



THE DefenseLINE



SCDTAA/Claims Management Association
Joint Meeting at the Grove Park Inn
Asheville, NC ▶ July 23-25 2009

www.scdtaa.com

President's Message

by John T. Lay, Jr.



As we reach the halfway point for the year, we as an organization can take great pride in what we have accomplished thus far. On April 1st, the organization held the fifth annual reception for the judicial committees of South Carolina legislature. It was incredibly well attended by both membership and the legislators. We are really starting to get traction at the legislature and are excited about the opportunities that are being presented. Earlier that same day we held our first in-house counsel seminar. Thirteen corporate counsel in South Carolina attended this event. We offered free CLE hours and a one-year membership to our organization. Importantly, we also developed an extensive list of in-house counsel which includes almost 100 in-house counsel, South Carolina based, with whom we are now in regular contact. I urge each of you to provide the names of in-house counsel to our executive director, Aimee Hiers, so that information about our organization can be forwarded to them. Also remember that this event is now going to be held annually so please let your in-house counsel contacts know about the seminar for next year.

We also held a well-attended judicial reception in Charleston on May 27th. The event was held at McCrady's and a good time was had by all. On June 2, we held our 19th Annual Trial Academy. It was attended by 24 young lawyers and Anthony Livoti, Curtis Ott and Wendy Keefer lined up a wonderful slate of speakers. In each courtroom, there were experienced lawyers there to critique the trials and offer other trial insights. Wendy Keefer also updated the problem to give the lawyers acting as plaintiff's counsel more of a fighting chance.

We also have completely revamped the website. It is much more user friendly. I urge each and every one of you to go onto the website and get educated on all the new features that have been added. There is now a section for blogs for various substantive law committees as well as for the organization as a whole. Please take the time to participate in the blog discussions. We are also moving forward with the past president's dinner which will be held on the Wednesday of the annual meeting, November 4th. I invite each and every one of the past presidents to attend this meeting to catch up with old friends and learn about all the benefits that this organization continues to offer.

Our substantive law committees have also gotten back on track. We've had wonderful interest in the substantive law committees which include the following: ADR, Commercial Business Litigation, Construction, Employment, Healthcare, Insurance Defense/Torts, Law Firm Management, Products Liability, Trucking, and Workers' Compensation. We have appointed chairs and vice-chairs for each one of these committees and have asked these committees to provide articles for the DefenseLine, leadership on the blog discussions and presentations for breakout sessions at the joint and annual meetings.

We have also written two Amicus Curiae Briefs. One has already been filed and the other is the process of being filed. This committee has been relatively dormant the past couple of years but we are trying to take on a more active role. If any member has appellate issues that they believe the organization should weigh in on, please contact me or Amicus Curiae chairs, Kip Darling and Ryan Earhart.

In addition, we obviously have been monitoring current economic environment and its potential impact on the organization. We made the budget this year very lean and have created an ad hoc finance committee to make sure that our dues and other financial decisions are where they need to be. Currently, our organization continues to be in great financial shape. Finally, I urge each and every one of you to attend the joint and annual meetings. The value for these meetings is incredible as they are much cheaper than national meetings and there really is no substitute for access to these workers compensation commissioners and members of our judiciary. The annual meeting is being held at the Westin Harbor Resort in Savannah and we have wonderful entertainment already lined up. Importantly, almost all of the candidates for governor will be in attendance as well.

Please let me know if you have any additional ideas or concerns and I will be glad to speak with you.



Letter From The Editors

by Wendy J. Keefer and Erin D. Dean

The membership of SCDTAA is comprised of young lawyers and experienced lawyers. Though many new lawyers learn the ropes through mentors within the firms in which they work, it cannot be forgotten that SCDTAA provides yet another forum in which young lawyers may gain advice and wisdom from those who have worked in our profession for a number of years. Nowhere is that mentoring aspect of the Association more apparent than during the SCDTAA Trial Academy. Having just completed yet another successful trial academy, with the participation of some of the best trial attorneys in our state as mock trial observers, it seemed an appropriate time to review some of the reoccurring comments and suggestions provided by those trial observers to the younger lawyers participants. Indeed, we can all use some refreshers and reminders from time to time of ideal trial tactics, skills and considerations.

The majority of comments made by the trial observers related to the questioning of witnesses. The following were the most common observations:

- Be sure to introduce the witness to the jury. Who is the person? Why does he know anything related to this case? Only after that introduction, move into questions on the key facts, or opinions in the case of expert witnesses, you want from the witness.
- Structure and plan your direct examinations to end on a high note.
- Keep questions short, concise and related to a single subject. Get in and out and get to the point.
- Avoid saying you only have “a few questions.” We have all heard this during depositions and the response is a knowing smirk or eye roll, as a few questions is always much more than 3-4.

Making the same “promise” to the jury and failing to keep it carries an even higher price.

- Be able to improvise when a witness does not provide the answer you expected. And, remember that is often the case even with your own witnesses and a failure to be able to adapt your questions to work your way back to the answers you needed does not gain the confidence of the jury.
- Lay a thorough foundation for expert witnesses, erring on the side of introducing more qualifications rather than less.

And, the most common critique of witness questioning:

- Lead on cross examination!!

As for other aspects of trial advocacy, the following comments received from several of our trial observers are worth printing here:

- Be mindful of the jury. Do not turn your back on the jury.
- Do not block the jury from seeing an exhibit or a witness.
- Be comfortable away from a podium or counsels’ table.
- Make sure to project your voice to ensure the jury, the witness and the judge can hear you.
- After getting an exhibit admitted, do not forget to publish it to the jury.
- Do not read your opening or closing. The jury needs to trust that you know and believe in your case.
- Finally, do not assume the jury knows anything it has not been told by a witness or through admitted evidence.

Though these observations sound much like the lecture of a law school trial advocacy professor, each of us has made one or more of these mistakes. Reminding ourselves of the little differences that can either aid or hinder your communication and connection with the jury makes each of us a better trial attorney and a better advocate for our client.

We are thankful to have such acclaimed attorneys as those who make up this membership and look forward to years of the continued assistance, whether through participation in future trial academies or otherwise, we provide to one another through involvement in the SCDTAA.



Wendy J. Keefer



Erin D. Dean

Business Courts Pilot Program evaluation

The Business Courts Pilot Program began October 2007, and your input is needed for an evaluation of the program. A committee appointed by Chief Justice Toal is studying the pilot program to evaluate its effectiveness. A survey will be sent to lawyers who have had cases in the Business Court. Whether you have or have not had a case in the Business Court, your input is welcome. Please send comments to businesscourts@sebar.org by July 8, 2009.

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Turner Padget's René Josey and Ed Lawson Named to Charleston School of Law Board of Advisors

Turner Padget is pleased to announce that two of its attorneys, J. René Josey and W. Edward (Ed) Lawson have joined the Charleston School of Law's board of advisors. Mr. Josey and Mr. Lawson join seven distinguished judges and lawyers from across the state that have been selected to provide input to the school's governing board.

Mr. Josey is a resident in Turner Padget's Florence office and is a member of the firm's Business Litigation Group. He is a former U.S. attorney for the District of South Carolina with extensive experience focusing in trial and appellate litigation. He is also a certified mediator and arbitrator. Mr. Josey earned his undergraduate degree at Clemson University and his law degree at the University of South Carolina School of Law.

Mr. Lawson, who resides in the firm's Myrtle Beach office and is a member of the Litigation Group, concentrates his practice on construction, products liability, trucking and transportation, and insurance-related matters. He is also a certified mediator and arbitrator for a wide variety of disputes. Mr. Lawson holds degrees from Spartanburg Methodist College, East Tennessee State University and the University of South Carolina School of Law.

Five McAngus Goudelock & Courie Attorneys Named in 2009 SC Super Lawyers Magazine

The law firm of McAngus Goudelock & Courie, LLC is pleased to announce that attorneys Kristine L. Cato, J. Russell Goudelock, Erroll Anne Hodges, Amy Y. Jenkins and W. Hugh McAngus have been named by South Carolina Super Lawyers magazine as some of the top attorneys in South Carolina for 2009.

Cato received an undergraduate degree from the University of Georgia and her law degree from the University of South Carolina School of Law. Her practice focuses on labor and employment law, and she is a certified specialist in labor and employment law and a certified mediator.

Goudelock, a founding member of the firm, received an undergraduate degree from The Citadel and his law degree from the University of South Carolina School of Law. His practice focuses on workers' compensation law.

Hodges received her undergraduate degree from the University of Virginia and her law degree from the University of South Carolina. Her practice focuses on workers' compensation law.

Jenkins received her undergraduate degree from the University of New Hampshire's Honors Program and her law degree from the University of Virginia School of Law. Her practice focuses on labor and employment law, and she is a certified specialist in labor and employment law and a certified mediator.

McAngus, a founding member of the firm, received his undergraduate degree from the University of the South and his law degree from the University of South Carolina School of Law. He is a certified mediator, and his practice focuses on workers' compensation law.

Joel W. Collins Elected a Fellow of the International Society of Barristers

Collins & Lacy, PC is pleased to announce that Joel W. Collins has been elected as a Fellow of the International Society of Barristers by its Board of Governors.

The International Society of Barristers is an honor society with a membership limited to 600 outstanding trial lawyers elected by their peers. The Society is dedicated to excellence, integrity, and civility in advocacy, to the preservation of the adversary system and of the right to trial by jury, and to the encouragement of young lawyers to enter the field of trial practice. The Society has fellows in all fifty states and Australia, Canada, England, Ireland, Mexico, and Scotland.

Joel Collins, founding shareholder of the firm, received his undergraduate degree from Clemson University in 1965 and earned his law degree from the University of South Carolina School of Law in 1968. Mr. Collins recently completed his term as the 2008 President of the Board of Trustees of the Foundation of the American Board of Trial Advocates, (ABOTA). ABOTA is the national organization of experienced trial attorneys dedicated to preserving the constitutional right to jury trials. In 2005, he received the James Petigru Compleat Lawyer Award from the University of South Carolina School of Law. Mr. Collins was selected for Best Lawyers 2008 and has an AV rating with Martindale-Hubbell.

Love, Thornton Attorneys Recognized For Inclusion In The Best Lawyers in America® 2009

Love, Thornton, Arnold & Thomason, P.A. is pleased to announce that four attorneys were recognized by The Best Lawyers In America, 2009 Edition: Mason A. Goldsmith, Commercial Litigation; David L. Moore, Appellate Law, Personal Injury Litigation, and Product Liability Litigation; Theron G. Cochran,

Alternative Dispute Resolution – Mediation; William H. Hagood, Alternative Dispute Resolution – Mediation.

Love, Thornton Attorneys Chosen For Inclusion In 2009 Super Lawyers Magazine

Love, Thornton, Arnold & Thomason, P.A. is pleased to announce that Mason A. Goldsmith, Theron G. Cochran, and David L. Moore have been named by SuperLawyers magazine as among the top attorneys in S.C. for 2009: Mason A. Goldsmith for Real Estate, Business Litigation, Professional Liability:Defense; Theron G. Cochran for Alternative Dispute Resolution; David L. Moore for Insurance Coverage, Personal Injury Defense:General, Products Liability.

Turner Padget Shareholder Appointed Board Chair of Local United Way

Turner Padget Graham & Laney, P.A. is pleased to announce that Art Justice has been named board chair of United Way of Florence County. Following his service as campaign chair in 2008, during which he helped to raise over \$1 million for the organization and its partner agencies, Mr. Justice assumed the one-year term of board chair last month. In this capacity, he will oversee the various divisions and volunteers that work to carry out United Way's mission in Florence County.

Mr. Justice has been actively involved in the United Way of Florence since 2002, holding several leadership positions in the organization. United Way of Florence funds 20 partner agencies throughout the local area, primarily serving children and their families.

Mr. Justice is a shareholder in Turner Padget's Litigation Group, and focuses his legal practice in the areas of employment law, professional liability

and complex business litigation. He is also a certified arbitrator and mediator, and has built a substantial alternative dispute resolution practice mediating large, complex matters. Mr. Justice is a graduate of Louisiana State University and the University of South Carolina School of Law.

Turner Padget Shareholders Named to South Carolina Super Lawyers List

Turner Padget Graham & Laney, P.A. is pleased to announce that eight of the firm's shareholders have been named by South Carolina Super Lawyers magazine as top attorneys in the state for 2009. The attorneys are Reginald ("Reggie") W. Belcher, John E. Cuttino, Lanneau ("Lanny") Wm. Lambert, Jr., Curtis L. Ott, Steven W. Ouzts, Thomas ("Thom") C. Salane, Franklin ("Frank") G. Shuler, Jr., and John S. Wilkerson, III. Only five percent of lawyers in the state are named by Super Lawyers. All of the attorneys from Turner Padget are located in the firm's Columbia office, with the exception of Mr. Wilkerson, who is based in Charleston.

Mr. Belcher is a shareholder in the firm's Business Group and is certified as a specialist in employment and labor law. He advises businesses throughout the Southeast on matters related to employment litigation and prevention.

Mr. Cuttino is a shareholder in the firm's Specialty Litigation Group, who concentrates his practice in the area of civil litigation, including torts, contracts, construction, products liability, personal injury and commercial matters. He is also a certified civil mediator.

Mr. Lambert is a shareholder in the firm's Business Group, and has over 20 years experience in lender counsel representation in complex real estate, asset-based financing and in developer representation in all aspects of commercial real estate development. He also focuses on the formation of business entities, mergers and acquisitions, leasing and business counseling.

Mr. Ott is a shareholder in the firm's Specialty Litigation Group, and focuses his practice on the defense of product liability, trucking/transportation cases and commercial litigation.

Mr. Ouzts is a shareholder in the firm's Specialty Litigation Group. He defends product manufacturers, corporate directors and officers, construction professionals, and insurance companies in litigation involving construction defects, products liability, environmental contamination, toxic chemical exposure, and insurance coverage issues.

Mr. Salane is a shareholder in the firm's Litigation Group, who focuses his practice on insurance coverage matters. He has served as state counsel for the American Insurance Association and is recognized as a leading authority in insurance related matters, including bad faith claims, rate and regulatory filings, residual market mechanisms, reinsurance, and company or agency formations.

The Executive Committee seeks the input of the members regarding any potential cases worthy of an Amicus Brief on behalf of the Association. If you know of a situation where the interest of Association members or a particular client would benefit please contact the Amicus Committee.

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Mr. Shuler is a shareholder in the firm's Business Group, and is a certified specialist in employment and labor law. He advises employers, both public and private, in all facets of federal and state employment and employee benefits law. He also has a substantial mediation practice dedicated to the resolution of employment law matters.

Mr. Wilkerson is a shareholder in the firm's Business Group, who serves clients with complex litigation matters. He has particular experience as a trial lawyer in the areas of professional malpractice, commercial litigation, products liability, insurance "bad faith" litigation and complex insurance coverage disputes. He is also a certified civil mediator in state and federal courts.

Parker Poe announces South Carolina Super Lawyers

Parker Poe Adams & Bernstein, LLP announces that the following attorneys were named to the list of 2009 South Carolina Super Lawyers: Robert C. Byrd for Business Litigation and Susan Taylor Wall for Professional Liability Defense of the Charleston office; Ronald J. Tryon for Class Action/Mass Tort and James Lynn Werner for Construction Litigation from the Columbia office.

Nexsen Pruet Attorneys named among South Carolina Super Lawyers

Nexsen Pruet announces the following attorneys who have been named to the 2009 list of South Carolina Super Lawyers: Brad Waring for Business Litigation, Gene Allen for Bankruptcy & Creditor/Debtor Rights, Grant Burns for Employment & Labor, and Elbert Dorn for Personal Injury Defense/Products.

Turner Padget Announces New Mediator

Turner Padget Graham & Laney, P.A. is pleased to announce that Patrick W. Carr has recently been approved by the South Carolina Board of Arbitrator and Mediator Certification as a Circuit Court Mediator. Mr. Carr is a shareholder in Turner Padget's Charleston office. He practices in the areas of Construction Litigation, Premises and Product Liability, Motor Vehicle Torts and Insurance Coverage Disputes.

Nelson Mullins Partner Ed Mullins Honored with National DRI Award

Nelson Mullins Riley & Scarborough attorney Edward W. Mullins, Jr. has been awarded the Lou Potter Award for lifetime professional achievement by the Defense Research and Trial Lawyers Association (DRI). This is DRI's most prestigious award, and Mr. Mullins will become only the 13th lawyer in the country to receive this recognition. The award recognizes Mr. Mullins' leadership in the defense bar and in the community at large. DRI is the national organization of more than 22,000 defense trial lawyers.

Brooke C. Hammond Joins Collins & Lacy

Collins & Lacy, P.C. is pleased to announce that Brooke C. Hammond has joined the firm as an associate in the practice areas of commercial litigation, commercial transportation, insurance coverage, and financial institution law.

Brooke graduated from the College of Charleston with a B.A. in Political Science and a minor in Philosophy. At College of Charleston, Brooke was a member of the Golden Key National Honor's Society and a member of the Pre-law society. She received her Juris Doctor from The University of South Carolina School of Law in 2003. Following law school, Brooke served as a law clerk for the Honorable John C. Few, 13th Circuit prior to joining a large regional firm as an associate practicing in the area of commercial litigation. Brooke is a member of the South Carolina Bar, Greenville County Bar Association, and the South Carolina Defense Trial Attorneys Association. She is also a member of the Transportation Lawyers Association and a board member for AID Upstate.

Collins & Lacy Celebrates 25th Anniversary with Library Book Donation

To mark the Firm's 25th Anniversary, Collins & Lacy, P.C. is making a donation of 25 books to the Richland County Public Library.

"Our community, as well as our clients, have helped shape the Firm, and we are happy to be able to give back to the community as part of our anniversary celebration," said Gray Culbreath, the firm's managing shareholder. The Richland County Public Library, together with the Firm selected a variety of books relating to legal subject matters, as well as South Carolina history. "As 'Attorneys Who Know,' we hope that this book donation will help our friends in the Midlands know more about the legal system, as well as our wonderful state," said Stan Lacy, founding shareholder.

The book project was announced at the Firm's anniversary reception held in March at the South Carolina State Museum. Firm members gathered with clients, community leaders, and fellow attorneys to celebrate the firm's 25th anniversary. The firm also has plans to make donations to the libraries in Greenville and Myrtle Beach, where the firm has other office locations.

Turner Padget Recognized By Best's Directory of Recommended Insurance Attorneys and Adjusters for 78 Years

Turner Padget Graham & Laney, P.A. is pleased to announce that the firm has once again been selected as a "recommended insurance defense firm" by Best's Directory of Recommended Insurance Attorneys and Adjusters. The May issue of Best's

Substantive Law Committee Reports

Construction

The construction committee endeavors to facilitate discussion of current statutes, regulations, case law, and industry trends pertinent to the construction industry. Construction attorneys in the SCDTAA will contribute to *The Defense Line* and the committee plans to host a CLE this year. Members of the construction committee also plan to stay actively involved in the new SCDTAA web site by providing "blogs" on topics of interest as well as responding to posted inquiries from fellow members practicing construction law. The goal of the construction committee this year is to share resources among the many qualified attorneys practicing construction law so that involvement in the SCDTAA and the construction committee in particular becomes a primary tool for advancing the interests of our clients.

Please contact Graham Powell (chair): tel: (843) 329-9500 e-mail: graham.powell@elmorewall.com or Chris Adams (co-chair): tel: (803) 255.0441 e-mail: cadams@collinsandlacy.com

Insurance Defense/Torts

The Insurance Defense/Torts Substantive Law Committee is comprised of SCDTAA members who primarily and routinely represent and counsel insurance company clients, to include policy insureds, in a variety of first and third party contexts. Given the prominent, pervasive role insurance plays in most facets of today's society, the committee's scope is broad by design and will periodically coincide with goals and efforts of other SCDTAA substantive law committees. Committee members routinely handle cases ranging from automobile liability to premises liability to products liability to declaratory judg-

ments involving insurance coverage issues.

The Insurance Defense/Torts Substantive Law Committee's fundamental objective is to keep its membership timely and efficiently informed about significant issues germane to the handling of insurance claims and cases, both from a liability standpoint as well as a coverage standpoint. Committee members are encouraged and expected to participate actively in committee events, and members are routinely afforded the opportunity to do so by participating in breakout sessions at the Joint and Annual Meetings, writing for *The DefenseLine* and contributing to a blog on the Association's website.

If you are interested in joining the Insurance Defense/Torts Committee, please e-mail John Hudson at jhudson@ellislawhorne.com or Frances Zacher at fzacher@gwblawfirm.com.

Products Liability

SCDTAA's Products Liability Committee supports practitioners by providing timely information about developments in this area of law and facilitating education and discussion on issues important to products liability practitioners. The Committee encourages SCDTAA members to become involved with the Committee and plans to provide numerous opportunities for members to do so, including authoring articles for the website and *The DefenseLine*, providing case law updates on the website, and planning break-out sessions for the SCDTAA Joint and Annual Meetings.

If you are interested in joining the Products Liability Committee, please e-mail Jim Irvin at jim.irvin@nelsonmullins.com or Lucie Cohen at lucie.cohen@nelsonmullins.com.

NEW MEMBER BENEFITS

The SC Defense Trial Attorneys Association has partnered with McLaughlin Smoak to provide all of our member firms with (1) disability, (2) life, and (3) dental insurance. Because of the collective buying power of the SCDTAA, the carriers involved are willing to provide higher guarantee issue amounts (benefit guaranteed without health questions or exams) than would normally be available to individual firms. A number of our member firms have already taken advantage of these comparable benefits for less expense.

For individual attorneys in our member firms, the Association can now offer individual disability insurance with a carrier who will provide a 15%

discount. Additionally, any attorney who is responsible for overhead expenses can take advantage of the 15% discount on Business Overhead Expense Insurance.

Neil Haldrup of Elmore & Wall is pleased that the firm's "premium savings on dental insurance varies from 22% for single coverage to 35% for family coverage-and the benefits are better."

Trey McLaughlin of McLaughlin and Smoak is willing to review the policies of our member firms and provide information on the cost savings available. He can be contacted at Trey@McLaughlinSmoak.com or at (843) 345-5461.

New SCDTAA Website

by John F. Kuppens

MEMBER
NEWS

We are pleased to announce that the newly updated the SCDTAA website is up and running. Here is a summary of some enhancements to the website:

- The ability to register online for upcoming SCDTAA events.
- A message board which provides a confidential forum for discussions only accessible to SCDTAA members.
- A blog which allows SCDTAA members to post messages which are viewable by the public.
- A searchable member directory that allows each member to update his/her member profile.
- Updated information on the website relating to sponsors, member benefits, Substantive Law Committees, and the Executive Committee.
- Updated links to recent publications of our quarterly magazine, "The DefenseLine".
- Links to other legal, governmental, and professional sites of use to your practice.

Please click on the events link on the navigation bar to get a preview of upcoming events, and to register for those events online. We are looking forward to our Joint Meeting with the Claims Management Association of South Carolina at the Grove Park Inn in Asheville, North Carolina, on July 23-25, 2009. We look forward to your participation in our upcoming events.

Finally, I'd like to thank Eric Seitz, Glenda Weaver, and Tyler Howes of DRI for their time and advice in implementing the enhancements to this website. I'd also like to thank Aimee Hiers, who was instrumental in making the improvements to the site. Finally, I'd like to thank Glenn Elliott, who was key in implementing the prior iteration of the SCDTAA website, from which we borrowed so much. We all hope that you enjoy the website, and that it becomes a mechanism for facilitating better communication among our members.

The screenshot shows the homepage of the South Carolina Defense Trial Attorneys' Association (SCDTAA) website. The browser address bar shows the URL http://www.scdtaa.com/. The page features a navigation bar with links for "Getting Started", "News", and "Latest Headlines". The main header includes the SCDTAA logo (a palm tree and a moon) and the text "SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION". A login form is visible in the top right corner with fields for "Email" and "Password", and a "Login" button. The main content area is divided into three columns. The left column contains a sidebar with links for "Home", "Contact", "About", "Member Benefits", "Member Directory", "Events", "Member Application", "Blog", "Trial Academy", "Substantive Law Committees", "The DefenseLine", "Legal Links", "Sponsors", and "Disclaimers". The middle column has a "Welcome" section, an "Our Mission" section, and a "Connect with Other Members" section. The right column features an "Upcoming Events" section with three event listings: "Trial Academy" (June 3-5, Columbia, SC), "Joint Meeting" (July 23-25, The Grove Park Inn, Asheville, NC), and "Annual Meeting" (November 5-8, The Historic Savannah Harbor Resort, Savannah, GA). At the bottom of the page, there are links for "Member Directory", "Blog", and "Member Forums", and the "THE DefenseLINE" logo.

19th Annual Trial Academy a SUCCESS!

by Anthony W. Livoti



The 19th Annual SCDTAA Trial Academy recently concluded in Columbia, South Carolina. Twenty-Four eager young lawyers from across the state convened in the Capital City June 3-5 for three days of intense training on trial skills. Once again, our Committee was able to tap into the immense talent of our defense bar to present a top-notch program. On Wednesday, we were very fortunate to have Brian Beverly, a dynamic North Carolina attorney currently serving as the President of the North Carolina Defense Attorney's Association, speak on opening statements. Students also heard from Ray Moore on taking depositions with an eye toward using them at trial. Biff Sowell talked on mediation presentations and Joel Collins taught a great lesson on direct and cross examination of expert witnesses. Becky Lafitte gave an entertaining and informative talk on the use of exhibits and demonstrative evidence at trial. Students also participated in breakout sessions with an experienced trial attorney to cover key trial skills and strategies. The Young Lawyers hosted a reception at Liberty Tap Room where students got to unwind and gear up for the next day of training.

On Thursday, Donnell Jennings kicked the day off with a great talk on direct and cross examination of lay witnesses. Judge Paula Thomas, along with Chief Judge Kay Hearn, presented a "mock-moot court" hearing to hammer home the importance of issue preservation at the trial level. Judge Thomas continued discussing issue preservation, appellate practice, and "the vibe of the thing" in greater detail. Judge Joe Anderson graced the students with pearls of wisdom on closing arguments, drawing from his excellent book, "The Lost Art: An Advocate's Guide to Effective Closing Arguments." And our own Sam

Outten concluded the seminar by discussing the business of law and being a young defense lawyer today. Students participated in more breakout sessions and continued practicing for the mock trials on Friday. We concluded the day with a reception and dinner at the Oyster Bar for our students, judges, and executive board.

Friday brought the actual mock trials, which were conducted at the Matthew J. Perry, Jr. Federal Courthouse. Students tried cases in front of "juries" to a verdict and received great feedback from our judges, the juries, and our trial observers. Our special thanks go out to the Judges for presiding over our trials and giving of their time to make this event a reality: Judge G. Thomas Cooper, Judge Tommy Russo, Judge Jim Barber, Judge Buck James, and Judge Michelle Childs. We also want to thank our trial observers who provided great feedback to our students: Carl Epps, John Grantland, John Lay, Gray Culbreath, Mitch Griffith, and Eddie Laney. We also want to thank our own Eric Englebardt for standing in the gap and helping us conduct our mock trials. Numerous lawyers from our board and member law firms ably performed as witnesses, and there will be some acting awards going out this year (you know who you are!). Finally, the leadership of Trial Academy Chairman Curtis Ott and the wonderful writing and work of Co-Chair Wendy Keefer and Anthony Livoti is much appreciated. But none of this happens without the tireless efforts of our Executive Director, Aimee Hiers and her dedicated staff, who make the Trial Academy run like a well oiled machine. The Trial Academy is truly one of the greatest assets of our association and great benefit to our members. Thanks to all who helped make this year another success.

**SEMINAR
NEWS**



Columbia Legislative Reception

On April 1, 2009, the SCDTAA hosted its annual Legislative Reception and Oyster Roast at the Oyster Bar in Columbia. As in past years, the reception included terrific fellowship, fun, and wonderful seafood. Altogether, more than 60 people attended this year's event, including over 25 members of our State legislature. With all the activity in the General Assembly, we were honored to have so many members of our legislature join us. Additionally, because this year's event followed the Inaugural Corporate Counsel Seminar, we were pleased that several attendees at that seminar also were able to attend. The popularity of our Legislative Reception continues to grow both among members of the legislature and members of the SCDTAA. We look forward to an even better event in 2010, and hope that those of you who were unable to attend this year will include this outstanding event in your plans for next year.

Charleston Judicial Reception

On Wednesday, May 27, 2009, SCDTAA hosted a reception honoring the South Carolina Judiciary in Charleston. The reception was held at McCrady's Wine Bar and Restaurant on historic Unity Alley in Charleston. The venue was excellent with a wonderful assortment of wine and first class appetizers prepared by Executive Chef Sean Brock. The event was well attended by both the state and federal Judiciary. Association members came from Columbia, Greenville, Charleston, Florence, and all points in between. The venue was perfect, the food was excellent, and the libations were generous. A good time was had by all. The next Reception will be held in Greenville in the fall. Please make plans to attend and interact with your South Carolina Judiciary.

Would you drive to Savannah to have dinner with the next GOVERNOR?

Come to the Westin in Savannah to hear from South Carolina's state and federal judges about good lawyering. After they join us for dinner, the candidates for Governor of South Carolina will participate in a panel discussion about the future of South Carolina.

As always, the Annual Meeting promises personal and professional relationships, impressive speakers, and necessary education.

**November 5-8, 2009
Westin Savannah
Harbor Resort
Savannah, GA**

SCDTAA Hosts Corporate Counsel Seminar

On April 1st, 2009 the South Carolina Defense Trial Attorneys' Association held its first continuing legal education seminar specifically for in house counsel. The seminar, which was presented at no charge, was well attended, and was a resounding success. We hope it will be the forerunner of an annual event, and will encourage more corporate counsel to join our organization. All attendees received a complimentary one-year membership in the SCDTAA.

The presenters included Kaye Crowe, Luanne Runge, Mary Giorgi, and Fred Manning. The topics at the CLE were 30(b)6)and apex depositions, changes to laws affecting employees in the workplace, and legislative issues in South Carolina.

The attendees included John Mahon and Eleanor Kellett from SCANA, Susan Berlin from Nuvox, Judy Davis from Blue Cross Blue Shield of South Carolina, Jeff Wheeler from TriCenturion, Inc., and Wyman Bowers from the South Carolina Medical Association. All of the attendees seemed to enjoy the presentation, and we look forward to hosting it again next year.

Judicial Profile: The Honorable Kaye G. Hearn Elected to South Carolina Supreme Court

by Lydia L. Magee, Esq.

My first introduction to Chief Judge Hearn took place almost a decade ago when I had the somewhat daunting opportunity of interviewing for an administrative assistant position in her chambers at the South Carolina Court of Appeals. Her non-lawyer administrative assistant left unexpectedly, and she made the decision to hire an attorney to fill this vacancy and serve as a third law clerk. She needed someone who could begin right away, and as a recent law school graduate in need of a job, it was an incredibly fortunate opportunity for me. She is too generous to admit it, but truth be told, I was probably hired on the spot because I fulfilled both those basic requirements, not because she was so impressed by my legal mind. No matter the reason, I can truly say there was no better way to begin a legal career.

As any of her current or former law clerks can attest, Chief Judge Hearn not only welcomed me into her chambers, but also into her family. For a short period of time I was also lucky enough to work for “the other Hearn” in the household, her husband George, a family law practitioner in Conway, South Carolina, who currently represents the 105th district in the General Assembly. In addition to being able to observe a talented and tireless professional couple, I saw firsthand in Chief Judge Hearn and her husband, an equal partnership in their marriage and as parents to their daughter Kathleen, now entering her senior year at Wofford College. The balance they attained between their demanding careers and their personal lives was striking. Whether directly through constructive feedback or indirectly by example, Chief Judge Hearn believes in mentoring the next generation of young lawyers both personally and professionally. The importance of this role probably originated from her formative years as a young lawyer.

After graduating from the University of South Carolina School of Law as one of a handful of women



students, Kaye Hearn began her legal career clerking for the inimitable Justice Julius “Bubba” Ness on the South Carolina Supreme Court. She clerked for Justice Ness for two years before landing in Horry

County to work for James P. Stevens, a prominent trial lawyer. Shortly thereafter, her husband joined the same firm, where they both made partner. In 1986 she was elected to the family court bench and served for nine years until she was elected to the South Carolina Court of Appeals in 1995. She was elected Chief Judge of the Court of Appeals in 1999 and has served as the Chief Judge since that time. From 2006-2007, she served as President of the National Council of Chief Judges. In May of 2009,

she was elected to the South Carolina Supreme Court to fill the unexpired seat of retiring Justice John Waller. I was able to catch up with Chief Judge Hearn in her chambers in Conway after she finished meeting with her law clerks to discuss the cases on which her panel would hear oral arguments later that week in Columbia.

Questions

How does it feel to come full circle to the Supreme Court where your legal career began?

I’m excited, although I am not sure if I have really had enough time to let it sink in. I did learn that I am the first former Supreme Court law clerk to be elected as a Justice to the Supreme Court. When I was clerking for Chief Justice Ness this is not something that I thought would ever really happen. However, it does feel like there is some symmetry to my career now that I am returning to the Court.

How did clerking for Chief Justice Ness influence your decisions to run for family court judge and then appellate judge?

He was a huge influence, and being his law clerk was a turning point in my career. When I was in law school my class was about 20% women and I was the

first lawyer in my family. I just wanted to find a job after graduating and did not even think about being a judge. When I began clerking for Justice Ness I realized that I enjoyed the work and that becoming a judge was a possibility.

Do you think it will be a challenge for you to move from being Chief Judge of the Court of Appeals to being a justice on the Supreme Court?

I do think it will be a challenge because as the Chief I am used to being in charge, but with a different court comes a different culture and different procedures that will hopefully make the transition easier. I have been the Chief Judge at the Court of Appeals for 10 years, and a member of the Court for 14 years, so I feel that this is a natural progression for me, and that it is now time to move on and let someone else take over the reins at the Court of Appeals. I am actually looking forward to working as a justice without any administrative responsibilities.

There will be two women on the Supreme Court, a first in South Carolina, how do you think that demographic will affect the judiciary and the Bar?

I hope it will have a positive impact, but honestly I will be glad when we get to the point in time when the fact that I am the second woman elected to the Supreme Court is not mentioned every time my election is discussed. It seems shortsighted, not just to me but to all women, to focus too much on the fact that I am a woman. I think I bring much more to the Supreme Court in terms of academics, experience, and geography than that. I did not run or expect to be elected because I was a woman; I ran for the Supreme Court based on my experience and qualifications. So maybe when the third woman is elected it won't be such a big deal and we won't have to say that she was the "third woman elected to the Supreme Court," and instead, can focus on her experience and qualifications.

What has been the most challenging aspect of your legal career?

Being Chief Judge of the Court of Appeals when I was not the most senior member of the Court was challenging for me, especially when there were more highly qualified and experienced jurists on the court like Judge Goolsby and Judge Cureton. I believe I was a successful and effective Chief and met the challenge, even though it was a challenge.

What has been the most rewarding aspect of your legal career?

Being a family court judge. When I was a family court judge I felt like I made a difference in people's lives everyday. In hindsight, that was very rewarding. My work now is very academic, and as I have

said before, I am truly one of those geeks who thinks it is fascinating to read and discuss cases. But I received a lot of personal fulfillment as a family court judge and found it incredibly rewarding.

What characteristics do you think make a good trial judge versus a good appellate court judge?

The talents required for each are different. I would say that as a trial judge you have to have good people skills. During trial, you are refereeing and trying to move the case along, making sure that both sides receive a fair trial. You have to have good instincts because you do not have time in the middle of a trial to do a lot of legal research before making a ruling. As an appellate court judge, people skills are not as important, but appellate work is very academic and rigorous. You usually cannot appreciate how much time we spend reading and writing as an appellate court judge until you become one, so those are two things you really have to like to do. You are obligated to "get it right" as an appellate court judge, so that is why we spend so much time reading and researching. They are two very different jobs, so as a judge you need to know your strengths and weaknesses when considering offering for a judgeship.

What advice would you give to those appearing before you for oral argument?

Listen to the questions from the bench, and do not assume that the questions being asked are adversarial to your position. Lawyers condition themselves to believe that most questions are adversarial, and as a result they may respond inappropriately. You should welcome questions and strive to engage in a conversation with the judges on your panel. The last thing you want is a "cold bench." There should instead be a dialogue between the judges and the lawyer.

What advice would you give to female attorneys who may be struggling to balance family-life and work balance issues?

Marry the right man! The woman should not be the only one doing the balancing. I agree with what Ruth Bader Ginsburg said, "Women as lawyers [or judges] need no special favors, just equal opportunity and equal help from their husbands to raise the next generation."

Lydia Magee is a shareholder with Richardson, Plowden & Robinson, P.A. in Myrtle Beach, South Carolina. She practices insurance defense litigation focusing on medical and professional malpractice. She can be reached at lmagee@richardsonplowden.com or 843-448-1008.

Keeping Your Data Safe

by Julia Self

Data backup is something everyone knows they should be doing (or doing better), but creating or reviewing your backup plan is best done before disaster strikes.

Regular backup of your vital information is your insurance against natural disasters such as flood, fire and tornados, as well as unnatural disasters like viruses, equipment failures and human error. If your office is destroyed it can be rebuilt, but can the same be said of your e-mail, word-processing documents and contact databases?

One of the first questions people have regarding a backup system is, "How much is this going to cost?" But don't let money be an obstacle – any price you pay will be nothing compared with a catastrophic loss of data. That said, there are solutions to match just about any budget, and anything is better than nothing at all.

First Steps

Develop a solid backup strategy. Create a written plan that outlines what is being backed up, where it's being backed up to, how often backups will occur and who's in charge of performing backups. Normally, your most critical information will be your accounting files and client database, followed by your important documents and e-mail files. These should be backed up before and after any significant changes are made. I suggest backing up these files once a week for your personal computer, but daily would be best for your work machines. Did I say personal computer? You really weren't expecting to create a backup plan just for your firm, were you? You need to have a backup plan for all of your computers, including your laptop or handheld devices if they store any important data.

Files that are not used very often or used for archive or reference purposes don't need to be backed up as often and can be stored separately from your other, more important data.

Don't overdo it – not everything on the hard drive needs to be backed up. The operating system and program files can be easily reloaded from a CD if necessary. You can also trim down the size of your e-mail file by periodically removing messages from the Deleted Items and Sent Items folders. These two often-overlooked folders can contain copies of large attachments that are no longer needed.

Backing up your data is useless unless a copy is stored offsite. Keeping your backups in the office will

provide quick access in case of a virus or other computer error but will not help in the event of a flood, fire or break-in. The best solution would be to store your data in a different geographic location or, better yet, several different locations. After all, you're not the only one a disaster can happen to.

Finally, test your backups. Try restoring a few files to a different computer at a different location so you can test your plan before you actually need it.

Choosing a Backup Solution

With your backup plan in hand, next determine how much data you need to back up. Take a look at the machines on your network to get an idea of the size of each user's documents folder and e-mail file and add in the amount of data in any primary shared folders.

Pick a backup solution with a storage capacity of at least twice the total amount of data you need to back up. This will give you room for growth, and will also allow you to perform incre-

mental backups on the same tape or external hard drive along with a full backup.

- **Tape drives.** Tape drives are used by many organizations because of their high reliability and reasonably fast speeds with large storage capacities. Tape drives have long been the standard in backup media and are a reliable alternative.
- **DVDs, USB flash memory devices and external hard drives.** Should you use these devices as your primary means of backing up? Well, the price is certainly right for these items, and they can be read by any modern operating system on another computer with a DVD drive or functioning USB port.

Ah, but beware - DVDs and flash memory devices usually have plenty of space to backup one computer, but not if you have five or more staff members. DVDs are also fairly fragile and can be affected by heat, cold and scratching.

Flash memory drives are better served by carrying data you want to access or change while on the go rather than backing it up. You can use them to make quick, easy, redundant backups of super-critical files such as databases and accounting files.

External hard drives are a great cost-effective solution for single computers or a small office network, although, if left connected, they also become susceptible to computer viruses and natural disasters. Remember, offsite storage is the key, and to be



The Lawyers' Epidemic: Depression, Suicide, and Substance Abuse

by C. Stuart Mauney

In a period of 18 months, six lawyers committed suicide in South Carolina. In late 2008, a student at the Charleston (SC) School of Law committed suicide. Around that same time, a student at the USC School of Law died of alcohol poisoning. Recent studies show that lawyers are three times as likely to suffer from depression as other professions. The rate of substance abuse among lawyers is twice that of the general population.

The South Carolina Bar formed the HELP Task Force to shine a bright light on these problems. It is my privilege to serve as Chair of HELP, whose mission is to raise awareness and promote prevention of substance abuse, mental illness, and suicide within the legal profession. The Bar's Lawyers Helping Lawyers program provides confidential services for lawyers who suffer from substance abuse and mental illness. HELP complements the work of LHL by educating lawyers, law firms, law students, and judges about the services available through LHL. HELP also promotes a better understanding of mental health issues in the legal profession.

A study by Johns Hopkins University found that among more than 100 occupations studied, lawyers were most likely to suffer from depression and were 3.6 times more likely than average to do so. A quality of life survey by the North Carolina Bar revealed that almost 26% of respondents exhibited symptoms of clinical depression, and almost 12% said they contemplated suicide at least once a month. The North Carolina study was prompted in part by the suicides of 8 Mecklenburg County lawyers in a seven-year period.

10% of Americans, more than 19 million people, suffer from depression every year. More Americans suffer from clinical depression than heart disease and cancer. Effective treatment is available for 90% of those with a depressive illness.

Suicide is the third leading cause of death among attorneys, after cancer and heart disease. The rate of death by suicide for lawyers is nearly six times the suicide rate for the general population. Suicide can be prevented. While some suicides occur without any outward warning, most do not. We can prevent suicide among lawyers by learning to recognize the signs of someone at risk, taking those signs seriously, and knowing how to respond to them.

The National Institute on Alcohol and Alcohol Abuse estimates that 10% of the U.S. population is alcoholic or chemically dependent. In the legal profession, the abuse may be as high as 20%. Alcoholism is a factor in 30% of all completed suicides. Reports from lawyer assistance programs indicate that 50%-75% of lawyer discipline cases nationwide involve chemical dependency.

Whether you are the husband, wife, employee, judge, law student, law partner, law firm associate, friend, or colleague of a person challenged by depression or substance abuse, your understanding of the nature of the problem can play a vital part in helping that individual to achieve and maintain recovery. Please remember that there is hope, and there is help. You are not alone.

Call the Lawyers Helping Lawyers toll-free helpline at 866-545-9590 or LifeFocus Counseling Services toll-free at 866-726-5252 to be referred to a counselor in your area.

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really effective you should use multiple drives that are used in rotation.

USB drives and portable hard drives are also more prone to theft. Storing data on these devices is less secure than it would be in a harder-to-read backup archive, even with password encryption – and encryption is the key. Backup software will handle scheduled backups as well as encrypting your data.

- Online backup and recovery. One of the easiest, safest and reliable solutions for protecting your data is an online backup and recovery service. Companies like CoreVault offer automated backup solutions for all of your different types of data. The service encrypts your data before using your high-speed Internet connection to send it to multiple datacenters where it stays encrypted, keeping your data

both safe and secure. CoreVault also offers a data-analysis tool to help determine which files to backup, as well as project data-growth trends. The other side of the data backup coin is recovery. With a click of a button you can immediately restore e-mails and files.

They also offer solutions for offsite backup of archive data. The restoration process takes a little longer, but you can store more data at a lower cost – an excellent option for your older data.

We know how important your data is. That is why the SCDTAA has added CoreVault as a member benefit. SCDTAA members can sign up for CoreVault for as low as \$19.95/month. For more information call toll-free at (866) 981-5949, or visit www.corevault.com/scbar-scdtaa.

Case Notes

David Anthony Murphy v. Donald Ray Tyndall, and E-Z Credit Auto Sales, Inc., No. 4465, June 4, 2009

David Murphy and Donald Tyndall were involved in an automobile and motorcycle accident on July 3, 2006. Tyndall owned a small business called Clear Difference Headlight Restoration, which did headlight restoration for individuals and car dealerships. At the time of the accident, Tyndall had just left a NAPA auto parts store to pick up parts needed for the work he was doing for E-Z Credit Auto Sales, Inc. He had charged the parts he purchased from NAPA to E-Z Credit's account. Tyndall provided E-Z Credit's address and telephone number for the accident report, and told the reporting officer that he was 'going back to work'. The officer later dropped off the accident report to Tyndall at E-Z Credit later that afternoon. Murphy sued Tyndall and E-Z Credit, alleging that Tyndall was acting as an agent or employee for E-Z Credit and was within the course and scope of that employment or agency at the time of the collision. E-Z moved for summary judgment.

The Circuit Court granted summary judgment in E-Z Credit's favor finding that the only reasonable inference was that Tyndall's actions were for his own independent purpose. The Court of Appeals reversed, holding that while viewing the facts and all reasonable inferences that can be drawn in the light most favorable to Murphy, Murphy presented at least a mere scintilla of evidence that Tyndall was working for E-Z Credit at the time of the accident, thereby precluding summary judgment.

Robert J. Dema, Edward M. Finn, and Joyce E. Gadson, on behalf of themselves and all other similarly situated v. Tenet Physician Services – Hilton Head, Inc. and AMISUB (Hilton Head) Inc., collectively d/b/a Hilton Head Regional Medical Center, No. 26663, June 8, 2009

Between 1997 and 2000, HHRMC (Hilton Head Regional Medical Center) performed over 200 unauthorized cardiac catheterizations in violation of State Certification of Need and Health Facility Licensure Act (CON Act), S.C. Code Ann § 44-7-110, et seq. (Supp. 2008). The Department of Health and Environmental Control (DHEC) issued a fine of \$100 for each unauthorized procedure, for a total of \$24,200. Appellants (Dema, Finn, and Gadson) filed suit against Respondents asserting claims for viola-

tions of SCUTPA (SC Unfair Trade Practices Act) S.C. Code Ann § 39-5-10, et seq. (Supp. 2008), unjust enrichment, battery and outrage. Respondents filed a Motion to Dismiss the complaint in its entirety. The Trial Court held the following (1) that it lacked subject matter jurisdiction stating that DHEC was the sole agency empowered with the authority to resolve claims for violations of the CON Act; (2) that Appellants could not maintain an unjust enrichment or SCUTPA claim because a private right of action did not exist for violations of the CON Act; and (3) that the SCUTPA prohibits class action suits.

The Court of Appeals agreed with the rulings of the Trial Court, except that it found that the Trial Court did have jurisdiction. The Court held that while the DHEC had exclusive subject matter jurisdiction to determine whether a violation of the CON Act has occurred, it did not have subject matter jurisdiction to hear civil claims for damages resulting from those violations. However, the Court also held that the enforcement mechanism of the CON Act is DHEC's authority to impose sanctions, and that the Act does not provide a private cause of action for violations. The Court of Appeals upheld the Trial Court's dismissal of Appellant's Complaint.

City of Hartsville v. South Carolina Municipal Insurance & Risk Financing Fund, No. 26625, May 18, 2009

South Carolina Municipal Insurance and Risk Financing Fund (Insurer) appealed the Circuit Court's order finding the Insurer had a continuing duty to defend the City of Hartsville, and ordering it to pay the City the costs it incurred from having to defend itself against the suit brought by a Hartsville landowner. The Supreme Court affirmed the Circuit Court's decision.

In 1991 a homeowner (Phelix Byrd) purchased land that lay partly in the City and partly in the County. Byrd encountered various problems with trying to rezone and sell portions of the land based on delays by the City and the County. Byrd ultimately filed suit against the City and the County alleging gross negligence and taking or inverse condemnation. The City, represented by Insurer, moved for summary judgment on Byrd's claims. The Circuit Court granted the motions with respect to gross negligence and takings but not as to inverse condemnation. Subsequently, Insurer withdrew its defense of City on the remaining cause of action for inverse condemnation, stating that it was specifically

excluded under the terms of the liability insurance policy the Insurer issued to the City. The City protested the withdrawal, citing concerns that Byrd would amend his complaint to add claims covered by the policy. Insurer refused, but stated that it would reconsider in the event that Byrd was permitted to reinstate his negligence cause of action. City retained its own counsel.

The City filed a second motion for summary judgment with respect to Byrd's inverse condemnation claim. At the hearing on this motion Byrd raised the theory that the city and county officials conspired to flag his property so that it could not be sold. The Circuit Court granted the motion regarding inverse condemnation but not as to the conspiracy. The City was ultimately dismissed as a defendant.

The City filed a declaratory judgment action against Insurer to recover all costs incurred by the City in defending against Byrd's lawsuit after Insurer withdrew its defense. The Circuit Court held that Insurer was contractually bound to defend the City against all tort claims, including the conspiracy claim, and ordered Insurer to reimburse City for its defense costs in the amount of \$17,642.55. Insurer appealed.

The Supreme Court affirmed the Circuit Court, holding the dismissal of the negligence claim and

Byrd's failure to plead the elements of conspiracy did not negate the Insurer's duty to defend. The Court further held that an insurer's duty to defend is dependent on the allegations of the complaint and not solely the specifically pleaded causes of action. The duty to defend may arise from facts outside of the complaint that are known to the insurer.

Noel and Elizabeth Dillon v. Neil Fraser, No. 26629, June 1, 2009

This action arose out of an automobile accident in which Noel Dillon was injured due to Neil Frazer's admitted negligence. Dillon sustained injuries in a car accident when Frazer ran a stop sign in a car in which Dillon was a passenger. At the time of the accident, both Dillon and Frazer were employed by Massiv Die Form, a Canadian corporation with no facilities or place of business in South Carolina. The men were in Greenville, South Carolina, working for Massiv at the time of the accident. Dillon was hospitalized for two days, and medically unable to travel back to Canada until the Friday after he was released from the hospital. His remaining medical care was covered by the Canadian Health System and those costs were not sought in this action. Dillon was unable to work for ten weeks, and once he returned was unable to work as much as prior to the accident.

Dillon's wife claimed for lack of consortium, and Dillon's claimed the following amounts for damages: hospital care in Greenville was \$10,518; EMS transportation was \$320; physical therapy was \$1,188; lost, past and future earnings were \$509,818 (\$101,350 in lost wages from the date of the injury, and \$407,818 for the post trial period).

During the jury deliberations, the jury sent questions to the judge regarding whether compensation had been paid to Dillon from a third party. The jury awarded Dillon \$6,000 for damages, and found for Frazer on the loss of consortium. Dillon moved for a new trial nisi additur or in the alternative for a new trial absolute as to damages only. The Trial Court granted Dillon's Motion for additur and increased the damages by \$15,000 (total amount now \$21,000). The Trial Court denied all other Motions. Dillon appealed arguing that the Trial Court erred by not granting a new trial absolute as to damages.

The Supreme Court held that the Trial Court erred in not granting Dillon's Motion for a New Trial Absolute. The Court held that the jury's award of \$6,000 in the face of over \$30,000 in undisputed damages

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is so grossly inadequate and demonstrates that the verdict was actuated by improper motivation. Frazer raised the argument that the Trial Court erred in refusing to apply Ontario Worker's Compensation law and exclusivity law. The Supreme Court held that Frazer failed to plead the Ontario law and is therefore barred under SCRCR Rules 12(b) and 8(c).

Gail Mungo v. Rental Uniform Service of Florence, Inc. and Companion Commercial Ins., No. 4550, May 27, 2009

In May 2000, Gail Mungo sustained an admitted compensable injury to her cervical spine while working for her employer. Employer provided Mungo treatment by an orthopedist, Dr. Edwards. Dr. Edwards released Mungo on May 29, 2001 with a twenty percent impairment rating on her spine. Dr. Edwards reevaluated Mungo on May 2, 2003, and found she had reached maximum medical improvement as of that date, and reiterated Mungo's twenty percent impairment. On June 3, 2003, Mungo sought treatment from a Dr. Snoderly, an interventional anesthesiologist specializing in pain management. The hearing regarding the matter was held before a Commissioner on June 10, 2003. At the hearing, Employer objected to the introduction of Dr. Snoderly's report from the June 3, 2003 examination. The Commissioner sustained this objection because Mungo failed to submit the report to Employer fifteen days prior to the hearing as required by SC Code of Regulations § 67-612. The Commissioner found that Mungo reached maximum medical improvement as of May 2, 2003, making her ineligible for any further medical treatment.

On July 23, 2004, Mungo filed a Form 50, Request for Hearing alleging a change of condition and development of further problems, including the depression. A hearing was held before Commissioner Bass who held that because Dr. Snoderly's diagnosis was made prior to the last hearing, it could not be considered for change of condition, and that because Mungo had not raised the issue of depression at the last hearing, it could not be raised currently. The Circuit Court reversed the Commissioner Bass' findings, holding that it was error to not consider Dr. Snoderly's records created between May 2 and June 10, 2003. The Circuit Court remanded to the Commissioner to determine the precise benefits owed to the Mungo for her change of condition and for her psychological condition.

The Court of Appeals affirmed the Circuit Court in part and held that the review of an award at a change of condition hearing is concerned with the date as of which the claimant's condition was determined rather than the date of the actual hearing in which that award was rendered, and that Dr. Snoderly's exam and diagnosis could be admitted for change of condition. The Court of Appeals held that the Circuit Court was correct to hold that it was error to

not allow Mungo to raise the issue of depression at the change of condition hearing, but that the Circuit Court exceeded its scope by finding that Mungo was entitled to psychological benefits. There were no prior factual findings regarding whether Mungo had carried her burden for proving her psychological condition had worsened. The Court held that where the appellate panel has made no factual findings, the case must be remanded.

Glenda Barron v. Labor Finders of South Carolina, No. 4553, May 28, 2009

Glenda Barron began employment with Labor Finders of South Carolina around 1990 or 1991 as an at-will employee. Barron addressed Labor Finders regarding her belief that she was due some unpaid commissions on February 8, 2005. On February 9, 2005, Labor Finders terminated Barron citing the need to downsize in light of recent budget cuts. Eight or nine days later Labor Finders paid Barron all of the commissions owed to her. Barron filed suit alleging (1) violation of SC Payment of Wages Act; (2) breach of contract; (3) breach of contract accompanied by a fraudulent act; and (4) wrongful termination.

On February 26, 2007, summary judgment was initially granted on all claims except wrongful termination. The wrongful termination claim proceeded to trial, where Labor Finders made another motion for summary judgment. The motion was granted, but before the final order was entered, Barron filed a Rule 54(b) motion, requesting the February 26, 2007 order be amended. She was directed to file the 54(b) motion with the original Judge that granted the February order. She did so and it was denied. On January 11, 2008, the Court granted the renewed summary judgment motion on wrongful termination. Barron appealed the January 11 order, and the denial of the 54(b) motion.

The Court of Appeals held that because Barron was not asked to violate the law and her termination itself was not a violation of criminal law, summary judgment was proper; accordingly, the wrongful termination claim could not be maintained. The Court also held that in light of this decision, neither the Rule 54(b) motion, nor the initial grant of summary judgment prejudiced Barron's wrongful termination claim, and they therefore did not address any of the remaining issues.

Nicole M. Robinson v. Equifax Information Services, LLC, 560 F.3d 235, (USCA, 4th Circuit) March 16, 2009

Nicole Robinson brought an action against the credit reporting service, Equifax, for violations of the Fair Credit Reporting Act (FCRA). The United States District Court for the Eastern District of Virginia entered a judgment on jury verdict awarding Ms. Robinson \$200,000 in actual damages and

\$268,652.25 in attorneys' fees. Equifax appealed. The 4th Circuit Court of Appeals upheld the judgment for actual damages, and remanded the award of attorneys' fees stating that Robinson had not met her burden of establishing the prevailing market rates.

Robinson was the victim of identity theft, and the fraudulent activity was negatively reflected on her credit report. Despite taking all of the necessary steps to restore her credit report and remove any negative fraudulent activity, Equifax repeatedly linked her name and/or social security number to the identity thief's fraudulent activity for a period of six years. Robinson spent over 300 hours of her time away from work addressing Equifax's repeated errors, she had physical manifestations of emotional distress, including hair loss, headaches, sleeplessness, skin acne, and upset stomach. Robinson put forth evidence of her lost opportunities in the housing market, the lost income from the time required to address this issue, and the emotional distress as the basis for her claim of actual damages. At trial the parties agreed to use a general verdict form that did not separate damages for emotional distress.

On appeal Equifax argued that the District Court erred in not granting Equifax's request for Judgment

as a Matter of Law with respect to damages. The Court held that Robinson sufficiently demonstrated and articulated her emotional distress, and that because Equifax did not object to the jury verdict form initially – the Appeals Court will not consider issues first raised on appeal. The award of damages was affirmed.

Regarding attorney's fees, the only evidence Robinson presented were affidavits from the named partner of the firm who testified to his rate(\$350), that of his associate (\$250), and the hourly rates recommended by "Laffey Matrix" (\$425, and \$305, respectively), an official statement of market supported reasonable attorney fee rates adopted by the US Court of Appeals for the District of Columbia. The Court held that Robinson had not met her burden of establishing the market rates. The Court held that there was no evidence in the record to support the Laffey Matrix rates, and that the named partner's affidavit, standing alone, is not sufficient to establish the market rates. The Court remanded on the issue of the attorneys' fee award instructing the district court to recalculate after taking additional evidence of the market rates for this type of work in the Eastern District of Virginia.

Review, one of the insurance industry's leading publications, honors the 69 law firms that have been listed for at least 75 years. Turner Padget, which has been included by Best's since 1931, is one of only three law firms from South Carolina, and the only statewide firm to make the list.

A.M. Best Co., publisher of the directory, has been rating the strength of insurance attorneys since 1929. A.M. Best gathers information from insurance companies about their legal services providers. Each firm referenced is then asked to complete an application, and their insurance company clients are asked to provide feedback. Only law firms with consistently positive feedback are considered for a listing in Best's Directory of Recommended Insurance Attorneys and Adjusters.

Turner Padget's Steven W. Ouzts Inducted Into Litigation Counsel of America

Turner Padget Graham & Laney, P.A. is pleased to announce that Steven W. Ouzts, a shareholder in the firm's Specialty Litigation Practice Group, was inducted into the Litigation Counsel of America at the organization's Spring Conference and Induction of Fellows on May 8, 2009. The Litigation Counsel of America is an honorary society of trial lawyers composed of less than one-half of one percent of American lawyers.

"We are pleased that Steve has been recognized as a preeminent litigator and invited into such a prestigious society," said Edward W. Laney, IV, Turner Padget's chief executive officer. "His outstanding skill in the courtroom and his commitment to client service make him a deserving recipient of this honor."

Mr. Ouzts is a shareholder in the firm's Specialty Litigation Group. He defends product manufacturers, corporate directors and officers, construction professionals, and insurance companies in litigation involving construction defects, products liability, environmental contamination, toxic chemical exposure, and insurance contract disputes.

Fellowship in the Litigation Counsel of America is highly selective and by invitation only. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. The Litigation Counsel of America is aggressively diverse in its composition. Established as a trial and appellate lawyer honor society reflecting the American bar in the 21st century, the organization represents the best in law among its membership. More information can be found at the Litigation Counsel of America's Web site at www.litcounsel.org.

Verdict Reports

VERDICT
REPORTS

Type of Action: Breach of Contract/Conspiracy/ Abuse of Process/Negligent Supervision

Injuries alleged:

Cost of pool (\$35,000) as well as damages due to domestic violence charges

Name of Case:

Robert Alan Hutka v. Michelle Tinti and Don G. Lagomarsino a/k/a "LAGO", and Hilton Head Plantation Property Owners Assoc., Inc.

Court: Beaufort County Court of Common Pleas

Case number: 07-CP-07-215

Tried before: Jury

Name of Judge: The Honorable A. Doyet Early

Amount: \$0 - Against Co-defendants: \$3136

Date of Verdict: April 22, 2009

Attorneys for defendant (and city):

Chilton Grace Simmons and
Elizabeth W. Ballentine;
Hood Law Firm, L.L.C. (Charleston)

Description of the case:

Prior to 2006, Plaintiff Robert Hutka and co-defendant Michelle Tinti lived together and Plaintiff alleged they were engaged to be married. Plaintiff paid for the installation of a pool at Tinti's house on Hilton Head Island, with the alleged understanding she would reimburse him if they broke up. Ms. Tinti began a relationship with a security guard employed by Hilton Head Plantation Property Owners Association, and Plaintiff moved out of her house. Ms. Tinti subsequently filed domestic violence charges against Plaintiff. Plaintiff alleged the charges were instigated by the new boyfriend (co-defendant Security Guard Don Lagomarsino). Plaintiff sued Tinti for breach of contract for the cost of pool (\$35,000). He also sued co-defendants Tinti and Lagomarsino for breach of fiduciary duty, civil conspiracy, malicious prosecution, and abuse of process. Plaintiff sued Hilton Head Plantation Property Owners Association for negligent supervision and respondeat superior.

Judge Early struck Plaintiff's causes of action for breach of fiduciary duty and malicious prosecution as to the co-defendants Tinti and Lagomarsino. After the three day trial, the jury returned a verdict for the

Plaintiff for \$0 as to the Property Owners Association, on both counts. The jury found for the Plaintiff against co-defendants Tinti and Lagomarsino for \$3,136, on the charge of civil conspiracy, and for the co-defendants on the charge of abuse of process. Judge Early decided the quantum meruit cause of action for the cost of the pool (\$35,000) was a legal question instead of a jury question, and ruled in favor of co-defendant Michelle Tinti on that count.

Type of Action: Personal Injury

Case:

Willie Homer Stephens, guardian ad Litem for Lillian Colvin, a minor v. CSX Transportation, Inc. and South Carolina Department of Transportation

Venue: Hampton County Court of Common Pleas

Dates of Trial: July 28, 2008 to August 14, 2008

Presiding Judge: Honorable Carmen T. Mullen

Trial Attorneys:

- Defendant - CSXT
Jonathan Harmon; Ron Wray; Jim Purcell
- Defendant - SCDOT: Peden B. McLeod
- Plaintiff: John E. Parker; Paul Dietrich; Graham Holmes; Carl Jacobson

Facts:

This case involved a crossing accident that occurred at a railroad grade crossing in Yemassee, South Carolina in Hampton County. Twelve year old Lillian Colvin was riding as a passenger in the back seat of a Ford Explorer being driven by her mother. Ms. Colvin drove her vehicle in front of an on-coming locomotive, resulting in the locomotive striking the Explorer on the passenger side near where Lillian was sitting. Ms. Colvin claimed that she was unable to see the train because of vegetation which allegedly blocked her view at the crossing. Plaintiff also claimed that CSXT failed to sound the locomotive horn in compliance with state law.

CSXT contended that the crossing was safe and that Ms. Colvin had ample opportunity to observe the on-coming train from the position at which she stopped before entering the crossing.

Injuries:

As a result of the accident, Lillian suffered a number of injuries, including a traumatic brain injury. She was in a coma for several weeks at MUSC. CSXT admitted that Lillian had suffered a traumatic brain injury as a result of the accident, but

Continued on next page

contested the extent to which this injury would cause problems in the future, and presented evidence that Lillian had made a remarkable recovery.

Experts:

Plaintiff presented a number of experts, both on damages and liability. Liability experts were Dr. Ken Heathington, Dr. David Lipscomb, and Jimmy Scott. Primary damages experts included Dr. Randy Waid (Neuropsychologist), Dr. Oliver Wood (Economist), Dr. Ron Savage (Education) and Dr. Robert Voogt (Life Care Planner). Plaintiff also called a number of treating physicians as expert witnesses.

CSXT retained several experts to assist with trial preparation, but did not present any expert testimony at trial.

Damages:

Plaintiff claimed medical expenses of approximately \$275,000 and submitted a life care plan valued at approximately \$5.6 million. Plaintiff also sought damages for both past and future pain and suffering, mental anguish, and loss of enjoyment of life. In closing argument, Plaintiff's counsel suggested the jury award approximately \$14,000,000.00 in actual damages. Plaintiff also suggested a punitive damage award of between one to three times the actual damages.

Result:

After approximately four hours of deliberation, the Hampton County jury returned a defense verdict in favor of CSXT and SCDOT. Judge Mullen recently denied post-trial motions filed by the plaintiff.

Type of Action: Medical Malpractice

Injuries alleged:

Severe pelvic floor dysfunction

Name of Case:

Joan C. Beaumont, Gerald P. Beaumont v. Dr. Jay A. Crockett, M.D. and Greenville Colon & Rectal Associates, P.A.

Court: Circuit Court – Greenville County

Case number: 07-CP-23-5896

Tried before: Jury

Name of Judge: The Honorable Larry R. Patterson

Date of Verdict: April 24, 2009

Most helpful experts: (name, title and city)

Rudolph Rustin, Colorectal Surgeon, Charleston and Eric Bour, General Surgeon Greenville.

Attorneys for defendant (and city):

James B. Hood and John K. Weedon of Hood Law Firm, LLC, Charleston.

Description of the case, the evidence presented, the arguments made and/or other useful information:

Plaintiffs alleged that Defendants performed an inappropriate procedure to address the patient's diverticulitis. Patient developed a pelvic abscess 15 days post-operative and alleged that Defendants failed to recognize signs of infection during the immediate post operative period causing the abscess which ultimately led to severe pelvic floor dysfunction. Defendants' established through objective medical evidence as well as expert testimony that a sigmoid colectomy was performed rather than a low anterior resection and that it was performed in accordance to the standard of care. The Defendants' also proved that the patient exhibited no signs of infection at any point during the patient's immediate post-operative course, and the development of the pelvic abscess was a known and accepted complication of the procedure.

Type of Action: Medical Malpractice

Injuries alleged: Wrongful Death

Name of Case:

Melissa Hardy, as Personal Representative of the Estate of Lizzie Mae Beatty, deceased v. Francis DiBona, MD, CSRA Renal Services, LLC, Wayne Thomas Frei, MD, and Aiken Surgical Associates, LLC

Court: Circuit Court – Aiken County

Case number: 06-CP-02-935

Tried before: Jury

Name of Judge: The Honorable Doyet A. Early, III

Amount: Defense Verdict

Date of Verdict: May 29, 2009

Demand: \$250,000 prior to trial

Attorneys for defendant (and city):

Molly H. Craig and James B. Hood of Hood Law Firm, LLC, Charleston.

During the placement of an internal jugular catheter, which was needed for dialysis, the Defendant doctor punctured the subclavian artery. The Plaintiff alleged the arterial injury was caused by the physician's negligence in placing the line through the intended vein and puncturing the subclavian artery. The arterial injury resulted in loss of over five liters of blood, subsequent surgeries and prolonged and complicated ICU course. Ultimately, the patient died.

The defense argued that the physician encountered a known, albeit extremely rare, complication of placing an internal jugular catheter. Much of the trial focused on the distinction between medical complications and medical negligence.

After a one week trial, the jury returned a defense verdict.

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