

# MG&C News

McAngus Goudelock & Courie LLC



## HCZ's Geoffrey Canada to Speak

### at MG&C Educational Seminar

MG&C is pleased to announce Geoffrey Canada, president and CEO of the Harlem Children's Zone, will be the keynote speaker at the 2011 Educational Seminar. In his 20-plus years with Harlem Children's Zone, Inc., Canada has become nationally recognized for his pioneering work helping children and families in Harlem and as a passionate advocate for disadvantaged families, struggling communities and education reform. He was featured in the award-winning documentary "Waiting for Superman."

*The New York Times Magazine* called Harlem Children's Zone "one of the most ambitious social experiments of our time." Canada's presentation offers a vision that with hard work, dedication, and prioritizing resources, a safe, caring and stimulating environment can be created for all children. For more information about Geoffrey Canada and Harlem Children's Zone, visit [www.hcz.org](http://www.hcz.org).

### J.D. Keister Joins the Raleigh Office

MG&C is pleased to announce attorney J.D. Keister has relocated to MG&C's Raleigh office to expand the firm's litigation practice in the Triangle area.

Keister's email address stays the same: [jkeister@mgclaw.com](mailto:jkeister@mgclaw.com). His new phone number, fax number and mailing address are:

**Phone:** 919.719.8249

**Fax:** 919.510.9825

**Mailing Address:** PO Box 30516  
Raleigh, NC 27622



### MG&C's Dominic Starr Coaches Team to State Softball Championship

Myrtle Beach attorney Dominic Starr coached the Carolina Forest girls softball team—including his 13-year-old daughter—to winning the 2011 South Carolina Senior League State Softball Championship! Starr has coached softball for Carolina Forest Community Center for six years.



Starr (center) and the Carolina Forest softball team after winning the championship.

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

Looking for some super information?



Start your search at the

## MG&C 2011 Educational Seminar

MG&C is proud to announce its  
**11th Annual Educational Seminar!**  
Join hundreds of your peers and colleagues for a day to expand your knowledge and gain new solutions directly related to your workers' compensation and general liability work.

**Thursday, November 17**

Hilton Charlotte University Place  
8629 JM Keynes Drive, Charlotte, NC 28262

Ready to register? Need additional info?  
Visit [mgclaw.com/events-and-seminars](http://mgclaw.com/events-and-seminars).

Use event code **edsem11** to register.

Credits: This seminar has been approved by the NC Department of Insurance for 6 hours of general insurance continuing education credits.

Questions? Contact Jen Bricker at  
[jbricker@mgclaw.com](mailto:jbricker@mgclaw.com) or 803.227.2207.

# From the Courts:



## North Carolina

### Workers' Compensation

#### **Wynn v. United Health Services**

The Court of Appeals held that any job offer made prior to maximum medical improvement (MMI) must still satisfy the "suitable employment" standard that applies to post-MMI job offers in order for a claimant's benefits to be suspended due to unjustifiable refusal of employment. This decision virtually eliminates any distinction between pre- and post-MMI job offers and marginalizes *Russo v. Food Lion*, which since 2007 stood for the proposition that a claimant's benefits could be suspended for refusing to accept "make work" prior to reaching MMI. Since the new legislative reforms specifically define "suitable employment" and address job offers prior to reaching MMI, the *Wynn* decision only affects claims arising before June 24, 2011.

<http://bit.ly/q3MpDh>

#### **Newnam v. New Hanover Regional Medical Center**

The Court of Appeals addressed the issue of ongoing disability. The full Commission found that the claimant proved disability merely by showing that the authorized treating physician never released her to return to work. In reversing, the Court held that a finding that a doctor never released a plaintiff to return to work is, by itself, insufficient to establish disability under the first prong of the *Russell* analysis. The Court held that a claimant must still show that he is unable to work in any capacity, even under medical restrictions. Absent such a finding, the Court held that it was impermissible for the Commission to award ongoing benefits.

<http://bit.ly/phmOnm>

#### **Norman v. Food Lion, LLC**

The Court of Appeals held that a carrier is not required to start payment of indemnity benefits following an award at the deputy commissioner level if that award is timely appealed. The plaintiff filed a motion for a 10% late penalty under § 97-18(g), arguing that the defendants were required to start paying benefits after entry of the deputy commissioner's award of benefits. The full Commission granted the plaintiff's motion, but the Court of Appeals reversed on this issue, holding that a timely appeal of an initial award of benefits stays the effect of that award.

<http://bit.ly/r1AH1V>

## Litigation

#### **Green v. Fishing Piers, Inc.**

This decision is the result of a single vehicle accident involving a driver and two passengers. The driver had been drinking at a bar; when she left the bar, she lost control of the vehicle and crashed, leading to the death of the three individuals. The guardian *ad litem* for the son of one of the passengers sued the owner of the bar seeking damages under the Dram Shop Act. After settling those claims, the bar sought contribution from driver's estate. The trial court granted summary judgment to the driver's estate, and the bar appealed. The decision of the trial court was upheld and the Court of Appeals found that the Dram Shop Act does not provide a cause of action against a negligent driver.

<http://appellate.nccourts.org/opinions/>

#### **Khomyak v. Meek**

In this medical malpractice action, the jury found for the defendant. Subsequently, the defendant moved for an award of \$15,599 in costs under G.S. § 6-20 and 7A-305(d). The trial court awarded only \$1,000, and the defendant appealed. The Court of Appeals held that due to recent decisions, the trial court is afforded no discretion in determining whether or not to award those costs enumerated under § 7A-305(d). Therefore, the trial court must impose those costs requested by the defendant, if they are reasonable and necessary. Although the court does not have discretion on whether to award those costs listed in § 7A-305(d), it is to consider whether the costs requested are reasonable and necessary. The Court of Appeals reversed and remanded for reconsideration in light of controlling statutes as interpreted by case law.

<http://bit.ly/pNEBsJ>

#### **Herbert v. Marcaccio**

This case arose from personal injuries resulting from a motor vehicle accident. The plaintiff filed suit against the defendant and the UIM carrier as the unnamed defendant. The matter was litigated for more than two years, including multiple motions and two trial continuances, which caused the UIM carrier to prepare for and attend court hearings and engage in other defense activities. This resulted in a significant expenditure of resources. On the eve of the second trial date, the plaintiff filed a motion to compel arbitration. The trial court found that the plaintiff waived the right to arbitrate by proceeding with litigation so far and in such a manner that the unnamed defendant was prejudiced by spending a significant

amount of resources to defend the suit, which would have been unnecessary had the plaintiff demanded arbitration much earlier. The Court of Appeals affirmed.

<http://bit.ly/noDFWC>

## South Carolina

### Workers' Compensation

#### **Rabon v. Arrow Exterminating, Inc.**

The Court of Appeals held that the claimant did not commit fraud in the application by concealing a pre-existing back injury where the employer did not ask about pre-existing injuries or impairment in the hiring or placement process. There is no affirmative duty to disclose a pre-existing condition if the claimant is not asked by the employer.

<http://bit.ly/or3DJs>

#### **Trotter v. Trane Coil Facility**

The Supreme Court reversed the Court of Appeals and found that the Commission did not abuse its discretion when denying the defendants the right to postpone a hearing or leave the record open for depositions, where the evidence showed that the defendants' own actions or inactions were responsible for the absence of the testimony.

<http://bit.ly/njxMMb>

#### **Allison v. W.L. Gore & Associates**

The Supreme Court found that the Commission does not have the authority to extend the period for filing an appeal beyond the statutory period of 14 days.

<http://bit.ly/qHRhCk>

#### **Wise v. Wise**

The claimant was denied benefits by the single commissioner then filed suit for benefits in the Circuit Court against his employer and a third party. He argued that evidence of the Circuit Court judgment and third party settlement cannot be presented to the Commission on appeal where such evidence was not in existence at the time of the original Commission hearing. The Court found that the regulations do not prohibit the Commission from considering new evidence on appeal simply because it was not in existence at the time of the original hearing. The Court of Appeals further found that a claimant cannot recover from an employer in both a workers' compensation and civil action. Because the claimant did not strictly comply with the notice provisions in filing suit against a third party, he is barred from recovering under the Act.

<http://bit.ly/q9XPQP>

## Litigation

#### **Clea v. Odom**

In this dog bite case, the Supreme Court affirmed in part and reversed in part the trial court, finding there was a material question of fact whether the landlord of an apartment complex was liable under the theories of strict liability and common law negligence. In support of its decision, the Supreme Court concluded that the dog was knowingly kept in a common area of the apartment complex that was controlled by the landlord, all of which created a question of fact as to the landlord's responsibility for keeping the dog at the time of the attack. Moreover, there was evidence the landlord had knowledge of the dog's previous attack of another child and that it failed to remedy the situation.

<http://bit.ly/r8kkMq>

#### **5 Star, Inc. v. Ford Motor Company**

In this products liability case involving alleged negligent design issues, the Court of Appeals held that the trial court erred in denying Ford's motion for a directed verdict. In support of its reversal, the Court of Appeals concluded that 5 Star presented no expert witness to testify that Ford was negligent in designing the speed control deactivation switch nor any other evidence that Ford breached its duty of care at the time the switch was designed and manufactured. The Court reiterated that 5 Star not only had to show the switch was defective, but that Ford's conduct in designing the switch was negligent at or before the time of manufacture.

<http://bit.ly/nTkMqA>

#### **White Oak Manor, Inc. v. Lexington Insurance Company**

The Court of Appeals reversed the trial court's denial of Lexington Insurance Company's motion to set aside the entry of default and vacated the judgment, holding that the service of suit clause in the insurance policy did not absolve White Oak of the responsibility to comply with the requirement in S.C. Code Ann. §15-9-270 that it deliver two copies of its summons and complaint to the director of the South Carolina Department of Insurance in order to serve process on Lexington. The Court of Appeals remanded the matter to the trial court, concluding that Lexington may file an answer upon perfected service of process.

<http://bit.ly/oLSU2r>

## MG&C Photo Album



## MG&C News

### Weddings & Engagements

Greenville attorney **Mark Allison** married Amanda Webb on September 30.

Charlotte attorney **Michael Hummel** married Melissa Holer on August 13.

### Expecting & Births

Myrtle Beach attorney **Joseph Sandefur** and his wife, Meg, welcomed Jackson Griffith Sandefur to their family on August 5.

Charlotte attorney **R.J. Williams** and his wife, Erin, welcomed Raymond John Williams IV to their family on June 30.

Columbia attorney **Terra Futch** and her husband, Kevin, are expecting their second child in January.

Charlotte attorney **Sally Moran** and her husband, Craig, are expecting their first child in December.

Charlotte attorney **Andrew Ussery** and his wife, Rona, welcomed Aydin Ussery to their family on July 29.

Charleston attorney **Mikell Wyman** and his wife, Amy, are expecting their first child in February.

Columbia attorney **Andy Delaney** and his wife, Courtney, welcomed Blair West Delaney to their family on September 7.

### Professional Appointments, Awards & Recognition

Charlotte attorney **Adrienne Gilman** is now the co-chair for the N.C. Bar Association's Young Lawyers Division's Wellness Committee. She is also now serving on the Mecklenburg County Bar Association's Communications Committee.

Greenville attorney **Erroll Anne Hodges** has been named to the Christ Church Episcopal School Parents' Organization Executive Committee for the 2011-2012 school year.

Columbia attorney **Jay Courie** was re-elected to serve as the chairman of the Hammond School's Board of Trustees.

Columbia attorney **Edward Rawl** and Myrtle Beach attorney **Joseph Sandefur** have been selected to serve on the S.C. Bar Association's Judicial Qualifications Committee.

Charleston attorney **Bennett Crites** was named to the Greater Charleston YMCA Board of Directors. He was also named to the Advisory Panel of the Oversight Committee for the Charleston County School District's Capital Improvements Program for 2010-2016.

### MG&C welcomes...



**Drew Richardson** to the Columbia office. His practice focuses on business, construction and general liability litigation.

# SHAKEN, NOT STIRRED.

SHAKE UP YOUR EVENING AND JOIN  
**McANGUS GOUDELCK & COURIE**  
FOR HAPPY HOUR AT THE  
**SCWCEA EDUCATIONAL CONFERENCE**

**TUESDAY, OCTOBER 18**

**5 PM TO 9 PM**

**WINDSOR BALLROOM SALON B**

RSVP online at  
[mgclaw.com/events-and-seminars](http://mgclaw.com/events-and-seminars)  
Event Code: **SCComp11**  
Questions? Contact Jen Bricker at  
803.227.2207 or [jbricker@mgclaw.com](mailto:jbricker@mgclaw.com)



# The Faces of MG&C:



**Heather Connor**  
*Litigation Attorney, Charlotte*

**Nickname:** None that I will own up to!

**Place of birth:** Baton Rouge, Louisiana

**College/Law School:** LSU/Tulane Law

**Family:** Husband, Lee; son, Wesley (4) and soon-to-be-son, Nathan - I'm due November 17.

**Hobbies:** Reading, being silly with my son

**Pet peeve:** Mean people

**Favorite movie:** *Raising Arizona*

**As a child, what did you want to be when you grew up?** Rich

**Fun fact:** I was raised in the swamps of Louisiana by alligators - that explains my profession!

**Favorite MG&C moment:** Sparring with Mary Webb at the 2010 Educational Seminar dressed as a professional wrestler.

**Favorite sports team:** LSU

**Favorite food:** Anything Cajun



## Calendar of Events:

**October 6 - Nashville, Tenn.**

**MG&C, Swift Currie and Manier & Herod Litigation Seminar**

Hilton Garden Inn Nashville Vanderbilt - [www.mgclaw.com](http://www.mgclaw.com)

**October 16-19 - Myrtle Beach, S.C.**

**SCWCEA Educational Conference**

Embassy Suites at Kingston Plantation - [www.scwcea.org](http://www.scwcea.org)

**October 18 - Myrtle Beach, S.C.**

**MG&C's Shaken, Not Stirred Happy Hour at the SCWCEA Educational Conference**

Windsor Ballroom Salon B at the Embassy Suites at Kingston Plantation - [www.scwcea.org](http://www.scwcea.org)

**October 19-21 - Raleigh, N.C.**

**North Carolina Industrial Commission Workers' Compensation Conference**

Raleigh Convention Center - [www.ic.nc.gov](http://www.ic.nc.gov)

**November 17 - Charlotte, N.C.**

**MG&C 2011 Educational Seminar**

Hilton Charlotte University Place - [www.mgclaw.com](http://www.mgclaw.com)

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