislation has been upheld in state courts of California, Delaware, Maryland, New York, and Wisconsin. In Florida a $450,000 cap on noneconomic damages was struck down while other measures of the broad tort reform statute were upheld.

The federal courts, including the Supreme Court, have been less receptive to attacks on tort reform legislation. The U.S. Supreme Court has twice refused to hear a case challenging California's $250,000 cap on noneconomic damages in medical malpractice cases. Recently the justices have agreed to decide the constitutionality of punitive damages in *Browning-Ferris Industires* v. *Kelco Disposal* 845 F. 2d 404 (2nd Cir. 1988). DRI is considering filing an *amicus* brief in this case.

Major tort reform initiatives were on the November ballots in three states. In Alaska, by 74% of the vote, joint and several liability was abolished. Floridians narrowly rejected a proposed constitutional amendment that would have capped noneconomic damages in all negligence cases at $100,000. In California, proposition 103 passed. This proposition calls for liability rates to be cut back to 80% of their November 1987 levels. Insurance companies are challenging it in court.

Defense Association Activities

More and more law schools are thinking of defense bar strength in the long term and are starting up law school scholarship or awards programs. The *Kentucky Defense Counsel* will sponsor an annual $500 award at each of Kentucky's law schools for the student with the highest grade in torts.

Responses to a questionnaire indicate that 70% of the members of the *Mississippi Defense Lawyers Association* favor funding a chair for the University of Mississippi's School of Law. Based upon that support MDLA's Board has decided that rather than support the project through a dues increase, it will be funded through a separate foundation to which members will be asked to pledge.

The *Louisiana Association of Defense Counsel* is establishing four $1,000 per semester scholarships at each of the states' four law schools. The recipient will be a senior selected on the basis of academic excellence and need.

State and area defense associations are increasingly concerned about the effect low judicial salaries have on the quality of the judiciary. The *Montana Defense Trial Lawyers*, whose state court judges are the lowest paid in the country, reprinted a survey on judicial salaries and in a long article in its newsletter urged its members to persuade legislators to support increases, because "the need to preserve and foster excellence within the judiciary is perhaps the most important tort reform of all."

The Mississippi Conference of Judges adopted a resolution commending the *Mississippi Defense Lawyers Association* on its diligent efforts in securing judicial salary increases during the 1988 legislative session.

The Board of the *Defense Trial Counsel of West Virginia* passed a resolution in October endorsing specific salary increases for Circuit Court and Supreme Court Justices. The resolution will be sent in January to the Governor and each member of the legislature. Association members are urged to write letters to senators and newspaper editors and educate lay members of the community on this issue.

In tort reform, Brad Hume, DRI State Chairman and *Kentucky Defense Counsel* member, reports that Kentucky's new tort reform legislation, effective July 15, 1988 has left so many unanswered questions that it is hard to "understate the degree to which this statute is going to be responsible for lawyer employment over the next several years." The most significant aspect of the legislation deals with apportionment

(Continued on page 8)

of fault between defendants and third party defendants. Another significant provision makes collateral source benefits and subrogation interests admissible at trial. A major question in regards to all the provisions is whether they apply to cases *filed* after the effective date or cases *heard* after the effective date.

The *Connecticut Defense Lawyers Association* is promoting procedural reforms which would reduce the cost of litigation. Then-association president Richard Bowerman testified before the state's Superior Court Rules Committee on such matters a number of times in the last year.

The *Montana Defense Lawyers Association* has participated in a number of forums seeking a solution to the shortage of obstetricians practicing in rural areas caused by rising malpractice insurance costs. The association has a committee that has been reviewing and making recommendations on various groups' proposals. The association favors one that provides tax credits for part of a rural obstetrician's medical malpractice insurance premiums. The Montana Defense Trial Lawyers, incidentally, were until recently The Montana Association of Defense Counsel. The name change was intended to make their association a more visible counterpart to that state's plaintiff lawyers.

In Wisconsin, the *Wisconsin Coalition for Civil Justice* has set the following issues as priorities during the 1989 legislative session: 1) joint and several liability, 2) caps on noneconomic awards for medical malpractice cases and 3) common knowledge defense in product liability cases. A hard-hitting advertisement campaign — "Welcome to the 'sue you' society. If you don't think Wisconsin's outdated liability laws affect you, take a closer look." — has generated a lot of response from the news media.

The *Missouri Organization of Defense Lawyers* coordinated much of the opposition from Missouri's business community to a plaintiff attorney-sponsored bill that would have effectively required the attendance of any defendant's corporate employee or officer located anywhere in the world for appearance in Missouri on a ten day notice. The Governor, in his veto message, restated many of the arguments provided by association president Bob Babcock.

Two new defense associations have emerged this year and one association, previously moribund, has been revitalized. The impetus behind the formation of the *Vermont Defense Lawyers Association* was Secretary-Treasurer John B. Webber. Formed to promote the goals of defense counsel in general, the organization is also seen as a badly needed counterpart to the increasingly active role that the plaintiff attorneys have in that state's legislature. Association President is John M. Dinse, former DRI President; Leonard F. Wing, former DRI Regional Vice President; is Vice President.

DRI Delaware State Chairman, B. Wilson Redfearn, helped organize the *Defense Counsel of Delaware,* now almost 100 members strong. President is James Semple, and President-elect is Somers "Chip" Price. The organization generated a position paper on tort reform proposals heard by the Delaware legislature this past year.

The *Defense Lawyers Association of Wyoming,* which has not been very active for the last two years, has revitalized, and, under President Bill Downes, is taking advantage of a more favorable tort reform climate in Wyoming. Downes reports that his organization is filing an *amicus* brief for the first time in two years. The issue is the extent of an insurance company's duty of good faith. Wyoming has a new governor, a former defense lawyer, and defense verdicts are becoming more common. Downes feels that, generally, public sentiment toward large awards is less favorable. The association plans to be active in the 1989 legislative session.

"Erosion of Professionalism"

G. Duffield Smith

Lawyers and Courts, over the past 10-12 years, have been more and more confronted by conduct which has been characterized as an "erosion of professionalism." It frequently arises during pre-trial discovery and depositions, and, in recent years, has drawn the attention of many Bar Associations, as well as the Courts. I am sure all of us have seen certain lawyers use the rules for their own selfish motives rather than attempting to cooperate in the discovery process, or they have been excessively vague in their responses or failed to produce relevant documents; thereby causing you to file motions and hold Court hearings, all of which increases Court and attorney time, thereby resulting in increasing the already high cost of litigation.

Studies by many Bar Associations reflect that members of the Bar have certain responsibilities to the legal profession. A few of them are:

1. The experienced lawyer should mentor newly admitted associates to face the practical and ethical issues which inevitably arise in practice;
2. The lawyers should preserve and develop within the profession integrity, competence, fairness, independence, courage and a devotion to the public interest;
3. The lawyers should encourage innovative methods which simplify and make less expensive the rendering of legal services.

One Bar Association committee observed that some of the causes of this erosion come from:

1. The high exposure of certain egregious forms of lawyer conduct; and
2. The shrinkage of civility between attorneys which traces both to a Clint Eastwood mindset among a few self-styled "hired guns" and to the loosened bonds of community where lawyers only have a short term exposure to each other.

Courts are more and more decrying the increased costs of time and expense to the Courts and the public brought about by this type of conduct resulting in the Courts' use of sanctions where they feel it is justified to curb such conduct. Additionally, some Courts have initiated their own guidelines for lawyers practicing in their Court. For example, the Northern District of Texas has recently established standards of conduct which members of the Bar must follow in these Courts. A few of them include:

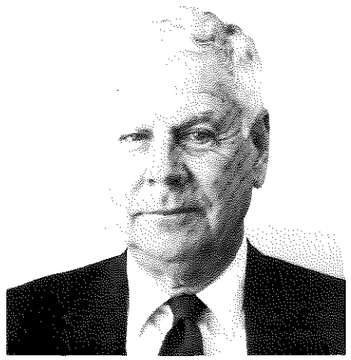
a. In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client;
b. A lawyer owes to opposing counsel a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and respect of the public it serves;
c. A lawyer should not use any form of discovery or the scheduling of discovery as a means of harassing opposing counsel or counsel's client;
d. If a fellow member of the Bar makes a just request for cooperation, or seeks a scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent. (*Dondi vs. Commerce Savings, Et Al,* Civil Action No. CA3-87-1725-H, U.S.D.C., Tx, 1988).

The one thing in which all members of the legal profession share equally is our civil justice system. It continues under attack from many sources, and for many reasons, not the least of which may be its ever increasing cost which makes it less available to the American public.

Such result is truly unacceptable, in my opinion.

Are you doing your part to check this erosion and help keep our civil justice system available to members of our society at a reasonable cost?

NEWS AND VIEWS



Jacobs Receives Hemphill Award

Columbia attorney Harold W. Jacobs was named recipient of the first annual Hemphill Award, sponsored at the S.C. Defense Trial Attorneys' Association's Annual Meeting in October. Given in honor of the late U.S. District Judge Robert W. Hemphill, the award was presented for distinguished and meritorious service to the legal profession and the public.

Jacobs is a senior partner in the firm of Nexsen Pruet Jacobs & Pollard and a Fellow of the S.C. Bar Foundation, the American Bar Foundation and the American College of Trial Lawyers. He has served as President of the S.C. Bar Association; President of the S.C. Defense Trial Attorneys' Association; Chairman of the S.C. Civil Justice Coalition; and Chairman of the Commission on Character and Fitness of the Supreme Court of South Carolina. In addition, he has been a member of the S.C. Commission on Higher Education; Senior Warden of St. Michael's and All Angels Episcopal Church; a member of the Committee for Canons and Bylaws of the Episcopal Diocese of Upper South Carolina; and a member of the Medical University of S.C./ University of S.C. Medical School Joint Health and Education Board.

A native of Kingstree, he is a graduate of the U.S. Naval Academy and the University of S.C. School of Law and is married to the former Jacqueline Everington of Hartsville.

Governor Campbell Invited to Speak At ATRA

Governor Carroll A. Campbell, Jr. was invited to be the Keynote Speaker at the National Conference of the American Tort Reform Association in Washington the end of January.

This annual conference was designed to highlight how America's tort liability system affects Americans socially and economically. Nationally recognized scholars and leaders discussed issues such as the impact of the liability system on sports and recreation, innovation of new products and international competition.

Governor Campbell was unable to accept the invitaiton because of a prior commitment out of the country. Nevertheless, recognition was given to the governor and the State of South Carolina for "enacting the most comprehensive tort reform package passed in 1988."

ATRA is a broadbased bipartisan coalition of over 400 organizational members, including associations, corporations, non-profits, small business, state coalitions and professional groups and over 500 individual members whose sole goal is reform of Americans.

SC Workers' Compensation Commission

Announced that the maximum compensation rate for 1989 (beginning January 1, 1989) is

$334.87

Automobile Insurance Legislation

Edward Poliakoff

All current indications are that automobile insurance reform will be a top priority subject for the 1989 General Assembly. Observers expect much of the debate to focus on Governor Campbell's proposals, which are expected to track some of the proposals he made during the 1988 session. While the Governor has not yet announced the specifics, it is expected that his proposal may include the following: Repealing or amending the collateral source rule with respect to certain automobile insurance claims; making uninsured motorist benefits optional; clarifying how insurance companies must offer uninsured, underinsured and PIP coverages; prohibiting "stacking" of coverages; and repealing or amending the requirement that policies cover punitive damages.

It is expected that proposals will be made by legislators to mandate the use of seatbelts. In the past, such proposals have provided that non-usage would be inadmissible in litigation.

Robinson New President South Carolina Claims Association

DONNA McINTOSH ROBINSON, AIC, CPIW, was recently elected President of the South Carolina Claims Association. She is past President of the Columbia Claims Association and currently Adjuster of the Year for the State Association, and State Director for the Insurance Women of South Carolina. Donna is owner of Robinson and Company, an independent adjusting agency in Columbia and previously has been multiline adjuster with American States, field claims adjuster for the Prudential and office manager for State Farm. She graduated from the Columbia public schools and received a degree in Commercial Education from USC. We salute you, Donna.

WORKERS' COMPENSATION REFORM

Samuel F. Painter

In March of 1988, the Legislative Audit Council released a report on the South Carolina Workers' Compensation system. In this report, the Council found problems with South Carolina Workers' Compensation statutes as well as with the administration of the law by the Workers' Compensation Commission. The Council made eighty-seven recommendations for legislative and administrative reform.

The Governor's Workers' Compensation Study Committee, which is chaired by Senator John Land of Manning, South Carolina, is currently reviewing thirty-four of the Legislative Audit Council's recommendations that call for consideration of legislative change.

Some of the more significant recommendations of the Legislative Audit Council that are being considered by the Workers' Compensation Study Committee are as follows:

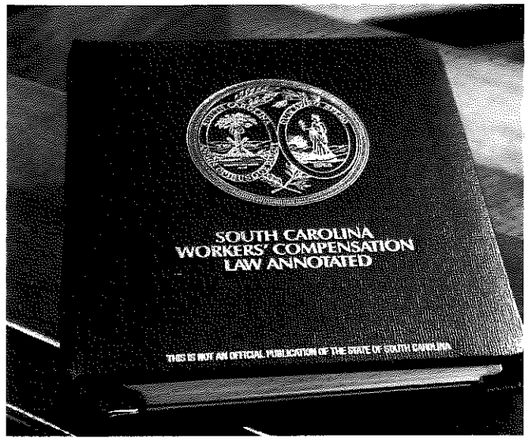
1. Lifetime Benefits

The Legislative Audit Council recommended that the General Assembly consider amending Section 42-9-10 to extend permanent total disability payments for life or for the period of disability. (Under the current law, such benefits are limited to 500 weeks except in total and permanent cases resulting from paraplegia, quadraplegia or physical brain damage.)

The Governor's Workers' Compensation Study Committee has two lifetime benefit bills under consideration. One would extend permanent total disability payments to life or for the period of disability in all permanent total cases. The other bill would extend lifetime benefits to cases involving "loss of both hands, arms, feet, legs or vision in both eyes or any two thereof."

2. Physician Selection

The Legislative Audit Council recommended that the General Assembly consider amending the Workers' Compensation Act to provide a means by which an employee,



rather than the employer or carrier, may select the primary treating physician.

A subcommittee of the Governor's Workers' Compensation Study Committee recommended that there be no change in the current statute on this issue. This recommendation has been carried over to the January meeting of the Study Committee.

3. The Back

Section 42-9-30(19) provides that an employee who is determined to have sustained a fifty percent or more loss of use of the back is deemed to be totally and permanently disabled. Under the current law, the back is rated as 300 weeks. Therefore, awards for loss of use of the back that are less than fifty percent are currently calculated as being percentages of 300 weeks.

Along with recommending that the General Assembly remove the conclusive presumption of total permanent disability for employees who are determined to have 50% or more loss of use of the back, the Audit Council also recommended that the General Assembly consider whether the 300 week rating for the back is adequate.

The Governor's Workers' Compensation Study Committee is considering a bill that would repeal the "50% rule," but which would increase the value of the back from 300 to 500 weeks.

4. Stop Payment Procedures

The Legislative Audit Council recommended that the General Assembly consider implementation of a direct pay system in which compensation payments commence within a specified period after a reported accident, but may be stopped within a specified non-waiver period without penalty based upon investigative findings.

A bill to this effect has been drafted and submitted to the Workers' Compensation Study Committee.

5. Reduction of Workers' Compensation Taxes

South Carolina imposes a workers' compensation tax, which is set by statute as 4½% of the amount of premiums collected by workers' compensation carriers or 4½% of the actual cost of self-insurer workers' compensation programs. According to the Legislative Audit Council's report, the premium taxes for workers' compensation programs in forty-two states for which data was available averaged approximately 2.6%.

The workers' compensation tax goes directly to the State's general fund. Only an amount equivalent to about 24% of the revenue generated

(Continued on page 12)

(Continued from page 11)

by this tax is actually used to administer the Workers' Compensation system. In fiscal year 1986-1987, for example, the tax netted 14.7 million. The budget, however, for the Workers' Compensation Commission was approximately 3.5 million, which meant the tax netted a surplus of approximately 11.2 million.

The Governor's Workers' Compensation Study Committee is considering a bill that calls for a gradual, three-year rollback of the 4.5% premium tax. The tax would eventually be reduced to 2%. The bill also calls for the tax to be allocated 100% to the Workers' Compensation Commission. The bill as presently drafted makes no reference to a comparable rollback of the self-insurers' tax.

6. Disfigurement

The Legislative Audit Council recommended that the General Assembly consider clarification of the statutory definition of disfigurement.

The Workers' Compensation Study Committee has approved a bill requiring scars to be visible from 6 feet. The Study Committee is also considering a bill to increase the maximum award for disfigurement from 50 weeks to 100 weeks.

7. Reorganization of the Commission

The Legislative Audit Council has recommended that the General Assembly consider reviewing alternatives to the organizational structure of the Workers' Compensation Commission. The report points out that the process in this state for reviewing awards is unique in requiring Commissioners to review each other's decisions. All other states have separate appeal panels.

A subcommittee of the Governor's Workers' Compensation Committee adopted the recommendation of the Legislative Audit Council that reorganization be considered, but the subcommittee made no specific recommendations. The full Governor's Workers' Compensation Study Committee has carried the matter over for further discussion at its next meeting.

8. Elimination of Unknown Condition Claims from Second Injury Fund

The Legislative Audit Council recommended that the General Assembly consider amending Section 42-9-400(c) and 42-9-410(d) to eliminate Second Injury Fund coverage of unknown or concealed conditions.

A subcommittee of the Governor's Workers' Compensation Committee proposed a bill adopting this recommendation. This bill was carried over until the next meeting.

9. Limitation of Lump Sum Awards

The Legislative Audit Council recommended that the South Carolina Workers' Compensation Commission determine by regulation standards as to when lump sums are in the best interests of an injured employee.

Because this recommendation was not one of the 34 recommendations that were specifically addressed to the General Assembly, the Governor's Workers' Compensation Study Committee does not have a proposal limiting lump sums before it for consideration at this time. There is little doubt, however, that this issue will he discussed at future meetings of the Governor's Workers' Compensation Study Committee.

10. Other Issues

The Legislative Audit Council also made recommendations that the General Assembly consider whether there should be minimum qualifications for Workers' Compensation Commissioners, whether uncontested claims could be settled without the necessity of a viewing, whether there is a conflict of interest when the Commission adjudicates claims of its own employees, and whether the Commission should establish regional hearing sites. There are many more recommendations for both legislative and administrative reform in the Legislative Audit Council's report of March 16, 1988. You can obtain a copy of the report by contacting Mr. George L. Schroeder, the Director of the Legislative Audit Council. His telephone number and address are as follows:

George L. Schroeder
Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29202
(803-734-1320)

Claims Adjustor Elected President of Her Association

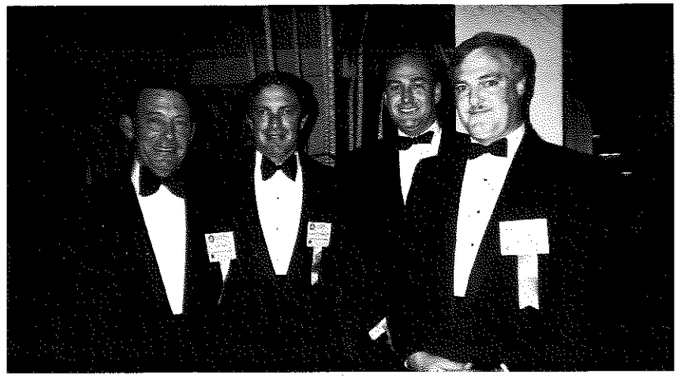
Donna McIntosh Robinson has been elected president of the South Carolina Claims Association. She is the owner of Robinson & Company Claims Adjusting Service and has 18 years experience in the insurance field.

FREDDIE KEEN, former director of guest services at the Raddison Hotel of Columbia, has been named gneeral manager for the Park Inn International on St. Andrews Road in Columbia. Keen has been in the hospitality industry for six years after starting his career at Walt Disney World as a guide host. He spent 4½ years with Interstate Management Investment Corp. in Columbia in the management training program, which included opening services for five hotels in the two Carolinas. Keen has a bachelor of arts degree from Georgia Southern College in Statesboro, Ga.

A number of industry groups have joined together to form a group called the Workers' Compensation Task Force. This group is closely monitoring the response of the Governor's Workers' Compensation Study Committee to the Legislative Audit Council's recommendations. E. Blair Rice, Jr., the President of Blair Mills, Inc. of Belton, South Carolina, is the chairman of the Workers' Compensation Task Force.

The next meeting of the Governor's Workers' Compensation Study Committee is scheduled for Tuesday, January 31, in Room 307 of the Gressette Office Building in Columbia, beginning at 10 o'clock a.m.

1988 ANNUAL CONVENTION KIAWAH, SC



Newly elected officers of the SCDTAA were installed at the 1988 Annual Meeting. L to R: William M. Grant, Jr., Treasurer; Frank H. Gibbes, III, President; Mark H. Wall, President-Elect; and Glenn Bowers, Secretary.

Annual Meeting

The 1988 Annual Convention in October was well attended by attorneys and judges. The program was outstanding as were the social events.

Golf Tournament

The Golf tournament scheduled for Friday was rained out and had to be played on Saturday, October 29, 1988. JACK BARWICK chaired the Committee and had the tournament scheduled as a Captain's Choice with separate prizes for attorneys and judges.

The winners were as follows:

Closest to the pin on the front -JUDGE ROSS ANDERSON and KEN YOUNG

Closest to the pin on the back -FRANK GIBBES, no judge hit the green.

Longest drive on No. 8 - JUDGE DAVID HARWELL and TOLAND SAMS

Shortest drive on No. 18 - JUDGE JAMES MOORE and RUSTY WEINBERG

Longest, straightest drive No. 12 -JUDGE ERNEST KINARD and PETE ROE

Last one in the water on No. 11 -JUDGE DAVIS HARWELL and BILL GRANT

For the team trophies, the three teams tied for first place were seven (7) under par, and they were the teams of PAUL DOMINICK, BILL SWEENEY, JUDGE DAVIS HARWELL and RUSTY WEINBERG, the team of WELDON JOHNSON, JUDGE ERNEST KINARD, ED LAWSON and the team of TOLAND SAMS, PALMER FREEMAN, MIKE BOWERS and ED YOUNG. It was necessary to have a playoff on the card, sudden death, and the winning team was TOLAND SAMS, PALMER FREEMAN, MIKE BOWERS and ED YOUNG. The runner-up went to WELDON JOHNSON, JUDGE ERNEST KINARD and ED LAWSON. The team with the highest gross score was REEVES SAMS, BILL GRANT, RICK THOMAS and JACK BARWICK. Prizes were modest, but appreciated.

MEDICARE AND WORKERS' COMPENSATION LUMP SUM SETTLEMENTS

J. Marshall Allen

A workers' compensation attorney should consider Medicare entitlement when settling a case involving a Medicare-eligible claimant. When confronted with a claimant eligible for Medicare benefits, an attorney should turn for instructions to 42 CFR Sections 405.311 through 405.320. The regulations provide that Medicare will not pay for any item or service covered by workers' compensation laws in any of the fifty states. Medicare begins to pay only after state workers' compensation benefits are exhausted, subject to deductible and coinsurance charges. If the payment for workers' compensation covered benefits is less than the cost of a greater benefit with accompanying greater expense under Medicare entitlement, then Medicare will pay the difference between the cost of the benefit provided under the wokers' compensation plan and the additional service granted under Medicare.

The Medicare-eligible claimant should be advised immediately that he has an affirmative obligation to take all necessary steps to obtain workers' compensation payments. In other words, if an individual incurs a compensable injury and fails to timely file a Form 50, resulting in denial of workers' compensation benefits, Medicare may treat the case as if the claim had been paid and refuse Medicare benefits. Along with the claimant's attorney, the defense attorney should be educated on the impact of Medicare entitlement on any lump sum settlement or final release under the South Carolina workers' compensation laws.

42 CRF Section 405.320 states the following:

> Where a lump sum settlement in final release of a workmen's compensation claim has been entered into and approved by the Workmen's Compensation Board..., payment may be made under Title XVIII of the Act for expenses incurred for covered services to the extent that such expenses cannot reasonably be deemed to have been reimbursed under the settlement. Therefore, where under the state law, the signing of a final release of all rights under the workmen's compensation claim forecloses the possibility of further workmen's compensation benefits, medical expenses incurred thereafter are reimbursable under Title XVIII, if otherwise covered, *insofar as such medical expenses were not contemplated by and incorporated into the settlement.* (Emphasis added.)

The above cited section of the Code of Federal Regulations suggests that a final lump sum settlement not contemplating or incorporating medical expenses entitles the claimant to post-settlement Medicare benefits. It should be recognized, however, that there exists a possibility that contemplation of benefits prior to entering into a lump sum settlement (even with the conjunctive "and" incorporated into such settlement) could result in a denial of benefits. This language appears to the author to put a more affirmative duty on the claimant's attorney to consider the impact of Medicare entitlement upon a lump sum settlement prior to the entering into negotiations with legal counsel for the carrier.

Relying upon the literal interpretation of the regulation, a lump sum settlement which, through negotiations, is reduced in anticipation of additional Medicare benefits, could result in a denial of those Medicare benefits. This reasoning could potentially go as far as the claimant's unilateral contemplation of the impact of Medicare on a lump sum settlement prior to entering into negotiations with the defense attorney. It should also be recognized that the benefits under the Medicare laws have various limitations which, under an array of circumstances, could be less than the benefits provided under workers' compensation laws.

In conclusion, the author recommends that the defense attorney, claims personnel, and the claimant's counsel be aware of the impact of any workers' compensation settlement on the Medicare benefits available to Medicare eligible individuals. This impact should be relayed by the claimant's attorney as advice to his or her client. The defense attorney and claims personnel should be aware that the regulations appear to prohibit creative negotiations regarding a reduced lump sum settlement on the basis that additional benefits will be forthcoming through Medicare benefits under Title XVIII of the Social Security Act so as not to mislead a claimant or his or her attorney during negotiations.

Recent Decisions

(Continued from page 2)

himself. Subsequently, the plaintiff was terminated by the supervisor after engaging in "a rather acrimonious confrontation" with another employee.

Although the plaintiff alleged that her termination violated a clear mandate of South Carolina public policy, she was unable to point to any such policy enunciated by either the legislation or the courts of South Carolina.

The District Court relied upon a recent Fourth Circuit decision rejecting an even stronger whistleblowing claim in Maryland. *Adler v. American Standard Corp.*, 830 F.2d 1303 (4th Cir. 1987). In that case, the Fourth Circuit held that a termination allegedly in retaliation for the employee's threats to report illegal corporate activities to higher management did not violate any public policy. It further pointed out that declarations of public policy are to be left up to the state legislatures or courts. In addition, Judge Anderson cited a number of other federal decisions refusing to recognize the type of public policy exception to the at-will doctrine relied upon by the plaintiff.

Finally, Judge Anderson noted that the plaintiff was not faced with the choice of choosing to commit a criminal act and keeping her job as in the case of *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985). Judge Anderson found it difficult to imagine why the employer would want to punish the plaintiff for protecting its interest.

KEEPING A FRIEND: SOUTH CAROLINA SECOND INJURY FUND CLAIMS HANDLING

I. COMMUNICATION

(Both Written and Verbal).

It is important to keep the claims representative of the Second Injury Fund abreast of all developments in your case and your efforts to resolve it. These people have more exposure to similar facts, the likely outcome before a certain Commissioner, and the other attorneys involved than you are likely to have. Additionally, if they are to reimburse the claim, they certainly should be informed as to medical evidence which is likely to be presented, any recent developments, and settlement negotiations.

II. CO-OPERATION.

Personnel at the South Carolina Second Injury Fund are on your side, the defense, and are not to be considered the enemy. It is therefore important to cooperate with the claims representative and others at the fund as a bad outcome or ultimate bad decision by the Commission, or Supreme Court, is likely to have more of a prejudicial effect on the fund than on your individual client. Seek therefore their advice and take into consideration their suggestions. It is extremely important to keep the Second Injury Fund posted as to any appeal of a decision of the Commission into the Circuit Court or ultimately to an Appellate Court as the fund has no other way to know what has occurred except through the defense attorney.

III. CONSIDERATION.

If you have kept the claims representative advised as to the developments of your case, particularly as a hearing approaches, you should certainly let the representative know if you plan to postpone a hearing, or if the other side does, so as to avoid an unnecessary trip by the representative to the hearing. The representatives will normally appear at all hearings, as they receive notices from the Workers' Compensation Commission, unless specifically requested by you that they not appear. It is sometimes wise to advise the representative not to appear, particularly on a case which is a disputed claim which would obviously be reimbursable if it were ultimately found to be compensable. There is always the potential that a disputed case will be awarded if it is recognized that the Second Injury Fund is available, interested, and likely to reimburse it.

By the same token, if a case should be settled, assumably with knowledge of the Second Injury Fund, they should be advised of the fact that a hearing will not be necessary so that their time can be devoted to something more profitable. It should be remembered that the case load of a claims representative of the Second Injury Fund usually is in excess of 400 files and making an unnecessary trip can create animosity which might ultimately be prejudicial on a close case where discretion of the representative is important. Common decency, however, would dictate this consideration even if there were no prejudicial potential.

IV. COMPROMISE.

Seek the authority of the claims representative prior to attempting to make any offers of settlement, especially if the claim is large and has been accepted for reimbursement by the Second Injury Fund. The Second Injury Fund is not bound by any settlement to which it did not consent although normally the fund would accept any reasonable settlement. However, it could be embarrassing if at a subsequent hearing it was necessary for the defense attorney to have to prove the reasonableness of a

settlement. Equally as important is the need to have agreement and authority from the Second Injury Fund prior to settling a claim with the claimant's attorney before the fund has accepted it for reimbursement. Many times adequate medical information has not be developed so as to make the claim reimbursable with the fund but the claimant's attorney has processed the case towards a hearing and resolution of the claimant's case necessarily must take place prior to finalizing the Second Injury Fund claim. The mere fact that the Second Injury Fund claim has not been accepted does not mean that you can ignore their input as ultimately they will become aware of the settlement and need to have been a party to it.

V. CREDIBILITY.

Always maintain your credibility with the Second Injury Fund by protecting the interest of the fund as well as the interest of your employer, insurer or self-insured. Nothing looks worse and is more obvious than a defense attorney who overpays a claim or fails to properly prepare one simply because the Second Injury Fund has accepted the case and obviously will pay the ultimate award. Some attorneys justify such attitude and do not go to full lengths to prepare a case for a hearing, or reasonable settlement, particularly when the claimant's case obviously is close to being a total and permanent case. This is done either out of laziness or so as to limit the expenses of the insurer in the defense of the case but neither is justification. Future dealings with the claims representative of the fund will certainly be more difficult and the likelihood of having a close case accepted will be significantly lessened if the defense attorney loses his credibility and does not reflect sincere concern for the interest of the Second Injury Fund. After all, money within the South Carolina Second Injury Fund is that of the carriers' and self-insureds' and if it is exhausted, it will be replenished through an assessment. Therefore, Second Injury Fund should be treated as any other client and the reward for this will be great!

These points were presented at the South Carolina Workers' Compensation Educational Conference on October 24, 1988 by Wallace G. Holland of Charleston, South Carolina.

1989 SCDTAA GOALS AND OBJECTIVES

I. **GENERAL**

- A. Increase membership
- B. Increase active participation on committees
- C. Improve public image of denfense attorney
- D. Continue legislative efforts
- E. Establish liaison to S.C. Bar/SCTAA/Courts
- F. Improve Financial stability of association
- G. Continue solid educational programs for members

II. **SPECIFIC**

- A. *Amicus Curiae*
  1. Develop set of Amicus forms for use from year to year
  2. Work with Judiciary Committee - draft Amicus Rule for Supreme Court consideration
- B. *Defense Line*
  1. Make active use of committee members
  2. Consider again desirability of advertising as source of revenue
- C. *Legislative*
  1. Workers Comp
  2. Medical Privilege
  3. Auto Insurance Reform
  4. Politcal Contributions
- D. *Long Range Planning*
  1. Make President-Elect Chairman
  2. Establish long-range goals based on membership survey
- E. *Membership Committee*
  1. Target labor firms
  2. Target new names identified thru membership survey
- F. *Programs and Conventions*
  1. *Joint Meeting*
     (a) Consider 3 hour block devoted to workers compensation
  2. *Annual Meeting*
     (a) Improve attendance by members and judges
- G. *Public Information Committee*
  1. Develop long range plan for improving image of defense attorney
- H. *Seminars Committee*
  1. Consider alternate dates for seminar
  2. Consider desirability/impact/problems revenue from seminar without S.C. Bar support
- I. *Liaison Committee*
  1. Explore more formal relationship with S.C. Bar
  2. Explore more formal relationship with SCTAA
  3. Explore more formal relationship with courts

III. **Review Goals on Membership Survey**

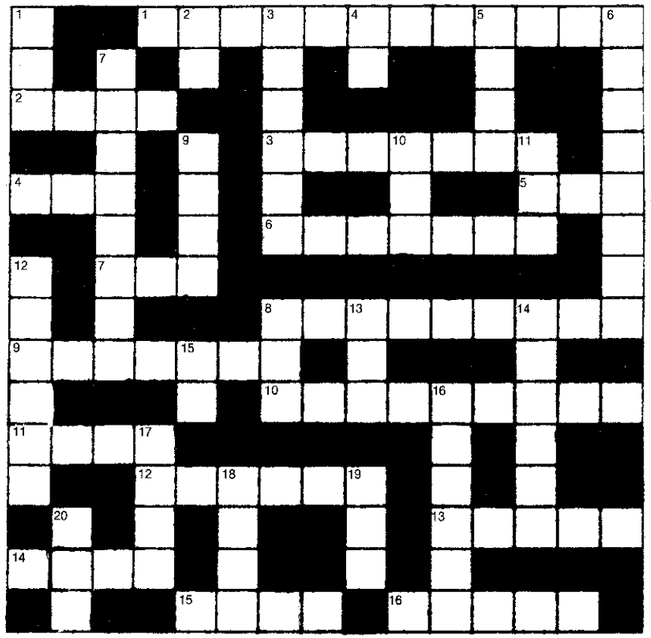
LIGHTER SIDE

Across

1. "Friend of the Court" (2 wds)
2. SCDTAA President-Elect
3. Persons involved in legal proceedings
4. Defense Institute
5. To employ for a purpose
6. "The Highest"
7. To determine guilt or innocence by trial
8. Joint Meeting Location
9. Defense Line Editor
10. Judicial Appeals Court
11. SCDTAA Immediate Past President
12. Approval
13. A happening
14. Civil wrong for which a suit can be brought
15. To impose and collect by authority
16. Erect position

Down

1. Rule of conduct
2. Objective Pronoun
3. Main part
4. State
5. Twisted fibers
6. Proof
7. Location of SCDTAA Annual Meeting
8. Also known as
9. Judicial tribunal
10. _____ and feather
11. Prosecute
12. SCDTAA President
13. Short leaps
14. Legally responsible
15. Unconcious part of the psyche
16. Not visible
17. Proceeding demanding recovery
18. Desire with expectation
19. Light period
20. Officer



(See answers on page 19)

CRUEL TREATMENT

Judge HIRAM WARNER HILL, in Wilkinson v. Wilkinson, 159 Ga. 332, 125 S.E. 856.

Facts: Charles G. Wilkinson filed a libel for divorce against Irene S. Wilkinson, basing his petition on desertion and cruel treatment. Judgement for plaintiff affirmed.

Opinion: The learned trial judge (Peter W. Meldrine) said:

"From the days of Socrates and Xantippe, men and women have known what is meant by nagging, although philology cannot define it or legal chemistry resolve it into its elements. Humor cannot soften or wit divert it. Prayers avail nothing, and threats are idle. Soft words but increase its velocity, and harsh ones its violence. Darkness has for it no terrors, and the long hours of the night draw no drapery of the couch around it. The chamber where love and peace should dwell becames an inferno, driving the poor man to the saloon, the rich one to the club, and both to the arms of the harlot. It takes the sparkle out of the wine of life, and turns at night into ashes the fruits of the labor of the day."

He might have added the words of Solomon that —

"It is better to dwell in the corner of the housetop, than with a brawling woman in the wide house." Proverbs 25:24.

Opinions and Stories of and from the Georgia Courts and Bar collected and arranged by Berto Rogers.

1988-89 Committees

Some 10-15 members submitted completed questionnaires but did not include their name on the questionnaire. If you returned your questionnaire but have not been appointed to a committee, please drop me a note indicating your committee preference and I will be glad to see that you are promptly appointed to the appropriate committee.
Frank H. Gibbes III
P.O. Box 10589
Greenville, SC 29603

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Charleston, SC 29402
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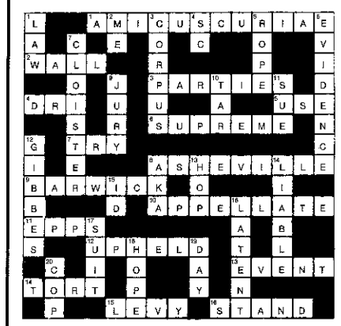
Answers to Crossword Puzzle Page 17



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CALENDAR OF EVENTS

1989		
Mid-Year Meeting SC Bar	January 12-15	Hyatt Regency Greenville
International Association of Defense Counsel Surety Trial Practice Program	January 27-28	The Plaza New York, New York
American Bar Association (Mid-Year)	February 1-8	Denver, Colorado
International Association of Defense Counsel (Mid-Year)	February	Location to be announced
Defense Research Institute (Annual)	February	Location to be announced
Federation of Insurance and Corporate Counsel	February 22-26	Camelback Scottsdale, Arizona
Association of Insurance Attorneys	April 18-22	Olympic Hotel Seattle, Washington
Annual Meeting SC Bar	June 29-July 2	Hyatt Regency Savannah
International Association of Defense Counsel (Annual)	July 2-8	Copley Place Boston, Massachusetts
Defense Research Institute (Mid-Year)	July 3-5	Copley Playce Boston, Massachusetts
Defense Counsel Trial Academy	July 21-29	College Inn, Conference Center Boulder, Colorado
Federation of Insurance and Corporate Counsel	July 26-30	The Homestead Hot Springs, Virginia
SCDTAA Joint Meeting	July 27-30	Grove Park Inn Asheville, NC
American Bar Association (Annual)	August 3-10	Honolulu, Hawaii
SCDTAA Annual Meeting	November 2-5	The Cloister Sea Island, GA
1990		
Mid-Year Meeting SC Bar	January 18-21	Omni at Charleston Place
Annual Meeting SC Bar	May 31-June 3	Myrtle Beach Hilton