

# MG&C NEWS

Winter 2004

McAngus Goudelock & Courie Attorneys at Law



ATTORNEYS AT LAW

Dear Friends & Clients:

Wow! What a year. As we close 2003 and look forward to 2004, we would like to take this opportunity to thank each and every one of you for your continued support.

2003 was a fun and exciting year for us. Here are just few of the things we accomplished in 2003.

- Added eight new lawyers
- Named one of South Carolina's fastest growing companies
- Celebrated our eighth anniversary in Columbia and fifth in Charlotte
- Registered over 400 guests at our holiday educational seminar
- Started our administrative law and governmental relations practice group
- Moved into our new office in the Vista in Columbia

We continue to strive to balance our growth with continued quality legal representation and service.

We are excited about the prospect of 2004. We anticipate moving into new office space in Charleston in March, and we will continue to hire good lawyers and good people to provide the quality of service you have come to expect.

I hope all of you had a wonderful holiday season and look forward to a prosperous and happy new year.

With kind regards,

James R. Courie  
Managing Partner  
McAngus, Goudelock & Courie, LLC

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# South Carolina Update

## From the Courts

### Contracts

#### Indemnity Agreement Strictly Construed

The South Carolina Supreme Court held an indemnity provision purporting to relieve an indemnitee from the consequences of its own negligence shall be strictly construed. Absent clear and unequivocal terms, an indemnity contract will not be construed to indemnify the indemnitee against losses which are the consequence of its own negligence.

*Laurens Emergency Medical Specialists v. M.S. Bailey & Sons Bankers*, 584 S.E.2d 375 (S.C. 2003).

### Insurance

#### Underinsured Coverage/Attorney-Client Relationship.

The South Carolina Court of Appeals held an attorney-client relationship is not created between a UIM carrier's attorney and the named defendant. Absent the attorney-client relationship, a UIM carrier's attorney may not assert the attorney-client privilege to protect communications with the defendant. If the privilege could be asserted at the defendant's deposition, the Court held it may be waived if the attorney fails timely to move for a protective order pursuant to South Carolina Rule of Civil Procedure 30(j)(3).

*Crawford v. Henderson*, 2003 WL 22705334 (S.C. Ct. App. 2003).

#### Independent Insurance Adjusters

The South Carolina Supreme Court declined to recognize a general duty of care owed by an independent insurance adjusting company to an insured. The acts of the adjuster or adjusting company, as agent, may be imputed to the insurer in a bad faith action.

*Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co.*, 586 S.E.2d 586 (S.C. 2003).

### Workers' Compensation

#### Personal Comfort Doctrine

While working as a paramedic, the Claimant and a co-worker took a smoke break during which the co-worker retrieved a pistol from her car to show the Claimant. While examining the gun, the Claimant accidentally shot himself in the leg. The Workers' Compensation Commission found the claim compensable because it occurred during a smoke break which the courts have recognized as an incident of employment covered by the "personal comfort doctrine." The Circuit Court and South Carolina Court of Appeals affirmed the Commission's finding of compensability. The South Carolina Supreme Court reversed the Court of Appeals, finding the accident did not "arise out of" employment even though it may have occurred during "the course of employment." The Court distinguished the case from other smoke break injury cases by noting the injuries in the prior cases were occasioned by employment hazards attendant to the smoke break. In the instant case, Claimant's injury was caused by a gun which was not a natural hazard and was in no way connected to his employer's business.

*Dukes v. Rural Metro Corp. and Reliance National Indemnity Company*, 587 S.E.2d 687 (S.C. 2003).

## Legislative and Administrative News

The South Carolina General Assembly will reconvene in January 2004. Tort reform and at-will employment will be among the topics covered in the upcoming session. However, budget issues will likely drive the majority of the session as legislators attempt to find ways to fund agencies facing severe budget cuts. It is unlikely costly new programs will be implemented, and State agencies are expected to face another round of significant budget cuts in 2004.

In addition to tort-reform issues, including venue selection and caps on non-economic damages, many anticipate the Legislature may address the Supreme Court's ruling in *Brown v. Bi-Lo* which essentially forbids treating physicians in workers' compensation cases from disclosing information to employers, insurance carriers, and their representatives unless by consent of the claimant, court order, or recognized method pursuant to the rules of discovery.

## McAngus Goudelock & Courie's growth recognized as one of South Carolina's fastest growing companies of 2003.

Elliott Davis, LLC and the South Carolina

Chamber of Commerce recognize companies for

their significant growth and achievement during

the previous fiscal year. MG&C is proud of this

recognition and our accomplishments, growth

and success in 2003. We truly appreciate our

clients who have given us their continued

confidence and support. Our practice continues

to grow thanks to you!

# North Carolina Update

## From the Courts

### Civil Procedure

#### Attorney's Fees and Costs for Judgment less than \$10,000.

In a personal injury action, a jury awarded the Plaintiff \$9,500. With costs and prejudgment interest, the amount of judgment entered by the trial court amounted to \$10,604.76. The Plaintiff made a motion for attorney fees under NC Gen. Stat. 6-21.1 which gives judicial discretion for attorney fees when the judgment is under \$10,000. The trial court denied the motion on the grounds the judgment exceeded the \$10,000 statutory threshold. In a 2-1 decision, the North Carolina Court of Appeals held a trial judge may not include prejudgment interest and costs when determining whether a judgment exceeds \$10,000 for the purpose of awarding attorneys fees.

*Brown v. Millsap*, 2003 N.C. App. LEXIS 2041

### Insurance

#### Statute of Limitations for Uninsured Motorist Coverage

Following an automobile accident, the Plaintiff filed a suit against the at-fault driver in December 2000. The Plaintiff provided written notice to the uninsured carrier in June 2002, but he did not serve the carrier until July 2003. The North Carolina Court of Appeals affirmed the dismissal of the uninsured carrier under the rationale that the Plaintiff failed to serve the carrier within the applicable 2 year statute of limitations. The Court held that unlike an underinsured carrier, the general statutes clearly set out the method of notifying an uninsured carrier of a potential claim. Specifically, service must be made upon the carrier within the applicable underlying statute of limitations period.

*Estate of Polk v. Andrews*, 587 S.E.2d 510 (N.C. Ct. App. 2003)

### Workers' Compensation

#### Post Traumatic Stress Disorder

The Claimant filed a workers compensation claim alleging she suffered Post Traumatic Stress Disorder due to her employment at a mental health facility. The North Carolina Court of Appeals held work-related depression and other mental illnesses can qualify as occupational diseases if a claimant proves the depression or mental illness due to stress and conditions differ from those borne by the general public. Additionally, the Court held the record supported the Industrial Commission's decision that the Claimant's stress was compensable.

*Smith-Price v. Charter Pines Behavioral Center*, 584 S.E.2d 881 (N.C. Ct. App. 2003)

#### Expert Witness Testimony in Repetitive Trauma Claim

An ergonomic expert watched the Claimant's job performed by co-workers and testified the job was unlikely to cause repetitive motion injuries. The North Carolina Court of Appeals held the expert's testimony supported the Industrial Commission's decision that the Claimant's shoulder problems were not compensable despite the fact that the treating doctors believed the shoulder problems were the result of repetitive motion associated with the Claimant's job as a title clerk.

*Johnson v. N.C. License Plate Agency*, 2003 N.C. App. LEXIS 1781 (2003)

#### Course and Scope of Employment

The North Carolina Court of Appeals held a claimant remained in the course and scope of his employment when a car struck him while he was on his way back to work from a convenience store since the employer regularly allowed its employees to go to the nearby convenience store for breaks.

*Freeman v. Triangle Grading & Paving, Inc.*, 2003 N.C. App. LEXIS 1779 (2003)

## Legislative & Administrative News

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

The North Carolina Industrial Commission determined the maximum weekly benefit for workers' compensation 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 be thirty dollars (\$30.00).

### Legislature Clarifies the 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. Under Senate Bill 776, N.C. Gen. Stat. §97-2(2) was amended 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." The amended statute applies to claims arising on or after June 4, 2003.

### Change in Workers' Compensation Forms

The North Carolina Industrial Commission adopted Form 28C. This new form is to be used in place of a Form 28B for cases settled by a Compromise Settlement Agreement (Clincher Agreement). The new Form 28C is available on the North Carolina Industrial Commission website.

### Adverse Reaction to Smallpox Vaccine Now Enumerated Occupational Disease

Under House Bill 273, adverse reactions to the smallpox vaccine are now considered an enumerated occupational disease under N.C. Gen. Stat. §97-53 (29). Effective on June 12, 2003, the amendment applies to claims arising from infections or adverse medical reactions related to smallpox vaccinations occurring before, on, or after the effective date.

### Medical Malpractice

The North Carolina Medical Board voted in favor of suspending the license and privilege of practice to a neurosurgeon for one year. The neurosurgeon is the first doctor in North Carolina to have his license suspended based upon his testimony in medical malpractice cases. The doctor testified in many cases for plaintiffs, and this suspension resulted from one such case in 1997. In the case, the suspended neurosurgeon accused the treating physician of "lying" and described him as "unqualified." The Board found these statements to be defamatory in nature and made the decision to suspend the doctor's North Carolina license for one year. This suspension is believed to be the first given to a doctor based on frivolous testimony in the United States.

# Calendar

## OF EVENTS

### January 10

Run for Peace in Charlotte, NC

### March 6

MG&C 9th Anniversary

### March 12-14

McAngus Goudelock & Courie, LLC  
South Carolina Workers' Compensation Medical Conference at the Hyatt in Greenville, SC

### April 7-9

NC Self Insured Association Conference in Wilmington, NC

### April 14-16

Atlanta Claims at the Hilton Atlanta, Northeast

## DID YOU KNOW?



Bo Williams in MG&C's Columbia office was a professional golfer before going to law school. Bo was on the golf team all four years at Washington & Lee University. He played on the Teardrop Tour and went to qualifying school twice for his PGA card.

## Web Sites of Interest

### CHECK THESE OUT!

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

This site provides comprehensive information regarding total and partial joint replacement surgery, including animation of the procedures.

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

This site is a great source for human resource and articles and general information.

#### [www.expertlaw.com/library/premises.html](http://www.expertlaw.com/library/premises.html)

This site contains a variety of articles discussing premises liability issues and solutions.

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# News

## Expecting

**Mary Margaret and Doug Hyatt**  
February 2004

**John and Meredith Jeffries**  
June 2004

## Births

**Lauren and Chuck Citrano** welcomed **Gabrielle Marie Citrano** into their family November 20th.

## Engagement/Wedding

**Tre Morgan and Laura Snead**  
Married September 20, 2003.

## Professional Appointments/ Awards/Recognitions:

**Rusty Goudelock** was elected to the Board of the South Carolina Workers' Compensation Educational Association.

**Sterling Davies** was elected to the Executive Committee of the South Carolina Defense Trial Attorneys Association.

**Steve Bates** was invited by the University of South Carolina School of Law to be an Adjunct Professor and will be teaching a course on SC Administrative Law during the 2004 Spring semester.

Steve is also nearing completion of a book to be published by the SC Bar in late 2003/early 2004. He is co-editor and co-author of South Carolina Administrative Law, the first comprehensive publication on the subject in over twenty years.

**Michael Burkett** contributed the chapter on workers' compensation law.

# MG&C Profile



## John E. Spainhour

John received his B.A. in History from Davidson College in 1997. He received his J.D. from the University of South Carolina School of Law in 2001. He served on the South Carolina Environmental Law Journal. John joined the firm's Charlotte office in November. His practice focuses on workers' compensation defense.



## Kara Sharrad

Kara is a graduate of the University of North Carolina, Chapel Hill. She received her J.D. from Wake Forest University School of Law in 2000. Kara joined the firm's Charlotte office in December. Her practice focuses on workers' compensation defense.

## Jay Courie Elected President Elect of the South Carolina Defense Trial Attorneys' Association



Please join us in congratulating our managing partner, Jay Courie on his recent election as President Elect 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 Treasurer for the 2002-2003 term and Secretary for the 2001-2002 term.

His term will begin in November 2004. The South Carolina Defense Trial Attorneys' Association is made up of over 750 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.