

MG&C NEWS

Summer 2004

McAngus Goudelock & Courie Attorneys at Law

MG&C's Charleston Office Sends Supplies To U.S. Soldiers Serving In Iraq



The MG&C Charleston office, in conjunction with a seventh grade class at Porter Gaud School, recently sent care packages to U.S. soldiers serving in Iraq. The soldiers to whom the goods were shipped had no family or close friends to provide them with these needed items. The donated items included 42 toothbrushes, 7 pillows, 4 air mattresses, 51 packs of gum, and 25 handwritten notes from the students.

South Carolina WCC Full Commission Review Filing Fee Increased

On May 19, the General Assembly passed the 2004-2005 budget bill, which included a provision regarding filing fees. Beginning July 1, each Form 30 filing, Request for Commission Review, must be accompanied by a \$150 filing fee. Individuals who wish to request a waiver of the filing fee due to indigence should use Form 32 to request such a waiver. Failure to submit the filing fee will result in Form 30 being returned to the appropriate parties, delaying processing of the request. No action will be taken on any Full Commission Review request until the S.C. Commission has received the appropriate filing fee. For more information, please contact the S.C. Workers' Compensation Commission at (803) 737-5700.

We're On The Move... Again!

With great excitement, we announce the relocation of our Charleston office. As of June 7th, our Charleston is located at 78 Wentworth Street, Suite 200 in the historic Kress building located at the corner of King and Wentworth Street in Charleston's historic district. MG&C worked with local officials to retain the historic character of the 150-year-old Kress Building during renovation. Wherever possible, we retained the exposed ductwork in the ceilings, sealed concrete floors and exposed brick.

Our phone, fax, and post office box numbers will remain the same. We invite you to stop by and visit us at our new location in Charleston.



Thomas Chase Elected as Member of the Firm



Tom Chase, of our Columbia office, has been elected a member of the firm. Tom has been an associate in the firm's litigation practice group since 1999. His practice focuses on litigation including auto liability, business tort, employment practices, toxic tort/mold litigation, products liability, and premises liability.

Tom graduated from Furman University with a Bachelor of Arts degree in political science. He received his JD degree from the University of South Carolina School of Law. He is a former Assistant Attorney General for South Carolina, and Deputy Solicitor for the Eleventh Judicial Circuit of South Carolina. Congratulations Tom!

Anne Marie Hagood Selected as One of Charleston's "40 Under 40"



Anne Marie Hagood, an associate in the firm's Charleston office was selected as one of Charleston's "40 under 40." Each year, the Charleston Regional Business Journal chooses forty individuals who are rising leaders of the business community under the age of 40. An outside panel of judges selects the top forty individuals who have achieved success in business and demonstrated a commitment to the Charleston region and charitable endeavors. Congratulations Anne Marie! We are proud of your accomplishment.

MG&C Rockets Battle to Second Place

As the 2004 Columbia Law League Softball season unfolded, the MG&C Rockets learned that its 2003 championship would be as hard to defend as it was to win. The team was centered around right fielder Tom "The Tombino" Chase who enlivened the fans night after night with towering home runs. Around this slugging juggernaut, the team relied on the plate discipline and timely hitting of first baseman Tommy Lydon and center fielder Jordan "Blue" Berry. And when long-time shortstop Sterling "The Silver Slugger" Davies went down with a nagging injury, hurler Scott Garrett made the transition to the field flawlessly. Despite a moribund regular season, the MG&C bats came to life during the playoffs and the team advanced to the league's championship game for the second straight year. The day of the championship was met with a steady drizzle that dampened the field but not the team's spirit. The MG&C squad fought valiantly but was eventually overcome by a single run that separated the team from another championship. For its efforts, the team brought home yet another trophy to add to the growing collection of softball accolades being compiled in the firm's employee break room. As fans of the Brooklyn Trolley-Dodgers were fond of saying, "Wait 'til next year."



South Carolina Update

From the Courts

Workers' Compensation

Court of Appeals Clarifies Statutory Employment Doctrine and Intentional Tort Exception to Exclusive Remedy

Employee of a subcontractor working on a project for Milliken was crushed to death by a piece of machinery. A death claim was filed against the decedent's direct employer and the Commission awarded benefits. The decedent's Estate then filed suit for wrongful death and survival actions against various manufacturers and distributors of the allegedly defective machinery that caused the death. The complaints were amended to include Milliken and individual Milliken employees. The trial court found the Estate's action barred by the exclusivity provision of the South Carolina's Workers' Compensation Act. On appeal, the Estate argued that the decedent was not an employee or statutory employee of Milliken. However, the Court of Appeals found that the exclusive remedy applied because the decedent's activity at the time of his death was a necessary, essential and integral part of Milliken's trade, and was previously performed by Milliken's own employees. Secondly, the Estate contended that it could pursue a common law action against Milliken based on the alleged intentional acts of Milliken's employees leading to decedent's death. The court disagreed and ruled that only injuries inflicted by an employer who acts with a deliberate or specific intent to injure are exempted from the exclusive remedy of workers' compensation coverage. There was no evidence that Milliken's employees acted with an intent to harm or injure the decedent.

Edens v. Bellini, et al. 2004 S.C. App. LEXIS 174 (2004).

Company Doctor Not Fellow Employee and Thus Not Immune from Medical Malpractice Suit

A company physician for Westinghouse was sued for medical malpractice by the estate of a Westinghouse employee who died from prostate cancer. The physician argued that he was immune from common law suit under the Workers' Compensation Act's exclusivity provisions because he and the decedent were co-employees. The trial court found that the physician was an independent contractor, not an employee of Westinghouse, and that the decedent's death was not a work-related injury. The appellate court affirmed the trial court's ruling and held that although the employer arranged for a doctor to be available on its premise, and provided an employee to assist the doctor as his nurse, the doctor scheduled employee visits, reviewed test results, and made his recommendations without any direct supervision from the employer. The doctor was not on the employer's payroll and received no compensation from the employer. Therefore, the malpractice claim is not barred by the exclusive remedy provision of the Workers' Compensation Act. *Fuller v. Blanchard* 2004 S.C. App. LEXIS 74 (2004).

General Liability

Products Liability

Shirley Madison, a physician, began taking the drug Effexor (prescribed for chronic depression) on September 25, 1998. She took it as prescribed through September 29, 1998, at which time she assaulted her seven-year-old and attempted suicide. She alleged causes of action in negligence, strict liability, and breach of warranty against American Home Products Corporation, the company which formulated and marketed Effexor, and Aiken Drug Co., the pharmacy that filled the prescription. The trial court dismissed the strict liability and breach of warranty claims against Aiken Drug for failure to state a claim upon which relief could be granted. On appeal, the court held that dismissal was proper because the pharmacy was providing a service, rather than selling a product, and could not be held strictly liable for properly filling a prescription in accordance with a physician's orders.

Madison v. American Home Products Corp. 2004 S.C. LEXIS 92 (S.C. 2004)

UIM Benefits

Julius Prioleau submitted an application to purchase automobile insurance from Nationwide in his name and his wife's name, but only he signed the application. Before Nationwide issued the policy, it offered Julius UIM coverage, but he rejected that coverage. Ten months later his wife, Paula, was injured in an automobile accident while driving a vehicle that was covered by the policy. After the other driver's insurance company paid the limits of liability coverage he carried, Paula filed a claim for UIM benefits under the policy Julius purchased. Nationwide denied the claim and filed suit seeking a declaratory judgment declaring that it was not liable to pay UIM benefits to Paula. The trial court found no meaningful offer of UIM coverage had been made to Paula, and she was therefore entitled to have her policy reformed to include UIM coverage up to the limits of the policy. On appeal, the court found that while no express agency relationship existed between Paula and Julius, the facts clearly demonstrated an implied agency existed between the parties for the purpose of acquiring the automobile insurance policy in question. By making a claim under the policy, Paula essentially placed herself in such a position that the court had to infer an agency relationship. Thus, Paula was not entitled to have the policy reformed to include UIM coverage. *Nationwide Mutual Insurance Co. v. Prioleau* 2004 S.C. App. LEXIS 116 (2004)

Commercial Automobile Policies

Rickie Johnson was driving a pickup truck along a highway when she ran off the road and struck Neil Bryan Goldston, Sr., who died from injuries sustained in the collision. Johnson was involved in repossessing three vehicles on behalf of his employer, American Lenders Service Company. The truck driven by Johnson was insured under a policy issued by the South Carolina Insurance Company. The carrier for the truck paid the policy limits, \$100,000, and the insurer for the truck driver's employer paid \$600,000. The referee ruled that the truck, for purposes of the employer's policies, was a "non-owned" vehicle or a "hired auto"; therefore, the commercial auto portion of the employer's policies provided sufficient coverage to satisfy the personal representative's claims. The appellate court held this was error because evidence that the employer listed the truck as an asset on its financial statements and claimed depreciation on its tax returns showed it was the true owner, even though the truck was not titled in its name. Nonetheless, coverage existed under the commercial auto policies for a different reason: because the terms therein were ambiguous and had to be construed in favor of the insured. The referee correctly ruled that no gap existed in coverage, and that the employer's policies had to be considered in determining whether the vehicle was underinsured for purposes of the personal representative's entitlement to UIM benefits. *Goldston v. State Farm Mutual Automobile Insurance Co.* 594 S.E.2d 511 (SC Ct. App. 2004)

Premises Liability

Vogt was invited to Murraywood Swim and Racket Club as a social guest by Pevey and Soobitsky. After consuming alcohol at their home, the group walked to the pool. About thirty minutes later, Vogt dove in the pool, struck his head on the bottom and was injured. He commenced an action asserting causes of action for negligence and strict liability against Murraywood. The trial judge ruled that Vogt was a licensee and, as such, she declined to charge the jury with the law applicable to an invitee. On appeal, the Court of Appeals found the trial court correctly determined as a matter of law that Vogt was a licensee because, by his own admission, he entered the pool facilities as a social guest of two club members. He did not have a right to use the club facilities and his presence was entirely permissive. Thus, it was clear that Vogt did not enter for a purpose directly or indirectly connected with the business dealing of the possessor. *Vogt v. Murraywood Swim and Racket Club* 357 S.C. 506 (Ct. App. 2004)

From the S.C. Legislature

The 115th Session of the General Assembly may best be described by the adage “in like a lion, out like a lamb.” Despite expectations of sweeping tort reform, few laws were passed having an effect on litigation, administrative law or workers’ compensation by the end of the 2003-2004 Legislative Session. The following relevant legislation passed this Session:

S.C. Administrative Law Court

The Administrative Law Division will now be known as the “South Carolina Administrative Law Court.” The Act further provides that all requests for a hearing must be served on the affected agency. **H. 3235 (Rat. #0252, Act 0202)**

Updated Life Expectancy Tables

General Bill, by Sheheen, Jennings, Altman, McLeod and Weeks amends section 19-1-150, to update the life expectancy tables for civil litigation. **H. 4453 (Rat # 0259, Act # 0209)**

Employee Handbook

General Bill, By the House Labor, Commerce and Industry Committee provides that a handbook, personnel manual, policy, procedure or other document issued by an employer after June 30, 2004, does not create an express or implied contract of employment if conspicuous disclaimer is included. **H. 3448 (Rat # 0214, Act # 0185)**

North Carolina Update

From the Courts

Workers’ Compensation

Waiver of Lien Pursuant to N.C. Gen. Stat. 97-10.2(j) - No Subject Matter Jurisdiction

Where plaintiff moved to waive the workers’ compensation lien pursuant to NCGS 97-10.2(j) and the only evidence presented at the motion hearing showing a third party settlement was a letter indicating the settlement was contingent upon a waiver of the worker’s compensation lien, the Court of Appeals held that the trial court did not have jurisdiction to waive the lien. The court noted that NCGS 97-10.2(j) permitted a superior court to adjust a subrogation lien if the settlement agreement had been finalized so that only the performance of the agreement is necessary to bind the parties. However, the third party settlement presented at the motion hearing contained a condition precedent which must have been satisfied to complete the settlement contract. Therefore, the trial court did not have jurisdiction to waive the lien. **Ales v. T.A. Loving Company, 593 S.E. 2d 453, (N.C. Ct. App. March 16, 2004)**

Vocational Rehabilitation - Termination of Benefits

The Court of Appeals held that a plaintiff’s withdrawal from voluntary participation in vocational rehabilitation could not serve as the grounds for suspension of benefits under NCGS 97-25 where the Industrial Commission never ordered the plaintiff to participate in vocational rehabilitation. If a claimant is non-compliant with vocational rehabilitation, defendants must file a Motion to Compel Compliance with the Industrial Commission. Once approved, the employer or carrier can move to terminate benefits. **Williams v. Spray Cotton Mill, 2004 N.C. App. LEXIS 617 (April 20, 2004)**

Injury By Accident - Hurrying - Normal Routine

Where a claimant truck driver suffered a calf muscle strain while exiting his truck, the court held that the strain was not caused by an accident even though he had to hurry to get out of the truck on the side of the road due to heavy traffic. The court reasoned that

this did not constitute an accident because the claimant exited the truck many times a day and his haste did not affect the mechanism of his descent. **Davis v. USF Holland, 2004 N.C. App. LEXIS 842 (N.C. Ct. App., May 18, 2004)**

General Liability

Unsigned Interrogatory Responses are an Appearance

Insured was served with complaint along with interrogatories. Insured filed his handwritten answers to plaintiff counsel, but did not sign or verify. Insured later moved to dismiss the time-barred action via counsel, however, the court held that the filing of unsigned interrogatories counted as an appearance under the Rules and the Motion to Dismiss was denied. **Hill v. Vanden Bosch (North Carolina Lawyers Weekly No. 04-16-0684, 7 pages) — Unpublished 2004**

No Duty to Inform or Serve Insurance Carrier of Litigation

Plaintiff was involved in auto accident and counsel had worked with carrier towards a pretrial resolution. When resolution failed, plaintiff attempted service on defendant at last known address and by publication. At no time did plaintiff inform carrier of the suit, or serve carrier with a copy of pleadings. Plaintiff entered default against defendant, and defendant later moved to have the entry set aside. The Court denied the Motion to set aside holding that the plaintiff had made a good faith and diligent effort towards perfecting service and plaintiff was under no obligation to inform carrier in any way of the suit. **Cureton v. Helms 594 S.E.2d 259 (April 2004)**

No Attorney Fees!

After a low impact collision, plaintiff filed suit against defendant. Defendant filed an Offer of Judgment in the amount of \$1264. Plaintiff later received a jury award of \$2348 and requested costs and attorney’s fees. The trial court awarded costs, but declined awarding any attorneys fees, although the award exceeded the Offer of Judgment. The Court of Appeals gave great deference to the trial judge in finding that many factors went into the judge’s decision. The Court stated that exceeding the amount of an Offer of Judgment does not automatically entitle the plaintiff to attorney’s fees and costs. **House v. Stone 594 S.E.2d 130 (April 2004)**

From the Legislature

NC Bar Proposes Limits on Mailings to Accident Victims

Under the proposed revision to ethics Rule 7.3, a lawyer could not solicit a potential client if the communication concerns an action for wrongful death or personal injury unless the communication takes place more than 30 days after the accident, injury, or death in question.

New Reporting Rules Under Revised Mediation Rules

New reporting and scheduling rules were approved by the North Carolina Supreme Court to give greater priority to mediated settlement conferences and to protect the confidentiality of settlements. Under Rule 3.1 mediated settlement conferences now take scheduling priority over many other trial court matters. If an agreement is reached either at or before the settlement conference, the parties will have from 14 to 30 days to file documents with the court. Attorneys of record in the case will have to report the settlement to the resident judge within 4 days and indicate who will be filing the consent order or voluntary dismissal. The mediator will no longer be required to send in a copy of the parties’ agreement.

New Registry of Practicing Rehabilitation Professionals

The North Carolina Industrial Commission is in the process of establishing a registry of practicing Rehabilitation Professionals who are providing Workers’ Compensation case management to injured workers in North Carolina. Details are available at www.comp.state.nc.us.com.

Calendar

OF EVENTS

- July 22-24** SC Defense Trial Attorneys Association Joint Meeting at the Grove Park Inn in Asheville, NC
- Sept 29-Oct 1** North Carolina Workers' Compensation Educational Conference at The Sheraton Imperial Hotel and Conference Center in Raleigh, NC
- September 29** MG&C event at The Sheraton Imperial Hotel for the NC Workers' Compensation Educational Conference
- October 24-27** South Carolina Workers' Compensation Educational Conference at the Crowne Plaza in Hilton Head, SC
- October 25** MG&C and Gallivan White & Boyd event at Eugene's Restaurant for the SC Workers' Compensation Educational Conference
- November 5** MG&C and Goodman McGuffey Lindsey & Johnson Workers' Compensation Seminar in Atlanta, GA
- November 18** MG&C Educational Seminar at the University Hilton in Charlotte, NC

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Check out our newsletter online

DID YOU KNOW?



Bill Nixon, an associate in McAngus, Goudelock & Courie's Charleston office, lived and practiced law in the U.S. Virgin Islands. Bill also studied at the London School of Economics before joining the firm.

Web Sites of Interest

CHECK THESE OUT!

www.gasbuddy.com

Fight rising gas prices! This great website touts itself as "The ultimate portal to local real-time gas price information."

www.gettingwell.com

This medical website provides user-friendly access for information on such topics as disease overviews, drug information, general health & wellness and clinical trials.

www.atkins.com

If you're looking to join the low carb diet craze that has taken America by storm, this is a great place to start.

www.mgclaw.com

843-534-0101
CHARLESTON, SC 29402
PO Box 877
Suite 200
78 WENTWORTH STREET
CHARLESTON

704-643-6303
CHARLOTTE, NC 28230
PO Box 30307
Suite 500
611 CARNEGIE BOULEVARD
CHARLOTTE

803-779-2300
COLUMBIA, SC 2921
PO Box 12519
Suite 300
700 GERVAIS STREET
COLUMBIA



MG&C Profile



Stuart Moore

Stuart joined the firm's Columbia office in April. He received his B.A. in Government from Wofford College and his J.D. from The University of South Carolina

School of Law, where he served on the ABA Real Property, Probate and Trust Journal and was a member of the Phi Delta Phi legal fraternity. His practice focuses on workers' compensation defense.



James D. "J.D." Smith, Jr.

J.D. joined the firm's Charleston office in May. He graduated from the College of Charleston with a B.A. in English and a minor in Political Science. He received

his J.D. from Cumberland School of Law where he was selected as a Cordell Hull Fellow and was elected the Associate Director of the Trial Advocacy Board. Prior to moving to Charleston, J.D. practiced law in Florence, S.C., where he was a member of the Board of Directors of the United Way of Florence County and served on the Executive Committee as United Way's Treasurer. J.D. is licensed to appear in all S.C. State Courts, the U.S. District Court of S.C., and the U.S. Fourth Circuit Court of Appeals. J.D. is an associate in the firm's litigation practice group and concentrates his practice on premises liability, personal injury issues, construction defects, products liability, collection law, and employment law.



Terry L. Wallace

Terry joined the firm's Charlotte office in May. He received his B.S. in Political Science from the University of North Carolina and his J.D. from North Carolina Central

University School of Law. Terry served a one year judicial clerkship for the Honorable Henry E. Frye, Chief Justice, and Supreme Court of North Carolina. Terry's practice is concentrated in the areas of civil and commercial litigation

MG&C's Seminars

Are you Ready for MG&C's 2004 Educational Seminar?

MG&C will hold our annual educational seminar on Thursday, November 18, 2004 at the Hilton University Place in Charlotte, NC. Please mark your calendars to attend. More information will be coming your way in the near future.

We will also co-host our annual workers' compensation seminar in Atlanta with Goodman McGuffey Lindsey & Johnson on Friday, November 5, 2004. We will have more details at a later date.

News

Expecting

Rob and Kiersten Starnes
October

Bill and Courtney Nixon
October

Nikki and Jay Nicholson
November

Brian and Aimee O'Keefe
November

Births

John and Meredith Jeffries welcomed **Jake Alexander Jeffries** into their family on June 1

Engagement/Wedding

Jim Lichty engaged to **Angie Ward**
Wedding April 2005

Tometta and Michael Brown
Married May 2, 2004

Professional Appointments/ Awards/Recognitions:

Chad Abramson is a graduate of the Leadership Columbia program class of June 2004. The year long program gives participants opportunities to enhance their civic knowledge and network. The program encourages participants to develop relationships with the region's current and future leaders and to become inspired to focus their talents in a way that will best serve their cities and towns.

Summer Law Clerks

Our Columbia office welcomes **David Barnes, Mandy Dudgeon, Amanda Anderson, Terra Futch,** and **Wally Frye.**

Our Charlotte office welcomes **Carolyn Marcus** and **Charity Taylor**

Our Charleston office welcomes **Danielle Wallace Payne** and **Doug Durand**

