

# MG&C NEWS

Winter 2005

McAngus Goudelock & Courie Attorneys at Law



ATTORNEYS AT LAW

Dear Friends:

2004 was another fun and exciting year at MGC and once again, it was another year of phenomenal growth for our firm. It's hard to believe, but we added 15 lawyers to the MGC family this past year. In North Carolina, we were recognized as one of the 25 largest firms in Charlotte. In South Carolina, we were named the tenth largest firm in the state.

We are also excited about several new practice areas. In addition to our Consulting Group, Angie Kirby joined our firm to lead our Probate and Estate Planning Practice Group. We were also delighted to announce the opening of our Greenville, South Carolina office with Jeff Ezell joining us to lead our workers' compensation section in the upstate. Jeff will be joined in the upstate by Mark Allison and another 2004 member, Tom Chase. As the year drew to a close, we capped off our holiday seminar and reception with the announcement that Mark Davis, George Gallagher, Anne Marie Hagood, and Andrew Ussery joined us as members of the firm.

In addition to our new practice areas, MGC Consulting continues to grow. The Consulting Group hired its first full-time professional, Jeff Thordahl, to lead our lobbying and governmental relation efforts.

It has truly been a phenomenal year for our firm. We continue to be humbled by your support and friendship.

Best wishes for a wonderful holiday season and prosperous new year.

Warm regards,

James R. Courie  
Managing Partner  
McAngus, Goudelock & Courie

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# South Carolina Update

## From the Courts

### General Liability

#### Punitive Damages

In this case, the South Carolina Court of Appeals examined the size and scope of punitive damage awards. The Court, relying heavily on the recent *State Farm Mut. Auto. Ins. Co. v Campbell*, 358 U.S. 408 (2003) decision, reversed and remanded this case on the issue of punitive damages. Here, the jury found the defendants liable for breach of contract accompanied by a fraudulent act and awarded the plaintiffs \$6,191 in compensatory damages and \$786,500 in punitive damages (a 127 to 1 ratio). The court held that the sizable disparity between the punitive and compensatory damages established a presumption that the punitive damages was an unconstitutional deprivation of property and was, in fact, an irrational and arbitrary deprivation of property under the Due Process Clause of the Fourteenth Amendment. The court also found that the trial court had improperly admitted certain evidence of defendants' conduct that was too dissimilar from that involved in this particular case which inflated the reprehensibility of the defendants' conduct so that it unfairly prejudiced the defendants. *Atkinson v. Orkin Exterminating Co.*, 604 S.E.2d 385 (S.C. Ct. App. 2004).

#### UIM Coverage

This case was a declaratory judgment action involving the determination of a setoff in a UIM situation. Here, a man and wife were involved in an auto accident caused by a negligent driver. The at-fault driver had a GEICO policy with liability limits of \$50,000 per person and \$100,000 per occurrence. The wife suffered over \$75,000 in damages from her personal injuries. GEICO paid the wife \$25,000 for her injuries and also paid her husband \$25,000 for his loss of consortium claim resulting from his wife's injuries. The wife then turned to her own carrier, Horace Mann, for UIM coverage. The issue in this case was whether Horace Mann was entitled to a \$50,000 set off (based on the liability policy limits) or a \$25,000 setoff (based on the amount actually tendered to the wife). The Court held that Horace Mann was only entitled to a

\$25,000 setoff on the wife's UIM claim. The Court concluded that South Carolina has interpreted the "per person" liability limit to include loss of consortium claims stemming from the injured person. However, the Court stated that these claims remain independent of one another in all other aspects. Therefore the Court held that the per person liability limit of \$50,000 was properly exhausted and split between the wife's claim and the husband's loss of consortium claim, but that since the wife only collected \$25,000, her UIM claim could only be setoff by \$25,000. *Kizer v Kinard*, 602 S.E.2d 783 (S.C. Ct. App. 2004).

#### Commercial General Liability Coverage

The issue in this case was whether damage caused by faulty workmanship of a road contractor and its subcontractors was covered under a commercial general liability [CGL] policy. The Court held that the property damage caused by the faulty workmanship to the product itself (the road) was not an occurrence under the CGL policy. However, the Court left open that coverage may be provided if the faulty workmanship causes bodily injury or property damage to another, as opposed to the property itself. *L-J, Inc. vs. Bituminous Fire & Marine Insurance Company Opinion No. 25854* (S.C. 2004).

The Court held that a CGL policy did not obligate the carrier to indemnify and defend various homebuilders for claims of claimants which were only economic in nature and based on the diminution in value of the claimant's properties. The claimants owned homes built on a bombing range used in the 1940's. The Court found that the Complaint did not allege any physical injury which would qualify under the definition of "property damage" in the CGL policy. Since these were only economic damages, they did not constitute property damage within the meaning of the policies which defined property damage as physical injury to tangible property. *Auto-Owners Insurance Company vs. Carl Brazell Builders, Inc, et al 588 S.E.2d 112* (S.C. 2003).



### James R. Courie Elected President of the South Carolina Defense Trial Attorneys' Association (SCDTAA)

Jay has been a member of the SCDTAA Executive Committee since 1997 and has chaired both the

Legislative and Program Committees. He previously served as President Elect for the 2003-2004 term, Treasurer for the 2002-2003 term and Secretary for the 2001-2002 term.

His term began in November 2004. The South Carolina Defense Trial Attorneys' Association is made up of over 900 defense attorneys in the state of South Carolina. The SCDTAA was formally organized in 1968. The organization grew out of a series of discussions with insurance and industry representatives about the need for an organized Defense Bar. SCDTAA's main purpose is to promote justice, professionalism, and integrity in the civil justice system by bringing together attorneys dedicated to the defense of civil actions.

## Faces of MG&C



#### Full name

George Douglas Gallagher

#### Joined firm

1997, Columbia office

#### Nickname

Jorge

#### Place of birth

Knoxville, TN, Grew up in Myrtle Beach, SC

#### College/law school

The Citadel and The University of South Carolina

#### Family

Wife--Allison, Son--George Jr. (9 months)

#### Hobbies

Golf, reading military history, and playing with my son

#### Pet peeves

Dirty bathrooms and lines

#### Favorite movies

The Godfather I and II

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

Astronaut

#### Fun fact

Lived in Japan for 2 years as a child

#### Favorite MG&C moment

The day I was hired

# North Carolina Update

## From the Courts

### Workers' Compensation

#### An Act to Clarify the Civil Liability and Increase the Criminal Penalty of Insurance Agents Representing Unauthorized Insurers

Section 58-33-95 of the North Carolina General Statutes was rewritten, and approved by the General Assembly on August 22, 2004. The Act holds insurance agents strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the insurance contract. The Act also provides for increased criminal liability for such agents, and grounds for revocation of the agent's license. The Act will become effective December 1, 2004.

#### A Bill to Reduce Workers' Compensation Premiums

House Bill 1626 will provide a tax credit for safe workplaces that has the effect of reducing workers' compensation insurance premiums for certain employers. It allows an eligible taxpayer a credit equal to five percent (5%) of the amount of workplace premiums it paid during the taxable year. A taxpayer is eligible if it is an employer subject to the Workers' Compensation Act and has no liabilities under the Act during the last five consecutive years. This Act will become effective for taxable years beginning on or after January 1, 2005.

### General Liability

#### Attorneys' Fees Barred if Amount of Verdict, Plus Prejudgment Interest, Exceeds \$10,000

Plaintiff obtained a jury verdict of \$9,500 in a personal injury action. Thereafter, plaintiff was awarded court costs of \$435.00 and prejudgment interest of \$669.76. The trial court held that it could

not award attorneys' fees under N.C. GEN. STAT. § 6-21.1 because the verdict, plus court costs and prejudgment interest, exceeded \$10,000. The Court of Appeals reversed, holding that it was error to add the court costs and prejudgment interest to the verdict when determining whether the amount obtained by plaintiff exceeded \$10,000. The Supreme Court reversed the Court of Appeals, holding that prejudgment interest is to be added to the amount of the verdict before determining whether the plaintiff's award exceeds \$10,000. However, court costs are not to be included. In this case, since the \$9,500 verdict, plus the \$669.76 in prejudgment interest, exceeded \$10,000, attorneys' fees were barred.

*Brown v. Millsap*, 358 N.C. 212, 594 S.E.2d 1 (2004).

#### Obtaining Punitive Damages From A Corporate Defendant

The corporate defendant owned and operated a nightclub. Their bouncers had beaten up plaintiff, whom one of the bouncers suspected had assaulted him a week earlier. When plaintiff sued for the personal injuries he sustained in the assault, defendant argued the bouncers were acting outside the course and scope of their employment. The Court of Appeals first affirmed the trial court's holding that the bouncers were acting within the scope of their employment. The Court then analyzed N.C. GEN. STAT. § 1(d)-15c, which provides that punitive damages cannot be assessed against a corporation unless the officers, directors, or managers of the corporation participated in or condoned the conduct constituting the aggravating factor giving rise to punitive damages. In this case, punitive damages were appropriate because the manager of the nightclub directed the bouncers to approach plaintiff, and condoned the attack. He also failed to intervene in the beating. *Wallace v. M, M&R, Inc.*, N.C. App., 600 S.E.2d 514 (2004).

## MG&C Elects Four New Members

In November, MG&C announced that Mark Davis, George Gallagher, Anne Marie Hagood and Andrew Ussery have been elected as members of the firm.



Mark graduated from Furman University and the University of South Carolina School of Law. He joined MG&C's Columbia office in 2000 and moved to the Charleston office in 2001.



Anne Marie graduated from Wake Forest University and the University of South Carolina School of Law. She joined MG&C in the Columbia office in 1999 and the Charleston office in 2000.



George obtained his undergraduate degree from the Citadel and his Juris Doctrate from the University of South Carolina. He joined MG&C's Columbia office in 1997.



Andrew Ussery obtained his undergraduate degree from Wake Forest University and his law degree from the University of North Carolina at Chapel Hill. He joined the MG&C Charlotte office in 1999.

## DID YOU KNOW?

# MG&C Legal All-Star Athletes

—by Jim Lichty, MG&C poet-in-residence

Everybody is aware MG&C employs a good number of legal all-stars but would it surprise you to know that many of our attorneys were at one time athletic all-stars as well?

No fewer than four MGC attorneys played collegiate golf. **Mark Allison** tread the links as a member of the Erskine Flying Fleet while **Tom Bacon** was a duffer for the Furman Paladins. In addition to reading pleadings, **Scott Garrett** knows a thing or two about reading greens. Scott played for the Western Carolina Catamounts and was named to the All Southern Conference team twice. Finally, **Bo Williams** played from the back tees as a member of the Washington and Lee Generals golf team. After graduation, Bo event spent a few years playing on a professional golf tour before making his move to law school.

We certainly hope that **Brian O'Keefe** looks good in white as he played tennis for the Furman Paladins. And in the oldest sport of all, **Andrew Ussey** was a four-year letterman as a member of the Wake Forest Demon Deacons track team. Ussey also served as the squad's captain during his senior year. Don't worry about Andrew however. We know he got through college by running away from his competition but his approach to practicing law is exactly the opposite. And this is where I should mention that **Mundi Moss** held the Orangeburg Prep track record in the 100 and 300 meter hurdles for exactly one year. Way to go, Mundi!

Not all of the athletes roaming the halls of MGC played "country club" sports, however. **Rocky Hughey** played for the Wofford Terriers basketball team his freshman year, highlighted by a career-high four points against Army. **J.D. Keister** roamed the hardwood for the Bowling Green Falcons practice squad basketball team. It should hardly come as a surprise that big man **Tom Chase** played hoops in college for the Furman Paladins. And **Doc Morgan** was a baller for the Citadel Bulldogs when he wasn't marching or learning the finer arts of combat.

The firm even employs several former collegiate football players. **Rick Pierce** was a practice squad running back for the William & Mary Tribe. Some of our attorneys even got playing time. **John Spainhour** was a linebacker for the Davidson Wildcats. Although John played a Division III schedule, chances are he never matched up against a player of **Boomer Foster's** caliber. Boomer started at tight end for the South Carolina Gamecocks. His career highlights include a critical 13 yard reception to set up the winning touchdown in the Gamecocks' 1993 match up against Georgia and a touchdown reception in the 1995 Carquest Bowl.

MGC salutes the achievements of its former collegiate athletes and begs you not to think the rest of us just sat around looking for parties in college. Well, wait a minute...

## And Another Fun Fact



**Steve Bates** was elected as an Administrative Law Judge by the South Carolina General Assembly in 1994 at the age of 31. At the time, he was the youngest judge in the state. Steve Bates is a partner in MG&C's Columbia office who specializes in administrative law, government relations, election law and local government law.

## News

### Expecting

**Cindi and Jefferson Hodges.** March 2005

### Births

**Rob and Kiersten Starnes** welcomed **Hannah Jo Starnes** into their family on October 24

**Bill and Courtney Nixon** welcomed **William Harold Nixon, III** on October 27

**Brian and Aimee O'Keefe** welcomed **Leyton Walker O'Keefe** on November 2

**Nikki and Jay Nicholson** welcomed **Amanda Clark Nicholson** into their family on November 8

**Jimmy and Nancy Fennell** welcomed **Katelyn Fennell** into their family on November 22

### Engagement/Wedding

**Bo Williams and MaryMac Williams**  
Married October 2004

**John Spainhour and Missy Sumerell**  
Married November 2004

### Professional Appointments/ Awards/Recognitions

**Sterling Davies** was named Membership Chairman of the Defense Research Institute's Construction Law Committee.

**Rusty Goude-lock** and **Hugh McAngus**, members in our Columbia office, have been selected by their peers as among the best attorneys in their respective fields of practice in the 2005-2006 edition of *The Best Lawyers in America*.

**Jay Courie** has been named the President of the South Carolina Defense Trial Attorneys' Association.



# MG&C Profile

All six of the associates listed below joined MG&C in October 2004.

## William Thomas "Tom" Bacon IV



Tom is in our Charleston office. He graduated from Furman University in 2001 with degrees in political science and history, and received his Juris Doctorate from the University of South Carolina School of Law in 2004. He was admitted to the South Carolina Bar and the United States District Court, District of South Carolina in 2004. Tom's practice focuses on the defense of employers and carriers in workers' compensation claims.

## J. Andrew "Andy" Delaney



Andy is in our Columbia office. He graduated from the University of South Carolina with a Bachelor of Science degree in finance in 1999. He received his Juris Doctorate from the University of South Carolina School of Law in 2004. He was admitted to the South Carolina Bar. His practice concentrates on general liability defense including automobile negligence, premises liability, products liability, and construction defects.

## James "Jimmy" M. Fennell



Jimmy is in our Columbia office. He graduated cum laude from the University of South Carolina with a Bachelor of Arts degree in history. He earned a Juris Doctorate from the University of South Carolina School of Law. His practice concentrates on workers' compensation defense.

## Kelly A. Fitzharris



Kelly is in our Columbia office. She graduated from Clemson University in 1999 with a Bachelor of Arts degree in history. She obtained her Juris Doctorate from Loyola University New Orleans School of Law in 2004. Kelly concentrates her practice in the area of workers' compensation defense.

## Bonnie B. Goldsmith



Bonnie is in our Columbia office. She is a cum laude graduate of the University of South Carolina where she earned a Bachelor of Arts degree in psychology. She earned a Juris Doctorate from the University of South Carolina School of Law. Bonnie's practice concentrates on workers' compensation defense.

## Amanda M. Morgan



Amanda is in our Charleston office. She is a 2001 graduate of The Pennsylvania State University with Bachelor of Arts degrees in political science and history. She earned a Juris Doctorate from Villanova University School of Law in 2004. Amanda's practice focuses on workers' compensation defense.

## MG&C: Coming Soon to an Event Near You!

MG&C's Party and Putt-Putt Tournament at the S.C. Workers' Compensation Educational Association Annual Conference in Hilton Head, Atlanta Happy Hour and Atlanta Workers' Compensation Seminar, MG&C Educational Seminar in Charlotte, and MG&C's Holiday Gala in Columbia.



# Calendar

## OF EVENTS

**Feb 25-27** 26th Annual South Carolina Workers' Compensation Medical Seminar at the Hilton Savannah DeSoto in Savannah, Georgia

**March 6** MG&C 10th Anniversary

**DID YOU KNOW** that MG&C now provides Estate Planning services for your individual or business' needs. Everyone needs a Will, Power of Attorney, Health Care Power of Attorney and Living Will as a basic estate plan. If you have minor children, testamentary or revocable trusts are a necessity. If you would like to learn more about our estate planning services, please e-mail Angela Kirby at [akirby@mgclaw.com](mailto:akirby@mgclaw.com). Our estate planning division also will provide in-house employee seminars on the importance of having an estate plan, and you may request a date by contacting Bobbi Johnson at (803) 227-2204.

### COLUMBIA OFFICE DONATES TO HARVEST HOPE

This year our Columbia office did a food drive for the Harvest Hope Food Bank in conjunction with our Thanksgiving luncheon. We were able to donate 64 pounds of food to the local food bank.

Harvest Hope Food Bank was born and opened its doors on April 4, 1981. Begun as an Emergency Food Box program, Harvest Hope has grown into a regional food distribution program providing food, support and hope to thousands of hungry people in the Midlands and Pee Dee regions of South Carolina. Today, Harvest Hope Food Bank serves 18 counties in SC. Their mission is "to gather and share quality food with dignity, compassion and education."

# Web Sites of Interest

## CHECK THESE OUT!

### [www.411.com](http://www.411.com)

This great website allows you to find people, business listings, phone numbers, addresses, area codes, ZIP codes and postal codes. It also includes a very useful "reverse phone" option which allows you to locate a name and address based upon the phone number that shows up on your caller ID screen.

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

This helpful website is for crossword puzzle enthusiasts. It provides immediate answers for those difficult crossword puzzle clues.

### [www.golf.about.com](http://www.golf.about.com)

This website is the ultimate site for golfers. No matter what your skill level, this site contains something for everyone, including helpful tips, message boards, chat rooms, golf books and videos, photographs, and lots more.

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