The Defense Line

S.C. Defense Trial Attorneys' Association

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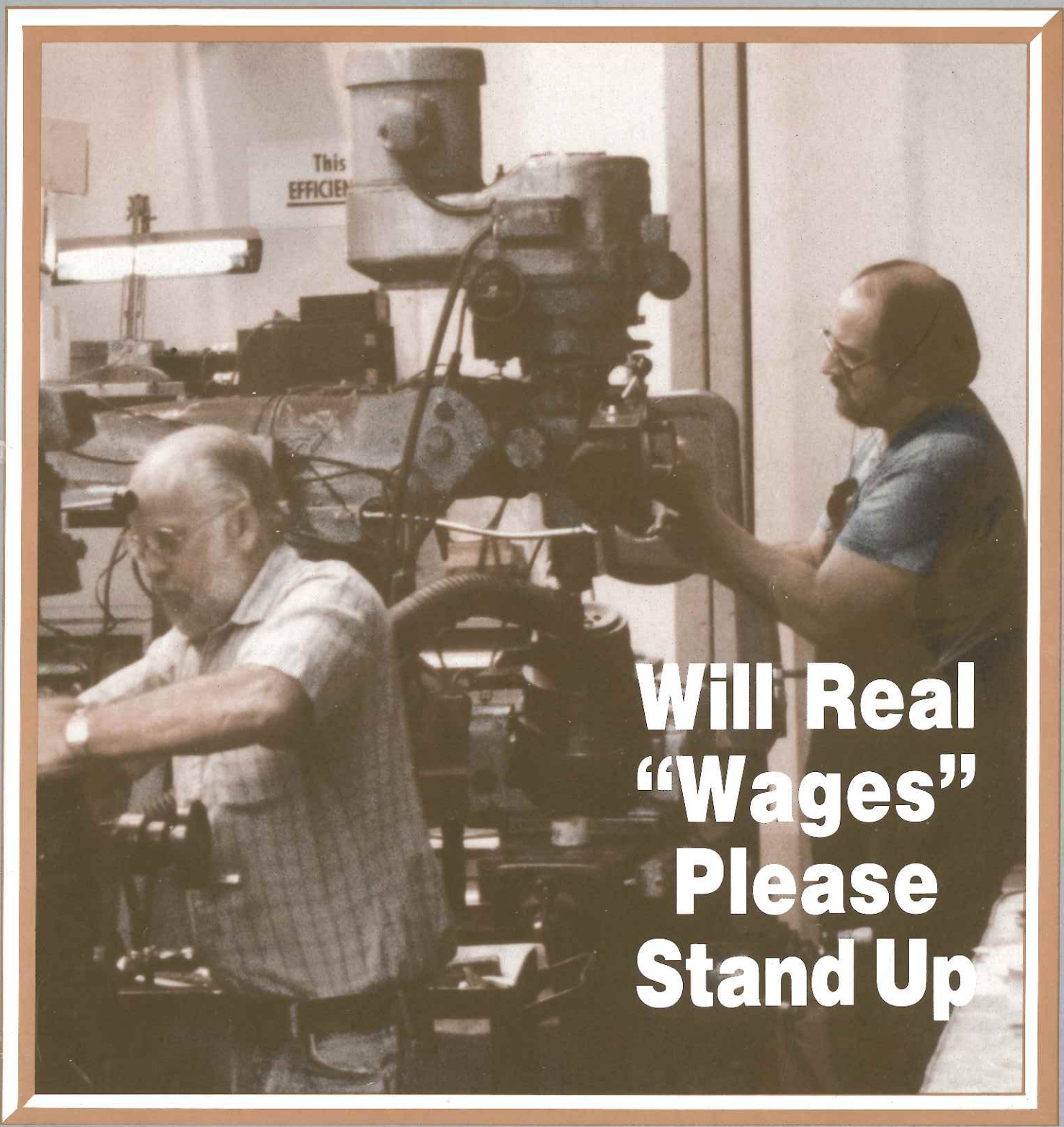


Will Real "Wages" Please Stand Up

LOOKING BACK TEN YEARS AGO

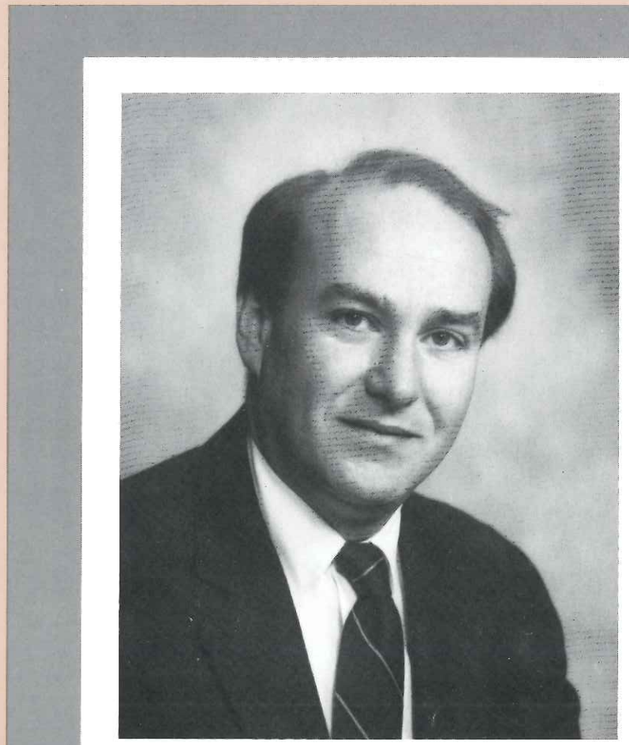
As we close the book on 1978, President BARRON GRIER has his first Executive Committee meeting and we had $1,980.57 in the checking account, and $12,826.94 in the savings account. The Claims Managers reported their new officers, JOHN DUNN, President, RALPH CHAMBLEE, Vice-President. T. EUGENE ALLEN, III was undertaking an expert witness bank.

LOOKING BACK TWENTY YEARS AGO

Then President H. GRADY KIRVEN and HUGH HARLESS, President of the Claims Managers, announced that March 27, 1970, would be the Joint Meeting at the Sheraton, Fort Sumter in Charleston.

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.

PRESIDENT'S PAGE



MARK H. WALL

We embark upon a New Year for our Association with new officers and new additions to the Executive Committee. However, the strength of our Association is the continuity of direction which continues from year to year.

Carl Epps set as the major goal for our Association - increased service to our membership. Frank Gibbes expanded on the same theme and added an increased participation by the members. The specific goals established by Frank last year will be continued into this year.

The Chairmen of our Committees have been established and are listed elsewhere in **The Defense Line.** Each of you will be receiving a survey asking you if you would like to serve on a Committee and your preference. It is our intention to place each member of the Association, who wants to serve on a Committee, on the Committee of their choice.

With specific regard to service to our members, I would like to point out the fine job that the Amicus Curiae Committee has performed and their successes. This is particularly shown by the case of ***Barnwell v. Barber-Coleman Company,*** **Supreme Court Opinion Number 23086,** filed October 9, 1989 dealing with punitive damages and strict liability. I believe that our Amicus Curiae brief, authored by Tim Bouch, greatly assisted the Court in determining that punitive damages are not allowable in a strict liability cause of action.

We invite any member who has a novel issue or an issue of importance to the Defense Bar to contact the Amicus Curiae Committee for consideration as to filling an Amicus Curiae brief.

We will again put on a Seminar in conjunction with the State Bar. That together with the educational portion of our Annual and Joint Meeting will provide sufficient CLE hours for all of our members. We will include, in conformity with the new Supreme Court Rule, and allocation of time devoted to ethical considerations.

Our Legislative Committee will again track, and if necessary, appear before the Legislature on bills of interest to the Defense Attorneys. As an aside, we have already received notice of a prefiled bill to attempt to statutorily overturn the ***Barnwell*** decision.

Also, under Legislative activity, I would like to have the Committee identify each Board and Commission of the State which specifically provides that an attorney will be a member of such Board or Commission so that we can attempt to have our voice heard at all levels within the State government.

On another subject, thanks to the dues increase implemented last year our Association is financially sound. With your continued participation in our programs, it will remain in that condition.

I would be remiss if I did not again express the thanks of the Association to Frank Gibbes for his many contributions to the Association during his year as President. Frank showed his expertise by putting Mike Wilkes and Tom Wills in charge of the Annual Meeting, which I think all will agree was a complete success, both educationally and socially.

Speaking for myself, the officers and the Executive Committee, we look forward to working with you and for you and solicit your input as to the direction and projects of the Association for the coming year.

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Law Practice Facts, Figures

• **States with the most lawyers:** California: 82,646; New York: 75,733; Texas: 41,320; Illinois: 37,520; Pennsylvania: 34,880.

• **Total Lawyers nationwide:** 676,852 — almost double the number in 1970 (355,242). By the year 2000, there will be an estimated one million lawyers.

• **Highest lawyer-to-population ratio:** District of Columbia: 1 to 25; New York 1 to 280; Alaska: 1 to 297; Massachusetts: 1 to 309; Colorado: 1 to 334. Nationwide: 1 to 418.

• **What lawyers do:** (using 1980 figures): Government: 50,490; Judicial: 19,160; Individual private practice: 179,923; Group private practice: 190,187; In-house corporate: 73,862; Private industry: 54,626; Educational institutions: 6,606; Other private employment: 12,630; Inactive/retired: 28,582.

• **Billable hours:** The average for partners, 1,680; for associates — 1,840. Ten years ago, the average billable hours for partners was about 1,525. *(Still, more and more firms are requiring 2200-2500 hours to justify present salaries and yield desired returns to partners.)*

• **Lawyer income:** The average is $101,455. The median is $65,995. The average attorney's net worth is $512,300.

— ABA Journal, October 1987.

• **Trends for House Counsel:** A survey by Arthur Young & Co.'s Law Firm Consulting Gourp, found the average general counsel earns about $235,000; senior attorney, $91,500; and new law school graduate, about $45,000. The number of law departments that handle all or part of their litigation in-house has doubled in five years, from 37% to about 75%.

— National Law Journal, 9/5/86.

Witness (Expert)
Expert opinion, which is only an ordinary guess in evening clothes -
Bok, J., Earl M.
Kersteller, Inc. v. Commonwealth, 404 Pa. 168, 173 (1961)

Will Real "Wages" Governed By State Wage Payment Law Please Stand Up

CHARLES T. SPETH II

Since the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, *et seq.,* territorial battle lines have been drawn between the state legislatures and departments of labor and the federal judiciary.[1] The battle is for jurisdiction over the payment of "wages" for the purposes of state law. The South Carolina Wage Payment Law (S.C. Code Ann. § 41-10-10 to -110 (Supp. 1988)) serves as an excellent example of this ongoing jurisdictional dispute, and an analysis of this statute provides an instructional module for employers who must establish compliance procedures.

I. WAGE PAYMENT LAW — COVERAGE AND REQUIREMENTS

The only express concession to ERISA jurisdiction contained in the South Carolina Wage Payment Law is the exclusion of "[f]unds placed in pension plans or profit sharing plans" from the definition of "wages" in Section 41-10-10(2). Otherwise, wages are defined as "all amounts at which labor rendered is recompensed...and includes vacation, holiday, sick leave, and severance payments...." *Id.* This South Carolina law requires all employers with five or more employees to: (1) notify all employees, upon hiring, of the wages to be paid and the time and place of payment (by posting or otherwise in writing); (2) post written notice of changes in wages at least seven days in advance; (3) keep records of wages paid; and (4) furnish an itemized statement of wages to each employee for each pay period. S.C. Code Ann. § 41-10-30.

All employees in South Carolina are required to comply with the remaining provisions of the law which include: (1) allowing employees one withdrawal for each wage deposit made by an employer in a financial institution pursuant to a wage deposit plan; (2) providing written notice to employees prior to withholding or diverting any portion of wages; (3) payment of all wages due (or conceded to be due by the employer) to a terminated employee within 48 hours of the time of separation or the next regular payday; and (4) providing written notice to employees of any disputed wages not paid by the employer. S.C. Code Ann. § 41-10-40 to -60. The South Carolina Labor Department at the request of an employee or at its own instance may: (1) investigate fully any alleged violations; (2) endeavor to resolve all disputes through mediation and conciliation; (3) issue a written warning or civil penalty; (4) report criminal misdemeanor of wilful refusal to pay wages; and (5) collect unpaid penalty. S.C. Code Ann. § 41-10-70 to -90. Following the conciliation process, either party may pursue state judicial action. S.C. Code Ann. § 41-10-70(B).

II. ERISA — COVERAGE AND REQUIREMENTS

ERISA covers two basic types of employee benefit plans: pensions, where income is deferred until termination of employment or beyond, or is paid upon retirement; and welfare benefits, where benefits are paid for certain limited purposes. Examples of pension plans include: profit-sharing, money-purchase, 401(k), savings or thrift, stock bonus, employee stock ownership, and standard pension (generally payable in life annuities). Examples of welfare benefit plans include: medical, hospital, sickness, accident, disability, life insurance, severance pay, vacation, apprenticehip, training, day care, scholarship, and prepaid legal services. The only express concession to state wage payment law jurisdiction under ERISA is contained in United States Department of Labor regulations, in which certain benefits categorized as "payroll practices" are exempt from ERISA welfare benefit plan coverage. 29 C.F.R. § 2510.3-1 (1986). These "payroll practices" include: overtime, shift differentials, sick leave, holiday pay, and vacation pay, where such payments are normal compensation out of the employer's general assets for time otherwise ordinarily worked by the employee. ERISA covers employee pension and welfare benefit plans maintained by all employers "engaged in commerce or in any industry or activity affecting commerce" with limited exceptions, including governmental plans, church plans, and state-mandated benefit plans. 29 U.S.C. § 1003.

Disputes which "relate to any employee benefit plan" subject to ERISA may not be governed by state wage payment laws, because such laws are preempted. 29 U.S.C. § 1144. Instead of state wage payment law, employee benefit plans subject to ERISA must comply with federal procedural and substantive requirements which are enforceable by administratively imposed fines, court actions, and criminal penalties. A participant or beneficiary whose benefit claim has been denied by the plan must first exhaust his intraplan appeal remedies before filing a civil action in either state or federal court under ERISA.[2] Such participant or beneficiary may also complain to the United States Department of Labor or, if the plan is tax-qualified, the Internal Revenue Service. There are many other civil actions under ERISA, including wrongful discharge and fiduciary breach claims, which may result in *personal* liability. ERISA requires documentation of the plan and distribution of a summary document (benefits booklet, summary plan description) to participants and beneficiaries in the plan. 29 U.S.C. § 1021. However, if there is a required waiting period prior to plan participation (e.g., six months or one yer), the distribution of the benefits booklet may be remote in time to the date of hire. ERISA and the United States Department of Labor regulate the content of the plan document and the benefits booklet. A plan administrator who fails or refuses to timely issue documents requested by a plan participant or beneficiary may be sued and penalized up to $100 per day. Among ERISA's substantive provisions are COBRA health care continuation rules, pension vesting, participation, funding, and commencement of benefit payment rules.

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WAGES

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III. WHEN ARE WAGES REALLY "WAGES"?

As outlined above, an employer's obligations, liability, and functions vary dramatically depending on which law governs the compensation at issue. The regulatory agency, the documentation, the notices, the penalties, and the court which will hear the dispute are all determined by which law is applied. The following discussion may help clarify which law is applicable for specific categories of compensation.

A. Salary, Bonuses, Incentive Pay, and Remembrance Funds

The distinction between wages and pensions primarily lies in the time of payment. So long as cash, stock, or other payments to the employee for the employee's service are distributed during the year in which such payments were earned, such payments will not lead to a finding of an ERISA-covered pension plan. In contrast, if cash, stock, or other "payments are systematically deferred to the termination of covered employment or beyond, or so as to provide retirement income to employees," then according to United States Department of Labor regulations, that deferral may lead to a finding that a "pension plan" has been created, subject to ERISA. 29 C.F.R. § 2510.3-2.

B. Savings Plans, IRAs

United States Department of Labor regulations state that individual retirement annuities or accounts are not ERISA-covered pension plans, provided that: (1) there is no employer contribution; *and* (2) the employer permits but does not endorse the publication of the program and remits any payroll deductions or dues checkoffs to the sponsor; *and* (3) participation for employees or members is completely voluntary; *and* (4) the employer receives no consideration other than reasonable consideration for its services actually rendered in payroll deduction. 29 C.F.R. § 2510.3-2. So long as there is employer contribution to the savings plan, there may be a finding that a "pension plan" has been created, subject to ERISA.

C. Vacation Pay, Holiday Pay, Sick Pay, Tuition Reimbursement

In April of 1989, the United States Supreme Court resolved the dispute between ERISA and state wage payment law as governing the payment of unused vacation time. In *Massachusetts v. Morash*, 109 S. Ct. 1668 (1989), the Court held that employer-sponsored vacation time plans which are paid out of general assets were not ERISA-covered employee welfare benefit plans. This decision enforces United States Deprtment of Labor regulations which distinguish funded vacation pay plans (ERISA-covered) from unfunded programs in which benefits are paid out of general assets (state-law governed). 29 C.F.R. § 2510.3-1. Since the labor regulations treat holiday pay, sick pay, and tuition reimbursements in a manner similar to vacation pay, it is likely that the regulations addressing these items would also be enforced. It is important to note that sick leave which is paid out of general assets will be governed by state law; however, a disability plan that is funded by an insurance policy will be an ERISA-covered employee welfare benefit plan.

D. Severance Pay

Several years ago in a case from North Carolina, the Fourth Circuit Court of Appeals held that the North Carolina Department of Labor had no jurisdiction over employee severance pay programs, because they were ERISA-covered employee welfare benefit plans. That decision was summarily affirmed by the United States Supreme Court. *Holland v. Burlington Indus., Inc.*, 772 F.2d 1140 (4th Cir. 1985), *aff'd mem. sub nom. Brooks v. Burlington Indus., Inc.*, 477 U.S. 901, 106 S. Ct. 3267, *cert. denied*, 477 U.S. 903, 106 S. Ct. 3271 (1986). *See also Gilbert v. Burlington Indus., Inc.*, 765 F.2d 320 (2d cir. 1985), *aff'd mem. sub nom. Brooks v. Burlington Indus., Inc.*, 477 U.S 901, 106 S. Ct. 3267 (1986). Thus the law is well settled that severance pay policies must comply with ERISA.

IV. WHY DOES IT MATTER?

The threshold determination of which law governs an employer's policies is critical to establishing a compliance program. As we have seen, state wage payment law permits the posting of notices as employee communication; ERISA requires individual benefit booklet distribution. State wage payment law requires notice on date of hire and posted notices of change in advance. ERISA does not require distribution to any individuals other than participants and beneficiaries in the plan. These are just a few examples of compliance problems that can arise. ERISA requires a specific claim filing and review procedure, and labor regulations establish the content and deadlines for the plan's decisions on appeal. Unaware of the true parameters of "wages," employers may find themselves unable to defend ERISA actions instituted by participants or by the United States Department of Labor. Moreover, there are significant advantages to be gained by complying with ERISA, since *properly worded* employer decisions regarding employee benefit plans will be given a more deferential standard of review under ERISA than under state wage payment law. The broad wording of the South Carolina statute belies the possibly narrow parameters of its coverage due to ERISA preemption. Practitioners should alert employers to this fact and to its impact on policy implementation.

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[1] The insurance commissions of each state also dispute the jurisdictional limits of ERISA. *See* Porth & Abel, *ERISA Impact on Insurance Litigation,* Defense Line, Vol. 17, No. 2, p. 5 (Spring 1989).

[2] Congress granted concurrent state and federal jurisdiction to hear ERISA benefit disputes, but restricted all other ERISA litigation to federal courts. 29 U.S.C. § 1132(e).

INTERPLEADER

Justice LOGAN E. BLECKLEY, in Andrews v. Halliday, 63 Ga. 263.

Opinion: The general rule is that the complainant in a bill of interpleader merely stirs up a war and then leaves the real belligerents to fight it out, he retiring from the scene to repose in dignified ease, holding, the while, the prize which is to reward the victor.

Head Injury: One Side of the Coin

ROBERT E. DEYSACH, PH.D.
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Neuropsychological assessment and cognitive deficit and rehabiltiation are just a few terms in a developing lexicon to be used in the '90's by those dealing with brain injured individuals. More and more are professionals far removed from the actual delivery of clinical services being required to *assess* an individual's level of disabilty and to *defend* positions regarding efficient use of treatment resources following a possible brain injury.

It was the need for such information that prompted a short workshop this past Summer delivered by this author to the Defense Trial Lawyers and Claims Management Association. The topic was the role of the neuropsychologist in the evaluation and treatment of head injuries. The workshop provided the spark for the present paper and the comments that follow are designed to serve as a foundation for fostering meaningful communications among patients and families, treatment professionals and those with the responsibility of coordinating delivery of appropriate services. Combined with subsequent comments in a companion paper, the present remarks are designed to ultimately assist the readership in drawing meaningful distinctions between organic damage, neuropsychological deficit, and functional disability.

Early Case Management

It is axiomatic that the initial medical treatment of a recently-injured patient is designed to accurately diagnose the presence of conditions which are themselves life-threatening or which significantly limit, if left untreated or mistreated, the level of expected recovery. At these times, **mild cognitive deficits** are usually treated *only to the extent* that they signal the need for immediate medical intervention. Descriptions of most cognitive behavior in such patients are often found later as dormant entries in Nursing Notes.

Initial diagnosis of cognitive functioning of the brain following an accident frequently includes a combination of behavioral, or "clinical," judgments regarding the patient's present **level of consciousness.** In addition to guilding immediate medical response, information regarding level of consciousness at the time of admission is frequently helpful later in attempting to estimate potential course of recovery and level of residual cognitive deficits expected.

One system used in early medical management distinguishes patients who are 1) alert and oriented from those who are 2) lethargic but able to speak and follow one-step commands from those 3) unable to speak. Among this last group, the level of coma can be further defined. The **Glasgow Coma Scale,** measuring visual and motor responses along with patient vocalizations, provides a quantitative index which is easily communicated. This information, along with results of laboratory diagnostic procedures, is subsequently useful in understanding the severity of an injury. When other medical problems (e.g., the absence of fractures) are not evident, overnight hospital stays and more extended testing regarding brain injury are likely to be postponed except for patients whose cognitive status is lethargic or comatose.

The Role of Rehabilitation

A rehabilitation setting frequently inherits a patient with an identified head injury several weeks or months after the trauma. In the United States, there exist only about 100 free-standing rehabilitation hospitals, so most patients are simply transferred to a rehabilitation wing or unit of a general medical hospital for sufficient inpatient treatment. The goal is to facilitate safe adjustment back home or to other community agency appropriate for the patient's level of functioning.

Traditional inpatient rehabilitation often is primarily directed toward **physical therapy,** designed to make the patient as independent as possible in changing positions and locations, and **occupational**

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HEAD INJURY

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therapy, which assists the patient in managing a range of daily self-help activities. The inclusion of **speech language pathology,** a potential valuable resource in work with cognitive deficits, is often limited to those circumstances in which problems with swallowing, articulation or communication are apparent.

Cognitive deficits are typically *only indirectly* addressed, i.e., if they interfere with compliance to medical practice, the conduct of therapy or immediate discharge options. Some of the cognitive disabilities which *are* most likely to be noted include: a) disorientation b) distractibility, c) perceptual deficits (e.g., neglect a portion of self or environment), d) auditory comprehension deficits, e) motor sequencing problems (i.e., dyspraxias), f) word-finding problems, and g) rote (i.e., directed or cued) memory deficits.

Often missed or ignored are problems with a) initiative and goal setting, b) pattern recognition, c) reading comprehension, d) calculations and numerical reasoning, e) route learning, f) cognitive flexibility, g) perception of emotion, h) systematic problem solving, i) social understanding and judgment, j) cognitive flexibility and k) incidental memory. While none of these problems are likely to figure strongly in discharge options, they come into much sharper focus for mildly impaired patients and their families once an attempt is made to foster resumption of more familiar home and work routines. **These "mild" cognitive deficits often are likely to take on greater significance as a major basis for claims of subsequent disability.**

Direct Hospital Discharge

Only about 1 in 20 individuals experiencing cognitive deficits at the time of the accident are treated within an inpatient rehabilitation setting. Patients who are generally alert and oriented at the time of emergency room admission, who do not report symptoms of pain or exhibit signs of other disorder, and who do not have other incapacitating medical problems, are very often not admitted for an inpatient hospital stay. Although some of these patients are expected to experience mild disruption of function upon return home as a result of a head injury, this disruption is predicted to be temporary, with a resumption of usual levels of productivity and adjustment to follow an anticipated time-limited recovery period. And a large percentage of these patients do just that!

Diagnosis of Mild Head Injury

The term **"post-concussion syndrome"** is a frequently used neurodiagnostic label to identify those patients who experience behavioral symptoms linked to a mild head injury. The syndrome itself consists of a loose amalgam of behaviors which may extend to include those cognitive disturbances which go unaddressed within traditional inpatient rehabilitation settings. These "post-concussion" behaviors are frequently diagnosed clinically and comprise a broad and individualized symptom picture. In addition to those cognitive dysfunctions listed above, emotional expression and control (e.g., depression and inability to cope with stress) are other frequently identified sequelae of a mild head trauma noted by medical diagnosticians.

In cases of continuing unresolved cognitive and emotional difficulty, a prior diagnosis of "post-concussion syndrome" can serve to alert an examining physician to solicit more detailed behavioral data sometime during the recovery period. **Neuropsychological assessment,** a more extensive, quantitative diagnostic process, often identifies the exact pattern of symptoms helpful in determining whether a functional link does exist between condition of the brain and performance deficits for an individual patient. (As will be explained in a later paper, the nature of neuropsychological evaluation varies greatly depending upon the recency of injury and the purpose of the evaluation.)

Because of the growing numbers of patients now alive only through recently advanced emergency medical procedures, combined with a large, previously ignored, group of individuals reporting mild cognitive deficits linked to a head injury, those with the responsibility of authorizing and coordinating delivery of services are now expected to deal a greatly enlarged range of issues linked to long-term patient adjustment and productivity. Currently available agencies and models (e.g., facilities and treatments serving the developmentally handicapped or mentally ill) are insufficient to be these needs. *Inadequate treatment of such individuals promotes disability and unnecessarily burdens the community required to underwrite their care.*

It is clear that a head injury, even one producing decreases in alertness and memory loss for events surrounding the accident, does not by necessity produce permanent evidence of loss of function. To expect disability where disability is not present is to needlessly restrict an individual's productivity and introduce a base for loss of self-esteem, comfort and optimism. What is needed is a strategy to accurately predict the rate and level of recovery for these patients as early as possible and to foster a therapeutic response individualized to each patient's needs.

The diagnosis of "post-concussion syndrome" *does not itself formally distinguish those patients whose recovery will be complete from those who will experience residual deficits.* As long as confusion exists on this point, patient, family, and professionals working with patients (including guarantors and those providing legal assistance) will continue to ue the diagnosis of "post-concussion syndrome" as support for claims of permanent disability as well as for claims of complete recovery.

The Nature of Damage

To promote consistency in communication regarding return of function following a head trauma, it is critical to both adopt and share a general model for understanding brain damage and recovery of function. The physical facts regarding what can happen in a closed head injury are themselves helpful to understand. In this regard, the use of apt metaphor can initiate an understanding of some of the variables in head injury. Such metaphors can then be blended into more valid descriptions of the injury process in subsequent work with patients, families and others.

One metaphor of demonstrated value characterizes the effects of a closed head trauma on the brain in terms of the forces of a storm on a boat moored in its slip. Not only can a boat (i.e., the brain) be tossed against nearby stationery objects, it also is likely to yank against its lines and cleats. Depending on the force of the storm, the vessel itself may develop leaks, resulting in further disruption or destruction of inside the boat. Some of this damage will be immediately evident, while other damage may accrue (e.g., as a consequence of increased moisture in the boat).

Analagously, the force of the impact of the brain against structures inside the skull, the "cavitation" caused by the pulling away of the brain from the side opposite impact, injuries to the covering of the brain (which "ties" it to the skull), and shifts in blow flow, bleeding, leaking and swelling of portions of the brain - all can combine to produce damage. When such damage is done to the brain, loss or disruption of function is likely to occur. When the trauma is mild, the injury is likely to be mild and the behavioral evidence minimal or non-existent.

The Recovery Process

The signs of physical injury following a closed head injury are usually evident immediately, with a gradual return of function. Some effects might be slightly delayed, however, and, in some instances, may be themselves life-threatening (e.g., accumulation of blood in the brain outside the vascular system). At the time of hospital discharge, it is reasonable to expect that medical management has successfully assessed and addressed the injury and physical complications.

Available research offers a range of physical factors which are likely to account for the gradual recovery of function. Some research has pointed a) to the possibility of **regeneration** (through "sprouting or remodeling") of nervous tissue in the central nervous system, b) to **reactivation** of "silent" pathways, c) to neutral **"reorganization"** within the brain, d) to the **reduction** of vascular inflammation or "scar tissue" occurring either spontaneously or through pharmacological intervention, and e) to **recovery** from "shock" to the uninjured portions of the nervous system.

Behaviorally, the evidence of disability should be greatest at or around the time of injury. [As will be described more clearly in the companion paper, subsequent complaints of cognitive deficits prompt comprehensive reviewing of previous case records as well as the conducting of further neuropsychological testing to understand the behavioral course of recovery. In doing so, it is possible to match rates and type of improvement with expected patterns following injury.]

Cognitive Rehabilitation

While support for the above theories of recovery is drawn largely from research with laboratory animals, a large amount of research with human subjects has demonstrated that **environmental stimulation** is a critical ingredient in the recovery process. It is likely that 1) general rehabilitative efforts within a hospital, 2) the efforts of other available health care resources and 3) the prompting of family and friends work together to supply opportunities for helpful skill development and social stimulation - i.e., forces which foster faster recovery.

Acute rehabilitation settings designed to provide a more coordinated and focussed approach to promoting return of function following a head injury. Although it is no longer asserted that recovery stops within a year or 18 months, it appears that it is during the early weeks following injury that the introduction of **intensive rehabilitation** is most timely. Systematically building levels of attention/concentration, verbal and perceptual analytic skills, automatic and novel motor sequencing, rote and incidental memory - provides a solid base for developing the most functional routines within the patient's own home, work and community environments.

Utilizing an interdisciplinary training model, comprehensive rehabilitation settings attempt to remain alert to residual deficits and aspects of a patient's post-discharge environment likely to promote dysfunction. Training patients, families and employers in **compensatory strategies** (e.g., through use of assistive devices) for those deficits which cannot be remediated, assisting patients in **substituting** new routines for those that are no longer possible and in instructing those involved about **methods of coping** with new demands are all part of the rehabilitative process.

Cracks in the System

Rehabilitation programs are designed to increase the rate of recovery of fuction or to maximize the level of patient productivity and adjustment following an injury. Unfortunately, as indicated above, cognitive deficits are temporarily ignored or denied following a head injury. Although some personal, family and community resources are often able to mitigate problems as they develop and effectively promote an individual's return to full function, more often than not individuals and agencies are unprepared.

As a consequence, what may be experienced for patient, family and employer are increasing (rather than decreasing) signs of disability over time. A "cycle of failure" can develop with a descending spiral of expectations of deficit on the part of the patient and frustrations for family, employer and community.

The Role of Prevention

The problems facing the severely head injured patient and their families should not be confused with those facing mildly injured ones. The most immediate task for those working with the severely injured patient is frequently one of locating a setting prepared to continue to promote behavioral change while themselves remaining vigilant to the factors likely to further impair function and long-term adjustment (i.e., the interaction, often subtle, between poor behavioral treatment, poor physical health, and poor response to medication).

For mildly injured patients, on the other hand, the goal should be to promote a return to former levels of independence, responsibility and adjustment. Many fail to do so, however, because the need for careful treatment and social programming has not been recognized. As a consequence, permanent disability does result - even in the face of full physical recovery.

Today, the number of individuals reporting cognitive deficits and resulting disability linked to mild head injury is growing. The implications of such claims are being felt by diagnosticians and therapists as well as by those evaluating such services. The long-term consequences of failures to regain maximum levels of functioning are indeed significant and costly both to the patients and their families, and to the community at large.

To meet the challenges of a new decade, the neurophychologist, the physician, and those underwriting service must share responsibility for developing a set of principles as well as an improved level of understanding and trust in order to provide the most efficient and economical social response possible. The need for effective and timely coordination of services has begun to be addressed through the use of **trained case managers** both within insurance company and rehabilitation center.

It is within this emerging system of cognitive rehabilitation that the neuropsychologist plays an earlier role in planning following a traumatic injury. Another "side of the coin" (alluded to by the title of this paper) refers to those instances when a neuropsychologist is called upon only after expected recovery has not occurred. The task then is to determine the relative contribution of physical injury to the brain versus those non-organic contributors to reduced productivity and adjustment. This is the topic of the paper to follow in a later issue of this publication.

About the author:
ROBERT E. DEYSACH, Ph.D. received his doctorate in Clinical Psychology at Syracuse University and completed post-doctoral study in Clinical Neuropsychology at the University of Oregon Medical School. Dr. Deysach is on the USC-Columbia psychology faculty and serves as Director of Clinical/Neuropsychology at HealthSouth Rehabilitation Hospital in Columbia. HealthSouth is a 60-bed acute rehabilitation hospital treating which treats a range of head, spinal cord and orthopedic disabilities.

William M. Hagood, III
Love, Thornton, Arnold & Thomason

The following Order was recently signed by Judge Patterson which permits defense lawyers to privately confer with treating physicians if the treating physician voluntarily agrees to have an ex parte communication with the defense attorney. The Defense line thought that this Order might be helpful to defense attorneys across the state and has run the Order in its entirity. Even though the particular case in question deals with a medical malpractice case, the same principle involved would be applicable in all civil cases.

COURT OF COMMON PLEAS
ORDER
C/A NO. 88-CP-23-4864

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Joe Marshall Biggerstaff, Sr., individually, and as Administrator of the Estate of June Knight Biggerstaff,

Plaintiff,

-vs-

Allen Bennett Hospital and Dr. Raymond V, Grubbs, Dr. Dale A. Van Slooten, William T. Ellison and the Greenville Hospital System,

Defendant.

Plaintiff seeks a protective order which would prohibit the defendants from engaging in *ex parte* conferences with the treating physicians of the deceased, June Knight Biggerstaff. Defendants take the position that *ex parte* conferences with the treating physicians are permissible since there is no physician-patient privilege in South Carolina and for the further reason that the wrongful death and survival lawsuits filed by the Administrator of the Estate of June Knight Biggerstaff constitutes a waiver of any expectation of privacy attaching to communications between patient and doctor. The Court, believing that South Carolina law does not prohibit such *ex parte* communications and that good and valid reasons exist for permitting private interviews by both parties, declines to grant plaintiff's request for a protective order.

In determining an attorneys right to privately confer with a witness, one must start with the general proposition that no party litigation has anything resembling a proprietary right to any witness's evidence. Absent a privilege no party is entitled to restrict an opponent's access to a witness, however partial or important to him, by insisting upon some notion of allegiance. See *International Business Machines Corp. v. Edelstein* 526 F2d 37, 41 (2nd Cir. 1975); 8 Wigmore *Evidence* Sec 2192 (McNaughton rev. ed 1961). While rules of civil procedure have provided methods of acquiring evidence from recalcitrant sources by compulsion, they have never been thought to preclude the use of such venerable, if informal, discovery techniques as the *ex parte* interview of a witness who is willing to speak. *Hickman v. Taylor*, 329 US 495, 67 S.Ct. 385, 91 L Ed 451 (1945).

South Carolina is included within a minority of states that does not have a physician-patient privilege. *Peagler v. Atlantic Coast Line Railroad Co.,* 232 SC 274, 101 SE2d 841 (1958). Even so, plaintiff argues that the American Medical Association and the South Carolina Medical Association place restrictions upon physicians and thereby create a right of privacy even in absence of a physician-patient privilege. A similar argument was made but rejected in Georgia and Florida, two other states that did not have a physician-patient privilege when the cases were handed down. *Orr v. Seivert,* 162 Ga. App. 677, 292 S.E.2d 548 (1982); *Coralluzzo v. Fass,* 450 So.2d 858 (Fla. 1984). See *Green v. Bloodsworth,* 501 A.2d 1257 (Del. Super 1985) ("any limitation (about talking to defense counsel) based on physician's fear of violating a patient's qualified right to privacy implicit in the Hippocratic Oath is not grounded in legal reality once the patient files a personal injury claim that puts his physical, mental, or emotional condition in issue"); *State ex rel. Stufflebam v. Appelquist,* 694 S.W.ed 882 (MO.App. 1985) (fiduciary relationship between the doctor and patient did not preclude *ex parte* conference even though the Missouri State Medical Association had adopted the American Medical Association *Principles of Medical Ethics).*

Whether or not the physicians have or will breach any professional standards of conduct by talking to defense attorneys is an issue that should be addressed in spite of the fact that the physicians are not before the court and are not represented by counsel.

After a review of the case law and other authorities, this Court concludes that even assuming a right of privacy exists it has been waived by the personal representative when he filed the lawsuit. By bringing the action the plaintiff has placed the physical condition of the deceased in issue which constitutes a waiver of communications that might otherwise be privileged under professional standards applicable to physicians. As Stated in 8 Wigmore *Evidence* Sec. 2389:

> In the first place, the bringing of an action in which an essential part of the issue is the existence of physical ailment should be a waiver of the privilege for all communications concerning that ailment. The whole reason for the privilege is the patient's supposed unwillingness that the ailment should be disclosed to the world at large; hence the bringing of a suit in which the very declaration, and much more the proof, discloses the ailment to the world at large, is of itself an indication that the supposed repugnancy to disclosure does not exist.

There is a division among jurisdictions regarding the permissibility of informal, *ex parte* contact by defense counsel with plaintiff's treating physician. Some states hold defense attorneys are limited to formal discovery in efforts to obtain information from these physicians. For example, see the case of *Loudon v. Mhyre,* 756 P2d 138 (Wash. 1988) and the cases cited therein. A growing number of states, it appears, have adopted a more rational approach and allow the defense to have informal discussions with the physician. *Doe v. Eli Lilly & Co.,* 99 F.R.D. 126, 128 (D.D.C. 1983) is one of the leading cases in holding that *ex parte* interviews are allowed. In that case the plaintiffs sued several pharmaceutical manufacturers, claiming that ingestion of DES during pregnancy resulted in birth defects. Defense counsel wished to inquire into the plaintiffs medical histories during pre-trial discovery to identify other possible causes for their injuries. To this end, defendant Lilly moved the court to require the plaintiffs to authorize their physicians to discuss the medical histories with Lilly. The trial court granted the motion, agreeing that a prohibition on *ex parte* interviews would unfairly burden the defendant's efforts at trial preparation. The court discussed the purposes behind the physician-patient privilege and pointed out its limitations.

> The privilege was never intended, however, to be used as a trial tactic by which a party entitled to invoke it may control to his advantage the timing and circumstances of the release of information he must inevitably see revealed as some time... The inchoate threat implicit in refusing or qualifying permission to speak to a witness in possession of privileged information operates to intimidate the witness, who is then placed in the position of withholding or divulging what he knows at his peril, and is itself a species of improver influence. 99 F.R.D. at 128.

In *State v. Appelquist,* 694 S.W.2d 882 (Mo.App. 1985), defense counsel wanted to informally interview a treating physician of the plaintiff. The trial court denied defendant's motion, but the appellate court ruled that defense counsel had the right to conduct such an *ex parte* conference so long as the physician consented to the interview. ("The trial court has no authority to compel Dr. Shealy to grant such an interview.") The court noted that the physician-patient privilege had been waived once the plaintiff's physical condition was made an issue in the pleadings. It also pointed out that it is "arguable that permitting one attorney to overhear his opponent's interrogation of a witness might invade the work product of the opponent and lay bare matters of trial strategy and mental impressions or legal theories of the opponent." 694 S.W.2d at 888.

The recent trend of authority is to permit *ex parte* interviews of the plaintiff's treating physicians, not only because statutes and codes do not prohibit such conferences, but also because public policy and fundamental fairness favors them. Other cases permitting private meetings include *Romine v. MediCenters of America, Inc.,* 476 So.2d. 51 (Ala. 1985); *Covington v. Sawyer,* 9 Ohio App.3d 40, 458 N.E. 2d 465 (1983); *Lazorick v. Brown,* 195 N.J. Super. 444, 480 A.2d 223 (1984) ("Defendants ought to have the same right of access as plaintiffs have to potential witnesses, even if they are treating physicians."); *Stempler v. Speidell,* 100 N.J. 368, 495 A.2d 857 (1985)("Personal interviews, although not expressly referred to in our Rules, are an accepted, informal method of assembling facts and documents in preparation for trial. Their use should be encouraged as should other informal means of discovery that reduce the cost and time of trial preparation."); *Trans-World Investments v. Drobny,* 554 P2d 1148 (Alaska 1976) ("We find no legal impediments in existence which limit informal methods of discovery, such as private conferences with the attending physicians, or the voluntary exchange of medical information by the parties... the intended purpose of our discovery process is to simplify trials, not complicate them." 554 P2d at 1151); *Langdon v. Champion,* 745 P2d 1371 (Alaska 1987); *Coralluzzo v. Fass*, 450 So2d 858 (Fla. 1984); *Green v. Bloodsworth,* 501 A.2d 1257 (Del. Super. 1985) ("This Court will not condone the use of formal discovery rules as a shield against defense counsel's informal access to a witness when these rules were intended to simplify trials by expediting the flow of litigation... and to encourage the production of evidence.")

There are several reasons why it makes good judicial sense to permit informal discovery. Requiring a defense attorney to depose each treating physician creates an unnecessary expense which could be partially or totally avoided through the use of informal interviews with these physicians. In some small cases, discovery would be virtually eliminated because the taking of a formal deposition would be cost prohibitive. Furthermore, enabling a defense attorney to informally discuss the merits of a case at its initial stages of litigation with a treating physician aids in the proper and expedient evaluation of a claim. It is unjust to assume that a defense attorney's interview with a treating physician will automatically taint that physician's testimony. On the contrary, that physician may adopt the plaintiff's viewpoint and in so doing, convince the defense attorney of the merits of the plaintiff's case. The Court has always encouraged prompt evaluation and settlement of cases and therefore should not place obstacles in the path of those trying to avail themselves or probative information.

In summary, there are "entirely respectable reasons for conducting discovery by interview vice deposition; it is less costly and less likely to entail logistical or scheduling problems; it is conducive to spontaneity and candor in a way depositions can never be; and it is a cost efficient means of eliminating non-essential witnesses from the list completely." *Doe v. Eli Lilly & Co., Inc.* supra.

Defendants argue, with justification, that a practical effect of a rule prohibiting *ex parte* conferences is that it prevents a defendant from utilizing a treating physician as an expert witness. Pre-trial discovery "is intended to be a mechanism for the ascertainment of truth, for the purpose of promoting either a fair settlement or a fair trial. It is not a tactical game to be used to obstruct or harass the opposing litigant," nor is it a weapon in a war of inconvenience. *Ostendorf v. International Harvester Co.,* 89 ill.2d. 273, 283, 433 N.E.2d. 253, 257, (1982).

If a defense attorney cannot informally contact a treating physician, it is impossible for that attorney to retain the physician as an expert. Utilizing this "neutralization technique," a plaintiff's attorney is able to use favorable treating physicians as witnesses while eliminating the unfavorable.

This Court shares the view expressed by Justice Traynor in *San Francisco v. Superior Court*, 37 Cal.2d 227, 232, 231 P.2d 26, 28 (1951) where he says

> The whole purpose of the privilege is to preclude the humiliation of the patient that might follow disclosure of his ailments. When the patient himself discloses those ailments by bringing an action in which they are in issue, there is no longer any reason for the privilege. The patient-litigant exception precludes one who has placed in issue his physical condition from invoking the privilege on the ground that disclosure of his condition would cause him humiliation. *He cannot have his cake and eat it too.* (emphasis added)

For the reasons stated above the Court denies plaintiff's motion for a protective order and will not prohibit defendants' attorneys from privately conferring with the treating physicians who voluntarily agree to confer with them. And it is so ordered.

Judge Larry R. Patterson
October 11, 1989
Greenville, S.C.

COURT DIRECTS VERDICT IN EMPLOYEE HANDBOOK CASE

Charles T. Speth II
M. Susan Eglin

Haynsworth, Baldwin, Johnson and Greaves, P.A.

In *Allan v. Sunbelt Coca-Cola Bottling Co., Inc.,* Civil Action No. 88-CP-18-936 (August 12, 1989), the Honorable Luke N.

Continued on page 12

Brown, Jr., held that an employee handbook which did not contain a specific limitation of the employer's right to discharge employees at will could not serve as the basis for the plaintiff's claim for breach of implied contract of employment. The plaintiff relied on *Small v. Springs Industries, Inc.,* 292 S.C. 481, 357 S.E.2d 452 (1987), as the legal basis for his claim that his employee handbook constituted the terms of an implied contract. In directing a verdict for the defendant, the court noted that the handbook at issue in *Small* contained a specific four-step disciplinary procedure which altered the otherwise at-will employment relationship between the parties in that case.

The plaintiff in *Allan* was terminated when his position was eliminated in a companywide economic layoff. The plaintiff based his implied contract claim on the introductory section of the employee handbook which contained a list of "principles by which both the Company and the employee can join in contributing to future job security and individual growth." One of the principles provided that the employer would "try insofar as possible to provide permanent, steady work to all employees subject to normal business conditions." The plaintiff also based his claim on oral statements by the original owners of the company that the company was a secure and rewarding place to work.

In directing a verdict at the close of all the evidence, the court noted that the employee handbook in the *Small* case contained a four-step disciplinary procedure which was not followed. Similarly, the handbook in the seminal case of *Toussaint v. Blue Cross & Blue Shield of Michigan,* 408 Mich. 579, 292 N.W.2d 880 (1980), contained a specific statement that discharges would be "for just cause only." By contrast, the plaintiff could point to no discharge or layoff policy or procedure in his handbook which limited the company's right to discharge him at will. Further, the oral assurances of job security allegedly relied upon by plaintiff were too vague and general to be considered a binding contract of guaranteed employment.

Judge Brown also recognized that even if the handbook and oral assurances had been contractual, the company negated any contractual effect by issuing to plaintiff two conspicuous disclaimers. According to the court, the plaintiff's express assent to the disclaimers was not required. Rather, in the unilateral contract framework, the employee's returning to work following the issuance of the disclaimers constituted his acceptance of the modification.

The plaintiff also asserted a claim for breach of implied covenant of good faith and fair dealing. The court held that South Carolina does not recognize such covenants in at-will employment contracts.

Court Dismisses Action for Lack of Personal Jurisdiction Over Defendant Sellers and Brokers of Airplanes

By Robert W. Buffington
Sinkler & Boyd

Judge Matthew Perry (U.S. District Court, Columbia Division) recently dismissed a lawsuit against three nonresident defendants because none had sufficient minimum contacts with South Carolina. *Eagle Aviation, Inc. v. Dr. Miles A. Galin, George L. Lindeman and Flight Services Group, Inc.,* No. 3:89-1561-0 (D.S.C. Filed Nov. 15, 1989).

Galin and Lindeman, owners of an airplane, engaged defendant broker Flight Services Group, Inc. ("FSG") to sell it. The plane's availability was advertised in THE WALL STREET JOURNAL. In response to this advertisement, Eagle Aviation, Inc. ("Eagle") placed a telephone call from South Carolina to FSG in Connecticut. Later Eagle sent an offer letter to FSG which FSG signed in Connecticut. The letter was telecopied back to Eagle in South Carolina. A representative of Eagle then travelled to Connecticut to inspect the plane. Thereafter, Eagle sent a form "Aircraft Sale Agreement" to FSG, signed by Eagle in South Carolina. That Agreement indicated that Eagle intended delivery of the plane to take place in Connecticut. Eagle wired $50,000.00 into FSG's account as a credit against the purchase price of the airplane.

When the sale failed to close, Eagle sued Galin, Lindeman and FSG for breach of contract in federal district court in South Carolina. Defendants filed a motion for dismissal under Rule 12(b)(2) of the Federal Rules of Civil Procedure.

Eagle alleged the Court had jurisdiction over defendants pursuant to South Carolina's long arm statute, S.C. Code Ann. § 36-2-803 (1976). The court ruled that the defendants' contacts with South Carolina were "unique and insignificant" and held there was nothing to indicate that defendants "purposefully availed themselves of the privilege of conducting business activities in South Carolina to the extent necessary to find personal jurisdiction over them" in that state.

The Court distinguished the Fourth Circuit's opinion in *Cancun Adventure Tours, Inc. v. Underwater Designer Co.,* 862 F.2d 1044 (4th Cir. 1988), differentiating that case on the ground that there the defendant had transmitted the contract to the forum, the contract was signed and entered in the forum state, and the breach occurred in the forum state.

Judge Perry found that if there had been contract with Eagle, it was entered in Connecticut, and no acts were contemplated to be performed in South Carolina. Finally, the alleged breach, non-delivery of the plane, occurred in Connecticut.

The Court held that defendants' contacts were "random, fortuitous and attenuated," and "not of a quality or nature to support this Court's exercise of jurisdiction over defendants." The Court expressly held that an advertisement in an international publication is not sufficiently purposeful contact with South Carolina to support a finding of personal jurisdiction.

Defendants were represented by Daryl L. Williams and Sue C. Erwin of Sinkler and Boyd, John F. Beach of the Law Offices of Mitchell Willoughby and William H. Davidson of Nauful and Ellis. Celeste T. Jones and David J. Mills of the McNair Law Firm represented plaintiff.

Congress Limits Tax Exclusion for Personal Injury Damages

David C. Sojourner, Jr.

Internal Revenue Code Section 104(a)(2) provides that a taxpayer's gross income does not include amounts that he or she receives as damages (whether by suit or settlement) because of personal injuries or sickness. There has been a movement in Congress to limit the Section 104 exclusion to cases involving *physical* injuries or sickness, thereby taxing damage awards relating to *nonphysical* injuries or sickness. The proponents of such a revision achieved a minor victory with the passage of the Revenue Reconciliation Act of 1989. The Act amends Section 104 to provide that punitive damages received by a taxpayer do not qualify for the income tax exclusion unless the damages relate to physical injury or physical sickness. Under the amended statute, punitive damages received in defamation or discrimination cases, for example, would now be subject to income tax.

If the court order or the settlement agreement does not specify whether the damages are compensatory or punitive in nature, the Internal Revenue Service will look to the purpose for which the damages are awarded and the reasonableness of the amount of the damages in order to make the determination.

The amendment generally applies to amounts received after July 10, 1989, however, there are two exceptions. The amendment will not apply to any amount received after July 10, 1989: (a) if the amount is received pursuant to a written binding agreement, court decree, or mediation award in effect on or before July 10, 1989, or (b) if the amount is received pursuant to any suit filed on or before July 10, 1989.

Workers' Compensation Commission To Submit New Regulations

In its report of March 16, 1988, the Legislative Audit Council pointed out that in the past, the Workers' Compensation Commission has not amended or promulgated its regulations by the procedures as set forth in the Administrative Procedures Act. Specifically, the Workers' Compensation Commission has not been submitting its regulations to the General Assembly for approval.

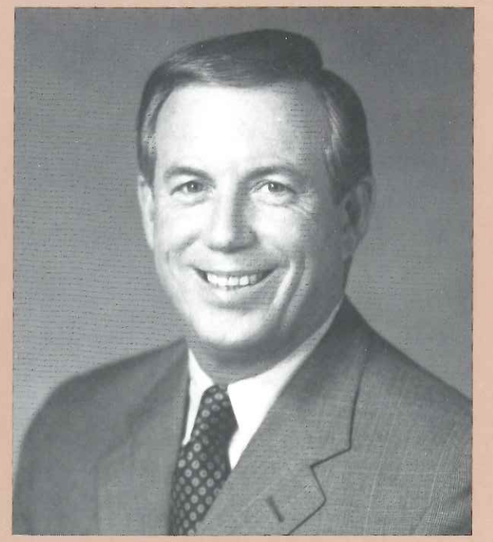
The Workers' Compensation Commission intends to submit an extensive set of regulations to the General Assembly for approval this coming year. The Commission is taking this opportunity to revise old rules and in some cases, write new ones.

Copies of many of the regulations that the Commission intends to propose are now available. The Commission is inviting comments and suggestions. Comments and suggestions can be addressed to the following:

Kelly J. Golden, Esquire
P.O. Box 1715
Columbia, SC 29202-1715

If you wish to be included on the mailing list of persons who are receiving the proposed regulations you may contact Kelly J. Golden, Esquire or Kelly's assistant Ms. Teri Snelling at 803-737-5749.

Edward Wade Mullins, Jr. 2nd Annual Hemphill Award



Columbia Attorney Edward Wade Mullins, Jr. was named recipient of the 2nd Annual *Hemphill Award.* Given in honor of the late U.S. District Judge Robert W. Hemphill, the award was presented for distinguished and meritorius service to the legal profession and the public. Edward Wade Mullins, Jr. is a senior partner and head of the Litigation Department of the Law Firm of Nelson, Mullins, Riley & Scarborough. The firm has offices in Columbia, Lexington, Greenville, Myrtle Beach and Charleston. Mullins is a 1959 Cum Laude Graduate of The University of South Carolina Law School, where he was a member of the Wig & Robe and Phi Delta Phi. He is a diplomat of the American Board of Trial Advocates and is listed in *The Best Lawyers of America,* a legal publication. He is also a member of the American, South Carolina and Richland County Bar Associations, and the Fourth Circuit Judicial Conference. He is a member of the International Association of Defense Counsel and taught in its Civil Trial Advocacy School at the University of Colorado.

Mullins is also a member of the Federation of Defense Counsel, for which he served as Regional Vice President and on the Board of Directors, a member of the South Carolina Defense and Trial Attorneys Association, a statewide group of attorneys specializing in the defense of civil damage suits, and he has served on its Executive Committee as President. He is also a member of DRI, The Defense Research and Trial Lawyers Association, which is the national group of Defense Attorneys headquartered in Chicago. He has been a DRI Regional Vice President; Vice President of Public Relations; and President.

He has appeared as a speaker at the American Bar Association National Seminar on Federal Discovery, several South Carolina Bar Continuing Education Seminars, DRI's Drug and Medical Device Seminar, and the Annual Meetings of the Federation of Insurance and Corporate Counsel, the Association of Defense Counsel, the South Carolina Bar Association, the Southeast Claims Executives, the National Association of Independent Adjusters, the National Association of Independent Insurers, State Defense Attorneys Associations, California, Texas, Illinois and Pennsylvania Insurance Claims and Agents Associations, and various local and state service clubs.

Mullins is married to the former Andrea Robertson of Decatur, Georgia, and has two children, Edward Wade Mullins, III and Andrew Robertson Mullins.

ASSIGNMENT OF CIRCUIT COURT JUDGES

The assignment of Circuit Court Judges was provided by the South Carolina Court Administration Office. These monthly schedules are subject to change. Please consult local Clerks of Court for any updates.

JANUARY 1990

	1	8	15	22	29
ANDERSON	9th Cir. AW	Charleston CP	Charleston CP	Charleston CP	Charleston CPNJ
BAGGETT	11th Cir. AW	Lexington GS	Edgefield CP	Lexington CP	Lexington CP
BALLENGER	Anderson GS	Oconee CP	Anderson CP	Oconee GS	Pickens GS
BROWN	14th Cir. AW	Beaufort CP	Beaufort CP	Beaufort CP	Allendale CP
BURNETT	7th Cir. CPNJ	Spartanburg GS	Spartanburg GS	Spartanburg GS	Aiken CP
CONNOR	Richland CP	Richland GS	Richland CP	Richland CP	Richland GS
COTTINGHAM	4th Cir. AW	Horry CP	Chesterfield GS	4th Cir. CPNJ	Chesterfield CP
ERVIN	10th Cir. AW	Chester GS	Anderson CP	Anderson CP	10th Cir. CPNJ*
FIELDS	Horry CP	Charleston CP	Horry GS	Horry GS	Georgetown GS
FLOYD	15th Cir. AW	Horry CP	15th Cir. CPNJ	Horry CP	Horry CP
HARRIS	Marlboro GS	Darlington CP	Richland CPNJ	Richland GS	Florence CP
HOWARD	Charleston GS	Charleston GS	9th Cir. CPNJ	Berkeley GS	Charleston GS
HOWELL	5th Cir. AW	Richland CP	Richland CP	Richland CP	Richland CP
HUGHSTON	Charleston CPNJ	York GS	York GS	Charleston GS	Newberry CP
KINARD	Richland GS	Richland GS	Kershaw GS	Richland GS	Richland GS
LANEY	14th Cir. CPNJ	Sumter CP	Sumter CP	Sumter CP	Charleston GS
LOCKEMY	XX	Charleston GS	Charleston CP	Charleston CP	Berkeley CP
LONG	Richland CP	Richland CP	Lexington GS	Abbeville GS	Richland CPNJ
MCFADDEN	16th Cir. AW	Cherokee GS-(S)	Cherokee GS-(S)	York GS	16th Cir. CPNJ
MCGOWAN	Greenville CPNJ	Allendale GS	Allendale GS	Jasper CP	Greenville CP
MCINNIS	XX	3rd Cir. AW	Horry CP	Williamsburg GS	Williamsburg CP
MCKOWN	Charleston CP	Greenville GS	X-X	Pickens CP	Cherokee GS
MOORE	8th Cir. AW	Newberry GS	Greenwood CP	Laurens CP	Laurens CP
MORRIS	Clarendon GS	1st Cir. CPNJ	Dorchester CP	Dorchester CP	Richland CP
PEEPLES	2nd Cir. AW	Bamberg GS/CP	Aiken GS	Aiken GS	Barnwell GS/CP
PYLE	13th Cir. AW	Greenville CP	Greenville CP	Greenville CP	Greenville CP
RUSHING	6th Cir. AW	Lancaster CP		Fairfield GS	Chester CP
SMITH	1st Cir. AW	Orangeburg GS	Orangeburg GS	Orangeburg GS	Orangeburg CP
STEPHEN	7th Cir. AW	Spartanburg GS	Richland GS	Spartanburg CP	15th Cir. CPNJ
TRAXLER	13th Cir. AW	Greenville GS	Greenville GS	Greenville CP	Greenville CPNJ
WALLER	12th Cir. AW	12th Cir. CPNJ	Florence GS	Florence GS	Florence GS
		5th Cir. CPNJ McLeod	13th Cir. CPNJ McLeod	York GS Epps	Beaufort GS Epps
		Anderson GS Epps	Williamsburg GS Epps		3rd Cir. CPNJ Bristow
		11th Cir. CPNJ Bristow	6th Cir. CPNJ Weatherford		
		York CP Weatherford	Pickens GS (1) 16th South		

FEBRUARY 1990

	5	12	19	26	
ANDERSON	Charleston CP	Charleston CP	in-chambers	Charleston CP	
BAGGETT	Greenville GS	Colleton CP	in-chambers	McCormick CP	
BALLENGER	Anderson GS	Anderson GS	in-chambers	XX	
BROWN	Hampton CP	14th Cir. CPNJ*	in-chambers	Colleton GS	
BURNETT	Spartanburg CP	Calhoun GS	in-chambers	Spartanburg GS	
CONNOR	Richland GS	Richland CPNJ	in-chambers	Richland CPNJ	
COTTINGHAM	Darlington GS	Darlington GS	in-chambers	Lee GS	
ERVIN	Union GS	XX	in-chambers	Anderson CP	
FIELDS	Charleston GS	Horry GS	in-chambers	Georgetown GS	
FLOYD	Horry CP	Georgetown CP	in-chambers	Horry CP	
HARRIS	Horry CP	Kershaw CP	in-chambers	Dillon GS	
HOWARD	Charleston GS	Charleston GS	in-chambers	Charleston GS	
HOWELL	Richland CP	5th Cir. AW	in-chambers	Richland CP	
HUGHSTON	Greenwood GS	Greenwood GS	in-chambers	Newberry CP	
KINARD	Richland GS	Richland GS	in-chambers	Richland GS	
LANEY	Beaufort GS	13th Cir. CPNJ-PC	in-chambers	Berkeley GS	
LOCKEMY	Richland CP	Horry GS	in-chambers	15th Cir. CPNJ	
LONG	Edgefield GS	Saluda CP	in-chambers	Beaufort CP	
MCFADDEN	York CP	York CP	in-chambers	York GS	
MCGOWAN	Sumter GS	Charleston CP	in-chambers	Greenville CPNJ	
MCINNIS	Dorchester GS	Clarendon CP	in-chambers		
MCKOWN	Cherokee GS	Cherokee CP	in-chambers	7th Cir. CPNJ	
MOORE	8th Cir. CPNJ (5,6,7)		in-chambers	Laurens GS	
MORRIS	Sumter GS	Sumter GS	in-chambers	Fairfield CP	
PEEPLES	2nd Cir. CPNJ	Aiken GS	in-chambers	Aiken CP	
PYLE	Greenville GS	Greenville GS	in-chambers	Greenville CP	
RUSHING	XX	Lancaster GS	in-chambers	Darlington GS-(S)	
SMITH	Orangeburg CP	9th Cir. CPNJ-PC	in-chambers	Charleston GS	
STEPHEN	Spartanburg CP	Spartanburg CPNJ	in-chambers	Spartanburg GS	
TRAXLER	Greenville CP	Greenville CP	in-chambers	Richland GS	
WALLER	Florence CP	Richland CP	in-chambers	Marion GS	
	Lancaster GS Epps	Jasper GS Epps	Charleston CPNJ McLeod	Lexington GS Epps	
	Lexington CPNJ Bristow	8th Cir. CPNJ McLeod	12th Cir. CPNJ Weatherford	1st Cir. CPNJ Bristow	
		Marion CPNJ Weatherford			

MARCH 1990

	5	12	19	26	
ANDERSON	Charleston CP	9th Cir. AW	Charleston CP	Charleston CP	
BAGGETT	Calhoun CP	Lexington CP	Lexington CP	Greenville CPNJ	
BALLENGER	Spartanburg GS	Greenville CP	Anderson CP	Anderson CP	
BROWN	Colleton GS	Charleston GS	Hampton GS	Hampton GS	
BURNETT	Beaufort CP	XX	McCormick GS	Cherokee CP	
CONNOR	Richland CP	XX	Richland GS	Richland CP	
COTTINGHAM	XX	Charleston CP	15th Cir. CPNJ	Darlington GS	
ERVIN	Anderson CP	Anderson GS	Union GS	Oconee GS	
FIELDS	Berkeley CP	Horry GS	Horry GS	Charleston GS	
FLOYD	Horry CP	Georgetown CP	Horry CP	Horry CP	
HARRIS	Marlboro CP	Florence CP	Florence CP	XX	
HOWARD	Charleston GS	Berkeley GS	Berkeley GS	Charleston GS	
HOWELL	Richland CP	5th Cir. AW	Richland CP	Richland CP	
HUGHSTON	Laurens GS	Charleston CP	Richland CP	Richland CPNJ	
KINARD	Richland GS	Kershaw GS	Newberry GS	Richland GS	
LANEY	Chester GS	Chester GS	Spartanburg GS	3rd Cir. CPNJ	
LOCKEMY	Horry CP	Chesterfield GS	Dillon CP	Horry CP	
LONG	Lexington GS		Beaufort CPNJ	Lexington CP	
MCFADDEN	York GS	Pickens GS	York CP	York CP	
MCGOWAN	York GS	Greenville CPNJ	Greenville CP	Charleston CP	
MCINNIS	15th Cir. CPNJ-PC	Sumter CP	Sumter CP	Sumter CP	
MCKOWN	Greenville GS	Spartanburg CP	Charleston GS	Spartanburg CPNJ	
MOORE	XX	Greenwood CP	Greenville CP	Abbeville CP	
MORRIS	Clarendon GS	Lee CP	Williamsburg GS	Williamsburg GS	
PEEPLES	Bamberg GS/CP	2nd Cir. CPNJ*	Dorchester CP	Aiken GS	
PYLE	Greenville CP	13th Cir. AW	Richland GS	Greenville CP	
RUSHING	Darlington GS-(S)	Lancaster CP	6th Cir. CPNJ	Fairfield GS	
SMITH	Orangeburg GS	Orangeburg GS	XX	Orangeburg CP	
STEPHEN	Spartanburg CP	Spartanburg CP	Spartanburg GS	Spartanburg GS	
TRAXLER	Greenville GS	Greenville GS	XX	Pickens CP	
WALLER	Marion GS	Horry GS		12th Cir. CPNJ*	
	Pickens GS (1) 6th Smith				

APRIL 1990

	2	9	16	23	30
ANDERSON	in-chambers	Charleston CP	Charleston CP	Charleston CP	Charleston CP
BAGGETT	in-chambers	Lexington GS	Lexington GS	15th Cir. CPNJ	Greenville GS
BALLENGER	in-chambers	Anderson GS	XX	Anderson GS	Greenville CPNJ
BROWN	in-chambers	Beaufort CP	Beaufort CP	Hampton CP	Colleton CP
BURNETT	in-chambers	Richland GS	11th Cir. CPNJ	Spartanburg GS	Spartanburg GS
CONNOR	in-chambers	XX	Richland GS	Richland GS	Richland CP
COTTINGHAM	in-chambers	Darlington CP	Darlington CP	Horry CP	Horry CP
ERVIN	in-chambers	Union CP	Oconee CP	10th Cir. CPNJ	Anderson CP
FIELDS	in-chambers	Jasper GS	Horry GS	Horry GS	Berkeley CP
FLOYD	in-chambers	15th Cir. CPNJ-PC	Horry GS	XX	XX
HARRIS	in-chambers	Charleston GS	Charleston CPNJ	Dillon GS	Dorchester CP
HOWARD	in-chambers	Charleston GS	Charleston GS	Berkeley GS	Charleston GS
HOWELL	in-chambers	Richland CP	Richland CP	Richland CP	Richland CP
HUGHSTON	in-chambers	Greenville GS	Laurens CP	Richland CPNJ	Abbeville GS
KINARD	in-chambers	XX	5th Cir. CPNJ	Richland GS	Richland GS
LANEY	in-chambers	XX	Greenville CP	Charleston GS	Richland CPNJ
LOCKEMY	in-chambers	Marlboro GS	Georgetown CP	Kershaw CP	4th Cir. CPNJ*
LONG	in-chambers	Dorchester GS	Dorchester GS	Lexington GS	Lexington CP
MCFADDEN	in-chambers	York GS	York GS	16th Cir. CPNJ-PC	York CP
MCGOWAN	in-chambers	XX	York GS	Greenville CP	Pickens CP
MCINNIS	in-chambers	Georgetown GS	Williamsburg CP	1st Cir. CPNJ*	Horry CP
MCKOWN	in-chambers	Cherokee GS	Cherokee GS	Spartanburg GS	XX
MOORE	in-chambers	Greenwood GS	Greenwood GS	8th Cir. CPNJ*	Beaufort GS
MORRIS	in-chambers	Sumter GS	Sumter GS	Sumter GS	Clarendon CP
PEEPLES	in-chambers	2nd Cir. CPNJ	Barnwell GS/CP	Aiken CP	Aiken GS
PYLE	in-chambers	Greenville CPNJ	Spartanburg CP	Greenville CP	Greenville GS
RUSHING	in-chambers	Richland GS	Lancaster GS	Lancaster GS	Lancaster CP
SMITH	in-chambers	XX	Richland CP	Richland CP	Orangeburg GS
STEPHEN	in-chambers	Spartanburg CP	7th Cir. AW	Charleston CP	Spartanburg CP
TRAXLER	in-chambers	Greenville GS	in-chambers	Pickens GS	Union GS
WALLER	in-chambers	Florence GS	Florence GS	Florence GS	Marion CP
			Pickens GS (1) 17th Board		

"XX" indicates vacation, "X" indicates official leave, "PC" indicates full week post conviction relief term, "*" indicates partial week post conviction relief term, "(S)" indicates state grand jury

MAY 1990

	7	14	21	28	
ANDERSON	9th Cir. AW	in-chambers	Charleston GS	Charleston CP	
BAGGETT	Edgefield CP	in-chambers	Lexington GS	Lexington GS	
BALLENGER	Oconee GS	in-chambers	Anderson CP	Anderson CP	
BROWN	Allendale CP	in-chambers	Colleton GS	Colleton GS	
BURNETT	XX	in-chambers	7th Cir. CPNJ-PC	Cherokee CP	
CONNOR	5th Cir. CPNJ*	in-chambers	Richland CP	Richland CP	
COTTINGHAM	Charleston CP	in-chambers	Darlington GS	Darlington GS	
ERVIN	Anderson CP	in-chambers	Spartanburg GS	Spartanburg GS	
FIELDS	14th Cir. CPNJ	in-chambers	Horry GS	Willimsburg CP	
FLOYD	Horry CP	in-chambers	Georgetown CP	Horry CP	
HARRIS	Chesterfield CP	in-chambers	Richland GS	Richland GS	
HOWARD	Charleston GS	in-chambers	Charleston GS	Charleston GS	
HOWELL	Richland CP	in-chambers	Richland CP	Richland CP	
HUGHSTON	Newberry CP	in-chambers	Greenwood CP	Greenwood CP	
KINARD	Richland GS	in-chambers	Richland GS	Greenville GS	
LANEY	Lee GS	in-chambers	XX	Horry GS	
LOCKEMY	Horry CP	in-chambers	Marion GS	Marion GS	
LONG	Lexington CP	in-chambers	Horry GS	Lexington CPNJ	
MCFADDEN	York CP	in-chambers	York GS	York GS	
MCGOWAN	Spartanburg CP	in-chambers	Greenville CPNJ	Beaufort CP	
MCINNIS	Berkeley CP	in-chambers	Clarendon GS	XX	
MCKOWN					
MOORE	XX	in-chambers	Laurens GS	Laurens GS	
MORRIS	Calhoun CP	in-chambers	Sumter CP	Sumter CP	
PEEPLES	2nd Cir. CPNJ	in-chambers	Barnberg GS/CP	Aiken CP	
PYLE	Greenville GS	in-chambers	Pickens GS	Greenville GS	
RUSHING	Richland GS	in-chambers	16th Cir. CPNJ	Fairfield GS	
SMITH	Orangeburg GS	in-chambers	Orangeburg GS	Orangeburg GS	
STEPHEN	Spartanburg CP	in-chambers	XX	XX	
TRAXLER	Greenville CP	in-chambers	Greenville CP	Greenville CP	
WALLER	12th Cir. CPNJ	In-chambers	Florence CP	Florence CP	
		Pickens GS (1) Board 15th			

JUNE 1990

	5	12	19	26	
ANDERSON	XX	Charleston CP	XX	Charleston CP	
BAGGETT	Lexington CP	Lexington CP	Lexington GS	Saluda CP	
BALLENGER	Spartanburg GS	10th Cir. CPNJ	Greenville CP	Oconee GS	
BROWN	Beaufort CP	Beaufort CP	Beaufort GS	Beaufort GS	
BURNETT	Edgefield GS	Spartanburg CPNJ	Cherokee GS	Cherokee GS	
CONNOR	Kershaw GS	Kershaw CP	Richland CPNJ	Greenville GS	
COTTINGHAM	Dillon GS	Darlington CP	Horry CP	Marlboro GS	
ERVIN	XX	Anderson GS	Anderson CP	Anderson CP	
FIELDS	XX	Charleston CP	Charleston GS	Horry GS	
FLOYD	Horry CP	Horry CP	Horry CP	Horry GS	
HARRIS	XX	XX	Chesterfield GS	4th Cir. CPNJ	
HOWARD	Charleston GS	Jasper CP	XX	XX	
HOWELL	XX	XX	Richland CP	Richland CP	
HUGHSTON	8th Cir. CPNJ	Richland CP	Greenwood GS	Greenwood GS	
KINARD	Allendale GS	Richland GS	XX	Richland GS	
LANEY	Georgetown GS	Georgetown GS	Charleston CP	Greenville CPNJ	
LOCKEMY	15th Cir. CPNJ		Florence CP	Florence CP	
LONG	Charleston CP	Calhoun GS	Richland GS	Lexington GS	
MCFADDEN	York CP	York CP	York GS	York GS	
MCGOWAN	13th Cir. CPNJ-PC	XX	Hampton CP	Dorchester GS	
MCINNIS	XX	Richland GS	Williamsburg GS	Williamsburg GS	
MCKOWN					
MOORE	Newberry GS	Laurens CP	Richland CP	XX	
MORRIS	Sumter CP	3rd Cir. CPNJ		Berkeley CP	
PEEPLES	Aiken GS	Union GS	Barnwell GS/CP	Lexington CPNJ	
PYLE	Greenville GS	Pickens CP	Greenville GS	Greenville GS	
RUSHING	6th Cir. CPNJ*	Chester CP	Lancaster GS	Lancaster GS	
SMITH	1st Cir. CPNJ	Orangeburg CP	Orangeburg CP	Charleston GS	
STEPHEN	Spartanburg GS	Spartanburg CP	Spartanburg CP	Spartanburg CP	
TRAXLER	Greenville CP	Greenville CP	Pickens GS	XX	
WALLER	Richland CPNJ	Florence GS	Florence GS	Florence GS	

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1990 CALENDAR OF EVENTS

International Association of Defense Counsel Surety Trial Practice Mid-Winter Meeting	January 26-27	The Plaza New York, New York
International Association of Defense Counsel (Mid-Year)	February 4-10	Maui Inter-Continental Wailea, Hawaii
Defense Research Institute (Annual)	February 5-7	Maui Inter-Continental Wailea, Hawaii
American Bar Association (Mid-Year)	February 8-14	Los Angeles, California
Federation of Insurance and Corporate Counsel	February 21-25	Ritz-Carlton Hotel Naples, Florida
Association of Defense Trial Attorneys	April 18-22	Ritz-Carlton Hotel Atlanta, Georgia
SC Bar Annual Meeting	June 7-10	Myrtle Beach, S.C.
International Association of Defense Counsel (Annual)	July 1-7	The Greenbrier White Sulphur Springs, West Virginia
Defense Research Institute (Mid-Year)	July 2-4	The Greenbrier White Sulphur Springs, West Virginia
SCDTAA Joint Meeting	July 26-28	Grove Park, Asheville, N.C.
Defense Counsel Trial Academy	July 20-28	College Inn Conference Center, Boulder, Colorado
Federation of Insurance and Corporate Counsel	August 1-5	Ritz-Carlton Hotel Laguna, California
American Bar Association (Annual)	August 2-9	Chicago, Illinois
SCDTAA Annual Meeting	October 25-28	Mariner Inn Hilton Head, S.C.

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1990 JOINT MEETING
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ASHEVILLE, NC
JULY 26-28, 1990