

GDLA NEWSLETTER

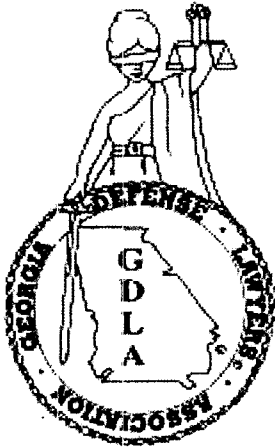
Volume 16

Editor: John A. Foster

April 2002

THE PRESIDENT'S MESSAGE

By: Walter McClelland



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As most of you know, the GDLA has decided to honor the memory of Dick Richardson by endowing a scholarship at the University of Georgia. The scholarship will be known as the Willis J. "Dick" Richardson, Jr. Memorial Scholarship, and will be awarded annually to the outstanding trial practice student who has indicated an interest in becoming a defense lawyer in Georgia. Grant Smith and Salty Forbes will be sending out a letter regarding this scholarship with some pertinent information on Dick's life and career.

In order to initially fund the scholarship, we need to raise a minimum of \$10,000.00. I am therefore asking each of you, and particularly those who served with Dick on the Association's Board of Directors, to make a contribution toward this scholarship. In addition to being one of the 5 founding members of our Association, as well as our

second president (1969-70), Dick was a mentor and a friend to many of us.

At this year's Annual Meeting in Ponte Vedra, our Association will celebrate its 35th anniversary. I would like to be able to announce that we have received 100% participation from our members in this tribute to our "president in perpetuity," Dick Richardson. If you haven't already done so, please send your contribution to our treasurer at the following address:

Richard A. Rominger
BRENNAN, HARRIS & ROMINGER
 2 East Brian St, Ste. 1300
 P.O. Box 2784
 Savannah, Ga. 31402-2784

I also sadly announce that our 6th president, Glenn Frick, died in March. Glenn had retired to Skidaway Island, where he was enjoying his



retirement and keeping his handicap low. The Association sends its condolences to Glenn's family.

He was a good friend and will be missed.

I look forward to seeing you at our best Annual Meeting ever this summer in Ponte Vedra from July 18-21, 2002.

Walter B. McClelland

GDLA GOES TO PONTE VEDRA

Mark your calendars now for July 18-21, 2002! The Annual Meeting of the Georgia Defense Lawyers Association will be held at the beautiful Ponte Vedra Beach & Resort outside of Jacksonville, Florida. This is our home away from home and the folks at Ponte Vedra have promised a superlative meeting site.

Our Executive Vice President, Jerry Buchanan, is planning one of those "you-don't-want-to-miss-this" type of program. There are tentative plans for a presentation on law firm economics by the renowned speaker, Dr. Bill McAllister. His talk will cover how to make the practice of law more profitable – something every lawyer needs to hear. I can promise you that if you implement one or more of his tips, it will more than pay for your attendance at this event.

An outline of the Agenda for this year's annual meeting appears elsewhere in this newsletter.

Your Georgia Defense Lawyers Association has tried to make this year's program family-friendly and there will be planned events for the children such as a sand-castle building contest.

One of the many benefits of joining this association is the opportunity of networking with fellow civil defense attorneys and establishing friendships that will last many years in the future. As has been the custom in the past, we will be hosting two complimentary

cocktail parties that you will not want to miss. Our traditional golf tournament will likewise be held and this year, we will also have a tennis tournament with prizes.

While you are reading this article, please put July 18-21, 2002 on your calendar. You will be receiving mailings, Emails, and the final program once all of the speakers have been confirmed. Please make your reservations by the deadline indicated. This is extremely important as we must fill the block of rooms allocated or suffer a penalty. Please give this your attention and help make 2002 our best convention to date!

See you at the beach in Ponte Vedra!

STEVE KYLE
Conference Coordinator



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Calendars!**

July 18-21 GDLA Annual
Meeting
Ponte Vedra

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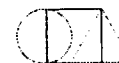
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THE GEORGIA DEFENSE LAWYERS
ASSOCIATION WINTER BOARD MEETING, ATLANTA, GEORGIA
February 16, 2002

The meeting was called to order by President McClelland. In attendance at the meeting were: Walter McClelland, Jerry Buchanan, Johnny Foster, Steve Kyle, Bob Travis, John Edwards, Richard Rominger, Sandy Owen, LuAnn Clark, Bruce Welsh, Grant Smith, Salty Forbes, and George Duncan.

Approval of the minutes of the last meeting were discussed. Apparently, despite the secretary having been informed to the contrary, minutes of the fall board meeting were not distributed to the board. The minutes will be distributed to the board and a copy of the minutes was distributed at the meeting for approval.

The treasurer's report was given by Richard Rominger.

Salty Forbes discussed a change in the DRI free membership for new members program.

George Duncan made a motion to have the \$100.00 initiation fee be paid upon acceptance for membership. A motion was made and seconded by LuAnn Clark and Steve Kyle, and then passed, that a new bylaw amendment be presented at the annual meeting to the effect that a \$100.00 initiation fee for new members be paid upon their being accepted for membership.

There was a discussion of when dues were to be paid by new members.

Also discussed was why we require initiation fees to be paid at all. Steve Kyle proposed doing away with the initiation fee, and there was a general discussion of alternatives. A committee was formed by the President to consider by-law changes for initiation fees. The committee appointed included: Steve Kyle, LuAnn Clark, George Duncan, Staten Bitting and Jerry Buchanan.

President McClelland wants to push, between now and the spring board meeting, for new members. In the past, people who applied but had not been approved were allowed to attend the annual meeting.

John Edwards pointed out that a push is needed to get older members of the Georgia Defense Lawyers to participate more. The thought is that it would spur younger lawyers to become more involved as GDLA members if they see the more senior members of the firms attending and participating.

President McClelland asked for volunteers in each district to identify firms or lawyers that need to be contacted for new membership and for more participation of existing members.

For the northern area (other than Atlanta), Wayne Forester and Wade Monk were to be approached. In the middle district, John Edwards volunteered. In the southern district, Clay Ratterree is going to be asked to do this. In the Atlanta

area, Steve Kyle and Grant Smith and Tom Harper are to undertake this task.

George Duncan reported on the November CLE program at Manuel's Tavern. The attendance exceeded 80 people. The program accomplished its goal in that many young people were involved who otherwise were not members of GDLA or involved in the organization even if they were members. George Duncan proposed some kind of Annual CLE program for Atlanta lawyers. President McClelland asked George Duncan to come up with a proposal in time for the spring board meeting. There was a discussion of perhaps having similar (if smaller) meetings of this type in other parts of the state such as Savannah, for example.

LuAnn Clark reported on the winter CLE seminar. There was a very good showing. There was about equal attendance for those people who are interested in workers compensation and those interested in traditional lawsuits. Most of the participation at the seminar was by non-GDLA members. There was a general discussion about the possibility of turning the winter CLE into a workers' compensation academy instead of the winter CLE seminar. LuAnn Clark was asked to explore a fall or winter function for workers' compensation.

(Continued on page 5)

(Continued from page 4)

Grant Smith reported on the Willis J. Richardson Scholarship Fund. A source at UGA may be available for some additional funding of the fund. The award can be instituted at UGA when we have at least a \$10,000.00 balance in the fund. Grant will report to Walter McClelland when the fund reaches that amount.

Salty Forbes reported 23 applications for membership to include the following: Stephen H. Brown, Ann Bishop, John A. Chandler, Michael F. Coogan, John Dixon, Larry W. Fouche, Theodore Freeman, Amy Michelle Hoffman, Charles D. Jones, Carlton E. Joyce, Susan Carter Lovett, David C. Marshall, R. Scott Masterson, Ronald W. McBay, Lee C. Mundell, Samuel A. Murray, Jr., Christopher E. Parker, Stephanie Colings Patel, Norman C. Pearson, III, Jennifer R. Rossi, Jeffery N. Schwartz, Sorja R. Tate, and Paul H. Threlkeld. The applicants were approved for membership.

Johnny Foster reported that regarding the sponsorships program, we have two new Gold sponsors, Crawford & Company and S.E.A. Statements were sent out to four existing sponsors who have not been billed. The following organizations have expressed an interest in sponsorship: Vista Engineering, Blumberg, Excell and Decision Quest. Esquire Deposition Service wants to become a premier sponsor. A \$100.00 donation was reported from Brown Reporting. Affordable Video (Eric Stinson) was sent an information letter regarding the

sponsorship program. Trial Graphix is a potential sponsor that has been identified by Sandy Owen. John Edwards mentioned that Rick Fuentes had split off from Decision Quest and may be interested in being a sponsor. Additional potential sponsors to be contacted are: Trial Graphix and Peter Inmans at Orian (a time and billing case management system). Our present sponsors are: Applied Technical Services (A.T.S.), Benedict Engineering Company (B. E.C.), Forcon International, Corp., Brown Reporting, Inc., Henning Mediation & Arbitration Service, Inc., and Insurance Specialists, Inc.

Johnny Foster reported on the newsletter. He is to obtain examples of a slicker format for at least one edition per year.

Steve Kyle reported on future meetings. The Spring Board Meeting is set for Callaway Gardens May 3-4, 2002. Steve urged the board members to call and make reservations in advance if they want to stay both nights. Reservations are necessary. Steve has three tee times for golf on Saturday at the mountain course. The annual meeting has been scheduled for Ponte Vedra, Florida, July 19-21, 2002. The room rates are in place now. After some discussion, this was approved by the board. The dinner at the annual meeting is on Saturday night. The winter board meeting for 2002 is scheduled for November 1-3 at the cloister. The location of the 2003 annual meeting is up for discussion.

Jerry Buchanan reported on preliminary program plans for the annual meeting at Ponte Vedra, Florida.

Warner Fox sent in a report on the law journal committee. Chairman Fox reported that he has commitments for articles as follows: John Hall, "Medical Malpractice Update"; Charles Benas, "Product Liability"; Lynn Roberson, "Premises Liability," Unknown "Workers' Compensation Article"; and Tom Harper, "Auto Liability."

Salty Forbes gave the DRI report. Free membership offers for new members are being reconsidered by DRI. There was a discussion of the multi-discipline practice issue. The DRI board voted against it; the Georgia State Bar, as reported in the latest Bar Journal, seems to be in favor of it. Salty Forbes made a motion, which was seconded and passed, that the Georgia Defense Lawyers Association send to the State Bar and all members of the Board of Governors, a statement of our opposition to multi-disciplinary practice. Salty Forbes is to draft the statement.

There was a discussion that impeachment documents and materials must be listed on a pre-trial order in order to be admissible. Apparently the Court of Appeals has so indicated and the matter is now before the Supreme Court. GDLA is going to file an Amicus Brief in opposition to the Court of Appeals opinion. The committee head for this will be Jimmy Singer.

New Business: Steve Kyle wants to find a way to encourage more people on the Board to attend our meetings. A letter to the Board members suggesting that their attendance is needed was discussed.

(Continued on page 6)

(Continued from page 5)

John Edwards pointed out again the need to give more advance notice to board members of meetings.

The secretary will prepare a letter from the officers encouraging attendance of board members at the meetings of the Board of Directors.

The meeting was adjourned.



At its fall 2,000 meeting, the GDLA Board of Directors approved a recruitment incentive. Here's how it works: Hereforth, any member who recruits a new lawyer for membership in our organization will receive a certificate redeemable for a fifty dollar discount on the registration cost of any GDLA event - annual meeting, Winter CLE, and trial academy. Please take advantage of this incentive and help GDLA increase its membership.

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A GOOD LAWYER STORY

A Charlotte, N.C. lawyer purchased a box of very rare and expensive cigars, then insured them against fire (among other things). Within a month, having smoked his entire stock-pile of these great cigars, and not yet having made even his first premium payment on the policy, the lawyer filed a claim against the insurance company. In his claim, the lawyer stated the cigars were lost "in a series of small fires." The insurance company refused to pay, citing the obvious reason: the man had consumed the cigars in the normal fashion. The lawyer sued ... and won!

In delivering the ruling, the judge agreed with the insurance company that the claim was frivolous, however, the judge stated that the lawyer held a policy from the company in which it had warranted that the cigars were insurable, and had guaranteed that it would indeed insure them against fire, without defining what is considered "unacceptable fire" - and was obligated to pay the claim. Rather than endure a lengthy and costly appeal process, the insurance company accepted the ruling and paid \$15,000.00 to the lawyer for his incendiary bamboozle.

NOW FOR THE GOOD PART

After cashing the check, the insurance company had him arrested on 24 counts of ARSON!!!! With HIS OWN INSURANCE CLAIM AND TESTIMONY FROM THE PREVIOUS CASE BEING USED AGAINST HIM, THE LAWYER WAS CONVICTED OF INTENTIONALLY BURNING HIS INSURED PROPERTY AND SENTENCED HIM TO 24 MONTHS IN JAIL AND A \$24,000.00 FINE. This is an apparently true story and was the 1st place winner in a recent Criminal Lawyers Award Contest.

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**GEORGIA DEFENSE LAWYERS ASSOCIATION
35TH ANNUAL MEETING
JULY 18-20, 2002
PONTE VEDRA, FLORIDA**

LAW OFFICE ECONOMICS AND TECHNOLOGY

FRIDAY, JULY 19, 2002

- 8:30 A.M. CALL TO ORDER** Walter McClelland
President, GDLA
- 8:45 A.M. INTRODUCTION OF PROGRAM**
Jerry A. Buchanan
Program Chairman
- 8:50 A.M. RETOOLING FOR PROFITABILITY**
Dr. Bill McCallister
- 1. Profitability and Size of Law Firm**
 - 2. Urth, Wynde & Fyre – A Hypothetical Law Firm**
 - 3. Factors Influencing Profitability**
 - 4. The Value of Benchmarks**
 - 5. Profitability is a Choice, Not a Fate**
 - 6. Reclaiming the Art of Lawyering**

12:30 PM Adjourn

1:30 PM Golf Tournament

SATURDAY, JULY 20, 2002

- 8:30 AM GDLA ANNUAL BUSINESS MEETING**
Walter McClelland, President
- Treasurer's Report** Rick Rominger
- Old Business**
- New Business**
- Report of Nominating Committee**
Salty Forbes, Chairman
- Election of Officers**
- 9:00 AM LITIGATION MANAGEMENT WORKSHOP**

(Continued on page 11)

(Continued from page 10)

HOW TO BECOME A TECHNO LAWYER AND SURVIVE TO TALK ABOUT IT

Speaker: Michael R. Boutot
Director – Litigation Management
Crawford & Company

Statement of Purpose: In an era where litigation is on the rise and expectations are increasing, law firms are turning to experts to assist in making their firms more efficient. There is no "one size fits all" solution to the problem. Learn how today's technology in the field of litigation and litigation management allows law firms the ability to better manage their firms **and** case files while also allowing them the ability to adhere to more and more complex and stricter guidelines and procedures. This session will share specific examples and results that will allow individual attorneys and law firms to begin utilizing technology to implement and comply with standards, procedures and guidelines. By applying some of these principles, law firms will be able to maintain their business while also marketing themselves more aggressively to new clients.

Learning objectives: At the conclusion of the seminar the attendees will:

- Better understand what products are available in the marketplace.
- Gain insight and gather information relative to technological enhancements in the area of case management and document management.
- Recognize the difference between technology that is designed to just "save money" for clients verses technology that is designed to allow attorneys to be more efficient.
- Ascertain the value of using technology to greatly improve communications.
- Understand why budgeting has become such a sensitive subject and how, with technology, it can be a "blessing in disguise".
- Evaluate the difference between "auditing" verses "validating" via real-time processing.
- Get a glimpse of what lies ahead in the area of litigation technology.

Outline

Introduction to Technological Enhancements
Impediments to Technological Enhancements
Improvements in Technological Enhancements
Incentives for Technological Enhancements
Involvement through Technological Enhancements

11:00 –11:20: Coffee Break

11:20-12:30: To be announced

RECENT DEVELOPMENTS IN WORKERS' COMPENSATION LAW FOR THE YEAR 2001

By: KEVIN C. GAULKE

The purpose of this article is to discuss selected decisions from Georgia's Appellate Courts in the year 2001 which may have significant impact on issues arising in the litigation of workers' compensation claims in the State of Georgia.

Occupational Disease

McCarty v. Delta Pride, decided January 30, 2001.

Randall McCarty worked for Delta Pride as a construction worker. Mr. McCarty's duties included preparing and loading a truck for transport from Georgia to the Central American country of Belize. After working six weeks in Belize installing irrigation pipes on a banana plantation, Mr. McCarty contracted malaria. After filing a claim for benefits, Delta Pride controverted the claim, asserting that malaria is not an occupational disease entitling Mr. McCarty to benefits.

Medical evidence was presented at the hearing through the deposition testimony of Mr. McCarty's physician. That medical evidence showed that malaria is a disease that has been essentially eradicated from the United States and is not considered a disease of life to which the general public in Georgia is exposed. However, malaria is still a disease prevalent in Central America, Asia, and Africa. Therefore, the issue before the Court was whether malaria is a compensable occupational disease under the workers' compensation statute.

Generally, a claimant can recover benefits for contracting an occupational disease within the course of his employment if the claimant can show that the disease is not an ordinary disease of life to which the general public is exposed. In this case, the evidence showed that malaria is not an ordinary disease to which the general public in Georgia is exposed. However, the disease is still prevalent in Central America, where the Claimant was working at the time he was exposed. The Court took a liberal interpretation of the statute to correspond with the humanitarian purpose of the Workers' Compensation Act and found that Mr. McCarty is entitled to benefits for contracting malaria. Even though malaria is an ordinary disease of life in the country where Mr. McCarty was working, it is not an ordinary disease of life to which the general public in Georgia is exposed.

Waiver of Defense to Claim for Income Benefits

Baugh-Carroll v. Hospital Authority of Randolph County, decided on February 22, 2001.

Felicia Baugh-Carroll was employed as a nurse's aide by the Hospital Authority of Randolph County. In 1992, Ms. Baugh-Carroll sustained an injury to her right knee which resulted in surgery. Following the surgery, she received temporary total disability benefits through March of 1992. Ms. Baugh-Carroll returned to light-duty work with the Employer while still under the care of an orthopaedic surgeon. It was later determined that a second surgery was needed in June of 1997. Ms. Baugh-Carroll underwent the second surgery and received temporary total disability benefits until July of 1997. After returning to light-duty work, she resigned in March of 1998.

In September of 1998, Ms. Baugh-Carroll moved to Florida and began working for a mental hospital. However, she resigned from this second employer after ten months of working due to complaints of pain in both knees.

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Ms. Baugh-Carroll filed a claim for workers' compensation benefits against the first employer, Hospital Authority, in June of 1999, two years and seven days after she last received income benefits from the Hospital Authority in 1997.

The Claimant's attorney did not list income benefits as an issue on the WC-14 Request for Hearing. At the hearing, Ms. Baugh-Carroll's attorney formulated the issues to include medical care for the left knee, and "disability issues also".

The Administrative Law Judge found that Ms. Baugh-Carroll suffered a superadded injury to her left knee which developed as a result of her original right knee injury. Therefore, the Claimant was entitled to medical benefits for the left knee, as well as income benefits from April of 1999, the day she resigned from the second employer, to the present and continuing.

On appeal, the attorney for the Employer/Insurer first raised the Statute of Limitations defense, contending that more than two years passed since the Claimant last received income benefits from Hospital Authority, thus barring the Claimant from a recommencement of those benefits. The issue before the Appellate Court was whether the Employer/Insurer waived their affirmative defense by not asserting that defense at the hearing level.

Generally, the Employer/Insurer waive a Statute of Limitations defense if the Employer/Insurer fail to assert the defense until after the hearing. In this case, the Employer/Insurer asserted and relied upon the one-year Statute of Limitation defense found in O.C.G.A. § 34-9-82(a), as if this was a new claim. The Employer/Insurer did not assert the Statute of Limitations defense found in O.C.G.A. § 34-9-104(b), which precludes untimely claims for temporary disability benefits based on a change in condition for a claim already established. Consequently, since the Employer/Insurer relied upon the one-year Statute of Limitations defense of O.C.G.A. § 34-9-82(a) rather than the two-year Statute of Limitations defense set out in O.C.G.A. § 34-9-104(b), the Employer/Insurer could not come back later and assert the two-year Statute of Limitations defense for the first time on appeal.

Heart Attacks, Any Evidence

Phillips Correctional Institute v. Yarbrough, decided March 21, 2001.

Jeffrey Yarbrough was a prison guard at Phillips Correctional Institute. On May 11, 1997, he went from cell to cell to check on inmates, which required him to walk up and down several flights of stairs. After serving breakfast, Mr. Yarbrough began sweating profusely. Moments after complaining to a co-worker that he did not feel well, Mr. Yarbrough collapsed of a heart attack and died. An autopsy attributed his death to cardiac dysrhythmia secondary to an enlarged heart. Mr. Yarbrough's widow filed a claim for death benefits and the State Board of Workers' Compensation awarded benefits. The Appellate Court was presented with the question of whether there was sufficient evidence to support the State Board's finding of a compensable heart injury.

Generally, a heart attack shall not be a compensable injury unless it is shown by a preponderance of evidence, including medical evidence, that job exertion was a contributing factor. Such a determination is for the Administrative Law Judge to determine and will not be overturned by the higher court if there is any evidence to support the Administrative Law Judge's findings.

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At the hearing, two physicians testified regarding Mr. Yarbrough's death. Both physicians agreed that Mr. Yarbrough had the pre-existing conditions of hypertension, obesity, and a severely enlarged heart. The doctors disagreed, however, on whether Mr. Yarbrough's work was a contributing factor. One physician claimed that Mr. Yarbrough's death was solely attributable to the state of his heart. The second physician opined that the physical and mental stress of the work contributed to Mr. Yarbrough's death at the time that he died.

It is well settled that work need only be a contributing factor to a heart injury in order for that injury to be compensable. Consequently, the Appellate Court upheld the Administrative Law Judge's award of benefits under the any evidence standard, since one physician did find that work contributed to Mr. Yarbrough's heart attack and subsequent death.

Statute of Limitations

City of Poulan v. Hodge, decided August 16, 2001.

Mr. Hodge suffered a compensable accident to his low back on January 9, 1989. Mr. Hodge received income and medical benefits until March 20, 1989. He was released to light-duty work after an MRI of the lumbar spine showed results that were "minimally abnormal" with degenerative disc disease at L5-S1. Thereafter, the authorized treating physician released Mr. Hodge back to full-duty work on May 22, 1989, without a specific determination or declaration that Mr. Hodge reached maximum medical improvement. However, the physician did state that Mr. Hodge had no permanent impairment disability.

Mr. Hodge performed full-duty and light-duty work for the Employer until November 27, 1989. At that time, he left to work for another employer because the work he was doing for the City of Poulan was causing too much pain to his back. Mr. Hodge worked for the second employer until December 23, 1989, when he quit because of increased symptoms of pain in his back.

Mr. Hodge's back continued to worsen until September of 1992, when another physician diagnosed him with a herniated disc at L5-S1. After the second physician performed back surgery in November of 1992, he pronounced Mr. Hodge at maximum medical improvement and assigned a permanent partial disability rating.

On August 12, 1999, over ten years after he last received indemnity benefits, Mr. Hodge filed for benefits under the theory of a change of condition. The Administrative Law Judge, and the Appellate Division of the State Board, found that the Statute of Limitations under O.C.G.A. § 34-9-104(b) had run.

Generally, there is a two-year Statute of Limitations under O.C.G.A. § 34-9-104(b) for a change in condition claim filed by a claimant. The Statute of Limitations begins to run the date after a claimant is last paid weekly benefits. However, the Appellate Court found that under O.C.G.A. § 34-9-104(b), the Statute of Limitations is tolled if MMI is not declared prior to the cessation of benefits because potential unpaid benefits may be owed, but not yet paid. Therefore, MMI must be determined before or at the same time that a PPD rating is determined, since a determination of MMI is a condition precedent to rendering a PPD rating. Failure to render a claimant at MMI prior to or at the same time a PPD rating is given will toll the Statute of Limitations. Consequently, the Court determined that the Claimant could seek benefits in this case but would still have to prove that he suffered a change in condition for the worse as a result of the original work injury.

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SUPREME COURT UPDATE: WHO IS DISABLED UNDER THE ADA?

W. Melvin Haas III
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In a decision issued January 8, 2002, the U.S. Supreme Court continued its trend toward narrowing the scope of the Americans with Disabilities Act ("ADA"), this time in a case involving a plaintiff with carpal tunnel syndrome.

In *Toyota Motor Mfg., Kentucky, Inc. v. Williams*, the plaintiff contended that she was substantially limited in the major life activity of performing manual tasks, among others. Her limitations consisted of inability to perform one or two components of a four-part rotation job on the Toyota assembly line and moderate limitations on her ability to garden, do housework, and groom herself. The Supreme Court found that these restrictions were not "substantially limiting" enough to amount to an ADA disability.

A "disability" within the meaning of the ADA requires (1) an impairment (2) that "substantially limits" (3) a "major life activity." Some examples of "major life activities" are seeing, hearing, walking, working, and performing manual tasks.

In the *Toyota* case, the Court defined what a plaintiff must prove to show that she is substantially limited in performing manual tasks. According to the Court, the individual must have an impairment that "prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment must also be permanent or long-term." It is not enough for her to show that she is unable to perform various manual tasks of a specific job, the Court said. Instead, an employee must be unable to perform a wide range of tasks -- both at work and outside of work -- to meet the definition of "disability."

It is important to note that the Court did *not* say that carpal tunnel can never be an ADA disability. If the carpal tunnel results in a long-term impairment that severely restricts the individual's ability to perform these "centrally important" "daily life activities," then presumably the individual would be "disabled" within the meaning of the ADA. Accordingly, employers must still evaluate each employee's condition and restrictions on a case-by-case basis to determine whether an employee is entitled to a reasonable accommodation under the ADA.

The *Toyota* decision continues the Court's trend toward requiring that individuals be markedly more limited than the general population to be entitled to ADA protection and its reluctance to declare that certain medical conditions, *per se*, are ADA disabilities. In 1999, the Court began curtailing the coverage of the ADA in *Sutton v. United Air Lines* (nearsightedness that was correctable is not an ADA disability), and *Albertson's, Inc. v. Kirkingburg* (monocular vision is not necessarily an ADA disability; particularized analysis of the limitations it imposes on the individual must be assessed). See also *Bragdon v. Abbott* (HIV infection found to be a disability in *individual* case, but Court declined to consider whether HIV infection was an ADA disability in *every* case).

There has been a decline in ADA litigation since the Court's 1999 decisions, and our law firm expects the *Toyota* decision to continue that trend as fewer individuals can claim the ADA's protections. That said, we continue to recommend that employers accommodate their employees' medical conditions to the extent possible and practical, as a matter of good Human Resources practice. But it's good news for employers that mistakes or business concerns that result in "no accommodation" decisions are less likely to be subject to legal challenge.

The analysis provided in this article is provided for information purposes only and should not be used to evaluate individual legal problems or situations. For more information on these and other employment issues, contact author, who is an attorney with Constangy, Brooks & Smith, LLC. Mel Haas's e-mail is m.haas@constangy.com He can be reached at (478) 750-8600.

**REPORT FROM DRI SOUTHEAST REGIONAL
DIRECTOR SALTY FORBES**

At the Winter Board Meeting of the DRI, the report of the Ad Hoc Committee on the DRI guidelines recommended that DRI not withdraw the guidelines that the Board adopted two years ago. The Board voted to amend the guidelines and not to withdraw the guidelines. The guidelines were amended as follows:

The Preface to the Guidelines states:

[Insurer] expects to work with the Firm and the insured to achieve the best result for the insured in an efficient and cost-conscious manner consistent with the Firm's ethical obligations. Nothing contained herein is intended to nor shall restrict Counsel's independent exercise of professional judgment in rendering legal services for the insured.

The new provision reads:

[Insurer] expects to work with the Firm and the insured to achieve the best result for the insured in an efficient and cost-conscious manner consistent with the Firm's ethical obligations. Nothing contained herein is intended to nor shall restrict Counsel's independent exercise of professional judgment in rendering legal services for the Insured or otherwise interfere with any ethical directive governing the conduct of counsel.

Depositions – Section V.B.7 presently states:

7. Depositions. Counsel should consult with [Insurer] before initiating and attending depositions other than that of the plaintiff(s), the insured, and other depositions already approved in the initial Litigation Plan or supplement thereto.

New provision reads:

7. Depositions. Counsel should consult with [Insurer] before initiating depositions other than that of the plaintiff(s), the insured, and other depositions already approved in the initial Litigation Plan or supplement thereto and shall advise the [Insurer] of upcoming depositions initiated by other parties that Counsel plans to attend.

Audits – new provision reads:

[Insurer] reserves the right to review all charges for services and disbursements pertaining to litigation, including without limitation all charges paid by the insured with respect to such litigation, whether pursuant to self-insured retentions or deductibles under [Insurer's] insurance policies or otherwise. [Insurer] reserves the right to conduct audits and to review the defense file and/or defense bills, consistent with the defense attorney's ethical obligations, and in a manner that will not compromise the attorney-client or work product protection accorded material in the file or communications by and between counsel, the client and [Insurer] fully reserves all rights to decline to pay or to seek reductions and/or refunds with respect to charges that fail to comply with the requirements set forth herein, and which are not fully explained or documented by the firm after reasonable inquiry. The [Insurer] shall allow the law firm to appeal any declination of payment by [Insurer]. [Insurer] agrees to pay the undisputed portion of bills received from Counsel within ____ days.

**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, Post Office Box 13929, Savannah, Georgia 31416, or call him at (912) 352-1190, or e-mail him at:

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NOTICE OF PROPOSED REVISION TO THE BY-LAWS OF
THE GEORGIA DEFENSE LAWYERS ASSOCIATION

At the spring meeting of the Board of Directors of the Georgia Defense Lawyers Association, held May 4, 2002, the Board proposed the following as a change to the By-Laws of the Association:

Article V of the By-Laws is repealed in its entirety.

The following shall be Article V of the By-Laws:

Article V - Dues and Fees

1.

The dues and initiation fees of the Association shall be set by the Board of Directors. Dues and initiation fees shall be payable at such times and under such conditions as may be determined by the Board of Directors.

2.

Each retired member, who during his/her membership served as President of the Association and by virtue of that office is an ex-officio member of the Board shall not be required to pay annual dues. An Honorary Member shall not be required to pay annual dues.

3.

The fiscal year of this Association shall commence on January 1, and end on December 31.

The portions of the By-Laws which are the subject of this proposed amendment currently read as follows:

Section 1. Each Active Member, at the time of his/her admission to membership, shall pay an initiation fee and the annual dues for the fiscal year for which he/she is admitted to membership.

Section 2. Each Associate Member, at the time of his/her admission to membership, shall pay an initiation fee at the time of his/her admission to membership, as set by the Board of Directors at the annual meeting for the fiscal year for which he/she is admitted to membership.

Section 3. The initiation fee and annual dues for Active Members shall be set by the Board of Directors at each winter meeting of the Board and shall become due and payable on or before the first day of July of such year. The Board of Directors of the Association may, on the basis of the total consecutive years of active practice of law of each member, establish different rates of dues, which shall be due and payable on the first day of July of each year.

Section 4. The initiation fee and the annual dues for each Associate Member shall be set by the Board of Directors at each winter meeting of the Board and shall become due and payable on or before the first day of July of each year.

Section 5. The annual dues for each Retired Member shall be set by the Board of Directors at each winter meeting of the Board and shall become due and payable on or before the first day of July of such year. Each Retired Member, who during his/her membership served as President of the Association and by virtue of that office is an ex-officio member of the Board, shall not be required to pay annual dues. An Honorary Member shall not be required to pay annual dues.

Section 6. The Board of Directors shall have authority to levy such assessments from time to time as shall be necessary to meet unusual expenditures, or to finance a special project or program in furtherance of the purposes of this Association; provided, however, that any such proposed assessment may be nullified by a majority vote of the members of this Association present and voting at a meeting called for such purpose and held within thirty (30) days after notice of such proposed assessment shall have been given by the Board to the members, and provided further that the total assessment during any fiscal year may in no event exceed a sum equal to the annual dues for such fiscal year. Any assessment shall be due and payable ten (10) days after notice thereof is mailed by the Association.

Section 7. The fiscal year of this Association shall commence on January 1 and end on December 31.