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## FIFTEEN WJCB ATTORNEYS NAMED TO 2020 LEGAL ELITE:



**Fifteen Willson Jones Carter & Baxley attorneys have been named to South Carolina Business Magazine**

(Greenville Business Magazine, Columbia Business Monthly and Charleston Business Magazine) 2020 Legal Elite.

Congratulations to Allison Carter for being named to the Top Lawyer list for Workers' Compensation Defense in the Lowcountry.

### **WJCB Attorneys named to 2020 Legal Elite:**

**Greenville** office attorneys Ben Renfrow, South Lewis, Franklin Guerrero, Zach Smith, Wes Shull, Jeff Jones, Hal Willson, Kyle Thompson, Wilson Sheldon, Chuck Turner, Anne Culbreath and Allison Mabbs. **Columbia** office attorney Candy Hindersman and **Charleston** office attorneys Adam Greene and Allison Carter.

For additional information or contact details visit our Attorney Profiles

<https://www.wjcbllaw.com/our-team>

# 25 WJCB ATTORNEYS NAMED TO 2020 U.S. NEWS BEST LAWYERS IN AMERICA:

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**Congratulations to the twenty-five WJCB attorneys who made the 2020 U.S. News Best Lawyers in America list:**

**Greenville:** Anne Culbreath, Franklin Guerrero, Jeff Jones, South Lewis, Tracy Tiddy, Chuck Turner, Brenn Watson, Hal Willson, Jason Griggs, Wilson Sheldon, Wes Shull, Ben Renfrow

**Charlotte:** Kenny Coble, Angie Zachary, Larry Baker

**Charleston:** Johnnie Baxley, Allison Carter, Anne Noonan, Troy Thames, Alan Westerlund

**Columbia:** Robb Brown, Michael Burkett, LeAnne McCormack, Strat Stavrou,

**Raleigh:** Dana Leonard

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Additionally, **South Lewis** was named **Lawyer of the Year for Workers' Compensation Law (Employers)** for **Greenville** and **Anne Noonan** was named **Lawyer of the Year for Workers' Compensation Law (Employers)** for **Charleston**.



# **COVID-19 CORONAVIRUS UPDATE**

## **GEORGIA COVID-19 UPDATE: BY PAULA SMITH | PFSMITH@WJLAW.NET**

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To date, the state of Georgia has reported over 270,000 confirmed cases of COVID-19. The economic impact includes a 12.6% unemployment rate reported as of May. As we attempt to dig out of the pandemic, we have a watchful eye on its impact on workers' compensation claims in Georgia. We are unable to locate any litigated COVID-19 cases in Georgia, although claims are being filed with The Georgia Board of Workers' Compensation.

There are also businesses with open COVID-19 cases they have voluntarily accepted as compensable. The Georgia legislature has not enacted any legislation that would carve out an exception for COVID-19 from the Occupational Disease requirements for compensability. There is still much to be determined about the outcome of COVID-19 claims being filed in Georgia. We do not believe COVID-19 cases are compensable in most cases. We are available to assist with the myriad of questions that arise as you receive and investigate Georgia COVID-19 claims.

# **SOUTH CAROLINA COVID-19 UPDATE:**

**BY KEVIN COUCH | JKCOUCH@WJLAW.NET**

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South Carolina enjoyed a thriving economy with a 2.5% unemployment rate in February. By the end of May, the unemployment rate had skyrocketed to 12.4%, representing the loss of more than 272,000 jobs in the state. This is the highest unemployment rate experienced in SC in well over 40-years. The South Carolina Workers' Compensation system has not been unscathed by the COVID-19 pandemic.

The South Carolina Workers' Compensation Commission reported approximately \$105,000 in indemnity and approximately \$8,000 in medicals have been paid thus far. As of July 31, the Commission reported 793 COVID-19 related claims had been filed with The Commission.

The South Carolina General Assembly is considering a bill related to COVID-19. Before adjournment in May, H5482 was read before the House and referred to the Committee on Judiciary. This proposed bill would "establish a presumption that a first responder, healthcare provider, or correctional officer contracting COVID-19 is entitled to workers' compensation benefits as an occupational disease." The bill is currently in Committee. There is no pending legislation that would presume compensability in any other context.

In most situations, we do not believe that COVID-19 cases are compensable under The South Carolina Workers' Compensation Act, although each case is fact-specific. WJCB is available to assist you with the facts related to your individual case. We encourage you to reach out to your WJCB attorney for questions and clarification on your COVID-19 claims.

# **NORTH CAROLINA COVID-19 UPDATE:**

## **BY KENNY COBLE | EKCOBLE@WJLAW.NET**

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The impact of COVID-19 on the workers' compensation system in North Carolina has been vast and wide-ranging. There have been a number of claims filed by employees alleging they contracted the disease as a result of their employment and this has required claims professionals and employers to conduct thorough investigations of such allegations, including contact tracing of the activities of those employees during the fourteen days prior to their manifestation of symptoms. Conducting such investigations requires a great deal of meticulousness and an awareness of government and public resources that are available on the disease and its spread. We at WJCB have made certain that we have remained well-versed in what is required in these investigations and the resources available so that we are ready to assist our clients whenever we are called upon to do so.

In addition to the COVID-19 claims, the disease has also affected existing claims in a myriad of ways. Hearings were delayed for several months, but have now resumed via Webex. Insurers and employers will need to decide whether this venue adequately allows their case to be tried and serves their best interest. We would encourage you to discuss this with your counsel before moving forward with the process. Additionally, there have also been issues with medical treatment in existing claims as a result of COVID-19 in the form of delayed treatment due to the prior moratorium on elective procedures and a plaintiff's apprehension about participating in medical care. If the medical provider is the only one causing the delay in treatments, it is difficult to avoid these delays; however, if a plaintiff is refusing to participate in medical treatment based on alleged concerns about COVID-19, consideration should be given to the legitimacy of these alleged concerns and whether or not redress should be sought with the North Carolina Industrial Commission in the form of a motion to compel compliance with medical treatment. COVID-19 has also had a tremendous economic impact and this has given rise to mass layoffs in some instances that have included plaintiff's with active workers' compensation claims. Such situations have led to questions about whether or not indemnity benefits should be initiated. While this analysis is fact-specific there is certainly an argument against doing so and here again, you should consult with counsel before making any decision on this issue.

These are just a few of issues that have arisen in the North Carolina workers' compensation system as a result of COVID-19. We are all finding our way through this uncharted territory, but we at WJCB stand ready to provide you with the guidance you need. We are only a phone call or email away.

# LITIGATION UPDATE:

BY J.P. FERGUSON & ANDREW PRICE

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## **Is the Punitive Damages Cap in South Carolina a Moving Target after the South Carolina Court of Appeals decision in Garrison v. Target Corp.?**

In Garrison v. Target Corp., the South Carolina Court of Appeals held that Target's failure to assert the affirmative defense of capped punitive damages under S.C. Code Ann. § 15-32-530 waived the defense. As such, the Court upheld a punitive damages award disproportionately larger - 45 times larger - than the compensatory damages.

In May 2014, Appellant Garrison stood outside a Target store in Anderson, South Carolina examining a coupon book with her daughter nearby. Garrison's daughter picked up a syringe from the parking lot, presented it to her mother, and asked what she had found. Garrison turned to her daughter, saw her holding a syringe with an exposed needle, and instantly swatted the syringe out of her daughter's hand. In doing so, the needle punctured Garrison's palm and a bead of blood emerged.

At trial, the jury returned a verdict in Garrison's favor which included \$100,000 in compensatory damages and \$4.5 million in punitive damages, a ratio of 1:45. Following trial, Target moved for a JNOV as to the punitive damages, which the Court granted. Multiple appeals followed.

The South Carolina Court of Appeals considered the issue of whether Target waived the application of the punitive damages cap set forth in S.C. Code Ann. § 15-32-530. S.C. Code Ann. § 15-32-530(A) states, "Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars." Subsection (B) outlines two situations where the court will allow punitive damages of four times the compensatory damages, but no more than two million dollars. Subsection (C) outlines three situations where there is no cap on punitive damages. Therefore, the statute sets forth two applicable sections on punitive damage limits, either \$500,000 or \$2,000,000, determined by the defendant's conduct, and an exception to punitive damage limits if one of the three circumstances in subsection (C) is present.

# LITIGATION UPDATE:

## (CONTINUED) BY J.P. FERGUSON & ANDREW PRICE

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The Court of Appeals highlighted Rule 8(c) of the South Carolina Rules of Civil Procedure, which outlines the mandatory inclusion of affirmative defenses in a responsive pleading. Rule 8(c) states that a party shall affirmatively plead defenses including “any other matter constituting an avoidance or affirmative defense.” The Court opined that an important purpose of Rule 8(c) is to inform the court and parties on how the cases will be tried and “to avoid the surprise defenses permissible under the old general denial answer.” The Court of Appeals sought instruction from Rule 8(c) of the Federal Rules of Civil Procedure and relevant Federal caselaw. Ultimately, the Court held that preventing unfair surprise is central to the requirement of pleading affirmative defenses. The gravamen of the Court’s opinion is that a defendant should not be permitted to ambush a plaintiff with an unexpected defense.

The Court of Appeals acknowledged that analyzing courts may overlook a defendant’s failure to plead an affirmative defense when it “is timely raised to the trial court without resulting in unfair surprise to the opposing party.” However, courts will enforce the pleading requirement when a statutory liability limit such as S.C. Code Ann. § 15-32-530 affects the proof to be presented at trial. In *Garrison*, the Court emphasized that subsections of § 15-32-530 set out when punitive damages are or are not capped. Explicitly, subsection (C) provides “there shall be no cap on punitive damages” when the court finds that one of three circumstances applies to the case. The Court again stressed that the statute’s plain language to require the trial court to make circumstantial findings based on the proof presented at trial. Accordingly, the Court of Appeals reasoned that if a plaintiff is not made aware that a defendant intends to rely on the statutory cap to punitive damages, a plaintiff will likely not engage in discovery or present evidence supporting a circumstance outlined in § 15-32-530 in order to exempt themselves from the punitive damage caps found in subsections (A), (B), and (C).

In sum, the Court of Appeals stated, “[T]he criteria of Section 15-32-530 undoubtedly affect the proof at trial.” The Court concluded that Target was required to plead the recovery limits in § 15-32-530 or, at the very least, raise the defense prior to the conclusion of discovery so that *Garrison* would have prior notice of the additional evidence needed to challenge the punitive damage limit.

# A MESSAGE FROM HAL WILLSON, WJCB MANAGING SHAREHOLDER:

BY HAL WILLSON HJWILLSON@WJLAW.NET

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What a year! We hope that you and your family are doing well despite these unusual times. Many people are experiencing great economic and emotional difficulty due to the COVID-19 shut downs and changes we have had to make in our daily lives. Here at WJC&B, we are grateful for the work you continue to send to us, which has allowed us to continue operations and remain productive. We do not take this for granted and greatly appreciate your continued support. With all the change we have dealt with and are still dealing with, I think the quote from the great basketball coach and leader John Wooden can inspire us to make the best of the situation. He said, "Things work out best for those who make the best of how things work out." Even though it might be difficult, I hope that you will make the best of how things have worked out this year.

## WEBINARS:

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- September 28 | 9:00 – 11:00 | SC Auto Liability - 2.0 General CEU NC, FL, TX, GA
- October 6 | 9:00 – 11:00 | GA Workers' Compensation Basics - 2.0 General CEU GA, NC
- October 13 | 9:00 – 10:00 | Communicating With Medical Providers in NC and SC 1.0 General CEU NC
- November 3 | 9:00 – 10:00 | NC Medical Treatment Authorization 1.0 General CEU NC

**To Registers For These Sessions or  
Request Additional Training,  
Contact Kelli Smith [kmsmith@wjlaw.net](mailto:kmsmith@wjlaw.net)**

## RESOURCE GUIDE:

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<https://www.wjcbllaw.com/insurance-defense-resources>