GDLA NEWSLETTER

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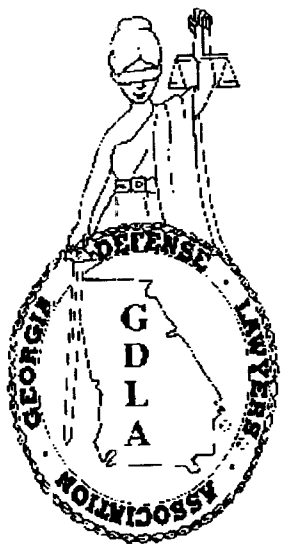

Inside this issue:

THE PRESIDENT'S MESSAGE

BY: George E. Duncan, Jr.

Somewhere in the depths of the hard drive on my computer is a very eloquent president's message dealing with the philosophy of the Georgia Defense Lawyer's Association. Upon further reflection, I have come to the realization that the strength of our organization is good ideas, philosophies and programs. Our shortcomings, typical of those of most professional associations, relate to getting the word out and getting people enthused enough about some very good programs to donate an hour or two to participate.

My thoughts were confirmed when in a moment of deep reflection I asked Sandy Owens "Sandy, don't you think that the biggest problem facing all aspects of the organized bar today are ignorance and apathy"?

Sandy took another sip of his cocktail and responded, "George, I really don't know... and frankly, I don't much care".

Inasmuch as deep philosophy has little impact upon even the most dedicated of our members, we will leave the eloquent message buried in the computer and opt for a more nuts and bolts approach. The president's message will now deal with "FAQ's" - Frequently Asked Questions.

Q. With all the push toward offering services to members, has the Association forgotten the social aspect and the first rate trips that we used to take for the annual meeting?

A. No. They are back and better than ever. This year's meeting will be August 3-6 at the Ritz Carlton Hotel at Amelia Island, Florida. Last year was the first summer annual meeting that we have had and the first in the "family friendly" format. The meeting was phenomenally successful with over a 50 increase in attendance over what we had seen in past years, not counting scores of children of all ages who attended. This was the case even though the meeting conflicted with the State Bar meeting and quite a few of our "regulars" could not attend for the full time.

Q. Why did we change to a summer meeting?

A. Quite simply, popular demand. Over the years, Spring Break trips for families have become the norm and having a meeting at a nice resort on the heels of a ski

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trip or other spring activity created too many conflicts. Through moving the meeting to the mid to late summer we have avoided those conflicts. Moreover, we have been able to achieve some excellent off-season hotel rates which the resorts are willing to guarantee for the full length of a member's stay. In other words, members and families can convert a weekend CLE into a full week's stay at a five star resort at group rate prices.

Q. Do I really need to register early to come to the summer meeting?

A. Yes– we are not kidding, we really need for you to make your plans early. The reason is that in order to get guaranteed group rates, reserve tee times for golf, pre plan children's activities and the like, we need to give the Ritz Carlton and other resorts a guaranteed number of attendees several months in advance.

Let me encourage you to take this newsletter and the enclosed information home and discuss it with your family. Make your plans now, arrange for your leave of absence because this will be a meeting that you do not want to miss.

Q. I would like to get involved in some professional work but I don't have a great deal of time to spend. What do I do?

A. The answer to this question is itself a question: How much time do you have and what would you like to do? Do you have a few hours per month that you would like to spend monitoring a web page keeping up with pending legislation? If so, there is a project where your talents can be used. Do you have a few hours once a quarter to write a newsletter article or help solicit organization sponsors or speak at a CLE program? If that is the case, we have programs for you. If you have a few hours once every other year to help with the professionalism programs at one of the law schools, to write a journal article or to help plan a meeting or seminar, we have a task that fits your talent as well.

More significantly, if you have an idea for a project or service that would be of benefit to your colleagues, suggest it. If the idea is worthwhile, there is a good chance we can sponsor it. Some of our best Association's activities have been on an ad hoc basis and with increasing participation in the Association we are in a position to take on more projects.

Q. You mentioned soliciting sponsors for the Association, what is that all about?

A. The cost of putting on annual meetings, CLE programs, the Trial Academy, golf tournaments and the like has grown tremendously. At the same time, we have been able to maintain registration costs for the annual meeting at roughly half what other major professional associations charge. Likewise, the cost for our CLE programs throughout the year is significantly less than what the GTLA charges or even what the Georgia ICLE charges for comparable programs. We have found that a number of friends of the Association and vendors to defense lawyers and our clients are willing to help underwrite the cost of programs in exchange for unobtrusive advertising and the ability to meet and intermingle with members at certain Association functions. The first of these groups to come on board as a major sponsor is Insurance Specialists. Not only are they anxious to underwrite parts of our annual meting including children's activities, we are hopeful that we will be able to work with them to analyze issues of the extreme cost of health insurance to small and mid size law firms.

We are not turning our Association into an advertising vehicle, but we think that through selective work with sponsors we can achieve a program of mutual benefit to our members and to the sponsors.

Q. I was sad to hear of Dick Richardson's passing. Is there a memorial fund you can recommend?

A. As you know, Dick Richardson, one of the founders of our Association, and one of the leaders of the defense bar for

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nearly a half-century died last year. As a lasting memorial to the contribution Dick made to our profession, the Georgia Defense Lawyer's Association has undertaken to underwrite an award in Dick's honor to be given for excellence in trial practice to a student at the University of Georgia. We will be providing you with details on how you can contribute to this fitting memorial for Dick.

Q. How is the Amicus Curiae Committee going?

A. Better than we had ever expected. Last year we made a push to enlist firms around the state to be on an on-call basis to help with an Amicus brief no more frequently that once every three years. We have over thirty firms committed to participate and candidly, we are able to handle more Amicus projects than members have thus far submitted to us. The last two briefs we have written have resulted in the Supreme Court's granting cert on major issues. If you have a topic that is of interest or significance to the defense bar, contact Jimmy Singer at Bovis, Kyle & Burch and submit your request for Amicus Curiae assistance.

Q. How can I get involved with the Association if I have an idea or want to work on a project?

A. It takes a telephone call or an e-mail. Call me at 404-256-4832 or e-mail me at gedjr@mindspring.com or contact Greg Melton, the Executive Vice-President at 706-278-5211 or e-mail him at gmelton@kinney&Kemp.com. There is a way to get plugged in no matter what level of time commitment you can make.

Q. Why are people not telling lawyer jokes anymore?

A. Lawyers don't think they are funny and no one else thinks they are jokes.

Though this column will certainly not be the subject of great philosophical discussion, let it at least be a personal invitation to join us at Amelia Island with your family and get plugged in to an enjoyable and worthwhile group.

SYNOPSIS OF SELECTED RECENT WORKERS' COMPENSATION OPINIONS

N. Staten Bitting, Jr.
Fulcher, Hagler, Reed, Hanks & Harper, LLP
Augusta, Georgia

In the last few months the Georgia Court of Appeals has handed down its usual large number of decisions involving the any evidence rule and tort cases addressing the exclusive remedy provisions of the Workers' Compensation Act. In addition, there have been several workers' compensation decisions which clarify the substantive law, including at least a couple of cases of first impression. A few of those recent decisions have been summarized here.

Brassfield & Gorrie v. Ogletree, 241 Ga. App. 56, _____ S.E.2d _____ (1999). The Superior Court affirmed State Board award within 20 days of the hearing of the appeal. It postponed ruling on the employee's motion for an award of fees for frivolous appeal. More than 20 days after the hearing, the Superior Court entered an award of attorney's fees in favor of employee. The Court of Appeals held that Superior Court lost jurisdiction over the matter 20 days after the hearing. The fee award was reversed.

Groover v. Johnson Controls World Service, A99A1792 (decided 1/12/00). The employee argued that the term "wages" under O.C.G.A. § 34-9-760 includes amounts paid by the employer toward the employees' health insurance plan and that these insurance payments should be used in calculating the average weekly wage. The Board and the Court of Appeals rejected this argument.

Georgia Forestry Commission v. Taylor, 241 Ga. App. 151, _____ S.E.2d _____ (1999). This is a case of first impression. The issue is whether the employer's credit under § 243(b) of the Workers' Compensation Act is to be calculated on the gross amount of the disability benefits paid by the employer or on the net amount of disability benefits received by the employee. Court of Appeals held that the credit was to be based on the net amount of benefits received by the employee. Note that this decision involved State Disability Retirement benefits, but the issue of whether the employer is entitled to a credit under this plan was not raised or addressed.

Ayers d/b/a Advanced Materials v. Rembert, A99A2023 (12/30/99). The employer received a favorable award from State Board which included income benefits, medical expenses and an assessed attorney fee. The employer did not pay the amounts due under the award. The employee petitioned the Superior Court for a judgment to be issued pursuant to O.C.G.A. § 34-9-106. The Superior Court entered a judgment which included accrued income benefits, medical expenses, attorney fees and then added a 20% penalty pursuant to O.C.G.A. §34-9-221(f). The employer argued that the penalties could not be included in the judgment because they had not been included in the underlying award from the State Board. The Court of Appeals held that the Superior Court had the authority to assess the 20% penalty and had correctly calculated the amount. The judgment was affirmed.

Newsome v. DOAS, 241 Ga. App. 357, _____ S.E.2d _____ (1999). This is a case of first impression. DOAS filed a subrogation claim pursuant to O.C.G.A. § 34-9-11.1(c) two years and 10 days after the date of accident. The Court of Appeals held that the claim was barred by the two year tort statute of limitations which applied to the employee's claim. DOAS argued that the 20-year statute of limitations under O.C.G.A. § 9-3-22, which governs actions for enforcement of rights accruing to individuals under statute, should apply. Court of Appeals rejected this argument.

GDLA WINTER CLE A GREAT SUCCESS

The Association's Winter CLE Program, which was put together by Warner Fox of Hawkins & Parnell, was held on Friday, January 21, 2000, at the Atlanta Marriott Perimeter Center Hotel.

Peter B. Silvain, Ph.D., began the program with an excellent presentation on defending and evaluating head injury and post-traumatic stress disorder claims. Dr. Silvain is with Med Psych Corporation which is located in Palm Coast, Florida, and which provides detailed strategy reports upon request for defense attorneys and claims managers showing conflicts and errors in claimant's diagnosis, treatment and testing. Med Psych also provides deposition and cross-examination questions, and the medical research needed to challenge the plaintiff's proof of damages. Dr. Silvain explained the three types of brain injuries, gave an overview of the DSM, and then using a real case which he had recently worked on as an example, he discussed numerous typical defense arguments frequently available in litigation involving alleged organic brain injury or post-traumatic stress disorder. He also discussed the role of the neuropsychologist and neuropsychological testing. Attendees received charts which, through annotations, review and critique the many neuropsychological and psychological tests and also provide a chart system for the analysis of plaintiff's evidence in high risk psychological/injury claims.

Next, Doug Wilde of Webb, Carlock, Copeland, Semlar & Stair gave an informative talk on premises liability which provided an overview of this area of the law which will be most helpful in putting premises cases in perspective. Doug's presentation included discussion of Robinson v. Kroger and the significant appellate opinions that have followed. This provided valuable insight into the approaches of the various panels of the Court

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Mark your Calendars!

2000

- August 3-6 — Annual Meeting, Amelia Island, Florida. The expected program will focus on scientific (and not–so-scientific) evidence, and also will have segments of the program tailored to individual practice needs. Plan now to attend!!!
- October 4-8 — DRI Annual Meeting Westin Hotel at Palmetto, New Orleans, LA

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- July 19-22 — Annual Meeting

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of Appeals. Doug also talked about security cases in the wake of the Sturbridge decision.

The luncheon speaker was Art Glaser of Self, Glaser and Davis. Art's career recently took a new turn when he began serving as a mediator and he has mediated approximately eighty (80) cases since last April. Art gave a great talk on mediation thoughts and strategy for defense lawyers. Getting pointers and insight from an experienced mediator's perspective is most helpful.

Following lunch, Al Parnell of Hawkins & Parnell gave a presentation by way of video on making persuasive arguments. Al's talk, as always, was very entertaining and informative, and even included appearances by a number of famous guests, Jimmy Buffet and Admiral Chester Nimitz to name a couple. Al's comments focused on ways to make our arguments interesting so as to hold the attention of the listener.

Following Al's presentation, Bob Tanner of Weinberg, Wheeler, Hudgins, Gunn & Dial, spoke about recent developments in the defense of medical malpractice cases. Bob's talk included a number of hot topics including the new venue rules, claims against HMOs, the effect of a plaintiff's failure to object within ten (10) days to a third party request for production of documents to health providers, bifurcation where the injury is catastrophic, ostensible agency issues involving emergency room physicians, and the benefits of strategic selection of an agent for service.

Following the afternoon break, Ken Cannfield of Doffermyre, Shields, Canfield, Knowles & Devine hosted a panel discussion on the professionalism aspects of how plaintiffs and defense counsel can get along more amicably. The hypothetical situations that were discussed were thought provoking and provided material for lively discussion.

Finally, Hank Scrudder of Goldner, Sommers, Scrudder & Bass gave an update on ethical concerns involved in staff counsel and billing audits. Hank's presentation, naturally, focused upon the recent proposed advisory opinion concerning outside audits which is printed in last fall's State Bar Journal. It is going to be interesting to see what happens with this since it goes a little further than any similar opinion in other states in that it would likely prohibit defense counsel from playing any role in obtaining a waiver of the attorney/client privilege from the insured allowing bills to be sent to third parties for audit purposes. We all need to keep a close eye on this issue.

All in all, Warner put together an excellent presentation which provided the attendees with seven (7) hours of CLE credit and some invaluable information and insight.

NEWS WORTHY ITEMS WANTED

Are you aware of a recent important legislative enactment or a major defense victory in the Courtroom? Have you attended any events our readers would be interested in? We would like to report it in the GDLA Newsletter. Send your items to John Foster at P.O. Box 13929, Savannah, Georgia, 31416 or call him at (912) 352-1190, or e-mail him at jfoster@forbesandbowman.com

PROPOSED GDLA BY-LAW AMENDMENT

The GDLA By-Laws provide in Article XI that they "may be amended at any annual meeting at which there is a quorum by a two-third (2/3) vote of the active members present and voting; provided, however, that a copy of such proposed Amendment has been submitted in writing to the Secretary, who shall present the same to the Board of Directors for its consideration and recommendations prior to the session of the meeting at which the proposed change is to be voted upon by the membership. The Board of Directors at the Winter Board Meeting recommend the following:

1. **Proposed**:

Amendment of Article VII, "Section 1.... Each Director shall assume his office forty-five (45) days after the adjournment of the Annual Meeting of the Association at which he is elected...." Substituted in lieu thereof, the following "Each Officer and Director shall assume his office after the adjournment of the Annual Meeting of the Association at which he is elected."

GDLA TRIAL ACADEMY

Once again the GDLA Trial Academy which was held at Callaway Gardens in December was an outstanding success. One student's evaluation noted,

"The interaction between faculty and students was invaluable. For many young attorneys, the opportunity to interact with distinguished attorneys outside their own firm doesn't exist. The Trial Academy provides a perfect forum for such an experience."

Other students' comments included:

"The faculty was superb... and the practice is fantastic" and "Great chance to stand on your feet and get feedback from some great lawyers."

Students learned by observing experienced defense lawyers and by practicing their own skills in small breakout sessions.

The Faculty, chaired by Kay Deming (Troutman Sanders LLP), consisted of Jerry Buchanan (Buchanan & Land); George Duncan, Jr. (Duncan & Mangiafico); Jim Elliott (Elliott & Blackburn); Steve Goldner (Goldner, Sommers, Scrudder & Bass); Rusty Gunn (Martin, Snow, Grant & Napier); Greg Hodges (Oliver, Maner & Gray); Mary Katz (Chambless, Higdon & Carson); Greg Melton (Kinney, Kemp, Pickell, Sponcier & Joiner); Wade Monk, II (Shaw, Maddox, Graham, Monk & Bowling); and Al Parnell (Hawkins & Parnell).

Next year's Trial Academy, chaired by Rusty Gunn (Martin, Snow, Grant & Napier), will be held at Callaway Gardens November 29 through December 2. Participants should be those lawyers at your firm who are ready to begin trying cases or who need to improve their courtroom skills. Please mark your calendars for this important GDLA event and encourage lawyers who need intermediate level trial training to participate. Contact Rusty Gunn at 912-749-1700 with questions or comments.

FIGHTING THE LOSS OF PROFESSIONALISM: AN INDIVIDUAL REMEDY

BY: David L. Winter

Part I

Over the past several years, much has been written about changes in the legal profession. Where the U.S. Navy once claimed that the service was not just a job, but an adventure, many attorneys are heard to complain that law is not a profession, it's just a job. There have been a myriad of articles, speeches, even codes of conduct to deal with an apparent loss of civility in the practice of law, the phenomenon of "Rambo style" litigation tactics, and what are generally perceived as "sharp" tactics. At the same time, a growing focus on the "business" of law has had an effect on all lawyers.

Public perception of lawyers and the practice of law is also low. Commentators target many potential sources for that perceived loss of esteem, some blaming the media, others the growth of advertising by lawyers, still others the ever growing "lawyer jokes." Due to a family situation recently, I had occasion to examine my practice, the practice of law in Southern California, and what I might do to maintain, or return to, the profession of law. In that evaluation I turned to advice my father had given our family as we sat around the dinner table. We were taught, and we practice, a simple rule of respect. That rule, if applied consistently throughout our practice and throughout our lives, can indeed make the practice of law a profession, make dealing with litigation tactics tolerable, and restore esteem to our profession.

The rule is simply stated: Treat all others with respect, but earn the respect of others.

Although simply stated, the rule is not always simple to apply. By analyzing how respect applies in our profession, however, we can begin, or return to, or continue on, an ethical path, representing our clients within the highest duties of advocacy, ethics, and professionalism. To make this system work, and to change the public perception of our profession, this rule of respect must apply to every component of our life. Following are simply a few aspects of the application of that rule.

RESPECT YOUR OPPOSING COUNSEL

Although I have been a litigator in Southern California for the past 19 years, in my next case it is more likely that I will encounter counsel I have never dealt with, rather than encounter opposing counsel I know. When one opens the legal directory, listing the attorneys in Los Angeles County, there are almost 400 pages of dual columns of names. Although there are several attorneys, or firms, who are well-known, and whom I have dealt with on numerous occasions, the majority of my cases require dealing with individuals I have never met, and who know nothing of me. Likewise, I know nothing about my opponent, except perhaps how long he or she has practiced law, or the law school he or she attended.

With little information about opposing counsel, I have a choice. I can assume that counsel will be difficult to deal with, and that counsel should be subjected to an all out war, or I can assume that counsel is, and will be, professional. Opposing counsel is not necessarily evil incarnate, destined to be the bane of my existence, sworn to slay my client. Instead, counsel is more like the general or coach of the other side, the leader chosen to present their view of the dispute. Respect for the other side is not an admission of the correctness of their position, but only for the role he or she plays in resolving this dispute, whether that be by negotiation, arbitration, or trial. Although there are attorneys whom we have all encountered whose methods are difficult, argumentative, troublesome, contentious, and sometimes even unethical, our profession is better served if we begin with the assumption that our opposing counsel is worthy of our respect.

More important than the benefit to our profession, however, respect is vital to the appropriate protection of your client. You should not only respect your opponent as a fellow professional, in the manner shown below, but you should also respect his or

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her intelligence, ability to present their case, viability of their arguments, potential of their evidence, and credibility of their clients. If all cases brought or defenses presented against your client had no merit, they would never reach you. It is important in the representation of your client to not only hear what the other side has to say, but to listen to it, and consider it. With better understanding comes better resolution of the case for your client.

Communication of information is key to the resolution of any lawsuit. Only by considering the position of opposing counsel can you begin to understand, to respond, to identify the risks and benefits of litigating the issue, and to guide your client. Sometimes that communication must be accomplished through formal discovery, where the sole means by which you acquire information about the other side's case, or convey information about your own, is through interrogatories, notices to produce, and depositions. More likely, however, for this communication to be effective, it must be attorney-to-attorney, discussing and appreciating the nuances of each side's case, the application of law to the facts, the admissibility of the evidence, or the credibility of the witnesses. You can maximize that communication, and increase the value of your service to your client by doing the following:

1. Do not lie; if your word is not your bond then you might as well quit now;
2. Treat opposing counsel with respect in your comments to him or her, or before the court;
3. Develop a rapport that allows each side to discuss the strengths and weaknesses of the case, preferably through personal exchanges, or by telephone, rather than the omnipresent "confirming" letter;
4. Return phone calls;
5. Be up front with problems regarding dates, times, or other situations that arise because of other aspects of your practice, or your life;
6. Use the facsimile machine and hand-delivery for convenience of both sides, not for strategic or procedural advantage.
7. Understand that compromise is a vital component of building rapport with your opponent, and that compromise does not mean a loss;
8. Use every means possible to avoid name calling, and personal challenges to a party's causes of action, witnesses, or evidence.

As we all know, there are individual attorneys who are markedly difficult to get along with. Even the best attorneys have their bad days. However, you serve your client, and our profession, better by giving those personality quirks the benefit of the doubt, and by treating your opponent with a personal and professional respect. Take the higher ground, and pull all of us up with you.

RESPECT THE LAW

At its base, the law is merely a set of rules by which society is to function, and on a lesser level by which lawyers are to present the concerns and complaints of clients. Compare the practice of law, for a moment, to a game of tennis. Every day, somewhere, there are people playing tennis with no referees, no line judges, simply the players. It is incumbent upon those players to enforce the rules of the tennis game, to call balls in when they are in, to play the ball before the second bounce, and clearly declare if you do not, and to fairly compete. As the stakes rise in games, or as the player's talent improves, he may find himself in a game with a referee, the equivalent of a judge in a courtroom. Still the rules apply, and those rules apply even when the referee inadvertently misses a call.

As lawyers, we must respect the law. We know the law is full of nuances, ambiguities, and conflicts, real or apparent. It is our duty to assist our client within the law, and to evaluate all laws

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that apply. However, it is incumbent upon us as members of a profession to follow the law, and to admit the accuracy of the law when presented to us, be it by our opponent, or by a judge. The enthralling aspect of law, the attribute that draws us to the practice of law, and makes it a continually challenging career is the fact that the law changes. The law is not a "small box of unchanging rules," given to us upon completion of law school. Rather, law is dynamic, changing and adjusting as society changes and adjusts. To a professional, it is not enough to know what the law was; one must, at a minimum, know what the law is, and those lawyers who are the best have a great concept of what the law will be. We must maintain our knowledge of the law, by reading not only the new cases and the new statutes that affect us, but by being aware of trends in the law. By keeping abreast of the political issues of the day, by maintaining contact with attorneys in varying fields, and by continuing to analyze, we respect the law. We appreciate the fact that as society changes the law must adapt to act as a clear guideline for society.

As a professional, we are also duty bound to educate others. Whether this means assisting newer associates in your firm, speaking at local seminars, or writing locally or nationally, each of us owes something to the current and incoming lawyers. Our highest respect for the law is in discourse about it, in educating others as to where we have been, as to where we are, and as to where we will be with the law.

Respect for the law does not mean we are limited in our ability to argue a case. It means we are bound as professionals to not present cases that are no longer valid, laws that are no longer in effect, or otherwise disrespect the law. We are to be zealous advocates, but we have a higher duty, a duty to the law, a duty to society. If every situation, we owe it to our profession to be prepared, to fight hard, but to fight fair. Both winning and losing will happen; our charge is to handle both in a professional manner.

Watch for the conclusion of Mr. Winter's paper which will be presented in our next edition.

David L. Winter is a partner with Moore, Winter, Skebba & McLennan, L.L.P. in Glendale, California. His practice for the last 20 years has primarily involved complex litigation, particularly property related litigation, including construction accident, premises liability, and construction defect cases.

UPDATE FROM THE AMICUS COMMITTEE

By: James E. Singer

A special thanks to all the law firms who have volunteered to be "Patrons of the Association" Over 30 firms readily agreed to volunteer to write, if necessary, one brief within the next three years. The Patrons of the Association will receive special recognition at Amelia Island in August.

Below is the GDLA policy regarding *amicus curiae* briefs. Please keep this newsletter or at least this policy portion for future reference. This gives a guide on not only how to go about determining whether a particular case presents an issue on which the Association may assist as *amicus curiae*, but further, gives you the direction on how to submit that case for determination. Also, though not specifically set forth in our guidelines, it is hoped that the issues will be identified by trial counsel sufficiently in advance of the need for the brief and that the initial request, with supporting documentation, be submitted to the executive committee for vote a minimum of 30 days prior to the due date.

As a footnote, we also just received notice that one case in which the Association submitted an amicus brief, Security Life Insurance Company v. Clark, is scheduled for argument before the Supreme Court on Monday, April 17. The Association thanks Alan Willingham of Loehman, Willingham who prepared the brief.

GDLA POLICY REGARDING AMICUS CURIAE BRIEFS

It shall be the policy of the Association to authorize the filing of briefs *amicus curiae* sparingly and only in appropriate cases as described. Briefs *amicus curiae* authorized by the Association shall be filed only in the name of the Association.

A. APPROPRIATE CASES

1. Only at the appellate level and only in the highest court where the issue is likely to be determined.

2. Only when such a brief would constitute a significant contribution to the determination of the issue or issues involved and only where the issue or issues sought to be determine is:

(a) of peculiar significance to the interests of the defense trial bar; or

(b) of peculiar significance to the administration of justice.

3. Only when the case has some general application to the defense bar in general, and as a general rule, the GDLA should avoid cases which have application only to the insurance industry.

4. Only to advance argument with respect to the legal issues and not factual questions.

5. The Georgia Defense Lawyers Association desires to have the reputation at the Appellate Court level of

(a) being extremely careful in choosing the cases in which it appears; and

(b) producing Briefs of extremely high quality, so that the Georgia Defense Lawyers Association will have greater influence as an Association in the selective few cases in which it submits an *amicus curiae* brief.

B. AUTHORIZATION

Briefs *amicus curiae* filed on behalf of the Association shall be authorized by the Executive Committee (President, Executive Vice-President, Secretary-Treasurer, Past President) plus the Chairman of the *Amicus Curiae* Brief committee [five voting members]. To the extent possible, the five members should discuss the case by phone conference before voting whether or not to accept the case. Furthermore, this Committee of five has the option of discussing how the substantive law issues should be approached by the Association's representative, with this additional direction being passed on to the author of the Brief. The decision regarding whether or not to accept a particular case will be made by the majority of the voting members of this five-member Committee.

C. APPLICATION

1. Application for authorization of briefs *amicus curiae* may be submitted to the GDLA President and/or the Chairman of the *Amicus Curiae* Brief Committee, who will refer the matter to the Committee set forth in Section B above.

2. Each application shall be accompanied by:

(a) A full statement of the facts of the controversy and the status of the litigation;

(b) A statement whether the present appeal is likely to be the highest Court where the issue will be determined [See Section (A)(1)];

(c) A statement of the principle or principles of law to be supported together with an explanation of the applicant's reasons for believing

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that the case is an appropriate one for Association involvement [See Section (A)];

(d) A full disclosure of any personal or professional interest in the matter of any applicant or proponent of the application.

D. JOINT BRIEFS

As a general rule the Association will not join in briefs *amicus curiae* with other organizations except other local defense associations.

E. COSTS

1. The Association will accept NO payment from any applicant for the preparation or argument of briefs *amicus curiae*.

2. Costs of printing and filing the brief, and the costs of phone conferences related to the authorization process and brief-writing process shall be borne by the Association. The attorney volunteering his or her time to write the brief shall not be paid any fee, but can be reimbursed for his or her out-of-pocket expenses such as long distance phone calls, etc.

F. APPEARANCES

The brief *amicus curiae* shall show as counsel for the Association the author of the brief, the President of the Association, and the Chairman of the *Amicus Curiae* Committee.

If you are not already a member of Georgia Defense Lawyers Association we invite you to apply for membership. If interested, please contact Morton G. Forbes at the following:

MORTON G. FORBES
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WORKERS COMP: PROPOSED LEGISLATIVE CHANGES

By: Kevin Gaulke

Perhaps the most significant bill likely to become law as of July 1, 2000, is House Bill 1184. This bill was submitted as a result of the efforts of Chairman Hall's Workers' Compensation Advisory Council's Legislative Subcommittee, has passed the House and as of this writing was on the Senate General Calendar. Listed below is a summary of the proposed changes to amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to Workers' Compensation.

O.C.G.A. §34-9-13 (b)(1) will be amended by deleting language regarding employment of the spouse of a deceased employee. There will no longer be a rebuttable resumption of dependency for the surviving spouse who was employed 90 days prior to the deceased's employee's accident. Since most households operate on income from two working spouses, it was determined that employment by the surviving spouse for a period of 90 days prior to the accident should not be a determinative factor as to whether the spouse was dependent upon the deceased employee. However, the presumption of total dependence is still rebuttable if the husband and wife lived separately for a period of 90 days prior to the accident.

O.C.G.A. §34-9-15 will be amended to give the Board authorization to approve a stipulate settlement between the parties which concludes that there was no liability under this Chapter. Issues have been brought up in the past which questioned the Board's authority to approve and enforce no-liability stipulation agreements. The Board has always taken the position that it has jurisdiction to enforce such agreements. O.C.G.A. §34-9-15 as amended will clarify the Board's authority. Additionally, there will be a subsection added which addresses the problem of Social Security offsets in the settlement of Workers' Compensation cases. As amended. O.C.G.A. §34-9-15 will allow for lump sum settlements to be provided over the life expectancy of the injured worker.

An important change to be aware of is the amendment to O. C.G.A. §31-9-203 ©. In that section the employer and/or insurer will have only 30 days, reduced down from 60 days, to pay reasonable medical charges incurred from medical treatment received by the injured worker. However, before the 30 day period begins to run, the medical provider must provide the proper documentation and medical reports to the employer and/or insurer as required by the law and Board Rules. The Board may assess up to a 20 percent penalty for medical charges not paid within 30 days from the date that the employer or the insurance carrier receives the charges and supporting documentation.

O.C.G.A. §34-9-261 and 262 regarding temporary total disability benefits and temporary partial disability, respectively, will be amended to increase the maximum amount of disability benefits a claimant can be paid. The maximum temporary total disability rate will increase from $350 per week to $375 per week. The maximum temporary partial disability rate will increase from $233.33 per week to $250 per week. Additionally, O.C.G.A. §34-9-265 (d) to increase the maximum death benefit to a surviving spouse who is the sole dependent at the time of death. The maximum death benefit will increase from $100,000 to $125,000.

Other proposed bills of interest which have not yet passed the House include the following: House Bill 1175 would amend O. C.G.A. §34-9-2 to require Workers' Compensation coverage from employers with fewer than three employees if the employers' occupation has been declared hazardous by the Commissioner of Labor. House Bill 1275 will authorize an employer to seek a temporary restraining order and injunction prohibiting further violence or threats of violence in the workplace if an employee has suffered such threats at work.

ANNUAL MEETING UPDATE

We are committed to growing our membership and to increasing younger lawyer participation. Moving the annual meeting to the summer with an emphasis on family involvement was a big step. Last year was our best turn out in years but, we still must improve.

There is no better vacation bargain for a lawyer and family than this year's meeting.

WHEN: August 3-6, 2000

WHERE: Ritz-Carlton Hotel, Amelia Island Plantation, FL.

WHAT: Medical Causation – The Other Proximate Cause

National speakers to include: Microsurgery and Brain Research Inst. "The Spine on Parade"; Biodynamics Research Corp. "The Biodynamics of Low Velocity Collisions"; and Benedict Engineering, Inc. "Animation – Fact or Fiction."

We have obtained a great rate of $199/night.* The many "off property" dining and entertaining opportunities of the Fernandina Beach area are next door. We are also arranging special activities for children. Where else can you network, enjoy a beachfront four star resort, get CLE credits and tax deductions at such a low family vacation price.

IF YOU DON'T SHOW THE ENCLOSED NOTICE TO YOUR SPOUSE, you will be held in "contempt of Association". Registration info to follow. Join us for the fun and fellowship!

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*Max. 2 children under 18 per room no addition charge. $15.00 per person additional charge for each person over 18. Max. 4 persons per room.