R. Brett Garrett Attains Shareholder Status in Rushton Stakely

Rushton, Stakely, Johnston & Garrett, P.A. is pleased to announce that R. Brett Garrett has been made a shareholder in the firm.

Mr. Garrett joined the firm as an associate in 2004. As a member of the litigation practice group, he handles a wide range of litigation matters, with his primary focus on professional liability and general casualty insurance defense. Mr. Garrett specializes in representing physicians, nurses, hospitals, and pharmacies and has significant experience representing medical and nursing professionals in administrative and licensure matters. He also represents a number of healthcare providers and companies specializing in correctional medicine.

Mr. Garrett obtained his undergraduate degree in Political Science/Pre-Medical Studies from the University of Alabama in 2000 and his juris doctor from Cumberland School of Law in 2004.

Four Rushton Stakely Lawyers Named Lawyers of the Year

Best Lawyers, the oldest and most respected peer review publication within the legal industry, has named four lawyers of Rushton Stakely as “Lawyers of the Year” for the Montgomery

area. The Rushton Stakely lawyers being honored include Thomas H. Keene, Personal Injury Litigation; Jeffrey W. Blitz, Real Estate Law; Dennis R. Bailey, Product Liability Litigation; and Helen Crump Wells, Trust and Estates. After more than a quarter of a century in publication, Best Lawyers is designating “Lawyers of the Year” in high-profile legal practice areas in large legal communities. Only one lawyer in each practice area in each community is being honored.

Inclusion in the Best Lawyers list is based on exhaustive peer reviews of thousands of leading attorneys throughout the United States. The lawyers being honored as “Lawyers of the Year” were selected because they received particularly high ratings in Best Lawyer surveys. The selected lawyers have earned a high level of respect among their peers for their abilities, professionalism, and integrity. We are pleased that four of our lawyers were recognized with this distinguished honor.

In addition to the “Lawyers of the Year” awards, the following members of our firm have been recognized as the best lawyers in their fields: Dennis R. Bailey, Jeffrey W. Blitz, L. Peyton Chapman, Ronald G. Davenport, William I. Eskridge, James W. Garrett, Jr., Richard B. Garrett, William S. Haynes, Robert A. Huffaker, James Theodore Jackson, Paul M. James, Thomas H. Keene, Daniel L. Lindsey, Patrick M. Shegon, Christopher S. Simmons, Frank J. Stakely, Fred W. Tyson, Robert C. Ward, Jr., and Helen Crump Wells.

Bailey and Bolger Receive

Favorable Supreme Court Opinion on Open Records

Dennis R. Bailey and Beth L. Bolger received a favorable opinion from the Supreme Court today, reversing a ruling by the Lauderdale Circuit Court which had concluded that an area Health Care Authority (the "Authority"), organized under the Health Care Authorities Act of 1982 (the "Act"), was not required to disclose certain records requested by the TimesDaily in Florence. The records related to the final sale of assets of the Authority, which had to be voted on by the City Council of Florence and the Lauderdale County Commission (pursuant to the provisions of the Act). When the newspaper tried to obtain copies of the records from its local officials, their requests were denied. The Supreme Court reversed and remanded in favor of the newspaper, holding that the Authority was a governmental entity subject to Alabama's Open Records Act, and further opining that documents related to the final sale of assets were public records.

The opinion was authored by Justice Bolin, with seven other justices concurring. Justice Murdock wrote separately, concurring in part and dissenting in part.

Defense Verdict in Favor of Anesthesiologist

Rushton Stakely shareholders Thomas H. Keene and Ben C. Wilson successfully defended an anesthesiologist and his practice group in a recent wrongful death/medical malpractice trial in the Circuit Court of Calhoun County (Anniston). The plaintiff

alleged that the anesthesiologist had failed to adequately screen his 66-year-old patient for evidence of cardiovascular disease minutes prior to the performance of gallbladder surgery. The plaintiff further criticized the anesthesiologist's decision to put the patient to sleep given complaints of sudden and severe abdominal pain observed in the surgical holding area. The patient went into cardiopulmonary arrest shortly after the induction of anesthesia and subsequent resuscitation efforts were unsuccessful. The defense successfully argued that the patient's holding room symptoms represented a catastrophic heart attack that the anesthesiologist could neither have predicted nor averted during his brief opportunity to assess the patient and that the introduction of anesthesia had no adverse impact on the patient's prognosis. This case was tried before a Calhoun County jury and the Honorable Malcolm B. Street, Jr. over the course of five days. The plaintiff was represented by S. Shay Samples of Hare, Wynn, Newell, & Newton of Birmingham.

Defense Verdict in Wrongful Death Timber Case Involving Claims of Racial Discrimination

Jim Garrett and Evans Bailey recently received a defense verdict from a Monroe County jury in a wrongful death action which also alleged that the decedent was discriminated against due to his race under 42 U.S.C. Sec. 1981.

The facts of the accident leading to the lawsuit were

relatively undisputed. The Decedent, an experienced timber cutter, was killed while cutting timber in April 2007. He used a chainsaw to fell a beech tree, but the beech tree struck a nearby snag or dead tree. The snag struck the Decedent and caused the injuries which led to his death.

At the time of the accident, the Decedent was working as a timber contractor for the Defendant. The Defendant, a timber dealer or supplier, was in the business of acquiring timber cutting rights from landowners and then contracting out the cutting jobs to contractors, like the Decedent.

The case, however, wound up encompassing more than just the simple facts of the accident. The Plaintiff, the administratrix of the Decedent's estate, brought suit against the Defendant in early 2009. The original complaint filed in Monroe County (the Defendant's principle place of business) was stricken due to inflammatory racial language. The subsequent amended complaint alleged worker's compensation claims, wrongful death, and racial discrimination leading to the Decedent's death under 42 U.S.C. Sec. 1981.

After discovery, the Defendant moved for summary judgment on all of the Plaintiff's claims. The motion argued, in relevant part, that the Decedent was an independent contractor to whom no duty was owed, and that discrimination could not be proven. The Court found that the Decedent was an independent contractor and dismissed the worker's compensation claims. The remaining claims were set for trial on September 15, 2010.

Evans and Jim argued a simple case to the jury: the Decedent made a lapse in judgment when he either (1) cut down the beech tree before cutting the snag (it was his regular practice to cut down snags first) or (2) decided not to use an available mechanical tree cutter which had a protective cab that would have prevented his injuries.

The Plaintiff's case was far more complex. She argued that

despite the Decedent's status as an independent contractor, he was forced to cut down the beech tree by the Defendant. This was also presented in spite of evidence that the Defendant had never been to the site of the accident and had never instructed the Decedent on what equipment to use when felling a tree. The Plaintiff argued that the Decedent had to cut down this tree because the job was "clear cut," the Decedent owed money to the Defendant for certain equipment, and that the Decedent was regularly given more dangerous tracts, because of his race, and could not complain about this treatment or walk off the job.

After three days of testimony, the court denied Evans and Jim's motion for judgment as a matter of law on all counts, and the jury was charged on wrongful death and racial discrimination. The jury deliberated for approximately an hour and a half before delivering a defense verdict on all counts.

Rushton Stakely Receives First Tier Ranking

Rushton, Stakely, Johnston & Garrett, P.A. is pleased to announce that it has earned top metropolitan rankings in the first-ever *U.S. News and Best Lawyers* "Best Law Firms" publication. As our firm proudly celebrates its 120th anniversary serving the Montgomery community and the State of Alabama, we would like to thank our many devoted clients who have allowed us to achieve the prestigious Tier 1 ranking. U.S. News Media Group and Best Lawyers compiled these rankings based on the results of exhaustive surveys of over 9,000

clients and attorneys, including representatives of more than half the Fortune 1000 companies. In these surveys, clients were asked to evaluate law firms on factors such as responsiveness, understanding of legal issues, understanding of client needs, cost-effectiveness, pro-bono commitment, and civility. We are very proud to report that our firm achieved the highest Tier 1 ranking in the following areas: Alternative Dispute Resolution, Communications Law, General Commercial Litigation, Insurance Law, Media and First Amendment Law, Medical Malpractice – Defendants, Personal Injury Litigation–Defendants, Real Estate Law, Tax Law, and Trust and Estates Law. According to *U.S. News and Best Lawyers*, "achieving a high ranking is a special distinction that signals a unique combination of excellence and breadth of expertise."

In addition to the best firm rankings, the following members of our firm have been recognized as the best lawyers in their fields: Dennis R. Bailey, Jeffrey W. Blitz, L. Peyton Chapman, Ronald G. Davenport, William I. Eskridge, James W. Garrett, Jr., Richard B. Garrett, William S. Haynes, Robert A. Huffaker, James Theodore Jackson, Paul M. James, Thomas H. Keene, Daniel L. Lindsey, Patrick M. Shegon, Christopher S. Simmons, Frank J. Stakely, Fred W. Tyson, Robert C. Ward, Jr., and Helen Crump Wells. Our mission is to continue to provide this top level of service throughout the State of Alabama in the coming years.

Defense Verdict for Insurance

Company

Plaintiff, Quinton Sankey, a minor, and his parents Tekisha and Gary Sankey, sued Defendant Dionna Henderson for negligence and wantonness as a result of an automobile/bicycle accident. Quinton Sankey (who was 14 years old at the time of the accident) approached an intersection on a bicycle. His path of travel into the intersection was controlled by a yield sign. He claimed that he stopped at the yield sign, looked left, then right, and saw Ms. Henderson's vehicle approaching at a distance of one city block. Ms. Henderson was driving the speed limit when Mr. Sankey started out and had the right of way. There were no traffic control devices directing her egress into the intersection. Instead of waiting for Ms. Henderson to safely pass, Mr. Sankey attempted to cross the roadway before she arrived. He almost made it across before being struck on the rear tire. Mr. Sankey received a closed head injury and multiple lacerations. He was not wearing a helmet. The vision of both parties was obscured by hedges, trees, bushes and telephone poles.

Ms. Henderson defended by arguing that Mr. Sankey was contributorily negligent by attempting to cross the roadway with knowledge of her approaching vehicle, an impending danger. She also argued that Mr. Sankey assumed the risk of being injured.

Under Alabama law, a minor can be contributorily negligent if he/she was a "normal" 14 year old when the accident occurred. In an effort to avoid the affect of Mr. Sankey's negligence, Plaintiffs argued that he was "abnormal" or "mentally slow" for his age since he repeated the 4th grade. Ms. Henderson countered by offering evidence that Mr. Sankey was not abnormal since he (1) maintained a "B" grade point average at all times before and after the accident, (2) was elected to the student counsel by his peers a year after the accident occurred, and (3) had no difficulty answering questions at

trial or during deposition.

Plaintiffs attempted to justify Mr. Sankey's decision to cross the roadway by arguing that Ms. Henderson, for reasons unknown, sped up from 25 mph to 35 mph after he started to cross the roadway thereby eliminating any reasonable chance for him to cross safely. The only witness to this alleged behavior was Mr. Sankey who was riding a hard perpendicular line at the time and, of course, was alleged to be "mentally slow." Plaintiffs' accident reconstructionist testified that if Ms. Henderson had been paying attention to the roadway and traveling the speed limit she should have been able to bring her vehicle to a controlled stop approximately 80 feet before impact. Ms. Henderson's accident reconstructionist offered his opinion that Mr. Sankey failed to yield and, as such, rode out in front of Ms. Henderson quickly, eliminating any reasonable chance for her to take evasive action. The jury deliberated two days before rendering a defense verdict.

Defense Verdict in Favor of Hospital

Fred W. Tyson and L. Peyton Chapman, III successfully defended a hospital in a medical malpractice case which was tried before the Honorable Butch Binford in the Circuit Court of Houston County, Alabama. The case involved a patient who developed a stage IV decubitus ulcer while recuperating from a left pneumonectomy. The Plaintiff alleged that the hospital and its nursing staff failed to take appropriate precautions to prevent the patient from developing the decubitus ulcer, and that the ulcer was not properly treated once it had developed. The defense vigorously disputed these allegations

at the trial, which lasted for five days. Through expert testimony, the defense demonstrated that the hospital had followed the appropriate standard of care with regard to the prevention and treatment of the Plaintiff's decubitus ulcer – and that the ulcer resulted from the patient's overall medical condition and complications rather than any act or omission of the hospital staff. Following several hours of deliberation, the jury returned its verdict in favor of the hospital on the evening of Friday, September 3.

RSJG Achieves Top Rankings in Chambers USA 2010

Rushton, Stakely, Johnston and Garrett, P.A. is pleased to announce that the Firm ranked 2 in Litigation: General Commercial and ranked 2 in Real Estate for the state of Alabama in *Chambers USA* 2010. In addition, two RSJG shareholders achieved top rankings in the publication. These shareholders include: Thomas H. Keene – ranked 1 in Litigation: Medical Malpractice Defense (Alabama) and Jeffrey W. Blitz – ranked 2 in Real Estate (Alabama). Each year, Chambers and Partners publishes updated guides to the World's leading law firms and lawyers. Rankings are based on an extensive research process which includes interviews of thousands of lawyers and their clients.

Nineteen RSJG Attorneys Listed as Best Lawyers 2011

For years, Rushton, Stakely, Johnston & Garrett, P.A. has been home to some of the top-ranked attorneys of not only the River Region, but also of the country. This year, nineteen attorneys from RSJ&G were chosen for the 2011 edition of *The Best Lawyers in America*®. The selected lawyers from RSJ&G were: Dennis R. Bailey, commercial litigation & communications law; Jeffrey W. Blitz, real estate law; L. Peyton Chapman, medical malpractice; Ronald G. Davenport, personal injury litigation; William I. Eskridge, real estate law; James W. Garrett, Jr., alternative dispute resolution, personal injury, and insurance law; Richard B. Garrett, medical malpractice law and personal injury litigation; William S. Haynes, medical malpractice and personal injury litigation; Robert A. Huffaker, appellate law & commercial litigation; James Theodore Jackson, tax law; Paul M. James, personal injury; Thomas H. Keene, medical malpractice law and personal injury litigation; Daniel L. Lindsey, tax law and trust & estates; Patrick M. Shegon, medical malpractice; Christopher S. Simmons, public finance law, tax law, and trusts & estates; Frank J. Stakely, medical malpractice and personal injury litigation; Fred W. Tyson, medical malpractice and personal injury litigation; Robert C. Ward, Jr., alternative dispute resolution and insurance law; and Helen Crump Wells, tax law and trusts & estates.

Best Lawyers is the oldest and most respected peer review publication within the legal industry. Inclusion in the *Best Lawyers* list is based on exhaustive peer reviews of thousands of leading attorneys throughout the United States. The 2011 edition is based on over 3.1 million detailed evaluations of attorneys by their peers. We are pleased that nineteen of our attorneys were recognized with this distinguished honor.