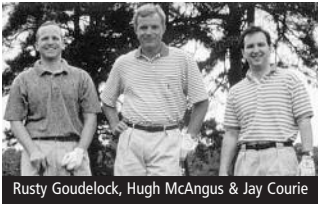


# MG&C NEWS

Spring 2005

McAngus Goudelock & Courie Attorneys at Law

## McAngus Goudelock & Courie Celebrates 10th Anniversary



Rusty Goudelock, Hugh McAngus & Jay Courie

Founding Members Hugh McAngus, Rusty Goudelock and Jay Courie never expected the kind of growth MG&C has seen over the past 10 years. "We couldn't be happier with where we are right now," says Senior Partner Hugh McAngus. "But to be honest, we never really planned it this way."

Today, MG&C is a full-service firm with more than 55 attorneys and 160 people on staff. Our clients and our people are really what have given us the ability to grow like this," says Rusty Goudelock. "We are very fortunate to have great

clients and great people. And when you have a dynamic that meshes like that, growth is inevitable



After opening that second office in Charlotte, locations in Charleston and Greenville soon followed.

"We concentrated on growing wisely not just geographically. The most important thing to us was to maintain our culture. And that meant hiring the right people. So we go out and look for people who have the same work ethic; people with whom we can build a relationship, regardless of whether we're hiring attorneys or staff members," says Jay Courie.

Growth has also led to diversity. While MG&C first concentrated on workers' compensation law, we are now a full service firm with practice areas that include a full range of litigation, commercial and consumer law, product liability, construction, government relations, estate planning and probate litigation.

"Where we're headed in the next 10 years, I'm not sure. But I do know our first priorities are to remain client-focused and to grow better, not just bigger," said Courie. "It sounds like a cliché, but I think what our clients appreciate about us most is that we respect them and understand we wouldn't be here if it weren't for them. It's amazing to come as far as we have in over the past 10 years, and I'm looking forward to the years to come.



## MG&C Charlotte Gets New Address

Spring is the season of new beginnings, especially at MG&C Charlotte. We are pleased to announce the relocation of our Charlotte office to One Fairview Center effective April 1, 2005.

MG&C will occupy the entire top floor of the seven story building. The new office will feature improved conference and meeting facilities with four spacious conference rooms specifically designed to provide an ideal setting for mediations, depositions and arbitrations. The firm is confident that the new facilities will enable our lawyers and staff of legal professionals to provide an even higher level of service to our clients.

We want to thank all of you whose continued support has made all of the firm's growth and progress a reality. We look forward to seeing you soon at our new home in Charlotte. Don't forget: Moving day is April 1, and that's no joke!

## South Carolina Passes Tort Reform

On Monday March 21, 2005 Governor Mark Sanford signed into law historic tort reform legislation. Leadership in both the House and Senate worked tirelessly to adopt meaningful tort reform. Among the reforms is an amended venue statute that for most foreign corporations means they may be sued in the county of their principal place of business or where the cause of action arose. In addition, joint and several liability only applies to defendants found 50% or more at fault. Those less than 50% are only liable for their percentage of fault. Other changes include a reduction in the statute of repose to 8 years, the repeal of the motor carrier statute, changing the post judgment interest rate and codifying frivolous lawsuit sanctions. In addition significant medical malpractice legislation should be completed shortly. Along with a \$350,000 cap on non-economic damages the new law requires mediation, provides guidelines for an offer of judgment in all civil cases except domestic and changes qualifications for expert witnesses.

**EFFECTIVE DATE** - For the most part these laws will apply to causes of action arising after July 1, 2005. A summary and copy of the bill is available at [www.mgclaw.com](http://www.mgclaw.com).

# South Carolina Update

## From the Courts

### Workers' Compensation

#### Supreme Court Limits the Withdrawal of a Form 50 to Prior to the Hearing

The Supreme Court held that a Claimant may withdraw their Form 50 pursuant to Regulation 67-609 only when the request to withdraw is made prior to the hearing. The court based its finding on its interpretation of Regulation 67-609 as a whole and its preference to allow the Commission to construe regulations. (For more information, see profile story.) *Spruill v. Richland County School District*, Opinion No. 25942 (2005)

#### Effective Voluntary Coverage Supersedes Subsequent Assigned Risk Policy Making Reg. 67-409 Inapplicable

Employee was injured on the job on June 27, 2000, and there was no question that he was entitled to Worker's Compensation benefits. Employer carried Worker's Compensation insurance through INSCORP until some time in June 2000 when they sought an assigned risk policy through Capital City Insurance. Capital, unaware that Employer still retained a policy with INSCORP, accepted Claimant's claim and began providing benefits. In August 2000, Capital learned of INSCORP's coverage, and tendered Employee's claim to INSCORP. In response, INSCORP issued a flat denial of benefits to Employee. Capital filed a cancellation to cease providing benefits to Claimant, citing that Employer had effective voluntary coverage and made material misrepresentations in his application for coverage. INSCORP's policy was not cancelled until August 17, 2000. The Single Commissioner ruled that because Capital's policy was the most recent effective policy, Capital was the responsible carrier pursuant to Regulation 25A S.C. Code Ann. Reg. 67-409. The Circuit Court reversed and found that INSCORP was the responsible carrier and that Capital's coverage was void *ab initio* due to the Employer's material misrepresentations in his application for coverage. The Supreme Court affirmed the decision of the Circuit Court finding that INSCORP was the proper carrier to provide benefits. The Court determined that because Employer had voluntary coverage in effect, his assigned risk policy never became effective, and accordingly there was no dual coverage making S.C. Code Ann. Reg. 67-409 inapplicable. *Rodriguez v. Hector Romero and the Insurance Corporation of New York and Capital City Insurance Co.*, Opinion No. 25948 (2005)

### General Liability

#### Venue

Plaintiff suffered heat exhaustion, dehydration, and acute abdominal pain while on the job at CSX's facility in Greenwood, South Carolina. He remained out of work for two weeks, attempted to return, but had recurring problems. Plaintiff never returned to work.

Plaintiff filed a complaint against CSX in Hampton County asserting claims under the Federal Employer's Liability Act (FELA) and the Locomotive Inspection Act (LIA), alleging that CSX was negligent for failing to provide him with a safe place to work. CSX filed a motion to transfer venue to Greenwood County. This motion was denied. The case proceeded to trial in Hampton County, and the jury returned a verdict for Plaintiff in the amount of \$1,000,000.

The lower court had ruled venue was proper in Hampton County because CSX owned property and transacted business there. On appeal, the South Carolina Supreme Court held CSX did not reside in Hampton County and venue should have been transferred to Greenwood County. For purposes of venue, the Court decided a corporate defendant resides in any county where it (1) maintains its principal place of business or (2) maintains an office and agent for the transaction of business. Previous decisions had allowed

venue to be set in any county where the corporate defendant owned property and transacted business. The Court ruled the previous "owns property and transacts business" test for venue is no longer viable. *Whaley v. CSX Transportation, Inc.*, 2005 S.C. Lexis 38, Op. No. 25935.

#### UIM Benefits

Sixteen-year old Christian Coakley became a quadriplegic as a result of a car accident in which he was a passenger. He was a passenger in a car driven by Scott Mitchell. The automobile belonged to Scott's older brother, Christopher, and was titled in Christopher's name. Scott had permission to use Christopher's car.

The car was insured through Horace Mann, with Scott and Christopher's mother, Dee Dee Mitchell being the named insured. The policy provided liability limits of \$50,000 for personal injury. Dee Dee also maintained policies on three other vehicles, two of these policies carrying liability limits of \$50,000 and one carrying a liability limit of \$250,000. None of these other policies provided primary coverage for the vehicle involved in the accident. After Horace Mann paid the liability limits on the car involved in the accident, Coakley sought excess coverage under the other three policies on the basis that the other policies provided excess coverage for non-owned vehicles. Coakley argued the vehicle involved in the accident was a non-owned vehicle because Christopher owned the car and was not a "relative" within the meaning of the policies.

An amendatory endorsement defined a non-owned car as a private passenger car . . . not: 1. owned by; 2. registered in the name of; or 3. furnished or available for the regular use of you or your relatives. Because the car was owned by Christopher and not the named insured (Dee Dee), the issue became whether Christopher furnished the car or made it available for the "regular use" of Dee Dee or her "relatives." The policies define "relative" as someone "related to you by blood, marriage or adoption who lives with you. It includes your unmarried and dependent child who is away at school."

The Supreme Court held Christopher was not a relative because he was not a "dependent child" on his mother. The evidence indicated his father provided him with most of his financial support.

The Court also held that the policy language did not prohibit stacking of these policies despite a paragraph that read "if two or more vehicle liability policies issued by us to you apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability." The Court reasoned that a separate paragraph in the policies extending excess coverage to insureds when they use "non-owned" cars was independent of the limitation contained in the former paragraph. *Coakley v. Horace Mann Insurance Co.*, 2005 S.C. App. Lexis 14.

#### Meaningful Offer of UIM Benefits

The Court held in this case that Progressive made a meaningful offer of UIM coverage when its form, titled "UIM Selection Form," allowed the Plaintiff to choose from eleven different amounts of UIM coverage up to the amount of liability coverage, a twelfth level of coverage above the liability limit and a thirteenth option to select no UIM coverage whatsoever. There was also a space on the form for the insured to sign acknowledging that the optional coverage had been offered. The Court held that this offer gave the insured the opportunity to make an intelligent and informed decision on whether to purchase UIM coverage. The Court also found this case distinguishable from others because the insured purchased UIM coverage but specifically rejected the amount equal to his liability coverage.

The court also held it is sufficient for an insurer to offer all of the coverage amounts the insurer is authorized to sell by the Department of Insurance, without providing a blank line for insureds to write in any amount of coverage up to the policy limit. *Progressive Cas. Ins. Co. v. Leachman*, 2005 S.C. Lexis 2.

## South Carolina Legislative Update

The following legislation will be considered by the South Carolina General Assembly this session:

### Liability

#### Insurance Carriers' Ability to Deny Benefits

Senate bill 529 provides that insurance carriers may deny medical, hospital, and disability benefits to any person who sustains bodily injury in a motor vehicle accident or collision where the injured person was not wearing a seatbelt.

### Workers' Compensation

#### Appealing Administrative Decisions

House bill 3184 provides judicial review of an administrative decision is to go to an Administrative Law Judge. The decision of an ALJ is appealed to the Court of Appeals.

#### South Carolina Workers' Compensation Reform Act of 2005

House bill 3205 proposes several changes to the Workers' Compensation Act, including the following: (1) limiting an award of permanent impairment to no more than 150% of the AMA guidelines for impairment; (2) not allowing compensation for

injury or death due to the employee's willful misconduct; and (3) not allowing compensation to be paid for an injury or death of an illegal alien, who gained employment through fraudulent means or methods, such as falsification of an application, presentation of an invalid social security number, or falsification or presentation of invalid immigration papers.

#### Captive Insurance

House bill 3643 states an employer who may self-fund workers' compensation coverage is authorized to write workers' compensation coverage directly through a captive insurance company.

#### Commissioners Bound by the Code of Judicial Conduct

Senate bill 127 provides Workers' Compensation Commissioners are bound by the Code of Judicial Conduct and requires the Commissioners and their Administrative Assistants to attend a yearly workshop concerning ethics and the Administrative Procedures Act.

#### Persons Exempted from the Workers' Compensation Act

Senate bill 346 exempts owner-operators of vehicles leased to motor carriers who have signed independent contractor agreements with a motor carrier from the Workers' Compensation Act.

#### Communication Between a Healthcare Provider and an Employer

Senate bill 521 defines "medical and vocational information" and "rehabilitation professional" and it provides the manner of communication between a healthcare provider and an employer is not limited if the information is related to a workers' compensation claim.

## North Carolina Update

### From the Courts

#### General Liability

##### Arbitration Can Result In Waiver of Coverage Defense

Plaintiff collided with an abandoned truck on the side of a highway and claimed that he was unable to locate any insurance coverage for that truck. Plaintiff exercised his right to submit the case to arbitration, and the panel found for Plaintiff. However, the panel did not make a finding that the abandoned truck was uninsured, a prerequisite to UM coverage. The trial court confirmed the arbitration award. On appeal, the UM carrier argued that coverage did not exist for the award because the panel did not find that the truck was uninsured. The appellate court held that because the carrier never sought a determination on the coverage issue before submitting to the arbitration, the carrier waived any right to object to the arbitration award based on a lack of coverage. *Miller v. Roca & Son, Inc.*, 2004 N.C. App. LEXIS 2057, 604 S.E.2d 318 (November 2004).

##### Attorneys' Fees

Plaintiff allegedly injured her wrist and neck when Third-Party Defendant's car, in which Plaintiff was riding, collided with the car in front of him and Defendant collided with the rear of Third-Party Defendant's car. Before the trial, Third-Party Defendant settled with Plaintiff. The trial court accordingly reduced the jury's award

against Defendant by the amount of Plaintiff's settlement with Third-Party Defendant. That reduction actually reduced Plaintiff's award to less than \$0. However, the trial court still awarded attorney's fees to Plaintiff under N.C. Gen. Stat. §6-21.1 because she was the prevailing party at trial and she obtained a judgment for damages. The appellate court affirmed this award under Rule 68, stating that the total amount of the judgment for Plaintiff exceeded Defendant's offer of judgment, despite the fact that Plaintiff's judgment was later reduced. *Reinhold v. Lucas*, 2005 N.C. App. LEXIS 10, 606 S.E.2d 412 (January 2005).

##### Depositions Are Included In Definition of "Costs"

Plaintiff voluntarily dismissed her personal injury suit, and Defendant moved for costs, including the costs Defendant incurred in taking depositions related to the case. The appellate court held that "costs" include "deposition expenses," unless the depositions were unnecessary, even though an award of deposition expenses is not expressly allowed by statute. This includes expenses for taking depositions, videotaping depositions, obtaining copies of depositions from a reporting service, and court reporting services. *Daniels v. Winston-Salem/Forsyth County Board of Education*, 2005 N.C. App. LEXIS 153 (January 2005).

# North Carolina Update

## From the Courts

### Workers' Compensation

#### Coming and Going Rule

The Claimant was required to make bank deposits after her shift at The Dollar Store, and she was involved in a car accident after making such a deposit when she was driving home. The Court held that since driving to the bank and making deposits was a regular, routine part of the Claimant's job, and because the accident occurred after the Claimant completed her regular job duties and was on her way home, the coming and going rule applied. Furthermore, the special errand exception to the coming and going rule did not apply because the night deposits occurred with such frequency and regularity. *Gillette v. The Dollar Tree Stores, Inc.*, 2005 N.C. App. LEXIS 119 (2005)

#### Voluntary Resignation to Maintain Work Record

The Claimant's union representative told him that he was about to be fired and that it would appear better on his record if he resigned. The Claimant resigned pursuant to the union representative's advice. The Court held that such a resignation was not voluntary since it was in the face of an imminent dismissal. Therefore, the Court determined that it should not be considered voluntary when an employee resigns because he wishes to preserve an otherwise positive work record rather than wait for an inevitable termination and the *Seagraves v Austin Co. of Greensboro* analysis could be applied to such cases. *White v. Weyerhouse Co.*, 606 S.E.2d 389 (2005)

#### Experts' Opinion Must Be "With Reasonable Medical Probability"

A Claimant's doctor testified that she could not give an opinion with reasonable medical probability regarding the Claimant's back injury. Rather, she repeatedly prefaced her statements by stating "my suspicion is" and "suspect." The Court concluded that the doctor's testimony was insufficiently reliable and she did not possess enough information regarding the Claimant's back injury to satisfy the requirements for medical causation. *Alexander v. Wal-Mart Stores, Inc.*, 603 S.E.2d 552 (2004)

## North Carolina Legislative Update

### Liability

#### Aggressive Driving Prohibited by Statute

Effective for all offenses committed after November 30, 2004, the motor vehicle statutes are amended to add an entire new section prohibiting aggressive driving. NCGS §20-141.6: Any person who operates a motor vehicle on a street, highway, or public vehicular area is guilty of aggressive driving if the person is speeding and drives carelessly and heedlessly in willful or wanton disregard of the rights or safety of others. A person convicted of aggressive driving is guilty of a Class 1 misdemeanor. To prove a violation, the State must show that the person committed two or more of the following while speeding:

- (1) Running through a red light.
- (2) Running through a stop sign.
- (3) Illegal passing.
- (4) Failing to yield right-of-way.
- (5) Following too closely

### Workers' Compensation

#### Death Benefits

To promote prompt payment of death benefits, the IC recently adopted a policy to clarify that an employer, carrier or administrator may voluntarily pay death benefits on the uncontested part of a claim prior to an award or order of the Commission determining all of the issues in dispute.

In cases where compensability is not disputed, but a contested claim exists over who is entitled to death benefits or the amount of death benefits payable; an employer, carrier or administrator may voluntarily pay the undisputed benefits to eligible beneficiaries without a final award or order of the Commission resolving all issues in the claim.

The parties making the undisputed payment shall provide notification to the Industrial Commission in writing of the amounts and dates of payment and shall receive a credit in the full amount of its payments against any benefits which may ultimately be awarded by the Industrial Commission.

# News

### Expecting

**Peter** and **Elizabeth Balthazor**, April 2005  
**Sterling** and **Kristie Davies**, June 2005  
**Jason** and **Catherine Lockhart**, Sept. 2005

### Births

**Boomer** and **Kathryne Foster** welcomed **Mattie Amelia Foster** into their family on February 21

### Engagement/Wedding

**Hugh** and **Evon McAngus**  
Married January 22, 2005

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

**Rocky Hughey** engaged to **Eveleigh Horton**  
Wedding April 2005

**Kelly Fitzharris** engaged to **Hal Morrow**  
Wedding October 2005

**Mundi Moss** engaged to **Michael George**  
Wedding October 2005

**Katherine McCarthy** engaged to **Matt Greene**  
Wedding Fall 2005

### Professional Appointments/ Awards/Recognitions

**Rusty Goudelock** has been appointed Vice-Chairperson of the SC Bar's Workers' Compensation Section effective July 1, 2005 for the SC Bar's 2005-2006 term.

**Mary Margaret Hyatt** was appointed to a general member post on the current council for the South Carolina Bar Health Care Law Section Council from 2005 until 2008.

**Andrew Ussery** will be speaking at the Workers' Compensation Panel Discussion at the Charlotte Regional Safety and Health School on March 23, 2005.

**Andrew Ussery** and **Rob Starnes** represented the defendant in *Collins vs. Speedway Motorsports*. NC Lawyers Weekly listed the decision as one of the 100 most important issued by the appellate courts in NC from July 1, 2004 through December 1, 1004. *Mickey S. Collina, Employee, Plaintiff, v. Speedway Motor Sports Corp. Employer, and Royal and SunAlliance Carrier, Defendants*. NO. COA03-853. *Court of Appeals of North Carolina*. 598 S.E.2d 185: 2004 N.C. App. LEXIS 1175

**Stuart Moore**, formally of our Columbia office, has moved to MG&C's Greenville office. Stuart focuses his practice on workers' compensation defense.

# MG&C Celebrates 10 Years!



## LOOKING FOR AN ESCAPE?

Let MG&C rescue you from your HECTIC work week on April 21 at Village Tavern in Charlotte, 5-7 pm.

**WE LOOK FORWARD TO RESCUING YOU WITH SOME FUN!**

## Columbia Office Contributes to Care Package Sent to Troops in Iraq

In February, Columbia paralegal Fern Potter and friends worked tirelessly preparing care packages. They baked and shipped over 500 cookies as well as items that the troops had requested such as coffee, wipes, powdered drink mixes, instant grits, bubble gum, and more. In addition, MG&C was happy to donate insulated coffee mugs.

## Faces of MG&C



**Full name:** James Russell Goudebeck, II  
**Joined firm/office:** 3/6/95, Columbia office  
**Nickname:** Rusty  
**Place of birth:** Winnsboro, SC  
**Education:** The Citadel/USC School of Law  
**Family:** Wife (Diedri) and 3 Daughters (Chandler, age 14; twins Anne Elise and Hannah, age 10)  
**Hobby:** Flying

**Pet peeves:** Things girls fight over (see "Family" section above)

**Favorite movie:** Schindler's List

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

**Fun fact:** Can ask for a beer in 5 languages (French, German, Spanish, Dutch and, of course, English)

**Favorite MG&C moment:** Watching Chad Abramson lose play money to Boomer Foster at our Inaugural MG&C Attorney Poker Tournament

## Hugh McAngus Wins at SC Supreme Court



On February 22, 2005, the South Carolina Supreme Court issued a decision in *Spruill v. Richland County School District 2*, a case argued by our own Hugh McAngus, and held that a Claimant cannot withdraw a Form 50 following a hearing.

The case of *Spruill v. Richland County School District 2* began in 1999. Claimant obtained a report from a doctor linking her disability to exposure to construction dust at her workplace. Defendants did not take the opportunity to depose Claimant's doctor before the January 17, 2000 hearing; therefore, the Commissioner ordered the record to remain open to allow Defendants to take the deposition. The doctor surprisingly opined the Claimant's disability was not connected to her exposure to dust in the workplace. In April 2000 the Commissioner issued notes of decision and requested an Order denying Claimant's request for permanent disability benefits. Claimant then attempted to withdraw her Form 50.

In her argument to the South Carolina Supreme Court, Claimant asserted the language of 25A S.C. Regulation 67-609 permitted her to withdraw her hearing request at any point in the proceeding before the Commissioner's Final Order is filed. Defendant's argued the regulation only applied when the request is made prior to a hearing. The South Carolina Supreme Court agreed with Defendants and found Regulation 67-609 discusses withdrawing a request prior to the hearing and the procedures associated with such action. Accordingly, the Supreme Court held a Claimant may only withdraw a Form 50 prior to the hearing before the Single Commissioner.

Congratulations to Hugh for this important victory! A copy of the South Carolina Supreme Court decision can be found at [www.sccourts.org](http://www.sccourts.org).

# Calendar

## OF EVENTS

- April 13-15** North Carolina Self-Insured Conference at the Holiday Inn in Wrightsville Beach, NC
- April 20-22** Atlanta Claims Association Convention at the Holiday Inn Gwinnett Center in Duluth, GA
- April 21** MG&C Client Happy Hour at the Village Tavern in Charlotte, NC
- May 4-6** North Carolina Adjusters Association Conference at the Sheraton Charlotte Airport Hotel in Charlotte, NC

### Thursday, May 12

MG&C will host an **ATLANTA CLIENT HAPPY HOUR** at Athens Pizza Kouzzina from 5:00 pm-7:00 pm.

### Friday, May 13

MG&C and Goodman McGuffey Lindsey & Johnson are hosting an **Educational Litigation Seminar** in Atlanta, Georgia at the Hilton Atlanta Northeast. The seminar has been submitted to the North Carolina Department of Insurance for six continuing education credits. Please call or email Kim Schneider at 803-227-2282 or [kschneider@mgclaw.com](mailto:kschneider@mgclaw.com) for more information.

## DID YOU KNOW?



Brian O'Keefe, an attorney in MG&C's Charleston office, eloped to Grand Cayman Island in 2001 with a girl he sat next to in high school home-room. They now have two sons.

## Web Sites of Interest

### CHECK THESE OUT!

#### [richlandonline.com/probate.htm](http://richlandonline.com/probate.htm)

This site is a great link for probate and estate planning information in South Carolina.

#### [salaryclock.com](http://salaryclock.com)

This site allows you to compare your real time earnings to those of many celebrities, politicians, and business executives.

#### [equifax.com](http://equifax.com), [transunion.com](http://transunion.com), [experian.com](http://experian.com)

With identity theft becoming an increasing problem in the United States, it is extremely important to regularly review your credit report. The above three sites are the home pages of the three major credit bureaus. Access any one to obtain a credit report.

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

Check out our newsletter online

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

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