



THE PRESIDENT'S MESSAGE

BY: JOE CHAMBLESS

As I begin to fulfill my responsibilities as the president of this organization, I will look forward to working with each of you in the coming year. The Georgia Defense Lawyers Association has and can continue to play an important role in maintaining a strong, competent, professional and ethical defense bar. During my years of membership, I have come to learn that our association does in fact consist of the cream of the crop of Georgia lawyers that meet those attributes.

I believe that it goes without saying that an organization will be as strong and as active as it's members will permit it to be. Thus I want to encourage each of you to play some role in keeping GDLA moving forward. That role can be undertaken and accomplished in many ways to include, but certainly not being limited to, making suggestions, actively participating in committee assignments, attending our CLE seminar and annual meeting, supporting and encouraging participation in the trial academy, recruiting competent and capable new members, fulfilling your role as an officer, board member and committee chairperson and aspiring to a leadership role. Much has been done in the past and much more can be done in the present and in the future.

Some of my goals this year which I believe are obtainable are as follows:

One: Increase active participation of our current membership and recruit new members.

Two: Increase the attendance at our CLE seminar, trial academy and annual meeting.

Three: Establish a communication medium that will permit the timely dissemination of information to our membership.

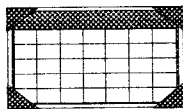
Four: Maintain and nurture a professional and social relationship with our sister associations, the Alabama and Florida Defense Lawyers Associations, for the purpose for networking the exchange of ideas and information that could strengthen our association.

Five: To establish other short-range and long-range goals for the association to avoid any potential for stagnation.

With high expectations, I look forward to this coming year and for your active participation, suggestions and recommendations.



CALENDAR OF EVENTS



1997 Events

Nov. 01, 1997

Fall Board Meeting (Grove Park)

Nov. 05-09, 1997

DRI Meeting (Baltimore)

Dec. 04-06, 1997

GDLA Trial Academy (Callaway Gardens)

1998 Events

Feb. 1998

GDLA Winter Board Meeting

April 23-26, 1998

GDLA Annual Meeting 1998
(Cloister)

1999 Events

April 28-May 02, 1999

GDLA Annual Meeting 1999

1997 ANNUAL MEETING

By: Morton G. Forbes

This past April, Georgia Defense Lawyers again met at Ponte Vedra for our 30th Annual Meeting. Five years ago, the GDLA celebrated its 25th Anniversary. Up until the dinner Friday night, everyone assumed the 30th would go unnoticed. However, the officers and past-Presidents had other ideas.

Thirty years ago, Ed Lane, John David Jones, Jack Capers, Mead Burns and Dick Richardson founded this Association. Dick served as our Second President and has served as our "President in Perpetuity" since that time. Dick has been in charge of the Annual Meeting since its conception. Those of us who have

passed through the chairs can never thank Dick enough for all of his advice, assistance, and support. The GDLA has established the Willis Jenkins Richardson, Jr. Award, for outstanding service to the Association, recognizing all of Dick's hard work. It has taken us 30 years to establish this award and it will probably take another 30 years before we will present the Richardson Cup again. The GDLA purchased a 1782 Sterling Silver Cup that was made in Newcastle, England one year before Dick started practicing law. At present, the Cup resides on Dick's mantel and will remain in that place until the past-Presidents choose to award it to a second recipient. Those of you who attended the Annual Meeting dinner will recall Dick's eloquent acceptance speech. He was totally surprised by the presentation, and richly deserved it.

At the Annual Meeting, the following individuals were elected:

President

Joseph H. Chambliss

Executive Vice President

Steven J. Kyle

Secretary/Treasurer

George E. Duncan, Jr.

Vice Presidents

William H. Pinson, Jr.
F. Gregory Melton
Walter B. McClellan
Andrew H. Hill, III

Board of Directors

Northern District

Grant B. Smith (2000)

Middle District

John C. Edwards (2000)

Southern District

Richard A. Brown, Jr. (2000)

State at Large

N. Karen Deming
Robert M. Brinson
Edgar B. Wilkins, Jr.

Other officers of the association serving their terms.

Board of Directors

Northern District

Robert M. Travis (1998)
Henry E. Scrudder, Jr. (1999)

Middle District

Jerry A. Buchanan (1998)

F. Thomas Young (1999)

Southern District

Wiley A. Wasden, III (1998)

Richard A. Rominger (1999)

In addition, the Florida Defense Lawyers Association hosted DRI Southeastern Region Meeting at Ponte Vedra on Friday afternoon following the GDLA's morning session. Among those present were Lloyd Millikin, DRI First Vice President; Jack McEwan, DRI Board member from the Southeast Region; Sandy Sweica Schmidt, DRI Liaison and Membership Director; Representatives of the Alabama Defense Lawyers Association (Wade Baxley, ADLA President, Ollie Blan, DRI Alabama State Representative and Ed Livingston, Executive Vice President of ADLA); and representatives of the Florida Defense Association, (Bob Cousins, FDLA President; Dick Collins, DRI Florida State Representative) along with members of the GDLA. (Joe Chambliss, Greg Melton, Steve Kyle and Jerry Buchanan)

Next year's Annual Meeting will be at the Cloister, so make your plans to attend. This will be our 31st Annual Meeting, and who knows what surprises await.

FOR COMMITTEE ASSIGNMENTS FOR 1997-1998 SEE ADDENDUM

PRODUCT LIABILITY REFORM

On May 1, the U.S. Senate Commerce Committee approved without amendment S. 648 (Ashcroft, RMO) the "Product Liability Reform Act of 1997". The vote, 11-9 was along straight party line. S. 648 includes changes to last year's Product Liability Conference Report (introduced this Congress as S. 5) that directly addresses concerns raised by President Clinton's veto statement.



As to its basic provisions, S. 648 (as did last year's conference report on H.R. 956) provides:

1) that punitive damages shall not exceed two times a claimant's compensatory damages or \$250,000 whichever is greater. (There is a special rule for small businesses—this provision limits punitive damages against small businesses to the lesser of two times compensatory damages or \$250,000. This bill defines a small business as having a net worth which does not exceed \$500,000 or fewer than 25 full time employees.)

There is an exception for insufficient award in cases of egregious conduct known as the "safety valve for community outrage." This allows for an exception to the limit on punitive damages in cases of egregious conduct. The jury is not told about the limit on punitive damages. If the award exceeds the cap, the judge must reduce it to the limit. However, in cases of especially egregious conduct which goes beyond conscious, flagrant disregard for the rights of others, the judge can decide to sustain the jury verdict. The judge cannot exceed or add to the jury award.

2) that punitive damages may to the extent permitted by State law, be awarded only if the claimant establishes by "clear and convincing evidence" that the harm suffered was the result of conduct carried out by the defendant with a conscious, flagrant indifference to the safety of others.

3) that trials be bifurcated to enable a separate determination of punitive damages

4) that the following defenses be available: a) sellers defense b) alcohol and drug defense c) reduction of damages for misues or alteration

5) that the claimant bring a product liability action within two years of the

time that the claimant knew, or should have known, about the harm and its cause.

6) that liability for noneconomic harm shall be several only, and not joint. This permits states to retain joint liability for economic harms, or to eliminate joint liability altogether.

7) that the liability of suppliers of raw materilas may be limited to encourage those suppliers to sell their products to medical device manufacturers.

S. 648 includes the following modifications to last year's bill which directly address the President's concerns including: restoring language to the general "Applicability" section of the bill to make clear that actions for **negligent entrustment** are not covered (specific language was provided by MADD); expanding the statute of repose from 15 years to 18 years (this provision preempts state law); providing that the drug and alcohol defense provision clearly states that the burden is always on the **defendant** to prove the defense; and preventing the statute of limitations from running during a bankruptcy court proceeding. There has been no indication when the Senate will begin to debate S. 648.

PROFESSIONALISM SEMINAR

On Friday, October 10, 1997, the Georgia Defense Lawyers Association co-sponsored with the Georgia Trial Lawyers Association, the Georgia Institute of Continuing Legal Education, and the four major law schools in the State an unprecedented conference: "The Summit on Professionalism".

For reasons that no one has fully analyzed and for reasons not well understood, collegiality has left the civil trial bar during the past decade, and in its place has arisen a system in which dishonesty (or the perception of dishonesty), and even open hostility,

have become the norm. The goal of the joint conference is not merely to air and analyze the problem, but to formulate solutions.

The conference was held at the Colony Square Hotel in Atlanta, and was approved for six hours of CLE credit in professionalism and trial practice.

The format has not previously been undertaken in CLE programs. The morning session focused on identifying problems and issues of professionalism and included presentations by Foy Devine, Matt Dwyer, Clay Porter, and Ben Weinberg. There was a session focusing on the judiciary and analyzing issues of whether the courts and judges have "dropped the ball" in responding to professionalism issues. Following the presentation, Tim Terrell, Professor of Law and Professionalism at Emory moderated a probing discussion in "the Advocates's" format, again attempting to analyze the reasons for the decline in professional relations among members of the trial bar.

Lunch was provided and featured a keynote address by Larry Fox, Esquire of Philadelphia, the Chairman of the ABA standing committee on professionalism.

The afternoon session was quite unique. Attendees were divided into four groups, each group was led by a defense lawyer, a plaintiff's lawyer, and a law school professor and assigned the responsibility not merely to analyze and complain about a specific area of trial practice (i.e., document production and the trying of cases on discovery issues and not on the merits), but to develop a plan for addressing and solving the problem. The sessions were moderated, but unscripted, and the participants at the seminar themselves formulated proposed solutions to the problem. At the end of the session, reports from the various break-out groups were received by the joint session. Seminar materials will, in fact, be created following the seminar and



will be distributed to attendees and members of the judiciary.

FEDERAL UPDATE

Product Liability - As you may know, the White House has named representatives of the Department of Justice, the Department of Commerce as well as the Small Business Administration to a White House Task Force on product liability. Under the direction of Deputy Counsel and Assistant to the President Bruce Lindsey with input from Director of the National Economic Council Gene Sperling, this group continues to hold meetings to study the reforms proposed in S. 648, the "Product Liability Reform Act of 1997." Majority Leader Trent Lott (R-MS) has put S 648, the "Product Liability Fairness Act," on the Senate calendar for September.

Medical Liability - Proposed health care liability reforms were not included in the final budget agreement. The House passed health care liability reforms as part of its budget reconciliation package. The Senate did not include medical liability limits in its version. Despite legislative findings that reforms would save \$600 million by the year 2007, the reforms did not survive the negotiations.

Volunteer Liability - On June 18, President Clinton signed the "Volunteer Protection Act of 1997" into law. The House approved the final version of the legislation by a margin of 390-35 on May 21. That evening, the Senate unanimously passed the bill by voice vote. Contact ATRA if you would like additional information on the volunteer legislation.

Association Liability - Sponsored by Representative Sonny Bono, H.R. 1542, the "Trade and Professional Association Free Flow of Information Act" would protect associations from liability claims when associations exchange information with their members regarding defects,

quality, or performance. As co-sponsors are sought in the House, Senator Mitch McConnell (R-KY) is expected to introduce a companion measure. Call ATRA for details.

PROPOSED PRODUCT LIABILITY REFORM LEGISLATION

As many of you may already be aware, after several months of negotiations on federal product liability legislation between the White House and congressional Democrats including Senator John D. Rockefeller (D-WV), a "discussion draft," was released last week. The "discussion draft," would limit punitive damages for small business only (less than 25 employees and annual revenues of \$5 million or less) to the lesser of two times compensatory damages or \$250,000; provide an 18-year statute of repose for workplace durable goods; limit liability for product sellers and wholesalers; and provide a defense for manufacturers whose products were deliberately misused.

The draft does establish a requirement in all cases that if existing state law permits such an award, in order to recover punitive damages, a plaintiff must prove that a defendant acted with conscious, flagrant indifference to safety by clear and convincing evidence. The "discussion draft," however, does not contain limits on joint and several liability for noneconomic damages.



ADDENDUM

COMMITTEE ASSIGNMENTS FOR 1997-1998

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Wiley Wasden, II
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Brown Dennis
Troy Lance Greene
Mary Katz
Kirby Mason
Shari Miltades
Linda Pollock
Richard S. Thorppson

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Rick Brown
I. Stewart Duggan
Lynn Frey
Mary Katz
Kirby Mason
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Bill Hardegree
V. Jane Reed
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