IN THE SUPREME COURT OF GEORGIA

CASE NO. S16G0744

GOLDSTEIN, GARBER & SALAMA, LLC

APPELLANT,

V.

J.B.,

APPELLEE.

AMICUS CURIAE BRIEF

OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION

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AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION

COMES NOW the Georgia Defense Lawyers Association ("GDLA") and files this Brief as *amicus curiae* in the above-styled appeal, showing as follows:

I. STATEMENT OF INTEREST

The GDLA is an association of almost 900 Georgia lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, and promoting the administration of justice.

Ensuring reasonable, accurate, and consistent application of Georgia's statutory provisions regarding apportionment of fault, regardless of ability to pay, is of key importance to all persons and entities that may be subject to suit in

Georgia. It is the duty of the courts to ensure that the proper legal standards for proximate cause are applied in every case to determine if damages are recoverable. The ruling in this case essentially negates the long-held notions of reasonable foreseeability for finding proximate cause. The ruling, as it now stands, transforms healthcare providers into insurers against all potential criminal acts, including sexual assaults by deviant third-party contractors, irrespective of whether the defendant is aware of anything which makes the contractor likely to commit such a crime.

II. INTRODUCTION

This case arises out of a sexual assault committed against Plaintiff by non-party Paul Serdula ("Serdula"), a Certified Nurse Anesthetist, during a procedure at the dental office of Goldstein, Garber & Salama, LLC ("GGS"). GGS is the only named defendant in this case. All parties agree that the evidence demonstrates that non-party Serdula committed a despicable intentional tort resulting in harm to J.B. and that absent this crime, there would be no basis for the named defendant's liability, as the damages are directly related to Serdula's actions. And yet, the verdict rendered by the jury, and affirmed by the Court of Appeals, says otherwise. All of Plaintiff's damages were awarded solely against GGS while Serdula was found by the jury to have ***NO responsibility*** for causing Plaintiff's damages.

In the instant case, jurors were requested to determine the amount of damages incurred, as well as the percentages of the fault of the named defendant,

GGS, and the non-party, Serdula. The verdict form stated that if the jury found that any party was not liable, to put 0% next to their name. The jury placed 0% next to the name of the non-party criminal actor, and 100% next to the name of the dental practice.

Obviously, this is illogical because without Serdula's criminal actions, no recoverable damages would exist. Upon return of the verdict, which on its face indicated that the criminal wrongdoer had no fault and that GGS had 100% fault, GGS raised an objection. The trial court entered judgment on the verdict and GGS appealed.

The Court of Appeals, in a divided decision, affirmed the judgment below on the basis that the defendant waived appellate review of the verdict because the verdict was "ambiguous," rather than "void" or "plain error." While the majority's opinion acknowledges that the criminal wrongdoer is at fault for the harm caused, it figuratively re-writes the verdict form as an indication of only GGS's liability. The verdict form, as literally written, however, does not permit this interpretation.

Georgia law is clear that the relative wealth or poverty of the parties is not relevant or material to the issues in the case.[1] In reaching its verdict as to the liability and the apportionment of responsibility of each defendant and non-party

[1]The principle that "a man's treatment before the bar of Justice should not vary with his financial condition" is discussed in *Garrett v. State*, 125 Ga. App. 743 (1972); *see also Smith v. Satilla Pecan Orchard & Stock Co.*, 152 Ga. 538 (1922); *Northwestern University v. Crisp*, 211 Ga. 636 (1955).

listed on the verdict form, a jury is not supposed to consider whether those listed will have the ability to pay the relative portion of the damages. However, in this case, it seems clear that the jury's apportionment on the verdict was purposefully designed to provide a recovery for the injured plaintiff, at the expense of the party with the deepest pockets, rather than to provide justice to all parties, according to their respective degree of responsibility. It can hardly be doubted, as Judge Ray suggests in his dissent, that if the wealth of the defendants were reversed (*i.e.*, the dental practice being bankrupt and the criminal wrongdoer a millionaire), that the jury would have reached a different verdict.

Additionally, although finding that GGS did not know or have any reason to know that Serdula would commit intentional torts/crimes, the majority of the Court of Appeals affirmed the judgment below, finding that questions of proximate cause were properly left to the jury.

III. ARGUMENT AND CITATION OF AUTHORITY

A. The Verdict is Void or Constitutes Plain Error.

In the past, joint tortfeasors were held jointly and severally liable. The result was that one with little liability, but deep pockets, could be forced to pay the injured party over one who had greater legal responsibility for the harm, but less ability to pay. This approach favored a full recovery for the injured party over the proportional responsibility of a defendant. Georgia changed this approach in 2005

when it enacted the apportionment statute, O.C.G.A. § 51-12-33. Contrary to the claim of the Georgia Trial Lawyers Association ("GTLA"), the apportionment scheme is not designed to give jurors permission to be "lenient" to a responsible party, but rather to make each person independently responsible for his own degree of misconduct, without requiring him to pay for the fault of another. The intended result is that a party with deep pockets will not have to pay for damages caused by a separate wrongdoer, regardless of the wealth or poverty of such wrongdoer and regardless of whether the plaintiff chose not to sue the wrongdoer for strategic reasons.

Although, in the abstract, the form of the verdict—finding one party liable while exonerating another—is not objectionable, it cannot withstand a challenge *under the facts of this case* where it is undisputed that the criminal wrongdoer who was assigned 0% liability was at fault, and did cause damages. GTLA's argument that we must presume that the jury fulfilled its statutory duty to "consider" the fault of the non-party, is belied by the fact that it assigned no fault to the undisputed wrongdoer who inflicted the harm.

It is inherently illogical to exonerate a criminal actor from fault for the harm caused by his actions. While the wrongdoer could be held fully or partially responsible for the injury he caused, it is untenable for him to be assessed as having *no* fault. Conversely, it is irrational that the named party be assessed with

100% of the fault for the injury resulting from the direct and intentional misconduct of another. Logically speaking, if Serdula's conduct was not wrongful, as indicated by the verdict, then GGS should not be held liable for any damages since the injury was directly attributable to Serdula's conduct. Thus, a verdict which holds GGS liable for damages caused by the criminal actions of another, but exonerates the underlying criminal actor from his intentional torts, must be overturned.[2]

The idea that a jury has an unfettered right to make a decision as it sees fit, and is immune from review or from reversal is contrary to Georgia law, which has reversed verdicts which are contrary to the evidence. *See, e.g., Murray v. Gardner*, 259 Ga. App 725 (2003) (reversing a defense verdict and ordering new trial based on undisputed evidence that, by causing the collision, the defendant should have been found liable for at least some of the medical expenses claimed); *Drug Emporium, Inc. v. Peaks*, 227 Ga. App. 121 (1997) (reversing jury verdict which awarded punitive damages to party who did not pray for them).

[2] While claiming that GGS has no standing to contest the award of 0% liability because it lacks a right of contribution, GTLA acknowledges that the defendant has standing to address the corollary—that it is 100% responsible. Like the other side of the coin, the determination of sole liability is contrary to the evidence, which indicates that the non-party who committed the assault is at least partly to blame. Indeed, absent the assault committed by Serdula, no damages would have been recoverable against GGS. Since the undisputed facts do not support the verdict, it should be overturned.

Appellee acknowledges that Alaska's apportionment statute, like that of Georgia, requires the jury to "consider" the fault of all persons who may be responsible. In a recent case in that state involving the same issue before this Court (*i.e.*, whether, as between one tortfeasor who committed sexual assault and another tortfeasor who did not commit any intentional tort, a jury may assign 0% liability to the sexual predator), Alaska's Supreme Court concluded that the outcome of 0% liability assigned to the sexual predator was irrational and against the weight of the evidence, and it ordered a new trial. *State Dept. of Health and Social Services v. Mullins*, 328 P.3d 1038 (2014). This Court should rule the same way for the same reason.

In this case, the Court of Appeals found that Appellant waived its right to challenge the result of the verdict by failing to obtain a ruling from the trial court on its objection to the verdict. However, silence from the court, followed by entering judgment on the verdict, should be considered the equivalent of a denial of the objection. *See Kines v. State*, 67 Ga. App. 314 (1942); *Lynn v. States*, 140 Ga. 387 (1913). Having rendered an illogical verdict, in which the jury clearly did not follow the instructions of the court or the verdict form, what was the judge to do? Tell the jury that the verdict rendered was not logical and to go back and correct it? Quite honestly, in light of the jury's failure to follow the instructions of the court and the directions of the verdict form consistently with the evidence

presented, the only suitable correction would be to retry the case before another jury.

The majority of the Court of Appeals, citing *Anthony v. Gator Cochran Constr.*, 288 Ga. at 80 (1991), agrees with the minority that, if the verdict is void, rather than merely ambiguous and capable of reasonable construction, then additional deliberations would not have been required. The majority attempts to rationalize the verdict by concluding that the jury "must have" considered the fault of the non-party and reduced the total amount of damages so as to merely list the damages attributable to GGS. Notably, the Court acknowledges that, in truth, "[W]e cannot tell from looking at the verdict form exactly what was the jury's intent." Indeed, how could the majority see into the mind of the jury?[3] Of course, the answer is that it could not, and its analysis must therefore be limited to the four corners of the verdict form. Because the Court is not entitled to re-write the verdict form in order to save it, and because the literal reading of the verdict indicates that the criminal wrongdoer bears no fault for the harm, which is contrary to all of the evidence, it should be considered void or plain error.

Arguments as to the process by which the Court may review the challenge,

[3] While contending that it is merely providing a reasonable construction of the verdict, so as to uphold it, the majority is actually departing from the plain meaning of the words of the verdict and attempting to divine the jury's subjective intent.

and whether the challenge is properly characterized as one based on "the weight of the evidence" or on "the sufficiency of the evidence," are irrelevant under the facts of this case where the verdict is both contrary to the weight of the evidence, and to the evidence presented.[4] All parties agree that the intentional wrongdoer has some responsibility for the damages resulting from his conduct. GGS objected to the verdict when it was returned. The verdict cannot be reconciled with the evidence which demands that at least some responsibility be placed on the criminal who committed the assault which resulted in harm. As a result, the verdict, which is contrary to the evidence, should be overturned as void, or as plainly erroneous.

B. The Court Should Not Depart from Long-standing Precedent on Proximate Cause.

1. Negligence *Per Se*, by Violation of a Statute, Does Not Create Strict Liability.

Violation of a statute gives rise to a claim of negligence *per se*. However, no liability may be found unless (1) the plaintiff falls within the class of persons the statute was intended to protect; (2) the harm complained of was the same harm the statute was intended to guard against; and (3) the violation of the statute proximately caused the plaintiff's injury. *Kull v. Six Flags Over Georgia II, L.P.*, 264 Ga. App. 715 (2003).

[4] **No** evidence was presented which supports the verdict exonerating the criminal actor from fault in the assault he perpetrated, or is assigned 100% of fault to the named defendant, which did not commit the assault. Thus, the evidence was insufficient to support the verdict.

As a threshold matter, the harm complained of (*i.e.*, sexual assault) was not the harm the subject statute sought to protect against (*i.e.*, anesthesia-related *medical* complications). O.C.G.A. § 43-11-21.1 prohibits the administration of general anesthesia in a dental practice by a certified registered nurse anesthetist unless such anesthesia is administered under the direction and responsibility of a dentist who has obtained a permit under this Code section. By setting out the specific requirements for a dentist to obtain a permit to oversee the administration of general anesthesia to his patients, the language of O.C.G.A. § 43-11-21.1(b) makes clear the harm it seeks to avoid.[5] To obtain the permit, the dentist must show that he has (1) sufficient training in anesthesiology, (2) is properly certified by an appropriate medical or dental society, (3) has a properly equipped facility to safely administer anesthesia and (4) is shown to be proficient in safely administering anesthesia to patients.

Thus, by clear implication, the statutory requirement for having a permit is to protect dental patients from potential medical harm that can be caused by improper administration of anesthesia by someone who does not have the proper training, credentials, certification and facilities to safely administer or oversee the

[5] Counsel for GDLA is unable to find any source of authority indicating that the anesthesia statute at issue is specifically intended to protect against sexual assault, or any other crime for that matter. *Cf. Montgomery Ward & Co., Inc. v. Cooper*, 177 Ga. App. 540 (1986) (gun control legislation intended to prevent crime); *West v. Mache of Cochran, Inc.*, 187 Ga. App. 365 (1988) (same).

administration of general anesthesia. There is nothing in the statute which suggests that the requirement for obtaining a permit is intended to prevent criminal acts, including sexual assaults, by a nurse anesthetist. The existence of a permit or lack thereof, has no bearing on whether a patient is assaulted, shot, or bludgeoned by a nurse anesthetist. Because compliance with the statute by obtaining a permit would not protect patients from the possibility of assault, such assaults could not be the harm sought to be avoided by the statute. Rather, the logical conclusion is that by requiring certain healthcare-related educational expertise to administer anesthesia, the harm of *medical complications* arising from a lack of knowledge, understanding, or training will be alleviated.[6] Given that there is no evidence that the statute was designed to prevent the harm at issue, its violation should not give rise to any liability.

2. Expert Testimony is Not Needed to Establish Proximate Cause in Medical Malpractice Cases Unless the Damages Involve Complex Medical Issues.

Appellee contends that proximate cause is handled differently in connection with medical malpractice cases than in ordinary negligence cases. In attempting to distinguish medical malpractice cases, Appellee appears to conflate the

[6] The fact that the legislature considers unlicensed activities to be, in general, "a menace and a nuisance dangerous to the public health, safety and welfare," does not equate to a concern about sedation, in particular, or to sexual assault. As noted by Judge Dillard in his dissent, this same language is used in reference to licensing requirements for barbers and cosmetologists. *See* O.C.G.A. § 43-11-16.

requirements for proving medical negligence with those for establishing proximate cause. To establish negligence in medical malpractice cases, expert testimony is required. *Shea v. Phillips*, 213 Ga. 269 (1957). Negligence is determined by reference to "the standard of care" as established, generally, through the testimony of those who practice the same specialty at issue for sufficient time to be accustomed to the minimal standards of care, under like conditions and circumstances. O.C.G.A. § 24-7-702 (formerly cited as O.C.G.A. § 24-9-67.1); *Nathans v. Diamond*, 282 Ga. 804 (2007).

However, it is not enough to merely establish that medical malpractice occurred. No recovery is permissible unless the plaintiff establishes, by a preponderance of the evidence that the negligence either proximately caused or contributed to the plaintiff's injury. *See Berrell v. Hamilton*, 260 Ga. App. 892 (2003); *Anthony v. Chambless*, 231 Ga. App. 657 (1998). Although expert testimony is required to establish *negligence* in a medical malpractice case, it does not follow that such testimony is *necessarily* required to establish proximate cause. The type of evidence needed depends on the nature of the damages sought to be recovered. To be sure, if J.B. had suffered a *medical complication* following the procedure, and was seeking recovery for this, expert testimony would be required to determine whether such injury was due to an inherent risk of the procedure which can occur without negligence, or whether it was the result of negligence in

the degree of sedation or duration of same. *See Zwiren v. Thompson*, 276 Ga. 498, 500 (2003). Similarly, in a case of ordinary negligence, where a question arises as to whether a heart attack caused the car accident, or whether the accident triggered a heart attack, expert medical testimony would be required to determine proximate cause. *See Cowart v. Widener*, 287 Ga. 622 (2010); *Lancaster v. USAA Cas. Ins. Co.*, 232 Ga. App. 805, 807-08 (1998)

On the other hand, "it does not require expert testimony for a lay jury to determine that a gunshot wound to the head of an otherwise healthy person who died shortly thereafter was the proximate cause of her death." *See Gardner v. Clark*, Case No. A16A0734 (Nov. 16, 2016). Likewise, in a medical malpractice action where an allegation is made that the surgical procedure was unnecessary, if expert testimony establishes negligence, expert testimony is not required to show causation because no specialized medical knowledge is needed on that subject. *See generally Killingsworth v. Poon*,167 Ga. App. 653 (1983). In the instant case, since the harm complained of was not medical in nature, expert testimony was not required to establish proximate cause, and the traditional time-honored legal principles of proximate cause which apply to ordinary negligence cases apply here.

3. Proximate Cause Requires ***Reasonable*** Foreseeability.

Proximate causation includes “all the **natural and probable consequences** of the tortfeasor’s negligence, **unless there is a sufficient and intervening cause**.”

Cowart v. Widener, 287 Ga. 622, 627-628 (2010) (emphasis added). In determining proximate cause, *reasonable* foreseeability applies. Foreseeable consequences are "those which are probable, according to ordinary and usual experience, or those which, because they happen so frequently, may be expected to happen again." *Medical Center v. Cavender,* 331 Ga. App. 469, 473 (2015).

Determination of medical negligence has never been dispositive of liability for damages, and evidence of causation has always been required. To make a finding of causation, the jury is often instructed that "foreseeability" is not what did happen as determined by hindsight, but what a reasonably prudent person should have expected to happen under ordinary circumstances. See, e.g., *Ermutlu v. McCorkle,* 203 Ga. App. 335, 337 (1992); *Strickland v. Dekalb Hosp. Authority,* 197 Ga. App. 63, 68 (1990). An event is not regarded as being foreseeable if it is one in the nature of an extraordinary coincidence, or a conjunction of circumstances, or which would not occur save under exceptional circumstances; if it is unusual and unlikely to happen or if it is a rare event or experience or if other and contingent experiences dominate largely in causing the result. *See* O.C.G.A. §51-12-8; *Gulf Oil Corp. v. Stanfield,* 213 Ga. 436 (1957); *Strickland, supra*. In other words, a person is not bound to anticipate or foresee and provide against that which is unusual or that which is only remotely and slightly probable, and would not be liable for such. *Brown v. All-Tech Inv. Group, Inc.*, 265 Ga. App. 889

(2003); *Byrd v. Ribenback*, 183 Ga. App. 564 (1987); *Standard Oil Company v. Harris*, 120 Ga. App. 768, 774 (1969).

Furthermore, there can be no proximate cause where, between the act of defendant and the injury to plaintiff, there is an independent, intervening act of someone other than defendant, which was not foreseeable by defendant, was not triggered by defendant's acts, and which intervening act was sufficient of itself to cause the injury. *Union Carbide Corporation v. Holton*, 136 Ga. App. 726 (1975); *Granger v. MSR Transport, LLC*, 329 Ga. App. 268(2014); *Bradley Center, Inc. v. Wessner*, 250 Ga. 199 (1982); *Gulf Oil, supra*, 213 Ga. at 439-440 (1957).

Appellee argues that, if GGS is not strictly liable for all damages, whether foreseeable or not, GGS should have foreseen Serdula's criminal conduct either because sexual assaults are "never events" or because the duration or degree of anesthesia created an opportunity for misconduct. Such argument confuses what is *possible* from what is *probable*, and fails to take into account the law as it relates to the intervening criminal acts of others. As in *All Tech Inv. Group*, *supra*, the fact that workplace violence occurs, and the allegation that it is "common knowledge that some people will become violent and seek revenge against a party they hold responsible for their financial losses" is too vague and generalized to support a claim of liability. *All Tech Inv. Group*, 265 Ga. App at 895.

While it is true that all manner of criminal acts can happen, and that, on occasion, they do happen, as evidenced by history, it is not true that if given an opportunity, seemingly normal law-abiding citizens will naturally commit crimes, or that one must expect criminal activity from every person without a particularized basis for doing so.

To contend that proximate cause can be determined from the characterization of sexual assaults as "never events," is erroneous. All criminal acts are "never events," meaning that they should never happen in civilized society. Yet, criminal activity occurs everywhere, every day. Using Appellee's logic, all criminal acts are generally foreseeable because history has shown that they occur.[7] Using hindsight, and by preying on feelings of uncertainty and fear of harm, it is easy to convince others that crimes are preventable and should have been prevented. However, under the law, criminal misconduct has never been considered *reasonably foreseeable* based on abstract principles, but only where there is particularized information known by those charged with liability.

[7] If this was the correct analysis, it would apply in other contexts as well, as sexual assaults are known to occur in parking lots and by employees in virtually all occupations. Such knowledge, however, has never been the basis for rendering a property owner/occupier or an employer liable, without a more particularized basis for anticipating the criminal actor's actions.

4. Medical Providers Are Not Required to Anticipate Sexual Assaults Unless They Knew or Should Have Known of such Misconduct.

Despite the fact that crime occurs, even in medical facilities, Georgia courts have not heretofore held medical practitioners to a standard of strict liability for the intervening criminal acts of another when such person's deviancy was not reasonably foreseeable. It is undisputed that Serdula was highly recommended to GGS, with appropriate credentials and references had no reported criminal history, and that none of the employees or patients expressed any concerns or feelings of discomfort in his presence. In short, there was no basis upon which GGS could have reasonably predicted that Serdula was a sexual predator.

Although Appellee argues that the patient's degree or length of sedation was not appropriate, and provided Serdula with an opportunity to commit the sexual assault, it is again immaterial whether Serdula had an opportunity to commit the assault, where it was not reasonably foreseeable to GGS that any assault would ever be committed by Serdula. The degree and duration of sedation does not make a sexual assault more likely or probable. The determinative factor is not the amount of medication administered to a patient, but the flaw in the person attending to the patient which places the patient at risk.

While, in general, sexual assault on medical and dental patients is *possible*, and does occur periodically, it is not reasonable to suspect that an assault will be

perpetrated by a medical practitioner with no known history of such misconduct. Fortunately, rather than a haven for criminals, the vast majority of medical providers are well-intentioned professionals who have dedicated their lives to helping others. While, as in all aspects of society, a wolf in sheep's clothing will use his position to prey on others, this is a rare occurrence, and is not generally foreseeable. As such, without a particularized reason to suspect that Serdula was sexually assaulting his patients, GGS's negligence could not have proximately caused the assault in this case.

5. The Proximate Cause Requirement is Sound Policy, Particularly in the Medical Context.

Criminal wrongdoers often disguise their bad acts by performing them in secret, or disguising them as ordinary tasks. No crystal ball exists to detect the propensity of an employee, contractor, or visitor to commit a dangerous crime, or else society would have completely eradicated criminal activity long ago.

While the occurrence of intentional misconduct may be foreseeable generally, given general statistics of human misconduct, the difficulty is predicting, in advance, which specific employees or persons may engage in such conduct, and what crimes they may commit. The reality is that any person can commit some criminal act, at any given time. While possible, it is not probable or reasonably foreseeable as to any one person absent reason for particularized suspicion.

The root of the decision in this case is a desire to ensure safety, although, in reality, safety cannot be guaranteed. History shows that no matter how much time, money, and effort is expended by employers, citizens, police, prosecutors, and judges, crime persists. Life is filled with risk, and people are wild cards—the good not readily distinguishable on the surface from those that would mean harm. Healthcare providers have no special ability to detect criminal propensity better than other members of the public.

Applying "foreseeability" as broadly as this case suggests would impose strict liability on medical practitioners for the criminal actions of others. The result would require facilities providing healthcare, such as doctor's offices, hospitals, assisted living facilities, and nursing homes, to guard their patients from the *possibility* of criminal conduct by anyone who may encounter the patient on their premises. The healthcare system is already economically taxed in the provision of medical services, without providing police services too. *Must every hospital assign two nurses to round on the patients together? Must every housekeeper in a hospital or nursing home travel in pairs to decrease the potential that he/she may take advantage of a sleeping patient? Must chaperones be provided to guard against the possibility of a visitor taking advantage of a patient? And, given the possibility of having two deviant people together, what is a medical practice to do?*

These protective measures are not practically or economically feasible in a system that is already economically challenged, nor would they ensure success.

While safety is certainly an admirable goal, medical providers cannot reasonably be held strictly liable for the criminal acts of other individuals. Rather, they should be held accountable only for what is ***reasonably foreseeable***. Should the legislature desire to make medical providers insurers of the safety of their patients, they have the power to do so, but this honorable Court should not stray from longstanding precedent which limits liability for criminal acts to that which is *reasonably foreseeable*, rather than merely possible.

IV. CONCLUSION

For these reasons, this Court should reverse and remand with directions to enter judgment for GGS or, at a minimum, for a new trial on liability and damages.

Respectfully submitted, this 30th day of November, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this day served a true and correct copy of the foregoing upon all counsel by electronic service and/or by placing a copy of *Amicus Curiae* Brief Of The Georgia Defense Lawyers Association via the Court's electronic filing/service system and by placing a copy in the United States Mail, with First Class postage prepaid, properly addressed as follows:

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