

# THE DEFENSE LINE

**WINTER 1987** 

**VOLUME 15** 

THE SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS: ASSOCIATION

NO. 1



(From left to right - seated) Mark Wall - Secretary, Theron Cochran - President - elect. Gene Allen - President, Bill Davies - Treasurer (2nd row - standing) Paul Dominick, Elford Morgan, Tim Bouch, Bill Lynn, Wade Logan, Carl Epps (3rd row) Steve Morrison, Glenn Bowers, Bill Helms, Ladson Howell, Hugh McAngus.

1985 - 1986 Board Wishes You

A Safe and Prosperous New

Year!

# OFFICERS THERON G. COCHRAN President Post Office Box 10045 Greenville, SC 29603

CARL B. EPPS, III President-Elect Post Office Box 1473 Columbia, SC 29202

WILLIAM S. DAVIES, JR. Secretary
Post Office Box 1473
Columbia, SC 29202

FRANK H. GIBBES, III Treasurer Post Office Box 11070 Columbia, SC 29211

T. EUGENE ALLEN, III Immediate Past President Post Office Drawer 2426 Columbia, SC 29202

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EXECUTIVE DIRECTOR CAROL H. DAVIS 3008 Millwood Avenue Columbia, S.C. 29205

**EDITOR**JACKSON L. BARWICK

ASSOCIATE EDITOR NANCY H. COOPER

### PRESIDENT'S LETTER

Theron G. Cochran

1986 has been an outstanding year for our Association. Gene Allen, our ilm mediate Past President, and those who worked with him during the past year are to be congratulated. Our Annual Meeting at the Cloister was a tremendous success. The educational programs and other convention activities were superb. Thanks to Tim Bouch and Glenn Bowers, program chairmen and Paul Dominick; convention chairman, for helping make this convention a success. Many of our state and federal judges attended the convention as our guests, and they seemed to appreciate our hospitality. I have heard from many of them since the convention expressing their appreciation to the Association for having them as our guests at the convention.

I look forward to serving as President of our Association during the next year. This promises to be an exciting year, but we need your help. We have approximately 600 members, and hope to increase that number this year. I encourage you to participate in the activities of the Association. I believe you will find them to be worthwhile.

We expect to be heavily involved in legislative matters again this year. Tort reform is going to be a major topic. Press conferences were held in Greenville, Columbia and Charleston on November 12, 1986, to announce that tort reform legislation will be introduced in the next legislative session. Harold Jacobs, a former president of our Association, was spokesman at these press conferences. Our Association is a member of the South Carolina Civil Justice Coalition, so other members of our Association were in attendance at each of these press conferences.

At a special called meeting of the House of Delegates of the South Carolina Bar on November 13, 1986, the House of Delegates passed a resolution requesting the General Assembly to create a task force to study tort law and the insurance systems. The president of our Association or his designee is to be a non-voting member of that task force.

If the legislature creates this task force, it is difficult to say how it will affect the legislation to be introduced by the Civil Justice Coalition, however, this certainly means that the efforts of our Association in the area of tort reform are getting some attention, and apparently some action.

We will also be following other legislative matters closely during the coming year. Ed Poliakoff has agreed to monitor legislative action and will keep us informed on matters which may be of interest to our Association. Carl Epps, our President-Elect, has agreed to once again serve as chairman of the Legislative Committee.

We hope to increase our membership services. Of course, we already have an expert witness file which needs your participation. We hope to continue to improve our "Defense Line". We will be discussing some suggestions in that regard at our next Executive Committee meeting.

Let's work together to make 1987 a good year for our Association. With your help, we can.

The Defense Line is a regular publication of the South Carolina Defense Trial Attorneys' Association. All inquiries, articles, and black and white photos should be directed to Nancy H. Cooper, 3008 Millwood Avenue, Columbia, SC 29205, 252-5646.

#### LEGISLATIVE KEPUKT

Carl B. Epps Legislative Chairman

The South Carolina Civil Justice Coalition continues to grow, and preparation for introduction of the Tort Reform Bill during the 1987 Session is in its final stages. At the time of this dictation the Coalition is comprised of forty members, including most of the large professional and trade show association. A complete list of membership is included below. Harold W. Jacobs, our Past President, chairs the Coalition's Advisory Committee. The Advisory Committee is composed of some of the state's most promi-

nent business leaders. Harold chaired press conferences on November 12, 1986 in Charleston, Greenville and Columbia to announce plans for an introduction of the Bill during the 1987 Session. A Rally was held to show support for the Coalition on December 16, 1986 in the House Chamber at the State House. Tort Reform continues to loom as one of the key issues for the 1987 Session, and each of you are urged to contact your local representatives and ask their support.

### SOUTH CAROLINA CIVIL JUSTICE COALITION MEMBERS

Associated General Contractors of South Carolina Association of S.C. Property and Casualty Insurance Companies Carolina Association of Professional Insurance Agents Carolina Lumber and Building Material Dealers Association Consulting Engineers of South Carolina Greater Columbia Chamber of Commerce Hartsville Chamber of Commerce Home Builders A sociation of South Carolina Independent Insurance Agents of South Carolina Mechanical Contractors Association of South Carolina Motor Transportation Association of South Carolina Myrtle Beach Hotel and Motel Association National Association of Independent Insurers National Federation of Independent Businesses Printing Industry of the Carolinas, Inc. South Carolina Association of CPAs South Carolina Chamber of Commerce South Carolina Chapter of the American Institute of Architects South Carolina Defense Trial Attorneys' Association South Carolina Farm Bureau South Carolina Hotel and Motel Association South Carolina Medical Association South Carolina Merchants Association South Carolina Oil Jobbers Association South Carolina Petroleum Council South Carolina Podiatric Medical Association South Carolina Railroad Association South Carolina Restaurant Association South Carolina Self Insurers Association South Carolina Society of Professional Engineers South Carolina Soft Drink Association Union Camp Corporation AT&T E.I. DuPont

Hospital Corporation of America Amoco Oil Company Alliance of American Insurers South Carolina Dental Association Carolinas Ready-Mix Concrete Association South Carolina Asphalt Pavement Association, Inc.

## DRI

#### Ernest B. Lageson, President Defense Research

DRI's Executive Committee met in mid-October. This is traditionally a "house-keeping" meeting, but there were a few items that may be of interest. The Executive Committee authorized the creation of a Legislative Committee. A primary purpose of this new committee is to provide technical assistance to those concerned with legislation at the state level. After a period of organization, I would hope this committee could provide assistance in legislative drafting, in organizing legislative appearance. All this, of course, would be done in coordination with those in your organization who are working in these areas. DRI is no sense wishing to supplant your efforts but only to assist them when, where and how you decide it would be useful. I have asked Tony Barrett, the immediate Past President of the Association of Defense Counsel of Northern California to serve as the Legislative Committee's first chairman. Tony has agreed and we are now in the process of staffing the committee.

The Executive Committee considered two preliminary reports of committee engaged in examining all aspects of DRI publications program and its overall structure. I formed these committees in the belief that it is healthy for organizations to study themselves from time to time. I would welcome any experience that any of you may have had in evaluating your own groups and in establishing a set of priorities for further growth and development.

As many of you may be aware. DRI recently conducted a survey of its members. The Executive Committee considered a preliminary report based on the first several hundred responses. The final response rate approached 20% which we are assured is very good. We will share the highlights of the survey with you once the analysis is completed.

Other matters of note include a recent meeting of the National Coalition for Litigation Cost Containment. The Steering Committee met on November 13 and the full Coalition on November 14. Through the efforts of the Coalition's public relations consultant, a number of interviews with defense lawyers have been set up with major metropolitan newspapers. These efforts were coordinated with legislative activities then underway. With the resumption of legislative sessions in January, this program will be expanded to a number of additional cities. In addition, the Coalition is refining position papers dealing with punitive damages, joint and several liability, caps on awards, the collateral source rule and product liability reform.

DRI is in the process of installing an "800" number to facilitate communication among defense bar leaders. We will soon be able to supply this number to you. Initially, at least, it is our intent to make this number available only to the leaders of DRI and other defense groups as opposed to the general membership.

Again, I welcome any comments or suggestions concerning DRI and the defense effort generally.

Best wishes for the New Year.



## GOVERNOR RILEY TO MERGE LAW FIRM

Governor Dick Riley announced that he will become a partner in a Columbia-based law firm that will merge with his family's Greenville law firm after he finishes his term in office.

Nelson, Mullins, Grier & Scarborough will merge with Riley, Riley, Laws and Stewart to become Nelson, Mullins, Riley & Scarborough.

Riley, who left the family law business after he was elected governor in 1978, said he plans to work in corporate, financial and real-estate law.

After the merger, the firm will continue to operate the offices in Greenville and Simpsonville that are operated now by the Riley firm, along with the Columbia and Myrtle Beach offices of Nelson, Mullins.

The Nelson firm was founded a century ago and now is the second largest in the state. With Riley on board, it could rival the law practice established by former Governor Robert McNair.

Riley will start work when his eight-year tenure as governor ends in January. He will split his time between Columbia and Greenville, where he and his wife, Ann have bought a new home.



ANNUAL MEETING

The Nineteenth Annual Meeting of the South Carolina Defense Trial Attorneys' Association was held at the Cloister, Sea Island, Georgia, October 30 - November 2, 1986. T. Eugene Allen, III, Esquire, President of SCDTAA, opened the Friday morning session. The Honorable J.B. Ness, Chief Justice, South Carolina Supreme Court, addressed the Association on the State of the Judiciary. The Honorable Lee M. Thomas, Administrator, Environmental Protection Agency and the Honorable Howell T. Heflin, United States Senator (D. ALA.) were keynote speakers during the three day meeting. Newly elected officers of SCDTAA are President, Theron G. Cochran, Greenville; President Elect, Carl B. Epps, Columbia, Secretary, William S. Davies, Columbia; Treasurer, Frank H. Gibbes, III, Greenville; Executive Committeemen include William C. Helms, III, Charleston; W.G. Lynn, Jr., Aiken; Ladson Howell, Beaufort; Hugh McAngus, Columbia; J.D. Todd, Jr., Greenville; M.M. Weinberg, Sumter and newly elected William A. Coates, Greenville; with terms expiring in 1988. Committeemen elected for three year terms expiring in 1989 were: Thomas M. Boulware, Barnwell; Kay Gaffney Crowe, Columbia; Albert L. James, III, Darlington; John B. McCutcheon, Jr., Conway, and Charles B. Ridley, Jr., Rock Hill.





At our Association's Ninth Annual Meeting at Hilton Inn, (which closing was announced this week), JACKSON L. BARWICK, JR. of Columbia. was elected President. Other officers named were MARK W. BUYCK, JR. of Florence, President-Elect; ROBERT BRUCE SHAW of Columbia. Secretary-Treasurer; and C. DEXTER POWERS of Florence, Immediate Past President. Executive Committeemen selected at this meeting were H. SPENCER KING of Spartanburg; SAUNDERS M. BRIDGES of Florence; and ROBERT H. HOOD of Charleston.

This meeting was highlighted by addresses from two surgeons. DR. J. LORIN MASON, JR. of Florence, who spoke on whiplash injuries; and DR. JACK M. SMITH of Columbia, who discussed lumbar area problems and ruptured discs. During the business session, EDWARD W. MULLINS, JR. (President 1973), then Regional Vice-President of the Defense Research Institute, presented information in support of that organization.

## **CONVENTION SURVEY**

THE EXECUTIVE COMMITTEE HAS ASKED FOR
THE MEMBERSHIP'S INPUT FOR CONVENTION ANNUAL
MEETING SITES. WE WILL BE GOING TO THE
INTER—CONTINENTAL HOTEL ON HILTON HEAD
ISLAND FOR OUR 1987 ANNUAL MEETING.
PLEASE INDICATE YOUR CHOICES FOR FUTURE MEETINGS:

	KIAWAH ISLAND HILTON HEAD SAVANNAH CHARLESTON OTHER			
PLEASE LIST:				
NAME:				

#### **EXPERT WITNESS INDEX**

South Carolina Defense Trial Attorneys' Association 3008 Millwood Avenue, P.O. Box 11187 Columbia, SC 29211 (803) 252-5646

Name of Expert	
Address	
CityState	<b>_Z</b> ip
Phone	
Area of Expertise/Specialty	
•	
Type of Case	
Case Name	
Did you consultor confront	this expert?
If you consulted this expert, would you	consult
him/her again? Yes No	Norther bridge considerable with the side of the State of the side
Do you have a file on this expert? Yes	No
Anything significant and/or unusual about exper	t and/or testimony?
Name of Submitting Attorney	

# SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION ANNUAL MEETING MINUTES SATURDAY, NOVEMBER 1, 1986, 8:30 A.M. THE CLOISTER, SEA ISLAND, GEORGIA

The Annual Meeting of the South Carolina Defense Trial Attorneys' Association was held on Saturday, November 1, 1986 at Sea Island Georgia at 8:30 a.m.

The meeting was called to order by President Gene Allen.

A motion was made, duly seconded and passed unanimously to approve the minutes of the last meeting as mailed.

Bill Davies reported that the Treasurer's Report was in the annual report.

This was received as information.

The by-laws amendment, which was presented to the membership in the last issue of the Defense Line, was then brought before the attendees. A motion was made, duly seconded and passed unanimously to amend the by-laws as presented. (A copy of this amendment is on page 7 of the 1986 Annual report and also in this issue of Defense Line.)

The members were then asked to fill out the survey which had been passed out to them regarding future meeting sites.

Wade Logan was then called on to give the Nominating Committee Report:

President-Theron Cochran

President Elect-Carl Epps

Secretary-Bill Davies

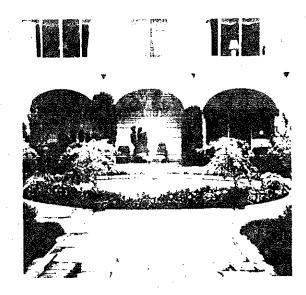
Treasurer-Frank Gibbes

- 3 Year term on the Executive Committee Kay Guffney Crowe (At Large)
- 2 Year term on the Executive Committee Bill Coates (At Large)
- 3rd Congressional District Thomas Boulware (3 year term)
- 5th Congressional District Charles Ridley (3 year term)
- 6th Congressional District John B. McCuthcheon, Jr. (3 year term)

6th Congressional District - Albert L. James, III (3 year term) A motion was then made, duly seconded and passed unanimously to accept the report and nominations.

There being no further business, the meeting was adjourned.









## 1986-1987 Committees

DEFENSE LINE RECENT DECISIONS COMMITTEE

**CHAIRMAN** 

Jackson L. Barwick, Jr., Esq. Be;ser. Baker, et al. Post Office Box 11848 Columbia, SC 29211 799-9091

David L. Moore, Jr., Esq. Greenville, SC 242-6360

W. Francis Marion, Jr., Esq. Greenville, SC 271-7970

J. Victor McDade, Esq. Anderson, SC 224-7111

A. Parker Barnes, Esq. Beaufort, SC 524-6160

Thomas J. Willis, IV. Esq. Charleston, SC 577-7700

Robert P. Foster, Esq. Greenville, SC 242-6200

John B. McCutheon, Jr., Esq. Conway, SC 248-7225

Lawrence B. Orr, Esq. Florence, SC 662-1418

James D. Nance, Esq. Orangeburg, SC 531-1700

Thomas M. Bouleware, Esq. Barnwell, SC 259-3532

Pledger M. Bishop, Jr., Esq. Charleston, SC 772-8375

#### **ETHICS COMMITTEE**

**CHAIRMAN** 

M.M. Weinberg, Jr., Esquire Weinberg, Brown & McDougal Post Office Box 1289 Sumter, SC 29150 775-1274

Joseph E. Major, Esquire Greenville, SC 242-6440

Jack D. Griffeth. Esquire Greenville, SC 242-6360

Finley B. Clarke, Esquire Florence, SC 669-2401

Hugh L. Willcox, Jr., Esquire Florence, SC 622-3258 PROGRAMS AND SEMINARS COMMITTEE

**CHAIRMEN** 

William M. Grant, Jr., Esquire Haynsworth, Perry, Bryant, Marion & Johnstone Post Office Box 2048 Greenville, SC 29602 271-7970

William A. Coates, Esquire
Love, Thornton. Arnold &
Thomason
Post Office Box 10045
Greenville, SC 29603 242-6360

John S. Wilkerson, III. Esquire Florence, SC

W. Hugh McAngus, Esquire Columbia, SC 771-4400

Paul A. Dominick, Esquire Columbia, SC 771-8900

Steven C. Kirven, Esquire Anderson, SC 225:2527

Backman S. Smith, III. Esquire Anderson, SC 225-2527

Elizabeth Van Doren Gray, Attorney Columbia, SC 799-9800

Harold E. Trask, Jr., Esquire Charleston, SC 722-3366

# PRACTICE AND PROCEDURE COMMITTEE

**CHAIRMAN** 

F. Ladson Howell, Esquire Howell, Gibson & Boney Post Office Box 40 Beaufort, SC 29902 524-3433

Timothy W. Bouch, Esquire Charleston, SC 577-4000

Cary Doyle, Esquire Anderson, SC 224-7111

William H. Davidson, II. Esquire Columbia, SC 254-4190

William W. Watkins, Sr., Esquire Columbia, SC 254-2200

#### CONVENTIONS COMMITTEE

**CHAIRMAN** 

William C. Helms, III, Esquire Barnwell, Whaley, Patterson & Helms Post Office Drawer H Charleston, SC 577-7700

William E. Shaughnessy, Esquire Greenville, SC 271-7970

Keating L. Simons, III, Esquire Charleston, SC 722-163-

Susan Taylor Wall, Esquire Charleston, SC 722-1634

#### MEMBERSHIP COMMITTEE

CHAIRMAN
Mark H. Wall. Esquire
Robinson, Carver & Wall
Post Office Box 1860
Charleston, SC 577-9440

David C. Norton, Esquire Charleston, SC 722-1634

M. Dawes Cooke, Jr., Esquire Charleston, SC 577-7700

Hutson S. Davis, Jr., Esquire Beaufort, SC 524-6160

M. Baker Wyche, III. Esquire Greenville, SC 242-1410

James D. Brice, Esquire Greenville, SC 271-9580

Stanley T. Case, Esquire Spartanburg, SC 582-5630

Kay G. Crowe, Attorney Columbia, SC

Charles B. Ridley, Jr., Esquire Rock Hill, SC 324-429

779-111

CONVENTION SITES COMMITTEE

Carl B. Epps, III. Esquire Turner, Padget, Graham & Laney Post Office Box 1473 Columbia, SC 29202 2

#### AMICUS CURIAE COMMITTEE

#### CHAIRMAN

Glenn Bowers, Esquire
Nexsen, Pruet, Jacobs & Pollard
Post Office Drawer 2426
Columbia, SC 29202 771-8900

John E. Cuttino, Esquire Greenville, SC

W. Howard Boyd, Jr., Esquire Greenville, SC 271-9580

Michael B. T. Wilkes, Esquire Spartanburg, SC 582-5683

Stephen E. Darling, Esquire Charleston, SC 722-3366

Henry E. Grimball, Esquire Charleston, SC 722-0311

John R. Devlin, Jr., Esquire Greenville, SC 242-6360

#### **BY-LAWS COMMITTEE**

W.G. Lynn, Jr., Esquire Henderson & Salley Post Office Box 517 Aiken, SC 29801 648-4213

#### PUBLIC INFORMATION AND RELATIONS COMMITTEE

Ms. Kay G. Crowe
Barnes, Alford Stork &
Johnson
Post Office Box 8448
Columbia, SC 29202
779-1111

#### JUDICIARY COMMITTEE

J.D. Todd, Jr., Esquire
Leatherwood, Walker, Todd &
Mann
Post Office Box 87
Greenville, SC 29602 242-6440

#### FINANCE COMMITTEE

Frank H. Gibbes, III, Esquire Rainey, Briton, Gibbes & Clarkson Post Office Box 10589 Greenville, SC 29603 271-9580

#### TRUSTS

Justice LOGAN E. BLECKLEY, in Kupferman V. McGee, 63 Ga. 250.

Opinion: Trusts are children of equity; and in a court of equity they are at home — under the family roof-tree, and around the hearth of their ancestors.

From: Opinions and Stories of and from The Georgia Courts and Bar by Berto Rogers

#### AMENDMENTS TO BY-LAWS

The following amendment to the By-Laws of the South Carolina Defense Trial Attorneys' Association was passed at the Annual Meeting of the Association at 8:30 a.m. on Saturday, November 1, 1986 at the Cloister, Sea Island, Georgia:

# ARTICLE III QUALIFICATIONS FOR MEMBERSHIP:

Those persons shall be qualified for membership who (1) Are members in good standing of the South Carolina State Bar; (2) Are actively engaged in the private practice of civil law, or employed by governmental bodies; and (3) Individually devote a substantial portion of their time in litigated matters to the defense of damage suits on behalf of individuals, insurance companies and corporations, private or governmental.

#### **CHANGE TO:**

# ARTICLE III QUALIFICATIONS FOR MEMBERSHIP

Those persons shall be qualified for membership who (1) Are members in good standing of the South Carolina Bar; (2) Are actively engaged in the private practice of civil law, or employed by governmental bodies: and (3) Individually devote a substantial portion of their time in litigated matters to the defense of damage suits on behalf of individuals, insurance companies and corporations, private or governmental.

(b) the representation of management in labor disputes. Application for membership must be made upon a form provided by the Secretary and submitted to the Secretary, who shall then refer the application to the Membership Committee. A check for annual dues, in an amount fixed by the Executive Committee, shall accompany the application.

# UNITED AUTO AND WHOLESALE, INC. -VSHE AMERICAN MUTUAL FIRE INSURAN

# THE AMERICAN MUTUAL FIRE INSURANCE COMPANY OF CHARLESTON, SOUTH CAROLINA

BRADISH J. WARING of Young, Clement, Rivers & Tisdale, Charleston, South Carolina, was successful in obtaining a judgement on the pleadings in a first party insurance claim. In the matter, the Defendant insurance company had issued a commercial property policy to the Plaintiff business. The policy contained language providing that the insurance company was only liable for damage which was a "direct loss resulting from actual physical contact of an aircraft or a vehicle with the property covered or with the buildings containing the property of the Plaintiff insured struck a tree and the tree, in turn, fell over onto the Plaintiff's insured building. The key fact was that there was no actual physical contact between the bulldozer and the insured commercial building.

The Honorable James E. Moore found that the policy did not provide coverage for the accident and granted judgement on the pleadings to the insurer based upon the lack of physical contact between the bulldozer and the building. Judge Moore stated that in order for the Court to construe the policy to provide coverage, the policy language would have to be "tortured beyond its plain meaning". Further, intended by the parties to be provided in instances where vehicles did not come in "actual physical contact" with the insured property.

# TORRIE TAYLOR --VS- DOUGLAS MURPHY AND CITY OF COLUMBIA

In an order filed July 28, 1986, Judge George Bell Timmerman, Jr., sitting as presiding judge of the Fifth Judicial circuit in Richland County interpreted the new South Carolina Tort Claims Act which became effective on July 1, 1986, as barring plaintiff's suit for personal injury arising out of an automobile accident with a cityowned vehicle. The accident occurred on May 23, 1985. In this case of Torrie Taylor v. Douglas Murphy and City of Columbia (85-CP-40-4934), Judge Timmerman ruled that the plain language of the new section (15-78-20 (c) re-instated sovereign immunity on the part of the City and its employee so as to bar recovery in this action which arose before the effective date of the Act. Neither the City nor its employee maintained liability insurance coverage. In granting summary judgement to the defendants. Judge Timmerman ruled that section 15-78-20 (c) was "an unequivocal statement by the General Assembly" and that the repeal of the South Carolina Governmental Motor Vehicle Torts Claims (15-77-210 et. seq.) by the South Carolina Torts Claim Act also was "unequivocal." Judge Timmerman held that the new act clearly repealed the prior limited waiver of sovereign immunity and divested the plaintiff of his right to proceed under that limited waiver statute.

# RECENT DECISIONS



#### WANDA S. MANDEL —VS— RALPH D. SICKELS

In the recent decision of Wanda S, Mandel v, Ralph D. Sickels Judge Falcon B. Hawkins, United States District Judge, ruled on motion for summary judgement that the decision of the Southe Carolina Supreme Court in Kinard v. Augusta Sash and Door Co., 286 S.C. 579, 336 S.E. 2d 465 (1985) is to be applied prospectively and not retrospectively. In Kinard, the South Carolina Supreme Court declared for the first time this state recognizes a cause of action for negligent infliction of emotional distress.

The case before the district court involved an automobile accident in which the defendant driver had as passengers a mother and daughter. The defendant driver lost control of his car and caused the death of the daughter. The mother was not injured but brought suit alleging a cause of action for negligent infliction of emotional distress. The accident occured in October 1985, eight months before the decision of the Supreme Court in **Kinard**, the sole issue before the district court whether **Kinard** should be applied prospectively or retrospectively.

In deciding that **Kinard** should be applied prospectively. Judge Hawkins reasoned that Kinard sanctioned a new cause of action which had not previously existed in this state and defined the elements of such a cause of action. The court recognized that South Carolina law follows the general principle that "retroactive application of judicial decisions (which) is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate rights are applied retroactively." Bartlett v. Nationwide Mutual Fire Insurance Company. No. 788, slip op. at 7 (S.C. Ct. App. Sept. 2, 1986) (citing Douglass v. Florence General Hospital, 273 S.C. 716, 259 S.E. 2 d 117 (1979 and Milbradt v. Margaris, 103 Wash. 2 d 337 🕻 693 P. 2d 78 (1985). Under this fundamental principle, because Kinard created a new tort, it cannot apply to claims arising before that decision. See id., Hupman v. Erskine College, 281 S.C. 43. 314 S.E. 2d 314 (1984).

#### MULTIMEDIA, INC.

-VS-

#### FIREMAN'S FUND INSURANCE CO.

In an order filed December 16, 1986, Judge J. Ross Anderson, Jr., vs. District Court refused to hear a Motion to Compel discovery more than twenty days after receipt of the discovery to which the Motion to Compel was directed. While this has been a local rule since October of 1983, it has been, up until this point, a rarely enforced rule. This diversity action came before the Court on a motion to compel William H. Horner, a witness for co-defendant Marsh and McLennan, to answer certain questions posed during his deposition. The case concerns liability coverage on a variety of insurance policies held by the plaintiffs.

Marsh and McLennan is an insurance agency. William H. Horner, an employee of Marsh and McLennan, answered a number of questions during his deposition. The questions focused on why Marsh and McLennan allegedly failed to pass on notice of impending suit to co-defendant Fireman's Fund, one of the plaintiffs' insurance carriers. On the advice of counsel, Mr. Horner declin

ed to answer queries about his understanding of the meaning of Fireman's Fund's policy. Marsh and McLennan took the position at the time of deposition that the testimony of a lay witness on a legal question of insurance coverage would not be useful to the trier of fact. Plaintiffs defendant Fireman's Fund argue the question goes to Mr. Horner's state of mind and helps explain the factual issue of why Marsh and McLennan allegedly failed to notify Fireman's Fund of an impending suit.

Whatever the merits of the arguments of the parties, the Court today declines to grant the motion to compel on grounds plaintiffs and co-defendant Fireman's Fund unjustifiably failed to comply with the local rule of this Court dated October 7, 1983. That rule provides "all motions to compel discovery must...he filed within twenty days after receipt of the discovery to which the motion to compel is directed, or, where no such response is received, within twenty days after the same was due." Mr. Horner gave his deposition in April of 1986. Approximately six months later, the plaintiffs and Fireman's Fund move to compel on grounds that should have been asserted in April 1986.

### **HELP WANTED!**

While the members of THE DEFENSE LINE - RECENT DECISIONS COMMITTEE has the direct responsibility for contributing articles and comments on cases and recent Orders to me as chairman of the committee, each of the members of our association owe it to the rest of the membership to be alert to items of interest that might help his fellow member. Won't you be a contributor? I would respectfully request that any contributors, whether on the committee or not, furnish me with a copy of the entire Order or Decision as well as a synopsis for publication. We will maintain these in a file and send them to those members of interest. You would be surprised how many people have been helped by this service.

Thank you very much,

Jackson L. Barwick, Jr.

Editor

# DEADLINE DATES FOR DEFENSE LINE

Winter Issue December 15 Deadline Spring Issue March 15 Deadline Summer Issue June 15 Deadline Fall Issue September 15 Deadline

Federation of Insurance Council (Summer)

August 3-7

CALENDAR OF EVENTS

January

February

March I

June 5-7

July 30-

August 2

August 5-9

August 6-13

November 5-8

January 22-24

February 17-21

February 11-18

February 25-

March 8-12

June 27-29

23-25

4-5

June 17-19

Hyatt Regency Maui, Hawaii Omno

San Francisco. California

Las Palmas, Palm Springs, Ca.

Omni

Breakers

Charleston, S.C.

Palm Beach, Fia.

New Orleans, La.

Marriott's Rancho

Boca Raton, Fla.

Hilton Head, S.C.

Intercontinental

The Broadmoor

Colorado Springs, Colorado

Grove Park Inn.

Asheville, N.C.

The Broadmoor

Colorado Springs, Colorado

Intercontinental

Hilton Head, S.C.

Marriott Columbia, S.C.

.- Charleston

Southampton Princess Hamilton, Bermuda

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1987

S.C. Bar

(Mid-Year)

American Bar

(Mid-Year)

Council

(Annual)

American Bar

(Annual)

Council

Defense Research Institute

Federation of Insurance

Defense Research Institute

Joint Defense Conference

Federation of Insurance

SCDTAA Annual Meeting

S.C. Bar (Mid Year)

Counsel (Winter)

S.C. Bar (Annual)

Federation of Insurance

S.C. Bar (Annual)

American College of Trial Lawyers

SCDTAA and Claims Managers

### DEFENSE TRIAL ATTORNEYS' ASSOCIATION SOUTH CAROLINA

3008 MIFFMOOD AVENUE, COLUMBIA, SC 29205



ADDRESS CORRECTION REQUESTED

Permit No. 535