

# THE SOUTH CAROLINA DEFENSE ATTORNEYS ASSOCIATION



## THE DEFENSE LINE

Editor  
Reporters

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MARK WALL  
MANTON GRIER  
STEVE KIRVEN  
WILLIAM U. GUNN  
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Volume 7

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No. 2

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## President's Report

### LEGISLATIVE MATTERS

Things are relatively calm right now on the legislative front. There is little activity on the products liability or the comparative negligence bills. I do not expect for this calm to last much longer. We are preparing to meet the rash of legislation that comes up toward the end of the session. We were able to reach a compromise on the interest on judgments bill. It was agreed that interest on judgments would run at 7½ per cent instead of the 10 per cent originally proposed in the bill.

There are numerous pieces of relatively minor legislation in which we have an interest, and are taking a position. JIM DUNBAR, our representative in the State House, is doing an excellent job keeping on top of pending and proposed legislation in which we have an interest.

### ANNUAL & JOINT MEETING

Plans are progressing well for the Joint and Annual Meetings. BARRON GRIER, JACK BARWICK and I met with the Claims Management Association to map out the program and social activities for the Joint Meeting which will be held at the Grove Park Inn in Asheville, North Carolina, on August 8-11, 1979. The program should be excellent. Please mark your calendars so that you can attend, as the Claims Management Association out did us in attendance last time.

The Annual Meeting of the Association will be held on October 25-27, 1979 at Hilton Head Island. I am very pleased to advise you that Professor CHARLES ALAN WRIGHT of the University of Texas has agreed to come and be one of our speakers. We have also invited CHIEF JUDGE HAYNSWORTH to come. CARL EPPS, our Program Chairman, is hard at work to complete the program which should be an excellent one.

### MEMBERSHIP

As usual, we need more members and I urge each of you to take a look at the last annual report and see who isn't listed in the roster of members and go out and get us some new members.

### FINANCES

The subject of finances will be a major one at the business meeting at the Annual Convention. Some definite plans must be laid to see that our organization is properly financed for its growth and purposes for the future.

R. Bruce Shaw, President

## Barron Grier Reports On National Conference

On behalf of the South Carolina Trial Defense Attorneys, I attended the Twelfth National Conference of Local Defense Associations. The meeting was held May 3 through May 5 at the Alameda Plaza Hotel in Kansas City, Missouri. Our hosts, the West Missouri Defense Lawyers, were most gracious, and all the events were elegant, and it was certainly an occasion that we will always remember.

The programs provided me with a great number of new ideas for the conduct of the affairs of our Association during my up-coming term as president. The Defense Research Institute provided these programs for us. There were four basic topics covered during the two-day meeting: (1) association management; (2) association public relations; (3) influencing legislation; and (4) methods of increasing membership. One particular program I thought was excellent, and to which we should give some serious thought, is that of the West Missouri Defense Attorneys. They make arrangements for a trial judge on a Saturday (for a small honorarium) to sit for a mock trial with three trial attorneys of the Bar critiquing the trial. This is only available for defense attorneys, and only after they have tried at least three cases on their own. In other words, it is not used as a substitute for the moot court or trial advocacy courses in law school, but is used more as a follow-up after some experience.

(Continued on page 3)

# Reports From The Districts

## THIRD DISTRICT REPORT

Congratulations to J. Franklin McClain who has been elected Family Court Judge. He fills the vacancy created in the Tenth Circuit when Michael D. Glenn resigned in July, 1978. He will take office on April 27, 1979.

Many members of the Anderson Bar were in attendance at the presentation of "Clarence Darrow" given by Stage South in the Courtroom of the Anderson County Courthouse on March 22. It is rumored that certain members of the Plaintiffs' Bar immediately began revising and polishing their standard jury arguments.

Steve Kirven, Anderson

## SIXTH DISTRICT REPORT

One of the most interesting cases to arise out of the Northwestern corner of the State in some years is **Henniford versus American Motors Sales Corporation and Ralph Cook**, now before U.S. District Judge Robert Chapman. The suit arose out of a franchise dispute among the individual parties, who are South Carolina residents, and American Motors. The case was recently tried in the Horry County Court of Common Pleas. In final argument to the jury, the Plaintiff's attorney reportedly stated that the Plaintiff sought no recovery from Cook, the South Carolina resident, but sought recovery only against American Motors.

At that point, Allen Ray of Conway, representing American Motors, requested a brief recess. With a quick phone call to an associate in Columbia, who was poised and ready, Mr. Ray filed previously prepared removal documents with the Clerk of the United States District Court. Copies of the removal papers were filed simultaneously with the Horry County Clerk of Court in the Common Pleas courtroom. The Circuit Judge nevertheless proceeded to charge and submit the case to the jury, and the verdict for the Plaintiff resulted.

Mr. Ray has taken the position that the argument of the Plaintiff's attorney amounted to a voluntary non-suit as to the South Carolina Defendant, thereby making the case removable at that point. Judge Chapman is reportedly studying the transcripts of the jury arguments. By agreement of all parties, no proceedings are going forward in the State Court pending Judge Chapman's Order. It should be an extremely interesting Order. Meanwhile, Defense attorneys have formed the habit of carrying removal forms with blank spaces in their coat pockets, and Plaintiff's attorneys are frequently seen biting their tongues before juries.

Saunders M. Bridges, Jr., Florence

## DRI REPORT

The following has recently joined DRI: GEORGE S. NICHOLSON.

## NO OTHER REPORTS

# The Visiting Judge

Several weeks ago, I traveled to attend a court hearing cross country, out where the west begins. Local counsel directed me to the courtroom and gave me some background on the judge who would hear my motion. Then I was on my own.

I identified myself to the clerk who told me and the other lawyers gathered around that a visiting judge would be taking the calendar. The assigned judge was engaged in a carry-over case and was unavailable. I questioned one of the local lawyers about the personality of this visiting judge. No one had heard of him. The corridor gossip was he had been sent in from a Northern district.

As the Judge took the bench, he requested that the clerk, because of her superior familiarity with the local practice, call the cases in any order she determined most efficient for the lawyers. Following the Judge's direction, she divided the cases into a morning and afternoon calendar. The Judge then announced that the lawyers on the afternoon calendar were excused until 2:00 o'clock. I was on the excused list but I had no place to go so I decided to remain and observe the proceedings.

The calling of the first case brought forward a young lawyer whose nervousness inhibited his flow of language.

"I don't know," he said, "whether to discuss the law or concentrate on the facts."

The Judge leaned back comfortably and ran his hand through a full head of gray hair and said, "Would you like to know what think?"

"I certainly would, Your Honor."

"Well, I think you ought to do what makes you feel comfortable and in that way you will be most helpful to me."

The lawyer's nervousness vanished. His voice became melodious. He found eloquence and spoke without repetition.

In another case, the lawyer for the defendant was incorrigible about arguing a subsidiary issue after the Judge announced his ruling. Without a word of warning, the Judge suddenly walked off the bench. He returned ten minutes later and said to the lawyer who was still standing at the lectern: "You have so many good points I could not understand why you wanted to keep on arguing that bad one. I felt a few minutes would be helpful to you. Was I right?" Of course he was.

After each presentation, the Judge discovered an opportunity to offer quite credible flattery to the lawyers. Good manners and attention to the small details which concerned others were all done effortlessly and without too much pedal, as the musicians say. Our visiting Judge had taken Lincoln's maxim — with malice toward none — as his working principle. What an effect it had on the proceedings. Even the losers (I was one) were impressed by the Judge's demeanor.

When the calendar was completed, the Judge thanked the Court personnel for their hospitality, wished everyone well and declared his great pleasure at being with us. He waved his hand towards the well of the Court and then he vanished through a side door.

Since that day, I have tried to find out more about the visiting Judge. My efforts have led to nothing. Nobody seems to know where he came from or where our mysterious stranger went. I should have guessed he was too good to be true.

Reprinted from THE SPECTATOR, by Jacob Stein  
January - February 1978

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# Defense Line Needs Contributors

This is your newsletter and is designed to keep the members of the Association informed. Is there anyone in your area who is active in civic affairs, public office or professional activities? Please take a few minutes to note this information in the space below and send to Jackson L. Barwick, Jr., P. O. Box 11848, Columbia, S.C. 29211.

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(Signature)

# Youth

By Samuel Ullman

Youth is not a time for life; it is a state of mind; it is not a matter of rosy cheeks, red lips and supple knees, it is a matter of the will, a quality of the imagination, a vigor of the emotions; it is the freshness of the deep springs of life.

Youth means a temperamental predominance of courage over timidity, of the appetite for adventure over the love of ease. This often exists in a man of sixty more than a boy of twenty. Nobody grows old merely by living a number of years. We grow old by deserting our ideals.

Years may wrinkle the skin, but to give up enthusiasm wrinkles the soul. Worry, fear, self-doubt bows the heart and turns the spirit back to dust.

Whether sixty or sixteen, there is in every human being's heart the lure of wonder, the unfailing child-like curiosity of what's next, and the joy of the game of living. In the center of your heart and mine there is a wireless station; so long as it receives messages of beauty, hope, cheer and courage, you are young.

When the aeries are down, and your spirit is covered with the snows of cynicism and the ice of pessimism, then you have grown old, even at twenty. But so long as your aeries are up, to catch the optimism, there is hope you may die young at eighty.

You cannot help small men by tearing down big men.  
You cannot bring about prosperity by discouraging thrift.  
You cannot strengthen the weak by weakening the strong.  
You cannot lift the wage earner by pulling down the wage payer.  
You cannot help the poor man by destroying the rich.  
You cannot keep out of trouble by spending more than your income.  
You cannot further the brotherhood of man by inciting class hatred.  
You cannot establish security on borrowed money.  
You cannot build character and courage by taking away man's initiative and independence.  
You cannot help men permanently by doing for them what they could and should do for themselves.

Abe Lincoln

## BARRON GRIER REPORTS (CONTINUED FROM PAGE 1)

This seems to be a well thought of program, and almost every representative was impressed with this idea. Another idea that I thought was good is to have neighboring associations to help participate in a regional educational program.

The area, of course, that has the most exciting possibilities for our Association in the future is that involving legislation. Up until now, whenever we had any unfavorable legislation, the Association, in its best effort, would try simply to defeat it. This year, of course, we have introduced several bills, and are now going on record as being in favor of things, rather than simply always opposing them. The Texas Defense Lawyers have established a remarkably successful program. They have actually financed or helped finance the campaigns of twenty-three persons running for the Texas Legislature, and were successful in electing twenty of them. This, of course, is what our Association should probably at least try to do, on a much smaller scale. Of course, we have already taken the first step by employing a part-time lobbyist, but to be really successful in this area will take a great deal of work, determination and money from our Association.

Our dues structures compare favorably, except many associations do not have firm memberships. Everyone agreed that the increasing membership is the result of good programs, good meetings and a high quality newsletter, and personal contact with prospective members. Several associations actually allow membership from the insurance industry that are not lawyers, but they are in the small minority, and, interestingly enough, almost all associations limited membership to actual practicing attorneys, rather than house counsel, general counsel, etc.

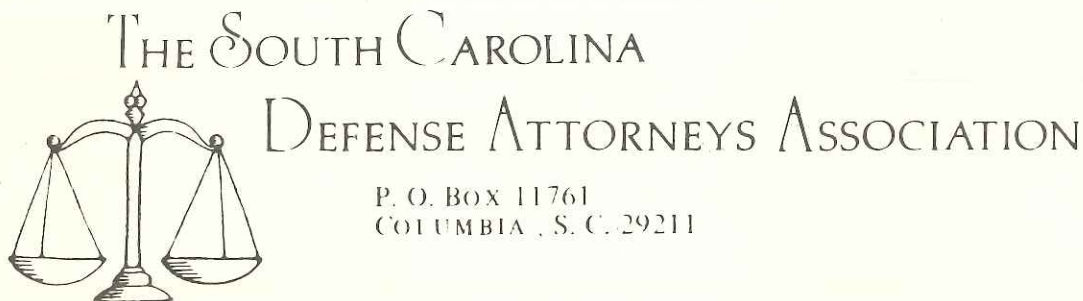
In conclusion, I think that this meeting, put on by DRI, is a superb primer for the mechanics of managing the Association, and I certainly enjoyed and benefited from my trip to Kansas City.

Very truly yours,  
F. Barron Grier, III

# Calendar of Events

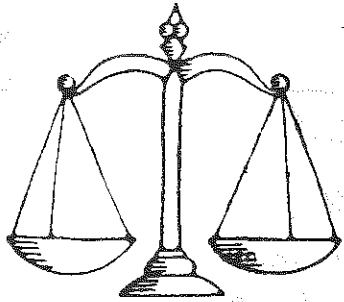
1979

South Carolina Bar Association (Annual)	May 31 - June 2	Myrtle Beach Hilton, Myrtle Beach, S.C.
International Association of Insurance Counsel (Annual)	June 24-30	The Broadmoor, Colorado Springs, Colorado
Defense Research Institute (Mid-Year)	June 25-27	The Broadmoore, Colorado Springs, Colorado
American Bar Association (Annual)	August 8-15	Dallas, Texas
Federation of Insurance Counsel (Annual)	August 15-19	The Greenbrier, White Sulphur Springs, West Virginia
South Carolina Defense Attorneys — Claims Managers Joint Defense Conference (Annual)	August 9-12	Grove Park Inn, Asheville, North Carolina
South Carolina Defense Attorneys (Annual)	October 25-28	Hilton Head Island, South Carolina
	1980	
International Association of Insurance Counsel (Mid-Year)	January 20-26	Mauna Kea Beach Hotel, Kamuela, Hawaii
Defense Research Institute (Annual)	January 20-23	Mauna Kea Beach Hotel, Kamuela, Hawaii
American Bar Association (Mid-Year)	January 30-February 6	Chicago, Illinois
Federation of Insurance Counsel (Mid-Year)	February 24-March 2	Marco Island, Florida
International Association of Insurance Counsel (Annual)	June 29-July 5	The Greenbrier, White Sulphur Springs, West Virginia
Defense Research Institute (Mid-Year)	June 29-July 2	The Greenbrier, White Sulphur Springs, West Virginia
Federation of Insurance Counsel (Annual)	July 27-August 7	Fairmont Hotel, San Francisco, California
American Bar Association (Annual)	July 30 - August 6	Honolulu, Hawaii
	1981	
International Association of Insurance Counsel (Mid-Year)	January 17-22	Marco Beach Hotel, Marco Island, Florida (Tentative)
Defense Research Institute (Annual)	January 17-22	Marco Beach Hotel, Marco Island, Florida (Tentative)
American Bar Association (Mid-Year)	February 4-11	Houston, Texas
Federation of Insurance Counsel (Mid-Year)	February 18-22	Camelback Inn, Scottsdale, Arizona
International Association of Insurance Counsel (Annual)	June 28-July 4	Century Plaza, Los Angeles, California
Defense Research Institute (Mid-Year)	June 28-July 1	Century Plaza, Los Angeles, California
Federation of Insurance Counsel (Annual)	August 5-9	Hilton Head, South Carolina
American Bar Association (Annual)	August 6-12	New Orleans, Louisiana



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## President's Report

It looks like the legislature is going to stay in session permanently. We have been monitoring the activity at the State House to see that nothing that our organization was interested in was "tacked on" to other bills. It does appear that we will get through this year safely. JIM DUNBAR, our representative at the State House, has done an excellent job of keeping us advised of activities. He thinks that next year will be one in which we will have to watch out for.

### JOINT MEETING

The joint meeting is practically upon us. It is at the Grove Park Inn in Asheville, North Carolina on August 8, 9, and 10. I urge each of you to register early so that we will know what attendance we will have. It is also imperative that you make your reservations, and the form is enclosed, at the Grove Park Inn immediately. They can only hold eighty rooms for Thursday night, so it is necessary, if you want to stay at the Grove Park Inn, that you register early for Thursday, Friday and Saturday nights. Do it now! I think that we will have an excellent meeting with the Claims Managers in that we have an excellent program. BARRON GRIER has done an outstanding job of getting the program put together. As ever, JACK BARWICK has managed to get things done that nobody else seems to know how to do. I think we can have a good gathering and I hope that each of you will try to attend. Last year the Claims Managers had about ninety-nine percent of their members present. We need to increase our attendance. If we turn out for this meeting, we can have a much better relationship with the Claims Managers and have a much better convention.

The annual convention is in October. As I told you in my last letter, PROFESSOR CHARLES ALLEN WRIGHT and CHIEF JUDGE CLEMENT HAYNESWORTH will be on the program. We are still working on the program and it looks like it will be a good annual meeting.

R. BRUCE SHAW, President

## Joint Meeting At Asheville

We have made final plans for the Joint Meeting of the South Carolina Trial Defense Attorneys Association and the South Carolina Claims Managers Association to be held in Asheville at the Grove Park Inn, beginning Thursday, August 9, 1979. We will start with a pool-side cocktail party from 5:30 to 7:30, with everyone having dinner on their own, either at the hotel or in Asheville. The actual business part of the meeting will not begin until 1:30 on Friday, but we will have a registration desk open from 10:00 through 12:30. The program will begin at 1:30 with the Honorable JOHN W. LINDSAY, South Carolina Insurance Commissioner, followed by the Honorable HAROLD TRASK, S.C. Industrial Commissioner. DAVE HOWSER of our organization will end the program for Friday, speaking on "Problems in handling defense of cases". The business session will be followed by a cocktail party and a steak cook-out at the Grove Park.

We will begin on Saturday, August 11, at 9:30 with a business meeting of the Defense Attorneys and the Claims Managers, followed by a panel discussion with BRUCE SHAW, Senator HEYWARD McDONALD and Representative JEAN TOAL on developments in legislation. Following these meetings will be a Bloody Mary party, followed by free time in the afternoon to do whatever anyone wants to, including golf and tennis. We have reserved four tennis courts for all afternoon, as well as 18 tee times. We will then re-assemble at Deerpark Restaurant in Biltmore Gardens at 7:00 for another dinner/cocktail party, featuring cloggers. The Deerpark is a new restaurant that the membership will agree is one of the outstanding features of our meeting. It is a most unusual restaurant and the decor and food promise to be a real treat.

All of the events, including the programs, accommodations, cocktail parties and dinners promise to be the best we have ever had, and we certainly urge everyone to make plans now to attend.

F. BARRON GRIER, III, Columbia  
Program Chairman

JOINT MEETING REGISTRATIONS AND GROVE PARK REGISTRATIONS ENCLOSED

# Report From The Districts

## 2ND DISTRICT REPORT

Richland County Bar honored Richland County Judiciary at Pine Island Club in June. Three hundred and seventy-five people attended cocktail party, barbeque and featured skit directed by HARVEY GOLDEN, Columbia. Several Association members were featured: JACKSON L. BARWICK, JR., BOB MCKENZIE, CRAVENS RAVENEL, FLETCHER PADGET, BARRON GRIER substituted his secretary SUSAN MARTIN. BOB THOMAS, last year's star, had rehearsed but flew up to London before the performance. GEORGE McMASTER was the producer.

Columbia Young Lawyers elected members GEORGE C. BEIGHLEY, President, and ROBERT SALANE, Vice President.

MANTON GRIER, Columbia

## Bill Baskin, Honored

One of the founding members of our association and a grand old man of defense practice, BILL BASKIN, JR. was honored as Lee County's Senior Citizen of the Year in April. The Lee County Messenger, April 4, 1979 issue featured "BILLY" reviewing his active life and contributions to his home county and state. Admitted to South Carolina Bar in June 1927, he has been in active practice for over fifty years, and is still going strong. Everyone knows of BILLY'S tenacity, but did you know he was a featherweight wrestling champion at USC from 1923 to 1927, and champion in 1925. Good luck and God bless.

## DRI REPORT

The following have recently joined DRI: R. GLENN HILLIARD, Greenville; HENRY D. McMASTER, Columbia.

## DEWEY OXNER, HONORED BY DRI

DEWEY was one of only two recipients of State-Area Chairman Achievement Award for the entire mid-atlantic region of DRI in 1978. We are proud of DEWEY. One unanswered question is how many "blazers" does DEWEY have?

## Legislative Report

JIM DUNBAR reports that there are several bills of major importance the defense practice pending, including Product Liability Bill, and Comparative Negligence.

Our association was very active in effecting a compromise on the interest rate to be charged on judgments from 10% to 8 3/4%. It is expected the legislature will be in session the end of August, and everyone will be alert to what is going on.

## Executive Committee Meets

At the last Executive Committee Meeting, updated membership lists were furnished. Membership Committee had picked up several new members and followed up on members who had not paid their dues.

The Treasurer's Report was presented to PRESIDENT BRUCE SHAW. BOBBY HOOD reported on adequate funds for the Joint Meeting in the savings account, \$9,000.00 plus. BARRON GRIER reported on finalized plans for the Joint Meeting with Claims Managers, promises very outstanding program for the meeting.

CARL EPPS reported on progress in setting up the program for the Annual Meeting at Hilton Head, October 25, 1979. PROFESSOR CHARLES ALLEN WRIGHT and JUSTICE CLEMENT F. HAYNSWORTH are to participate.

PRESIDENT SHAW reported on legislative activity of interest to all associates.

# Rather Interesting Figures

South Carolina ranks 31st in total insurance premiums written. The South Carolina total is 780,297,000 and represents 1.0% of United States total. The 1978 loss ratio percentage was 85.1. On eleven states had a higher loss ratio and they were only slightly so. State Farm led the way in South Carolina with 11.1% of the market followed by Allstate with 8.2% and Nationwide 4.6%.

## Case Comment

Several interesting cases were recently decided at the Trial Court level in the counties of the Fourth Congressional District.

In *Alice Lucille Grant, individually and as Administratrix of the Estate of Carl Grant, senior, deceased, vs. Edgar Gault, Jr. and J. Arthur Mobley, d/b/a Cherokee Speedway*, Court of Common Pleas of Cherokee County, 78-CP-11-458 (Order dated May 22, 1979), Judge Weatherford granted a Motion for Summary Judgment made by the defendants and thereby upheld the validity of a Release which had been executed by plaintiff's intestate.

The suit was one in which plaintiff sought damages for the alleged wrongful death of her intestate, when he was struck by a race car at Cherokee Speedway on the evening of April 30, 1977. He died shortly after being struck by the car.

The deceased regularly attended the racing program at Cherokee Speedway prior to his death on May 1, 1977. He had been given a special parking place in the infield, and a pass which allowed him to enter the Speedway premises and the pit area free of charge. According to the deposition testimony, the deceased served as a "Traffic Controller" and in furtherance of those duties, he would stand in the road between the pit area and the infield with a red flag, directing traffic coming in and out of the infield area and attempting to keep spectators off the track and out of the pits.

Employees of the Speedway are stationed at the entrance to the pit area of the Speedway prior to each racing program, and these employees are furnished with "waiver and release" forms which they require each driver, mechanic and other persons entering the pit area to execute prior to entering the area. Following each racing program, these forms are turned in to Edgar Gault, Jr., one of the defendants, and the operator of the Speedway.

Plaintiff's intestate executed one of these Waiver and Release forms which read in pertinent part as follows:

"In consideration of being permitted to enter for any purpose the restricted area, etc.,...the undersigned, for himself and personal representatives, assigns, heirs and next of kin...hereby releases, waives, discharges and covenants not to sue the promoter, participants, racing association, track operator, track owner, land owner, and each of them, etc.,...from all liability to the undersigned, his personal representatives, assigns, heirs and next of kin for all loss or damage, and any claim or demands therefore, on account of injury to the person or property or resulting in death of the undersigned, etc.,..."

The Trial Judge held that the Release executed by Grant was not invalid as against public policy, citing cases from other jurisdictions. Additionally, he recited the longstanding rule that the failure to read or understand the contents of the Release, in the absence of fraud or duress, does not avoid its effects and that if someone cannot read the Release, he must try to find someone to read it for him.

It is understood by the writer that this case is presently on appeal to the South Carolina Supreme Court.

Another noteworthy decision is *Randall K. Maw, by his guardian ad litem, Mary Alice Maw vs. Jimmy Maw*, Court of Common Pleas of Spartanburg County (Order filed June 20, 1979).

Maw involved a suit by an unemancipated minor against his father for damages alleged to have been sustained by the minor on December 14, 1977, while he was riding as a passenger in the vehicle driven by his father, which left the road and overturned.

The case was presented to the Trial Court upon a stipulation of facts by the parties, leaving only for determination the constitutionality of Section 15-5-210 of the Code of Laws of South Carolina (1976 as amended). That statute abrogates the common law

doctrine that prohibits an unemancipated minor from recovering in a tort action against his parent by permitting such suits for personal injuries arising out of a motor vehicle accident.

Defendant argued that the Statute is unconstitutional in that it violates the equal protection clause of Article I, Section 3 of the South Carolina Constitution and the Fourteenth Amendment of the United States Constitution, since it only applies to one class of individuals, those involved in motor vehicle accidents.

On the other hand, plaintiff asserted that the statute is constitutional and further argued that, even if it is unconstitutional, the doctrine of parental immunity should be declared unconstitutional, thereby permitting the suit.

The Court relied upon the recent decision of **Marly v. Kirby**, S.C., 245 S.E. 2nd 604 (1978) in concluding that the statute is unconstitutional due to its unreasonable classification.

In **Marley**, the Supreme Court held that Section 15-1-300, the Comparative Negligence Statute limited to motor vehicle accidents, was likewise unconstitutional.

It is interesting to note that Judge Moore had previously rejected the argument of defense counsel at the time a Motion for Summary Judgment was argued, however upon submission of the case upon the stipulation of facts, Judge Weatherford considered that Judge Timmerman had recently decided the identical question in the opposite fashion and that the ruling of Judge Moore was interlocutory in nature and not directly appealable in reaching his decision.

In **Jay Clarence White v. James Clyde Cox and Lamar Dean Outdoor Advertising Company**, Court of Common Pleas of Spartanburg County (Order denying new trial signed July 3, 1979) the legal issues were uncomplicated, however an interesting evidentiary question surfaced during the trial of the case.

Plaintiff had instituted suit for personal injuries arising out of an automobile accident which occurred on October 28, 1977. The plaintiff was a 54 year old male who was blind in his left eye, having suffered a detached retina in 1955 which was not successfully repaired and left him in that condition. He contended that, as a result of the October 28, 1977, accident, he was having "floaters" on his remaining sighted eye which substantially impaired his vision.

There was substantial conflicting medical testimony in the record on the question of whether indirect trauma, such as a blow to the rear of an automobile, could cause the floaters alleged to be a problem with plaintiff.

Plaintiff further sought to prove, however that it is more likely now that he will suffer a detached retina, and resulting blindness, in his sighted eye, as a result of the accident, than it would have been had the accident not occurred. In support of that position, he offered the testimony of the physician who examined the plaintiff some nine months after the accident, and stated that in his opinion, it was some 15 to 20% more likely that a retinal detachment would occur than if the accident had not occurred.

After hearing the testimony in full, outside the presence of the jury, Judge Weatherford declared the entire line inadmissible. Plaintiff's counsel ingeniously argued that the testimony should be admissible on the issue of mental anguish, however the Court adhered to its ruling, as it did on the Motion for a new trial, after plaintiff had obtained a \$5,000.00 verdict.

A Notice of Intention to Appeal has been served, in which plaintiff's attorneys will undoubtedly argue the same evidentiary point and contend that the jury verdict was grossly inadequate.

WILLIAM U. GUNN, Spartanburg

## **Bevo Arnold Leads SC Contingent at IAIC At The Broadmoor**

Bevo Arnold and wife Lucy led the SC delegation at the annual meeting at the International Association of the Insurance Council. Held at the Broadmoor Hotel at Colorado Springs, Colorado June 24-30. Others attending were Mr. and Mrs. William Haygood, Greenville, Mr. and Mrs. Davis Houser, Columbia, Mr. and Mrs. Jack Barwick, Columbia. Ed Mullins was in for part of the meeting as Regional V.P. of DRI.

☆☆☆☆☆

## **Defense Line Needs Contributors**

This is your newsletter and is designed to keep the members of the Association informed. Is there anyone in your area who is active in civic affairs, public office or professional activities? Please take a few minutes to note this information in the space below and send to Jackson L. Barwick, Jr., P. O. Box 11848, Columbia, S.C. 29211.

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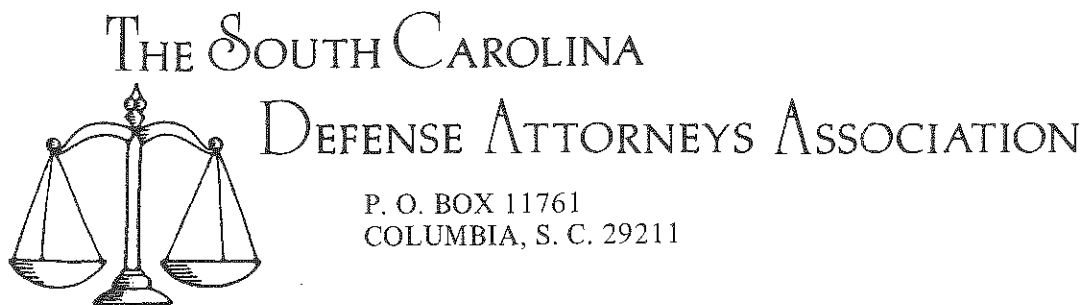
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(Signature)

# Calendar of Events

American Bar Association (Annual)	1979	
Federation of Insurance Counsel (Annual)	August 8-15	Dallas, Texas
South Carolina Defense Attorneys — Claims Managers Joint Defense Conference (Annual)	August 15-19	The Greenbrier, White Sulphur Springs, West Virginia
Atlanta Claims Association Fall Outing	August 9-12	Grove Park Inn, Asheville, North Carolina
South Carolina Defense Attorneys (Annual)	September 7	Stone Mountain, Georgia
	October 25-28	Hilton Head Island, South Carolina
	1980	
International Association of Insurance Counsel (Mid Year)	January 20-26	Mauna Kea Beach Hotel, Kamuela, Hawaii
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1979 JOINT ANNUAL MEETING

S. C. TRIAL DEFENSE ATTORNEYS ASSOCIATION

AND

S. C. CLAIMS MANAGERS ASSOCIATION

Grove Park Inn, Asheville, North Carolina

August 9-11, 1979

REGISTRATION INFORMATION

NAME: \_\_\_\_\_

Name for Badge: \_\_\_\_\_

Member of: Defense Attorneys \_\_\_\_\_ Claims Managers \_\_\_\_\_

Are you presently an officer or a past president? \_\_\_\_\_  
If so, what office do you hold? \_\_\_\_\_

Will your spouse attend? \_\_\_\_\_  
Name for badge: \_\_\_\_\_

Do you plan to play golf on Saturday? \_\_\_\_\_ Spouse? \_\_\_\_\_  
Would you be interested in playing in a tournament? \_\_\_\_\_  
Spouse? \_\_\_\_\_

Do you plan to play tennis on Saturday? \_\_\_\_\_ Spouse? \_\_\_\_\_  
Would you be interested in playing in a tournament? \_\_\_\_\_  
Spouse? \_\_\_\_\_

When will you be arriving? Thursday, August 9 \_\_\_\_\_  
Friday, August 10 \_\_\_\_\_  
Saturday, August 11 \_\_\_\_\_

Will you attend Welcoming Cocktail Party on Thursday? \_\_\_\_\_  
Spouse? \_\_\_\_\_ (Included in Registration Fee.)

Will you attend Cocktail Party and Supper on Saturday? \_\_\_\_\_  
Spouse? \_\_\_\_\_ (Included in Registration Fee.)

REGISTRATION FEE:

If received by July 27, 1979: Defense Attorneys - \$80.00/person  
Claims Managers - \$45.00/person

Received after July 27, 1979: Defense Attorneys - \$85.00/person  
Claims Managers - \$50.00/person

PLEASE RETURN THIS FORM, TOGETHER WITH YOUR CHECK, TO:

DEFENSE ATTORNEYS  
Robert H. Hood, Esquire  
Post Office Box 340  
Charleston, SC 29402

CLAIMS MANAGERS  
John Dunn  
Post Office Box 1803  
Orangeburg, SC 29115

PROGRAM

**Twelfth Annual Meeting**

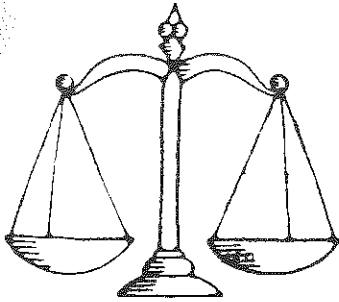
**South Carolina  
Trial Defense Attorneys Association  
Bruce Shaw - President**

**Claims Management Association  
of South Carolina  
Curtis Hipp - President**

GROVE PARK INN  
ASHEVILLE, NORTH CAROLINA

August 9, 10, 11, 1979

# THE SOUTH CAROLINA DEFENSE ATTORNEYS ASSOCIATION



## THE DEFENSE LINE

Editor  
Reporters

JACKSON L. BARWICK, JR.  
MARK WALL  
MANTON GRIER  
STEVE KIRVEN  
WILLIAM U. GUNN  
JOHN HAYES, III  
SAUNDERS M. BRIDGES, JR.

Volume 7

August, 1979

No. 4

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## President's Report

The joint meeting with the Claims Management Association at the Grove Park Inn in Asheville, North Carolina, was well attended by the members of both organizations. Once again, the Claim's Managers had almost one hundred percent of their members attend. Thanks to the hard work of President-Elect BARRON GRIER and Claims Manager President CURTIS HIPPE and President-Elect JOHN DUNN the meeting was a success.

We had a joint business session with the claims managers while in Asheville which I think was very beneficial to both associations. During the joint business session, we discussed the subjects of location of next year's joint meeting, an additional joint educational meeting and future programs were discussed. Both organizations will appoint committees to further explore these subjects so that a complete report can be made to the executive committees of both organizations.

The claims managers would very much like to have a second meeting with the defense attorneys and I think it would be beneficial for us to seriously explore that idea.

I would like to take this opportunity to thank the speakers at the joint meeting. Chief Insurance Commissioner LINDSAY, "SON" TRASK, Chairman of the South Carolina Industrial Commission, DAVE HOWSER, and SHERYL BLENIS, who spoke to the ladies, all did an excellent job. Many thanks to them.

Our next meeting is the annual convention which will be held at the Hilton Head Inn starting October 25. We are inviting the State and Federal Judiciary in South Carolina to be our guests at the annual convention. The program for the annual meeting will include Professor CHARLES ALAN WRIGHT, and Chief Judge CLEMENT HAYNSWORTH, JR as speakers. Additionally, "BUTCH" EPPS, Program Chairman, has arranged for an expert to speak to us on what impressions a jury obtains during the trial of a case. The program certainly should be an interesting one for all of us.

This issue of The Defense Line will contain the hotel registration form for your use for making the reservations at the Hilton Head Inn. **Please do so at once as the hotel will only hold our block of rooms until September 17.** We hope all of you will plan to attend and look forward to seeing you there.

R. BRUCE SHAW, President

## Joint Meeting In Asheville A Success

The SOUTH CAROLINA DEFENSE ATTORNEYS and SOUTH CAROLINA CLAIMS MANAGERS just concluded their annual Joint Meeting at the Grove Park Inn in Asheville. It was one of the best meetings ever, from an educational standpoint, as well as recreational and social. The Claims Managers gave their full support, as they had over ninety-five percent of their membership present. Our organization, did have a good turnout, but not that percentage although most firms were represented.

JACK LINDSAY spoke on the problems confronting the Insurance Department and its interconnections with other governmental agencies, such as the FTC. His remarks were well-received by the Associations.

COMMISSIONER HAROLD TRASK, newly elected Chairman of the Industrial Commission, gave an excellent talk on the practicalities of handling stop-payments. He recited that one of the main problems that the defense industry has to contend with is the fact that in order to be successful on a stop-payment application, there must be testimony already in the record that the claimant has reached maximum improvement and can return to work of a specific nature and kind. Then, there must be testimony from the employer that such work is available. He pointed out that too often, a doctor will say that a patient has been released, with no idea of what type of work he is able to do, then the employer will come in and testify that the only work available is heavy work. The claimant then rebuts this by saying that he is unable to do heavy work, and the Commission finds that it cannot rule in favor of the stop-payment application. Another problem he pointed to was the fact that so often, the files are given to the defense attorney only a few days prior to the hearing, and the only thing he is able to do is react and respond to the claimant's witnesses. This, he felt, was a waste of the Commission's time, and that no stop-payments would be granted unless the medical evidence was in hand, either through stipulations of reports, direct testimony of the doctor at the hearing, or a deposition in hand.

(continued next page)

## JOINT MEETING Continued from page 1

He further indicated that the Commission preferred to have this testimony by deposition, and have it taken well in advance of the stop-payment hearing. This, of course, is not always possible, but it is the desired goal of the Commission.

DAVE HOWSER, of Richardson, Plowden, Grier & Howser, spoke to the Joint Associations on "Problems in handling defense cases." The thrust of his speech involved the many intricacies of possible conflicts of interest when coverage may not apply, but a duty to defend is in order. Dave's speech was well-organized, and everyone was greatly impressed with his remarks. We have asked Dave to publish this speech, or a paper on his subject, to be used in the Defense Line at a later time.

PAUL CANTRELL, BILL WOODS, and BRUCE SHAW reported on the legislative activity this past year. None of our legislation was enacted, but it was viewed as a successful year from the industry standpoint in that no plaintiff-oriented legislation was passed, either. It was agreed that everyone in the Association should become more actively involved in the legislative process, and that if we are going to have any input into the laws that are being made by our Legislature, that we must try to help some of our members get elected by encouraging them and helping in any way possible, plus keeping active and being willing to volunteer our time when a bill does come before a select committee. PAUL CANTRELL very accurately pointed out the dangers that we face in the up-coming Legislature, and also pointed out that we need a great deal more participation from our members, as well as the insurance industry, than we have had in the past, if we hope to be successful in not only defeating Plaintiff-oriented legislation, but in trying to get some favorable industry legislation passed.

The social events included a steak cook-out at the Grove Park Inn, and a square dance and gourmet meal at Deerpark in the Biltmore House and Gardens. Additional entertainment was provided the Association through the wonderful piano playing of AMY SHAW, with the noted tenor, CAREY DOYLE, supported by bass ERNIE NAUFUL, singing "Amazing Grace" at 2:00 in the morning.

The meeting did go very smoothly, and we do believe that a lot was accomplished towards the aim of sharing ideas, getting involved and discussing the problems that confront our two associations. It was decided at the Joint Meeting that we would try to have one additional educational seminar in the Winter, which would be sponsored by both associations. It was also agreed that we would try to have our Joint Meeting at Hilton Head next year, and if that failed, we would make arrangements to go back to Asheville, since it was enjoyed by so many people.

## Report From The Districts

### REPORT FROM THE SECOND DISTRICT

In a recently published Order, Judge Hemphill ruled on a motion in limine that South Carolina's Railroad Crossing Statute, S.C. Code Ann. §58-17-1440 (1976), is unconstitutional in that it denies defendant railroads the equal protection of the laws under the South Carolina and United States Constitutions. The statute provides that a plaintiff is not barred from recovery by simple contributory negligence in a crossing accident where the railroad failed to give the required statutory warning signals. Rather, the defendant railroad must show that the plaintiff was guilty of gross or willful contributory negligence or was acting in violation of the law. The defendant railroad contended that the statute constituted an unreasonable classification of railroads as opposed to cars and trucks: whereas the operator of a car or truck who violated a safety statute could defeat a plaintiff's claim by showing simple contributory negligence, a railroad could not. The court agreed, holding that changed conditions since the enactment of the statute in 1882 made the classification between railroads and cars and trucks unreasonable. The case arises out of a crossing accident that occurred in Lexington County. **Wessinger v. Southern Ry.**, 470 F.Supp. 930 (D.S.C. 1979).

In an unpublished per curiam opinion released June 20, 1979, the Fourth Circuit Court of Appeals affirmed the order of Judge Chapman in the case of **Taylor v. Universal Underwriters Ins. Co.**, No. 78-1798, holding that a certain Mary Baldwin Jones was not an insured under an automobile public liability policy issued to an automobile dealer. On or about June 24, 1976, Miss Jones selected a car from the dealer's stock and executed the following documents: buyer's order form, security agreement, credit application, and a personal check for a down payment. Agents for the dealer prepared the application for title, odometer verification, tax affidavit and liability insurance card. After the completion of these documents, Miss Jones was allowed to take possession of the car. Miss Jones' check was subsequently returned for insufficient funds and the credit application was unacceptable to the bank to whom the application was made. On August 17, 1976, Miss Jones was involved in an accident with the plaintiff, who obtained a judgment and sought recovery on the policy relying on the omnibus clause, which covers persons operating the car "with the permission of the named insured". Judge Chapman held that Miss Jones was excluded from coverage by policy language excluding persons obtaining possession "pursuant to an agreement of sale", rejecting the plaintiff's argument that the policy language in question contemplated a consummated sale or an enforceable contract of sale (the buyer's order form had not been signed by an agent of the dealer as required by its terms). The Court said that "the plain, ordinary and popular meaning of the phrase 'agreement of sale' includes a written buyer's order, signed by the purchaser and stating a specific price."

The Clerk of the U.S. District Court for the District of South Carolina has recently adopted a policy of adding a numerical suffix to the civil action number of each civil case in the Federal Court to indicate the judge responsible for the case. The numbers and the judges to which they correspond are as follows: 1 - Hawkins; 2 - Houck; 3 - (not assigned); 4 - (not assigned); 5 - Hemphill; 6 - Simons; 7 - (not assigned); 8 - Blatt; 9 - Chapman; 0 - Perry.

Manton M. Grier

### REPORT FROM THE THIRD DISTRICT

Several members from this area enjoyed the recent annual Joint Meeting of defense attorneys and claims managers held August 9-11 at the Grove Park Inn in Asheville, N.C. Among those present were BILL BRADFORD and BOB IRWIN of Greenwood and TOMMY COEFIELD, CAREY DOYLE and GRADY KIRVEN of Anderson.

The Piedmont Claims Association held its annual barbeque outing at Fox Run Country Club near Simpsonville on July 20. Among those enjoying the festivities were STEVE KIRVEN, JIM LOGAN and JACK MICHAELS. The Honorable WALTER T. COX, JR., who was presiding in Greenville also stopped by.

JOHN O'ROURKE, formerly law clerk to the Honorable Walter T. Cox, Jr. of the Tenth Judicial Circuit apparently liked Anderson so much he decided to stay. He has associated with Doyle and Coefield in Anderson.

Steve Kirven  
Anderson, S.C.

(NO OTHER REPORTS)

### DRI REPORT

The following has recently joined DRI: WILLIAM R. WILLIAMS, Florence.

## Causes of Attorney Malpractice Claims

by Duke Nordlinger Stern

[Duke Nordlinger Stern is president of Risk & Insurance Service Consultants, Inc., and is the outgoing Executive Director and General Counsel of the West Virginia State Bar. He is the author of two books and more than 35 articles on professional liability and is a member of the editorial advisory board of **Professional Liability Reporter**.]

What are the causes of legal malpractice claims? How can attorneys' errors be prevented?

Some answers to these critical questions can be found in a recent study of the professional liability experience of 13 states with a population of approximately 60,000 lawyers. As can be seen on the accompanying table, 31.18 percent of the claims where a specific cause was designated resulted from law office errors. If faulty research or abstract are excluded from consideration, these administrative errors provoked 34.99 percent of all claims in which a specific cause was designated.

These law office errors do not involve substantive mistakes but rather include failure to meet procedural deadlines, failure to comply with statutes of limitation, conflicts of interest, fee disputes, and lost files, documents or evidence. Claims resulting from these causes can be prevented by appropriate law office systems controlled by the attorney and staff. Such systems can be simple and inexpensive and still be quite effective.

Effective docket control can be achieved through various systems, but the key is the adoption of a method which can be easily managed and which will be conscientiously followed. Conflicts of interest can be prevented through the use of a client-adverse party file which is reviewed before accepting a new client or a new matter for an existing client. Fee disputes can be avoided through effective client relations, diligent use of the employment letter, and periodic and detailed billings. Proper handling of client funds can be achieved through an effective law office accounting system.

Prevention of administrative errors can go a long way towards reducing professional liability insurance premiums and further expanding the market for this coverage. However, avoidance of these types of claims requires immediate and consistent efforts by attorneys.

**Causes of Attorney Malpractice Claims**  
13 State Study

	Number	Percent
Conflict of interest	45	2.49
Failure to meet procedural deadline	203	11.23
Failure to file required papers	102	5.64
Error in preparation of documents	150	8.30
Failure to provide services	61	3.37
Lost file, document or evidence	8	.44
Fraud or conspiracy	109	6.03
Fee dispute	39	2.16
Improper interpretation of law	64	3.54
Faulty research or abstract	163	9.02
Breach of fiduciary duty	39	2.16

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## The Decline and Fall Of Litigatia

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By Paul B. Horton, Ph.D., Professor of Sociology, Western Michigan University, Kalamazoo, Michigan

**BY THE YEAR 2005, LIFE HAD COME TO SUCH A STANDSTILL THAT DOCTORS AND OTHER CITIZENS ACTUALLY WELCOMED THE INVASION FROM ABROAD.**

The economy of the Torres Islanders of Melonesia rested upon the skills of a caste of professional canoe-builders. There were many magical and demonic hazards connected with canoe-building. As time passed, these grew steadily more and more threatening until, finally, canoe-building became so hazardous that no one was willing to become a canoe-builder. Canoe-building ended, so when there

canoes wore out, their fishing economy collapsed.

—W. H. R. Rivers

"On the Disappearance of Useful Arts"

If the nation of Litigatia had heeded the tale of the Torres Islanders, it might have avoided a similar fate. Blessed with bountiful resources, an energetic population, and an enlightened social system, the people of Litigatia were the most prosperous and the freest in the world. But after a few decades of world prominence, Litigatia suffered the most calamitous decline and fall since that of the Roman Empire.

To understand this, one must first understand the foundations of Litigatian society. Its economic system was based on belief in the long-run convergence of private interest and public good. This gave Litigatia the most productive economic system ever seen, although it worked severe hardship on the incompetent, the indolent, and the unfortunate, of whom there were many. And it was the effort to protect such individuals and to achieve perfect justice and equality that led to the total transformation and destruction of Litigatian society.

Litigatia was the only major society in the world whose law enforcement rested on the idea that the accused is innocent until proven guilty. As decades passed, concern for protecting the accused grew steadily and it was more and more difficult to convict the guilty. During the 1960s, it became accepted that juries must be representative cross sections of the population. In the 1980s, it also became established that police and court personnel must be representative cross sections of the total population. This principle was enshrined in the 41st Amendment, ratified in 1983, stating that "Citizens shall be served by a police of their peers."

**AFTER 1985, POLICE FORCES HAD TO REPRESENT EVERY AGE, SEX, RACE, ECONOMIC CLASS, AND EDUCATION LEVEL — INCLUDING CRIMINALS, THE HANDICAPPED, AND CHILDREN.**

In 1985, the U.S. Supreme Court ruled that "Equal justice is denied unless police personnel are proportionately representative of the total population as to race, sex, age, birth order, native intelligence, physical handicaps, education, life-style, sexual preference, and criminal record" (*Unione Siciliano v. State of New York*). Inequalities in power were mitigated by a Supreme Court ruling that "abuse of police power may be inferred whenever law enforcement personnel carry more lethal weaponry than that carried by the least heavily armed of the citizenry" (*American City Liberties Union v. City of Chicago*, 1987). Citizen complaints of police abuses disappeared, since after police departments became representative by age, physical handicap, and criminal record, they were so fully occupied in watching and taking care of one another that they had no time to spend in harassing the citizenry.

In tort law, Litigatia had long followed the concept that each person bears primary responsibility for his own destiny. In the 20th century, however, people recoiled from this harsh doctrine and sought to provide the individual with protection against misfortune. Bit by bit, Litigatia eventually arrived at the conclusion that the individual himself is in no way responsible for his misfortunes. To decide in each instance just who is responsible required a growing mountain of laws, court decisions, court personnel, and legal talent. As one example, consider what happened to medical practice.

Until the mid-20th century, the Litigatian people assumed that illness and death were natural phenomena. Physicians sometimes helped and sometimes harmed; occasional medical error was viewed as one of the inescapable hazards of life in a hazard-filled world. But by the later 20th century it had become widely accepted that, for every medical complication or fatality, there must be a culpable party. Medical malpractice suits multiplied geometrically, and juries became more and more generous with insurance companies' money.

By 1975, physicians were spending an increasingly large amount of their time (and their patients' money) practicing defensive medicine — collecting X-rays, tapes, consultations, and laboratory tests to use in the expected lawsuits. Doctors began refusing to treat certain disorders or to use certain procedures whose outcome was uncertain. By 1980, industries were phasing out their medical facilities for injured employees, not because of the cost of operating them, but because of the cost of the damage suits that followed.

**BY 1980, SCHOOLS WERE SO AFRAID OF DISCRIMINATION CHARGES THAT ALL STUDENTS GOT STRAIGHT A's.**

Medical practice became so dangerous that, by 1990, most medical school graduates entered the new specialty of "medical litigation." Many joined law firms as full-time expert witnesses. Most of the others were employed by manufacturers, retailers, trade associations, or labor unions to help them in either pursuing or defending medical malpractice suits. By the year 2000, no one was treating patients anymore, and the death rate soared, much to the satisfaction of the Zero Population Growth people.

The development of new drugs and therapeutic procedures also grew increasingly hazardous. By 1980, the cost of developing new drugs was exceeded by the cost of the extensive testing required to demonstrate them as "safe and effective." But even such certification provided no protection against damage suits. By 1990, drug

**GET REGISTRATIONS FOR MEETING AND MOTEL IN PROMPTLY**

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American Bar Association (Annual)	August 6-12	New Orleans, Louisiana

## Decline and Fall (Cont'd)

manufacturers had ceased introducing new drugs, had discontinued most of their existing pharmacopoeia, and confined themselves to selling such safe products as rubbing alcohol and witch hazel.

No business or profession remained unaffected by the Litigation passion for perfect equality and justice. Schools were among the first to be charged with unjust discrimination. By 1980, schools were sternly enjoined from discriminating against anyone on the basis of race, religion, sex, intelligence, or effort. Damage suits against teachers, school systems, and universities became common pressed by claimants who charged that they (or their children) had failed to learn. Education at all levels adjusted to this hazard by abolishing all measures of student learning. No one failed, and all students received A's. This made less difference than might be imagined. Medical school graduates knew little medicine, but no one practiced medicine anyway. Graduate engineers were incompetent, but "research and development" had ceased; the inevitable damage suits produced by new products made them unprofitable. Engineers were engaged mainly in pressing or fighting damage suits. In fact, everybody seemed to be spending most of his time in court, preparing to be in court, or recovering from having been in court.

Throughout the economy, new ventures disappeared. New factories were not built, since no locations could be found where it was legally possible to build them. In 1998, the U.S. Supreme Court promulgated the "omnia culpa" doctrine (Lipshitz v. General Motors Corp.), which in plain language meant that whenever a person suffered injury through use of a product, all persons or corporations who had any contact with the product, from raw material to delivery van, were equally liable to damage claims. It soon became very difficult to get anyone to make or sell anything, and most people went back to the ancient art of making things for themselves.

As early as the mid-1970s, courts held that not only bartenders but also private hosts who allowed patrons or guests to imbibe too freely could be sued for any accidents following such over-indulgence. To give a guest food or drink became so hazardous that private entertaining largely disappeared. Drinking remained as popular as ever, but social drinking was replaced by solitary drinking. The Spillway decision (Spillway v. Bacardi Imports, Inc.; Coca-Cola Co.; Penn Central Transportation; Hilton Hotels; American Federation of Cooks, Waitresses, and Bartenders; and 47 other defendants, 1999), applying the "omnia culpa" doctrine to the manufacture and distribution of alcoholic beverages, accomplished within months what the Anti-Saloon League had vainly sought for over half a century; the end of legal liquor distribution. The bootlegger and the moonshiner returned in force.

With the complete popular acceptance of the idea that for every unpleasantness there must be someone who can be sued, the legal profession prospered. The most rapidly growing legal specialty was the "litigation counselor," whose task was to meet with the aggrieved party (or his survivors) and survey all his associations and activities to advise whom to sue. Any litigation counselor who could not locate a dozen or more promising defendants would soon be unemployed (and be busily engaged in suing the client who had complained about him and the law firm that had dismissed him).

With the dawn of the 21st century, market production had virtually ceased, unemployment had passed the 50 per cent mark, the investment markets had been idle for years, and the death rate had

trebled. One would assume that movements to return to the "good old days" would have arisen, but they did not. It was satisfying to have someone else to blame for every failure and someone to sue for every financial exigency. Proceeds from damage suits now comprised nearly half of all personal income, and nearly half of all employed persons were either lawyers or were otherwise employed in legal processes. The pains and sacrifices of dismantling this system appeared too great to bear.

The end came quickly in the spring of 2005. All national food processors and retailers had long since disappeared, and food processing and distribution was divided between small food bootleggers supplying trusted customers in semisecrecy and several huge Government-sponsored food monopolies that did for food distribution what the reorganized Postal Service did for mail delivery in the 1970s. Inefficient food production and distribution, combined with a worn-out transportation system (the last new locomotive was made in 1981) resulted in the appearance of widespread food shortages. Massive food riots broke out in most large cities in March of 2005, followed by a general strike the next month. The police, who had been disarmed in 1986 and had forgotten how to make an arrest, were helpless. The army, unionized in 1983, refused to cross picket lines. By June, 2005, no trains ran, no utilities operated, and no stores had anything to sell. Only the hoarders and looters were eating.

Then came the invasion! The first massive air strike from Communalia dropped only food parcels. The second wave dropped propaganda leaflets announcing Communalia's willingness to assume direction of Litigatia, following the three unifying principles of Communalian society: Freedom Is Slavery, Less Is More, and Work is Play. The third wave dropped paratroopers who established control with little opposition.

That was that.

## Defense Line Needs Contributors

This is your newsletter and is designed to keep the members of the Association informed. Is there anyone in your area who is active in civic affairs, public office or professional activities? Please take a few minutes to note this information in the space below and send to Jackson L. Barwick, Jr., P. O. Box 11848, Columbia, S.C. 29211.

THE YEAR 2005, LIFE HAD COME TO SUCH A STANDSTILL THAT VICTORS AND OTHER CITIZENS ACTUALLY WELCOMED THE IN-  
SION FROM ABOARD.

The economy of the Torres Islands rested upon the life of a caste of professional canoe-builders. There were many magical and benomonic hazards connected with canoe-building. As time passed, these grew steadily more and more threatening until, all, canoe-building became so hazardous that no one was willing to become a canoe-builder. (Signature)

8-A

THE STATE — Columbia, S.C., Tuesday, Oct. 23, 1979



## Palmetto Scene

*Palmetto Scene will include meeting notices of general public interest, as well as honors and recognition of people in the Palmetto State. Items should be typed, include a name and phone number for verification, and mailed to Palmetto Scene, The State, Box 1333, Columbia, S.C. 29202.*

### **Defense Attorneys Meeting**

The annual meeting of the South Carolina Defense Attorneys Association will be held Oct. 25-28 at the Hilton Head Inn.

SOUTH CAROLINA DEFENSE ATTORNEYS ASSOCIATION

TWELFTH ANNUAL MEETING

October 25-28, 1979

Hilton Head Inn, Hilton Head Island, S.C.

NAME: \_\_\_\_\_ Badge  
Name: \_\_\_\_\_

FIRM NAME  
AND ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAME OF SPOUSE/DATE FOR BADGE \_\_\_\_\_  
First and Last

Registration Fee: Attorney only - \$125.00 \_\_\_\_\_  
Attorney and spouse/date - \$150.00 \_\_\_\_\_

(Make check payable to SOUTH CAROLINA DEFENSE ATTORNEYS ASSOCIATION and  
mail to: Post Office Box 340, Charleston, South Carolina 29402)

\_\_\_\_\_ I will play in men's doubles tennis tournament on Friday,  
October 26th. My partner is \_\_\_\_\_.

\_\_\_\_\_ I will play in mixed doubles tennis tournament on Saturday  
afternoon, October 27th. My partner is \_\_\_\_\_.

\_\_\_\_\_ I will play in golf tournament on Friday afternoon, Oct. 26th.

\_\_\_\_\_ I will play in golf tournament on Saturday, October 27th.

\_\_\_\_\_ My spouse/date will play in ladies tennis tournament on  
Friday afternoon, October 26. Her partner is \_\_\_\_\_.

\_\_\_\_\_ I/we will attend the President's cocktail reception on  
Saturday evening, October 27th from 6:30 to 8:00 PM.

Please complete and return to: South Carolina Defense Attorneys Association  
Post Office Box 340  
Charleston, South Carolina 29402



# Twelfth Annual Meeting South Carolina Defense Attorneys

## **OFFICERS**

R. BRUCE SHAW  
President

F. BARRON GRIER, III  
President Elect

ROBERT H. HOOD  
Secretary-Treasurer

MARK W. BUYCK, JR.  
Immediate Past President

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JAMES B. PRESSLY, JR.  
THOMAS A. McKINNEY  
JOHN B. McCUTCHEON  
ERNEST J. NAUFUL, JR.  
CARY C. DOYLE

## **PROGRAM CHAIRMAN**

CARL B. EPPS, III

## **PAST PRESIDENTS**

B. Allston Moore, Jr., 1969  
H. Grady Kirven, 1970  
Harold W. Jacobs, 1971  
G. Dana Sinkler, 1972  
Edward W. Mullins, Jr., 1973

G. Dewey Oxner, Jr., 1974  
James W. Alford, 1975  
C. Dexter Powers, 1976  
Jackson L. Barwick, 1977  
Mark W. Buyck, Jr., 1978

**HILTON HEAD INN  
HILTON HEAD ISLAND, SOUTH CAROLINA  
OCTOBER 25-28, 1979**

# THE SOUTH CAROLINA

# DEFENSE ATTORNEYS ASSOCIATION



## OFFICERS

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Post Office Box 11070  
Columbia, S.C. 29211

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1340 Pickens Street  
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ROBERT H. HOOD  
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Immediate Past President  
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Greenville, S.C. 29602

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CARY C. DOYLE  
Post Office Box 2125  
Anderson, S.C. 29621

Ex officio:  
DEWEY G. OXNER, JR.  
State DRI Chairman  
Post Office Box 2048  
Greenville, S.C. 29602

Enclosed is the program for the Twelfth Annual Meeting. Judge Haynesworth had a last minute conflict and was forced to cancel. However, the program is exciting and promises to be the best program ever. You are all strongly urged to attend and reap the benefits.

Enclosed are registration forms.

Contact the Hilton Head Inn directly and make your reservations now.

R. Bruce Shaw  
President

SOUTH CAROLINA DEFENSE ATTORNEYS ASSOCIATION

ANNUAL MEETING

at

HILTON HEAD

OCTOBER 25 - 28, 1979

R. BRUCE SHAW, Columbia attorney and President of the South Carolina Defense Attorneys Association announces that the Annual Meeting of the Association will be held at Hilton Head, South Carolina October 25th through 28th at the Hilton Head Inn. The Annual Meeting will begin Thursday evening with registration and social hour. On Friday, the association will be addressed by CHARLES ALLEN WRIGHT, Charles T. McCormick Professor of Law, University of Texas School of Law and author of Wright's Federal Practice. Also on the program is LIVELY M. WILSON of the firm of Stites, McElwain and Fowler of Louisville, Kentucky.

The HONORABLE FRANK A. CAUGHMAN, United States District Judge, District of Maryland will comment on "Appraisal of the Trial Bar". JAMES W. ALFORD of Columbia will moderate a panel consisting of Mr. WILSON, Mr. WRIGHT, JUDGE CAUGHMAN and the Honorable SOL BLATT, JR., United States District Judge, District of South Carolina.

On Saturday, the Association will hear a presentation by THOMAS S. CLAY of Altman and Weil, Inc., Management Consultants, Ardmore, Pennsylvania on the "Effective Use of Paralegals in Trial Practice". The second half of the program will be conducted by DR. THOMAS F. STATON, Huntington College, Montgomery, Alabama on the Psychological Factors in Jurors Perception of Evidence and Argument. Following the program on Saturday, there will be an annual business meeting of the Association.

Jackson L. Barwick, Jr.

*Sent to Florence, Greenville, Charleston  
and both Columbia newspapers 10/19/79*

November 1979

## Defense Trial Attorneys Assn. Elects Officers

The South Carolina Defense Attorneys Association held its annual meeting October 26 at Hilton Head with over one hundred of its three hundred members in attendance.

During the meeting the organization voted to change its name to the South Carolina Defense Trial Attorneys Association, elected officers and heard three well known speakers.

One of the keynote speakers was Charles Alan Wright of the University of Texas School of Law. A leading authority on federal practice, procedure and jurisdictional matters, Wright has served as counsel to Howard Hughes and Richard Nixon. Additionally, Lively Wilson of Louisville and Federal District Judge Frank A. Kaufman of Baltimore spoke to the group.

Elected president was Barron Grier, III, Columbia; Robert Hood, Charleston, president-elect; and Thomas McKinney, Rock Hill, secretary - treasurer. New members of the executive committee include Theron G. Cochran, Greenville; John

Hayes, Rock Hill; Gene Allen, Columbia. Incumbent members are Wade Logan, Charleston, John B. McCutcheon, Conway, and Cary Doyle, Anderson.

# THE SOUTH CAROLINA

# DEFENSE ATTORNEYS ASSOCIATION



## THE DEFENSE LINE

Editor  
Reporters

JACKSON L. BARWICK, JR.  
MARK WALL  
MANTON GRIER  
STEVE KIRVEN  
WILLIAM U. GUNN  
JOHN HAYES, III  
SAUNDERS M. BRIDGES, JR.

Volume 7

October, 1979

No. 5

### OFFICERS

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President

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Columbia, S.C. 29211

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**ERNEST J. NAUFUL, JR.**  
Barringer Building  
Columbia, S.C. 29201

Ex Officio:

**DEWEY G. OXNER, JR.**  
State DRI Chairman  
Post Office Box 2048  
Greenville, S.C. 29602

## President's Report

The annual meeting promises to be a good one. We have obtained some excellent speakers who will give us material to better our practice and our profession. CARL EPPS has done an excellent job in arranging the program. BILL BOYD, as Convention Manager, will see that you are fed a balanced diet and are able to obtain some type of liquid libation from time to time.

For the first time, we have invited the South Carolina State and Federal Judges to our convention. We have wanted to do this for a long time, but this year it is a reality. The Annual Meeting will be an excellent time to meet with and discuss our views with the Judges who are able to attend as well as to pass on information and gather socially with our brother defense lawyers. I hope all of you will make every effort to attend.

We have Committees who are preparing reports for the forthcoming Legislative Session on Comparative Negligence and No-Fault. As you know, no-fault has again, reared its ugly head with the report of the Legislative Audit Council. When you see your local Senator or House Member, please express your views to him or her on these subjects as they vitally effect our defense practice.

I have enjoyed serving you for the past year, almost as much as I have enjoyed writing this final President's Report. BARRON GRIER is a very prompt man and will probably get his reports to JACK BARWICK on time. I wish to thank the Executive Committee and all of the members and officers of the Association for their participation and help in the last year.

I hope to see all of you at the Annual Meeting.

R. BRUCE SHAW, President

## Twelfth Annual Meeting SC Defense Attorneys

Thursday, October 25, 1979

MESSAGE CENTER: Participants may be reached through (803) 785-5111.

1:00 p.m. - 6:00 p.m. — Registration

6:30 p.m. - 8:00 p.m. — Cocktail Party — Poolside Patio

Cocktail attire appropriate for evening events.

Friday, October 26, 1979

ALL BUSINESS MEETINGS WILL BE HELD IN HILTON HEAD INN — ROOKERY ROOM (Meetings to start promptly)

9:00 a.m. — Welcome: R. Bruce Shaw — Nelson, Mullins, Grier & Scarborough, Columbia, South Carolina — President — South Carolina Defense Attorneys Association.

9:05 a.m. — Program Announcements: Carl B. Epps, III — Turner, Padgett, Graham & Laney, Columbia, South Carolina — Program Chairman

9:10 - 10:10 a.m. — Recent Developments in Federal Practice as They Affect The Defense Bar: Charles Alan Wright — Charles T. McCormick Professor of Law, University of Texas School of Law, Austin, Texas

10:10 - 10:40 a.m. — Preparing the Major Case for Trial: Lively M. Wilson — Stites, McElwain & Fowler, Louisville, Kentucky

10:40 - 11:00 a.m. — Coffee Break

11:00 a.m. — Lady's Brunch — Audubon Room — Psychological Factors in Juror's Perception of Evidence and Argument: Thomas F. Staton, Ph.D. — Huntington College, Montgomery, Alabama

11:00 a.m. - 12:15 p.m. — Appraisal of the Trial Bar — Ways to Improve: Federal Judge's Observations: Honorable Frank A. Kaufman — United States District Judge, District of Maryland, Baltimore, Maryland — Panel Discussions: Moderator: James A. Alford — Alford & Johnson, Columbia, South Carolina

(continued next page)

# Twelfth Annual Meeting

(continued from page 1)

— Panelists: Lively M. Wilson, Charles Alan Wright, Honorable Frank A. Kaufman, Honorable Sol Blatt, Jr., United States District Judge, District of South Carolina, Charleston, South Carolina

1:15 p.m. — Golf Tournament — Terry Dill

1:30 p.m. — Tennis Tournament — Theron Cochran, Tom McKinney

6:30 p.m. - 8:00 p.m. — Cocktail Party, Poolside Patio

8:00 p.m. - 9:00 p.m. — Dinner, Planters Hall

9:00 p.m. - 1:00 a.m. — Dinner Dance, Planters Hall — Mama's Home Cooking — Bar will be open all evening

## Saturday, October 27, 1979

9:00 a.m. (promptly) — Opening Announcements: R. Bruce Shaw, Presiding — Introduction of Program: Carl B. Epps, III

9:10 a.m. - 11:30 a.m. — Practical Tips For The Trial Lawyer — Effective Use of Paralegals in a Trial Practice: Thomas S. Clay — Altman & Weil, Inc., Management Consultants, Ardmore, Pennsylvania

### COFFEE BREAK

11:30 a.m. - 11:50 a.m. — Legislative Report: R. Bruce Shaw, James V. Dunbar, Jr. — Berry, Dunbar & Woods, Columbia, South Carolina

11:50 a.m. - 12:00 noon — Annual Report of Defense Research Institute: G. Dewey Oxner, Jr. — Haynesworth, Perry, Bryant, Marion & Johnstone, Greenville, South Carolina

12:00 noon - 12:30 p.m. — Annual Meeting of South Carolina Defense Attorneys Association

1:15 p.m. — Golf Tournament — Terry Dill

1:30 p.m. — Tennis Tournament — Theron Cochran — Tom McKinney

7:00 p.m. — President's Reception

# Executive Committee Meeting

June 21, 1979

Present at the meeting were BRUCE SHAW, BARRON GRIER, MARK BUYCK, BUTCH EPPS, WADE LOGAN, JOHN McCUTCHEON, TOM MCKINNEY, and ROBERT H. HOOD. A detailed report of the plans for the upcoming annual meeting to be held at the Hilton Inn on Hilton Head Island on October 25-28 was discussed. BRUCE SHAW was pleased to report that CHIEF JUSTICE CLEMENT HAYNSWORTH has accepted the invitation to be on the program for the meeting along with PROFESSOR WRIGHT and attorney LIVELY WILSON of Louisville, Kentucky. BUTCH EPPS is in charge of coordinating the seminar portion of the meeting and has made arrangements to have TOM STATON speak on Saturday. Mr. STATON is a psychiatrist and will talk on impressions and reactions of jurors in given trial situations. Also a representative of Altman & Weil will talk on the effective use of paralegals in litigation. All state and federal judges, including new members of the judiciary, have been invited as guests of the association for the annual meeting and it is anticipated that a large number will be in attendance.

We are sending the roster of the members of the Defense Trial Attorneys Association to DRI to check against the list of their members to see if we can increase the DRI membership among the South Carolina defense attorneys.

A legislative report was given by JIM DUNBAR, BRUCE SHAW, and BARRON GRIER. There are two important bills pending before the state legislature that are in the judicial committees of the house and senate. These are the product liability and comparative negligence bills. Also, the audit council that audits state agencies has recommended that no fault legislation be adopted in the state of South Carolina. A position paper in opposition to the product liability and comparative negligence bill is to be prepared by BUTCH EPPS, JIM ALFORD, JIM PRESSLY, and BRUCE SHAW.

The bill for the work and the expenses incurred by JIM DUNBAR and his firm was approved for payment.

At the annual meeting, one of the topics for discussion at the Business session will be how much to pay a lobbyist to do work on behalf of the association.

Several members of the executive committee have written congressmen and senators representing South Carolina for their position on the pending bill which would do away with diversity jurisdiction in the federal district court. Based upon this polling of the South Carolina representatives and senators, apparently MENDEL DAVIS is the only representative from South Carolina who has voted to do away with diversity. Also, one member of the executive committee contracted Senator Teddy Kennedy's office and ascertained that he was in favor of doing away with diversity.

The treasurer's report was given by BOBBY HOOD, indicating that we are in the black following the joint meeting. BOBBY is starting to receive a lot of pre-registration forms for the annual meeting. It was reported that MICHAEL R. DANIEL of Gaffney has become a new member of the association.

BILL BOYD is the chairman of the Annual Meeting at Hilton Head in October.

Amicus Curi briefs were filed by the Amicus committee headed up by STEVE MORRISON in two cases. One involved DEWEY WISE and I am not sure what the other is. I would ask that you obtain this information in Columbia from STEVE MORRISON.

# Report From The Districts

## Report From The Second District

CLAUDE M. SCARBOROUGH, JR., a member of our association and past president of South Carolina Bar Association will appear on a panel at the convention of the Virginia Association of Defense Attorneys, Saturday, October 27th. We are pleased that CLAUDE has been asked to participate in their program with many other outstanding lawyers. We will miss him at our Annual Meeting, however.

ERNEST J. NAUFUL, JR. was featured in the State-Record, Sunday, October 21st, for his "culinary talents". It was an interesting article with a picture of Ernie and Brenda at his charcoal grill.

MANTON GRIER

(NO OTHER REPORTS)

## DRI REPORT

The following have joined DRI in September:

William D. Gray, Anderson  
Seth E. Keener (INA), Columbia  
Richard M. Lovelace, Jr., Conway  
William H. Davidson, Columbia  
Coming B. Gibbs, Jr., Charleston

GOOD GOING!

# Ten Years Ago

On October 10th and 11th, 1969, our association held its annual convention at the Sheraton-Columbia Inn. The entertainment committee, headed up by chairman JIM ALFORD, assisted by ERNIE NAUFUL, presented a luncheon, cocktail party, dinner and stage play, and bus transportation to and from the Carolina — N.C. State Football Game. Remember that?

# Banquet Honors Judge Louis Rosen

The Honorable Louis Rosen, who served as judge of the First Judicial Circuit for Calhoun, Dorchester and Orangeburg Counties for 18 years, was honored Thursday night with a banquet dinner sponsored by the Orangeburg County Bar Association.

Serving on the bench from March 30, 1962, to his retirement on July 20 of this year, Rosen received tribute from the more than 50 SC Bar Association members present from the three counties.

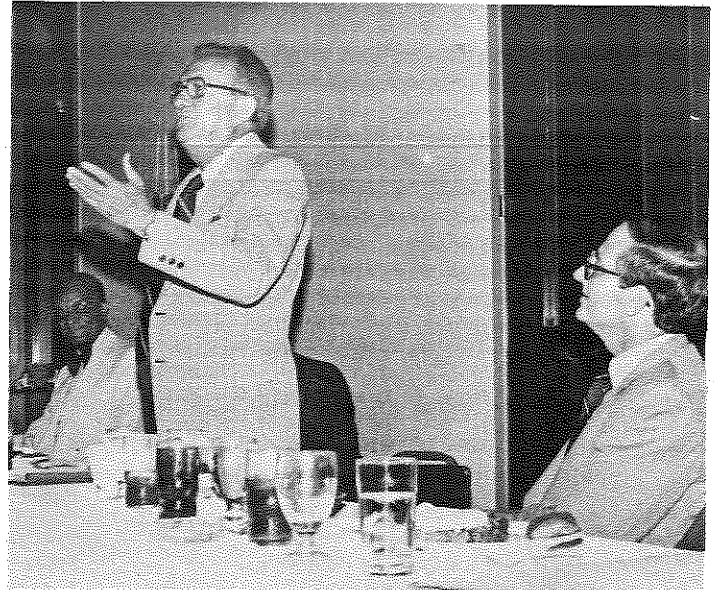
In his speech at the Country Club of Orangeburg, Rosen emphasized that the American judicial system at all levels is "basically honest and good.

"we have the best legal system, the best courts, and the best law schools in the world," he said.

But he stressed that the senior lawmakers should involve themselves more "in the problems of the poor and the disadvantaged."

Since his retirement, Rosen has made himself available to practice law on a limited basis, mostly in a counseling capacity.

(Thanks to Bill Horger)



## Judge Honored

Judge Louis Rosen, who served on the bench for 18 years and retired from the First Judicial Circuit in July, talked to more than 50 members of the S.C. Bar Association Thursday night at a dinner in his honor. From left are: Newton Pough, vice president of the Orangeburg County Bar Association; Rosen; Judge John H. Smith, current First Judicial Circuit judge; and Michael Horger, secretary-treasurer of the bar association. (T&D Photo by Jim Housand)

## Claims Management Report

The Claims Management Association reports that CURTIS HIPP, State Farm, has been designated as liaison with our Association and will be providing news about happenings in the Claims Community.

The Claims Management Association will have an evening meeting Thursday, November 1, 1979 at the Quality Inn, Columbia prior to the South Carolina Claims Association Fall Seminar to be held Friday, November 2, 1979. SLED CHIEF STROM will be the speaker and guest of honor at the Annual Meeting of the State Claims Association.

Several claims managers are on the move. CHARLES D. "DOUG" CURD, former supervisor with Kemper in Greenville has been transferred to Kemper's Atlanta Office as Regional Compensation Supervisor.

MICKEY WATSON, Claims Manager for The Hartford in Columbia for some time has been transferred to the home office of Hartford as a Quality Control Supervisor.

DAN STALLINGS, former Manager of The Hartford Charleston Office has succeeded WATSON as Manager of the Columbia Office.

TERRY ANDRY is the new Claims Manager for Aetna Insurance Company in Columbia.

SETH KEENER is the new Claims Manager for Insurance Company of North America in Columbia.

The Atlanta Claims Association recently recognized those who had 25 years of service with the Association.

Those from South Carolina so honored are:

CHARLES H. GIBBS, Charleston; A BARON HOLMES, III, Charleston; JOSEPH R. YOUNG, Charleston; WALTON J. McLEOD, III, Columbia.

## Defense Line Needs Contributors

This is your newsletter and is designed to keep the members of the Association informed. Is there anyone in your area who is active in civic affairs, public office or professional activities? Please take a few minutes to note this information in the space below and send to JACKSON L. BARWICK, JR., P. O. Box 11848, Columbia, S.C. 29211

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(Signature)

**One who is slack in his job  
Is  
Brother to one who destroys**  
First Baptist Church Marquee — Columbia

## NAME CHANGE PROPOSED

At the business meeting Saturday morning vote will be taken on changing the name of our Association to "Defense Trial Attorneys of South Carolina.

# Calendar of Events

## **SOUTH CAROLINA DEFENSE ATTORNEYS (ANNUAL)**

DRI Seminar — Insurance "Complex Problems in Law and Practice"

Mid-Year Meeting SC Bar

October 25-28

November 15-16

November 15-17

**1980**

International Association of Insurance Counsel (Mid-Year)

Defense Research Institute (Annual)

American Bar Association (Mid-Year)

Federation of Insurance Counsel (Mid-Year)

International Association of Insurance Counsel (Annual)

Defense Research Institute (Mid-Year)

Federation of Insurance Counsel (Annual)

American Bar Association (Annual)

**SC DEFENSE ATTORNEYS — CLAIMS MANAGEMENT**

**JOINT MEETING**

January 20-26

January 20-23

Jan. 30 - Feb. 6

Feb. 24 - March 2

June 29 - July 5

June 29 - July 2

July 27 - August 7

July 30 - August 6

August

**1981**

International Association of Insurance Counsel (Mid-Year)

Defense Research Institute (Annual)

American Bar Association (Mid-Year)

Federation of Insurance Counsel (Mid-Year)

International Association of Insurance Counsel (Annual)

Defense Research Institute (Mid-Year)

Federation of Insurance Counsel (Annual)

American Bar Association (Annual)

**SC DEFENSE ATTORNEYS (ANNUAL)**

January 17-22

January 17-22

February 4-11

February 18-22

June 28 - July 4

June 28 - July 1

August 5-9

August 6-12

October 22-25

Hilton Head Island, South Carolina

The Marriott Orlando, Orlando, Florida

Carolina Townhouse, Columbia, South Carolina

Mauna Kea Beach Hotel, Kamuela, Hawaii

Mauna Kea Beach Hotel, Kamuela, Hawaii

Chicago, Illinois

Marco Island, Florida

The Greenbrier, White Sulphur Springs, West Virginia

The Greenbrier, White Sulphur Springs, West Virginia

Fairmont Hotel, San Francisco, California

Honolulu, Hawaii

Hilton Head Island, South Carolina

Marco Beach Hotel, Marco Island, Florida (Tentative)

Marco Beach Hotel, Marco Island, Florida (Tentative)

Houston, Texas

Camelback Inn, Scottsdale, Arizona

Century Plaza, Los Angeles, California

Century Plaza, Los Angeles, California

Hilton Head, South Carolina

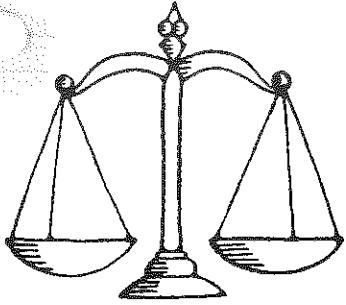
New Orleans, Louisiana

The Cloister, Sea Island, Georgia



# THE SOUTH CAROLINA DEFENSE

# TRIAL ATTORNEYS ASSOCIATION



## THE DEFENSE LINE

Editor  
Reporters

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MANTON GRIER (Chairman)  
STEVE KIRVEN  
CARL FERGUSON  
TOM McKINNEY  
LARRY ORR

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State DRI Chairman  
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Volume 7

December 1979

No. 6

## President's Report

It is a privilege and a pleasure to serve as your president for 1980. I hope the Association can move forward this year as it has in the past. Our membership needs to be increased so that we will be more effective when we appear before the Legislature. One proposal is that all firms that can possibly afford to do so should join on a firm membership, so that we can legitimately report that we represent a certain number of members. Of course, if a firm has more than ten attorneys, it is a financial benefit to them, but we would like to see all firms join as a firm so that we can tell the Legislature that we represent seven or eight hundred attorneys, rather than the three hundred we now represent.

This year, we are going to set up several new committees, including a committee headed by MANTON GRIER of Boyd, Knowlton, Tate and Finlay, to report on cases of interest that we, the members, have tried in our circuit and federal courts. These will be reported by MANTON anonymously, but should contain information concerning procedure, evidentiary matters and trial techniques that you feel would be of interest to your fellow members. I think you will find this to be a most informative and helpful column.

Additionally, GENE ALLEN has agreed to head up an Expert Witness Bank, which will appear in every issue of the Defense Line. Please forward to GENE any depositions or transcripts of testimony in which you have used experts or have cross-examined experts, together with a brief index of the specialty and in what type of case the testimony was used. GENE will print these names in each issue under the expert's field, and you may write to GENE for copies of these transcripts and depositions, at the cost simply of re-producing same.

Each of your Executive Committee members has agreed to appear before the Legislature at least once on behalf of the Association to argue in favor of or against bills that are before the Legislature this session. Since we successfully thwarted the plaintiffs' efforts last year, we feel this will be a very heavy legislative session, and we will need the support of all of the members from time to time.

(Continued on page 2)

## Executive Committee Meeting

November 16, 1979

Present at the meeting were BARRON GRIER, TOM McKINNEY, BRUCE SHAW, GENE ALLEN, THERON COCHRAN and JOHN McCUTCHEON.

The Treasurer's Report is attached as a part of these Minutes.

The Committee decided to offer the job of lobbyist to JIM DUNBAR again this year for the sum of \$2,500.00. BRUCE SHAW will make the offer and will report back to the Committee by December 10.

Several options for the Joint Meeting were discussed, and the Committee decided that either Fripp Island or Asheville would be the preferred locations, and that the months of April or August would best suit the Defense Attorneys.

It was decided that BARRON GRIER would check with Tom Legare of the S.C. Bar to see if we could invite the Claims Managers to a CLE Seminar on January 18, rather than sponsoring a separate seminar ourselves.

GENE ALLEN will head up an Expert Witness Bank, and a list of the names and fields of specialization of these experts will be printed in each issue of THE DEFENSE LINE.

BRUCE SHAW and GENE ALLEN volunteered to appear before the Circuit Court Advisory Committee on Monday, November 19, to suggest certain changes in the Common Pleas Court on behalf of the Association.

New Committee Chairmanships are as follows:

Membership, MIKE COLE; Legislative, BARRON GRIER and BRUCE SHAW (It was also decided that the entire Executive Committee would participate on this Committee.); Defense Attorneys/Claims Managers Meeting, BOBBY HOOD, Chairman; Annual Meeting, C. B. Smith, Convention Chairman; DRI, DEWEY OXNER; Defense Line, JACK BARWICK, Editor, MANTON GRIER, Chairman 2nd District.

There being no further business, the meeting was adjourned.

## President's Report (Continued from page 1)

Please remember that the practice of law as we know it can be drastically changed unless we are all willing to give up a little of our time and spend a lot of effort to help when we are called on by your Executive Committee.

In regards to the "feeler" that I sent to you concerning our Annual Meeting, we have not received a sufficient number of responses to make a definite statement at this writing, other than that the letters are running two to one in favor of going on the cruise. You will be receiving further details from me by way of the next "Defense Line" on this matter, so that we can all make our plans. I regret that this notice was sent to the Claims Managers by mistake, as it only involves our Annual Meeting, and does not involve the Joint Meeting.

Your Executive Committee met on November 16 and discussed several alternate plans for the Joint and Annual Meetings, which will be up-dated for you shortly.

BRUCE SHAW and GENE ALLEN agreed to appear before the Circuit Court Advisory Committee on Monday, November 19, to recommend certain changes before the Common Pleas Court. We specifically want to propose that paralegals and legal assistants be allowed to attend roster meetings, because we find it an intolerable problem, when you practice in more than one county, to have attorneys spending all day in roster meetings, and, of course, it is a tremendous expense to our clients. Additionally, we are going to suggest to the court that it not force attorneys to ask other lawyers in their firm to try a case that they are not prepared for, because it leads to errors in the trial, and possibly malpractice in some instances. The courts should not issue mandatory C.L.E. demands and require attorneys who are not familiar with a case to try it. Additionally, we are going to suggest that the court discontinue the use of jury pools because of the numerous problems that this system causes. BRUCE and GENE will also cover any other matters coming before this committee, and the Association appreciates the Court's advising us of this meeting and allowing us to be heard.

BRUCE SHAW did a good job as our president this past year. The programs and meetings were some of the best we have ever had, and a special thanks goes to CARL EPPS, program chairman, and BILL BOYD, convention chairman, for an outstanding meeting at Hilton Head.

The new members of the Executive Committee are: BOBBY HOOD, President Elect; TOM McKINNEY, Secretary/Treasurer; BRUCE SHAW, Past President; GENE ALLEN, THERON COCHRAN, JOHN McCUTCHEON, JOHN HAYES, CARY DOYLE and WADE LOGAN. Please give them your help and support, as I am sure we will be needing it, and I personally thank them for agreeing to serve.

In closing, I thank you again for the privilege and opportunity to serve as your president, and I hope that when my year is over, we can look back and say it was a good year.

F. BARRON GRIER, III, President

## South Carolina Defense Trial Lawyers Association Treasurer's Report

September 30, 1979-November 12, 1979

Balance in Checking Account:	\$ 1,980.57
Balance in Savings Account:	\$12,826.94
Checks written in this period:	
#399 James Dunbar	\$ 559.00 cost advance
400 Grove Park Inn	5,185.45 annual meeting
401 McDonald	354.14 printing
402 Barron Grier	62.40 speaker's gifts
403 Diamonds Liquor Store	605.40 annual meeting
404 Paul Cantrell	262.00 reimbursement
405 Kirkland, Taylor, Wilson & Moore	300.00 registration cancellation

406 Hilton Racquet Club	100.00 court deposit
407 Turner, Padgett, Graham & Laney	150.00 registration cancellation
408 Charles Plowden	150.00 reg. cancellation
409 Jackson L. Barwick	100.11 reimbursement
410 McDonald	161.21 printing
411 Sinkler Gibbs & Simons	19.66 reimbursement
412 Pledger Bishop	150.00 reg. cancellation
413 Mama's Home Cooking	100.00 annual convention
414 Theron Cochran	509.20 annual convention
415 McDonald's	1,408.16 printing
416 Steve Kirven	150.00 reg. cancellation
417 Sinkler Gibbs & Simons	150.00 reg. cancellation
418 Columbia Engravers	72.07 plaque & gavel
419 Frank P. Kaufman	631.69 reimbursement

## Report From The Districts

If any member of the Association has any item of interest to the general membership, please contact **The Defense Line** reporter from your Congressional District. **The Defense Line** reporters are:

First Congressional District, MARK WALL; Second Congressional District, MANTON GRIER, Chairman; Third Congressional District, STEVE KIRVEN; Fourth Congressional District, CARL FERGUSON; Fifth Congressional District, TOM McKINNEY; Sixth Congressional District, LARRY ORR.

**The Defense Line** is particularly interested in the results of cases that you have recently tried or rulings on motions or other matters involving interesting questions of substantive law, procedure or evidence. Also, please let us know if you have a brief or other memorandum concerning such questions that you would be willing to share with other members of the association, provided they pay the cost of copying. If so, we will so indicate in **The Defense Line** without disclosing your name. In order to encourage our members to supply us with information, we do not publish the names of attorneys supplying information in **The Defense Line**. We will, however, give out such names to any member of our association who would like to contact an attorney concerning a particular item in **The Defense Line**.

## REPORT FROM THE SECOND DISTRICT

One of our members reports a successful jury verdict for the defendant in an arson case recently tried in the Federal District Court, which involved several interesting procedural questions. The plaintiff sought to recover under a fire policy for damages sustained to her home and personal belongings as a result of a fire. The defense was: (1) That an arson or deliberate fire had been set by either the insured or someone acting on her behalf; and (2) that there was a fraudulent proof of loss (the insured claimed for certain items alleged to have been burned in the house, which, according to testimony of the insurance agent, were not found in the house immediately after the fire). The evidence of arson included: motive (the insured was living on social security); she had a prior fire two years before (this fire was not questioned); she had doubled the insurance coverage on a value policy a month and a half before the fire; she and her paramour were the last known people at the scene before the fire; the fire broke out and was discovered within an hour of their leaving the scene; it was a clear day (no electrical storms); there was no electricity in the particular room where the fire started; the insured had not made complete repairs from the first fire and some of the house was still unlivable; the insured had no receipts showing any building materials that she had bought to repair the house from the first fire, although she and her paramour testified that they had bought such materials; and a deputy sheriff and a fireman who were at the scene testified that they did not see any evidence of the fire being a natural fire, although they could not testify as to what did, in fact, cause the fire. At the trial, an interesting evidence question came up under Rule 613(b) of the new Federal Rules of Evidence, which provides as follows: "extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an oppor-

## New Members of The Defense Research Institute

The following have recently joined DRI: ELLIS M. JOHNSTON, II, Greenville; MARK H. WALL, Charleston; LADSON F. HOWELL, Beaufort; JETER E. RHODES, JR., Columbia; W. RAY BERRY, Columbia; HUTSON S. DAVIS, JR., Beaufort; HENRY B. SMYTHE, JR., Charleston; BACHMAN S. SMITH, Charleston; JACK F. McINTOSH, Anderson; RICHARD P. TOWNSEND, Laurens.

Congratulations!

## Report On Proposed Rule Changes

I attended the November 29, 1979 hearing before the South Carolina Supreme Court. At the hearing, I briefly advised the Court that our Association endorsed the proposals of the South Carolina Bar. I also spoke on one or two of the specific proposals. As there was no formal representative of the Trial Lawyers present, I also took the opportunity to point out to the Court that the written comments filed by the Trial Lawyers with Judge Coleman's committee indicated support for certain of the proposals being presented to the Supreme Court.

Not much opposition was voiced by attorneys at the hearing. Hoover Blanton spoke against changing the rule for production, and several persons spoke against allowing unlimited interrogatories. I pointed out to the Court that both the Trial Lawyers and our Association were in agreement that more extensive interrogatories were needed, although the Trial Lawyers favored a cap of fifty interrogatories, in accordance with the local U.S. District Court rule.

At the conclusion of the hearing, the Chief Justice pointed out that Senator Gressette had asked for the opportunity to present his judiciary committee's views on the proposals but, due to illness, Senator Gressette was unable to be present at the hearing. Accordingly, the Chief Justice announced he would defer any action until he had the benefit of the judiciary committee's opinion.

The hearing lasted all morning. To judge by their comments, the various Justices are concerned about the impact of the changes (especially in the discovery area) upon the function of the trial judges. Generally, a united position was presented by those present so that, hopefully, the Court will feel some pressure to adopt at least a portion of the proposals.

It was a pleasure to represent our Association at the hearing.

T. EUGENE ALLEN, III

## Report From The Claims Managers

The CLAIMS MANAGEMENT ASSOCIATION OF SOUTH CAROLINA held its annual Fall Meeting Thursday evening, November 1, 1979 at the Quality Inn on Broad River Road in Columbia.

The speaker and guest of honor was CHIEF J. P. STROM of the South Carolina Law Enforcement Division. The Claim Managers presented an award to Chief Strom for his meritorious service in law enforcement to the people of South Carolina.

The following members of the Association were elected to serve as officers for the coming year: President, JOHN DUNN; Vice-President, RALPH CHAMBLEE; Treasurer, C. L. MATTHEWS, JR.; Secretary, E. B. "MAC" McCONKEY; Immediate Past President, CURTIS HIPPIE. 1979-80 Directors (Terms Expire 12/31/80): Mutual, JERRY TARLTON; Independent, HAROLD THOMAS; Stock, MAC TIMMONS; Self Insurers, J. W. DERRICK. 1980-81 Directors (Terms Expire 12/31/81): Mutual, ED DILLARD; Independent, JOHN HAMBY; Stock, SAM BLACK.

The STATE CLAIMS ASSOCIATION conducted its annual Fall Seminar at the same location the following day. During this meeting, it was announced that JOHN DUNN had been selected as the 1979 Claim Manager of the year.

tunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d) (2)." At the trial the plaintiff's son testified and was excused. Subsequently, a deputy sheriff was questioned about a contrary statement made by the plaintiff's son. The judge excluded this testimony under Rule 613 until such time as the plaintiff's son was recalled to the stand and asked about the prior inconsistent statement. [Note: there is some question whether Rule 613 would operate to keep out a prior inconsistent statement given at a deposition. See Rule 801(d)(1)(a)]. The Court also ruled at the trial that the son-in-law of the plaintiff's paramour (in fact, the plaintiff's common law husband) was not sufficiently identified with the adverse party to permit the defendant to lead the witness on direct examination under Rule 611(c), which provides, in part: "When a party calls...a witness identified with an adverse party, interrogation may be by leading questions." The attorney who tried the case for the defense says that he has an extensive pre-trial brief on the issues raised by 611 and is willing to make it available to any member of the association who is interested and willing to pay for the cost of copying the brief. If anyone is interested, please contact this reporter for the name of the attorney.

A member of our association also reports a successful jury verdict for the defendant in a products liability case involving a hand hoist. The plaintiff was injured when the hand hoist cable snapped while he was attempting to lift a piece of heavy equipment using the hand hoist. The case was submitted to the jury on the following theories of liability: defective design (hand hoist was designed in such a way that cable would become worn with use); failure to adequately test the product and failure to adequately warn potential users of dangers involved in using the product. There was also a factual dispute on whether the defendant had placed adequate warnings on the device showing its lifting capacity. The defendant put up evidence to show that such a warning had been placed on the device and the plaintiff put up evidence to show that the device did not contain such a warning. This case was also tried in the Federal District Court.

MANTON M. GRIER

### Report From the Fourth District

There are a couple of cases pending in the Greenville County Court of Common Pleas where the plaintiff is proceeding on the theory enunciated by Judge Blatt in **Robinson v. State Farm Mutual Automobile Insurance Company**, 464 F. Supp. 876 (1979). In that case, Judge Blatt, in ruling on a motion to dismiss, ruled that the South Carolina Supreme Court would recognize a cause of action for actual and punitive damages for an alleged bad faith refusal of the defendant insurance company to pay first party personal injury protection benefits as provided in its contract of insurance. It is too early to tell what the lower court will do with these cases, but their existence is noted.

Although the Supreme Court's decision in **State v. Hammond**, 242 S.E. 2d 411 (1978) has been out for some time, many defense lawyers are not aware of its existence because it is a criminal case. In **Hammond** the South Carolina Supreme Court held that while it is still permissible for counsel to argue to the jury with regard to the unexplained failure of a party to call an available witness, no case, criminal or civil, will be reversed in the future by reason of the trial judge's failure to charge the previously acknowledged presumption in that connection. This case came up recently in a civil trial where the trial judge refused to charge the presumption on the authority of this decision.

CARL G. FERGUSON

(No Report From Other Districts)

### NEW MEMBERS OF SCDTAA

MICHAEL E. DANIEL; THOMAS A. GIVENS; WILLIAM A. DALLIS;  
MICHAEL J. GIESE; JAMES C. COTHRAN, JR.; JOHN M. O'ROURKE.  
WELCOME!

# Calendar of Events

## 1980

International Association of Insurance Counsel (Mid Year) January 20-26  
 Defense Research Institute (Annual) January 20-23  
 American Bar Association (Mid-Year) Jan. 30 - Feb. 6  
 Federation of Insurance Counsel (Mid-Year) Feb. 24 - March 2  
 International Association of Insurance Counsel (Annual) June 29 - July 5  
 Defense Research Institute (Mid-Year) June 29 - July 2  
 Federation of Insurance Counsel (Annual) July 27 - August 7  
 American Bar Association (Annual) July 30 - August 6  
**SC DEFENSE TRIAL ATTORNEYS —**  
**CLAIMS MANAGEMENT JOINT MEETING** August 7-August 9  
**SC DEFENSE TRIAL ATTORNEYS (ANNUAL)** October 7

Mauna Kea Beach Hotel, Kamuela, Hawaii  
 Mauna Kea Beach Hotel, Kamuela, Hawaii  
 Chicago, Illinois  
 Marco Island, Florida  
 The Greenbrier, White Sulphur Springs, West Virginia  
 The Greenbrier, White Sulphur Springs, West Virginia  
 Fairmont Hotel, San Francisco, California  
 Honolulu, Hawaii

Grove Park Inn, Asheville, North Carolina  
 Kiawah Island, South Carolina

## 1981

International Association of Insurance Counsel (Mid-Year) January 17-22  
 Defense Research Institute (Annual) January 17-22  
 American Bar Association (Mid-Year) February 4-11  
 Federation of Insurance Counsel (Mid-Year) February 18-22  
 International Association of Insurance Counsel (Annual) June 28 - July 4  
 Defense Research Institute (Mid-Year) June 28 - July 1  
 Federation of Insurance Counsel (Annual) August 5-9  
 American Bar Association (Annual) August 6-12  
**SC DEFENSE TRIAL ATTORNEYS —**  
**CLAIMS MANAGEMENT JOINT MEETING** August  
**SC DEFENSE TRIAL ATTORNEYS (ANNUAL)** October 22-25

Marco Beach Hotel, Marco Island, Florida (Tentative)  
 Marco Beach Hotel, Marco Island, Florida (Tentative)  
 Houston, Texas  
 Camelback Inn, Scottsdale, Arizona  
 Century Plaza, Los Angeles, California  
 Century Plaza, Los Angeles, California  
 Hilton Head, South Carolina  
 New Orleans, Louisiana

To be determined  
 The Cloister, Sea Island, Georgia



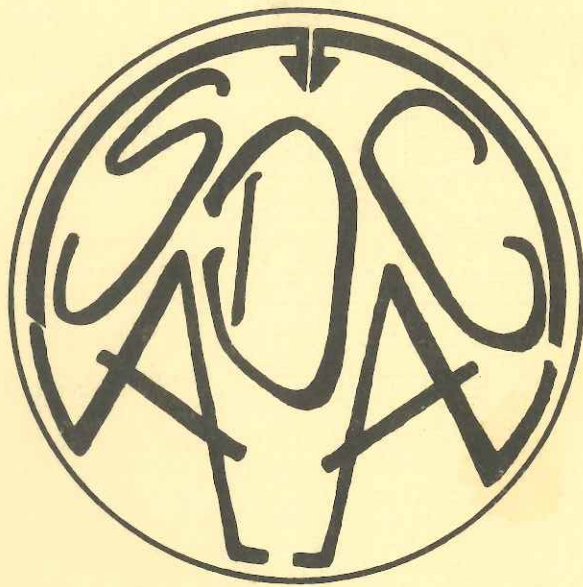
# THE SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS ASSOCIATION



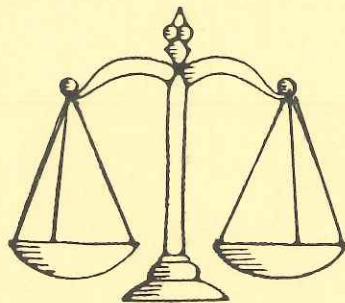
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**1979**  
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*South Carolina*  
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