

Spring 2011

One Day Seminar



May 6
Embassy Suites
Columbia

Visit the website
for details.



Pat Rediehs and Bill Shaughnessy Honored at 2010 Annual Educational Conference



Two SCWCEA members were awarded the Honorary Lifetime Membership designation during the 34th Annual Educational Conference on Workers' Compensation in October. This is the highest award bestowed on an individual by the association and recognizes those that have made significant contributions to the SCWCEA and workers' comp profession.

Patricia L. Rediehs, GENEX Services Branch Manager for the Carolinas, has been a member of the SCWCEA since the early 1980's. Her service to the SCWCEA includes serving on the Board of Directors and on various committees.

William L. Shaughnessy, Esq., an attorney with Turner Padgett Graham & Laney, PA in their Greenville office, has been a member of the SCWCEA since the 1970's. His service to the association includes duties of Past President, Annual Conference Chair, a member of the Board of Directors, committee positions and as the governor's designee to the Workers' Compensation Advisory Committee.

"Both individuals have exhibited extraordinary dedication and passion to improving the workers' compensation system of South Carolina," says Chris Daniel, President of the SCWCEA. "We greatly appreciate the contributions Pat and Bill have made to better the association over the years."

The SCWCEA Board of Directors renamed this award effective 1/21/11 to The Lifetime Achievement Award. To obtain information on criteria and nominating individuals, please visit the website.



South Carolina
Workers' Compensation
Educational Association

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Irmo SC 29063
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continued next page

2011 SCWCEA Officers



Left to right: Rusty Goudelock, Past President, Ric Davis, Vice President, Michael Swindell, Secretary, Harry Gregory, Treasurer, Chris Daniel, President.

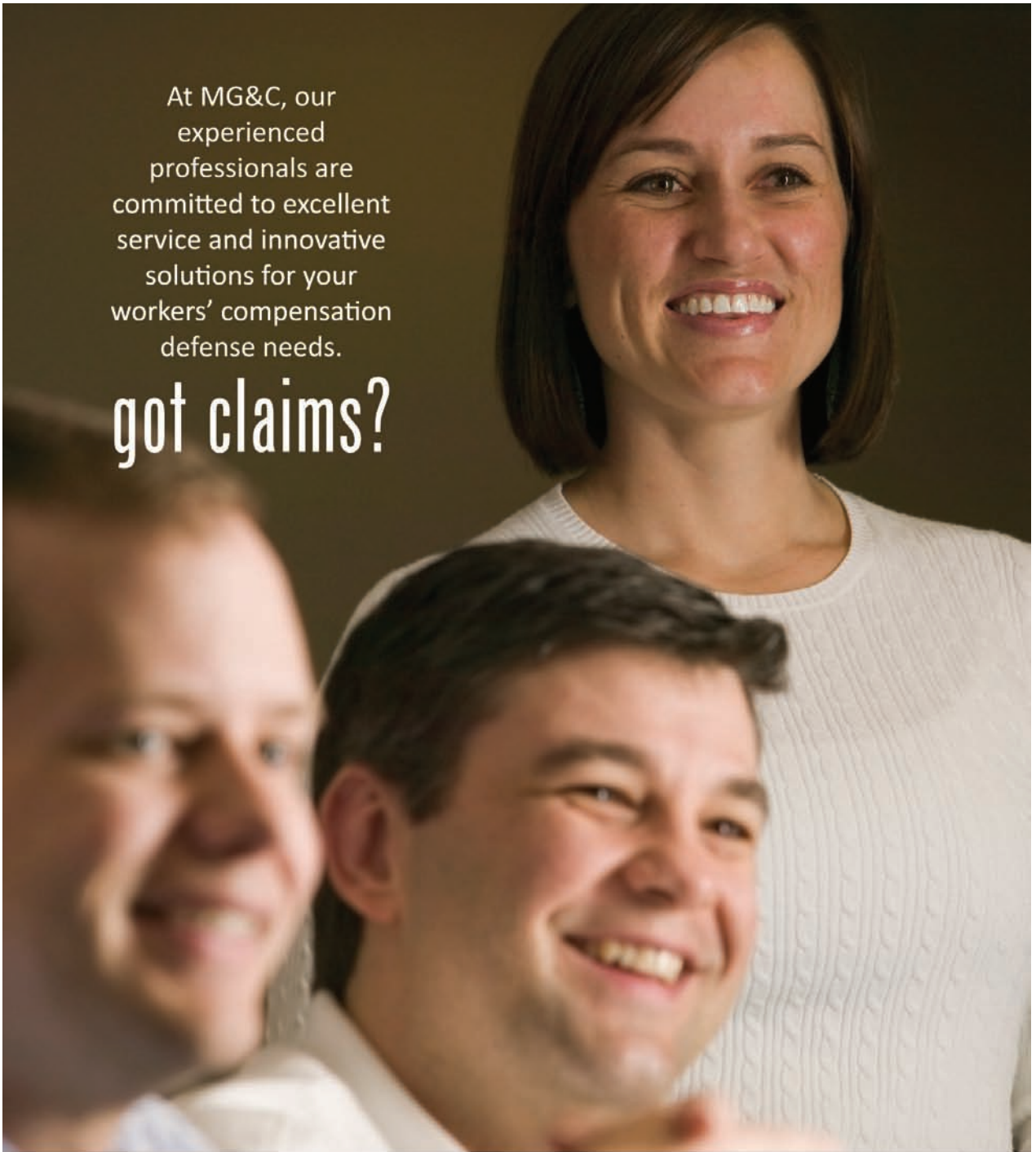
2011 SCWCEA Board of Directors



Back row left to right: Barbara Cullum, David Benenhaley, Stan Lacy, Bret Salley, Sunnie Thomason, Shayne Williams, Ric Davis, Chris Daniel, Michael Swindell, Avery Wilkerson, Joe Hutchinson
Front row left to right: Roy Howell, Stephen Ratliff, Andrea Roche, Harry Gregory, Rusty Goudelock, Scott Beck, Chuck Jacobson, Bill Shaughnessy.
Absent: Paige Bowling, Belinda Ellison and Hal Willson.

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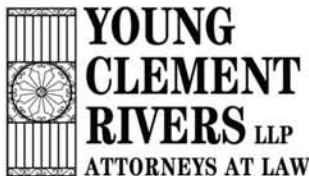
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The Unanswered Question

By Stan Lacy
Collins and Lacy, PA

In the last newsletter, we discussed the conundrum created by *Gordon v. Phillips Utilities, Inc.*, 362 S.C 403, 608 S.E.2d 425 (2005) in which the Supreme Court held §42-1-580 was "inapplicable" in a tort action. In essence, a third party who asserts the employer's negligence contributed to the worker's injuries cannot join the employer as a party to the civil action because the employer is protected by the exclusivity doctrine. Since the employer cannot be made a party to the suit, he is not present at trial to protect his interest.

How can a jury fairly assess whether the employer's negligence contributed to the injury and, if so, to what degree? Without the presence of the employer, the concept of reducing the third party's exposure by relative negligence of the employer is "inapplicable." The statute simply cannot be applied. So, how do we resolve the conflict between the exclusivity doctrine and the principle that the ultimate wrongdoer should pay?

The key, it seems, lies in the exclusivity doctrine itself. Almost every attempt to dilute the doctrine has failed. The only exception to date occurs when the employer injures the employee intentionally, such as becoming angry and shooting the worker with a pistol. The courts have consistently held the exclusivity doctrine is not a shield behind which a felonious employer can hide to avoid civil liability for wrongdoing. Obviously, that is not the situation we are addressing here. We are looking at the employer's negligence.

Under the exclusivity doctrine, the employer is shielded from suit regardless of the degree of his negligence. The employer has a lien against third party proceeds only when the employer is not at fault for the injury. If the employer's negligence contributed to the injury, the employer should not have a lien.

Applying a basic tenet that the wrongdoer should pay, the parties prejudiced by the inability to apply §42-1-580 are the claimant and the third party. The claimant is prejudiced because the employer does not lose its lien against third party proceeds regardless of his degree of negligence.

The third party is prejudiced because it may be held liable for all damages when the employer should share the fault. This is inconsistent with concept of comparative negligence. In balancing the interests of the employer, the employee and the third party, denying the third party the opportunity to involve the employer in the suit tips the scales of justice too much in favor of the employer.

Perhaps the answer is a narrowly defined exception to the exclusivity doctrine carved out by the General Assembly. The exception would be limited to adding the employer to a third party action, but only on the issue whether the employer's negligence caused the injury and, if so, to what degree. If the statute provided the exposure of the employer was limited to what was already paid pursuant to the Act, the only risk to the employer would be the loss of his third party lien.

The employer would have no other exposure. The third party would be free to assert negligence against the employer and a verdict based on its own comparative negligence. The employee would be entitled to the third party proceeds, which we would assume would be less than total cognizable damages, without the problem of satisfying the employer's lien.

Resolving this dilemma will be for the General Assembly. In light of the amount of time and effort the legislature expended on workers' compensation issues in 2006-2007, amending the Act again is not a high priority. Additionally, lawyers get nervous when we start talking about making in-roads into the exclusivity doctrine. That's understandable.

But something must be done or §42-1-580 will never provide the balance between the employer, employee and third party that it was initially enacted to provide.

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Mark Your Calendar

S.C. Workers' Compensation Commission

Upcoming Claims Administration Workshops

May 5, 2011

September 29, 2011

More information coming soon!

Worth Noting...

2011 One Day Seminar: May 6

Registration for this year's One Day Seminar at Embassy Suites in Columbia is currently underway. Take a day away from the office to collaborate, network and learn. Morning sessions will focus on witness credibility and current updates from the South Carolina Workers' Compensation Commission. The afternoon is structured to allow you to design your own CEU/CLE curriculum by choosing topics that are of most importance to you.



Make plans to join us for an informative session at a reasonable price. Current members will receive their registration material in this week's mail or you may [register electronically by accessing our website](#).

Is Your Membership Current?

Please remember that dues must be current to receive reduced member rates at our meetings. The deadline to join to receive the Annual Educational Conference member rate is 90 days prior to the start of the conference or **July 15, 2011**.

If there are staff changes to your organization, now is the time to update this information. For membership additions, [please download and complete the form on our website](#) so that we have current contact information for our records.

Guest Articles Welcomed

The SCWCEA continues to look for educational articles and information to benefit the membership. You are welcome to [submit editorials for future newsletters to us via email](#).

Promote Your Organization Through Future Newsletters

Space is available. Cost is \$500 for a full page and \$250 for a half page. Contact Donna Croom at 803.407.3360 or at scwcea@bellsouth.net regarding specifications and placement. Ads are being accepted now for the summer edition. Deadline is June 1, 2011.

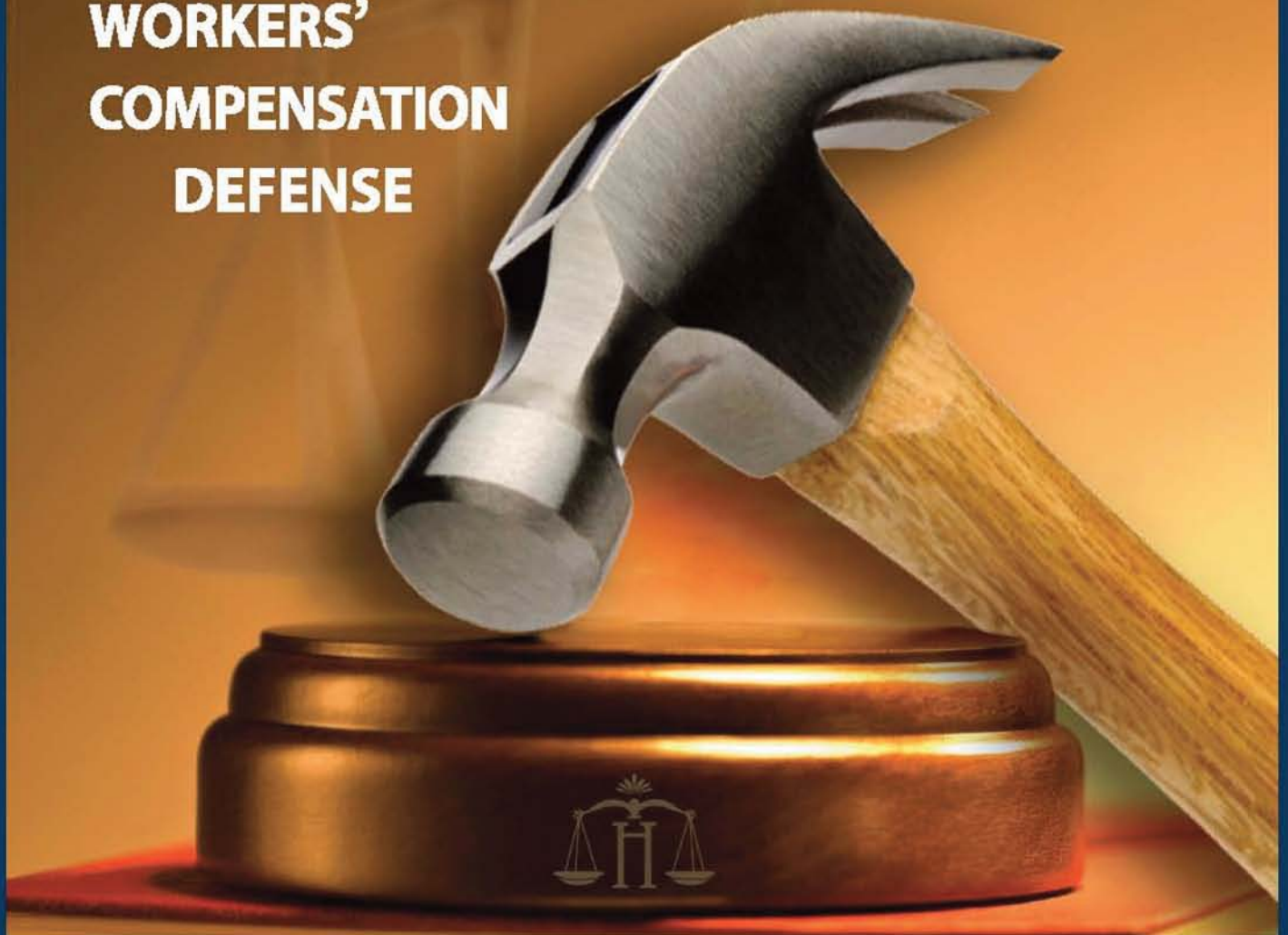
Comp Camp Booths Available Now!

2011 Comp Camp booths are on sale now. Plans for the conference are underway and exhibitors are encouraged to secure their locations at this time. Prices have remained the same and there are some excellent locations still available. To access exhibitor forms, floor plans and bingo card participation, [click here](#). Don't delay and secure your location before the prime locations are taken!

Comp Camp 2011....Be There October 16 – 19

Program details and registration materials will be mailed to the SCWCEA membership in June.

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Kids' Chance Silent Auction

October 16
35th Annual Educational
Conference on Workers'
Compensation

Embassy Suites at
Kingston Plantation
Myrtle Beach, SC

Join the Kids' Chance Team

As March Madness comes to a close there is one more team that is gearing up for its main event! Planning for the 2011 Kids' Chance of South Carolina Silent Auction is underway and YOU could be a part of the Kids' Chance team!

We are seeking volunteers for the **2011 Kids' Chance Silent Auction** to be held on October 16th in Myrtle Beach during the SCWCEA Educational Conference. This annual event raises money for the Kids' Chance Scholarship Fund that assists children of SC workers injured or killed as a result of a work related accident.

As a volunteer, you will help promote Kids' Chance and secure donations for the auction. With all of our volunteers reaching out to their business contacts, we will be able to encourage more involvement and collect donations that will make this year's event a success.

Unable to volunteer?...Then donate!

You can play a large role by contributing items to be auctioned at the event. All donations are tax deductible and contributors will be recognized during the auction. Don't get caught by the buzzer...make your donation today!

Simply complete the form on the next page and return by mail or email to come a The Directions Group by phone at 800.242.8856 or by email:

Kristen Walpole: Khuggins@TheDirectionGroup.com
Stephen Ratliff: SteveRatliff@TheDirectionsGroup.com

Thank you in advance for your support!

Bar Gives Generously to Kids' Chance

Last year marked the 75th year of workers compensation in South Carolina. The Workers Compensation Section of the S.C. Bar celebrated this milestone with a generous donation of \$7,500 to the Scholarship Society of Kids' Chance of South Carolina.

In a time when many businesses are scaling back their community engagement, the S.C. Bar is scaling up its community commitment through this sponsorship. Kids' Chance of South Carolina wishes to thank the S.C. Bar and other Scholarship Society members for your continued support!



Left to right:
Johnnie Baxley, President of the Bar's Workers' Compensation Section and Ric Davis, member of Kids' Chance Board of Directors



2011 KIDS' CHANCE SILENT AUCTION DONATION FORM

October 16, 2011 • Embassy Suites • Myrtle Beach, SC

Federal Tax Number 57-0973253

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Company: _____

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434 Belle Isle Dr.
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For Additional Information Contact:

Angie Kohl
Kids Chance of SC
(803) 673-1332
kohl.angie@gmail.com

Kristen Walpole
The Directions Group
(843) 849-0400
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We Continue to Grow: Welcome New SCWCEA Members

The following is a listing of our new members who have joined the association since January 1, 2011. Make certain to introduce yourself to those attending the One Day Seminar or the annual conference this fall. They will all wear a “New Member” ribbon and can easily be identified.

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FCCI Insurance Group
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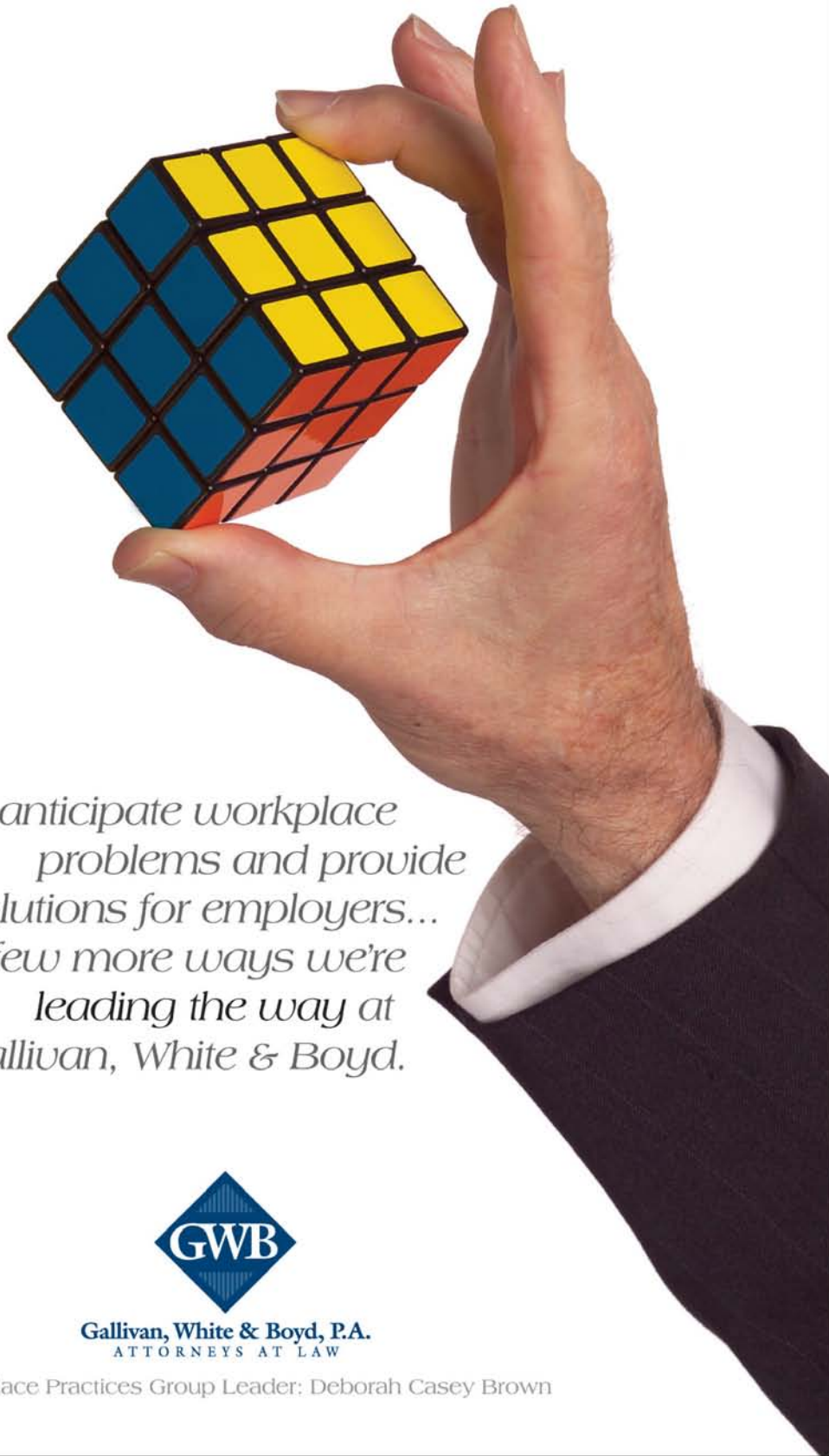
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Associates
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Greensboro NC

Ann Proctor
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Duncan SC

Wade Robinson
Chartis Insurance
Charlotte NC

Mary (Celia) Robinson
Mullis Law Firm
Columbia SC

Joel Rogers
Santee Cooper
Moncks Corner SC

John Roxon
Joye Law Firm, L.L.P.
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Ron Winburn
Wright Rehabilitation
Services
Woodstock GA

Laura W. Windham
Spartanburg Regional
Occupational
Spartanburg SC

Gina Vieceli
Page Rehabilitation
Services, Inc.
Ft. Mill SC

Tony Waters
Eaton Corporation
Greenwood SC

Cori Wyatt
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Irmo SC

Marie Warner-Smith
Liberty Mutual
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