

# MG&C NEWS

Fall 2003

McAngus Goudelock & Courie Attorneys at Law

## Kids' Chance Golf Tournament Raises Money for College Scholarships

On August 15, 2003, Kids' Chance completed the Dennis Brewer Memorial Kids' Chance Golf Tournament and Cookout at Windemere Country Club in Blythewood, S.C. Rusty Goudelock of McAngus, Goudelock, & Courie and Bill Smith of Chappell, Smith & Arden co-chaired the tournament. Nineteen golf foursomes competed, including two teams from MGC. Key sponsors for this year's tournament were Coca-Cola Bottling Company Consolidated and Reimbursement Consultants, Inc. Many other entities sponsored various golf holes and provided other items for a raffle held during the cookout. After rain cancelled two previous dates for the tournament, a nice day finally prevailed and Kids' Chance raised almost \$15,000 to help fund its scholarships.

Kids' Chance of South Carolina is a charity arm of the South Carolina Workers' Compensation Education Association. Kids' Chance raises money to provide higher education scholarships to needy children of workers seriously injured or killed as a result of workplace accidents. Presently, Kids' Chance is supporting 18 very impressive young men and women in the scholarship program. They continue to be very successful in their educational endeavors and many would not have had the opportunity to pursue college degrees without the support of the charity. Several of these young men and women are first-generation college students in their families, and they are quite proud of their accomplishments.

Kids' Chance is actively supported by the staff and commissioners at the South Carolina Workers' Compensation Commission, and many of the applicants are referred to Kids' Chance by commissioners. Others are referred by attorneys and other participants in the workers' compensation system. Donations to Kids' Chance are received in various forms, but most of the money is raised through annual golf tournaments, cookouts, and the silent auction held each year at the Education Association's annual conference.

## MG&C Appoints Managing Partner



The firm announced James R. Courie as its first managing partner in July. The firm was previously managed by a management committee.

Jay was one of the founding partners of the firm in 1995. Hugh McAngus, Rusty Goudelock, and the rest the partners have made a commitment to the future of the firm by appointing a managing partner. Commenting on the appointment, Jay said, "I feel very fortunate and honored to spend more time working on the growth and development of the firm." The basic aim will obviously remain the same – we will continue to be totally committed to providing our clients with legal services of the highest quality. He will work with the firm administrator Leah Wallace on improving communication within the firm, exploring new opportunities and practice areas, and identifying ways to make the firm more efficient and successful.

Jay also serves as Treasurer of the South Carolina Defense Trial Attorneys Association and is a member of the Executive Committee. He is a past Chairman of the South Carolina Defense Trial Attorneys Legislative Committee. Jay also serves on the Board of Directors for EdVenture Children's Museum, the Columbia Downtown Business Association, and Hammond School.

## Charlotte Office Celebrates Anniversary

**"This is a lot of space."** This thought was the general consensus of the four people who walked through the door of an empty 1500 square foot office suite in the South Park area of Charlotte on October 30, 1998. Attorneys George Kurani and John Jeffries, Paralegal Carla Cozen and Legal Assistant Dawn Mistretta took a leap of faith and, with that, the Charlotte office of McAngus, Goudelock & Courie was born.

The comfortable feeling of having excess office space did not last long. By the time the lease expired fifteen months later, the only conference room was turned into an office, two lawyers shared one office, and an additional room across the hall had to be leased for two paralegals. It was time to move, and the office spread its wings in March 2000 when it relocated down the hall to its current location in Suite 500 at 6101 Carnegie Boulevard.

**"This really is a lot of space."** We were sure that the new suite would more than serve its purpose for an office that was continuing to grow. We knew with a true reception area, three conference rooms, a supply/copy room, a full kitchen, and an abundance of unused offices, there would be plenty of time before having to think about more space. We were wrong. In December 2002, after having

reached maximum capacity, the firm tore down the wall that separated it from the first suite and reclaimed its original space. Who says you can never go home again?

On October 30, 2003, the Charlotte office of McAngus, Goudelock & Courie will celebrate its five year anniversary. We owe our success to you, our faithful clients, who have encouraged and supported us from the very start, and to our associates, who have worked passionately and tirelessly to provide you with a level of service we hope is second to none. Our Charlotte associates, in the order in which they joined the firm, include: Andrew Ussery (March 1999), Trula Mitchell (April 2000), Chuck Cheney (June 2000), Christine Latona (January 2001); Lou Waple (January 2001), Tre Morgan (September 2001), Rob Starnes (September 2001); Sally Boswell (May 2002), J.D. Keister (August 2002), Lauren Citrano (September 2002), J. Wriley McKeown (September 2002) and Dan Eller (September 2003).

Thank you for five wonderful years in Charlotte. If you find yourself in the South Park area, please stop by to say hello. You know where to find us — at least for now!

In our Summer 2004 newsletter we printed a short section on the Stella Awards. The items were fictitious and only meant to add a little humor. We apologize to anyone who was offended by their inclusion.

# South Carolina Update

## From the Courts

### Employment Law

#### Employee Handbook Raised Question of Fact for Jury

The South Carolina Supreme Court held an employee manual containing an anti-discrimination provision and disclaimer was inherently ambiguous. As such, the determination whether the employee manual altered the at-will status was a question of fact for a jury. The Court noted that had disclaimer been conspicuous, the employee could not appreciate its conspicuousness because the manual was read aloud to her.

*Hessenthaler v. Tri-County Sister Help, Inc.*, 2003 WL 21057174 (S.C. 2003)

### Insurance Law

#### Nonrenewal of Policy

Despite S.C. Code Ann. § 38-75-790 which states “no insurer may nonrenew a policy... because the insured has filed a claim... for damages resulting from an act of God,” the South Carolina Supreme Court held an insurer may decline to renew upon the determination that property does not meet underwriting guidelines.

*Hinkle v. National Casualty Ins. Co.*, 579 S.E.2d 616 (S.C. 2003)

### Tort Law

#### Fraudulent Inducement to Settle and Release a Claim

The South Carolina Supreme Court recognized an action for fraudulent inducement to settle and release a claim. In the action, a plaintiff must establish the materiality of a false representation, which, in turn, requires a showing that the insurer has an obligation to pay by alleging and proving the liability for the underlying tort.

*Gaskins v. Southern Farm Bureau Casualty Ins. Co.*, 581 S.E.2d 169 (S.C. 2003)

### Workers' Compensation

#### Repetitive Trauma Back Claims

The South Carolina Court of Appeals held the two year statute of limitations did not begin to run “until the last day of exposure” for a claimant who alleged his return to full duty work as a nursing assistant following initial back complaints in 1997 continuously aggravated his condition. The claimant never filed a workers' compensation claim until 2000, but the Court's award appears to endorse the compensability of repetitive trauma back claims.

*White v. Medical Univ. of South Carolina*, 2003 WL 21911232 (S.C. Ct. App. 2003)

## From the Legislature

#### Workers' Compensation Commissioner Filing Fee

The General Appropriations Act (§ 43.4) enables the Workers' Compensation Commission to charge a \$25 fee to be submitted with each hearing request or motion for each WCC file number. Specifically, the fee is required for filing a Form 50 Request for Hearing, Form 21 Stop Pay Application, Clincher Agreement, Motion to Add Parties, and Motion to Compel.

#### Second Injury Fund Reimbursements (Act No. 73)

This Act Prohibits reimbursements to employers or insurance carriers that have defaulted on their current assessments until the assessments are paid in full (amended § 42-7-310). The Act also eliminates the “unknown” preexisting condition as a qualifying condition for Second Injury fund reimbursement (amended § 42-9-400 and § 42-9-410). This Act became effective 7/2/03, and it applies to all work related injuries sustained after this date.

#### Total Loss Claim on Vehicle/Allocation of Certain Highway Department Fees (Act No. 52 )

This Act provides that when an insurance company obtains title to a vehicle from settling a total loss claim, the insurance company may obtain a title to the vehicle designated as “salvage” and must pay a fee associated with obtaining a certificate of title. The provision does not apply to vehicles with a fair market value of \$2,000 or less or to an antique motor vehicle.

#### SC Notice and Opportunity to Cure Construction Dwelling Defects Act (Act No. 83)

This Act establishes procedures for a homeowner or subsequent purchaser to assert a claim against a contractor, subcontractor, supplier, or design professional for a construction defect in a residential dwelling. It also requires the court to stay an action if a claimant files an action for damages from a construction dwelling defect before complying with these procedures. It also provides these procedures do not apply to actions arising out of claims for personal injury or death. This Act became effective 7/2/03, and it applies to claims arising on or after this date.

## 2004 Legislative Preview

When the South Carolina General Assembly reconvenes in January 2004, it will take up where it left off when it adjourned in June but with less money. Most of the issues that dominated the 2003 session remain on the agenda for next year. As with the past few sessions, however, budget issues will get the most attention and have a direct impact upon most policy initiatives. It is highly unlikely any new programs with much of a price tag will be adopted. Lawmakers will start behind with next year's budget because of this year's use of non-recurring funds and the effect of a still sluggish economy upon incoming revenue. Gov. Sanford has been conducting budget sessions with cabinet agencies to highlight priorities and identify cost saving opportunities, but agencies have already incurred significant budget cuts. Over the past four years, the Budget and Control Board has made mid-year budget cuts totaling \$518 million. On August 20, 2003 the Budget and Control Board instituted another \$100 million cut, and most experts expect yet another round of cuts in 2004.

Tort reform, employment at will, Public Service Commission reform, cigarette taxes, reorganization of the Department of Health and Human Services, hog farming regulation, primary seat belt enforcement, mini-bottles, and racial profiling lead the list of hot legislative issues for 2004.

The much publicized tort reform legislation never made it out of committee in 2003, but proponents are optimistic about getting House approval and Senate consideration early in the 2004 session. While progress has been made on several key points, passage is still not certain. Venue and caps on non-monetary damages are the most contentious issues in the bill.

An at-will employment bill passed the House in February and is now on the Senate's calendar. The bill revises South Carolina's at-will employment doctrine in light of recent court rulings and provides that no handbook, policy, procedure, or other document issued by an employer or its agent may form an express or implied contract of employment, unless: (a) the contract is in writing; (b) the contract is signed by the employee and an authorized agent of the employer; and (c) the contract expressly provides that the parties intend to alter their at-will employment relationship.

# North Carolina Update

## From the Courts

### Workers' Compensation

#### Award of Compensation for Hernia too Speculative

The North Carolina Court of Appeals held there was insufficient evidence or findings to support a conclusion that a lifting incident at work caused a claimant's paraesophageal hernia. The Court based its holding on the testimony from the treating physicians. Specifically, one of the claimant's physicians testified a lifting incident at work could have caused the condition, and the other testified that such a condition can be asymptomatic for some time, making it impossible to know exactly when it appeared. The Court reasoned the conflicting testimony was not sufficient to establish a causal connection and made any award too speculative.

*Hodgin v. Hodgin*, 583 S.E.2d 362 (N.C. Ct. App. 2003)

#### Attorneys' Fees

In a claim where a farm worker's indemnity award in a death claim was very low when compared to the extraordinary medical expenses and inadequate to compensate counsel for their services, the North Carolina Court of Appeals held the trial court lacked authority to award attorney's fees out of reimbursement to medical providers. However, the Court held the trial court could award attorney's fees based upon a percentage of medical compensation to be paid in addition to medical expenses. In essence, the trial court could award attorneys' fees pursuant to N.C. Gen. Stat. 97-90(c) based upon a percentage of the medical expenses, but the attorneys' fees could not be deducted from the amounts awarded to medical providers. Instead, the fees are a percentage of the amounts paid above and beyond the amounts paid to medical providers.

*Palmer v. Jackson*, 579 S.E.2d 901 (N.C. Ct. App. 2003)

#### Insufficient Medical Evidence

Where the Claimant's medical evidence suggested a causal connection between the her work accident and her deep vein thrombosis (DVT) was possible but unlikely, the North Carolina Supreme Court held the medical evidence was insufficient to support the Industrial Commission's finding and conclusion the work accident caused the DVT.

In addition to its application to other workers' compensation claims, this case also seems to reiterate the language of Rule 704 of the Rules of Evidence when dealing with Expert Testimony and Causation. The Court stated the Court of Appeals erred when it upheld the Industrial Commission's decision by failing to adhere to Rule 704 and the "degree of medical certainty" required. This case may call into question *Johnson v. Piggly Wiggly* which admitted medical testimony on a "could have" standard rather than the "degree of medical certainty" standard. The Supreme Court is scheduled to rule on *Piggly Wiggly* later next year.

*Holley v. Acts, Inc.*, 581 S.E.2d 750 (N.C. 2003)

#### Fatal Injuries Arose out of the Decedent's Employment

The North Carolina Court of Appeals held decedent's death arose out of and in the course of his employment where decedent, a truck driver, got out of his truck to confront another driver who had been making gestures about the decedent's driving. The second driver used his vehicle to hit the decedent, causing fatal injuries. The Court reasoned the accident was within the decedent's employment because the dispute had its "root cause" in a merging incident which was related to "the basic nature of decedent's work as a truck driver."

*Dodson v. Dubose Steel, Inc.*, 582 S.E.2d 389 (N.C. Ct. App. 2003)

## Insurance

### Subrogation Rights of Insurance Carrier

The families of four individuals who were killed in a 1999 drunk driving accident were ordered to pay some funds back to the insurer of one of the victims that paid \$250,000 in Underinsured Motorist Coverage. The North Carolina Court of Appeals found the carrier paid the money with the understanding it would seek subrogation for any legal awards from two bars that served alcohol to the intoxicated driver on the date of the accident.

*Farm Bureau Ins. v. Estate of Blong*, 583 S.E.2d 307 (N.C. Ct. App. 2003).

## From the Legislature

### Maximum Weekly Benefit in Workers' Compensation for 2004

The North Carolina Industrial Commission determined the maximum weekly benefit in workers' compensation for 2004. The maximum weekly benefit applicable to all injuries and claims arising on or after January 1, 2004 will be \$688.00. The minimum benefits applicable to all injuries and claims arising on or after January 1, 2004 will \$30.00.

### Increase in Fee for Approval of Compromise Settlement Agreements

North Carolina House Bill 397 increased the fees associated with the Industrial Commission's approval of Compromise Settlement Agreements will increase to \$250.00. This bill became effective 7/1/03.

### District Court Non-Binding Arbitration Program Survives Budget Cuts

The majority of judicial districts in North Carolina have non-binding arbitration programs which hear civil cases involving money disputes of \$15,000 or less. Due to the recent budget crisis in North Carolina, government officials considered cutting the District Court Non-Binding Arbitration Program from the state budget. Although this program remains in effect in North Carolina, the Legislature enacted legislation to change the way in which the program is funded. Under North Carolina General Statute §7A-37.1 (c1) a fee of \$100.00 will be assessed per arbitration to be divided equally among the parties. This fee will cover the cost of providing arbitrators.

### Definitions of Employee Under the Workers' Compensation Act

North Carolina General Statute §97-2(2) provides a definition for the term "employee" as it relates to the Workers' Compensation Act. Senate Bill 776 amended N.C. Gen. Stat. §97-2(2) to include a "rebuttable presumption that the term 'employee' shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person."

# Calendar

## OF EVENTS

- October 8-10** North Carolina Workers' Compensation Educational Conference at The Sheraton Imperial Hotel and Conference Center in Raleigh, NC
- October 9** MGC's hospitality party at the NC Workers' Compensation conference in Raleigh, NC
- October 19-22** South Carolina Workers' Compensation Educational Conference at Kingston Plantation in Myrtle Beach, SC
- October 20** MGC and Gallivan White & Boyd party at House of Blues in Myrtle Beach, SC for the SC Educational Conference
- October 21** MGC's annual Putt-Putt tournament at Rainbow Falls in Myrtle Beach, SC for the SC Educational Conference
- October 30** MGC's Charlotte office celebrates 5th Anniversary
- November 7** MGC and Goodman McGuffey Lindsey & Johnson Workers' Compensation Seminar in Atlanta, GA
- November 20** MGC Educational Seminar and Client Holiday party at the University Hilton in Charlotte, NC
- December 4** MGC Client Holiday party in Columbia, SC

## DID YOU KNOW?

Between college and law school Hugh McAngus worked for Columbia Outdoor Advertising in Georgia posting billboards. He moved to South Carolina for a year to establish residency for law school, but did not want to take a real job for just a year. That year he received his BA (bush axe) and PhD. (post hole digger) degrees before going on to law school.

## Web Sites of Interest

### CHECK THESE OUT!

#### [www.emedicine.com](http://www.emedicine.com)

This site is a great medical reference that offers access to medical journals, a medical dictionary, and prescription drug information. It also contains detailed information on various medical specialty areas, including orthopedic surgery.

#### [www.drugreport.com](http://www.drugreport.com)

The site is one of the most comprehensive websites you will find on the internet. One of the many attributes of this site is the extensive collection of "links" contained on the front page.

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

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CHARLOTTE

COLUMBIA, SC 29211  
PO Box 12519  
Suite 300  
700 GERVAIS STREET  
COLUMBIA



# News

## Expecting

**Lauren and Chuck Citrano**  
December 2003

## Births

**Doc and Julia Morgan** welcomed **Abby Rose Morgan** into their family July 16th

**J. Wriley and Paige McKeown** welcomed **Emma Kate McKeown** into their family August 4th

**Chris and Amy Skipper** welcomed **Zachary Alton Skipper** into their family August 9th

## Engagement/Wedding

**Michael Petit and Karen Castelli**  
Married July 26, 2003

## Professional Appointments/ Awards/Recognitions:

**Hugh McAngus** was admitted to the Outstanding Lawyers of America.

**Steve Bates** was named chairman of the Governmental Relations Committee of the Historic Columbia Foundation. Steve was also named to the Board of Directors of the Presbyterian College Alumni Association.

**Christine Latona** was appointed to the NC Bar Association's Women in Professional Committee for the 2003-2004 term. Christine was also appointed to the association's Law School Liaison Committee.

**Chad Abramson** was selected for the Leadership Columbia program. 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.

**Michael Burkett** competed in the Lighthouse Triathlon in Hilton Head Island, SC on September 13, 2003. He raised over \$2000 for research through Team in Training with the Leukemia & Lymphoma Society,

# MG&C Profile



## Peter M. Balthazor

Pete received his B.S. in Forest Resource Management from Clemson University in 1994. He received his J.D. from the University of South Carolina School of Law in 2001. Pete joined the firm's Columbia office in August. His practice focuses on general liability defense, auto negligence, premise liability, and construction.



## Albert R. "Rick" Pierce, Jr.

Rick received his B.A. in History with a minor in Economics from the College of William and Mary in 1998. He received his J.D. from the University of South Carolina School of Law and his MBA from the University of South Carolina Moore School of Business in 2002. Rick joined the firm's Columbia office in September. His practice focuses on business and commercial litigation and bankruptcy.



## Daniel B. Eller

Dan received his B.A. in History from Erskine College in 2000. He received his J.D. from Campbell University in 2003. Dan joined the firm's Charlotte office in September. His practice focuses on workers' compensation.

## MGC's Seminars

### November 7 Workers' Compensation Seminar Hilton Northeast, Norcross, GA

This seminar has been approved for:  
GA 5 CLE (1 hr Ethics, 4 hrs. Property & Casualty)  
FL 4 CLE (2 hrs WC, 2 hrs Ethics)  
NC 6 CLE (6 hrs property & Liability)

### November 20 MGC 2003 Educational Seminar The University Hilton, Charlotte, NC

This seminar has been approved for:  
6 NC CLE (6 hrs Property & Liability)

Contact Kim Schneider at 802-227-2282 or [kschneider@mgclaw.com](mailto:kschneider@mgclaw.com) to learn more or to register for these seminars.

