

MG&C News

McAngus Goudelock & Courie LLC

Juggling claims in multiple states?

Don't drop the ball - come to the Multi-State Seminar in Florida at the 2011 Workers' Compensation Educational Conference!

Wednesday, August 24, 2011

Orlando World Center
Marriott Resort & Convention Center
Orlando, Florida

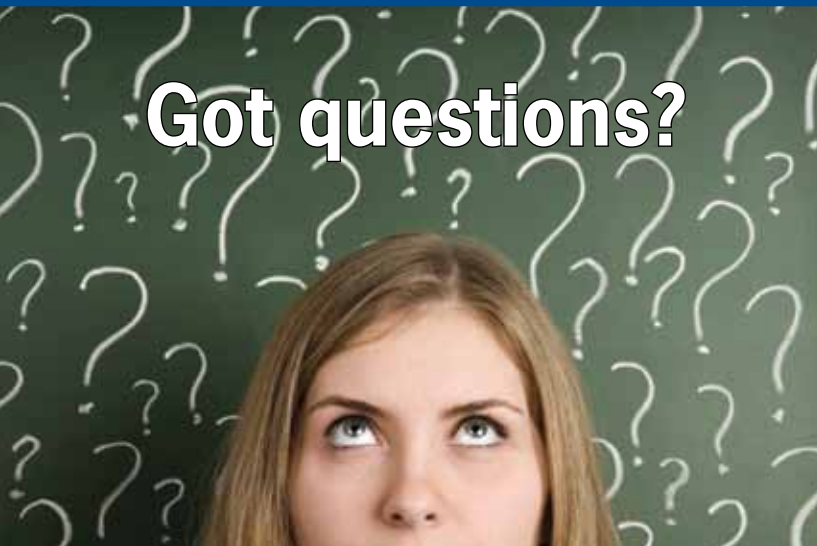
For more information, visit the FWCI website at www.fwciweb.org.



Continuing education credits will be applied for soon.



Got questions?



We've got the answers! Get in the know at MG&C's 2011 Educational Seminar!

Now in its eleventh year, MG&C is proud to announce that the **2011 Educational Seminar** will be held **Thursday, November 17** at the **Hilton Charlotte University Place** in **Charlotte, N.C.** Make plans now to attend and join hundreds of your colleagues for a day to expand your knowledge and gain new solutions directly related to your workers' compensation and general liability work!

Registration begins online at mgclaw.com on Aug. 29!

MG&C Basketball Champs!

MG&C Columbia attorneys won the Columbia Law League Basketball Championship for the second year in a row. Congratulations!



Rusty Goudelock and Sterling Davies Invited to Join Council on Litigation Management

McAngus Goudelock & Courie is pleased to announce that attorneys **Rusty Goudelock** and **Sterling Davies** have been invited to join the Council on Litigation Management.

The Council on Litigation Management is a nonpartisan alliance comprised of thousands of insurance companies, corporations, corporate counsel, litigation and risk managers, claims professionals and attorneys. Selected attorneys and law firms are extended membership by invitation only based on nominations from CLM Fellows.



Rusty Goudelock



Sterling Davies

From the Courts:



North Carolina

Workers' Compensation

Baker v. Chizek Transport, Inc.

The Court of Appeals affirmed the Industrial Commission's jurisdiction to hear a claim in which the claimant, a truck driver, was injured in Missouri. The employer was based in Wisconsin, but the plaintiff lived in North Carolina. He previously had worked for Chizek, but signed a "termination form," which acknowledged a severance of the employment relationship. The plaintiff was re-hired several weeks later via telephone while he was physically located in North Carolina. The Court reiterated the "last act" test permits a claimant to file a workers' compensation claim in North Carolina if the employment contract for hire is made while the claimant is located in North Carolina.

<http://bit.ly/jciVBQ>

Shackleton v. Southern Flooring and Acoustical Co.

The Court of Appeals reversed the Industrial Commission's holding that competent medical evidence must be presented in order for the claimant to receive an award of attendant care. While acknowledging other jurisdictions impose a requirement that a physician prescribe attendant care in order for it to be awarded under a workers' compensation claim, the Court held that no such rule applied in North Carolina. Instead, the Court held requests for attendant care should be reviewed by the Industrial Commission on a "flexible case-by-case" basis. Further, the Commission may award attendant care based on testimony from lay witnesses, such as relatives, family members, or life care planners.

<http://bit.ly/mywbXI>

Gentry v. iSurety, Inc.

The Court of Appeals dismissed the plaintiff's alleged *Woodson* claim against the carrier-defendant. The plaintiff's widow filed the claim after the plaintiff died, alleging the carrier-defendant withheld medical compensation in relation to his workers' compensation claim, which caused or contributed to his death. The Court dismissed the claim, holding *Woodson* claims (permitting a claimant to file a civil negligence claim against an employer in relation to a work-related injury) cannot be filed against carriers for alleged negligence in handling a claim. The Court reiterated *Woodson* claims can only be filed against the claimant's employer.

<http://bit.ly/mGzZLm>

Litigation

Williams v. Owens

The plaintiff filed a timely action for negligence against the named defendant, a deceased individual, approximately four months after the statute of limitations expired, the plaintiff filed for leave to amend her complaint to add the necessary parties, the estate or the executrix of the estate. The court found the plaintiff filed for leave to amend her complaint outside of statute of limitations and that the plaintiff's amended complaint would not relate back to the date of the original complaint as it sought to add new parties. The Court of Appeals affirmed the trial court's denial of plaintiff's motion to amend her complaint since plaintiff's amended complaint sought to add two new parties to her action after the statute of limitations had run.

<http://bit.ly/lgsrEu>

Vickers v. Street

The defendant was talking on his cell phone at a stop sign when he entered the dominant roadway and collided with the plaintiff. The speed limit on the dominant roadway was 45 mph, and the plaintiff was traveling approximately 50 mph. The plaintiff stated in her deposition that the intersection was very dangerous. Despite her familiarity with the intersection and her opinion regarding the dangerousness of the intersection, the plaintiff merely reduced her speed slightly. The trial court charged the jury on contributory negligence, and the jury returned a defense verdict. The plaintiff moved for a judgment notwithstanding the verdict or a new trial, and the plaintiff's motion was dismissed. The Court of Appeals affirmed this decision because there was more than a scintilla of evidence of the plaintiff's contributory negligence.

<http://bit.ly/mJdjec>

Taylor v. Sandbank

The plaintiff is an exterminator hired by the defendant homeowners to apply ant bait to the exterior of their home. The plaintiff walked around the perimeter of the home prior to starting the application. He did not notice that he was standing above a below-grade doorway until its plywood covering gave way below him. The plaintiff contends the plywood covering was obscured by leaves and grass and that the defendants had a duty to warn him about the condition of their property unless it was open and obvious. The trial court granted summary judgment in favor of the defendants. The Court of Appeals reversed the trial court's finding, holding there was a genuine issue of material fact about whether or not the condition was open and obvious.

<http://bit.ly/kuxNfz>

South Carolina

Workers' Compensation

Paschal v. Price

The Supreme Court affirmed the Court of Appeals' analysis that Pascal (a repo man) was an employee rather than an independent contractor. They affirmed the recent decision to allow the factors contained in the "right of control" test to be weighed evenly between the claimant and employer. The factors are (1) direct evidence of the right to, or exercise of, control; (2) the method of payment; (3) the furnishing of equipment; and (4) the right to fire.

<http://bit.ly/iQBS4a>

Bartley v. Allendale School District

The Supreme Court found the Commission relied on case law that was subsequently overturned and remanded the claim to determine whether the claimant was entitled to additional compensation based on the "combined effects" of her injury and pre-existing conditions on this pre-July 1, 2007, claim. (Note: "combined effects" was removed from the statute as it applies to post-July 1, 2007, claims.)

<http://bit.ly/mrpy8a>

Lawson v. Hanson Brick America, Inc.

The Court of Appeals held the Circuit Court improperly engaged in fact-finding when overruling the appellate panel's decision. The Circuit Court is tasked with determining whether substantial evidence supported the appellate panel's findings of fact or whether an error of law affected its order. The Court also found the appellate panel improperly refused to consider certain evidence submitted after the initial hearing. The claim was remanded to the panel for reconsideration including the new evidence.

<http://bit.ly/lv4qA>

Litigation

Berberich v. Jack

In this case of first impression, the South Carolina Supreme Court held, under our comparative negligence system, all forms of conduct amounting to negligence in any form, including, but not limited to, ordinary negligence, gross negligence, and reckless, willful, or wanton conduct, may be compared to and offset by any conduct that falls short of conduct intended to cause injury or damage. Additionally, the Court concluded future trial courts should instruct the jury on the definitions of these various terms, in addition to ordinary negligence, when so requested by a party.

<http://bit.ly/iCYeMD>

Argoe v. Three Rivers Behavioral Health, LLC

This case arose out of the involuntary commitment of Ms. Argoe to a psychiatric facility. In affirming the trial court's grant of summary judgment as to Ms. Argoe's claims for false imprisonment, intentional infliction of emotional distress, and defamation, the South Carolina Supreme Court concluded the probate court's involuntary commitment orders were not timely and properly challenged and thus legally presumed valid. Based on these valid orders, the Court found that the psychiatric facility's conduct toward Ms. Argoe was lawful, justified and reasonable.

<http://bit.ly/jmBnyW>

From the Courts continued on next page

MG&C Photo Album



From the Courts, continued:

Hutchinson v. Liberty Life Insurance Company

On appeal before the South Carolina Court of Appeals, Liberty Life argued the trial court inappropriately granted summary judgment to Ms. Hutchinson when (1) the trial court adopted a specialized medical definition of the term "narcotic" in the context of an insurance policy written for laypersons, as opposed to the plain and ordinary meaning of "narcotic" as understood by laypersons, and (2) the operative language of the Liberty Life policy exclusion providing that benefits will not be payable when the insured is "under the influence of any narcotic" was taken verbatim from the South Carolina Insurance Code. The South Carolina Court of Appeals reversed the grant of summary judgment and remanded for further proceedings.

<http://bit.ly/iUY2AQ>

MG&C News

Weddings & Engagements

Charleston attorney **Regan Ankney** was married to David Cobb on July 8.

Raleigh attorney **Webster Harrison** is engaged to Elizabeth Jernigan.

Greenville attorney **Mark Allison** is engaged to Amanda Webb.

Expecting & Births

Charleston attorney **Amanda Blundy** and her husband, Chris, welcomed James Morgan to their family on May 22.

Myrtle Beach attorney **Ashley Melton** and her husband, Duke, welcomed Ellison Gray to their family on April 29.

Columbia attorney **Kelly Morrow** and her husband, Hal, welcomed Riley Amelia to their family on April 25.

Myrtle Beach attorney **Christina Bisset** and her husband, Noah, welcomed Lucas Russell to their family on April 12.

Columbia attorney **Bo Williams** and his wife, Marymac, are expecting their third child in October.

Columbia attorney **Andy Delaney** and his wife, Courtney, are expecting a daughter in September.

Columbia attorney **Edward Rawl** and his wife, Ashley, are expecting their first child in December.

Professional Appointments, Awards & Recognition

Columbia attorney **Rocky Hughey** was named to the board of directors of Kids' Chance of South Carolina.

Columbia attorney **Edward Rawl** has been named American Bar Association Young Lawyers Division District 10 Representative for 2011-2013. He will represent South Carolina and the U.S. Virgin Islands and serve in the ABA YLD Assembly. In addition, he will also serve as a member of the S.C. Bar's Young Lawyers Division Executive Committee.

MG&C welcomes...



Elizabeth Render to the Columbia office. Her practice focuses on workers' compensation defense.



The Faces of MG&C:

Joseph Sandefur

Litigation Attorney, Myrtle Beach

Nickname: Joe

Place of birth: Winter Park, Florida

College/Law School: Rollins College/
Florida Coastal School of Law

Family: My wife, Megan; my 2-year-old little girl, Lily; and a baby boy on the way in August.

Hobbies: Taking my family to the beach and out on the boat.

Pet peeve: Being late to the movies and missing the coming attractions.

Favorite movie: *Heat* or *Risky Business*.

As a child, what did you want to be when you grew up? Either a Ghostbuster or an F-14 fighter pilot (*Top Gun* and *Ghostbusters* were big at the time).

Fun fact: I have a sincere love of heavy metal music and want to name my son Axl, but I cannot get my wife to agree. Is Axl really that bad? I could have chosen Duff or Slash!

Favorite MG&C moment: Being hired, of course! Also, discussing Stephen King books with Dominic.

Favorite sports team: Green Bay Packers and the Gamecocks (my adopted college team).

Favorite food: My mother-in-law's homemade strawberry jam on fresh bread.



Calendar of Events:



August 21-24 - Orlando, Fla.
2011 FWCI Workers' Compensation Educational Conference

Orlando World Center Marriott Resort & Convention Center - www.fwciweb.org

September 9 - Richmond, Va.
MG&C, Swift Currie and Kalbaugh Pfund & Messersmith Litigation Seminar

Hilton Richmond Hotel & Spa/Short Pump - www.mgclaw.com

October 2011 - Nashville, Tenn.
MG&C, Swift Currie and Manier & Herod Litigation Seminar
Location and day to be determined - please check www.mgclaw.com for updated information.

October 16-19 - Myrtle Beach, S.C.
SCWCEA Educational Conference
Embassy Suites at Kingston Plantation - www.scwcea.org

October 19-21 - Raleigh, N.C.
N.C. Industrial Commission Workers' Compensation Conference
Raleigh Convention Center - www.ic.nc.gov

November 17 - Charlotte, N.C.
MG&C 2011 Educational Seminar
Hilton Charlotte University Place - www.mgclaw.com

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