# Huffaker Appointed to Serve on the Standing Committee on Alabama Pattern Jury Instructions (Civil)

The Alabama Supreme Court has appointed shareholder Austin Huffaker to serve on the Standing Committee on Alabama Pattern Jury Instructions (Civil), term ending October 1, 2018.

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# Bailey, Freeman, and Bailey Granted Motions to Dismiss in Claims Against Alabama Electric Distribution Cooperatives

Shareholders Dennis Bailey and Mac Freeman, with associate Evans Bailey, were granted motions to dismiss in two putative class action complaints seeking immediate cash refund of millions in patronage capital credits forming the equity of an electric distribution cooperative.  The plaintiffs contended that an Alabama statute passed in the 1930s required yearly cash refunds of statutory excess revenues.

Because the cooperative had outstanding loans with the Rural Utilities Service (formerly REA), the cases, originally filed in Dallas County, were removed to the United States District

Court for the Southern District of Alabama where a motion to dismiss for failure to state a claim was filed. The plaintiffs moved to remand the cases.

The motions to remand were denied August 11, 2015. See 2015 WL 2354414. On September 8, 2015, U.S. District Judge William H. Steele granted the motions to dismiss for failure to state a claim for which relief could be granted under a plain statutory construction of the Alabama statute the plaintiffs were asserting as the basis for their case. See *Caver v. Central Alabama Electric Cooperative*, CV-15-0129-WS-C, Doc. 40 (S.D. Ala. Sept. 9, 2015) and *Davis v. Central Alabama Electric Cooperative*, CV 15-0131-WS-C, Doc. 34 (S.D. Ala. Sept. 9, 2015). (WestLaw citations not yet available).

These cases are two of over 30 cases filed against Alabama electric distribution cooperatives making similar class claims for cash refunds of patronage capital credit accounts.

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# James and Love Obtain Summary Judgment for Landlord

Paul James and JC Love recently argued a summary judgment on behalf of a Southeast Regional Property Management Company who was sued as result of a slip and fall in West Central Alabama. In the case, the Plaintiff asserted fault against the management company for the injuries. James and Love successfully argued to the Circuit Court that both the location of the injury and the specific facts did not give rise to liability against the company. The Plaintiff claimed otherwise, describing a series of facts which inferred, but did not establish liability under cases dealing with slip and

fall injuries.  The Order granting summary judgment ended the case, as the Plaintiff declined to pursue an appeal.

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# James Wins Summary Judgment Argument in Pest Control Litigation

Paul James recently obtained a summary judgment in a South Alabama case arising out of a Plaintiffs' claims that termites had infested the home.  Specifically, the Plaintiff alleged that a large regional pest control operator failed to properly complete a pretreatment and failed to properly inspect the home during the course of an eight year period.  As a result, extensive termite damage existed in the home that the Plaintiffs' blamed exclusively on the pest control operator.

In winning summary judgment, the Defendants correctly pointed out that the terms and the conditions of the contract did not require the company treat for the type of termite that infested that home.  In addition, the Defendant also proved that there was no direct or indirect connection between the alleged insufficient application of termiticide and the infestation which occurred over eight years later.  Despite the existence of expert testimony from the Plaintiffs, the Trial Court correctly acknowledged the lack of proximate cause and enforced the terms of the written agreement that governed the relationship between the parties and granted summary judgment for the pest control company.

# Huffaker Chosen to Serve as Delegate for the 11th Circuit Judicial Conference

Mr. Huffaker has been appointed by the Alabama State Bar to serve as one of three delegates for the 11th Circuit Judicial Conference for 2015-2016.

# Davenport and Johnston Granted Summary Judgment

Ron Davenport and Theresa Johnston granted summary judgment by the Circuit Court of Montgomery County. Plaintiff alleged that the Defendant ran over the Plaintiff with his truck, causing injuries. However, the evidence showed that the Plaintiff's injury was purely accidental. Because the Plaintiff was a guest in the Defendant's vehicle, and Alabama's Guest Statute requires evidence of the defendant's wantonness for a guest to recover, summary judgment was granted in favor of the Defendant.

# Nineteen Rushton Stakely Attorneys Named Best Lawyers 2016

Rushton Stakely is pleased to announce that nineteen of our attorneys were chosen for the 22nd edition of The Best Lawyers in America®. The selected lawyers are: **Dennis R. Bailey**, Communications Law, Bet-the-Company Litigation, Commercial Litigation, Litigation – Banking & Finance, Litigation – Intellectual Property, Litigation – Labor & Employment, Litigation – Real Estate, and Product Liability Litigation – Defendants; **Jeffrey W. Blitz**, Real Estate Law; **L. Peyton Chapman**, Medical Malpractice Law – Defendants; **Ronald G. Davenport**, Personal Injury Litigation – Defendants; **William I. Eskridge**, Real Estate Law; **James W. Garrett, Jr.**, Personal Injury – Defendants, and Insurance Law; **Richard B. Garrett**, Medical Malpractice Law – Defendants and Personal Injury Litigation – Defendants; **Alan T. Hargrove**, Insurance Law and Litigation – Insurance; **William S. Haynes**, Medical Malpractice Law – Defendants and Personal Injury Litigation – Defendants; **R. Austin Huffaker, Jr.**, Appellate Practice; **J. Theodore Jackson, Jr.**, Litigation and Controversy – Tax, Tax Law – Agribusiness, Cooperative Taxation, Federal, Municipal Obligations, Nonprofit Organizations and Charitable Giving, State and Local Tax, Tax Disputes, Tax Planning, Tax-Exempt Organizations, Trusts and Estates; **Paul M. James, Jr.**, Personal Injury Litigation – Defendants; **Thomas H. Keene**, Medical Malpractice Law – Defendants and Personal Injury Litigation – Defendants; **Daniel L. Lindsey**, Tax Law, Trusts and Estates; **Patrick M. Shegon**, Medical Malpractice Law – Defendants; **Christopher S. Simmons**, Litigation & Controversy – Tax, Employee Benefits (ERISA) Law, Public Finance Law – Bond, Tax Law, Trusts and Estates; **Frank J. Stakely**, Medical Malpractice Law – Defendants and Personal Injury Litigation –

Defendants; **Fred W. Tyson**, Medical Malpractice Law – Defendants and Personal Injury Litigation – Defendants; **Helen Crump Wells**, Tax Law, Trusts and Estates – Estate Planning.

In addition, **Mr. Fred Tyson** has been named Best Lawyers' 2015-2016 Medical Malpractice Law – Defendants Montgomery **"Lawyer of the Year."** Only a single lawyer in each practice area, in each community is being honored as a "Lawyer of the Year."

For 30 years, Best Lawyers has been regarded as the definitive guide to legal excellence in the United States. Inclusion in the Best Lawyers list is based on a rigorous national survey of almost 50,000 leading U. S. attorneys, and Corporate Counsel magazine has called Best Lawyers "the most respected referral list of attorneys in practice." We are proud that nineteen of our attorneys were recognized with this distinguished honor.

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# Tyson and Dees Granted Summary Judgment by Supreme Court

On July 10, 2015, the Alabama Supreme Court affirmed summary judgment with no opinion in favor of a Rushton Stakely client. The case involved allegations of medical malpractice against the hospital. Fred Tyson and Stephen Dees handled the case on behalf of the hospital.

# James Obtains Summary Judgment for Insurance Agent and Agency

Paul James recently received Summary Judgment in favor of a local insurance agent and agency in the Tallapoosa County Circuit Court. In the case, the Plaintiff alleged fraud in the sale of a life insurance policy with an annuity rider. Specifically, the Plaintiff claimed he wanted only the annuity portion of the policy and claimed misrepresentations were made both orally and in writing to him at the time of presentation. The defense countered by pointing out that material disclosures, in writing, were made to the Plaintiff at the time of presentation and that the Plaintiff knew or should have known exactly what they were purchasing based on the written documentation provided to him by the agent.

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# Sexton and Love Obtain Defense Verdict in Favor of Hospital

T. Grant Sexton, Jr. and J C Love, III achieved a defense verdict in favor of a local hospital before the Honorable Eugene Reese in Montgomery, Alabama. The plaintiff alleged that she sustained a torn meniscus in her left knee when she slipped and fell on a small puddle of water on the floor

outside of the Intensive Care Unit waiting room shortly after morning visiting hours began.  The defense countered that the hospital neither had knowledge that the water was on the floor nor that the water was on the floor long enough for the hospital to have known about it.  The jury began its deliberations on the third day of trial and returned a defense verdict.