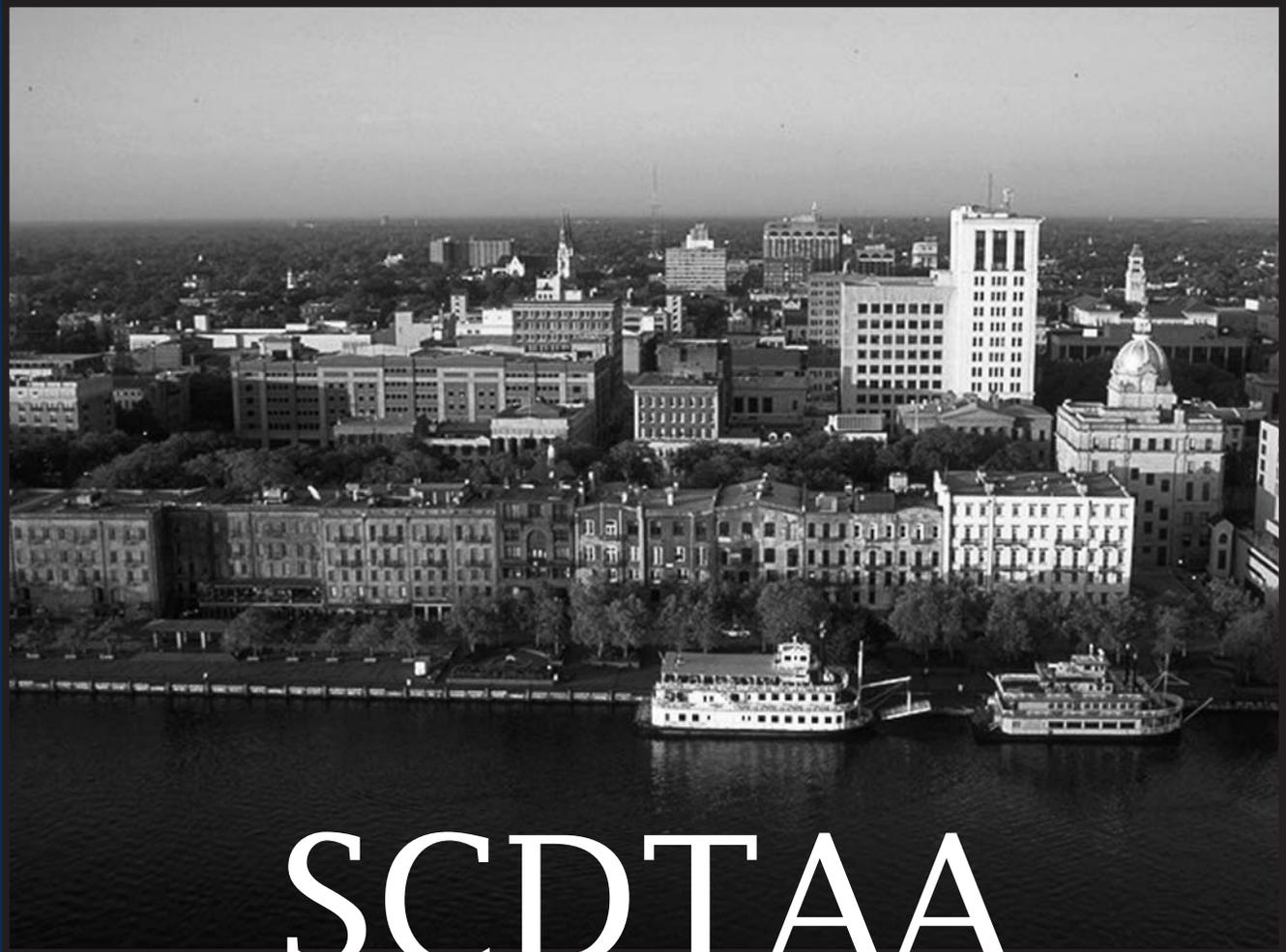




# THE DefenseLINE



## SCDTAA *Annual Meeting*

*Savannah, GA*

*November 5 - 8, 2009*

[www.scdtaa.com](http://www.scdtaa.com)

# President's Message

by John T. Lay, Jr.



We have had a truly spectacular year this year and as an organization we have accomplished a great deal:

1. Reconstituted and active substantive law committees;
2. Held our first deposition boot camp;
3. Scheduled a past presidents dinner to bring all of our past presidents together to remember our wonderful history;
4. A refurbished, and user-friendly website;
5. Held our inaugural seminar for in-house counsel;
6. Enhanced benefits including insurance benefits for members;
7. Renewed focus on diversity including diverse speakers at every meeting; and
8. Filed two Amicus Briefs and we are in the process of writing a third Amicus Brief.

Ron Wray, Hugh Buyck, John Kuppens, Matt Henrikson, Johnston Cox, Steve Mitchell, Duncan McIntosh, and Catherine Templeton all worked with purpose and focus to make these accomplishments come to fruition, and I cannot thank them enough.

In addition, we have continued with our traditionally great meetings and publications.

This year began with some anxiety due to the unstable economic environment. Our board, therefore, focused on making sure we closely evaluated our budget, cut any excess fat in the budget, and maintained the discipline necessary to stick to the budget throughout the year. We also focused on making sure the number of attendees at our meetings did not drop as this is a predictable way to create serious financial difficulties. As a result of the efforts of Sterling Davies, William Brown, and Alan Lazenby the number of attendees at the Joint Meeting was equal to 2008, which is simply incredible. Nationwide attendance at the meetings has been

down as much as 30%. The numbers at the upcoming Annual Meeting look just as promising thanks to the efforts of Glen Elliott, Catherine Templeton, and Bill Besley. David Anderson in particular has also made sure that we met our financial obligations by soliciting, and obtaining sponsorship dollars in this very difficult economic environment. As a result of these efforts, our organization simply could not be in better shape financially.

The Trial Academy, truly one of the great crown jewels of our organization, was held for the 19th consecutive year. Curtis Ott, Wendy Keefer, and Anthony Livotti worked tirelessly to ensure that it was yet again a successful program. Wendy Keefer also rewrote the problem to make sure that it was more balanced for the students. It was without question one of the best Trial Academies that we have ever held, due to the extraordinary efforts of these three individuals.

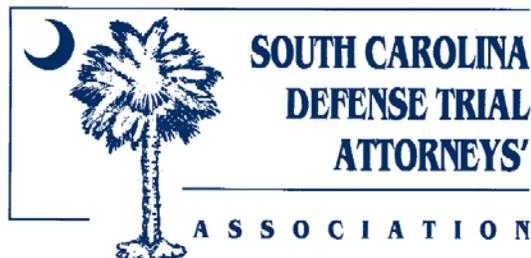
I also would like to extend a special note of appreciation and thanks to David Rheney, Gray Culbreath, Molly Craig, and Aimee Hiers. They showed great dedication, energy, patience, support, and responsibility throughout the year and I cannot thank them enough for their contributions and friendship.

Finally, I want to thank the entire board for making this year so special to me and my family. Everyone did what they promised to do, and always did it with good humor.

Under David Rheney's leadership and the leadership of other officers – and of course the hard work of Aimee Hiers – I am confident that the organization will continue to thrive and continue to be one of the best state defense organizations in the country.

Please know that I will continue to be a dedicated member of this wonderful organization. It has been an honor to be President this year, and it has been experience I will always cherish.

I look forward to seeing you all in Savannah!



# Letter From The Editors

by Wendy J. Keefer and Erin D. Dean

It may seem early to write about the holidays, but in the spirit of the commercial world's ever earlier display of holiday merchandise, this seemed the appropriate issue of *DefenseLine* to highlight the following ideas.

All too often, particularly as defense lawyers, our lives are ruled by the almighty billable hour. Our daily tasks are driven by it and often our measure of our own success or failure is dictated by it. There is, however, much more to being both a happy and successful attorney and to being a happy and successful member of your families and your communities (legal, neighborhood, religious, and other communities). Balancing the indisputable need for productivity in our professions (i.e., collections resulting from those very same billable hours) with nonbillable professional activities, family involvement and community participation is the mark of a content and admirable attorney. As the holidays do begin to approach (a time where finding this balance is often elusive), we offer these thoughts on ways the South Carolina Defense Trial Attorneys' Association can actually help each of us find this balance not only now but throughout the year.

Fine tuning one's skills as a lawyer involves all types of experiences – billable and nonbillable. Through the SCDTAA's Trial Academy, the Association offers a means to give your younger lawyers tools for the courtroom. Moreover, the opportunity to utilize these tools in a mock trial setting builds confidence and leads to a better understanding of the big pictures of trial work and creates more efficient lawyers. It also introduces lawyers to one another such that a community of lawyers of similar experience levels can identify with a group of peers with whom they will practice law, hopefully, for decades to come.

The Joint Meeting brings together our membership with those in another industry – claims management. This meeting reminds us all that our success as lawyers depends upon building good relationships with our clients and their representatives. At the same time, this meeting provides opportunities for each of us to spend time with our families and get to know each others' families in a beautiful environment in which activities for all abound. And, let's not forget the charitable contributions made through participation – both in the donation of items for bid and in the bidding process – in the silent auction.

A number of receptions, CLEs and other events around the state are also offered by SCDTAA each year, also offering additional opportunities to build –

and appropriately balance – personal and professional relationships with peers, judges, and members of our respective communities.

One last opportunity exists this year for each of our members to celebrate our profession in a way that merges legal learning, professional contacts, the chance for new or growing personal friendships with one another, and provides a schedule that allows time for relaxation -- the Annual Meeting. This meeting traditionally brings all of us together, as the holiday season is approaching, to learn, share stories, socialize and get to know each other better. Attendance is not billable, but it ultimately creates increased productivity by providing an environment in which we can all rejoice in the joys of our profession and appreciate the fine legal community in which we practice. What a great way to raise our spirits, just in time for the holiday season.



*Wendy J. Keefer*



*Erin D. Dean*

## A special thank you to our Joint Meeting Sponsors

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E. Glenn Elliott  
Eric K. Englehardt  
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Anthony W. Livoti  
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**Term Expires 2010**

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D. Jay Davis, Jr.  
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# Letter From The Secretary

by Molly H. Craig

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What a year! In preparing to write the Secretary's Report about the accomplishments achieved by the SCDTAA over the past year, I am truly amazed. Under the leadership of John T. Lay, the organization has greatly improved the substantive benefits to its members through updated technology, broader educational seminars and enhanced marketing activities. It was John T.'s effective use of the collective talents of the members of the Executive Committee that led our organization to new heights.

One of the first projects John T. targeted was a complete overhaul of the SCDTAA web site. If you have not seen the new web site, I urge you to visit [www.scdtaa.com](http://www.scdtaa.com) so you can appreciate the improvements. Of note, the web site now contains a blog and member forum to enable members to communicate in a broader yet more focused manner on specific issues. Also, the web site is more interactive and user-friendly by allowing such things as membership applications and meeting registration on line. Current issues of *DefenseLine* can also be accessed on line along with a full listing of other membership benefits. Rebuilding the web site was an ambitious goal, but with the great help from John Kuppens and DRI, this job was accomplished in six months.

Another significant change that John T. instituted this year was the revival of the substantive law committees. Our substantive law sections include Products Liability, Insurance Defense, Commercial Litigation, Healthcare Law, Employment Law, Workers' Compensation, Admiralty and Young Lawyers. Our substantive law committees have been led by Ron Wray, Hugh Buyck and John Kuppens. The committees have been active publishing articles for *DefenseLine* and leading breakout sessions during the 2009 meetings to discuss current issues in these areas of the law. Additionally, several committees have organized their own CLE sessions regionally around the state.

In April 2009, the SCDTAA sponsored its first in-house counsel seminar. This seminar was well attended with approximately twenty in-house lawyers from around the state. The inaugural in-house counsel seminar will serve as a platform for future seminars designed to reach out to in-house counsel as well as insurance professionals and other consumers of legal services.

In September 2009, the SCDTAA initiated a new CLE called Deposition Boot Camp to teach basic deposition skills including preparation, examination of witnesses, videotaped depositions, 30(b)(6) depo-

sitions and ethical considerations. We offered this program for an extremely reasonable rate which resulted in registration by sixty lawyers across the state. We anticipate this type of CLE and others like it designed to instruct lawyers on practical trial experience to become more embedded in the annual CLE programs of the organization.

Other new initiatives advanced by John T. this year include the establishment of a new finance committee which will provide oversight and recommendations to keep our organization financially sound. Additionally, we are researching the feasibility of a joint meeting with the North Carolina Defense Lawyers. In February 2009, the officers of the SCDTAA and Aimee Hiers traveled to Charlotte to meet with the officers of our sister defense organization in North Carolina to discuss their mutual organizational causes and the merits of planning a joint meeting for their members. From this meeting, an ad hoc committee was formed and chaired by Catherine Templeton to fully analyze plans that were initiated in Charlotte.

In addition to all of the new initiatives the organization has made and despite challenging economic conditions statewide, we have experienced great success with our other recurring activities. We held our 19th Annual Trial Academy in Columbia in June 2009 with the assistance of Curtis Ott, Anthony Livoti, and Wendy Keefer who worked diligently to make it a success. Thanks to Wendy Keefer who enhanced the Trial Academy with a revised factual scenario. Additionally, the Honorable Kaye G. Hearn, the Honorable Paula H. Thomas, the Honorable Michelle J. Childs, the Honorable Joseph F. Anderson, Jr., the Honorable Thomas G. Cooper, Jr., the Honorable Thomas A. Russo, the Honorable James R. Barber, III, and the Honorable George C. James, Jr. all participated in the Trial Academy by either giving a presentation to the participants or presiding over the mock trials. The efforts of the Trial Academy Chairs, faculty and judges resulted in a full Trial Academy of twenty-eight students, all of whom gained valuable trial insight and exposure to their peers and the judiciary.

We also enjoyed great success and attendance at our Joint Meeting at the Grove Park Inn in July 2009. Sterling Davies, William Brown and Alan Lazenby organized a spectacular meeting combining thought-



Molly H. Craig

Continued on next page

ful educational programs and multiple social and networking opportunities. The presentations for the CLE programs were excellent and reflected the organization's commitment to promoting diverse speakers through our diversity initiatives. In addition, the organization continued its focus on family by offering several events designed to encourage the members to include their entire family in the weekend events.

Another recurring member benefit is the publication of the DefenseLine. Erin Dean and Wendy Keefer has done a fantastic job ensuring that the DefenseLine continues to update our members on significant changes and trends in the law. Also, a new section was added to include Judicial Profiles. These published interviews with our judges have been well-received by our members.

As a final new initiative, Matt Henrikson and Johnston Cox have organized a Past Presidents Dinner to honor all of the organization's previous presidents for their committed service. The Past Presidents Dinner is scheduled for Wednesday, November 4, 2009. We certainly anticipate a great

night of having our Past Presidents regale in war stories, the truth of which will not be questioned. Following the Past Presidents Dinner, we look forward to a fun, educational and entertaining annual meeting in Savannah. Catherine Templeton, Glenn Elliott and Bill Besley have worked exceptionally hard to plan a superior meeting with informative CLE and social gatherings that will include all candidates for Governor. Our members will have an opportunity to socialize with the candidates and to learn more about them and their thoughts.

At the Annual Meeting, John T. will turn the leadership of the organization over to David Rheney, our President-Elect. Before that time comes, on behalf of the Officers and the Executive Committee, John T. should be congratulated for not only the countless hours he dedicated to move the SCDTAA to the next level but for the many accomplishments that resulted from those countless hours of hard work. Under John T.'s leadership, the substantive advancements to the organization's programming and member benefits are extraordinary. Well done!

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## Substantive Law Committee Reports

### Trucking

Jack Riordan of Smith Moore Leatherwood and Dennis Lynch of Nexsen Pruet are excited to chair the Trucking Substantive Law Committee. This committee shall provide substantive assistance to those defense attorneys who practice throughout the State. The initial breakout meeting took place at the Joint Meeting at the Grove Park, where varying topics were on the agenda, including: case/verdict updates, useful sources, internet sites and links; technical innovations impacting upon litigation and discovery; spoliation of evidence; joint and several liability; and the formal introduction into evidence of social website information.

The Committee will continually strive to provide assistance to those SCDTAA members whose legal practices relate to the trucking industry. They will attempt achieve this goal by (1) facilitating commu-

nication, electronic or otherwise, amongst those sharing interest in this area of practice; (2) establishing access to educational materials and/or appropriate programs addressing common practice issues; (3) facilitating communication with other SCDTAA committees and/or trucking defense organizations as may be beneficial; and (4) developing formal positions regarding laws and/or regulations affecting the trucking industry and advocating for the same when deemed appropriate or necessary.

Accordingly, we invite all sharing interest in the trucking industry to become a committee member. It is expected that the Trucking Committee will contribute articles regularly to DefenseLine regarding timely Trucking Litigation issues. We invite all to contact us regarding such submissions or involvement with the committee.

# The SCDTAA Docket

## 50 Year Milestone for Nelson Mullins Senior Partner

Congratulations to Edward W. Mullins, Jr., a senior partner with Nelson Mullins Riley & Scarborough LLP, on his 50th anniversary as an active trial lawyer with the firm. Residing in Columbia, South Carolina, Mr. Mullins focuses his practice on product liability, business and general litigation. He is Chair Emeritus of the firm and its Litigation Department. Mr. Mullins served as DRI president in 1985.

Mr. Mullins has held a plethora of leadership positions throughout his career. He is a fellow of the American and South Carolina Bar Associations, a diplomate of the American Board of Trial Advocates, and a fellow, former committee chair, state chair, and Regent of the American College of Trial Lawyers. Mr. Mullins is a member of DRI (former president and chair), the Lawyers For Civil Justice (former president and chair), a member of the Federation of Defense and Corporate Counsel (former vice president and board member), and the International Association of Defense Counsel, where he taught in its 1984 Trial Clinic. He is a member of the South Carolina Defense Trial Attorneys' Association and a past president.

Mr. Mullins is also a master in the John Belton O'Neill Inn of Court, a member of the Product Liability Advisory Council (former member of executive committee), a member of the Richland County Bar Association (former member of executive committee), and the South Carolina Bar Public Relations Committee. He is a permanent member of the U.S. Fourth Circuit Judicial Conference. In 2008, he was elected to the Board of Trustees of the American Inns of Court Foundation, the national organization of the local Inns of Courts.

## Nine MG&C South Carolina Attorneys Selected for 2010 Edition of The Best Lawyers in America

Nine attorneys from McAngus Goudelock & Courie's South Carolina offices have been selected by their peers for inclusion in The Best Lawyers in America® 2010 edition. MG&C was ranked as the #1 firm in South Carolina in workers' compensation law, #1 in Charleston in employee benefits law and #1 in Greenville in insurance law.

Nine attorneys in the firm's South Carolina offices were selected for the list:

### Charleston, S.C.:

- Mark Davis, workers' compensation law
- Amy Jenkins, employee benefits law, labor and employment law

### Columbia, S.C.:

- Steve Benjamin, government relations law
- Scott Garrett, workers' compensation law
- Mundi George, workers' compensation law
- Rusty Goudelock, workers' compensation law
- Thomas Lydon, banking law
- Hugh McAngus, workers' compensation law

### Greenville, S.C.:

- G.D. "Doc" Morgan, Jr., insurance law, personal injury litigation

## Turner Padgett's Jennings Named to General Liability Council of United Educators

Turner Padgett is proud to announce that Donnell G. Jennings, shareholder in the Columbia office, has been named to the newly formed General Liability Council (GLC) of United Educators. He will serve a three-year term. The Council will provide expertise on general liability legal issues unique to education. The Council will address current topics affecting education, including suicide, campus security issues, sexual assaults, catastrophic injuries and insurance coverage. Mr. Jennings is a member of the firm's Litigation Group.

A Reciprocal Risk Retention Group, United Educators is a licensed insurance company owned and governed by more than 1,160 member colleges, universities, independent schools, public school districts, public school insurance pools, and related organizations throughout the United States. UE was created in the mid-1980s, when the National Association of College and University Business Officers task force proposed formation of a company owned and operated by colleges and universities.

## Brian A. Comer Joins Collins & Lacy

Collins & Lacy, P.C. is pleased to announce that Brian A. Comer has joined the firm Of Counsel in the practice areas of Catastrophic Injuries, Class Action, Commercial Litigation, Financial Institutions, Products Liability and Professional Liability.

Brian graduated magna cum laude from the University of South Carolina Honors College with a B.A. in International Studies and Economics in 1995. He received his Juris Doctor from the University of South Carolina School of Law and a Master of International Business Studies, with a concentration in German, from the University of South Carolina Moore School of Business in 1999. While in law school, Brian was a member of the South Carolina

Law Review and the Order of the Wig and Robe. He was the recipient of the Carolina Petigru Scholarship as well as the Mortar Board Graduate Fellowship.

Brian is a member of the Defense Research Institute, American Bar Association, Richland County Bar Association, and the South Carolina Defense Trial Attorneys' Association. Brian also previously served on the University of South Carolina Board of Visitors and chaired the board from 2004-2005. Prior to joining Collins & Lacy, Brian was a partner with a large national law firm, based in Columbia.

#### **Lambert Appointed to Board**

Lanneau W. Lambert, Jr. of Turner Padgett Graham & Laney, P.A. will serve a three-year term on the Columbia Chamber of Commerce Good to Great Foundation Board. Mr. Lambert, immediate past president of the South Carolina Bar, serves on Turner Padgett's Executive Committee and is a shareholder in the Columbia office and a member of the firm's business transactions practice. He has more than 20 years experience in lender counsel representation in complex real estate and asset-based financing and in all aspects of commercial real estate development, leasing and financing. He works regularly with municipalities on various business, real estate and financial matters.

#### **Collins and Culbreath Selected for Litigation Counsel of America**

Collins & Lacy, P.C. is pleased to announce that Joel W. Collins, Jr. and Gray T. Culbreath have been invited to join the Litigation Counsel of America.

The Litigation Counsel of America is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. Fellows are selected based upon effectiveness and accomplishments in litigation, both at the trial and appellate levels, and superior ethical reputation. The mission of the LCA is to recognize deserving, experienced, and highly qualified lawyers, to foster a cohesive membership for the exchange of ideas, to advance superior advocacy and ethical standards in the practice of law, to provide a channel for scholarly creativity and authorship of legal articles devoted to trial and litigation subjects, to offer resources for further professional development, and to assist in community involvement by its membership.

Joel Collins is a founding shareholder of Collins & Lacy. He 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 Super Lawyers 2009 and has an AV rating with Martindale-Hubbell.

Gray Culbreath is the managing partner for Collins & Lacy. His practice focus includes products liability, class action litigation, transportation litigation, business and commercial litigation, and professional negligence claims. Additionally, he conducts an active appellate practice for his regional and national clients. Mr. Culbreath earned his undergraduate degree from Wofford College and received his law degree from the University of South Carolina School of Law. He is an active member of the Federation of Defense and Corporate Counsel and the International Association of Defense Counsel. He is a member of Lawyers for Civil Justice and the Defense Research Institute and serves as Secretary for the South Carolina Defense Trial Attorneys Association. Mr. Culbreath is also an active member of the American Board of Trial Advocates and currently serves as the Chair of the South Carolina State Museum Commission. He has been selected for Best Lawyers and Super Lawyers, and recently received the 2009 James Petigru Compleat Lawyer Award from the University of South Carolina School of Law. Mr. Culbreath is AV-rated by Martindale-Hubbell.

#### **Turner Padgett Honored By South Carolina House of Representatives For Its Inclusion on The National Law Journal's Midsize Hot List**

South Carolina House Representative Garry R. Smith introduced a resolution to the South Carolina House of Representatives commending Turner Padgett Graham & Laney, P.A. for its inclusion on The National Law Journal's "Midsize Hot List." Rep. Smith presented Turner Padgett's Greenville office managing shareholder Vernon F. Dunbar with the resolution during the office's fifth anniversary celebration on August 6. The resolution was signed by Speaker of the House Robert W. Harrell, Jr. and Clerk of the House Charles Reid.

"We are pleased to be recognized by Rep. Smith and the South Carolina House of Representatives for our inclusion among an elite list of midsize law firms from around the country," said Mr. Dunbar, who is also a member of the firm's Business Litigation Unit. "While we are celebrating our fifth anniversary in Greenville, our attorneys in this office are deeply embedded in the Greenville business community, just as our firm has strong roots throughout the state. The National Law Journal feature is a testament to our continued commitment to outstanding client service and our understanding of what it means to do business in South Carolina."

"The Midsize Hot List" was an inaugural feature in the June 29 issue of The National Law Journal, which highlighted law firms from around the country with 50 to 300 attorneys that have demonstrated creative, innovative strategies to stay competitive, particularly during a recession. Criteria considered in the selection process include the ways these firms

recruit legal talent, train associates, bill clients, develop practice areas, and structure management. Turner Padgett was the only South Carolina-based firm to be honored, and one of only a handful of firms from the Southeast included on the list.

#### **Drew Williams Selected to Leadership Columbia**

Turner Padgett is pleased to announce that D. Andrew (Drew) Williams has been selected to participate in the 2010 Leadership Columbia class. Drew is a shareholder in the Columbia office and is a member of the Specialty Litigation Group focusing on complex litigation involving construction and business disputes. Leadership Columbia, a project of the Greater Columbia Chamber of Commerce, brings together local business and community leaders to build relationships and inspire them to serve the Midlands.

#### **Haynsworth Sinkler Boyd, P.A. Leads SC in The Best Lawyers in America®**

Fifty lawyers at Haynsworth Sinkler Boyd, P.A., are included in The Best Lawyers in America® 2010 edition. On July 29, the oldest and most respected peer-review referral guide to legal excellence in the United States announced online that Haynsworth Sinkler Boyd has more listed lawyers than any other South Carolina firm in 15 practice areas. The list includes a gain of 13 new lawyers over the past year, with seven lawyers named to the “Bet-the-Company” category.

Haynsworth Sinkler Boyd received the following statewide rankings:

- Ranked #1 in South Carolina in Antitrust Law with 2 attorneys.
- Ranked #1 in South Carolina in Appellate Law with 2 attorneys. (\*)
- Ranked #1 in South Carolina in Bankruptcy and Creditor-Debtor Rights Law with 3 attorneys.
- Ranked #1 in South Carolina in Construction Law with 3 attorneys.
- Ranked #1 in South Carolina in Corporate Governance and Compliance Law with 1 attorney.
- Ranked #1 in South Carolina in Corporate Law with 9 attorneys.
- Ranked #1 in South Carolina in Health Care Law with 4 attorneys. (\*)
- Ranked #1 in South Carolina in Medical Malpractice Law with 5 attorneys.
- Ranked #1 in South Carolina in Non-Profit/Charities Law with 1 attorney. (\*)
- Ranked #1 in South Carolina in Professional Malpractice Law with 2 attorneys.
- Ranked #1 in South Carolina in Project Finance Law with 1 attorney.
- Ranked #1 in South Carolina in Public Finance Law with 7 attorneys.
- Ranked #1 in South Carolina in Real Estate Law with 6 attorneys.

- Ranked #1 in South Carolina in Tax Law with 5 attorneys.
- Ranked #1 in South Carolina in Trusts and Estates with 4 attorneys. (\*)
- Ranked #1 in Charleston, SC in Alternative Dispute Resolution with 1 attorney. (\*)
- Ranked #1 in Charleston, SC in Bet-the-Company Litigation with 1 attorney. (\*)
- Ranked #1 in Charleston, SC in Construction Law with 2 attorneys. (\*)
- Ranked #1 in Charleston, SC in Medical Malpractice Law with 1 attorney. (\*)
- Ranked #1 in Charleston, SC in Public Finance Law with 2 attorneys. (\*)
- Ranked #1 in Columbia, SC in Antitrust Law with 2 attorneys.
- Ranked #1 in Columbia, SC in Appellate Law with 2 attorneys.
- Ranked #1 in Columbia, SC in Bankruptcy and Creditor-Debtor Rights Law with 2 attorneys. (\*)
- Ranked #1 in Columbia, SC in Corporate Governance and Compliance Law with 1 attorney.
- Ranked #1 in Columbia, SC in Corporate Law with 6 attorneys.
- Ranked #1 in Columbia, SC in Insurance Law with 1 attorney. (\*)
- Ranked #1 in Columbia, SC in Non-Profit/Charities Law with 1 attorney.
- Ranked #1 in Columbia, SC in Project Finance Law with 1 attorney.
- Ranked #1 in Columbia, SC in Public Finance Law with 2 attorneys. (\*)
- Ranked #1 in Columbia, SC in Real Estate Law with 3 attorneys.
- Ranked #1 in Columbia, SC in Tax Law with 4 attorneys.
- Ranked #1 in Florence, SC in Trusts and Estates with 1 attorney. (\*)
- Ranked #1 in Greenville, SC in Health Care Law with 3 attorneys.
- Ranked #1 in Greenville, SC in Medical Malpractice Law with 4 attorneys.
- Ranked #1 in Greenville, SC in Personal Injury Litigation with 5 attorneys.
- Ranked #1 in Greenville, SC in Professional Malpractice Law with 2 attorneys.
- Ranked #1 in Greenville, SC in Public Finance Law with 3 attorneys.

(\*) Denotes tie with 1 or more other firm(s).

Considered by their peers as “outstanding attorneys” in the various categories are the following:

#### **Haynesworth Sinkler Boyd/Charleston:**

- Charlton deSaussure, Jr. – Public Finance Law
- Thomas C. Hildebrand, Jr. - Construction Law

Continued on page 10

- Marvin D. Infinger – Bet-the-Company Litigation; Commercial Litigation; Construction Law; Maritime Law
- Michael D. Jones – Corporate Law
- Julie O. Medich – Corporate Law
- Bachman S. Smith III – Alternative Dispute Resolution
- Todd W. Smyth – Medical Malpractice law
- David M. Swanson – Real Estate Law
- Elizabeth T. Thomas – Health Care Law
- John Paul Trouche – Public Finance Law

**Haynsworth Sinkler Boyd/Columbia:**

- William C. Boyd – Antitrust Law; Corporate Law; Mergers & Acquisitions Law; Real Estate Law
- John C. Bruton, Jr. – Insurance Law
- Joseph D. Clark – Corporate Law; Securities Law
- Suzanne Hulst Clawson – Corporate Governance and Compliance Law; Corporate Law; Securities Law
- Frank W. Cureton – Tax Law; Trusts and Estates
- J. Donald Dial, Jr. – Tax Law; Trusts and Estates
- Theodore B. DuBose – Public Finance Law
- Randolph B. Epting – Corporate Law; Mergers & Acquisitions Law; Tax Law
- Manton M. Grier – Antitrust Law; Commercial Litigation
- Theodore J. Hopkins, Jr. – Non-Profit/Charities Law; Tax Law
- George S. King, Jr. – Banking Law; Corporate Law; Securities Law
- Edward G. Kluiters – Project Finance Law
- Robert Y. Knowlton – Bet-the-Company Litigation; Commercial Litigation
- Steve A. Matthews – Appellate Law
- John B. McArthur – Real Estate Law
- Stanley H. McGuffin – Bankruptcy and Creditor-Debtor Rights Law
- Stephen F. McKinney – Bet-the-Company Litigation; Commercial Litigation
- Martin C. McWilliams, Jr. – Corporate Law
- Hamilton Osborne, Jr. – Appellate Law
- William H. Short, Jr. – Bankruptcy and Creditor-Debtor Rights Law
- John K. Van Duys – Public Finance Law
- Benton D. Williamson – Real Estate Law

**Haynsworth Sinkler Boyd/Florence:**

- John R. Chase – Tax Law; Trusts and Estates

**Haynsworth Sinkler Boyd/Greenville:**

- J. Ben Alexander – Medical Malpractice Law; Professional Malpractice Law
- Thomas H. Coker, Jr. – Construction Law
- Anne S. Ellefson – Real Estate Law
- Robert S. Galloway III – Public Finance Law

- Ellis M. Johnston II – Bet-the-Company Litigation; Commercial Litigation
- H. Sam Mabry III – Bet-the-Company Litigation; Commercial Litigation; Personal Injury Litigation; Product Liability Litigation
- W. Francis Marion, Jr. – Bet-the-Company Litigation; Commercial Litigation; Personal Injury Litigation; Product Liability Litigation
- Charles E. McDonald, Jr. – Real Estate Law
- Moffatt G. McDonald – Bet-the-Company Litigation; Commercial Litigation; Environmental Law
- Kathleen Crum McKinney – Public Finance Law
- Arthur F. McLean III – Employee Benefits Law; Trusts and Estates
- G. Dewey Oxner, Jr. – Commercial Litigation; Health Care Law; Medical Malpractice Law; Personal Injury Litigation
- Sarah M. Purnell – Medical Malpractice Law; Personal Injury Litigation; Professional Malpractice Law
- E. Tyler Smith – Public Finance Law
- Matthew P. Utecht – Health Care Law; Medical Malpractice Law; Personal Injury Litigation
- Andrew J. White, Jr. – Bankruptcy and Creditor-Debtor Rights Law; Corporate Law
- Stephen P. Williams – Health Care Law

Steven Naifeh, Managing Editor of Best Lawyers, says, “We continue to believe – as we have believed for 26 years – that recognition by one’s peers is the most meaningful form of recognition in the legal profession.”

**Turner Padget’s Nosizi Ralephata appointed to serve on ABA Diversity Committee**

Turner Padget Graham & Laney, P.A. is pleased to announce that Nosizi Ralephata has recently been appointed to serve on the ABA/TIPS Diversity in the Profession Special Standing Committee. She is currently serving as Vice-Chair on the ABA Business Litigation Committee. Ms. Ralephata has been a resident in Turner Padget’s Charleston office since 2004. Her practice focuses primarily on serving international, national and regional clients on complex commercial and business litigation issues. She also counsels international clients with regard to a variety of transnational issues, including business visas and immigration issues.

**Ellis Lawhorne attorneys selected to Litigation Counsel of America™**

Ellis, Lawhorne & Sims, P.A. is pleased to announce two of its attorneys, F. Earl Ellis, Jr., and John T. Lay, Jr., have been selected to the Litigation Counsel of America™. This invitation-only honorary society of trial lawyers recognizes experienced, highly qualified litigation and trial lawyers who have demonstrated excellence.

The Litigation Counsel of America is one of the most prestigious organizations for litigation and trial

lawyers. Membership is limited to 3,500 fellows, representing less than one-half of one percent of American lawyers. The composition of the organization is aggressively diverse, with recognition of excellence across all segments of the Bar. The purpose of the Litigation Counsel is to provide an outlet for scholarly authorship of legal articles on trial and litigation practice, to provide additional sources for professional development, to promote superior advocacy and ethical standards in the practice of law, to assist in community involvement, and to advance a superior judiciary by taking relevant positions on issues or legislation affecting judicial compensation and/or benefits, as well as those affecting the American litigation process.

Ellis is a shareholder at Ellis Lawhorne and a member of the Workers' Compensation Practice Group, where he focuses on workers' compensation, representing self-insured companies. He has served as lead counsel for the self-insurance funds for hospitals and governmental entities throughout South Carolina. Ellis is a certified mediator, and has mediated more than 300 cases in workers' compensation, personal injury, litigation, and other issues. He has been listed in The Best Lawyers in America® for the past 15 years and also is a 2008 and 2009 South Carolina SuperLawyer. Ellis earned his Juris Doctor from the University of South Carolina (USC) School of Law in 1975. His leadership skills have advanced a number of organizations such as the South Carolina Bar and the South Carolina Self-Insurers Association. He is a member of the South Carolina Bar, the Richland County Bar Association and the South Carolina Defense Trial Attorneys' Association.

Lay is shareholder at Ellis Lawhorne and is a member of the Litigation and Dispute Resolution Practice Group. He focuses his practice on litigation and appellate law. He is the president of the South Carolina Defense Trial Attorneys' Association, and has been selected to the 2009 and 2010 editions of Best Lawyers in America®. Lay has been recognized as a South Carolina Super Lawyer for the last two years. He also was selected to the faculty of the International Association of Defense Counsel Trial Academy, one of the most prominent trial schools in the country. He earned his Juris Doctor from the USC School of Law in 1991. He is a member of the South Carolina Bar and the Richland County Bar Association.

#### **Michel Featured Speaker at ILTA Conference**

David S. Michel, Directory of Technology for Turner Padget Graham & Laney, P.A., was a featured speaker at the International Legal Technology Association Conference held August 23-27 in Washington, D.C. David spoke on the subject of "Virtual Desktop Technologies." Mr. Michel, who joined Turner Padget in 2006, currently holds the position of Regional Vice President of ILTA.

#### **Collins & Lacy Celebrates 25th Anniversary With Donation to Library**

In celebration of the Firm's 25th Anniversary, Collins & Lacy, P.C. recently made a donation of 25 books to the Greenville County Library.

Collins & Lacy recently expanded to Greenville in February 2008. "We are excited about our new office in Greenville and are pleased to make this donation to the Greenville County Library as part of our anniversary celebration and our commitment to the Upstate," said Suzy Cole, shareholder with Collins & Lacy. The Greenville County 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 enhance the Legal Resource section of the Greenville County Library, providing Greenville residents with additional information 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, in Columbia. Firm members gathered with clients, community leaders, and fellow attorneys to celebrate the firm's 25th anniversary. The firm has also made donations to libraries in Columbia and Myrtle Beach, where the firm has other offices.

#### **26 Turner Padget Shareholders Named As Best Lawyers in America for 2010.**

Turner Padget named as top law firm in South Carolina for Alternative Dispute Resolution and Municipal Law, and as the top firm in Florence

Turner Padget Graham & Laney, P.A. is pleased to announce that 26 of its shareholders have been listed in the 2010 edition of Best Lawyers in America. In addition, the firm is ranked as the top law firm in South Carolina in the areas of Alternative Dispute Resolution and Municipal Law, is highly ranked in 14 other practice areas, and is recognized as the top law firm in Florence. The 2010 edition of Best Lawyers in America will be available in December 2009.

##### Charleston office:

- John K. Blincow, Medical Malpractice Law
- Elaine H. Fowler, Real Estate Law
- John S. Wilkerson III, Professional Malpractice Law

The firm is also ranked number one in Charleston in the categories of Medical Malpractice Law and Professional Malpractice Law.

##### Columbia office:

- Michael E. Chase, Workers' Compensation Law
- Danny C. Crowe, Alternative Dispute Resolution and Municipal Law
- John E. Cuttino, Construction Law and Product Liability Litigation

- Cynthia C. Dooley, Workers' Compensation Law
- Charles E. Hill, Medical Malpractice Law
- Catherine H. Kennedy, Trusts & Estates
- Lanneau W. ("Lanny") Lambert, Jr., Banking Law and Real Estate Law
- Edward W. Laney IV, Personal Injury Litigation
- Curtis L. Ott, Commercial Litigation and Product Liability Litigation
- Steven W. Ouzts, Mass Tort Litigation and Product Liability Litigation
- Thomas C. Salane, Insurance Law
- Franklin G. Shuler, Jr., Alternative Dispute Resolution and Labor & Employment Law
- W. Duvall Spruill, Commercial Litigation

The firm is also ranked number one in Columbia in the categories of Alternative Dispute Resolution, Insurance Law, Medical Malpractice Law and Municipal Law.

**Florence office:**

- Richard L. Hinson, Alternative Dispute Resolution
- J. Rene Josey, Appellate Law, Criminal Defense: Non-White-Collar and Criminal Defense: White Collar
- Michael G. Roberts, Tax Law and Trusts & Estates
- J. Munford Scott, Jr., Tax Law
- John M. Scott III, Tax Law

In addition to being ranked as the top law firm in Florence, Turner Padgett's Florence office is ranked number one in the categories of Alternative Dispute Resolution, Appellate Law, Criminal Defense: Non-White-Collar, Criminal Defense: White Collar, Tax Law and Trusts & Estates.

**Greenville office:**

- Vernon F. Dunbar, Workers' Compensation Law
- Eric K. Englehardt, Alternative Dispute

Resolution

- William E. Shaughnessy, Workers' Compensation Law
  - Timothy D. St. Clair, Intellectual Property Law
- Listed from the firm's Myrtle Beach office is:
- Wayne Byrd, Commercial Litigation

The firm is ranked number one in Myrtle Beach for Commercial Litigation.

**Gray T. Culbreath Selected for 2009 Leadership in the Law**

Collins & Lacy, P.C. is pleased to announce that Gray T. Culbreath has been selected to receive one of the South Carolina Lawyers Weekly 2009 Leadership in the Law Awards.

This year is the inaugural year for the South Carolina Lawyers Weekly Leadership in the Law Awards. The awards were designed to honor those members of the legal profession and in the community, both in the legal profession and in the community, has made a positive impact on our state. The ten recipients were selected by a panel of judges based on their outstanding achievement in the following key areas: achievement in law; involvement in the profession; support of the community; and mentoring.

Gray is the managing partner for Collins & Lacy. His practice focus includes products liability, class action litigation, transportation litigation, business and commercial litigation, and professional negligence claims. Additionally, he conducts an active appellate practice for his regional and national clients. Gray earned his undergraduate degree from Wofford College. He earned his law degree from the University of South Carolina School of Law, where he was a member of the Moot Court Bar, and the National Moot Court Team.

Gray is an active member of the Federation of Defense and Corporate Counsel and the International Association of Defense Counsel. He is a member of Lawyers for Civil Justice and the

## **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.

Defense Research Institute and serves as Treasurer for the South Carolina Defense Trial Attorneys Association. Gray is also an active member of the American Board of Trial Advocates and currently serves as the Chair of the South Carolina State Museum Commission. Gray has been selected for Best Lawyers and Super Lawyers, and received the 2009 University of South Carolina Gold Compleat Lawyer award. He is considered to be one of South Carolina's preeminent attorneys according to Martindale-Hubbell.

#### **Mason Selected to Leadership Charleston**

Turner Padget is pleased to announce that M. Britton Mason has been selected to participate in 2010 Leadership Charleston. Britton is a resident in the Charleston office and is a member of the Business Practice Group involved in commercial litigation matters. Leadership Charleston is a year-long program for professionals offering an intensive and up-close look at various sectors of the community.

#### **Lambert Selected Leadership in Law**

Turner Padget is pleased to announce that Lanneau W. Lambert, Jr. has been selected to the 2009 Leadership in the Law award by the South Carolina Lawyers Weekly. The award recognizes those individuals whose leadership, both in the legal profession and in the community, has made a positive impact on our state. Mr. Lambert, immediate past president of the South Carolina Bar, serves on Turner Padget's Executive Committee and is a shareholder in the Columbia office and a member of the firm's business transactions practice. He has more than 20 years experience in lender counsel representation in complex real estate and asset-based financing and in all aspects of commercial real estate development, leasing and financing. He works regularly with municipalities on various business, real estate and financial matters.

#### **Haynsworth Sinkler Boyd Attorneys in the News**

##### **COLUMBIA:**

William C. (Bill) Boyd, Shareholder of Haynsworth Sinkler Boyd, P.A., was honored September 23, 2009, in Charleston by South Carolina Lawyers Weekly as a recipient of the inaugural 2009 "Leadership in Law" award. This recognizes those individuals whose leadership, both in the legal profession and in the community, has made a positive impact on our state. Recipients of this award demonstrate outstanding achievement in these key areas: achievement in law; involvement in the profession; support of the community; and mentoring. Boyd, one of 10 lawyers selected for this statewide recognition, is the outgoing chairman of the South Carolina Chamber of Commerce.

John Adams Hodge, Special Counsel of Haynsworth Sinkler Boyd, P.A., presented at the 3rd Annual Conference for Latin-American Law and International Relations, held in Belo Horizonte, Brazil, September 5-7, 2009. The conference

concentrated on the challenges facing international legal practitioners, especially in the area of environmental law. Hodge combined his experience in environmental law and his knowledge as a geologist and spoke on "Ecological Forecasting." His presentation, combining environmental science with law, introduced the participants to key concerns related to climate change and global warming.

##### **GREENVILLE:**

On October 12-13, 2009, Haynsworth Sinkler Boyd, P.A. attorney Matthew P. (Matt) Utecht will be in Arlington, VA, as a faculty member of the Tax Issues for Healthcare Organizations Program. Utecht's session, "Physician Practice Acquisitions: A Focus on Legal and Tax Issues," will address: developing an acquisition strategy with a focus on tax and legal implications; executing the strategy and managing expectations from the start, including valuation issues, negotiating the purchase price, conducting due diligence; and the negotiation process with a focus on corporate structure, goodwill, non-compete agreements and compensation models. For additional information on this conference, visit [www.healthlawyers.org](http://www.healthlawyers.org).

#### **Turner Padget Recognized as Leading Litigation Firm by Benchmark. Four shareholders also honored as leading litigators in South Carolina**

Turner Padget Graham & Laney, P.A. is pleased to announce that it has been recognized in the 2010 edition of Benchmark: A Definitive Guide to America's Leading Litigation Firms and Attorneys as a recommended litigation firm in South Carolina. Benchmark also named Turner Padget shareholder W. Duvall Spruill as a "Litigation Star" and three additional shareholders, Richard S. Dukes, Nicholas W. Gladd and R. Andrew ("Drew") Williams, as "Future Stars."

Mr. Spruill, based in the firm's Columbia office, focuses on construction and commercial litigation, representing bonding companies, contractors, subcontractors and developers. A significant portion of his practice also includes banking-related disputes, including fidelity and fraud matters.

Mr. Dukes, based in the firm's Charleston office, focuses on professional liability and business litigation. His broad practice includes commercial litigation, securities litigation and arbitration, shareholder disputes, directors and officers liability, and the defense of real estate developers and builders in actions brought by homeowners.

Mr. Gladd, based in the firm's Columbia office, is an integral part of Turner Padget's products liability team. He focuses on the defense of automotive manufacturers.

Mr. Williams, based in the firm's Columbia office, defends general contractors and subcontractors against construction, premises liability and other related claims. He also represents food service companies, including grocery stores, in product liability and premises liability cases.

# The Joint Meeting at the Grove Park Inn - A Recap

by William S. Brown

Those who attended the 42nd Joint Meeting, July 23 – 25, 2009, at the Grove Park Inn in Asheville, NC, enjoyed a great educational program, exciting social interaction, and the beautiful surroundings of the Grove Park Inn. If you missed it this year, please mark your calendars for July 22 – 24, 2010. You will not want to miss out again.

The educational program focused on practical and timely issues including Medicare set asides and cutting edge analysis in break out sessions by substantive law committees regarding Insurance and Torts, Products Liability, Trucking, and Workers' Compensation. We received many practical tips from our members who have recently tried cases to verdict and were educated by a panel of experts on case evaluation for mediation. Judge Young provided entertaining insight from the bench by showing how

the movies teach the good and bad of trial techniques, and retired Judge Clary gave us advice on professionalism and civility. A corporate representative flew all the way from Washington State to give her perspective of trying a multi-week complex case in Walhalla, South Carolina. Finally, Mike Nunn mesmerized us with his amazing tale of survival from the Hudson River aircraft accident earlier this year.

The social aspects of the meeting continued to be a great time for fun and networking. The Thursday night welcome reception and charity silent auction set a fabulous tone for the seminar and generated over \$6,000 for charity. The Friday night barbeque and the traditional Friday afternoon activities (Golf, White Water Rafting, etc.) were enjoyed by all.

You will not want to miss the 43rd Joint Meeting, in 2010.

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## Deposition Boot Camp

by Paul D. Greene

On September 24, 2009, the SCDTAA held its inaugural deposition boot camp at the Capital City Club in Columbia. The three-hour program was designed to cover basic tactics, strategies and techniques for various types of depositions. Ray Moore, partner at Murphy Grantland, spoke on general preliminary considerations for depositions, including whom to depose, when to depose them, and how to conduct those depositions. Bruce Shaw, partner at Nelson Mullins and former recipient of this association's Hemphill Award, then discussed how to -- and how not to -- prepare a witness. Next, attendees got the perspective from the end of the table, through a presentation by Bill Roberts of A. William Roberts, Jr. and Associates. In addition to being the sponsor of the CLE, Bill and Dave Roberts spoke on how to maintain a clean record as well as how to effectively use technology, both in depositions and in the courtroom. Hugh Buyck, of Buyck and Sanders in Charleston, then gave practical tips on taking and defending video-

taped depositions. John T. Lay, Ellis, Lawhorne and Sims and President of the SCDTAA, covered the ins and outs of the 30(b)(6) deposition in a way that only John T. can. Ron Wray, of Gallivan, White, & Boyd, P.A., closed the session with a discussion on ethics and civility concerns when taking and defending depositions.

The turnout for the CLE was excellent, highlighting the importance of strategic planning—the morning CLE coincided with a home game day. The event was a valuable learning experience both for the participants and the presenters. The SCDTAA hopes this CLE will be the first of an annual series devoted to various aspects of deposition practice. If you attended the CLE, please provide us your feedback, as it will be of great use in shaping future programs. In addition, if you have topics you think would be appropriate for the CLE in the future, please contact Ron Wray ([rwwray@gwblawfirm.com](mailto:rwwray@gwblawfirm.com)) or Paul Greene ([pgreene@gwblawfirm.com](mailto:pgreene@gwblawfirm.com)).

# Two Days with Sandra Day O'Connor

by Catherine B. Templeton

When Justice O'Connor was reading her paper place mat on the bar table at the Variety Store in Charleston, she read that the "Shag" is the state dance. "Let's see it" she said, as she

motioned for Molly and me to show her. Without hesitation or embarrassment, Molly Craig and I hopped up in the middle of the diner and started shagging. By breakfast on the second day, Molly and I were

used to quickly reacting to Justice O'Connor's inquiries.

The night before, I had taken Justice O'Connor on a tour with Tommy Dew, Charleston's most entertaining and historically accurate tour guide. Thank goodness he was in the car with me. Not only did Justice O'Connor want to know where the Carolina Constitution was housed and what the difference was between what John Locke wrote in it and what Thomas Jefferson ultimately put in the Declaration of Independence; which Indian Tribe beat which, and in what order; and what the population of Charleston was at various stages over the past 300 years as compared to the rest of the nation; she asked for a pad and pen so she could take notes!

I asked the Justice if she would be interested in touring an historic house on Broad Street. Fortunately, Molly's parents, Bernie and Bobby Hood, were glad to oblige and hosted a lovely and intimate welcome in their drawing room. Afterwards, we escorted Justice O'Connor to the SC Women's Lawyers Association reception so she could accept their prestigious Bissell Award. According to Chief Justice Toal, the reception

attracted almost 500 attendees. While there is no question the other Judges and special guests at the party were a draw, the movement of the crowd when Justice O'Connor arrived left no question that every-

one was there to see her. When we came up on the elevator in the back of the Aquarium, the entire party was outside on the opposite end of the building. Within minutes, all 500 of those people had moved inside



to see Justice O'Connor. As Molly and I walked away from Justice O'Connor and towards the patio, we were like two salmon swimming upstream.

After the reception, we went to dinner. By this point in the night, the two 40 year old and unders were exhausted, yet we hadn't flown half way across the country hours earlier, given a speech, failed to eat lunch, or had to make conversation with strangers. Justice O'Connor, however, had done all of this and was holding her own. She was also constantly aware of the needs of others. Behind our four top sat Chief Justice Toal and 4 of the officers of the SC Women Lawyers Association. They sent over a bottle of wine and Justice O'Connor insisted that the waitress take it back and share it with them. She wanted to know if the U.S. Marshals were eating. How were Molly and I getting home? Bring her the bill. She even told me I should have taken my shoes off at the reception because that floor was so hard. She is a very no nonsense and down to earth lady.

As we ate, Molly and I discussed our plans the next day with Abby Taylor, the Executive Director of Our Courts and a member of the Sandra Day O'Connor Project at Georgetown Law. The highlight was the

Continued on next page

grits we were taking her to eat. While we hadn't meant to exclude Justice O'Connor, we knew she was tied up with other, more important things than grits. Never one to be predicted, Justice O'Connor asked if we could wait and go after her book signing so she could tag along!

I relaxed a little bit as we ate dinner and I remembered what a compassionate lady I was with. But then . . . another population question. This time, Tommy Dew was no where to be found. "Catherine, what is the population of Charleston?" I looked to Molly for help. Nothing. "What is the population of South Carolina?" Still nothing. While there had not been a lull in the conversation, I hoped that maybe she was just making small talk. Ha! This is a woman who is always interested and always thinking. She is well educated, has the curiosity of a two year old, a mind like a steel trap, and does not waste anyone's time with small talk. When I admitted my ignorance, she said, in a most professorial way, "You should know this." She then looked to Abby who immediately got on the Internet. Justice O'Connor actually wanted to know the answer. All information is important to her. In the meantime, Molly called my husband, Morgan, who knew both answers off the top of his head.

Fully satisfied that I had married well, I said, "I don't need to know. I have him." Sandra Day

O'Connor, as cowgirl and as Justice of the United States Supreme Court, looked at me with her piercing violet eyes and said in a most determined way, "You should have your own facts." While these words don't read as being very prophetic, they would shake you to the core if she had said them to you. It is not pleasant to tell this woman that you don't know the answer. There doesn't seem to be any excuse for why you wouldn't.

After our breakfast the next morning, Molly was off to prepare for the Our Courts presentation at Charleston Day School. Our Courts is a free, highly beneficial, web based resource for middle school Social Studies and Government teachers to supplement their curriculum. The children learn about the judicial branch of government by playing interactive computer games, while the teachers have user friendly access to lesson plans and quizzes.

When I went back to get Justice O'Connor for her Our Courts speech, I invited Chief Justice Toal to go with us. Our Courts is what Justice O'Connor does in her "retirement." She spends almost 347 days a year at or in route to various engagements. While she still sits with the appellate courts, as required by Congress, the Our Courts program is the outreach she created when she retired. Justice O'Connor believes that our students need to learn about our government, specifically the judicial branch.

This event for Our Courts was a sort of small scale experiment to determine the best way to launch Our Courts nationwide. The point of pulling Chief Justice Toal into the car and taking her to Charleston Day School was to get her excited about the program and let her have a real look at its contents. As we all know, if Justice Toal is excited about a project, the project will succeed. Fortunately, Justice Toal accepted the challenge to promote this program for South Carolina, at the invitation of Justice O'Connor. I feel confident that we will all soon be asked to make sure our local schools are aware of and using this resource. The children like it because it is entertaining and the teachers like it because it is free, easy to use, and substantive.

You should log on to OurCourts.org and play a game so you won't be caught silent when our Chief Justice asks you what you think. Trust me; there is nothing worse than saying, "I don't know" to a Justice of any Supreme Court.

*Catherine Templeton is Of Counsel at Ogletree, Deakins, Nash, Smoak & Stewart in Charleston, S.C.*

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# Weathering Lost Business Value Claims: The Problems With Forecasting and Speculation When Calculating Lost Business Value

by W. Howard Boyd, Jr. and Adam C. Bach

A recent case in South Carolina highlighted the difficulties in valuing a business that suffers a significant casualty loss, remediates the damages and continues operating but then closes some time after the accident alleging that the damage sustained in the accident forced it to cease operating. The case raised a host of issues regarding how to evaluate the damages claimed by the business and for many of these issues there is little to no guidance from South Carolina courts or from other jurisdictions. Under South Carolina law, the damaged business is entitled to recover the value of its lost business. *Carrigg v. Blue*, 323 S.E.2d 787, 790 (S.C. Ct. App. 1984). The traditional method for calculating a business's value can be expressed as Business Enterprise Value (BEV). To calculate BEV, experts consider pre-accident company financial information and performance, valuation of company assets, forecasts regarding the company's future performance and prospective results, comparative performance of similar companies in the industry, and a host of additional financial and operations data.

But BEV is only half the picture. A damaged business is required by South Carolina law to mitigate its damages. *Barnett v. Charleston & Western Carolina Railway*, 96 S.E.2d 555, 558 (S.C. 1957). BEV alone would overcompensate the business as it would be receiving compensation for assets that it could sell at liquidation. So BEV is just the starting point. The tortfeasor is entitled to a credit for the amount that the business received in its liquidation. So, the damages owed to the business could best be expressed as its BEV minus its Final Liquidation Value (FLV) to equal its total Lost Business Value (LBV).

The valuation is complicated when one side alleges that the FLV of a business is more than the business's BEV. Put more simply, what if the business is worth more in liquidation than as a going concern? It is easy enough to visualize the issue with a well-known example, General Motors. What if GM's manufacturing plants in Michigan were damaged by an accident during the month of April 2008, GM was able to get up and running again, but several months later closed its doors and began liquidating, blaming the accident. At the time of the accident GM was losing a billion dollars a quarter. Should GM be compensated for its "lost business" when it could be argued it was more profitable for it to be liquidated and sold

off in pieces than continue as a going concern? On the other hand, shouldn't GM be entitled to recover some value for its hundred year old business and its future expectations of profitability, even if it was operating at a loss at the time of the accident? Many businesses go through a period of down years prior to becoming profitable again. After all, GM weathered two world wars and a great depression and has survived numerous downturns in its history.

This analysis is difficult under existing law. The problem is the party claiming damages must establish its damages to a reasonable certainty. *Gray v. S. Facilities, Inc.*, 183 S.E.2d 438, 570-71 (S.C. 1971). "Neither the existence, causation, nor amount of damages can be left to conjecture, guess or speculation." *Id.*; *Carlyle v. Tuomey Hosp.*, 407 S.E.2d 630, 633 (S.C. 1991). Basing damages on future predictions of profitability requires economic forecasts to rely on what is expected to happen in the future. Basing damages on future predictions of profitability in a stressed or dying industry requires that courts or juries carefully evaluate the reasonableness of these forecasts.

The problem with forecasting grows more complicated as experts prepare their reports on BEV. A damaged business's experts' forecasts must rely, in part, on management's representations about their strategies for continued viability and profitability and assumptions about customer demand and the company's ability to maintain and grow market share. These assumptions are largely based on management testimony that relies upon management's beliefs about how the company would do in the future. However, an expert is not allowed to present otherwise inadmissible testimony, such as hearsay about customer preferences or management opinions about future growth and market conditions, under the guise of expert testimony. *Dura Auto. Sys. of Ind., Inc. v. CTS Corp.*, 285 F.3d 609, 613-14 (7th Cir. 2002). But a tortfeasor's rebuttal experts will also be forced to rely on forecasts that are based, in part, on the assumption that the business's decline will continue unabated and on criticisms of the business's strategy. Thus, each side will have to rely on evidence that may otherwise be inadmissible as hearsay or speculative when offering opinions about the success or failure of the business's strategies

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going forward. 29 Charles Alan Wright & Victor James Gold *Federal Practice & Procedure* § 6273 (2007).

Another issue which may arise involves the proper date for valuing the business loss. If a business operates for a period of time after the accident, it is advantageous to the business to value its business loss as of the date it announced it was closing its doors, rather than the date of the accident, because that will allow the business to claim damages during the interim period, including for lost profits and business interruption. A business may rely upon the “slow death” scenario accepted by courts in other jurisdictions, although never considered in South Carolina. *Heattransfer Corp. v. Volkswagenwerk, A.G.*, 553 F.2d 964, 987 (5th Cir. 1977); *See Cooper Distrib. Co. v. Amana Refrigeration, Inc.*, 180 F.3d 542, 547-48 (3d Cir. 1999) (New Jersey statutory and common law) (value of business on date of “termination”). A tortfeasor will argue that the proper date for valuing the business loss is the date of the accident. *See* 11 S.C. *Damages* § 53 (2007) (“The measure of damages for real property is the difference between the value of the entire premises before and after injury thereto.”); *Coleman v. Levkoff*, 122 S.E. 875, 876 (S.C. 1924). Otherwise, the business may obtain double recovery – being compensated both for the total value of the business and for profits and interruption to the business that are parts of the business value claim. Depending on which theory is accepted by the court, the business may be able to claim additional lost profits and business interruption claims worth a substantial amount.

Further complicating the issue is that the business is not only required to prove its BEV to a reasonable certainty, it is also required to show its FLV to a reasonable certainty. Neither the fact nor the amount of damages may be left to speculation or conjecture. *Petty v. Weyerhaeuser Co.*, 342 S.E.2d 611, 615 (S.C. Ct. App. 1986). The business can only be compensated for the difference in its BEV and its FLV; otherwise the business would be over-compensated for its loss.

Determining the business’s FLV is complicated since a business’s liquidation can be ongoing throughout the litigation. Liquidation of a business can take years; years during which the damaged party does not want to wait for compensation. As litigation continues, and the business continued to sell off its assets, a tortfeasor will be faced with a constantly changing FLV and, by consequence, LBV claim. Additionally, the dates on which FLV is calculated is critical as depreciation on machinery and equipment from continued use will affect liquidation value.

This creates numerous discovery headaches since the business is required to take all reasonable actions to minimize its damages. *Isthmian S.S. Co. v. Jarka Corp. of Balt.*, 100 F.Supp. 856, 860 (D. Md. 1951). Otherwise, the business could sell all of its assets at prices below fair market value in order to minimize its FLV and maximize its LBV. The tortfeasor is entitled to discovery on the actions that the business was taking to minimize its damages to determine if those actions were reasonable, but discovery on this issue is nearly impossible until the business completes its liquidation. *Brendle’s Stores, Inc. v. OTR*, 978 F.2d 150, 158 (4th Cir. 1992). How can a tortfeasor evaluate the reasonableness of a business’s liquidation until that liquidation is complete?

Against all of this rings the business’s cries that it is not required to prove its damages to a mathematical certainty and its damages can be based on contingent events. *Proctor v. Dep’t of Health and Envtl. Control*, 368 S.E.2d 496, 515 (S.C. Ct. App. 2006); *Piggy Park Enters., Inc. v. Schofield*, 162 S.E.2d 705, 708 (S.C. 1968). While true, how much uncertainty is too much? Sales of a business’s assets can lead to substantial swings in the company’s LBV. Additionally, if the business’s property has little fair market value at the time of the accident, but is valuable to the business in its operations, it can be difficult to apply a reasonable liquidation value to that asset.

Depending on the court or jury’s interpretation of the law and the facts, a business like GM could be worth as much as several billion dollars or nothing at all. Proving a business’s business enterprise value, final liquidation value, and lost business value presents a host of unresolved issues to litigants. South Carolina courts will need to provide guidance in future business loss cases so that litigants are better able to resolve issues among themselves concerning a damaged business’s value.

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

This year the gubernatorial candidates will join members and their guests for dinner and later participate in a panel discussion about South Carolina under the next Governor.

The South Carolina Defense Trial Attorneys’ Association’s Annual meeting provides participants the opportunity to learn from and socialize alongside South Carolina’s state and federal judiciary and leaders in the legal profession.

**November 5-8, 2009**

# Supreme Court Creates Demanding Standard for Discovery of Trade Secrets

by John C. Hawk, IV

Trade secrets are now safer in South Carolina, thanks to the South Carolina Supreme Court's recent decision in *Laffitte v. Bridgestone Corp.*, 381 S.C. 460 (2009). In *Laffitte*, the Court clarified the interplay between the South Carolina Trade Secrets Act and the South Carolina Rules of Procedure, and, in the process, created a demanding standard guarding discovery of trade secrets.

In this SUV rollover case, the plaintiff requested information on the design and manufacturing processes of Bridgestone tires. The requests included the formula for Bridgestone's steel belt skim stock. Skim stock is a rubber compound that provides adhesion between various parts of the tire. Bridgestone objected to requests for the formula, asserting that it was a trade secret and the plaintiff could prove his claims without this information. The plaintiff filed a motion to compel, and Bridgestone responded with a motion for a protective order. Bridgestone then requested to depose plaintiff's experts on the necessity of the skim stock formula to the plaintiff's case. The trial court permitted these depositions, but ultimately granted plaintiff's motion to compel discovery of the formula. The court found that the plaintiff had met the prerequisites for discovery of trade secrets under both the South Carolina Rule of Civil Procedure 26(c) and the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 et seq. (Supp. 2007) ("Trade Secrets Act").

With few options, Bridgestone petitioned for *certiorari* review of the trial court's discovery order. The Supreme Court rarely allows appeals of discovery orders, but in this case it granted Bridgestone's petition for a *writ of certiorari* in its original jurisdiction. The Court found that the required "exceptional circumstances" existed for it to hear the matter, as this was a "novel issue of significant public interest." The Court believed settling this increasingly litigated question would best serve judicial economy.

There were two issues on appeal: (1) What is the appropriate standard for the discovery of trade secret information in a product liability action?; and (2) Did the trial court err in finding that the plaintiff established the requisite need for Bridgestone's trade secret skim stock formula?

The Trade Secrets Act states: "In any civil action where discovery is sought of information designated by its holder as a trade secret, before ordering discovery a court shall first determine whether there is a substantial need by the party seeking discovery for the information." S.C. Code Ann. § 39-8-60(B). Citing *Griego v. Ford Motor Co.*, 19 F.Supp.2d 531, 533 (D.S.C. 1998), the plaintiff argued that the Act's requirement of "substantial need" applied only to cases of trade secret misappropriation, and not to discovery of trade secrets. The Court looked at the plain language of the statute and disagreed, finding that this standard applies not only in misappropriation cases, but in "any civil action" where trade secrets are sought through discovery. S.C. Code Ann. § 39-8-60(B).

The Court next examined the interplay between the Trade Secrets Act and the South Carolina Rules of Civil Procedure. The Rules allow for protective orders for trade secrets under the following circumstances:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: . . . (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

S.C.R.C.P. 26(c). The Court noted that state courts generally apply a balancing test to protective orders using the "relevant and necessary standard." The test is a three-part inquiry in which the party opposing discovery must demonstrate that discovery would be harmful, the party seeking discovery must demonstrate that the information requested is relevant and necessary, and the court must weigh the potential harm of disclosure versus the need for the information.

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The Supreme Court found that the Trade Secrets Act complements, not supplants, Rule 26(c). The Trade Secrets Act and Rule 26(c) both provide for reasonable restrictions on the discovery of trade secrets. Because the Rule 26(c) test calls for the party seeking discovery to show that the information is “relevant and necessary,” the Court defined these terms. Trade secret information is “relevant” when it is specifically relevant to the issues involved in the litigation. A general relevance to the subject matter of the litigation will not suffice. The information is “necessary” when the party seeking it demonstrates “exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” A trial court will also have to look at whether there are reasonable alternatives available to assist the party seeking discovery, and “ultimately, the trial court must require the discovery of a trade secret only when the issues cannot be fairly adjudicated unless the information is available.”

After examining the depositions and affidavits of the plaintiff’s experts, the Court concluded that the experts’ reasons for needing the skim stock formula

did not rise to the level of specificity required, there was no evidence that the formula was essential to a defect inquiry, there was not enough information about why the case could not be fairly adjudicated without the trade secret information, and the trial court failed to look at the availability of reasonable alternatives. Thus, the trial court erred in permitting discovery of Bridgestone’s skim stock formula.

This precedential ruling provides a clear roadmap for those attempting to protect trade secrets from discovery. The Supreme Court’s decision applies to discovery requests for trade secrets in all civil actions, not merely those involving alleged trade secret misappropriation. While trade secrets may be discoverable under certain circumstances, the Laffitte decision prevents a party from using discovery as a mechanism for routinely obtaining trade secrets. A party seeking discovery of trade secrets now faces a heavy burden, as it must demonstrate with specificity why the trade secrets sought are both relevant and necessary to prove its case, that no reasonable alternatives are available, and that the litigated issues cannot be fairly adjudicated unless the trade secrets are available.

## **ATTENTION SCDTAA MEMBERS**

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# Verdict Reports

## **Type of Action: Products Liability**

**Injuries alleged:**

Left hip/abdominal crush injury; soft tissue/nerve damage; loss of consortium

**Name of Case:**

*Marie Clapp and Richard R. Clapp v.  
Ford Motor Company*

**Court: (include county):**

USDC, Charleston Division

**Case number:** 2:06-CV-1011-CWH

**Tried before:** Jury (11 members)

**Name of Judge:**

The Honorable C. Weston Houck,  
Senior United States District Judge

**Amount:** \$0

**Date of Verdict:** August 21, 2009

**Most helpful experts:**

- Mark Taylor, Design Analysis Engineer  
Ford Motor Company  
Dearborn, Michigan

Mr. Taylor is a design analysis engineer for Ford Motor Company with significant expertise in automatic transmission design and manufacture

- Joseph J. Calandra, M.D.  
Performance Consultants, LLC  
2514 Harriet's Island Court  
Mt. Pleasant, SC 29466

Dr. Calandra is an orthopedic and sports medicine specialist. In this case, he examined Mrs. Clapp's voluminous medical records, conducted a medical examination, and rendered opinions regarding the causation of her alleged injuries.

**Attorneys for defendant (and city):**

- J. Kenneth Carter, Jr.  
Carmelo B. "Sam" Sammatar  
Turner Padgett Graham & Laney, P.A.  
1901 Main Street  
Columbia, SC 29201

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

Plaintiffs sought to recover actual and punitive damages when Plaintiff Marie Clapp's 2002 Ford Explorer allegedly jumped into reverse and knocked her to the ground, allowing the driver's side front wheel to roll between her legs and onto her left

abdomen and hip. Plaintiffs alleged that Mrs. Clapp shifted the vehicle from Drive into Park and, with the engine still running and without setting the parking brake, got out of the vehicle to let a family member out of the driver's side rear door. Moments later, as she attempted to re-enter the vehicle, it allegedly began to roll backwards, and her attempt to apply the brake were unsuccessful. The housekeeper, who had been working inside, came out to lend assistance by getting into the Explorer, applying the brake, and turning off the engine. Mrs. Clapp was already on her feet when the housekeeper exited the vehicle and could not explain how she extracted herself from underneath the approximately 1,100 tire and front end of the Explorer allegedly resting on her body. Mrs. Clapp got back into the vehicle, drove away, and did not seek professional medical assistance until she visited her chiropractor approximately one week after the alleged incident. All subsequent medical testing, including CT scans, x-rays, MRI's, and nerve conduction studies, were normal and revealed no objective signs of physical injury. Mrs. Clapp and her husband pursued negligence, strict liability, breach of warranty, and loss of consortium claims in which they alleged that the 5R55W automatic transmission installed in the 2002 Explorer was defective and unreasonably dangerous given its propensity to shift into powered Reverse under certain conditions.

Plaintiffs' experts, Milton Chace, Ph.D., and William A. Williams, offered evidence of the alleged defect, as well as Plaintiffs' proposed alternative feasible designs, which included modified automatic transmission components and an out-of-park warning buzzer. In response, Ford presented evidence that Mrs. Clapp was at fault for causing the accident, that the automatic transmission at issue was not defective, and that Plaintiffs' proposed alternative designs would not have prevented the alleged incident. More specifically, Ford's expert testified that the 5R55W transmission was not defective or unreasonably dangerous, that Mrs. Clapp never placed her vehicle into Park, that once a driver places a vehicle into Park, it stays in Park until another gear is selected, and that Mrs. Clapp failed to follow Owner Guide warnings regarding setting the park brake and turning the engine off before exiting the vehicle.

A unanimous eleven-member jury rendered a verdict in Ford's favor in less than an hour.

Continued on next page

**Type of Action: Personal injury**

Injuries alleged:

Shoulder injury resulting in the Plaintiff claiming to be totally disabled

Name of Case:

Tracy Seward v. Clayton B. Stevens, individually and d/b/a Pest Stop

Court: (include county):

York County Court of Common Pleas

Case number:

2007-CP-46-3169

Tried before: jury

Name of Judge:

Judge Lee S. Alford

Amount: Defense verdict

Date of Verdict: 07/28/09

Demand: \$75,000

Highest offer: \$10,000

Most helpful experts:

C.E. Bain, BEng, MD, CCFP, Biomechanics, San Antonio, TX

Attorneys for defendant:

Shannon F. Bobertz, Columbia, SC

Description of the case:

This case was the result of an automobile accident in which Plaintiff was rear-ended by the Defendant while she was stopped at a stop sign. Mr. Stevens admitting to causing the accident so negligence was not an issue. At issue in this case was the reasonableness and necessity of damages requested by Plaintiff as well as whether or not Plaintiff's preexisting conditions were the source of her injuries and treatment after the accident with Mr. Stevens. Plaintiff originally felt that she had a torn rotator cuff, however arthroscopic surgery had revealed that she merely had bursitis, a prominent acromion and tendonopathy. Dr. Bain reviewed Plaintiff's medical records and said that the injuries claimed by the Plaintiff could not have been caused by a rear-end collision. Plaintiff black boarded \$30,000 in medicals and asked for future meds and lost wages from her job as a CNA.

**Type of Action: Assault, Negligent Retention/Negligent Supervision**

Name of Case:

Tyneshia Brooks v. Furniture Barn and Eugene Creech

Court:

Richland County Common Pleas

Tried before: Jury

Name of Judge:

Judge Barber

Amount: For Defendants

Date of Verdict: September 25, 2009

Demand: Last Demand \$35,000

Highest offer: \$7,500

Attorneys for defendant :

Kelley Shull Cannon for Furniture Barn

Johnston Cox and Breon Walker for Eugene Creech

**Type of Action: Automobile accident/UIM**

Injuries alleged:

Left Shoulder injury requiring surgery and Concussion

Name of Case:

Stanley Ashley v. Noah Devon Sumter v. Richland County Sheriff's Department

Court:

Richland County Court of Common Pleas

Case Number: 08-CP-40-1551

Name of Judge:

Thomas W. Cooper, Jr.

Verdict Amount:

\$100K in actual damages – of this amount \$37,255 (\$25K BI and \$12,255 PD) was paid by the Primary carrier and \$62,745 was paid by UIM. \$0 in punitive damages.

Date of Verdict: August 26, 2009

Demand (required if defense verdict):

The lowest demand to the UIM carrier \$500k at mediation several months before the trial. The lowest demand to the primary carrier was \$50K (\$25 K BI and \$25K PD).

Highest Offer:

The highest offer from the primary carrier was approximately \$37K (\$25 BI limit and approximately \$12K PD) and the highest offer from the UIM carrier was \$125K.

Most helpful experts : The only experts were the Plaintiff's treating physicians.

Attorneys for Defendant (and city):

For Defendant Sumter, the UIM attorney was George V. Hanna, IV of Howser, Newman & Besley, LLC in Columbia. He was the primary trial lawyer because the primary carrier had minimum limits coverage and we had \$1 million in UIM coverage. The primary carrier attorney was Paul Owen of Allen, Kopet & Associates, PLLC in Columbia.

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**TRIAL ACADEMY  
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Columbia, SC**

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**JOINT MEETING  
SEE RECAP ON PAGE 14  
Asheville, NC**

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**ANNUAL MEETING  
November 5 - 8  
The Westin Savannah Harbor Resort  
Savannah, GA**

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

Defendant Sumter was a convicted drug trafficker that was out of jail on parole. The Plaintiff was struck by a Richland County Sheriff patrol car involved in a chase to arrest the Defendant. The Plaintiff claimed approximately \$34K in medical bills and \$13K in property damages. In addition he was seeking punitive damages. The critical issue that had prevented the case from settling was punitive damages. In closing, the Plaintiff argued the Defendant was reckless for evading arrest and that as a convicted drug trafficker he was an all around bad guy. Therefore, the jury should punish the Defendant and send a message to other crack dealers by f

awarding the Plaintiff punitive damages. The Defense argued that the judge would charge the jury that punitive damages are meant to serve two purposes: 1) to punish; and 2) to deter others; and that neither purpose would be served in this case. As to punishment, the Defendant was already serving 30 years in the federal penitentiary, so he had already been sufficiently punished. As to deterrence, no drug trafficker was going to stop dealing because they were concerned about a possible punitive award. The Defendant was not a corporation that would be deterred if you hit it in the pocket book. The only purpose that would be served by a punitive award would be to enrich the Plaintiff and his attorney.

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