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Litigation Forum

April 2009

LITIGATION FORUM is an informational newsletter provided regularly by the law firm of CRANFILL SUMNER & HARTZOG LLP. It is designed to provide helpful and current information in all areas of our practice, which include general liability litigation, workers' compensation, medical & professional malpractice, employment law, business/commercial litigation, insurance coverage law, construction law, products liability, appellate litigation, education law, and a variety of other areas related to civil litigation. Obviously, only a limited amount of information can be given within the confines of a short newsletter, so if further information is needed, or if there are any questions, please contact any of our attorneys in Raleigh, Charlotte or Wilmington.

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Employment Law

SOCIAL NETWORKING SITES AND THE EMPLOYER/EMPLOYEE RELATIONSHIP

By Allison Serafin (RAL), Employment Practices Group

What first started as a graduate project to offer electronic communication networking to college students has grown into a mode of communication used worldwide by people of all ages. These social networking sites are becoming the preferred mode of communication, and all sources indicate that they are here to stay. In the era of instant electronic communications and Internet-based social networking sites, it is increasingly difficult to keep our private lives and our professional lives completely separated. Consider these real life scenarios.

TINKERBELL'S TRYST. Late Wednesday afternoon, "Colin" sent an e-mail informing his boss that he would be out of work due to a family emergency for the next couple of days. That weekend, Colin's boss was surfing Facebook and located a picture of Colin in full "Tinkerbell" fairy gear (bare chested in a green tu-tu with matching fairy wings, blue eye shadow, turquoise glitter, a sloppy grin, with a Bush Light 40 in one hand and fairy wand in the other). The picture had been posted by Colin on Friday morning at about 2:00 AM. The following Monday Colin's boss responded to Colin's "family emergency notice" with the Tinkerbell picture attached, send-

ing well-wishes to Colin's family and remarking, ("cool wand!") Colin's boss copied the e-mail to the North America "all" section of employees.

SLURS IN FLIGHT. A crew of flight attendants was recently terminated when their Facebook "banter" revealed them branding their passengers as "chavs" and speaking negatively about the passengers' behavior. After a passenger called the airline's attention to the Facebook page, the airline (which had a strict policy prohibiting disparaging remarks against passengers and/or other employees) immediately investigated the complaint and terminated all thirteen crew members involved.

To date there have been no lawsuits brought by employees or employers challenging each other's use of these sites. Thus employers and employees frequently find themselves in uncharted terrain. Among the frequently asked questions are:

- *Can an employer restrict the content its employees publish on private social networking sites?*
- *Can an employer discharge an employee for information the employer reads on the employee's site profile?*
- *Can an employee post opinions about other employees? About past employers?*
- *Can employers search site profiles of prospective candidates for employment?*

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UPCOMING EVENTS

CSH Open Houses:

APRIL 30, 2009, 4:00-7:00pm
5420 Wake Park Blvd., Ste. 300
Raleigh, NC 27607

MAY 14, 2009, 4:00-7:00pm
2907 Providence Rd., Ste. 200
Charlotte, NC 28211

Client Continuing Education Seminar:

NOVEMBER 19, 2009
at Sister's Garden in
Raleigh, NC

visit our website at www.cshlaw.com

BECAUSE WORKING WITH YOUR LAWYER SHOULDN'T BE A TRIAL.

DO'S AND DON'TS

- *Can an employer restrict the content its employees publish on private social networking sites?*

The most important piece of armor an employer can use is a well drafted policy which imposes limits on the use of these sites in the workplace. It is acceptable for a private employer to implement a policy that restricts an employee from accessing these sites during company time and on company equipment. It is also permissible to prohibit employees from using the employers' name, logo, contact information or any other company property when providing profile information.

Policing content is a more difficult proposition. It is virtually impossible for employers to include a comprehensive list of unacceptable postings; however a good policy will remind employees of the need to use good judgment to ensure that the information published on these sites is not harmful to the company or to the employee's own professional reputation. As with any policy, the policy must clearly state that any violation of the policy subjects the employee to disciplinary action up to and including termination of employment.



- *Can an employer discharge an employee because of information the employer reads on the employee's site profile?*

Under North Carolina law, an employer can discharge an employee for any reason as long as the reason is not in violation of federal or state laws. In the example above, termination of Colin's employment because he was untruthful about the reason for his leave is likely justifiable.

However, if the employer had viewed Colin's profile and/or pictures posted by which he learned that Colin walks with a cane at home and then decided to discharge Colin because he might be a liability – this decision might violate the Americans with Disabilities Act.

- *Can an employee post statements (positive or negative) about other employees? About the company? About the company's customers? About past employers?*

Absent an employer policy, an employee can generally post opinions and statements about virtually anything and/or anyone they want, so long as those posts do not violate any other laws. A well drafted social network policy should clarify that posting information about the company's employees, customers or the company that is or could be viewed as detrimental or harmful to the company is prohibited.

There is little an employer can do by way of a policy that prohibits an employee from publishing statements about his/her former employer. Similarly, employers have little control over their former employees. Once that employee has separated employment, the employer's policy has no effect on the employee. Depending on the circumstances, a separation agreement that contains a non-disparagement clause against the employer may be the only remedy an employer has to prohibit former employees from posting statements about former co-workers or employers.

- *Can employers search site profiles of prospective candidates for employment?*

Yes. In fact, some would argue that an employer has a duty to search these sites as part of their duty of reasonable care to coworkers and third persons. Employers want to eliminate any liability for negligent hiring. If you find mug shots, violent photos, or admissions of criminal activity published by a prospective employment candidate, you may want to reconsider hiring this person. Keep in mind however that certain types of information found on these sites are not permitted to be used to make hiring decisions – such as information about the individual's race, sex, color, age, national origin, religion, or disability.

How can employers search profiles for information which is *permissible* to be used for hiring decisions and yet be assured that they will not be accused of using or being influenced by information which is *prohibited* as the basis for hiring decisions? The simplest solution is a "filter system" by which one of the employees in the HR department searches social networking sites for information. The information which may be legally considered in hiring decisions is then relayed to the decision maker for their consideration; the infor-

mation which is not permitted to be considered in hiring decisions is not. The decision maker then has the information necessary to make informed hiring decisions without exposing themselves to any information that the employer is otherwise prohibited from relying upon. The “filter” must of course be well trained on what precisely is permissible information to relay to the decision maker.

WHERE DO WE GO FROM HERE?

There is no indication that Facebook, MySpace, LinkedIn or any of the myriad of social networking sites permeating our electronic worlds will disappear anytime soon. In fact, statistics show that their popularity is growing at an almost-exponential rate. For example, in 2005 approximately 8% of adults had profiles on social

networking sites; in December 2008 the percentage of adults with profiles on social networking sites rose to 35%.¹

Employees should be aware of what you post on the sites; and be aware of what you allow others to post about *you* on the sites. Employers should implement a well drafted policy to protect the interests of the employer. Everyone should be aware that information that is so easily published is not always so easy to erase. Be mindful of what you are publishing – you’re not likely to appreciate a photo of yourself in full “Tinkerbell” fairy gear when you’re up for that promotion you so deserve! ♦

¹ The 35% data point and basic demographic information about social network users is from Pew Internet Project’s December 2008 Survey. All other data in the report is from the Project’s May 2008 survey unless otherwise noted.



Workers' Compensation

2008 CHANGES TO COMMISSION PROCEDURES AND FORMS

By Amy L. Pfeiffer (RAL), Workers' Compensation Group

The workers' compensation system in North Carolina is, as we all know, form-driven. There is a form for almost everything, a fact frequently bemoaned by insurance adjusters who are in the trenches filling out and filing the vast majority of these forms. The North Carolina Industrial Commission, as the state agency empowered to administer the North Carolina Workers' Compensation Act, accomplishes its mission of administering the Act at least in part through the use of forms. Pursuant to N. C. Gen. Stat. §97-81, the Commission has promulgated forms to collect information for various reasons, including the gathering of statistics, monitoring claims, and facilitating litigation.

The present article is not a primer on all of the Commission forms. That would take practically a textbook! Instead, the purpose of this article is to discuss recent changes in some of the key forms in order to give practicing attorneys some general information about these forms, at least. The article will address the legislation that prompted the changes and will give some insight into why the changes were proposed and implemented.

According to Keischa Lovelace, the Director of Claims Administration at the Industrial Commission, approximately 100,000 workers' compensation injuries/conditions are handled every year by insurance carriers, third-party administrators, or self-insured employers. Of those injuries, approximately 65,000 are reported each year to the Commission either by way of a Form 19 (by the defendants) or a Form 18 (by the plaintiff). After an injury is reported to the Commission, certain other forms may be required by law to be filed. However, according to the Industrial Commission, in the past there has been a significant number of cases in which there is a failure to file the requisite forms.

As a result of this failure to file the proper forms that the Commission has promulgated under N. C. Gen. Stat. §97-81, legislation was enacted in 2007 by the General Assembly to address the concerns over forms compliance. N. C. Gen. Stat. §97-78 was amended to require the Commission to prepare and implement a strategic plan to establish a procedure to enforce compliance with N. C. Gen. Stat. §97-18 and thereafter report to the General Assembly on this plan and its implementation.

In response to the G.S. §97-78 amendments, the Full Commission created a task force to study the legislation and the issues raised therein. Karissa Davan, the former Claims Administrator, chaired the task force. Other task force members included Commissioners Laura K. Mavretic and Danny Lee McDonald; Chief Deputy Commissioner Stephen T. Gheen; Sharon Sosebee, with Key Risk Management Services, was put on the task force to serve as the industry representative; John Hedrick, plaintiff's counsel, was chosen to rep-

resent the plaintiffs' bar; and I was chosen to represent the defense bar. The task force got some assistance as well from Daniel Pope, a defense attorney who has a particular interest in Industrial Commission forms. The task force met on a number of occasions and in January 2008 submitted its recommendations to the Full Commission. In July 2008 the Full Commission adopted changes on several of the N. C. Gen. Stat. §97-18 forms, implemented a procedure for assessing penalties when appropriate, and will be making annual reports to the Legislature on the process. The changes technically went into effect on April 1, 2008, but the new forms began being used and the penalties began being assessed as of August 1, 2008.

The following IC forms have been amended by the Full Commission, some slightly, some more significantly: Forms 18, 19, 25R, 26, 60, and 63. The Form 25A was abolished altogether, while a new form, a Form 26A, was adopted. This article will discuss some of these changes, as well as the rationale that went into the changes.

We will discuss the two reporting forms first. As noted herein, the Commission did not make any Rule changes. Therefore, Industrial Commission Rule 104 has not been amended, and it is this rule that governs when a defendant must file a Form 19 *Report of Employee's Injury or Occupational Disease to the Industrial Commission*. While certain language on the amended Form 19 seems to indicate that a Form 19 is required to be filed in all cases, in fact, the same Rule



104 threshold applies: A Form 19 is required to be filed in cases where the employee misses *more than* one day of work **or** if there is more than \$2,000.00 of medical compensation. Other language is changed on the form, including the notice that a blank Form 18 must be proved to the employee along with the completed Form 19, and other grammatical changes were made. While it has always been required information, the form now indicates that it is mandatory to provide the employer and carrier codes. There is also a new mailing address for filing. In October, the Claims Department also began accepting the Form 19, and other claims forms, electronically via email. The email address is **forms@ic.nc.gov**. Failure to file a Form 19 can result in no more than a \$25.00 penalty under N. C. Gen. Stat. §97-92.

There have also been some changes to the Form 18, *Notice of Accident to Employer and Claim of Employee, Representative or Dependent*, other than merely the address change. The “disability began” option was amended because it was recognized that “disability” is a legal term of art that most claimants will not or did not understand. Instead, the employee is asked to denote how many days of work have been missed to date. There is also a line where the employee is asked to indicate whether medical treatment has been received. These two options will give the Industrial Commission information as to whether a Form 19 should also have been filed, as well as giving valuable information about the claim itself.

Pursuant to N. C. Gen. Stat. §97-18(j) and Rule 601, defendants shall admit or deny a claim at the “earliest practicable time,” and in any case shall admit or deny within 30 days after notice. Under the new procedures adopted by the Full Commission, this 30-day period is triggered and tracked by the Commission upon the filing of a Form 18 by a claimant. Once a Form 18 is filed with the Commission, a notice is sent by the Commission to the defendants, and the defendants have 30 days to file a Form 60, 61, 63, or 21, if a form has not already been filed. If one of these forms has already been filed, defendants are not required to file a new form. (Defendants are also required to file the appropriate form if they begin making indemnity payments pursuant to N. C. Gen. Stat. §97-18, whether or not a Form 18 has been filed by the claimant.)

Defendants have always been required to file the appropriate form if a claim is admitted or denied, or if the claim is being paid while it is investigated. However, under the legislation, the Commission was tasked with establishing a procedure to enforce compliance with filing of forms under G.S. §97-18. The task force recommended that the Commission assess penalties if the appropriate form is not filed. If the form is not filed within 30 days after the notice from the Commission, defendants will receive an order assessing a \$200.00 penalty. The penalty will be waived if the appropriate form is there after filed within ten days. After ten business days, an order lifting the sanction will be entered or the sanction will be invoiced.

The Form 60, *Employer’s Admission of Employee’s Right to Compensation*, was amended in several key ways. First, the form requires

specific accounting of the body part or condition being admitted by defendants, whereas the prior version of the form simply asked for a description of the injury or occupational disease. From the perspective of the task force, this change was to remove any question or ambiguity as to the injury or condition actually being admitted by defendants. In addition, the phrase “subject to verification,” a phrase taken from the Form 21, was added to the average weekly wage line in an attempt to address situations when an average weekly wage is later determined to be incorrectly calculated and to leave open the option of allowing credits under N. C. Gen. Stat. §97-42 when a claimant has been overpaid benefits due to that incorrect calculation.

Most significantly, the Form 60 was amended to remove the “medical only” box. This issue was discussed extensively by the task force. It did not make much sense to have the medical only box listed on the Form 60 given that the very title of the form, *Employer’s Admission of Employee’s Right to Compensation*, indicates that the form was intended to memorialize the payment of indemnity payments to a claimant, given that “compensation” is elsewhere defined in the Act as “money allowance payable to an employee” (N. C. Gen. Stat. §97-2(11)). Instead, the medical only provision was moved to the Form 63.

The Form 63, previously entitled *Notice of Employee of Payment of Compensation Without Prejudice*, and now entitled *Notice to Employee of Payment of Compensation Without Prejudice or Payment of Medical Benefits Only Without Prejudice*, has also been the subject of significant changes. In the previous version of the form, there was no space to indicate the nature of the injury or occupational disease being investigated. Like the new Form 60, the Form 63 now requires the defendant to specify the body part(s) or condition(s) being admitted on a provisional basis. Also as with the new Form 60, the “subject to verification” phrase concerning the average weekly wage was added.

There are two distinct sections on the new Form 63: one for the payment of indemnity benefits, and one for the payment of medical benefits (“medical only” claims). With respect to the indemnity section, a defendant has the option to pay indemnity benefits without prejudice and without admitting the claim while it is being investigated. The provisions of N. C. Gen. Stat. §97-18(d) remain in effect: therefore, the 90-day period to investigate still applies, with an additional 30-day period if requested and granted. One change in this procedure is that these requests should now be directed to Keischa Lovelace in Claims instead of Executive Secretary Tracey Weaver.

It has long been established in the case law that payment of medical compensation does not constitute an admission of the claim. This is a matter of public policy: we should not discourage defendants from providing immediate medical care to an injured or sick worker. If payment of medical expenses constituted an admission of the claim, fewer defendants would be willing to provide even initial medical

treatment to an injured worker. Placing the medical only provision on the Form 63 recognizes these principles and the case law.

The medical only section of the form is not subject to the 90-day investigation period that applies to the payment of indemnity benefits. However, if the employee subsequently meets the requirements to potentially be entitled to indemnity benefits, defendants must file the appropriate form admitting or denying liability/compensability for the indemnity benefits. In these situations, the defendant may file another Form 63 for indemnity benefits if fewer than 90 days has elapsed since receiving notice of the claim, and the defendant will have the remainder of the 90-day period to investigate the claim (and/or request a 30 day extension). However, defendants only have the option to use the Form 63 if it is filed within 90 days of notice of the claim, and the same 90 or 120-day (with the extension) period applies.

The number one request the task force and the Full Commission received was "Please do not create any new forms!" However, in spite of this request, a new form, a Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, was adopted. The rationale behind this new form is that the Form 21 and/or Form 26, which have been used to pay ratings and disfigurements (N. C. Gen. Stat. §97-31), were not intended to pay these types of benefits. These forms were in place long before the §97-18 forms were adopted, and from a practical standpoint, the Forms 21 and 26 began being used to pay ratings in most instances, as the majority of claims for ongoing disability were paid on a Form 60 or Form 63. The Full Commission, therefore, adopted a new form that makes more sense in paying §97-31 benefits.

As of August 1, 2008, the **only form** by which defendants will pay §97-31 benefits (PPI ratings, disfigurement/scarring, or permanent organ damage) will be the Form 26A. The Form 21, *Agreement for Compensation for Disability*, will now be used **only** for payment of ongoing disability: temporary total, permanent total, or temporary partial disability compensation benefits. The Form 26, *Supplemental Agreement as to Payment of Compensation*, which has also been the subject of minor changes to remove the provision for payment of PPI ratings, will be used for subsequent period(s) of ongoing disability after a Form 21 has been used. It should also be noted that it is possible to have multiple Forms 26A in a single file if there are subsequent or multiple ratings. In addition, because §97-31 benefits are now paid on a Form 26A, and because the Form 26A incorporates the Form 25A medical records certification, the Form 25A has been abolished as no longer necessary. So the total number of forms remains the same, despite the adoption of a new form!

With respect to the assignment of a permanent partial impairment rating, please also note that the Form 25R, *Evaluation for Permanent Impairment*, has undergone a few changes as well. The physician is asked to note whether the employee is at maximum medical improvement, and whether the employee has been released with (presumably work) restrictions.

While the Commission admits that there are still a few kinks to work out with respect to these new forms and procedures, they are pleased overall that as a result of these changes, forms are now being filed in more cases. This will help all of us in our handling of claims before the North Carolina Industrial Commission, and will better facilitate the Commission's administration of the North Carolina Workers' Compensation Act. ♦

	PLAN I	PLAN II	LOSS OR TREATMENT
	\$1,500	\$2,250	SPECIFIED LOSS
	\$600	\$900	Burns treated within 72 hours. Payable once per accident.
up to \$2,500		up to \$3,750	Tendon / Ligament repaired within 1 year. Surgically
		up to \$450	Dislocation (separated joint) diagnosed within 30 days. Payable only for the first dislocation of a joint. Subsequent dislocation of the same joint will not be covered.
up to \$1,750			Eye injury requiring removal of lens within 30 days.

Land Condemnation

Cranfill Sumner & Hartzog's Land Condemnation Group represents property owners who are having their land taken from them by governmental authorities. The group consists of George Autry, Stephanie Autry, and Brady Wells, and they recently have had several favorable recoveries for their clients:

After a four-day trial in Richmond County, NC, it took a jury only 15 minutes to return a verdict in favor of the property owner in the amount of \$871,000.00 for the taking of a gas station. The taking was necessary due to the widening of U.S. 1 in Rockingham. The Department of Transportation's first offer was only \$195,000.00. With interest, the award comes to over \$971,000.00.

NCDOT vs. Melton

Two favorable settlements were reached in Iredell County, NC, where DOT is widening a popular road that runs from Mooresville down to Lake Norman. Both properties are developed with business condominiums. One building contained four businesses, and the widening of the road required the chopping-off of the orthodontist practice on the end. We represented the entire condominium, whose first offer was \$736,500.00, and convinced DOT to pay them \$1,183,000.00. ***NCDOT vs. Two Charleston Plaza.*** The second building was not getting hit by the new road, but it was coming very close and taking a sign and most of the yard and landscaping. After initially offering the owners only \$245,000.00, we reached a final settlement of \$608,000.00. ***NCDOT vs. Brawley Gateway Center***

The replacement of an old bridge in Brunswick County, NC required the taking of a drainage easement from our client's waterfront residence on Oak Island. Much of the foliage that served as a buffer from the road was destroyed. Our client was first offered \$173,600.00. However, just before trial, we were able to negotiate a settlement of \$475,000.00. ***NCDOT vs. Deeter***

The new Goldsboro (NC) Bypass caused the splitting of our client's 100-acre farm, which we argued would have been suitable for residential development but for the new road. DOT eventually agreed, paying \$675,000.00 to settle the claim after initially offering only \$374,900.00. ***NCDOT vs. Mathews*** ◆



Civic/Professional Notes

PATRICIA HOLLAND (RAL) was recognized by *Business North Carolina* magazine as a member of the publication's 2009 Legal Elite Hall of Fame in the Employment Law category.

PATRICIA HOLLAND (RAL) was recently appointed to a three-year term of the North Carolina Chief Justice's Commission on Professionalism. The Commission was established in September, 1998 by order of the North Carolina Supreme Court with the primary charge of enhancing professionalism among North Carolina's lawyers.

In October, 2008, **PATRICIA HOLLAND (RAL)** presented a program entitled "Hear No Evil, See No Evil, Speak No Evil: Don't Throw a Monkey Wrench into Your Political Career!" at the Centennial Conference of the North Carolina League of Municipalities held in Charlotte, NC.

PATRICIA HOLLAND (RAL) was a featured speaker at the North Carolina Chapters of the Construction Financial Management Association Conference held in Greensboro, NC, where she presented a program entitled "Using the Internet to Investigate Job Candidates: Useful Tool or Legal Nightmare?"

PATRICIA HOLLAND (RAL) was selected to participate as a member of the Faculty of the Wake Forest University School of Law's "Twenty-Eighth Annual Review, North Carolina 2008," and presented a program on the topic of recent noteworthy employment law cases in Asheville and Winston-Salem, NC.

NICK VALAORAS (CHAR) recently volunteered at the 4All Statewide Ask a Lawyer call in program where volunteer lawyers took phone calls, answered questions and provided advice/information for the general public.

AMY PFEIFFER (RAL) presented "New IC Forms and Procedures" at the firm's Fall Continuing Education Client Seminar.

In December, 2008, **AMY PFEIFFER (RAL)** and **ERIN TAYLOR (RAL)** visited a large insurance client and presented on the use, filing, and practical implications of all IC forms, including both the old and the amended forms.

AMY PFEIFFER (RAL) published an article entitled "Commission Implements New Forms & Procedures" in the *NC Workers' Comp News*. It was also published in the Winter 2008 edition of the *NC Association of Self-Insurers'* quarterly publication.

AMY PFEIFFER (RAL) also had another article published in the NCBA's Workers' Compensation Section's newsletter, *The Course and Scope*, entitled "2008 Changes to Commission Procedures and Forms." Feb. 2009.

KATHERINE WAGNER (WILM) has joined the Planning Committee for the 2009 New Hanover County Canine Relay for Life benefiting the American Cancer Society. The Canine Relay will be held on April 18, 2009 in Wilmington at Halyburton Park.

MICA NGUYEN (CHAR) and **AMANDA SMILEY (CHAR)** participated in the "Wills for Heroes" event in Charlotte on November 15, 2008. Wills for Heroes provides essential legal documents free of charge to our nation's first responders. **MS. NGUYEN** and **MS. SMILEY** helped draft wills for firefighters and law enforcement officers in the Charlotte

area. The event was supported by several local law firms, and over 200 wills were prepared during this one-day event.

STEPHANIE A. GASTON (RAL) was elected to serve as the 2009 Treasurer for the Young Lawyers' Division of the Wake County Bar Association.

STEPHANIE A. GASTON (RAL) along with **JENNIFER ADDLETON WELCH (RAL)** are co-chairs for the 2009 Wake County Bar Association Young Lawyers' Division Food Drive, which benefits the Food Bank of Central and Eastern North Carolina. This will be the third year Stephanie and Jennifer have co-chaired the Food Drive.

In January, 2009, eleven of the firm's attorneys were named by *Super Lawyers*® magazine as top attorneys in the state of North Carolina for 2009:

- **DAVID H. BATTEN (RAL)** - Personal Injury Defense-Medical
- **RICHARD T. BOYETTE (RAL)** - Alternative Dispute Resolution
- **SUSAN K. BURKHART (RAL)** - Insurance Coverage
- **M. ROBIN DAVIS (RAL)** - Employment & Labor
- **DAN M. HARTZOG (RAL)** - Civil Litigation Defense
- **PATRICIA L. HOLLAND (RAL)** - Employment & Labor
- **JOHN D. MARTIN (WILM)** - Personal Injury Defense-Medical
- **C. D. TAYLOR PACE (RAL)** - Workers' Compensation
- **ROBERT W. SUMNER (RAL)** - Personal Injury Defense-General
- **DAVID D. WARD (RAL)** - Personal Injury Defense-Medical

SELECTED FOR SUPER LAWYERS NORTH CAROLINA RISING STARS LIST:

- **KATHLEEN M. MILES (RAL)** - Personal Injury Defense-General

In addition, **PATRICIA L. HOLLAND (RAL)** was also named to the list of **Top 100 North Carolina Super Lawyers** and was honored as one of the **Top 50 Female attorneys in the State of North Carolina**.

Earlier this year, the following Cranfill Sumner & Hartzog LLP attorneys were selected for partnership:

RYAN D. BOLICK – Charlotte Office

ROY G. PETTIGREW – Raleigh Office

NICOLE D. VIELE – Charlotte Office

FRANK J. ALBETTA also joined Cranfill Sumner & Hartzog LLP as a partner in the Wilmington office.

Recent Case Results

MELODY CANADY (CHAR) and **LEE POOLE (CHAR)** got a favorable opinion in a legal malpractice claim pending in the Western District. Judge granted our 12(b)(6) motion. Plaintiffs were alleging that this was a class action and that damages would have exceeded \$5 million if they had been successful on all counts.

MELODY CANADY (CHAR) and **LEE POOLE (CHAR)** obtained dismissal as a matter of law on behalf of their client, a southeastern law firm, in a purported class action lawsuit seeking over \$11 million in damages and alleging numerous claims including fraud, breach of contract, breach of fiduciary duty and violations of North Carolina's Unfair Trade Practices Act. Suit was originally filed in state court. After removing the case to the U.S. District Court for the Western District of North Carolina pursuant to the Class Action Fairness Act, **MS. CANADY** and **MR. POOLE** prevailed over Plaintiffs' Motion to Remand the case back to state court. **MS. CANADY** then filed a Motion to Dismiss the complaint for failure to state a claim, on the basis that Plaintiffs' claims were all premised on violations of North Carolina State Bar ethics opinions which do not give rise to civil liability, that Plaintiffs failed to allege any duty independent of the State Bar ethics opinions and Rules of Professional Conduct, and that Plaintiffs failed to allege damages. Briefs were submitted by all parties, and the Court requested oral arguments on Defendants' Motion to Dismiss. At the hearing, **MS. CANADY** successfully argued Plaintiffs' failure to state a claim, and Defendants' Motion to Dismiss was granted, resulting in dismissal of Plaintiffs' case with prejudice.

At the conclusion of a week-long jury trial, **RYAN BOLICK (CHAR)** obtained a defense verdict that the officers of a municipality did not use excessive force in effectuating an arrest of the plaintiff and that the officers and the City were not liable to the plaintiff for the injuries sustained during his arrest. Plaintiff claimed that the officers battered him and allowed police dogs to bite him unnecessarily. The defense argued that the use of force by the officers and the K-9s was reasonable under the circumstances.

PATRICK FLANAGAN (CHAR) and **BRAD KLINE (CHAR)** obtained Summary Judgment on behalf of a municipality, its police chief and a police officer in the Western District of North Carolina Federal Court. Plaintiff was a former police officer who alleged libel and a deprivation of his liberty interest under 42 U.S.C. 1983. The complaint arose out of the officer's separation from employment with the municipality's police department and information contained in the personnel file. The case was dismissed with prejudice after the defense successfully argued that the information contained in Plaintiff's personnel file was true and had not been published to an outside third party.

NICK VALAORAS (CHAR) won a recent workers' compensation case in which Plaintiff suffered a compensable eye injury while working part time for a major home improvement store (Employer). As a result of his injury, he was also unable to go back to work at his full-time job as an air traffic controller. Employer has been paying him wage loss based on his AWW and CR with Employer but he claimed wage loss based on the difference between his full-time and part-time jobs. Such an outcome would have entitled Plaintiff to the maximum weekly CR due to his high salary as an air traffic controller. Deputy Commissioner Rowell ruled in favor of Employer and has allowed them to continue paying benefits based on his AWW and CR with Employer. **AMANDA SMILEY (CHAR)** assisted on the case.

DAN HARTZOG, JR. (RAL) obtained a finding of substantial fault before the Employment Security Commission.

DAN HARTZOG, JR. (RAL) obtained two zero dollar settlements before the Equal Employment Opportunity Commission.

VICTORIA STREET TOLBERT (CHAR) successfully represented a municipality, its police department, as well as four individually-named employee-defendants in an appeal filed with the Fourth Circuit Court of Appeals. Plaintiff initially filed suit in 2006 with the Eastern District of North Carolina alleging claims of race discrimination, racial harassment, retaliation, wrongful termination, as well as claims for negligent infliction of emotional distress, intentional infliction of emotional distress, and negligent supervision. In February 2008, the Eastern District of North Carolina granted Summary Judgment in favor of all Defendants and Plaintiff filed an appeal with the Fourth Circuit Court of Appeals. In March 2009, after considering the defendants' argument, the Fourth Circuit Court of Appeals filed a judgment and order affirming the Eastern District's grant of Summary Judgment and dismissed Plaintiff's complaint with prejudice, ending nearly three years of contentious litigation.

KATIE WEAVER HARTZOG (RAL) recently obtained Summary Judgment on behalf of the owner of a shopping center in a premises liability case. Plaintiff argued that the shopping center had multiple violations of the Americans with Disabilities Act and North Carolina Accessibility Code which caused Plaintiff to trip and fall over a curb. Katie successfully argued that Plaintiff was contributorily negligent at the time of her fall and that any alleged violations of the Americans with Disabilities Act or North Carolina Accessibility Code did not proximately cause Plaintiff's fall.

ALLISON SERAFIN (RAL) and **ROBIN DAVIS (RAL)** succeeded in arguing to the EEOC that a small municipality which employed sporadically between 14 and 15 employees was not within the jurisdiction of Title VII as defined by the statute.

ALLISON SERAFIN (RAL) and **PATRICIA HOLLAND (RAL)** succeeded in obtaining a "No Cause" determination in a recent case where an employee who was discharged raised claims of racial discrimination and retaliation.

ALLISON SERAFIN (RAL) and **ROBIN DAVIS (RAL)** negotiated a separation agreement for a municipality in which a police officer was asked to resign but refused to do so prior to instigation of any legal action.

ALLISON SERAFIN (RAL) and **ANN ESTRIDGE (RAL)** achieved dismissal of a case in Pitt County in which a child alleged (through her mother) that she was injured by the negligence of a school bus driver who allegedly failed to stop the school bus in the precise designated location.

ALLISON SERAFIN (RAL) and **PATRICIA HOLLAND (RAL)** negotiated the settlement in a case in which a plaintiff claimed national origin discrimination and retaliation against a university prior to submitting a Motion for Summary Judgment.

ALLISON SERAFIN (RAL) successfully received a "no cause" determination from the EEOC with charges alleging age and disability discrimination against a local housing authority in which a plaintiff-employee who was terminated for performance issues previously filed a Charge of Discrimination with the EEOC. Despite the close temporal proximity between the employee filing a Charge of Discrimination with the EEOC and the employer's decision to discharge the employee, the EEOC nonetheless dismissed the employee's claims of discrimination based on the defendant's argument that the employee's performance issues were egregious and the discharge was not related to the employee's claims of discrimination.

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TODD KING (CHAR) Obtained a verdict of “no negligence” in an automobile accident trial where the defendant collided with Plaintiff. Plaintiff was riding a dirt bike on the sidewalk and collided with the defendant when her car made a left turn in front of him. Plaintiff operated the dirt bike without a light, after dusk, while wearing dark clothing.

MEREDITH BERARD (RAL) and **GREGG NEWTON (RAL)** recently received a favorable decision on a workers’ compensation claim from the Court of Appeals in which Plaintiff suffered an admittedly compensable lower back injury when she slipped and fell in a freezer while retrieving some bagels on March 7, 2003. Plaintiff was treated for her accepted lower back injury through April 14, 2003, at which time she was released from care and allowed to return to work without any restrictions by her authorized treating physician. Plaintiff never returned to work for the defendant-employer, though her former job was available.

Plaintiff subsequently claimed that she injured her neck in this accident, and ultimately underwent a two level cervical decompression and fusion surgery at C5-6 and C6-7 performed on February 5, 2004. Although Plaintiff subjectively related her cervical condition to the work accident of March 7, 2003 and claimed that she had complained of cervical symptoms immediately after the accident, the medical records reflected (and the Full Commission found) that with the exception of an isolated complaint of neck pain on March 2, 2003 and an isolated complaint of having a “catch” in her neck on June 16, 2003, Plaintiff did not complain of any cervical symptoms until she saw her primary care physician on September 24, 2003 - over six months after the work accident.

Nevertheless, two of the physicians testified that Plaintiff’s cervical condition was related to the work accident of March 7, 2003. However, the Court of Appeals affirmed the Full Commission’s finding that the opinions of these physicians were based on an assumption not supported by the evidence (i.e. that Plaintiff developed cervical symptoms consistent with her disc herniations immediately to shortly after the work accident) and were also based solely on the purported temporal proximity of her symptoms to the work accident, contrary to established case law. As such, the Court of Appeals affirmed the Full Commission’s finding that Plaintiff’s claimed cervical condition was not causally related to the work accident of March 7, 2003.

The Court of Appeals also affirmed the Full Commission’s finding that Plaintiff was not disabled as a result of any work-related injury after April 14, 2003. Clearly, any disability related to Plaintiff’s cervical condition was not compensable since the Court of Appeals upheld the Full Commission’s finding that the cervical condition was not proximately related to the work accident. Although Plaintiff’s primary care physician testified that Plaintiff was totally disabled due to both her cervical condition and her accepted lower back injury, he also admitted that Plaintiff had no objective findings with which to corroborate her subjective complaints or upon which to keep her out of work. Accordingly, the Court of Appeals upheld the Full Commission’s finding that Plaintiff was not disabled beyond April 14, 2003 as a result of any work-related injury.

BRIAN KROMKE (WILM) defended a compensable claim where the quadriplegic Plaintiff had a home voluntarily built by the carrier and who requires 24/7/365 attendant care from an RN and an NA to help him with every aspect of living in his own home and not in an institution. Plaintiff’s attorneys filed an expedited Hearing Request and dispensed with mediation, refusing to try and reach some agreements that would alleviate a Hearing.

Plaintiff’s attorneys contended several modifications to Plaintiff’s home were necessary, despite the attendant care. They also contended roughly

\$700.00 in outstanding bills were unreasonably not paid by the carrier (out of a total of \$3.2 million paid) and asked for attorneys fees in their pursuit of payment of the bills. The evidence illustrated that instead of helping effectuate payment of these bills over the course of roughly three years, Plaintiff’s counsel tried to “paper the file to death” and then seek attorneys fees from the IC through the hearing process. For the time period March 8, 2005 through June 25, 2008, Plaintiff’s attorneys claimed 1303.35 total hours were spent on “bill recovery” and their fee request was \$86,188.50 with expenses of \$5,087.19.

The honorable DC Phil Baddour ordered the defense to make a number of modifications to the home on top of what AIG stipulated to provide pre-hearing and he also granted Plaintiff’s counsel attorney’s fees. On our appeal, the Full Commission wholly overturned the defense-negative portions of the DC’s O&A. AIG’s bill handling was found to be reasonable, no attorney’s fees were ordered to the plaintiff and the IC even ordered Plaintiff’s counsel to stay out of all aspects of bill handling. Plaintiff’s attorneys did not appeal.

NICK VALAORAS (CHAR) - Plaintiff alleged exposure to asbestos while working for our employer among other companies and claimed total disability. Case went to hearing and Deputy Commissioner ruled Plaintiff was exposed to asbestos but was not last injuriously exposed during his employment with our client, Power Plant Maintenance. Plaintiff was not awarded total disability but only lung damage compensation. Case was appealed to Full Commission and the Full IC affirmed the decision but also awarded Plaintiff ongoing total disability. The case is now on appeal to the Court of Appeals. **JARED SIMMS (CHAR)** assisted in the case.

MARSHALL WALL (RAL) and **DREW HATHAWAY (RAL)** were able to have a \$1,000,000 default judgment against a trucking company and driver set aside in Carteret County Superior Court. **MR. WALL** and **MR. HATHAWAY** were able to show that a letter filed with the court by the former owner of the company should have been considered an answer and prevented the entry of a judgment.

MARSHALL WALL (RAL) had a trial in Lee County Superior Court in which Plaintiff claimed that she suffered serious, ongoing headaches as the result of a relatively minor motor vehicle accident. Liability was admitted and the case was tried solely on damages. Plaintiff’s attorney demanded \$75,000 to settle the case before trial. The jury awarded her \$1,000.

MARSHALL WALL (RAL) had a trial in Martin County Superior Court in which Plaintiff was driving a tractor on a rural highway when he was struck by a commercial vehicle and thrown into a ditch. He was flown to a trauma center after the accident. His primary injury was a tibial plateau fracture. He claimed that he would need knee replacement surgery in the future, although this had not been performed. Liability was clear and was admitted before trial. Plaintiff’s counsel asked the jury for more than \$200,000 in damages. The jury awarded \$65,000.

HOUSTON FOPPIANO (RAL) was able to get a wrongful death case dismissed on behalf of a medical center in Oxford. The facts involved a 57 year old man with a seizure disorder who was brought into the emergency room, treated and discharged by the emergency room physician. It was 3 am and the man had been brought by EMS so the ED nurse called the man’s mother to come and take him home. The complaint alleged that the mother told the nurse that her son was disabled with a seizure disorder and to keep him at the hospital until someone could come to pick him up in the morning. The man was allowed to stay in the waiting room of the ED for as long as he needed, but at some point, decided to leave the premises and went missing. Seven months later his remains were found on a property about a mile away from the hospital. The cause of death

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was undetermined. Plaintiff tried to plead the action as one of ordinary negligence for letting the patient leave the premises, and did not have a Rule 9(j) expert review of the case as if it was a medical malpractice case. **MR. FOPPIANO** argued that the negligence in question was centered around the healthcare providers' professional evaluation of the decedent's medical and psychological condition, and was, therefore, a medical malpractice action that required a Rule 9(j) expert certification. The court agreed and dismissed the action.

REGAN TOUPS (WILM) won Summary Judgment in a homeowner's association lawsuit that was filed by several property owners against their Association, their Board of Directors, and the remaining property owners in the community. The neighborhood at issue is a waterfront community that provides water access and docking capabilities to owners both on and off the water. A canal and turning basin were dredged by the developers to create the water access, and a bulkhead was installed around the dredged area to make sure the water area remained navigable. Plaintiffs filed a declaratory judgment action and asked the Court to invalidate a significant assessment that was passed to replace the bulkhead. Plaintiffs also asked the Court to judicially declare what each property owner should be required to pay for the bulkhead, claiming those who live on the water should pay more than those property owners who live off the water. A partial Summary Judgment was filed by the defendants, and the Court entered a declaratory judgment in their favor declaring that all property owners are to be equally assessed to repair, maintain and replace the bulkhead under their covenants unless a vote is passed by the owners to vary an assessment.

COLLEEN SHEA (WILM) and **KATHERINE WAGNER (WILM)** obtained Judgment on the Pleadings on behalf of their client, a regional elevator installer, in a wrongful death case arising out of the death of an 11 year old girl who was crushed when she became wedged between the residential elevator car and the elevator shaft wall. Suit was originally filed against the general contractor and the installer, and after several months of contested discovery, **MS. SHEA** successfully obtained a dismissal in the case based on the general contractor's intervening and superseding negligence. After obtaining a settlement with the general contractor, the child's Estate subsequently re-filed suit against the installer. **MS. SHEA** and **MS. WAGNER** filed a Motion for Judgment on the Pleadings grounded on the doctrines of judicial and collateral estoppel, which was granted, resulting in dismissal of Plaintiffs' case with prejudice.

JENNIFER MORRIS JONES (RAL) received a favorable Full Commission decision in a workers' compensation claim in which Plaintiff, a general maintenance mechanic for a major Triangle area university, contended that he sustained a work-related left thumb injury when he allegedly reached for his two-way radio in an awkward manner. As a general maintenance mechanic, Plaintiff used his two-way radio approximately four to five times per day. Plaintiff testified that he normally grabbed his radio straight on. In the day in question, Plaintiff testified that for some unknown reason, he reached around to pick it up, allowing his thumb to make contact on the opposite side of the radio from where his thumb usually made contact with the radio. He immediately felt a cramp in his arm and his left thumb was limp.

Deputy Commissioner Griffin concluded that Plaintiff sustained a compensable left thumb injury and awarded benefits. On appeal, the Full Commission determined that Plaintiff had not sustained an injury by accident, as there were no unusual circumstances that led Plaintiff to reach for his radio in a manner different from his usual manner. The Full Commission denied Plaintiff's claim for benefits.

JOHN MARTIN (WILM), **NORWOOD BLANCHARD (WILM)** and **KATHERINE WAGNER (WILM)** were successful at the North Carolina Court of Appeals, when the Court affirmed the trial court's granting of Summary Judgment. Plaintiff was a child seen in a hospital for a fractured wrist. After treatment he was discharged home, and two months later brought back to the Hospital with severe head injuries, as a result of which the child is a quadriplegic. DSS found that the injuries were due to child abuse from a live-in boyfriend. Plaintiff alleged that the healthcare providers who saw and treated the child for the wrist fracture were negligent, and should have suspected and pursued an investigation and reported the abuse to DSS, all of which would have prevented the child abuse. The Court of Appeals affirmed the trial court's granting of defendants' Motion for Summary Judgment and dismissal of the case, holding that Plaintiff failed to establish that any alleged negligence was a proximate cause of the injuries.

AMY PFEIFFER (RAL) won a case at the Deputy Commissioner level in which Plaintiff had an admittedly compensable cervical spine injury for which she has received ongoing medical and indemnity compensation since 1992. In the interim, Plaintiff has developed low back pain and has had several dizzy spells, both of which she attributed as being directly related to the cervical spine injury. Plaintiff argued in front of Deputy Commissioner Houser that she was entitled to medical treatment for these issues, including a brain scan and an echocardiogram. Plaintiff also sought attendant care for help around her house, and wanted her employer to fund a life care plan, despite one never having been ordered or even recommended by a treating physician. Deputy Commissioner Houser denied all of Plaintiff's claims as not being related to the initial compensable injury.

HOLLAND BARKSDALE (CHAR) - Deputy Commissioner Harris found that Plaintiff's claim was barred by N.C.G.S. 97-22 due to her lack of reasonable excuse for the delay in reporting her claim. Plaintiff waited over six months and her excuse for the delay was that she "did not know it was work related" or thought that her back pain was related to a kidney problem. However, she had been treating with her chiropractor for several months by the time she report the injury. The Full Commission affirmed the determination of Deputy Commissioner Harris.

HOLLAND BARKSDALE (CHAR) - Deputy Commissioner Stanback found that Plaintiff's claim was not compensable for various reasons, including her lack of credibility in the report of injury; her attempt to pass a drug screen using false pretenses; her failure to return to suitable light duty employment and her failure of the post-accident drug screen. The Full Commission affirmed Deputy Commissioner Stanback's determination denying her claim for workers' compensation benefits.

PAUL HOLSCHER (RAL) successfully moved for dismissal of an appeal to the North Carolina Court of Appeals. The appeal was brought by Defendant who had asserted several counterclaims against Plaintiff which were dismissed due to Defendant's failure to attend his deposition. Upon reviewing briefs submitted by both parties, the North Carolina Court of Appeals granted Plaintiff's Motion to Dismiss Defendant's appeal. Defendant then petitioned the NC Supreme Court for review of the dismissal, which was denied.

ROBIN DAVIS (RAL) and **PAUL HOLSCHER (RAL)** recently obtained dismissal with prejudice of several claims asserted against a municipality and city employees including the City Manager, the Human Resources Director and Finance Director. The case involved a challenge to the suspension and eventual termination of a former city employee.

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ROBIN DAVIS (RAL) and **PAUL HOLSCHER (RAL)** recently obtained a dismissal without prejudice of several claims asserted against a municipality. The case involved a challenge to the termination of a former city employee. The defense filed a Motion to Compel and at the hearing for the motion asked the Court to dismiss the lawsuit with prejudice based upon Plaintiff's failure to adequately respond to discovery requests and Plaintiff's failure to preserve evidence. As a result of the hearing, the Court ordered Plaintiff to fully respond to Defendant's discovery and ordered Plaintiff to pay Defendant's attorney's fees incurred in pursuing the motion. Plaintiff eventually took a voluntary dismissal without prejudice of the lawsuit.

PAUL HOLSCHER (RAL) recently obtained a dismissal without prejudice of a negligence claim asserted against a board of education. The case involved a motor vehicle accident involving an employee of the board of education. The defense filed a Motion for Summary Judgment based upon the grounds of governmental immunity. In lieu of attending the Motion for Summary Judgment hearing, Plaintiff filed a voluntary dismissal without prejudice of the lawsuit.

DAN KATZENBACH (RAL) and **PAUL HOLSCHER (RAL)** recently obtained a favorable result in a pro bono case involving an alleged covenant not to compete. Plaintiff filed a complaint, including an *ex parte* application for a temporary restraining order against Defendant, a former dance instructor of Plaintiff. Prior to Defendant obtaining legal representation, Plaintiff obtained an *ex parte* temporary restraining order which prevented Defendant from teaching dance lessons. The defense filed a Motion to Dissolve the temporary restraining order and to deny injunctive relief. After a hearing on Defendant's Motion to Dissolve, the Court granted Defendant's motion and, as a result, Plaintiff filed a dismissal with prejudice of the lawsuit.

DAN KATZENBACH (RAL) and **PAUL HOLSCHER (RAL)** recently obtained a favorable settlement on behalf of a company related to a breach of contract. After filing suit and successfully defending a Motion for Summary Judgment brought by the defendant, the favorable settlement was obtained on the eve of trial.

STEPHANIE A. GASTON (RAL) successfully defended a motor vehicle negligence case in Wake County District Court. At trial, Plaintiff alleged he made a U-turn on a green arrow, and that his vehicle was struck from the rear by the Defendant's vehicle after he completed his turn. Defendant contended she was traveling straight through the intersection on a steady green light and that she did not see Plaintiff's vehicle until immediately prior to the accident. Defendant testified that a vehicle in the lane to her left partially obstructed her view of traffic. There was testimony from the investigating police officer that the left turn signal for Plaintiff's lane of travel sometimes emits a steady green light and sometimes emits a green lead. After submission of the issues to the jury, the jury returned a defense verdict, finding no negligence on the part of the Defendant. Plaintiff moved for a new trial on the grounds that there was no competent evidence to support the verdict and that the verdict was contrary to the greater weight of the evidence. The trial court denied Plaintiff's Motion for a new trial, and Plaintiff appealed to the North Carolina Court of Appeals. Following briefing of the issues and a hearing without oral argument, the Court of Appeals affirmed the trial court's denial of Plaintiff's Motion for a new trial.

STEPHANIE A. GASTON (RAL) successfully obtained Summary Judgment for the owner of a hotel in a premises liability case. Plaintiff alleged that she slipped on an area of wet carpet in her hotel room. After deposing Plaintiff as well as Plaintiff's roommate at the hotel, Defendant moved for Summary Judgment on multiple grounds. Defendant argued that viewing the evidence in the light most favorable to Plaintiff, Plaintiff had at least equal, if not superior, knowledge of the allegedly defective condition of the carpet prior to the accident. As such, Defendant argued it had no duty to warn or protect Plaintiff from the allegedly dangerous condition. After consideration of all matters of record and the arguments of counsel, the Court granted Defendant's Motion for Summary Judgment as to all claims.

DAN HARTZOG (RAL) and **STEPHANIE A. GASTON (RAL)** successfully obtained Summary Judgment in a defamation and misrepresentation case. Plaintiff, a radiologist, alleged that statements made by Defendant, an orthopedic surgeon, resulted in a lawsuit being filed against him for medical malpractice and fraud. Defendant denied making any allegedly defamatory or false statements regarding Plaintiff. After deposing Plaintiff and Defendant, as well as the claimant and claimant's attorneys in the underlying medical malpractice action, Defendant moved for Summary Judgment. The Court found that taking the evidence in the light most favorable to Plaintiff, any allegedly defamatory statements made by Defendant were made to claimant's attorneys in preparation of claimant's medical malpractice lawsuit, and thus, were subject to an absolute privilege. The Court entered Summary Judgment on all claims in favor of the defendant.

STEPHANIE A. GASTON (RAL) successfully represented a car rental company ("Rental Company") in a motor vehicle negligence case. Defendant driver, represented by separate counsel, was allegedly operating the rental vehicle at the time of the accident. In his complaint, Plaintiff alleged that Rental Company owned the vehicle operated by the defendant driver, but Plaintiff failed to allege any independent acts of negligence on the part of Rental Company. A Motion for Summary Judgment was filed pursuant to 49 U.S.C. 30106 on behalf of Rental Company. The morning of the Summary Judgment hearing, Plaintiff took a dismissal without prejudice of his claims against Rental Company. The remaining Defendants later settled the case and obtained a global release and dismissal with prejudice of all Defendants, including Rental Company.

GLORIA BECKER (RAL) and **BOB SUMNER (RAL)** obtained a dismissal in the highly contested "body bag" case. Plaintiff filed suit alleging a catastrophic anoxic brain injury as a result of being wrongfully declared dead at an accident scene where he was subsequently placed in a body bag and transported to the morgue. **MS. BECKER** successfully argued a Motion to Dismiss on the basis that the complaint failed to state any negligence and gross negligence claims against the volunteer fire and rescue personnel at the scene.

GLORIA BECKER (RAL), **MEREDITH BERARD (RAL)** and **DAVID BATTEN (RAL)** obtained a dismissal in a class action case in which Plaintiffs alleged that the private collection agency wrongfully collected child custody payments from them even after their parental rights had been terminated.