Legislative Session Wrap-Up

Flip-Flops: A Survey of Risk Perception and Acceptance

Why Whiplash Is a Common Symptom of Rear-End Collisions

Southeast Women Litigators Hold Second Conference

Past Presidents Honored

GEORGIA DEFENSE LAWYER

A Magazine for the Civil Defense Trial Bar

Volume IX, Issue I
Spring 2023

GDLA Honors Judiciary at 18th Reception

Cover photo courtesy of Court of Appeals Presiding Judge Stephen Louis A. Dillard

FORCON INTERNATIONAL

Since 1984

Forcon has been a leader in providing expertise in forensic accounting, construction, and engineering.

Our Expert Team

includes over **120** Experts in **27** Disciplines with Specialized Expertise in over **120** areas.

Some examples of our Specialized Areas of Expertise include:

- Agriculture Losses
- Boat Accident Reconstruction
- Chemical processes
- Clean rooms
- Cranes & Lifts
- Cyber Security
- Data Centers
- Fire Protection Systems
- Industrial Refrigeration and Industrial Gases
- Premises Liability
- Product Design/ Manufacturing
- Radio & TV Broadcast Equipment
- Safety

View our network of experts at forcon.com


Accident Reconstruction


Marine Services


Premises Liability


Product Liability


Heavy Equipment & Machinery


Fire & Explosions


Construction Defects


Property Damage


Subrogation


Surety Consulting


Fidelity Consulting


Forensic Accounting

Let's get in contact!

770-390-0980 inquiries@forcon.com https://www.linkedin.com/company/forcon-international forcon.com

INSIDE

GEORGIA DEFENSE LAWYER

18TH GDLA JUDICIAL RECEPTION

38

IN EVERY ISSUE

AMICUS BRIEFS

FEATURES

CASE LAW UPDATES

SPONSOR ARTICLES

HAPPENINGS

InQuis

Evidence-Based Rehab Experts

A Better Way to Evaluate Damages

(843) 566-4208
999 Lake Hunter Circle, Suite A
Mount Pleasant, SC 29464

www.InQuisGlobal.com

GEORGIA DEFENSE LAWYER
Volume IX, Issue I

EDITOR-IN-CHIEF:
Jason D. Logan
Constangy Brooks Smith & Prophete, Macon

Assistant Editors:
Karen Karabinos
Chartwell Law, Atlanta
Candis Jones Smith,
Lewis Brisbois, Atlanta

Georgia Defense Lawyer, the official publication of the Georgia Defense Lawyers Association, is published three times annually. For editorial information, please contact the Editor-in-Chief at jlogan@constangy.com.

Cover Photo:
The photo on the cover of this issue is courtesy of Presiding Judge Stephen Louis A. Dillard of the Court of Appeals of Georgia. His photo features the spiral staircase inside the Nathan Deal Judicial Center.

President's Message

Dart Meadows

The GDLA continues to grow. We now have over 1,060 members from throughout the state. The benefits of sharing information through the eblast/listserv, this award-winning magazine, and our amicus efforts are just a few of the reasons membership in GDLA is a prudent investment of time and money. In this message I want to focus on the legislature which enacts laws that impact our practice and our cases.

In 2021, through the generosity of GDLA member law firms, we established a Legislative Action Committee (formally, the Georgia Defense Lawyers Action Fund, Inc.) and hired a lobbyist to give our members a presence at the Capitol and to counter GTLA's efforts during the legislative session. Jake Daly of Freeman Mathis & Gary in Atlanta has chaired our legislative committee and has worked tirelessly.

Also in 2021, we added a negative check-off of $25 to the membership dues notice—much like the State Bar of Georgia does. We truly appreciate the members who choose to contribute that way. Meanwhile, many of the law firms who initially donated lobbying seed money contributed again in 2022. With the combined funds raised from members and member law firms, we have been able to engage Kade Cullefer of Troutman Pepper Strategies to work on our behalf for the past two sessions.

In our first year, we worked to help reverse the Supreme Court of Georgia's interpretation of the poorly written apportionment statute in *Hatcher v. Alston & Bird*. With the passage of House Bill 561 and the Governor's signing it on May 13, 2022, our lobbying efforts helped restore the original intent of the apportionment statute prior to *Hatcher*.

Kade Cullefer's final report for this session is on pages 24-25 but I want to touch on a few things here.

Prior to the 2023 General Assembly's convening, DeKalb State Court Judge Al Wong and Chatham State Court Judge Greg Sapp put together the Trial Bar Project, which assembled representatives from GDLA, GTLA and the American Board of Trial Advocates (ABOTA), to come to an agreement regarding six-person juries in smaller civil cases. The resulting legislation, House Bill 543, raises the amount for six-person juries from $25,000 to $50,000 absent a demand for 12 jurors. The original legislation, which passed the House, would have raised the amount to $100,000, but the Senate amended it to $50,000, which remained in the final bill.

We appreciate the service of these GDLA members on the Trial Bar Project Committee: Past President Dave Nelson of Chambless Higdon in Macon, Vice President Tracy O'Connell of Ellis Painter in Savannah, and Secretary Ashley Rice of Waldon Adelman Castilla Prout & Hiestand in Atlanta.

We were unsuccessful in legislation allowing the admissibility of seat belt nonuse. Senate Bill 196 passed the Senate Transportation Committee after being heard for a second time and received a vote on the Senate floor. It ultimately fell short by five votes after significant pressure was put on senators by personal injury lawyers and the GTLA. Ten Senate Republicans voted against the seat belt bill: John Albers (Roswell), Russ Goodman (Cogdell), Bo Hatchett (plaintiff's lawyer, Cornelia), Billy Hickman (Statesboro), Colton Moore (Trenton), Ed Setzler (Acworth), Brian Strickland (plaintiff's lawyer, McDonough), Carden Summers (Cordele), Blake Tillery (sole practitioner, Vidalia), and Larry Walker (Perry). Not allowing a jury to know that failure to

Continued on page 50

Member News, Case Wins & Significant Orders

MEMBER NEWS

Alycen Moss, co-chair of **Cozen O'Connor's** Property Insurance Group, has also been appointed to Co-Vice Chair of the firm's Global Insurance Department. Moss, who serves as Managing Partner of the firm's Atlanta office, concentrates her practice in civil litigation, and has extensive experience with matters pertaining to property and casualty insurance, transportation matters, and mass and complex torts.

Gower Wooten & Darneille announced that **Jeffrey N. Schwartz** has joined the firm as of counsel and will continue to focus his practice on general insurance defense, automobile negligence, and assisting insurance carriers in the resolution of time-limited demands served pursuant to O.C.G.A § 9-11-67.1.

Melody Kiella, formerly with **Goldberg Segalla**, has joined **McAngus Goudelock & Courie** as a member in the firm's Atlanta office. Her practice focuses on complex civil litigation, including trucking/transportation law, catastrophic personal injury defense, premises liability, and negligent security. As an active member of DRI, Kiella serves as the Online Programming Chair for DRI's Trucking Law Committee and the Publications Chair for DRI for Life. She received the 2022 DRI Tom Segalla Excellence in Education Award, which honors a member whose contributions through legal scholarship exemplify the highest educational standards of DRI and further its mission of improving the skills of defense lawyers.

Balch & Bingham announced the addition of **Katherine Carey** as an associate in the Atlanta office. Carey focuses her practice on civil litigation, advising and representing clients in matters involving complex commercial litigation, property disputes, personal injury and wrongful death, and intellectual property.

Waldon Adelman Castilla Hiestand & Prout announced that **Benjamin Harbin** has been named a partner in the firm and **Rakhi McNeill** has been elevated to equity partner. Both have been integral to the firm's continued growth, particularly in the COVID-19 era. Since 2021, the duo has been lead counsel on 11 jury trials.

Lee M. Gillis, **Jr,** formerly with **James Bates Brannan Groover**, has joined **Hall Bloch Garland & Meyer**, in its Macon office. His practice consists of trial and appellate advocacy, including insurance coverage, first-party insurance, business, employment, construction, corporate, civil rights, and general liability defense litigation.

Rahimi Hughes & Padgett in Savannah announced that **Mareesa Torres Dittle** has joined the firm as of counsel. She was previously a senior trial attorney at the **Law Offices of J. Andrew Williams** (staff counsel for Nationwide Insurance Company). She concentrates her practice in the areas of general litigation, insurance defense, handling a variety of coverage, declaratory judgment actions, auto and premises litigation, trucking litigation, and wrongful death.

Freeman Mathis & Gary announced that **Geoffrey F. Calderaro**, formerly a partner at **Quintairos Prieto Wood & Boyer**, has joined the firm as senior counsel in the Atlanta office. He will concentrate in the defense of claims in the areas of tort and catastrophic loss in Georgia, Mississippi, and Alabama. The firm also announced that **Scott Eric Anderson** joined the firm as a partner in the Atlanta office. He concentrates his practice in the areas of commercial and business litigation, professional liability, employment litigation, and torts and catastrophic loss litigation.

Swift Currie McGhee & Hiers announced the elevation of **Kelly Chartash, Gillian Crowl-Parrish,** and **Lauren Meadows** to partner. Chartash focuses her practice on third-party insurance coverage disputes, automobile litigation, and premises liability. Crowl-Parrish practices in the areas of commercial litigation, trucking litigation, catastrophic injury, wrongful death, insurance coverage, premises liability, and bad-faith litigation. Meadows practices in the Commercial Litigation and Insurance Coverage Group and represents insurance companies and their insureds in personal injury, construction, and premises liability litigation. The firm also announced the addition of **Samuel Lyon** and **Blake Reed** as associates. Lyon focuses his practice on insurance liability and bad faith litigation. Reed's practice focuses on premises liability, automobile liability, and wrongful death.

Quintairos Prieto Wood & Boyer announced the addition of the following lawyers from **Hall Booth Smith** as partners in its Atlanta office: **Mark Christopher, Scott H. Moulton, Sandro Stojanovic,** and **Paul Trainor**. Christopher specializes in insurance defense and general liability with an emphasis on transportation litigation and premises liability. Moulton has over 20 years of experience in trucking and transportation, having tried multi-

OUR NEUTRALS SPECIALIZE IN YOUR SPECIALTY.

THE BAY WAY

Since 2002, BAY Mediation & Arbitration Services LLC is one of Georgia's fastest growing alternative dispute resolution companies. BAY's mediators have the training and experience to handle complex, multi-party cases along with the personal touch to address the intricate nuances of smaller cases.

TRANSPARENT **VERSATILE** **EFFICIENT**

NEUTRALS AS UNIQUE AS YOUR CASE

FIND US AT OUR TWO LOCATIONS

5775 Glenridge Dr
Suite 100
Atlanta, GA 30328

5400 Riverside Drive
Suite 201A
Macon, GA 31210

BAY
Mediation & Arbitration Services

678.222.0248 | bayadr.com

ple jury trials to successful verdicts and directed the investigations of catastrophic and rapid response incidents, investigating driver-fatigue, negligent entrustment, and driver training issues. Stojanovic focuses on defending clients in commercial transportation cases including tractor-trailers, ambulances, garbage trucks, towing trucks, and any commercial vehicle covered by state and federal regulations. Trainor handles the defense of transportation and commercial vehicles, premises liability and negligent security, general liability, medical malpractice, catastrophic injuries, and wrongful death claims.

James Bates Brannan Groover, with offices in Macon, Athens and Atlanta, announced the addition of **Joey Burtner** to the firm's Commercial and General Litigation Practice Groups. Burtner's practice focuses on matters such as contracts, municipal government, and insurance defense. **Christina Ling** has also joined the firm as part of its General Litigation Practice Group.

CASE WINS

Carrie L. Christie, Courtney M. Norton, and **Breandon Cotter** of **Rutherford & Christie** in Atlanta obtained summary judgment in Cherokee County State Court in a motor vehicle accident in which the plaintiff argued that the insured driver moved into her lane of traffic without verifying the lane was clear, thereby causing the collision. The defense used an accident reconstructionist to develop evidence that the plaintiffs were in a right turn only lane and were the ones who entered the insured's lane of travel. Plaintiffs subsequently failed to respond to the defendant's request to admit on this theory. The defense then moved for summary judgment arguing the request for admission (RFAs) were deemed admitted and thus the plaintiffs failed to establish the requisite elements of their negligence claim. The court agreed, holding, "Plaintiffs did not point to evidence on file to establish a genuine dispute of material fact concerning any negligence by Defendant."

In another case, the defense trio obtained summary judgment in DeKalb State Court in a hot water burn case at a Chick-fil-A branded restaurant. Plaintiff alleged Defendant was negligent in serving excessively hot water to customers and that Defendant's employees negligently failed to secure the lid to the cup. The plaintiff sustained third-degree burns over her chest, face and arms, resulting in permanent scarring and skin discoloration, and requiring extensive medical treatment. The defense argued in its motion that the plaintiff failed to establish a legal duty owed to the plaintiff because she was unable to cite to any industry standard or code that restaurants are not permitted to serve beverages at the temperatures maintained by the defendant. The court agreed, holding that "[t]he appropriate temperature for serving hot beverages in a fast-food restaurant is not a fact within the common experience of a layperson … . It is not sufficient to argue in court, 'This is too hot.'"

GDLA Treasurer **William T. "Bill" Casey, Jr.**, a partner at **Swift Currie McGhee & Hiers** in Atlanta has had a series of successful outcomes over the last several months. In *Kriston Carter & Kandra Carter vs. Joe Abernathy and M&M Transportation* before Judge Steve Jones of the U.S. District Court, Northern District of Georgia, Casey teamed up with his partner **Elizabeth Bentley**. In the case, Kriston Carter claimed injuries stemming from debris falling from Defendants' truck, striking Plaintiff's car causing Plaintiff to lose control of his work van. Plaintiff presented medical specials of $132,000 for treatment of a torn knee ligament, neck and back disc bulges, and traumatic brain injury with memory loss. He also claimed loss of his car detailing business. His wife claimed loss of consortium. Plaintiff asked the jury to award just over $2.7 million. The jury found in favor of Plaintiffs and awarded $2,710. The verdict turned on Plaintiff's lack of credibility. He testified on deposition and at trial that the 275-gallon water tank in the back of his work van was anchored to the floor and did not hit him. He told his doctors, who related his injuries to the accident, the tank hit the back of his seat and pushed his head into the steering wheel.

Casey and **Bentley** worked together on the next case, too: *Monisha Dalcoe v. New Prime Transportation* before Judge Amy Totenberg, U.S. District Court, Northern District of Georgia. Plaintiff claimed injuries from a collision that occurred when Defendant's tractor-trailer changed lanes and struck the side of Plaintiff's car with the truck's deer guard. There was minimal property damage to the right-rear quarter panel of Plaintiff's sedan. Plaintiff denied injury at the scene but went to urgent care later that day. She presented medical specials of $299,000 for carpal tunnel syndrome release procedures, and neck and lumbar herniations. She also claimed loss of her job which paid $72,000. Plaintiff demanded $9 million prior to mediation but increased her demand to $23 million at mediation with no change in her damages. Plaintiff asked the jury to award just over $16 million. Jury returned a $1.7 million verdict for Plaintiff and found Plaintiff 40 percent at fault which reduced her recovery to just over $1 million. Plaintiff was allowed to raise a discovery dispute and *Daubert* challenge mid-trial which, until this

VERITEXT OFFERS **SEAMLESS COVERAGE**, WITH MORE THAN **50 LOCATIONS NATIONWIDE**, AND **LEADING-EDGE TECHNOLOGIES** THAT KEEP YOU CONNECTED.

PROFESSIONAL SERVICE.
With a pool of more than 9000 professionals, Veritext has the largest selection of high quality reporters and videographers in the industry.

ADVANCED TECHNOLOGY.
Streamline the deposition process and manage your most complex cases with the advanced tools in video, remote depositions, exhibit management, videoconferencing and workflow services.

DATA SECURITY.
As a HIPAA, PII and SSAE 16 compliant company, we ensure your data is physically and electronically protected.

COURT REPORTING • VIDEOGRAPHY • VIDEOCONFERENCING • REMOTE DEPOSITIONS • ONLINE REPOSITORIES • EXHIBIT SOLUTIONS • DATA SECURITY

VERITEXT LEGAL SOLUTIONS

Schedule a court reporter:
(770) 343-9696
calendar-ga@veritext.com
www.veritext.com/atlanta

2016 BEST OF THE NATIONAL LAW JOURNAL
Court Reporting & Deposition Service Provider

BEST OF 2017 WINNER
COURT REPORTING & DEPOSITION SERVICE PROVIDER
VERITEXT LEGAL SOLUTIONS

trial, was unheard of in federal court. The trial judge helped Plaintiff's counsel cross-examine the investigating police officer, as well as the defense duo's client and medical billing expert. Plaintiff filed a motion for $1 million in attorneys' fees, which the judge denied.

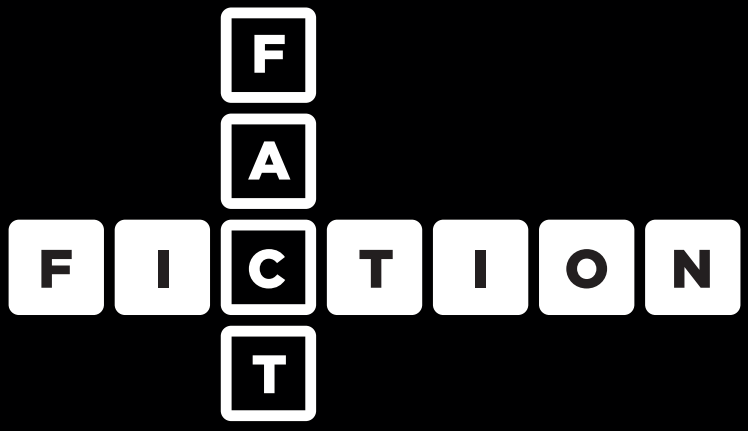
Casey and his partner **Kevan Dorsey** worked together on *Melvin Henry v. Dollar General* before Cobb State Court Judge Carl Bowers. Plaintiff claimed injuries from an unwitnessed fall at Dollar General due to water on the floor. He went to the ER five days post fall claiming knee pain that led to an arthroscopic procedure. He presented medicals of $38,000. He did not make a wage loss claim. Plaintiff had a history of pre- and post-date of loss falls most of which he denied on deposition. Defense presented video evidence of a subsequent fall, argued it was staged, and disproved Plaintiff's claim that he walked with a limp and used a cane every day after his Dollar General fall. Casey and Dorsey knew the outcome would depend on how the jury perceived Plaintiff. There were two choices: He was either a lying, career Plaintiff, or a likeable, uneducated fellow. The jury went with the latter. Plaintiff's lowest demand was $70,000 and last offer was $2,000. Plaintiff requested a verdict between $150,000 and $250,000, but the verdict was $112,277.

In the final case, *Jeffrey Losawyer v. Emery Wilson*, **Casey** and senior attorney **Monica Wingler** defended their clients before Cobb State Court Judge Jane Manning. Defendant and Plaintiff were traveling in the same direction on a two-lane road. Defendant attempted to change lanes to his left as Plaintiff was passing by. Defendant's left front bumper struck the passenger's side of Plaintiff's car causing Plaintiff to spin 180 degrees. PD estimate was $2,300. Plaintiff denied injury at the scene and drove his car home. He packed his car and drove from Kennesaw, Ga. to Orlando, Fla. that same evening. Defendant admitted fault for the accident. Plaintiff had a long history of back pain but had not treated for two years prior to this accident. Post-accident, Plaintiff treated at AICA on a lien for debilitating lumbar pain. Evidence of the lien was admitted at trial. Plaintiff presented medical specials of $102,000 and an $18,000 wage loss claim. Plaintiff testified that he was pain free and taking no meds for two years prior to our date of loss. Defense presented evidence of Plaintiff seeking treatment at multiple pain clinics in Tennessee before moving to Georgia and that he had taken meds from his wife and friend during the two years he said he was pain free. Defense also presented impeachment evidence in the form of post-accident video footage and photos of Plaintiff playing guitar in his rock and roll band. Plaintiff requested a verdict of $430,000 - $637,000. Jury found in favor of Defendant.

Weinberg Wheeler Hudgins Gunn & Dial's trial team of **Brannon Arnold, Jad Dial,** and **Marriah Paige** obtained a favorable jury verdict in an admitted liability catastrophic injury case in Fulton County. The case arose out of an incident that occurred on March 2, 2020, when the plaintiff's car was hit head on by a MARTA bus. Plaintiff sustained significant injuries, which led to undisputed medical bills of just under $1 million and almost $1 million in alleged economic losses. The sole question for the jury was the amount of damages to award the plaintiff. After two days of damages testimony and cross-examination, Plaintiff's counsel asked the jury to award over $15 million in damages. The jury deliberated for just over an hour before awarding the plaintiff only $5 million in damages.

Jamie Weston of **The Weston Firm** in Augusta obtained a defense verdict for the Board of Regents of the University System of Georgia in a medical malpractice case. The plaintiff sued the Board of Regents as the employer of Emergency Department physicians working at the Augusta University Medical Center. She claimed that the Emergency Department physicians improperly discharged her after she was treated for injuries sustained in a car accident. The next day she returned to the Emergency Department with complaints of chest pain, and in her suit she alleged that there was an improper delay in transferring her to the cardiac catheterization lab. After deliberating for three hours, the jury determined that the "gross negligence" standard for emergency medical care applied and returned a defense verdict.

Duke Groover and a colleague at **James Bates Brannan Groover** in Macon successfully defended Southern Flavor in the Court of Appeals of Georgia in a case which strengthened defenses Georgia businesses have to certain types of nuisance lawsuits. Plaintiffs filed two actions in the Superior Court of Peach County against Southern Flavor alleging nuisance. Southern Flavor is a commercial greenhouse operation that uses state-of-the art technology to carefully control its internal greenhouse environment for the mass production of food products. As a byproduct of Southern Flavor's operation, light is emitted from the greenhouse. Neighbors of the greenhouse sued claiming that the lights are a nuisance and sought injunctive relief. The Superior Court granted summary judgment in favor of Southern Flavor and ruled that legal business operations conducted in an ordinary and necessary manner cannot be a nuisance as a matter of law. The Plaintiffs appealed to the Court of Appeals. The Court of Ap-



Separating fact from fiction.

As one of the top forensic accounting firms in the state of Georgia, MDD regularly provides litigation support services and expert witness testimony in courts, arbitrations and mediations. All of the Atlanta partners are Certified Public Accountants, have testified at trial and have years of experience working in the litigation arena.

Our expertise includes:

- > Business Valuations
- > Business & Shareholder Disputes
- > Class Action Certifications/Damages
- > Construction Disputes
- > Divorce Matters
- > Employment Litigation
- > Fraud/Ponzi Investigations
- > Intellectual Property/Patent Infringement
- > Lost Profits
- > Personal Injury/Wrongful Death

To learn more about our litigation expertise, please visit us at mdd.com or contact us today:

Dayne Grey, CPA | Partner | dgrey@mdd.com
Neal Cason, CPA, CFE | Partner | ncason@mdd.com
Travis Williams, CPA | Partner | twilliams@mdd.com

T 404.252.0085

Making Numbers Make Sense

MDD
FORENSIC ACCOUNTANTS

AUSTRALIA • BRAZIL • CANADA • HONG KONG • JAPAN • NEW ZEALAND • SINGAPORE
THAILAND • UNITED ARAB EMIRATES • UNITED KINGDOM • UNITED STATES

> mdd.com

peals held that Southern Flavor had the necessary licenses and permits and were authorized by law to operate the greenhouse on the site zoned for agricultural use. Further, the greenhouse lights were an ordinary and necessary part of the business operation. Thus, the lights could not be a nuisance as a matter of law even if they impact neighboring property.

Attorneys at **Waldon Adelman Castilla Hiestand & Prout** in Atlanta have enjoyed a string of successes. After a three-day trial, **Rakhi McNeill** and **Dan Prout** secured a favorable verdict for their client in Cobb County State Court. The case involved an admitted fault, head-on collision. Plaintiff fractured a bone in her hand that required surgery. Plaintiff claimed a permanent injury/disability to her hand as a result of the accident. At trial, Plaintiff withdrew her claim for economic damages and asked the jury to award in excess of $1 million for pain and suffering. Plaintiff also requested that the jury find the defendant liable for attorney's fees and bad faith pursuant to O.C.G.A. § 13-6-11. The jury returned a verdict of $100,000 for Plaintiff and did not find the defendant acted in bad faith or was liable for Plaintiff's attorneys' fees.

Rakhi McNeill and **Katherine Rouse** secured a defense verdict on January 24, 2023, following a two-day trial in Rockdale County. The case involved an admitted fault rear-end accident with minimal property damage. Plaintiff claimed injuries to his neck, low back, and left shoulder. Prior to trial, Plaintiff claimed $52,000 in medical bills. The initial treatment focused on neck and back complaints, but ultimately Plaintiff was diagnosed with a shoulder tear and recommended for surgery. Plaintiff did not have any prior shoulder injuries. Plaintiff's orthopaedic surgeon related the need for surgery to the accident. However, on cross-examination, the surgeon conceded that because he had not treated Plaintiff in over a year, he could not recommend continuing with surgery without first having exhausted conservative treatment and a repeat MRI. At trial, Plaintiff did not introduce the medical bills and asked for $250,000 in general damages/pain and suffering only. The jury deliberated for 45 minutes and returned a verdict in favor of the defendant. In speaking with the jurors after the trial, the jury found that Plaintiff's testimony did not match his treatment records.

On February 8, 2023, after **a** three-day trial, **Jonathan Adelman** and **Carolyn Lee** obtained a defense verdict on behalf of an insured who admitted wrongdoing in causing a collision which pushed Plaintiff's vehicle off the road and into a ditch. Plaintiff was transported from the scene by ambulance and then began a nearly four-year course of treatment involving injections, radiofrequency ablations, and shoulder surgery. Plaintiff was also recommended for a lumber fusion. At trial, Plaintiff had three medical experts and one functional capacity evaluator provided expert testimony that the accident caused Plaintiff's injuries and that Plaintiff was permanently disabled. Plaintiff also had the investigating officer and Plaintiff's family members testify live at trial. Through the course of discovery, significant evidence of both prior and subsequent similar claims was discovered. On cross-exam, Plaintiff was successfully impeached more than 10 times. Plaintiff presented evidence of $400,000 in medical expenses, and opposing counsel asked the jury to award $2 million or more. The insurance company did not accept the pretrial policy limits demand of $250,000 and offered $100,000.

Kayla Bell secured a win for an automotive repair company after a two-day trial in Houston County. Plaintiff had brought claims under the Georgia Fair Business Practices Act, which would have allowed for treble damages, as well as punitive damages. The court granted defendant's Motion for Summary Judgment on those claims prior to trial. Pre-trial, the court also ruled in favor of defendant's Motion for Sanctions, finding Plaintiff had destroyed or failed to preserve evidence. At trial, Bell obtained a directed verdict as to Plaintiff's tort claim, leaving only a breach of contract claim for the jury to consider. After just 20 minutes of deliberation, the jury returned a verdict of $2,000, which will be offset by enforcement of a statutory Offer of Settlement that leaves Plaintiff on the hook for the corporate defendant's attorneys' fees.

Ashley Yagla secured a defense verdict in Bulloch County following a three-day jury trial on May 3, 2023. This was a case of disputed fault with virtually no damage to the plaintiffs' vehicle. Defendant denied that an impact occurred with the plaintiffs' vehicle altogether. Plaintiffs alleged neck, shoulder, and back injuries, which resulted in treatment at an emergency room, a chiropractor, and a pain management clinic. Plaintiffs called several witnesses in their presentation of their case, including a treating physician and physical therapist who related plaintiffs' injuries and need for treatment to the alleged accident with the defendant. In closing, the plaintiffs asked the jury for awards of $224,000 and $54,000. The jury deliberated for less than one hour and returned a verdict in favor of the defendant. Prior to trial, offers of approximately $9,000 were extended to each of the plaintiffs.

Martin A. Levinson and **Elliott C. Ream** of **Hawkins Parnell & Young** in Atlanta recently obtained summary judgment for their client, Frito-Lay, in an alleged food safety case in the U.S. District Court for the Northern District of Georgia.

The plaintiff in the case alleged that she was sickened after eating some salsa. She claimed that she had severe, permanent gastrointestinal injuries and symptoms over several years since eating the salsa.

The plaintiff relied on the expert testimony of an microbiologist, Dr. Batra, who analyzed a sample of the salsa. Dr. Batra concluded that the salsa was contaminated with a fungus called Claviceps purpurea, more commonly known as ergot fungus. He also attempted to give the opinion that the plaintiff's symptoms were consistent with being infected by the ergot fungus. The plaintiff also attempted to rely on the testimony of her primary care physician to show causation.

Levinson and Ream were able to get the judge to exclude the testimony of the plaintiff's expert, Dr. Batra, as unreliable and otherwise impermissible under *Daubert*. They were able to poke several holes in the chain of custody of the salsa before it reached the expert. They also demonstrated several problems with Dr. Batra's methodology and the reliability of his opinions. And they were able to show that he was not qualified to give opinions in the nature of medical causation or whether the plaintiff's claimed symptoms could have been caused by ingestion of ergot fungus. Likewise, the defense duo was able to show that the plaintiff's primary care physician's testimony was not sufficient to show a causal link between ingestion of the salsa and the plaintiff's claimed symptoms.

In a lengthy and very well-reasoned opinion, Magistrate Judge Regina Cannon found that the plaintiff had not presented sufficient evidence of proximate cause to survive the defense's Motion for Summary Judgment.

SIGNIFICANT ORDERS

Editor's Note: The Board of Directors recently discussed the importance of sharing significant orders, in addition to case wins. We hope you will find this helpful and, of course, please submit your own orders to jward@gdla.org.

Eric Mull and **Reid Evans** secured an order from the State Court of Gwinnett County compelling production from Injury Finance, LLC. Injury Finance was ordered to produce documents concerning its purchase of accounts receivable from several of the plaintiff's medical providers, as well as communications between the plaintiff, plaintiff's counsel and Injury Finance. Robbins Alloy Belinfante Littlefield represented Injury Finance in the dispute. ◆

Welcome, New GDLA Members!

The following were admitted to membership in GDLA since the last edition of the magazine:

Mari Agasarkisian
Rutherford & Christie, Atlanta

Caitlin Amick
Mozley Finlayson & Loggins, Atlanta

Juliette Barnes
Gower Wooten & Darneille, Atlanta

Daniel Bettis
Savell & Williams, Atlanta

Carter Bishop
Weinberg Wheeler Hudgins Gunn & Dial, Atlanta

Elizabeth Brooks
Ellis Painter, Savannah

Logan Anthony Brown
Fulcher Hagler, Augusta

Kathleen Broyles
Bendin Sumrall & Ladner, Atlanta

Joseph E. Burtner
James Bates Brannan Groover, Macon

Katherine Carey
Balch & Bingham, Atlanta

Stephen Gregory Carlson
Nall & Miller, Atlanta

Amber Carter
Gilbert Harrell Sumerford & Martin, Brunswick

Kristen M. Cesario
Hawkins Parnell & Young, Atlanta

Jonathan Deepak Chandrasekhar
Fields Howell, Atlanta

Kimberly E. Coleman
Drew Eckl & Farnham, Atlanta

Mark Christopher
Hall Booth Smith, Atlanta

James Creasy
Downey & Cleveland, Marietta

Kelly Crutchfield
Lueder Larkin & Hunter, Savannah

Edward Culver
Nall & Miller, Atlanta

Donna Davis
Makarenko, Kaiser & Eidex

Matthew Alfred Day
Young Thagard Hoffman, Valdosta

Bryan David Dayton
Wilson Elser Moskowitz Edelman & Dicker, Atlanta

James Dean
Hall Booth Smith, Atlanta

Jennifer DeBaun
Law Office of J. Andrew Williams, Atlanta

Nicholas Elias Deeb
McLain & Merritt, Atlanta

Meredith Chafin Florio
Worsham Corsi Scott & Dobur, Marietta

Ryan Florio
Imerys, Roswell

Jeremy Aaron Freiman
Gray Rust St. Amand Moffett & Brieske, Atlanta

Danielle Glover
Chartwell, Atlanta

Laura Golden
Downey & Cleveland , Marietta

Seth Timothy Golden
Anderson Walker & Reichert, Macon

Michael Goodin
Law Office of Neal B. Childers, Atlanta

Kelly Goodwin
Law Offices of Kelly Goodwin, Atlanta

Brittany Griner
Chartwell Law, Atlanta

Erik Haener
Copeland Stair Valz & Lovell, Atlanta

Jennifer Hamrick
Waldon Adelman Hiestand & Prout, Atlanta

Nolan Hendricks
Hall Booth Smith, Atlanta

James Spencer Holmes
Rutherford & Christie, Atlanta

Jimmy Thomas Howell
Howell Law, Statesboro

James Hughes
Groth Makarenko Kaiser & Eidex, Duluth

Laney Ivey
Ellis Painter, Savannah

Jaaonne Jackson
Thompson Sweeny Kinsinger & Pereira, Lawrenceville

Naomie Jean-Philippe
Downey & Cleveland, Marietta

Rashawn N. Jones
Law Offices of Kelly Goodwin, Atlanta

Ian James Kahler
Groth Makarenko Kaiser & Eidex, Atlanta

Sophia Efrosini Karnegis
Ellis Painter, Savannah

Kareem A. Kashlan
Rutherford & Christie, Atlanta

Luke R. Kennedy
McMickle Kurey & Branch, Alpharetta

Anna Kersey
Chambless Higdon Richardson Katz & Griggs, Macon

Lissa Klein
Hall Booth Smith, Atlanta

Tyler Knauss
Hall Booth Smith, Atlanta

Leo Kogan
Freeman Mathis & Gary, Atlanta

Tereza Kucerova
Rutherford & Christie, Atlanta

Lindsay C. Lee
Gray Rust St. Amand Moffett & Brieske, Atlanta

Mark Lefkow
Copeland Stair Valz & Lovell, Atlanta

Christina Ling
James Bates Brannan Groover, Macon

Chastity Marshall
Rutherford & Christie, Atlanta

Taylor Martin
Mozley Finlayson & Loggins, Atlanta

Lia Melikian
Gower Wooten & Darneille, Atlanta

William McQueen
Cowsert Heath, Athens

Tania Moore
McMickle Kurey & Branch, Alpharetta

Tatiana Mosbey
Chartwell, Atlanta

Thuy Ngan Nguyen
Scrudder Bass Quillian Horlock Taylor & Lazarus, Atlanta

Steven Tyler Normandia
Cowsert Heath, Athens

Amber R O'Connell
Swift Currie McGhee & Hiers, Atlanta

Saskia Olczak
Goodman McGuffey, Atlanta

Meghan Olson
Fain Major & Brennan, Atlanta

Cecilia Orozco
Weinberg Wheeler Hudgins Gunn & Dial, Atlanta

Marriah Nicole Paige
Weinberg Wheeler Hudgins Gunn & Dial, Atlanta

Peyton Patterson
Lewis Brisbois Bisgaard & Smith, Atlanta

Megan L. Patterson
Nall & Miller, Atlanta

Caroline Leigh Peck
Drew Eckl & Farnham, Atlanta

Alexander Perwich
Gray Rust St. Amand Moffett & Brieske, Atlanta

Andrew Pinter
Schreeder Wheeler & Flint, Atlanta

Charles Gregory Ragsdale
Gray Rust St. Amand Moffett & Brieske, Atlanta

Carley Rampy
Swift Currie McGhee & Hiers, Atlanta

Cameil L. Reddick
The Law Office of Paul Garrison, Alpharetta

Blake Reed
Swift Currie McGhee & Hiers, Atlanta

James Robert Reeves
Gray Rust St. Amand Moffett & Brieske, Atlanta

Candace Rodgers
Chartwell Law, Atlanta

Ann H. Searcy
Drew Eckl & Farnham, St. Simons Island

Sara Sibley
Worsham Corsi Dobur & Berss, Marietta

Caroline Sims
Copeland Stair Valz & Lovell, Atlanta

Arika Song
Rutherford & Christie, Atlanta

Corinne E. Stevens
Gray Rust St. Amand Moffett & Brieske, Atlanta

Sheryle Dickens-Thomas
McAngus Goudelock & Courie, Atlanta

Aspen Thomason
Waldon Adelman Castilla Hiestand & Prout, Atlanta

April Trimback
Levy Sibley Foreman & Speir, Columbus

Mitchell Blake Walker
Hall Booth Smith, Atlanta

Taylor Gregory Walker
Young Thagard Hoffman, Valdosta

Tyrra Walker
Chartwell Law, Atlanta

Jamila Gabrielle Watts
Nall & Miller, Atlanta

Bianca Webb
Drew Eckl & Farnham, Atlanta

Chris Willis
James Bates Brannan Groover, Macon

GDLA Law School Award Recipients Honored

Emma Duke, pictured above with Dean Karen J. Sneddon, was presented the GDLA Rusty Gunn Award during the Mercer Law School student dinner on May 10, 2023. This annual award, established in 2016 by GDLA, honors the memory of long-time Board of Directors member Robert R. "Rusty" Gunn. It recognizes a student whose professionalism is his/her badge of honor, and who quietly leads with strength, intelligence, and good humor.

Duke, a Woodruff Scholar, was a member of both the *Mercer Law Review* and Mock Trial. As a 2L, she placed first in the Keenan Kids Foundation 2022 Closing Argument Competition, and her team was a finalist at the South Texas Mock Trial Challenge. As a 3L, her mock trial team was an octofinalist at the South Texas Mock Trial Challenge, and she won an outstanding advocate award at the Hofstra Medical-Legal Mock Trial Competition. Duke's law review casenote on current Georgia law enforcing browsewrap agreements in smartphone applications was published in Volume 73 of the *Mercer Law Review*. She was awarded numerous legal writing awards during law school and completed Mercer's certificate program in advanced legal writing, research, and drafting. Duke graduated in the top five percent of her class and joins Bradley Arant Boult Cummings as a litigation associate.

Lindsey K. Adams (pictured at right) is the recipient of the Willis J. "Dick' Richardson Jr. Student Award for Outstanding Trial Advocacy at the University of Georgia School of Law. This annual award, sponsored by GDLA, honors the memory of one the GDLA's founding members.

Adams was a member of UGA's Moot Court Team. As a 2L, her team won the National Online Moot Court Competition and she was named the Best Advocate. As a 3L, her team were finalists in the Annual Civil Rights and Liberties Moot Court Competition. held at Emory She joins Huff Powell Bailey as an associate. ◆

GDLA Files Amicus Brief Seeking Clarity on Test for Establishing Reasonable Foreseeability of Third-Party Crime and Addressing Void Verdicts where No Fault is Apportioned to an Intentional Tortfeasor

The Supreme Court of Georgia granted certiorari in *CVS v. Carmichael* and GDLA filed an amicus brief focusing on two of the questions raised by the Court: (1) what is the legal test for determining whether a third-party crime was reasonably foreseeable and (2) whether a rational fact finder may determine that an intentional tortfeasor whose actions directly caused the plaintiff's injuries bears no fault at all for those injuries.

GDLA's amicus brief first addressed how, over the years, Georgia courts and plaintiff's attorneys began applying the constructive knowledge component from traditional trip and slip and fall premises cases to negligent security cases. This resulted in courts adopting and imposing a legal fiction in which the "hazard" or "unreasonable risk of harm" was deemed to be a third-party criminal actor and "constructive" knowledge of that hazard could be established by showing the property owner or occupier knew of prior substantially similar criminal acts on the premises. But despite what our courts may have stated in dictum, the true legal test for determining whether a criminal act was reasonably foreseeable has always been, and should continue to be, whether the defendant had actual knowledge of prior substantially similar crime or actual knowledge of a propensity for crime.

As for the verdict in *CVS*, GDLA argued that a verdict which apportions no fault to an intentional tortfeasor is nonsensical and eviscerates the scheme of mandatory apportionment of fault under O.C.G.A. § 51-12-33. GDLA's brief offers support from other jurisdictions including Louisiana, California, and Alaska where those courts have agreed that apportioning zero or even miniscule fault to the intentional wrongdoer is irrational, illogical, unsupportable, and void.

Oral argument in the Supreme Court was held February 8, 2023, and, for argument purposes, the *CVS* case was consolidated with *Welch v. Pappas Restaurants, Inc.*, since the Court posed the same questions on certiorari in each.

GDLA thanks our briefs' authors, GDLA Amicus Co-Chair Elissa Haynes of Freeman Mathis & Gary in Atlanta and GDLA Amicus Emeritus Marty Levinson of Hawkins Parnell & Young in Atlanta.

We also announce the elevation of longtime Vice-Chair, Philip Thompson of Ellis Painter in Savannah, to Amicus Co-Chair alongside Elissa. He authored the *Welch* brief (see page 18). In addition, Vice-Chair Anne Kaufold-Wiggins of Balch & Bingham in Atlanta is stepping down and Patrick Silloway with her firm will fill her shoes. Kudos to Annie for her service over the years. ◆

SHARE YOUR NEWS AND CASE WINS!

Perhaps you've made partner, won an award or been elected officer in another association. We also welcome your defense wins and significant orders. Remember our circulation includes all Georgia judges.

Email your good news to jward@gdla.org

THE KEY TO YOUR CLOSED CASE

CAPTURING, PRESERVING AND ANALYZING ONLINE AND IN THE FIELD

DigiStream® is the premiere provider of investigative services in the insurance defense market. We collect and organize evidence in the field and online that self-insured entities and legal professionals leverage to mitigate risk. Call us up. Open our eyes. Close your case.

DigiStream

digistream.com | 800.747.4329

GDLA Weighs in Again on Foreseeability and the Scope of Duties of Defendants in Third-Party Criminal Activity Cases

Continuing its efforts from when the cases were pending before the Court of Appeals, GDLA filed an amicus brief in support of the defendants in the second group of cert cases the Georgia Supreme Court accepted to review Georgia's law regarding third-party criminal conduct premises liability cases. The cases are *Cynthia Welch v. Pappas Restaurant, Inc*. (Case No. S22G0617) and *Cynthia Welch v. Tactical Security Group, LLC* (Case No. S22G0618).

The cases involve an October 7, 2016, armed robbery turned murder in the parking lot of the Pappasito's Cantina restaurant in Marietta. The plaintiff and her husband were leaving the restaurant at night when two criminals robbed and shot the plaintiff and her husband, causing the plaintiff to sustain serious injuries and her husband tragically to pass away. Defendant/Appellant Pappas Restaurants, Inc., the owner of the premises, had contracted with Defendant/Appellant Tactical Security Group, LLC to provide security services on the premises. Of particular importance were the defendants' alleged prior notice of criminal activity at and around the property and the actions of the on-site security guards on the evening of the shooting.

The plaintiff alleged that numerous incidents of non-violent property crime both on the premises and at neighboring businesses in Marietta more generally imposed duties on the defendants to prevent plaintiff's injuries and her husband's death. The plaintiff also alleged that adequate security on the evening of the attack would have prevented the shooting, given that the assailants had been casing the parking lot looking for a target.

Both defendants moved the trial court for summary judgment on a variety of grounds. The trial court denied the defendants' motions but granted a certificate of immediate review. The defendants' petitions for interlocutory review were both accepted, and GDLA filed briefs in support of their appeals. The Court of Appeals reversed, finding that the underlying crime was unforeseeable as a matter of law and that there was no

basis for imposing a duty on Tactical towards Plaintiff. That decision is available at *Pappas Restaurants, Inc. v. Welch*, 362 Ga. App. 152 (2021). Should it stand, the decision serves as valuable precedent in limiting liability for defendants in these circumstances.

The Supreme Court accepted the cases on cert, directing four questions to the parties. Paraphrased, they are (1) does proof that the underlying criminal act go to the duty, breach, or proximate cause elements of the premises liability claim; (2) is determining whether the underlying act was reasonably foreseeable generally for the judge or factfinder; (3) what is the legal test for determining reasonable foreseeability, and (4) do security services providers owe a duty of care to third parties under Sec. 324A of the Restatement (Second) of Torts as adopted by Georgia law?

GDLA submitted an amicus brief authored by Amicus Co-Chair Philip Thompson of Ellis Painter in Savannah in support of both defendants that addresses all four questions. In the brief, GDLA focused on proof of the reasonable foreseeability of the underlying criminal act as it pertains to the duty element and discussed how Georgia case law has traditionally focused on reasonable foreseeability in determining whether the premises owner/occupier had a duty in the first place. Given that such proof goes to duty, GDLA argued that it is generally a question for the judge as to whether the criminal act was reasonably foreseeable. And because it is the judge instead of the jury that performs this analysis, GDLA discussed how trial courts typically use the substantial similarity test, applying categorical rules to determine whether a criminal act is reasonably foreseeable such that a duty is imposed.

Thus, trial court application of the test is properly distinguished from how juries usually make foreseeability determinations as part of the proximate cause analysis, which involves a more detail-intensive and individual approach.

In making these arguments, GDLA introduced case law from other jurisdictions addressing these questions similarly. Finally, GDLA argued that whatever the duty imposed under Sec. 324A, it cannot be used to impose extra-contractual duties on security services providers.◆

GDLA Files Amicus Brief Seeking Clarity on Mechanisms to Apportion Fault in Single-Defendant Cases Under a *Hatcher* Regime Court

GDLA filed an amicus curiae brief with the Court of Appeals of Georgia in a case where plaintiffs deliberately split their claims against multiple defendants into separate suits to preclude the defendants from apportioning fault among each other and non-parties under the holding in *Alston & Bird LLP v. Hatcher Mgmt. Holdings, LLC,* 312 Ga. 350 (2021).

The case (*Deaton Holdings, Inc. v. Tiffany Reid, et al.*, Case No A23A0005) involves a motor vehicle accident with highly contested issues of fault among several different parties. Plaintiffs, a mother and her three minor children, were passengers in the at-fault driver's vehicle, which was struck by an eastbound vehicle as the at-fault driver attempted turn onto a four-lane highway and head westbound. Plaintiffs allege that the at-fault driver's vision was obscured by a broken-down tractor trailer owned by NFI Industries, Inc., which was parked on the shoulder of the highway and being serviced by another truck owned by Defendant Deaton Holdings, Inc.

Plaintiffs sued NFI Industries in Gwinnett County, and Deaton Holdings in Floyd County. Deaton Holdings attempted to add (1) the at-fault driver, (2) the eastbound driver, and (3) NFI Industries as necessary parties under O.C.G.A. § 9-11-19 in order to apportion fault. The trial court denied the motion but certified its order for immediate review.

Plaintiffs contend that these parties are not necessary parties under O.C.G.A. § 9-11-19 because their liability is joint, given that Hatcher precludes apportioning fault in single-defendant cases, and that Deaton Holdings' sole remedy is an action for contribution. Joint tortfeasors producing a single, indivisible injury were never previously considered necessary parties under O.C.G.A. § 9-11-19 (and the equivalent Rule 19 under the Federal Rules of Civil Procedure).

Deaton Holdings and GDLA argue that the case law precluding mandatory joinder of joint tortfeasors under O.C.G.A. § 9-11-19 must be re-evaluated in light of *Fed. Deposit Ins. Co. v. Loudermilk*, 305 Ga. 558 (2019), and its progeny which confirm that joint and several liability only persists in the context of concerted action or other scenarios where fault is legally indivisible (e.g., vicarious liability). And because fault is legally divisible among the various parties here (but-for Plaintiffs' procedural chicaneries), the non-parties should be joined-especially given the purposes of mandatory-joinder under O.C.G.A. § 9-11-19, which include promoting judicial economy and guarding against inconsistent remedies.

The Court of Appeals issued an order on May 26, 2023, finding that the trial court did not abuse its discretion by denying Deaton's motion to add and realign indispensable parties.

GDLA had urged the Court of Appeals, should it disagree with Deaton Holdings on the mandatory-party-joinder issue, to clarify a line of cases suggesting apportionment can still be done by adding the non-parties as third-party defendants under O.C.G.A. § 9-11-14, with apportionment occurring on the contribution claim(s) in the same proceeding. *See, e.g., Murray v. Patel*, 304 Ga. App. 253 (2010); *cf. Union Camp Corp. v. Helmy*, 258 Ga. 263 (1988). The Court of Appeals later questioned the reasoning of those cases (because of the ability to apportion fault), but that was before the Supreme Court of Georgia decided Hatcher foreclosing apportionment. The Court of Appeals did not address this in its decision.

Deaton plans to file an appeal to the Supreme Court, after which GDLA will file another amicus brief in that court.

GDLA members Pearson Cunningham and Austin Atkinson of Hall Booth Smith in Atlanta authored GDLA's brief in support of the Defendant-Appellant Deaton Holdings, Inc., who is represented by GDLA members Wayne Melnick and Michael Freed of Freeman Mathis & Gary in Atlanta. ◆

WE PROVIDE
ATLANTA
THE VERY BEST
DISCOVERY SOLUTIONS

Forensics & Data Preservation

- Forensic Analysis and Consulting
- Chain of custody and data management
- Certified forensic examiners
- Expert witness service
- Deleted file recovery and analysis

Electronic Discovery Processing

- Streamlined workflow automation
- Single instance storage
- Infinite scalability
- Complex keyword and data culling
- Foreign language translation and support
- Bibliographic coding and data capture

Hosting & Review Solutions

- ONE Discovery
- kCura Relativity
- TAR/Predictive coding
- Advanced analytics
- User management controls
- Gartner "Magic Quadrant" solution

Paper Discovery Services

- Document imaging and copying
- Oversize imaging and printing
- Trial boards and posters
- Exhibit binders
- Bates and electronic labeling
- Hi-speed printing/blowbacks
- Onsite scanning solutions

ABOUT US

We protect our clients by providing well established processes for managing data in regard to active litigation. Our process aligns with the courts demands, but more importantly, it places our clients in an advantageous position with greater influence and authority over their data options.

WHY CHOOSE US

The proper utilization of technology is a critical key to success in almost every engagement. We help our clients to understand their data landscape, and deploy the proper technology solutions that enable enhanced insight, and leverage over their data. Ultimately, providing greater control and management of the final outcome.

Relevant Data Technologies

Phone: 404-829-1133
Toll Free: 1-877-EDISCO-1

Website: www.relevantdatatech.com
E-mail: info@relevantdatatech.com

Our Main Location:
3700 Longview Drive
Atlanta, GA 30341 USA

GDLA Files Amicus Briefs on Constitutionality of Punitive Damages Cap: Supreme Court Upholds the Cap

On March 15, 2023, the Supreme Court of Georgia issued a 170-page opinion upholding the cap on punitive damages. In a 7-1 majority opinion, the Court held that Georgia's punitive damages cap does not violate the right to trial by jury, separation of powers, or equal protection guaranteed by the Georgia Constitution.

The Court focused heavily on the analysis of the right to jury trial under late eighteenth century English common law. This is because Georgia's constitutional jury trial right protects only those rights to a jury trial that existed in Georgia in 1798. Thus, the pivotal question was whether at least one of Plaintiff's claims of liability existed in 1798 and whether the punitive damages she sought were within the scope of her right to trial by jury on that claim.

As the Court noted, Plaintiff, as the party challenging the constitutionality of a statute, had the burden of proving there is a "clear and palpable" conflict between O.C.G.A. § 51-12-5.1 and the Georgia Constitution. The Court found that Plaintiff failed to satisfy this burden and noted that each of the eighteenth century English punitive damages cases cited by Plaintiff involved intentional torts, as opposed to negligence. In a footnote on page 27 of the opinion, the Court thanked GDLA and the numerous amici who filed briefs in this case.

In a special concurring opinion, Justice Verda Colvin gave nod to many of the arguments asserted by defense counsel and amici which the majority dismissed. Justice Colvin also questioned the majority's reliance on *Nestlehutt* which held that a statutory cap on compensatory damages violated the constitutional right to trial by jury, noting that *Nestlehutt* expressly stated that its reasoning did not apply in the context of punitive damages. She

questioned whether *Nestlehutt* was correctly decided and instead indicated that the punitive damages cap issue can be resolved under *Teasley* and *Moseley* where the Supreme Court rejected claims that the constitutional right to a jury trial prevented the legislature from establishing statutory limits on punitive damages.

Justice John Ellington dissented in part, disagreeing with the conclusion that the punitive damages cap does not violate the right to trial by jury. Justice Ellington disagreed with the majority's use of 1798 as the appropriate date for evaluating which claims and rights existed, and instead said the correct date is February 5, 1777, where Georgia first guaranteed the right to trial by jury in a constitution. He further stated at that time, "juries could award additional, exemplary damages for whatever conduct they found egregious enough to warrant such damages."

The Court focused heavily on the analysis of the right to jury trial under late eighteenth century English common law. This is because Georgia's constitutional jury trial right protects only those rights to a jury trial that existed in 1798.

GDLA thanks our briefs' authors, GDLA Amicus Co-Chair Elissa Haynes and Michael Freed of Freeman Mathis & Gary in Atlanta. GDLA also thanks the defense counsel who handled this matter at both the trial court and on appeal, Matthew Barr of Hawkins Parnell in Atlanta and Laurie Webb Daniel and Matthew Friedlander of Webb Daniel Friedlander in Atlanta. ◆

Legislative Session Wrap-Up

By Kade Cullefer
Troutman Pepper Strategies, Atlanta

In 2021, through the generosity of several GDLA member law firms, we established a Political Action Committee (Georgia Defense Lawyers Action Fund, Inc.) and hired a lobbyist to counter GTLA's efforts there and give our members and clients a presence at the Capitol. Many of the same firms contributed again this year, and some members contributed as part of the voluntary dues check-off, enabling us to keep Kade Cullefer of Troutman Pepper Strategies working on our behalf.

Jake Daly of Freeman Mathis & Gary, Atlanta, is GDLA's Legislative Chair and COO/CFO of our Legislative Action Committee. Other members are President Dart Meadows of Balch & Bingham, Atlanta; Vice-President Marty Levinson of Hawkins Parnell & Young, Atlanta; Jonathan Adelman of Waldon Adelman Castilla Hiestand & Prout, Atlanta; and Barbara Marschalk, Drew Eckl & Farnham, Atlanta.

Please consider helping fund GDLA's lobbying efforts when you receive your annual dues renewal (via the voluntary legislative donation check-off) or you can also send a check payable to GDLA and put "lobbying contribution" in the memo line.

The 2023 legislative year adjourned Sine Die on Wednesday, March 29 just after midnight. Following is Cullefer's final report for this session:

House Bill 543 raises the amount for six person juries from $25,000 to $50,000 absent a demand for 12 jurors. The original legislation, which passed the House, would have raised the amount to $100,000, but the Senate amended it to 50,000, which remained in the final bill. The legislation was carried by the Vice Chairman of the House Judiciary Committee Rep. Matt Reeves. The legislation is the result of a deal brokered between GDLA and GTLA, and we were able to get it across the finish line in both chambers. It now awaits a signature from the governor.

House Bill 530 is legislation related to the apex doctrine and criteria required to secure the deposition of certain high ranking public and corporate employees. It also designates a process for service when claims are filed against the state. It passed the House, but then the language contained in the House version was added to SB 74 after this version was amended in the Senate Regulated Industries Committee. HB 530 did not receive a vote in the Senate.

House Bill 470 is the CANDOR Act, which provides for an open discussion between a healthcare provider and a patient when an injury occurs during a medical procedure. A provision contained in the legislation would permit the open discussion to be admissible in court if compliance with the statutory requirements are not met. This legislation passed the House. It passed the Senate Judiciary Committee with the endorsement of the medical community despite its problems. GDLA's very own Jake Daly testified against it during the Senate Judiciary Committee hearing. We worked hard to run the clock out on the legislation on the final day of legislative session by asking leadership to hold it and were successful. It did not pass as it was never called for a vote on the Senate floor.

Senate Bill 73 would permit class actions under state law against individuals or entities who conduct telephone solicitations in a manner similar to the federal rule. It has passed the Senate and was amended in the House Rules Committee. It passed the House in its new form and was then amended again on the Senate floor with local language not pertaining to this

issue. The bill passed the Senate as amended, but was not called in the House. It did not pass.

Senate Bill 74 would permit a class action to be brought under state law against those who misrepresent themselves by advertising their legal services when it is not the true nature of their business or who advertise legal services but are not barred in this state. The House version of the apex doctrine was added to this legislation (originally language from HB 530) and ultimately passed both the House and Senate with apex language included. It currently awaits the governor's signature.

Senate Bill 168 would allow a chiropractic practice to file a lien on a cause of action in the same way a hospital is able to file a lien under similar circumstances. Additionally, an amendment was quietly added to require submission of bills to health insurers before any medical lien can be filed. It passed with the amendment and awaits a signature from the governor.

House Bill 271 would eliminate direct action against insurers in motor trucking cases. Georgia remains one of four states who allows this to happen. The House Judiciary Committee heard the legislation and it remains in committee. It did not pass.

House Bill 275 would limit discovery of GPS tracking and video software used by trucking companies for their own best practices to the day a trucking accident occurs as it is commonly used by plaintiffs in negligent retention cases. The House Judiciary Committee held the legislation and it remains in committee. It did not pass.

House Bill 381 creates a new right of action for workplace harassment. It has been assigned to the House Judiciary Committee. We succeeded in having the committee hold it—it did not pass.

Senate Bill 2 would extend COVID liability protections to businesses and healthcare providers without an expiration date so long as they are not grossly negligent in conducting their operations. It was assigned to Senate Judiciary. It did not receive a hearing.

Senate Bill 14 appears to provide guidance for preserving the record for appellate rulings, which require an objection to a violation of a motion in limine. Some have suggested this legislation could be problematic. It was assigned to Senate Judiciary. It did not pass.

Senate Bill 142 revises the definition of a dangerous dog and requires a dangerous dog owner to carry an insurance policy of $500,000 for prospective liability. This legislation was assigned to the Senate Insurance Committee. It did not pass.

Senate Bill 143 would reduce the age requirement for the retirement of appellate judges from 65 to 60. This legislation was assigned to the Senate Retirement Committee. It did not pass.

Senate Bill 186 related to premises liability would eliminate constructive notice when third party criminal acts occur on a landowner's property and require a landowner to have actual notice of the activity and to have contributed to the harm in some way. It was not called to the Senate floor after SB 196 failed and SB 203 was gutted.

Senate Bill 191 would eliminate direct action against insurers in motor trucking cases. Georgia remains one of four states who allow this to happen. It was not called to the Senate floor.

Senate Bill 192 relates to negligent retention criteria in motor trucking cases and when certain data is discoverable for establishing liability—similar to HB 275 above. It was assigned to the Senate Judiciary Committee. It did not pass.

Senate Bill 196 is seat belt nonuse admissibility legislation. It passed the Senate Transportation Committee after being heard for a second time and received a vote on the Senate floor Thursday. It fell short by five votes after significant pressure was applied to oppose it by the personal injury lawyers. There may be opportunities to attach it to a bill after Crossover, but we will need to shift the positions of at least five legislators. The vote count has been circulated. https://www.legis.ga.gov/legislation/64477

Senate Bill 200 is legislation related to the apex doctrine and criteria required to secure the deposition of certain high ranking public and corporate employees. It was not called to the floor as Senate leadership decided to work on the House version in the Senate (HB 530). It did not pass.

Senate Bill 203 is the Trucking Opportunity Act, which struck the ability to bring a direct action in a trucking case plus a presumption that if a truck driver has obtained a commercial driver's license in accordance with federal standards, he or she is considered qualified to operate a commercial motor vehicle. This bill was gutted by an amendment brought forward by Senator Brian Strickland. It passed the Senate, but the meaningful language was removed. It was not heard in the House ◆

Kade Cullefer is with Troutman Pepper Strategies in Atlanta, and serves as GDLA's lobbyist.

Mass Torts Case Law Update

Todd E. Schwartz
Chair, Substantive Law Section
Lewis Brisbois Bisgaard & Smith, Atlanta

Union Carbide Corporation v. Brannan
Court of Appeals of Georgia
A21A0143
306 Ga. App. 109 (2021)

Charles Brannan filed an asbestos-related person injury complaint in DeKalb County against several defendants, after Mr. Brannan was diagnosed with mesothelioma. Mr. Brannan passed away on October 5, 2015. Defense counsel filed a suggestion of death on October 14, 2015. On December 17, 2015, Mrs. Brannan was appointed executrix of the estate of Mr. Brannan. An amended complaint was not filed in the case until September 14, 2016. The defendants moved to dismiss the personal injury claims for Mrs. Brannan's failure to substitute herself as a party within 180 days of the filing of the substitution of death. Two days later, Plaintiff voluntarily dismissed the case without prejudice. On November 3, 2016, Mrs. Brannan filed a second complaint in DeKalb County.

Union Carbide filed a Motion to Dismiss the personal injury claims asserting that Mrs. Brannan could not unilaterally dismiss the claims of Mr. Brannan since she was never substituted as a party in the initial action. Thus, Mr. Brannan's personal injury claims remained pending in the first action, and O.C.G.A. § 9-2-5 bars the assertion of duplicate claims of prior pending actions. The Court denied the Motion. Union Carbide received a certificate of immediate review from the trial court and filed an appeal.

The Court of Appeals affirmed the trial court's denial of the Motion to dismiss holding that the re-filing of the Complaint within the applicable statute of limitation was proper. It found that a plaintiff's right to voluntarily dismiss an action under O.C.G.A. § 9-11-41(a) is not abated by the filing of a motion to dismiss for failing to substitute a party. Further, a deceased person cannot be a party to any legal proceeding so the trial court could not proceed in the first case since all action would be void.

PTI Royston LLC v. Eubanks
Court of Appeals of Georgia
A21A0182
360 Ga. App. 263 (2021)

On June 28, 2021, the Court of Appeals reversed the trial court's order that the general tort statute of repose does not bar strict liability claims brought under the Georgia Asbestos and Silica Claims Act, O.C.G.A. § 51-14-1, et seq. The Plaintiffs had brought suit under the Act against Johnson & Johnson and PTI Royston alleging that Mrs. Eubanks contracted mesothelioma from her use of baby powder containing talc contaminated with asbestos. PTI moved to dismiss the strict liability claims on the grounds that such claims are barred by the ten-year status of repose in O.C.G.A. §51-1-11(b)(2). The trial court denied the motion claiming the plain language of the limitation provision in the Asbestos Act barred the application of the general tort statute of repose.

The Court of Appeals reversed the trial court finding that the Asbestos Act does not bar the application of the general tort statute of repose. The Court of Appeals reviewed the legislative intent behind the Georgia Asbestos Act and the limitation period in that Act. It determined that the limitation period in the Act governed the time when an action must be brought after injury has accrued. Wright v. Robinson, 262 Ga. 844 (1993). The status of repose does not relate to accrual of a cause but an absolute bar after a set time period. Based on rules of statutory construction, the Georgia legislature was presumed to have knowledge of the general tort statute of repose when it enacted the Asbestos Act and if it intended for the statute of repose not to apply it would have stated such in the Act. Further, the Asbestos Act was similar to other such legislation passed in other states. Thus, the Court of Appeals found these conditions are persuasive that the statute of repose remains applicable to asbestos cases in Georgia. It remanded the case back to the trial court to determine if Plaintiff's allegations of fraud would provide a basis to preclude PTI from raising the status of repose defense.

Georgia Power Company v. Campbell
Court of Appeals of Georgia
A21A0462
360 Ga. App. 422 (2021)

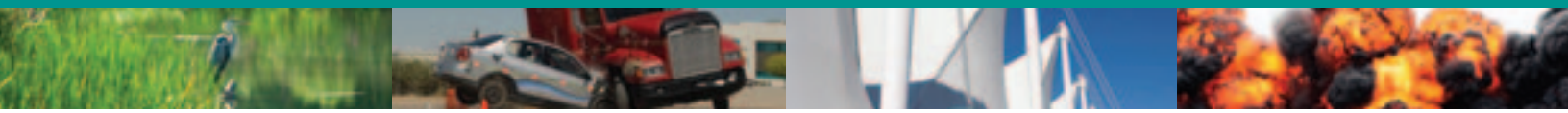
On June 20, 2021, the Court of Appeals ruled on Georgia Power's Motions to Exclude certain expert witnesses and on a Motion for Summary Judgment based on the status of repose. Colen Campbell developed mesothelioma from his work as an insulator and filed suit in the Chatham County against numerous defendants. Georgia Power filed a Motion for Summary Judgment which the trial court granted in part and denied in part. This limited the alleged exposure to asbestos by Mr. Campbell to the Hatch nuclear power plant from 1973 to 1974. Georgia Power also filed Motions to exclude the testimony of two of Plaintiffs' expert witnesses—Dr. Arnold Brody and Dr. Edwin Holstein. The trial court denied both of those motions. The trial court issues a certificate of immediate review and Georgia Power appeals the orders.

On the Motion for Summary Judgment, Georgia Power argued that it did not owe a duty to Mr. Campbell once its relinquished control and possession of its property to North Brothers, Mr. Campbell's employer. The trial court affirmed the denial of the Motion on these grounds finding an issue of material fact existed as to whether Georgia Power relinquished possession of the premises and control of the insulation work to North Brothers.

Continued on page 52

Exponent®

Engineering and Scientific Consulting



Our Atlanta office provides expanded capabilities to our clients based in the Southeast.

As one of the largest engineering and scientific consulting firms in the U.S., Exponent can provide you with access to both our local Atlanta staff, as well as more than 500 other Exponent consultants in over 90 technical disciplines.

Our service areas include:

- Biomechanics
- Biomedical Engineering
- Buildings & Structures
- Chemical Regulation & Food Safety
- Civil Engineering
- Construction Consulting
- Ecological & Biological Sciences
- Electrical Engineering & Computer Sciences
- Environmental & Earth Sciences
- Health Sciences
- Human Factors
- Industrial Structures
- Materials & Corrosion Engineering
- Mechanical Engineering
- Polymer Science & Materials Chemistry
- Statistical & Data Sciences
- Technology Development
- Thermal Sciences
- Vehicle Engineering

Exponent's Atlanta office provides consulting expertise to insurance companies, lawyers, as well as direct to private, public and multinational companies in areas such as energy, transportation, consumer products, textiles, and medical devices.

3350 Peachtree Road NE, Suite 1125 • Atlanta, GA 30326 • 678.412.4800

atlanta-office@exponent.com

Exponent is certified to ISO 9001

888.656.EXPO • www.exponent.com

Products Liability Case Law Update

Katherine Carey
Balch & Bingham, Atlanta

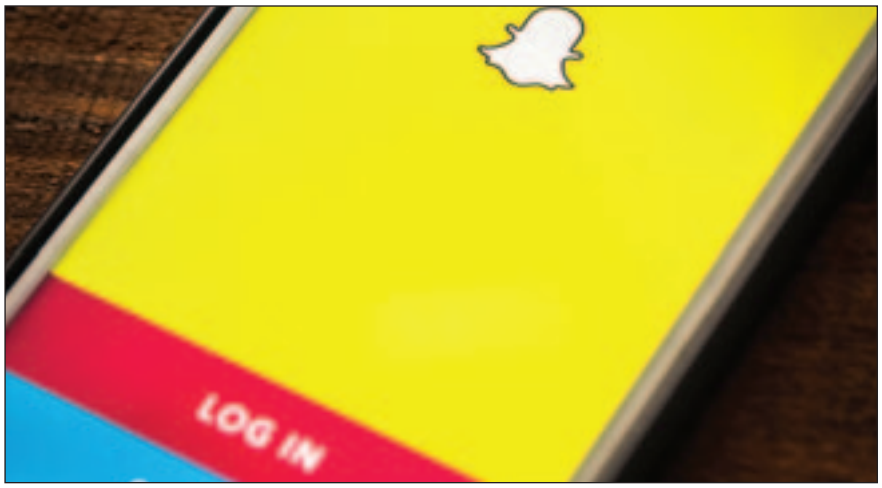
PRODUCTS LIABILITY; DESIGN DEFECT; DESIGN DUTY; THIRD-PARTY; INTENTIONAL AND TORTIOUS MISUSE: A social media company could be liable under a negligent design theory to a motorist for injuries caused by a third party's misuse of the company's app for all reasonably foreseeable risks posed by the use or misuse of the app.
***Maynard v. Snapchat, Inc.*, 870 S.E.2d 739 (Ga. 2022).**

While driving 107 miles per hour, Christal McGee rear-ended a car driven by Wentworth Maynard, causing severe injuries. McGee was using a "Speed Filter" feature within Snapchat, a mobile phone application, to record her real-life speed so she could share the speed with other Snapchat users.

Maynard sued Snapchat for negligently designing Snapchat's Speed Filter. Maynard asserted negligence claims against Snapchat, alleging the Speed Filter was defective because, among other things: (a) it did not remove or restrict access to the filter to address the danger the filter created; (b) the filter encouraged dangerous behaviors and; (c) Snapchat could reasonably foresee the filter was encouraging users to drive at dangerous, excessive speeds.

The trial court dismissed the design-defect claim. The Court of Appeals affirmed, holding that a designer's duty to design reasonably safe products did not extend to people injured by a third-party's intentional and tortious misuse of the product. See *Maynard v. Snapchat, Inc.*, 851 S.E.2d 128 (2020).

The Georgia Supreme Court reversed the Court of Appeals, finding it erred in granting Snapchat's motion to dismiss. In an issue of first impression, the Court held the Maynards adequately alleged Snapchat owed a duty resulting from another person's use of the Snapchat Speed Filter while driving at excessive speeds. Relying on *Jones v. NordicTrack, Inc.*, 274 Ga. 115, 550 S.E.2d 101 (2001), the Court concluded that a designer's duty for purposes of a negligent-design claim extends to all reasonably foreseeable risks posed by a product.



PRODUCTS LIABILITY; STRICT LIABILITY—FAILURE TO WARN; STRICT LIABILITY—DESIGN DEFECT; STRICT LIABILITY—MANUFACTURING DEFECT; STATUTE OF LIMITATION; STATUTE OF REPOSE:
Georgia's general tort statute of repose, O.C.G.A. § 51-1-11(b)(2), applies to bar strict liability claims brought under the Asbestos Claims and Silica Claims Act, O.C.G.A. § 51-14-1 *et seq*.
PTI Royston, LLC v. Eubanks, 360 Ga. App. 263, 861 S.E.2d 115 (2021), *cert. denied* (Nov. 23, 2021).

In *PTI Royston, LLC v. Eubanks*, the Georgia Court of Appeals addressed whether Georgia's general tort statute of repose, O.C.G.A. § 51-1-11(b)(2), applies to bar strict liability claims under the Asbestos Claims and Silica Claims Act (the "Act"). The Court concluded that it does apply to bar such claims.

Plaintiffs Mr. and Mrs. Eubanks used baby powder manufactured by Defendant Johnson & Johnson's ("J&J") and Defendant PTI Royston, LLC ("PTI"). Plaintiffs alleged daily use of the powder for more than 50 years. Defendant PTI started selling the powder in 2005. In 2016, Mrs. Eubanks was diagnosed with ovarian cancer, which she attributed to asbestos in the talc. In 2019, the Eubanks sued J&J and PTI, alleging, among other things, defective design and manufacturing claims. The strict liability claims were brought pursuant to the Act, which provides states *"[n]otwithstanding any other provision of law*, with respect to any asbestos claim or silica claim not barred as of May 1, 2007, t*he limitations period shall not begin to run* until the exposed person ... obtains, or through the exercise of reasonable diligence should have obtained, prima-facie evidence of physical impairment."

PTI moved to dismiss on the basis of Georgia's general tort statute of repose, which places an ultimate ten-year limit on tort actions. PTI's first sale of the talc was in 2005, more than ten years before Mrs. Eubanks' diagnosis. The trial court denied the motion based on the Act's liberal statute of limitations provision, concluding that such language barred application of the general statute of repose to claims brought under the Act.

As an issue of first impression, the Georgia Court of Appeals re-

Continued on page 52

- Business Interruption & Extra Expense
- Property Damage
- Lost Profits
- Stock & Contents
- Fidelity, Employee Dishonesty & Surety
- Product Liability & Recall
- Buillders' Risk
- Reported Values
- Litigation Support

Bennett Thrasher is a full-service certified public accounting and consulting firm specializing in tax, assurance and advisory services. Our team of experienced CPAs and forensic accountants thoroughly understand the circumstances that can affect the financial impact of a loss event and can provide the insight that will enable you to achieve a timely and amicable resolution.

Bennett Thrasher is Proud to Support the

GDLA

Georgia Defense Lawyers Association

Advancing the Civil Defense Bar©

BT

www.btcpa.net

Counter-Anchoring is More Important Than Ever—Here's How to do it Effectively

Carol Jarzyna, Ph.D.
Courtroom Sciences, Inc.

Introduction

Jurors struggle with deciding a "fair" amount to award a plaintiff in damages. We know this because they say so—not only in research like mock trials, but in interviews after a verdict has been reached at trial. Jurors in both contexts tell us it's difficult to translate things like injury or loss of life into a monetary award. They also say they don't have a realistic concept of very large amounts of money, making statements like, "Let's give her $100 million. We want her to be taken care of and make sure her family has money for years to come." Additionally, jurors inadvertently demonstrate that they are not accustomed to working with such large numbers. When it is helpful in deliberations to determine multiples of a base amount, many will just as readily multiply $5 million as $500,000, without the exponential difference between the two products occurring to them. These challenges to defense attorneys have existed for a long time, but because of recent economic changes, they are even more important to address now.

In determining what constitutes a fair award, jurors consider aspects of the current financial environment. Things like the value of the dollar in society, beliefs about corporations, and the prevalence of "jackpot justice," in which huge judgements disproportionate to actual damages are awarded, play strongly here. Unfortunately for the defense, these factors appear to be pointing jurors toward nuclear verdicts.

The annual U.S. inflation rate has been rising, leaping from 1.4% to 7% between the ends of 2020 and 2021, and to 8% for 2022.[1] Practically all Americans felt this leap, with those in the jury pool likely experiencing it even more keenly. In contrast, the population has concomitantly watched the richest corporate leaders, many in the tech industry, balloon in wealth. During the pandemic, the wealthiest Americans doubled their riches.[2] And while the net worth of the world's five richest people in 2000 totaled $181 billion,[3] the net worth of the world's five richest people in 2022 totaled $795 billion[4]—perhaps the biggest jump in history.

We know, too, that research as far back as the 1980s shows juror indignation at CEO's salaries[5] and we commonly see mock jurors reference Elon Musk, Jeff Bezos, or their likes. The only experience most jurors have involving very large amounts of money comes from hearing such figures in the media, often as they pertain to corporate wealth or sometimes, to nuclear verdicts. If indignation at CEO salaries has increased as much as the salaries themselves, it may be a big part of the post-COVID rise in anti-corporate sentiment.[6] Further, the outsized numbers broadcast by the media may have a normalizing effect. For instance, even a generous damages award dims in comparison to earnings approaching hundreds of billions.

While the COVID pandemic engendered confidence in corporations for a time, this surge has died down. In addition, post-COVID juries are younger, on average. These younger individuals expect more from corporations, not only in compensation for working for them, but in how critically they evaluate defendants' behavior from the jury box. In our research, C-suite executives testifying on behalf of their company have been spared no judgement.

Addressing the Challenges for the Defense

These aspects of juror sentiment pose formidable challenges to the defense. However, their impact at trial can be mitigated by a sound damages presentation, supported by a counter-anchor. There are many ways to suggest an effective counter-offer for damages, even when not admitting liability. Some tips that have been shown effective in our research include creating a counter-anchor early on, realistically appraising the other side's expert and their proposal, and exploiting a jury's appreciation for the bargaining process, which helps them to treat compensation in a grounded way, rather than as "Monopoly money."

Continued on page 54

courtroomsciences.com

Expert insight to impact every stage of litigation

Achieve superior litigation outcomes by leveraging Courtroom Sciences at each phase of litigation. Contact Carol Jarzyna, Ph.D. at cjarzyna@courtroomsciences.com or 773.919.0600 to learn more.

David Fortenbaugh

Peggy Shibata

Manuel Meza-Arroyo

Keith Thobe

Torrence Welch

Flip-Flops: A Survey of Risk Perception and Acceptance

Engineering Systems, Inc.

This study's goal was to better understand risk tolerance associated with wearing flip-flops. A review of existing biomechanical data revealed substantial differences in gait kinematics and kinetics and an increased risk of falling when wearing flip-flops. However, users' awareness of this increased risk and its potential influence on footwear decisions have not been studied. Nearly 800 participants were surveyed to evaluate usage behaviors of flip-flop wearers. Most participants found flip-flops comfortable and easy to wear, recognized the increased likelihood of a slip, trip, or misstep when wearing flip-flops, and reported experiencing such an event, mostly without injury. Older adults were less likely to have these attitudes and experiences regarding flip-flops. Despite the collective practical knowledge of an increased risk of a slip, trip, or misstep, most participants accepted the risk and chose to wear flip-flops, i.e., footwear choice was infrequently affected by awareness of the increased risk.

INTRODUCTION

The risk and prevalence of falls in the general population has been well-established. The Centers for Disease Control and the Consumer Product Safety Commission have found "unintentional fall" to be the first or second leading cause of nonfatal injuries treated in hospital emergency departments in the United States for all age groups (National Center for Injury Prevention and Control, 2017). Approximately 37 million falls requiring medical attention occur globally each year (World Health Organization, 2021).

The link between the risk of falls and footwear choice has been studied extensively in the elderly. A literature review on this topic found 79 such scientific articles and revealed that both walking indoors (barefoot or in socks) and walking in high-heeled shoes (whether indoors or outdoors), increased the risk of falls in older people (Menant, 2008). The researchers recommended that older people wear shoes with low heels and firm, slip-resistant soles, both indoors and outdoors. A more recent review concluded that, while there may be a broad association between certain footwear styles and falls, there was no evidence for causal relationships between particular footwear styles and falls in older adults (Davis, 2019). Further, the review found only limited evidence to support making specific footwear recommendations as a fall prevention strategy. Notably, this research topic has generally targeted elderly populations. The association between footwear and the risk of falling among all age groups has not been as widely explored.

Flip-flops are a popular footwear choice around the world. While various online articles and news reports have cited the popularity of flip-flops, others have provided a word of caution about the potential fall risks associated with flip-flops. From a biomechanical perspective, there are unmistakable differences in both gait kinematics and kinetics when wearing flip-flops as compared to barefoot and shoe walking.

A pair of research studies evaluating healthy young adults found that walking in flip-flops produced slower walking, shorter strides, and increased ankle range of motion than when wearing sneakers, suggesting increased gait instability with flip-flops (Shroyer, 2010; Chen, 2018). Another group of healthy young men walking in flip-flops exhibited stance times and foot contact angles that fell between those of barefoot and shoe walking. However, the observed anterior-posterior center of pressure movement while walking in flip-flops was identical to shoe walking but significantly different than barefoot walking (Zhang, 2013).

When compared to barefoot walking, researchers saw increases in peak knee flexion and ankle dorsiflexion during leg swing for those walking in flip-flops. They attributed those changes to the participants attempting to maximize the adherence of the flip-flop to the foot and thereby decrease the risk of the flip-flop inadvertently contacting the ground during the swing phase of gait (Sharpe, 2016). These same participants also exhibited a

Continued on page 58

ESi

Engineering Consulting and Forensic Investigation

Over our 30-year history, ESI clients have turned to us to help with many of their high stakes and complex claims. These clients know they can rely on us to provide clear answers to their most challenging technical questions.

- Multidisciplinary Approach
- Industry Expertise
- Powerful Insights

www.engsys.com

In the Post-COVID Age, ADR is More Important Than Ever

Hon. Randy Rich
Henning Mediation & Arbitration

Alternative Dispute Resolution has always been important to help resolve cases short of a jury trial. Defendants can save costs by ending the case early, and Plaintiffs are able to realize the cash value of their case without lengthy court delays and uncertainty. With COVID, court delays have been drastically magnified in negative ways for civil litigants.

Before COVID, judges could place a civil case on a trial calendar and trials would be held within a matter of months. With COVID, delays are now measured by how many years a party must wait to have the day in court. The reason is simple: criminal cases must take priority. Even with a demand for a speedy trial, some criminal defendants have been waiting in jail since 2019 for their jury trial! Additionally, post-COVID jury trials take longer to complete. Felony trials typically take at least one week, but now take longer due to COVID precautions.

Court-ordered mediation is now more common. Given the COVID court delays are here to stay for the short term, I urge parties at mediation to think outside the box in how they define success in mediation. Obviously, a full settlement of the case is always preferred, but when this is not possible, consider putting a faster resolution method on the negotiation table.

I regularly have a discussion with both sides about alternatives to court delays when it is clear a full settlement won't be reached on the day of mediation. It goes something like this to the defense: "If I can get Plaintiffs to waive their right to a jury trial, would you be interested in picking an arbitrator today so the case can be resolved in the next 30 days?" It goes something like this to the Plaintiff: "If I can get your case decided in the next 30 days, would you be willing to pick a fair person to decide the case?"

It is a win-win for both sides in many cases. Especially when the parties get to choose their "juror," who will decide the outcome. Plaintiffs have their favorite arbitrators, and so does the defense. Once the decision to arbitrate is reached, the next hour is spent on negotiating who will be the arbitrator.

Another option for cases early in the pipeline (i.e. still in discovery), I suggest agreeing at mediation to using a special master. After all, when will the Court have time to hear a discovery dispute in a simple car wreck case when they are swamped with criminal jury trials? The same is true for any cases which have a need for urgent hearings.

I believe civil litigants who want to move their cases forward may find a remedy with the Consent Appointment of a special master. Uniform Superior Court Rule 46 allows the special master to resolve all discovery disputes, and even impose contempt sanctions and remedies. And the Rule does not just deal with Discovery. The Rule allows a special master to conduct all pre-trial proceedings and even conduct a bench trial when consented to by the parties. For lawyers who want to keep the case moving forward, the option of a special master will be especially important to allow cases to move along their normal schedule.

When I was a judge, I limited appointing special masters to cases that needed close supervision for discovery, but not as a matter of routine. If you are a civil lawyer and want to keep the case moving through discovery, I suggest the special master option. If you are satisfied during discovery that the special master will be fair to your side, it may be that both sides can later agree to the special master resolving the case by consent of the parties.

I recommend this option not only in injury cases, but in all civil cases where time is of the essence. A two-year delay in a case is almost impossible to contemplate for litigator.

Being open to alternatives to the current COVID court delays is the key. It is not practical in every case for the plaintiff or the defense, but when possible, having an outside the system option can help the parties ultimately resolve the dispute.

Another benefit of having a special master option is the availability of the neutral to schedule, conduct hearings, and issue rulings is normally more flexible than a sitting judge. This is especially true for Zoom hearings, which some judges have stopped since COVID cases are now reduced. ◆

Hon. Randy Rich is a mediator and arbitrator with GDLA Platinum Sponsor Henning Mediation & Arbitration Services. He previously served as judge on both the State and Superior Courts of Gwinnett County. He also founded the Gwinnett Business Court and was later named a Business Court Judge in the Metro Atlanta Business Court.

HENNING
Mediation & Arbitration Service, Inc.

Where Atlanta Lawyers Go To Settle The Significant Cases

Since 1996, Atlanta lawyers have counted on Henning's panel of experienced, award-winning neutrals to successfully take on over **35,000 cases.** As the original pioneers in collective mediation, we know the importance of experienced mediators, state-of-the-art facilities, and a personal touch that makes the mediation process smoother for all involved.

Call **770-955-2252** today to schedule your next mediation – and see why Henning Mediation and Arbitration is the **gold standard in dispute resolution.**

770.955.2252 **henningmediation.com**

TRAINING

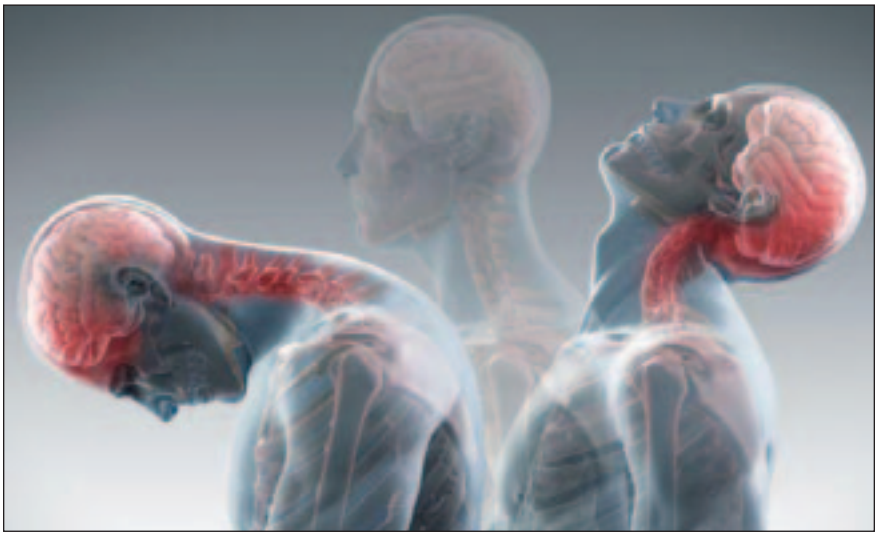
VIRTUAL

NEUTRALS

MEDIATION

Why Whiplash Is a Common Symptom of Rear-End Collisions

Karla Cassidy
J.S. Held



Introduction

It's common that rear-end collisions result in symptoms of whiplash. To determine how these symptoms develop, we must first consider the laws of physics. Newton's first law of motion states that a body at rest will remain at rest, and a body in motion will remain in motion, unless it is acted upon by an external force.

This means that when a vehicle is stationary, the occupant within the vehicle will be at rest or, when the same vehicle is moving, their body will travel at the same speed as the vehicle.

What Are the Occupant Kinematics of a Rear-End Collision?

Let's apply Newton's first law to an in-line collision scenario where a stationary vehicle is rear-ended by another vehicle. To assess the occupant kinematics within the target vehicle (i.e., the vehicle that gets struck from the rear), collision reconstructionists must break the collision into three distinct phases: pre-impact, engagement, and separation:

1. **Pre-Impact**
   Moments before the impact occurs, the occupant within the stationary vehicle is at rest. They will, according to Newton's first law, maintain that position until a force acts upon them to change their course.

2. **Engagement**
   At the moment of impact, the bullet vehicle (i.e., the vehicle that does the hitting), will begin to exert a force upon the target vehicle and begin to accelerate that vehicle forward.

3. **Separation**
   Once the momentum of the bullet vehicle has accelerated the target vehicle forward, the vehicles will separate.

The occupant kinematics (i.e. the motion of the occupants inside the target vehicle) changes during each phase of the collision:

1. **Pre-Impact**
   The occupants remain seated in their seat either stationary or travelling at a constant speed with the vehicle.

2. **Engagement**
   As the vehicle is accelerated forward, the seatback and headrest of the rear-ended vehicle move forward, while the occupant will initially remain at rest. The occupant's back is compressed into the seatback and their head contacts the headrest. The occupant's head travels slightly rearward relative to their torso.

3. **Separation**
   Once the occupant fully compresses into the seatback, the occupant rebounds forward until they are stopped by their seat belt. The occupant's head travels the farthest during this motion; this is when their neck muscles activate to protect their cervical spine from the sudden accelerations.

Understanding the occupant kinematics, it becomes possible to identify the most common symptoms of whiplash from a rear-end collision.

The Most Common Symptoms from a Rear-End Collision

Head, shoulder, or neck injury symptoms are typical symptoms reported after rear-end collisions. In minor and moderate rear-end impacts, a forensic biomechanical engineer will typically see soft tissue symptoms, primarily in the cervical spine. As the severity of the

Continued on page 66

JS|HELD

Find your expert.®

J.S. Held is a global consulting firm that provides technical, scientific, and financial expertise to organizations facing high-stakes events demanding urgent attention. From accident reconstruction and medical bill review to construction advisory and financial forensics, our experts serve as trusted advisors, helping clients understand complex matters worldwide.

OUR AREAS OF EXPERTISE

- FINANCIAL
- RISK & ADVISORY
- TECHNICAL & SCIENTIFIC

SCAN THE CODE OR VISIT **JSHELD.COM** TO LEARN ABOUT OUR SERVICES

GDLA Honors Judiciary at 18th Judicial Reception

GDLA hosted its 18th Judicial Reception at State Bar Headquarters on February 5, 2023. This was the first time we convened in person for this event since 2020 due to the pandemic.

This typically annual gathering honors Atlanta area judges from the state's appellate courts, state and superior courts, State Board of Workers' Compensation, as well as the federal courts. ◆


1


2


3


4


5


6


7

Pictured enjoying GDLA's 18th Judicial Reception are: *1. DeKalb State Court Judge Brian Ross and Elliot Kerzner; 2. Mark Lefkow, Brad Marsh, Sen. Bill Cowsert, Fulton State Court Chief Judge Wes Tailor, and Richard Hill; 3. GDLA Past Presidents Salty Forbes, Matt Moffett, Dave Nelson, Steve Kyle, and Bubba Hughes; 4. Fulton Magistrate Court Judge Catherine Koura, Eric Proser, and Vice President Jason Logan; 5. Henry Fellows and Workers' Comp Judge Edwina Charles; 6. Will Story and Cayton Chrisman; 7. Matt Boyer, Elissa Haynes, Karen Karabinos, Melody Kiella, Douglas Burrell, and Camille Dizon; 8. Supreme Court Justice Andrew Pinson, President Dart Meadows, and Court of Appeals Judge Stephen Dillard; 9. DeKalb Superior Court Judge Stacey Hydrick, DeKalb Superior Court Judge LaTisha Dear Jackson, and Clayton State Court Judge Shalonda Jones Parker; 10. Court of Appeals Judge Elizabeth Gobeil and Frank Bedinger; 11. Fulton Superior Court Judge Shermela Williams, Candace Rogers, and Cobb State Court Judge Ashley Palmer; 12. Court of Appeals Judge Ben Land, Shawn Kalfus, Jake Daly, and GDLA lobbyist Kade Cullefer; 13. Natalie Wilkes, Karen St. Amand, and Vice President Tracy O'Connell; 14. Mari Agasarkisian, Tereza Kucerova, Savannah Bowling, Arika Song, Breandan Cotter, and Raina Azarkhail.* ***(See more coverage on the next two pages.)***

GDLA Honors Judiciary at 18th Judicial Reception


15


16


17


18


19


20

Pictured enjoying GDLA's 18th Judicial Reception are: *15. Jason Lewis and Fulton Superior Court Judge Kevin Farmer; 16. Jay Doyle, Court of Appeals Judge Sara Doyle, Court of Appeals Judge Ben Land, Fulton Superior Court Judge Henry Newkirk, and Fulton State Court Judge Susan Edlein; 17. Fulton Superior Court Judge Rachel Krause, Fulton Superior Court Judge Chuck Eason, Fulton Superior Judge Scott McAfee, and Anne Gower; 18. Andrew Pinter, Alycen Moss, Sangeetha Krishnakumar, and Carter Bishop; 19. Trace Sexton, Peyton Patterson, and Vice President Marty Levinson; 20. Cobb State Court Judge Diana Simmons, Cobb State Court Judge John Morgan, Brianna Tucker, and Erica Morton; 21. Brad Carver, Court of Appeals Judge Stephen Dillard, Wayne Satterfield, and James Dean; 22. Jeremy Freiman, Sarah Lisle, Jena Emory, and Jeff Wasick; 23. Trent Edwards, Robert Johnson, Michael Becker, and Elliott Ream; 24. Past President Walter McClelland and Cobb State Court Judge Eric Brewton; 25. Austin Atkinson, Philip Thompson, and Pearson Cunningham; 26. Fulton Superior Court Judge Emily Richardson and Robert Luskin; and 27. State Board of Workers' Comp Director and Judge Frank McKay with Past President Staten Bitting.* ***(See more coverage on the previous two pages.)***

Southeast Women Litigators Hold Second Conference

Women litigators in Alabama, Georgia, Florida, North Carolina, South Carolina and Tennessee teamed up again to support, educate and advance women civil defense litigators at the Second Southeastern Women Litigators (SEWL) Conference held March 22-23, 2023, at the Sonesta on Hilton Head Island, S.C. in conjunction with the Hilton Head Food & Wine Festival.

Events kicked-off on Wednesday evening, March 22, with some attendees choosing to attend a wine tasting dinner at the resort. while others ventured out to enjoy island cuisine as part of dine-arounds. On Friday morning, some took part in a golf clinic at Shipyard Golf Club.

The one-day seminar combined speakers and panelists who discussed developing leadership and career-building skills. The presentations also explored challenges, risks and rewards on the path to having a fulfilling and productive career as women lawyers.

SEWL was the brainchild of GDLA member Karen Karabinos of Chartwell Law in Atlanta, who came up with the idea after also creating, and chairing for the first two years, a Women Litigators Section within GDLA. Her impetus behind SEWL was to give female civil defense lawyers in the southeast the opportunity to experience what DRI offers annually at its women's conference in Arizona by making a more affordable and accessible option.

The host state's counterpart to GDLA, the South Carolina Defense Trial Attorneys' Association (SCDTAA), led the way in planning with help from a committee of two representatives from each state, as well as the Executive Directors. The six participating state defense organizations, including GDLA, as well as the conference's law firm sponsors are featured on the opposite page. ◆

Pictured are: *1. Karen Karabinos, Jill Jenkins, Stephanie Brown (SC), Pam Coleman, and Shipyard's golf pro; 2. Aarati Subramaniam and Libby Watkins; 3. Whitney Greene, Pam Grimes, and Anelise Codrington; 4. Beth Brooks and Sophia Karnegis; 5. Stephanie Brown (SC) and Laney Ivey; 6. Lindsay Ferguson, Shannon Barrow, and Brannon Arnold; 7. Sloane Phillips (AL), Christy Crockett-White (MS), Meghan Pieler, Anne Wiggins, Martha Thompson (AL), and Jena Lombard; 8. GDLA President-Elect Pamela Lee and Sara Lincoln (NC); 9. TN's delegation: Mary Gadd, Lynn Lawyer, Alyssa Minge, Laura Bassett, Christina Hadaway, Kate Patton, Ally Hargett, Hannah Lowe, and Mickala Lewis; 10. Keely Wilson (TN), Dallas Roper and Naomi Jean-Philippe; 11. Sarah Lisle and Nicole Leet; 12. Tracy O'Connell and Ashley Rice; 13. Karen Karabinos and Lara Ortega.*

SEWL SPONSORS

SPONSORING STATE DEFENSE ORGANIZATIONS

ADLA

Tennessee Defense Lawyers Association

NCADA

South Carolina Defense Trial Attorneys' Association

FDLA

Georgia Defense Lawyers Association
Advancing the Civil Defense Bar

GOLD LEVEL

BALCH & BINGHAM LLP

mgc INSURANCE DEFENSE

20 CHARTWELL LAW

SILVER LEVEL

DREW ECKL FARNHAM
ATTORNEYS AT LAW

COZEN O'CONNOR

CSVL COPELAND STAIR VALZ & LOVELL LLP

G•R•S•M•B
Gray, Rust, St. Amand, Moffett & Brieske, LLP

H|B|S
HALL BOOTH SMITH, P.C.
ATTORNEYS AT LAW

LW DN LEITNER WILLIAMS DOOLEY NAPOLITAN

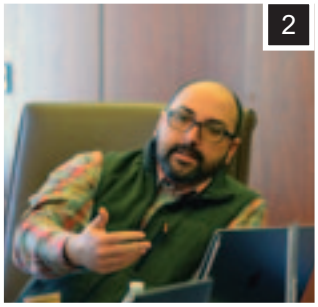
HAWKINS PARNELL

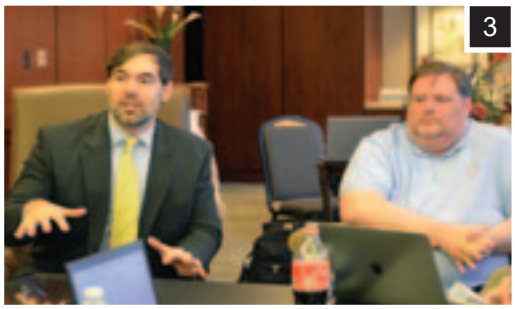
BRONZE LEVEL

swift / currie

WALDON ADELMAN CASTILLA HIESTAND & PROUT

Wall Templeton
ATTORNEYS





Pictured at the Board's Winter Meeting are: *1. Amicus Co-Chair Philip Thompson; 2. Jason Lewis; 3. GDLA's lobbyist, Kade Cullefer, and Legislative Action Committee Chair Jake Daly; 4. President Dart Meadows; 5. Judicial Relations Chair David Marshall and DRI Immediate Past President Douglas Burrell.*

GDLA Board Holds Winter Meeting

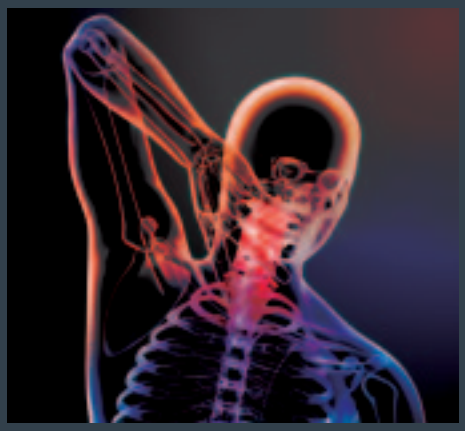
As is tradition, the GDLA Board of Directors held its Winter Meeting the day after the judicial reception, convening at State Bar Headquarters on February 8, 2023.

We were again honored to have GDLA member and DRI Immediate Past President Douglas Burrell on-hand for a report on the state of the national defense bar and DRI's efforts in that regard.

Also, GDLA's Legislative Action Committee COO/CFO Jake Daly appeared with GDLA's lobbyist, Kade Cullefer, for a report on efforts on our behalf under the Gold Dome.

Immediately following the meeting, Past Presidents and officers adjourned to the Capital City Club downtown for the Sixth Past Presidents Luncheon (see page 50).

Those present at the Board Meeting were Executive Committee: President James D. "Dart" Meadows, Balch & Bingham, Atlanta; Secretary Ashley Rice, Waldon Adelman Castilla Hiestand & Prout, Atlanta; Hall F. McKinley III, Drew Eckl & Farnham, Atlanta; and David N. Nelson, Chambless Higdon Richardson Katz & Griggs, Macon. Vice Presidents: Martin A. "Marty" Levinson of Hawkins Parnell Thackston & Young, Atlanta; Candis Jones Smith, Lewis Brisbois, Atlanta; Jason D. Logan, Constangy, Macon; and Tracy O'Connell, Ellis Painter, Savannah. Board of Directors: Anne D. Gower, Gower Wooten & Darneille, Atlanta; Karen K. Karabinos, Chartwell Law, Atlanta; Zach Matthews, McMickle Kurey & Branch, Alpharetta; Dallas Roper, James Bates, Macon; Philip Thompson, Ellis Painter, Savannah; Mary Elizabeth "Libby" Watkins, Levy Sibley Foreman & Speir, Augusta. Past Presidents: N. Staten Bitting, Jr., Levy Sibley Foreman & Speir, Augusta; W. Melvin "Mel" Hayes, Constangy, Macon; Edward M. "Bubba" Hughes, Ellis Painter, Savannah; Walter B. McClelland, Mabry & McClelland, Atlanta; and Lynn M. Roberson, Miles Mediation, Atlanta; Other: Judicial Committee Chair David C. Marshall, Hawkins Parnell & Young, Atlanta; DRI Immediate Past President Douglas K. Burrell, Chartwell, Atlanta; Kade Cullefer, Troutman Strategies; and GDLA Executive Director Jennifer Davis Ward. ◆



EXPERIENCE, SERVICE, EXPERTISE AND CREDIBILITY...

That's what our experts bring to every case they work on, every time, every day. It's what sets us apart, and the reason we've earned a national reputation for providing outstanding forensic, scientific and engineering solutions to our clients for over 30 years.

Our experts use a variety of scientific and cutting-edge industry tools, practices, and software during their investigations and research to identify and analyze all of the facts in a process, case, or claim. Then they relay their findings to our clients via a comprehensive, easy to understand report and can provide expert testimony in court.

When you need help, ask an Expert. Ask ARCCA.

ARCCA
Experts in Forensic, Scientific & Engineering Solutions

FORENSIC ENGINEERING & EXPERT WITNESS CONSULTING
SPORTS BIOMECHANICS & HUMAN PERFORMANCE
RESEARCH, DEVELOPMENT, TESTING & EVALUATION

800-700-4944 | ARCCA.com

BIOMECHANICS | ACCIDENT RECONSTRUCTION | HUMAN FACTORS | TRANSPORTATION
PREMISES LIABILITY | FAILURE ANALYSIS | FIRE & EXPLOSION | PROPERTY

GDLA Honors Former Leaders at Sixth Past Presidents Luncheon

GDLA honored those who have contributed so much of their time to shaping the civil defense bar at the Sixth Annual GDLA Past Presidents Luncheon on February 4, 2023, at the Capital City Club downtown.

The first gathering, held in 2015, was the brainchild of then-President Matt Moffett, and he is now among those honored for their commitment to advancing the civil defense bar.

President James D. "Dart" Meadows welcomed everyone and noted that as GDLA marks the 56th year since our founding, we have crossed the 1,000-member mark and are swiftly approaching 1,100.

Those present are pictured above. Seated beside President Dart Meadows on the front row are: Albert H. Parnell, 1979-1980, Hawkins Parnell & Young (retired); George E. Duncan, Jr., 1999-2000, Dennis Corry Smith & Dixon, Atlanta; and W. Melvin "Mel" Haas III, 2011-2012, Constangy Brooks Smith & Prophete, Macon. Back row: David N. Nelson, Chambliss Higdon Richardson Katz & Griggs, Macon; Theodore "Ted" Freeman, 2013-2014, Freeman Mathis & Gary, Atlanta; Lynn M. Roberson, 2012-2013, Swift Currie McGhee & Hiers (retired), Atlanta; Hall F. McKinley III, Drew Eckl & Farnham, 2018-2019; Edward M. "Bubba" Hughes, 2010-2011, Ellis Painter, Savannah; N. Staten Bitting, Jr., 2009-2010, Levy Sibley Foreman & Speir, Augusta; Walter B. McClelland, 2001-2002, Mabry & McClelland, Atlanta; and Morton G. "Salty" Forbes, 1991-1992, Forbes Foster & Pool, Savannah. ◆

Your Partner for Data on Local Healthcare Costs and Accurate Coding

We can tell you how the claimant's medical bills compare to what local providers and facilities charge for the same surgery

Our Coding Review identifies fraudulent coding tactics that physicians use to increase their charges without being exposed

Connor Beer

connor.b@accumedintel.com

720.788.7396

GDLA Board Holds Spring Meeting

The GDLA Board of Directors traveled to the Westin Jekyll Island for its Spring Meeting, April 14-16, 2023.The group convened Friday evening for cocktails and dinner on the resort patio overlooking the ocean. The Board held its meeting on Saturday morning, then everyone was free to enjoy island activities.

Those in attendance were Executive Committee: President James D. "Dart" Meadows, Balch & Bingham, Atlanta; Treasurer William T. "Bill" Casey, Jr., Swift Currie McGhee & Hiers, Atlanta; and Hall F. McKinley III, Drew Eckl & Farnham, Atlanta. Vice Presidents: Martin A. "Marty" Levinson of Hawkins Parnell & Young, Atlanta; Tracy O'Connell, Ellis Painter, Savannah; and Candis Jones Smith, Lewis Brisbois, Atlanta. Board of Directors: Beth Boone, Hall Booth Smith, Brunswick; Anne D. Gower, Gower Wooten & Darneille, Atlanta; Zach Matthews, McMickle Kurey & Branch, Alpharetta; Erica Morton, Swift Currie McGhee & Hiers, Atlanta; James W. Purcell, Fulcher Hagler, Augusta; Dallas Roper, James Bates, Macon; Joseph D. Stephens, Cowsert Heath, Athens; Philip Thompson, Ellis Painter, Savannah; Mary Elizabeth "Libby" Watkins, Levy Sibley Foreman & Speir, Augusta. Past Presidents: N. Staten Bitting, Jr., Levy Sibley Foreman & Speir, Augusta; Morton G. Forbes, Forbes Foster & Poole, Savannah; Walter B. McClelland, Mabry & McClelland, Atlanta; and Peter D. Muller, Goodman McGuffey, Savannah. Other: GDLA Executive Director Jennifer Davis Ward ◆

Pictured at the Board's Spring Meeting are: *1. Philip Thompson, President Dart Meadows, and Past President Peter Muller; 2. Treasurer Bill Casey; 3. Past Presidents Walter McClelland and Salty Forbes; 4. Joe Stephens and Dallas Roper; 5. Jim and Annie Purcell, Past President Staten and Cindy Bitting, and Libby and Tom Watkins; 6. Zach Matthews with his wife, Tracy, and daughter, Margot; 7. Tracy O'Connell and Beth Boone; 8. Erica Morton and her daughter, Kaitlyn; 9. Candis Jones Smith and her daughter, Demi; 10. Marty Levinson and Anne Gower.*

ELITE
MEDICAL EXPERTS

- Top-tier Professors of Medicine & Surgery
- Physician-Led Strategic and Tactical Consulting
- GDLA Platinum Sponsor

EliteMedicalExperts.com

866-261-7770

President's Message

Continued from page 5

wear a seat belt contributed to the injury is like excluding evidence that a motorcyclist wasn't wearing a helmet or a driver was talking on his/her cell phone.

GTLA's PAC gave the maximum campaign contribution to all 10 in the last election cycle. On the other hand, in GDLA's entire 56-year history, it has given zero in political contributions. Some of our members do so personally, but a perusal of the financial disclosure reports for GTLA's PAC shows that our members' contributions pale in comparison to GTLA members' contributions. Some legislators—who are friendly to our position on certain issues—have told us that's why it is extremely important that GDLA now has an official voice at the General Assembly with Kade present on a daily basis.

We are making progress under the Gold Dome, but we need to do more and we need your help to do it. Please consider, at a minimum, contributing to our lobbying program when you pay your dues (invoices were sent via email on June 1), and feel free to contribute more than the suggested $25. But, beyond that, please ask your firms to contribute to our Legislative Action Fund. Those firms who have contributed over the last two years have given $5,000. (Checks can be made payable to GDLA with "Legislative Action Fund" in the memo line.)

In the meantime, please familiarize yourself with how your state representatives are voting on matters important to the civil defense bar and reach out to them. You can go to www.legis.ga.gov to search for a bill/legislation then drill down to who voted for or against it. If you do reach out to a legislator, please let Jake Daly know about it (jdaly@fmglaw.com) so we can keep our efforts coordinated. Please also let Jake know any other thoughts you have about legislation in 2024 that would benefit GDLA members.

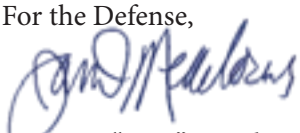
> *"We are making progress under the Gold Dome, but we need to do more and we need your help to do it. Please consider contributing to our lobbying program when you pay your dues."*

I want to thank Jake and Kade, as well as the other members of GDLA's Legislative Action Committee on which I also serve: Vice President Marty Levinson of Hawkins Parnell & Young in Atlanta, Jonathan Adelman of Waldon Adelman Castilla Hiestand & Prout in Atlanta, and Barbara Marschalk of Drew Eckl & Farnham in Atlanta. These colleagues of mine and yours are working hard to turn the tide at the Capitol. Always feel free to reach out to Jake, me, or any one of these individuals with ideas or concerns related to happenings at the General Assembly.

Finally, I want to say what a pleasure it has been for me to serve as GDLA President as I pass the gavel to Pamela Lee. What was supposed to be a 12-month term starting June 2022 became a 20-month term because of immediate Past President George Hall's untimely passing in September 2021. Then we dealt with another tragedy when (GDLA Executive Director) Jennifer's husband Jeff, the President before George, died in May 2022. We honor their service to GDLA.

After I started practicing law at Powell Goldstein, Frazer & Murphy, I had the privilege of working with three GDLA Past Presidents there: Gene Partain (1982-1983), Frank Love (1974-1975) and Bob Travis (2007-2008). It became a professional goal of mine to follow in their footsteps and I am proud to have done so. Thanks for being a GDLA member and all you do for the organization!

For the Defense,



James D. "Dart" Meadow
Balch & Bingham, Atlanta

WEED RECONSTRUCTION AND EXPERT CONSULTING

EXPERIENCED
RESPONSIVE
PASSIONATE
ACTAR ACCREDITED

Weed Reconstruction & Expert Consulting

CRASH RECONSTRUCTION
HUMAN FACTORS
OCCUPANT KINEMATICS
3D SCANNING
DRONE FLIGHT
ECM/ACM IMAGING

Shelly Weed is a former police officer with 18+ years of crash reconstruction experience. She worked thousands of crashes during her law enforcement career. Shelly has testified as a crash reconstruction expert in Courts across Georgia, but she has also been qualified as an expert in human factors and occupant kinematics as they relate to crash reconstruction. She is fully accredited as a Traffic Accident Reconstructionist (ACTAR #2528). Shelly's breadth of expertise translates into a more thoughtful, tailored, and thorough analysis of every crash.

Amber Bishop is an ACTAR accredited Traffic Accident Reconstructionist (ACTAR #3780) and a licensed attorney. Amber has a degree in physics, a masters from Emory, and extensive accident reconstruction training. Prior to joining WREC, Amber was a litigator at a highly respected law firm in Atlanta. She worked at the Centers for Disease Control and Prevention as a research scientist and epidemiologist before attending law school. Amber has worked hundreds of crashes in her years at WREC. Amber's scientific knowledge, legal experience, and attention to detail touch every case WREC handles.

- **Female Owned and Operated**
- **6000+ Crashes Investigated**
- **20+ Years of Experience**
- **Succinct and Persuasive Expert Reports**
- **Urgent Response for Established Clients**
- **2000+ Hours of Advanced Training**
- **Deposition, Hearing & Trial Preparation Services**

WREC'S Crash Reconstructionists Investigate Crashes Involving:

- Commercial Vehicles;
- Passenger Vehicles;
- Pedestrians;
- Bicycles;
- Motorcycles.

WEED RECONSTRUCTION AND EXPERT CONSULTING

770.315.9636
www.wreckconsulting.com

Mass Torts

Continued from page 26

This was based on language in the contract between Georgia Power and North Brothers.

Georgia Power also argued that it was entitled to summary judgement because Plaintiffs' claims were barred by the statute of repose. This argument was raised in a supplemental motion for summary judgment, but the trial court did not address the argument. The Court of Appeals remanded the issue back to the trial court to consider if the statute of repose would bar Plaintiffs' claims.

Finally, Georgia Power filed Motions to Exclude the testimony of Dr. Arnold Brody and Dr. Edwin Holstein, expert witnesses for the Plaintiffs. The trial court denied the Motions to exclude, allowing Dr. Brody to testify about general causation of asbestos, and Dr. Holstein to testify about general causation and specific causation as related to asbestos exposure and Georgia Power.

The Court of Appeals affirmed the denial of the Motion to Exclude Dr. Brody, but vacated the denial of the Motion to Exclude Dr. Holstein and remanded for further proceedings. The Court of Appeals found that issues related to general causation of asbestos were not in dispute and thus both experts could testify about general causation. As for Dr. Holstein's testimony of specific causation, the Court of Appeals held that Georgia Power had sufficiently challenged Dr. Holstein's qualifications to give certain opinions, and remanded back to the trial court for analyze those qualifications. ◆

Products Liability

Continued from page 28

versed, agreeing with PTI that all strict liability claims under the Act are barred by the general tort statute of repose. The Court of Appeals concluded the use of "limitation" in the Act's provision meant the limitations period for bringing an action began to run once there is evidence of a physical impairment. In contrast, the tort statute of repose refers to a time after which an action cannot be commenced, regardless of whether a claim has accrued based on evidence of a physical impairment. Accordingly, the Court held the term "limitations period" in the Act refers only to the statute of limitation and does not prevent application of the tort statute of repose to bar strict liability claims under the Act. Further, the Court noted that if the General Assembly had wanted to prevent the statute of repose from barring these claims, it knew how to do so and could have done so, as it has done in other contexts. The Court of Appeals remanded the case for consideration of whether Plaintiffs' allegations of fraud were sufficient grounds to equitably estop PTI from raising the now clearly applicable statute of repose defense.

PRODUCTS LIABILITY; WRONGFUL DEATH; DEFECTIVE COMPONENT; DISCOVERY; PROTECTIVE ORDER: The "apex doctrine" does not apply in Georgia courts to establish a burden-shifting scheme or rebuttable presumption that "good cause" exists for a protective order prohibiting the deposition of a high-ranking executive. *General Motors, LLC v. Buchanan,* 313 Ga. 811, 874 S.E.2d (2022).

In a matter of first impression, the Supreme Court of Georgia addressed whether the "apex doctrine"—which shields from depositions high-level corporate executives who lack personal, unique knowledge of facts relevant to the litigation—could be used to establish whether "good cause" exists for a protective order under O.C.G.A. § 9-11-26(c). The Court held that the apex doctrine could not be used in such a way in Georgia courts.

Robert Buchanan sued General Motors ("GM") on behalf of his wife who was killed in a single-vehicle accident while driving her GM vehicle. The complaint alleged the accident was caused by a defective steering component. During discovery, Plaintiff sought to depose Mary Barram GM's CEO. GM moved for a protective order, arguing Ms. Barra had not been identified as a witness during discovery, did not have personal, unique information about the relevant issues, did not have any knowledge relevant to the steering component's design, and that any knowledge she had could be obtained less intrusively.

The trial court denied GM's motion for a protective order, rejecting its assertion that the apex doctrine was applicable to assess good cause under O.C.G.A. § 9-11-26(c). The Georgia Court of Appeals affirmed, noting the trial court could consider the apex doctrine factors in its analysis but was not required to do so.

The Georgia Supreme Court first distinguished the scope of discovery under Federal Rule of Civil Procedure 26 from Georgia's counterpart, noting Federal law includes a proportionality requirement where Georgia law does not. The Court noted, where, as here, the Georgia statutory language differs from that of the Federal Rules, federal authority is less persuasive to a Georgia court.

The Supreme Court then held the language of O.C.G.A. § 9-11-26(c), not the apex doctrine, should guide the protective order analysis. This means the result rests on one or more statutorily enumerated harms being specifically established and on the discretion of the trial judge. Additionally, while the apex doctrine factors may be considered where relevant, they are not dispositive, and high-ranking executives are not *de facto* immune from deposition in Georgia courts. Determinations about the propriety of a protective order must be made on a case-by-case basis. The Court vacated the Court of Appeals' opinion and remanded the case to the trial court for consideration of all relevant factors related to the protective order analysis. ◆

R&D
STRATEGIC SOLUTIONS

LEADERS IN TRIAL AND STRATEGIC LITIGATION CONSULTING

Our exceptional services deliver the R&D advantage throughout the litigation process:

- Focus Groups and Mock Trials
- Case Consultation
- Witness Preparation
- Online Jury Research
- Shadow Juries
- In-Court Jury Selection Assistance
- Post-Trial Juror Interviews
- Customized CLE Programs to Law Firms and Legal Organizations

Contact info:
Rick R. Fuentes, Ph.D. | R&D Strategic Solutions | Rfuentes@RD-SS.com | 770-392-1361
4780 Ashford Dunwoody Road | Suite A, #465 | Atlanta, GA 30338-5504 | www.RD-SS.com

Dr. Fuentes is a founding partner of R&D Strategic Solutions, LLC. He has specialized in jury behavior and decision-making and the evaluation of complex evidence for more than 25 years.

Counter-Anchoring

Continued from page 30

The defense can be hesitant to offer an anchor in the first place. They fear that jurors will see it as an admission of liability. They worry that if their anchor is too low, jurors will think it insulting, to the detriment of their credibility and likeability. In contrast, a counter that is too high may do little to bring down excessive damages requested by a plaintiff. However, the behavior of jurors in our research has given only limited support for these fears.

When the defense indicates at a mock trial that they are not liable but must suggest a damages amount in the event they are found to be, jurors take it to heart. Typically, one juror brings up the fact during deliberations and the group debates it. While it's true that in more extreme cases jurors will see a defense offer as an admission of liability, they generally find it reasonable for the defense to counter the plaintiff's offer even if they are not to blame. This practical consideration, as well as others, are front-of-mind for jurors. One will usually mention during deliberations that the defense amount is a necessary, expected, and smart means of bargaining down the plaintiff's unrealistic ask. This commonly elicits judgements of the plaintiff's request as "ridiculous," "exorbitant," or even "obnoxious." In response, another juror will usually opine that the requests are exaggerated because the plaintiffs, too, are bargaining smartly. That is, the plaintiffs never expect to receive an amount close to what they request. Jurors routinely personalize this process by likening it to their own experience of purchasing a car. This personalization is beneficial because it leads jurors to think in a grounded, rational way.

Of course, it is not ideal for a jury to view a defense offer as an admission of liability. But despite the plaintiff's anchor carrying more weight, counter-anchoring still pulls awards lower than other techniques.[7] Academic research also shows that when people are not confident in their judgement, anchoring has a strong effect[8] and as already discussed, jurors are generally not confident in their judgements about damages. Thus, having a low end to create a range is better than not having one at all. Without a counter-anchor, jurors have little more to go on than a massive plaintiff's request. Though they are told that the plaintiff bears the burden of proving their case, and they try to adhere to that guideline, jurors in our research more commonly revert to a "defense must defend" ideology. They routinely state that if the defense hasn't raised strong evidence showing they are not liable, it is because there is no such evidence. Jurors then fill in any missing information the defense hasn't provided, including dollar amounts, themselves. Here, they suffer from what we as litigation consultants describe as "errors of imagination." That is, their judgements are often outsized in proportion to actual damages. For these reasons, most defense arguments require a counter-anchor.

> *"Without a counter-anchor, jurors have little more to go on than a massive plaintiff's request."*

Formulating the Counter-Anchor

An unnecessary detriment may come into play in the process of formulating a counter-anchor, simply because of where this process naturally falls in the trial timeline. Defense teams often delay the development of their damages presentation since it comes at the end and because they are refining their estimate of the plaintiff's total request. Further, experience may nudge the defense to subconsciously assume settlement. These factors lead to damages getting glossed over because time runs out. With a plan to counter-anchor, defense counsel can instead benefit from focusing on damages from the beginning of a case. This limits the chances that time constraints will shortchange the damages argument. If the case does not go to trial, the work done to establish a counter-anchor will still inform settlement strategy. Though it's ideal to approach damages armed with every number from the plaintiff, much valuable work can be done while anticipating them. For instance, the defense can use its own experts, or borrow the methods of such professionals to determine estimates themselves.

It is safe to assume that in catastrophic injury cases, the plaintiffs will have experts such as a life care planner. Employing such an expert early on can aid the defense. The team can decide as work proceeds if they will need to retain this expert to testify at trial, or use the expert only initially, as a consultant. If preparing estimates without a life care planner, remember that damages experts are usually not professionals in each area they consider. Rather, they use the input of physicians, PhDs, and other professionals to advise their own offers. Further, life care planners hired to testify for plaintiffs often do not have long-term, one-on-one relationships with them. Thus, a good attorney can adopt their methods and materials to create a life-care plan and other estimates similar to the way in which these experts do.

Armed with this first-hand experience, an attorney might also probe costs from plaintiff experts that seem exaggerated. In catastrophic injury cases we routinely see total requests in the double-digit millions. Jurors can be willing to award that amount and more. However, even in cases of neurologic injury, average lifetime costs are sig-

DELTA |v|

Forensic Engineering

Nationwide accident reconstruction - at the speed of technology

In the aftermath of a motor vehicle accident, you need a forensic engineering firm that can act fast– without sacrificing accuracy. At DELTA |v| Forensic Engineering, we combine unmatched forensic expertise and objectivity with groundbreaking technology to bring our clients the fastest and most precise insights available.

When time and accuracy matter most, trust DELTA |v|.

Accident Reconstruction

Full Incident Analysis

- Scene Investigation
- Collision Dynamics
- Roadway Conditions
- Damage Matching

EDR Services

Heavy Truck and Passenger Car EDRs

- Chip-level Data Recovery
- Onsite Downloads
- Benchtop Imaging
- Surrogate Trucks

Forensic Animation

Science-Backed Visuals

- Video Cleanup & Enhancement
- Infographics & Static Renders
- Overhead & 3D Animation
- Fully Admissible Exhibits

Biomechanics

Injury Biomechanics Analysis

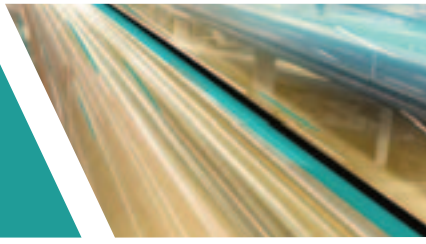
- Vehicle Inspection
- Occupant Kinematics
- Multi-Collision Injuries
- Injury Types

Resolution through engineering.

866.433.3358 | 24/7 Rapid Response

deltavinc.com

Charlotte | Nashville | Denver | Atlanta



nificantly lower. In cases of cerebral palsy, for instance, they are usually about $1 million.[9] This includes medical, non-medical, and indirect costs. More recent estimates for profound neurological impairment at birth are higher but are still in the neighborhood of $3 million.

Defense-generated life-care plans project lower costs for lifetime care by utilizing less expensive, but well-regarded and effective options for treatment and care. While it is not always the case, jurors tend to value and accept these reasonable alternatives. For instance, if a patient needs none of the advanced care that an registered nurse (RN) can provide, jurors appreciate the lower cost of employing a certified nursing assistant (CNA) instead. The same is true for the use of generic rather than brand-name medications. Additionally, if a neurologist recommends schooling, and the state offers it for free, jurors value the money this saves over private care. At times they even judge the state's offering superior to private options.

Presenting these practical elements of a counter-anchor may have an additional benefit. It may preempt the idealistic, theoretical mindset that we often see take over a jury, by eliciting the pragmatic reasoning of a few. Juries commonly contain a few people who are high in numeracy—they think in amounts and calculations rather than in philosophical ideas. In laymen's terms, these are "numbers people." While they don't necessarily have the mathematical sophistication of say, a physicist, they automatically start to add, subtract, and multiply when approaching a dilemma. When asked to decide if an award to an individual is fair, they immediately break it down into more understandable pieces numerically. For instance, they might divide the total to determine what it translates to monthly or yearly. This allows them to understand the amount more realistically, because they can compare it to what they live on themselves. It then becomes obvious that the award is exorbitant, tending to lower the amount they consider fair.

However, many jurors don't think in this way unless guided to it. Practically all jurors want to help a plaintiff who has suffered severe injury, of course. But with deep corporate pockets at their disposal and no practical ruler for how to compensate a person for loss of life or limb, this causes damages to soar. When the defense suggests a counter-anchor, substantiated with reasonable alternatives to an extreme award, it can prompt jurors headed for idealistic thinking to instead consider realistic factors. It can also provide those who are naturally practical with the material they need to persuade fellow jurors.

Defense attorneys know they must walk a thin line to argue damages down without perceived insult to the plaintiff. Some attempt to stay in the safe zone by sidestepping an explicit suggestion for total compensation. They instead offer the jury estimates for the major damages categories, hoping the group will sum them to determine the total award. The idea here is that the jury will not find the amount insulting since they arrived at it through their own calculation.

Another technique we have seen counsel use effectively is helping the jury to understand just how generous their estimate is—but without actually saying that, of course. When jurors are told, for example, that a plaintiff can no longer walk his favorite golf course due to loss of a foot, they can be astounded to learn that the defense's proposal would pay not only for the most advanced prosthetic foot but for tee times at the country's best resorts, for much of his life. Though it may seem like this would require an extremely large reward, it is usually a drop in the bucket compared to the plaintiff's ask, and that resonates with jurors. Precisely how the defense conceptualizes the worth of their estimate depends on the case, but the method of elaborating on the many specific benefits it will provide is the same.

Though our present climate of inflation in both the general economy and in nuclear verdicts create the opportunity for plaintiffs to win big, juries can still be persuaded by the grounded reasoning of the defense. Using counter-anchoring in this endeavor is one of the most effective ways to help juries adopt the realistic mindset from which equitable damages are awarded. ◆

Endnotes

1. Current US Inflation Rates: 2000-2022. https://www.usinflationcalculator.com/inflation/current-inflation-rates
2. Kollmeyer, B. (2022). The world's richest 10 men doubled their fortunes to $1.5 trillion during the pandemic, says Oxfam. MarketWatch. https://www.marketwatch.com/story/the-worlds-richest-10-men-doubled-their-fortunes-to-1-5-trillion-during-the-pandemic-says-oxfam-11642426379
3. World's Billionaires List. (2001). Forbes.
4. Mille, R., Dolan, K., Peterson-Withorn, C. (2023). Forbes Billionaires 2022: The Richest People in the World. World's Billionaires List. Forbes. https://www.forbes.com/billionaires
5. Speckart, G. & McLennan, Jr., L. (2002). Excessive Damage Awards and Tactics for Containment. For the Defense, 44.
6. Brenan, M. & Jones, J.M. (2021). Image Ratings of Several U.S. Industries Tumble. Gallup. https://news.gallup.com/poll/ 354653/image-ratings-several-industries-tumble.aspx
7. Campbell, J., Chao, B., Robertson, C., & Yokum, D. (2014). Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2470066
8. Jacowitz, K. & Kahneman, D. (1995). Measures of Anchoring in Estimation Tasks. Personality and Social Psychology Bulletin, 21, 11. https://doi.org/10.1177/01461672952111004
9. Economic Costs Associated with Mental Retardation, Cerebral Palsy, Hearing Loss, and Vision Impairment. (2004) Morbidity and Mortality Weekly Report. January 30, 2004; 53(03). https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5303a4.htm

Dr. Carol Jarzyna is a litigation consultant with GDLA Platinum Sponsor Courtroom Sciences, Inc., a national litigation support and litigation consulting firm. Dr. Jarzyna applies her training in social psychology and knowledge of personality traits, bias, attitudes, persuasion, group behavior, and research methodology to help achieve equitable litigation outcomes. The services she provides include pre-trial research such as mock trials and focus groups, witness training, juror profiling, jury selection, and post-trial juror interviews.

POINT TO POINT
FORENSICS

SERVICE AREAS:

- Personal Lost Wages
- Business Income / Business Interruption / Loss of Rents
- Financial Motive in Potential Arson / Fraudulent Claims
- Fidelity / Employee Theft
- Builder's Risk Claims
- Inventory / Stock Losses
- Business Valuation
- **Construction Claims and Disputes:**
  - ✔ Review of construction costs and lost profits due to delay
  - ✔ Analysis of change orders and cost overruns
  - ✔ Fraud Investigation
  - ✔ Subcontractor Payment Vouching

Forensic Accounting and Expert Witness Testimony for Insurance and Construction Claims

OUR MISSION

Point to Point Forensics is a uniquely positioned forensic accounting firm, focused on insurance and construction claims and related expert witness testimony. Point to Point Forensics delivers clear, compelling, and thorough analyses, while simultaneously remaining efficient and focused on excellent client service.

OUR HISTORY

Michael Shryock founded Point to Point Forensics in 2022, drawing from his more than 20 years of forensic accounting experience and his exposure to a wide range of claim types, from sole proprietors and homeowners up to Fortune 500 companies and major industrial construction projects.

Point to Point Forensics is based in the Atlanta, Georgia area and is capable of handling matters across the entire U.S.

CONTACT:

Michael Shryock, CFA CFE

mshryock@ptpforensics.com

Office: (678) 812-3262

Mobile: (404) 431-1855

Pointtopointforensics.com

Mr. Shryock has a wide breadth of experience in forensic accounting for insurance and construction-related matters. He has testified at arbitration, in Federal Court and in State Court. He has also been deposed on numerous occasions and has participated in multiple meditations and other claims settlement negotiations. He has been named as an expert in matters related to business interruption/lost profits, construction costs and related change order documentation, financial condition and motive in alleged arson claims, business valuation issues, and business inventory losses due to fire.

Flip-Flops

Continued from page 32

ground clearance of the hallux during barefoot walking of 42 mm but just 16 mm of clearance for flip-flops, suggesting an increased risk of tripping when wearing flip-flops.

The relative risk of slipping when wearing flip-flops, as compared to other footwear, has also been assessed, though research is currently limited. One research group measured kinematics, kinetics, and muscle activity during normal gait and various slip conditions and found that peak and mean vertical ground reaction forces were reduced in slippery conditions compared to dry conditions for all footwear types (Chander, 2015).

They attributed this to an incomplete weight transfer during unexpected slips and the anticipation of the slippery environment during expected slips. Interestingly, flip-flops were associated with the lowest mean vertical ground reaction forces among all footwear types in all slippery conditions, significantly less than Crocs and slip-resistant shoes in unexpected slips. In another study of the same data set, unexpected slips were also associated with a significantly more plantarflexed ankle and straighter knee 120 milliseconds after heel strike (the time point the authors noted as "the point of slip initiation or the period of the slip that determines the outcome of the impending slip, based on its severity").

The authors also found decreased tibialis anterior and increased medial gastrocnemius peak muscle activity when wearing flip-flops as compared to slip-resistant shoes (Chander, 2016). It was concluded that the slip-resistant shoes had better performance in preventing slips and maintaining relatively normal gait patterns in slippery conditions compared to flip-flops and thus were a better footwear choice for ambulating across slippery floors. A 2021 study identified the propensity for slips to occur while wearing flip-flops, particularly in wet conditions, because of the interaction not only between the flip-flop and the floor surface but also due to the potential decoupling between foot and flip-flop (Tennant, 2021).

The dry and wet available friction of various shoe sole materials, including flip-flops, has been independently measured on an assortment of surfaces with an English XL tribometer (Grieser, 2018). Among the shoe materials tested, athletic shoe material exhibited the smallest percentage change in dry versus wet available friction, with a 27% reduction in friction across all flooring surfaces when contaminated with water. The athletic shoe material had average Slip Index values of 0.70 under both dry and wet conditions. Of all footwear material types, the flip-flop material had the largest change in dry versus wet available friction, with Slip Index values around 0.50 when dry but less than 0.20 when wet, representing a 61% reduction in available friction across all surfaces.

The scientific literature and news media have both reported an increased risk for falling when wearing flip-flops, but it is unknown whether the average user is knowledgeable of this information. The purpose of the current study was to better understand whether ordinary people are generally aware of the increased risk of a slip, trip, or misstep while wearing flip-flops and to what extent they accept this risk. It was hypothesized that flip-flops are a relatively common footwear choice due to their ease of use and comfort. It was further hypothesized that people are aware of the increased risk of a slip, trip, or misstep when wearing flip-flops compared to closed-toe, flat shoes that attach around the heel, and that this knowledge and experience has little impact on their decision to wear flip-flops.

METHOD

A survey was developed to gain insight into the attitudes and behaviors of the general adult population as they relate to wearing flip-flops. The questionnaire, a series of online questions, was originally generated on SurveyMonkey and subsequently distributed through various social media and other electronic means to reach a broad group of backgrounds, ages, and locations throughout the United States.

A total of 788 individuals completed the survey (38% male, 62% female) between December 2019 and February 2021. The median age of the participants was 41 years (range: 15 to 86 years). Responses were reviewed and explored to identify themes and propensities in the attitudes and decisions of the participants. This research complied with the American Psychological Association Code of Ethics.

Survey

The survey consisted of 10 progressive questions, first targeting participants' basic demographics and then shifting to their familiarity, attitudes, and experiences with flip-flops (Table 1). Previous research and established techniques for questionnaire development (Meister, 1985) guided the crafting of the survey questions as well as the possible responses.

Statistical Analysis and Data Visualization

Participant responses were analyzed by considering either all participants or subsets of the sample when appropriate. Significant differences between subsets of the sample were examined via 2-sample tests of proportions, using the normal approximation and a 95% confidence level (statistical signifi-

AVALON HEALTH ECONOMICS

Economics Consulting
Health Economics
Expert Services

SERVICES

- Medical billing & fair market value
- Life care plans & medical necessity
- Product liability
- Contract & commercial disputes
- Damages & forensic economics
- Data science & statistical modelling
- Epidemiology & biostatistics
- Policy & regulatory analysis
- Expert services & testimony
- Health economics & outcomes research
- Economic modelling
- Cost impact & cost-effectiveness modelling
- Budget impact modelling
- Market scoping & access
- Management & strategic consulting

MARKETS

- Insurance & third-party payers
- Attorneys & law firms
- Medical services
- Hospitals & health systems
- Pharmaceuticals & biotechnology
- Medical devices & diagnostics
- Private equity & venture capital
- Consumer products
- Utilities
- Construction
- Transportation
- Public health
- Government

For more information visit:
www.avalonecon.com
Email: info@avalonecon.com
Office: (862) 260-9191

Table 1. List of Survey Questions

Q1. What is your birth year?
Q2. What is your gender? [Male, Female]
Q3. Do you at least occasionally wear flip-flops?
Q4. When it is warm outside, how frequently do you wear flip-flops? [Every day, A few times a week, About once a week, Once a month, Less than once a month?
Q5. Do you think that flip-flops are easy to wear? [Yes, No?]
Q6. When it is warm outside, do you think that flip-flops are comfortable to wear? [Yes, No]
Q7. Evaluate the following statement: Compared to sneakers, boots, or other closed-toe flat shoes that attach around the heel, I am more likely to trip, slip, or misstep when wearing flip-flops. [Moderately agree, Perhaps agree, Neutral, Perhaps disagree, Moderately disagree]
Q8. How frequently does the potential of a slip, trip, or misstep affect your decision to wear flip-flops? [Always, Usually, Sometimes, Rarely, Never]
Q9. Have you ever slipped, tripped or misstepped while wearing flip-flops? [Yes, No]
Q10. Have you ever injured yourself due to a slip, trip, or misstep while wearing flip-flops?

cance, $p<0.05$). All analysis was performed using R statistical software, version 4.0.5. Results from survey questions were visualized with box plots, reflecting the relative responses as a function of both age and gender.

RESULTS

Comfort and Ease of Use

Among the 788 participants in the study, 82% of participants reported at least occasionally wearing flip-flops [Q3]. 27% of participants indicated they wear flip-flops every day in warmer weather, while 38% said at least once per week, 10% said at least once per month, and 25% indicated they wear flip-flops less than once per month in warmer weather [Q4] (Figure 1). A large majority of participants thought flip-flops are easy to wear (83%) [Q5] (Figure 2) and are comfortable to wear when it is warm outside (74%) [Q6] (Figure 3). In fact, 85% of participants gave the same response (either yes-yes or no-no) to the questions related to ease and comfort [Q5, Q6]. Similarly, of those who wear flip-flops at least once a week, 97% found them easy to wear, and 94% found them comfortable in warm weather. In contrast, of those who wear flip-flops less than once a month, just 48% found them easy to wear ($p < 0.001$), and only 28% found flip-flops to be comfortable in warm weather ($p < 0.001$).

A large proportion (82%) of participants reported experiencing a slip, trip, or misstep while wearing flip-flops (hereafter, "adverse event") [Q9] (Figure 4), but just 25% of participants reported having an injury associated with an adverse event [Q10] (Figure 5). Among the participants who had experienced an adverse event, 39% rarely or never allowed the risk to affect their decision to wear flip-flops. Of the group that had not experienced an adverse event, 69% rarely or never allowed the risk to affect their choice ($p < 0.001$). Similarly, 38% of participants who had been injured during an adverse event rarely or never allowed such a risk to affect their decision to wear flip-flops, as compared to

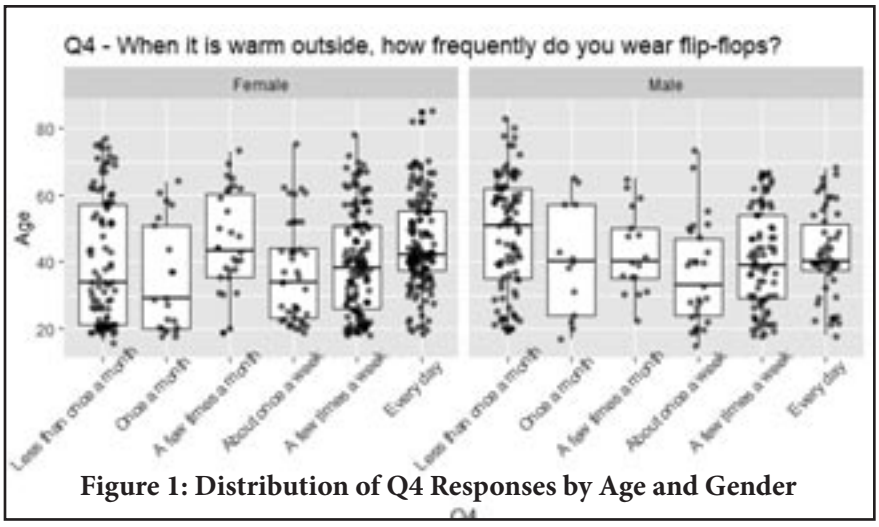


Figure 1: Distribution of Q4 Responses by Age and Gender

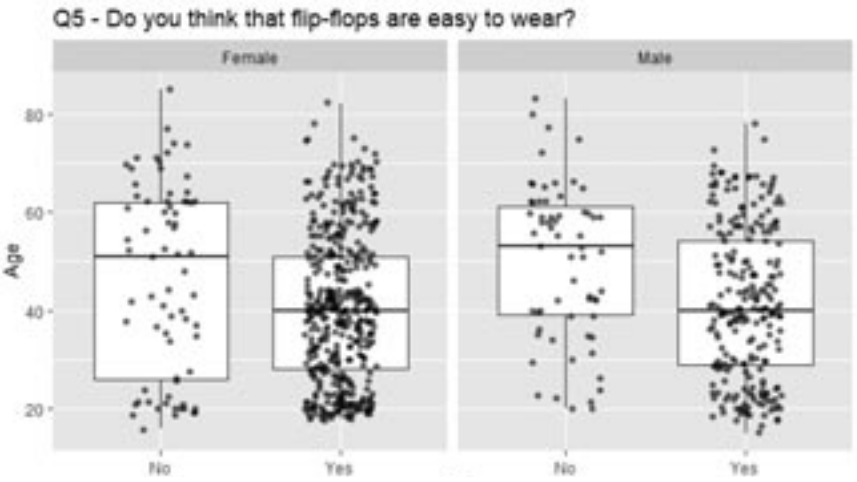


Figure 2: Distribution of Q5 Responses by Age and Gender

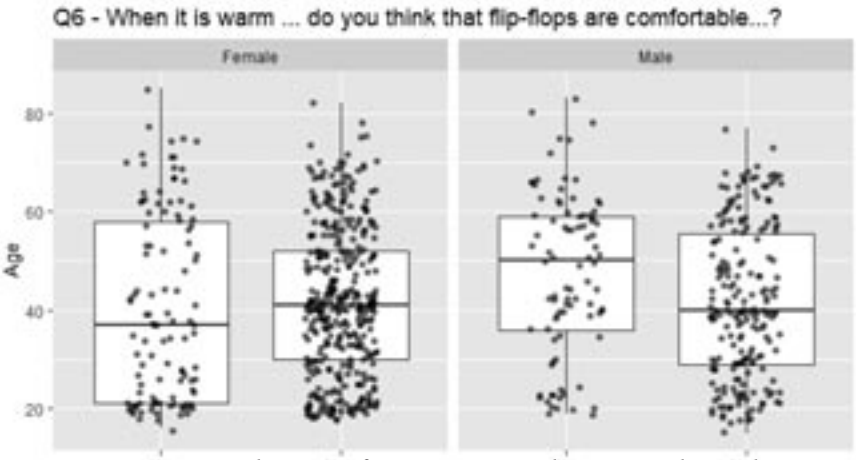


Figure 3: Distribution of Q6 Responses by Age and Gender

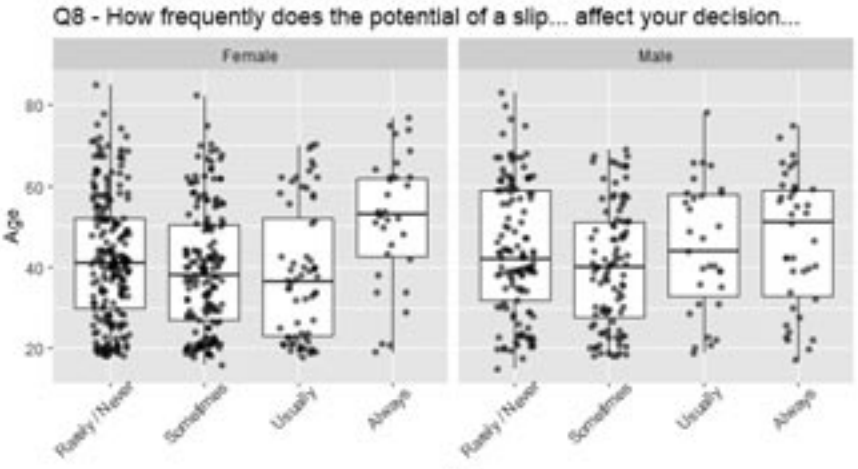


Figure 1: Distribution of Q4 Responses by Age and Gender

49% of participants who had never been injured in such an incident ($p < 0.001$).

Perception of Risk

Regarding the perception of risk as measured by the likelihood of an adverse event, 75% of participants agreed,that they were more likely to slip, trip, or misstep while wearing flip-flops as compared to closed-toed, flat shoes [Q7]. Similarly, 82% of those who had experienced an adverse event agreed that there was increased risk while wearing flip-flops as compared to closed-toed flat shoes. Further, prior injury while wearing flip-flops appeared to result in a higher awareness of the associated risks ($p < .001$), with 88% of those who had been injured while wearing flip-flops agreeing that there is an increased risk of an adverse event (vs. 69% of those who had not been injured while wearing flip-flops). Despite the generally high level of risk awareness among participants, nearly half (44%) indicated they rarely or never allowed the potential of an adverse event to affect their decision to wear flip-flops, with only 21% of participants indicating this potential risk always or usually affects their decision [Q8] (Figure 6).

Age and Gender

Various gender and age differences were discovered among the survey responses. More women than men at least occasionally wore flip-flops (87% vs. 72%; $p < 0.001$), thought flip-flops were easy to wear (85% vs. 78%; $p = 0.013$), and thought flip-flops were comfortable to wear in warm weather (77% vs. 70%; $p = 0.018$). However, more men than women agreed that they were more likely to slip, trip, or misstep while wearing flip-flops (84% vs. 70%; $p < 0.001$). Still, similar rates of women and men reported having an adverse event while wearing flip-flops (both 82%, $p = 0.90$) and reported injuries from such incidents (27% of women vs. 21% of men; $p = 0.07$).

Older participants (age > 55 years) were less likely than their younger counterparts (ages 18 to 54) to wear flip-flops at least occasionally (70% vs. 86%; $p < 0.001$).

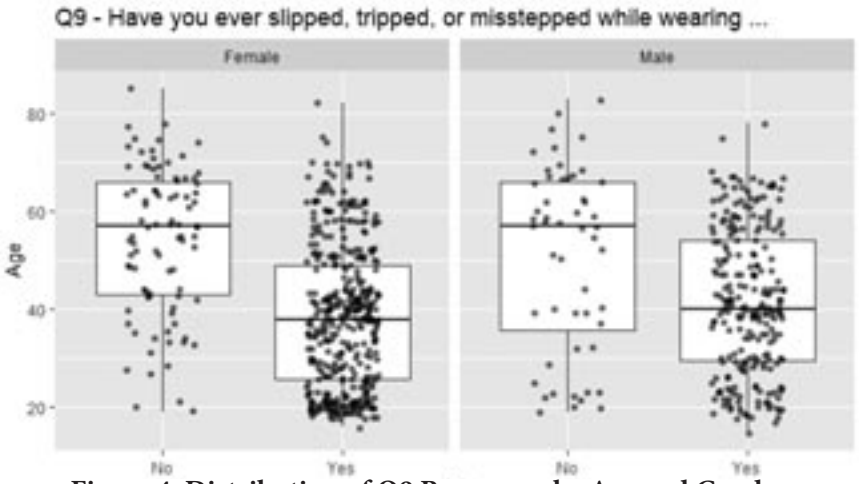


Figure 4: Distribution of Q9 Responses by Age and Gender

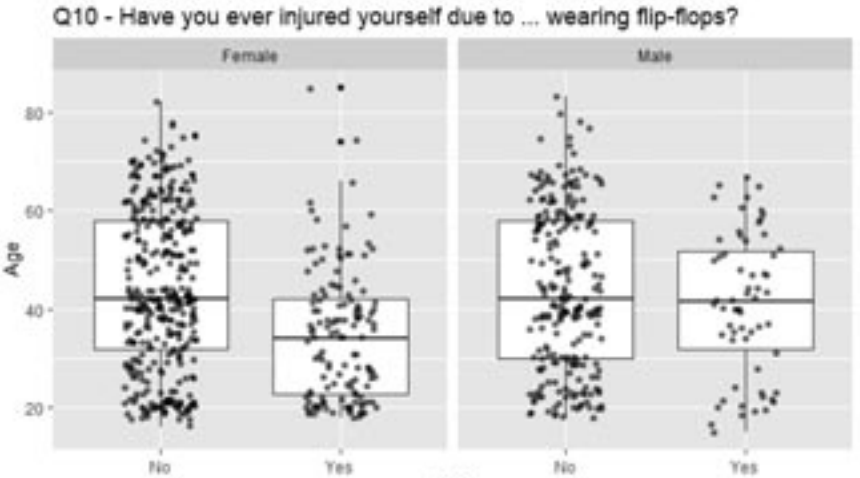


Figure 5: Distribution of Q10 Responses by Age and Gender

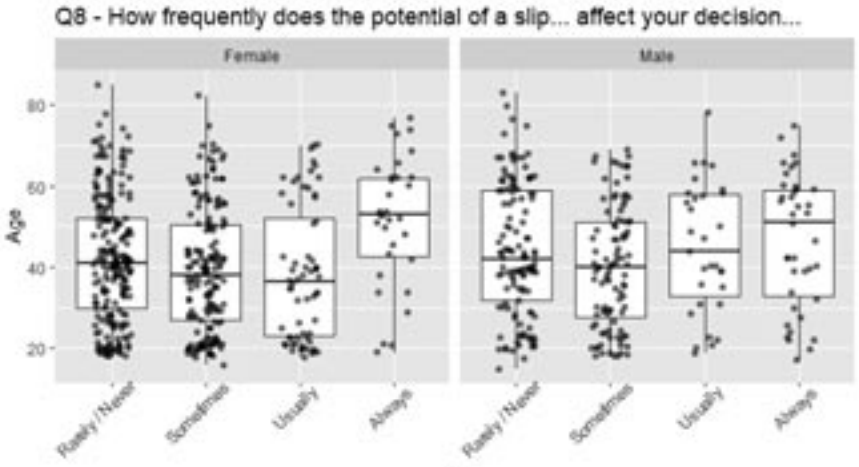


Figure 6: Distribution of Q8 Responses by Age and Gender

These older participants were also less likely to report that flip-flops are easy to wear (71% vs. 87%; $p < 0.001$) or that flip-flops are comfortable to wear in warm weather (67% vs. 77%; $p = 0.004$). Further, older participants were more likely to allow the potential of an adverse event to always affect their decision to wear flip-flops (15% vs. 7%; $p = 0.002$). Nevertheless, fewer older participants reported having experienced an adverse event (63% vs. 89%; $p < 0.001$).

Frequency of Use

The results of the survey revealed differences between frequent and infrequent (as defined by Q3) flip-flop wearers. Frequent wearers were more likely than infrequent wearers to report that flip-flops are easy to wear (95% vs. 53%; $p < 0.001$) and comfortable to wear in warm weather conditions (92% vs. 32%; $p < 0.001$). Frequent wearers appeared to be more aware of the risks associated with wearing flip-flops ($p < 0.001$). 71% of infrequent wearers agreed that they were more likely to experience an adverse event while wearing flip-flops as compared to closed-toed flat shoes, while 85% of frequent wearers agreed with that statement. However, fewer frequent wearers of flip-flops allowed the potential of an adverse event to affect their decision to wear flip-flops ($p < 0.001$), with only 14% of frequent wearers (vs. 40% of infrequent wearers) indicating this risk always or usually affects their decision.

DISCUSSION

The purpose of the current study was to assess whether the general population is aware of the increased risk of experiencing a slip, trip, or misstep while wearing flip-flops and to what extent individuals accept this increased risk or allow the risk to influence footwear choice. A broad swath of nearly 800 participants responded to a 10-question survey specifically designed to ascertain this information.

When evaluating responses to each of the survey questions individually, it was found that over three-fourths of the respondents noted that they at least occasionally

GRINDLEY WILLIAMS ENGINEERING

FORENSIC ENGINEERING

FULL-SERVICE FORENSIC ENGINEERING

GWE

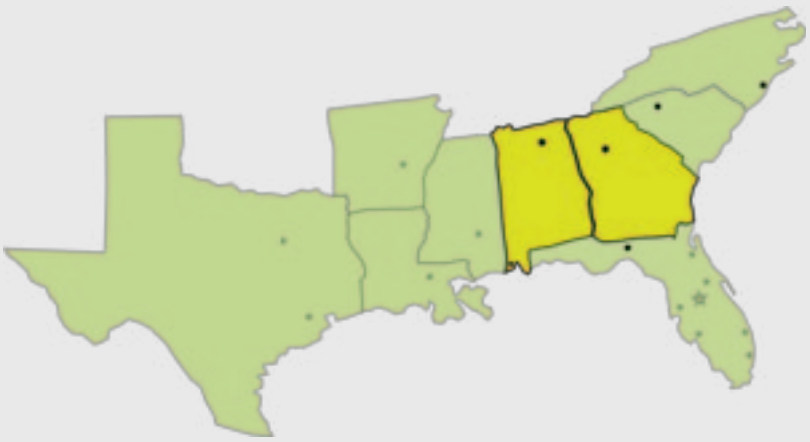
YOUR TRUSTED EXPERTS IN DELIVERING SIMPLE SOLUTIONS FOR ALL YOUR FORENSIC ENGINEERING NEEDS..

WE'RE HERE

NOW SERVING ALABAMA & GEORGIA

FORENSIC ENGINEERING

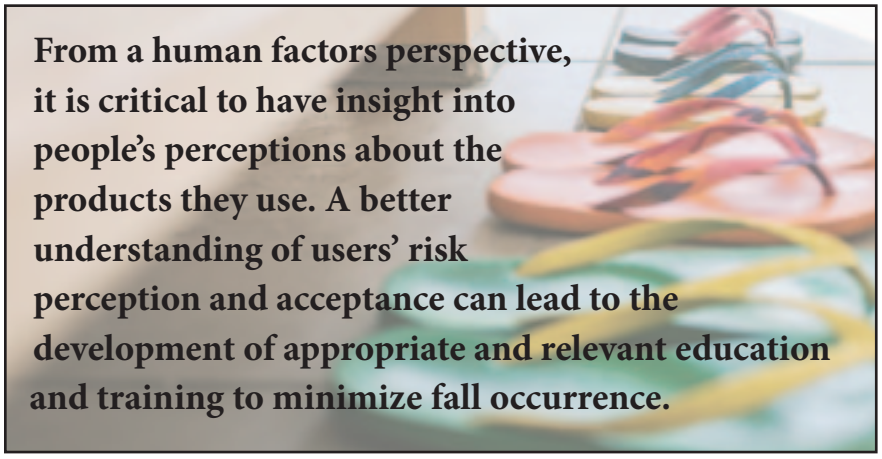
Grindley Williams Engineering is a multi-faceted consulting firm offering valuable solutions for complex losses. We are a firm with a foundation of talented professional engineers. utilizing technology and innovation, to bring the utmost expertise, efficiency and precision for any forensic engineering need. Service areas include:



SPECIALIZING IN...

- *CAUSE AND ORIGIN ASSESSMENTS*
- *ROOF DAMAGE ASSESSMENTS*
- *MOISTURE-RELATED INVESTIGATION*
- *STRUCTURAL DAMAGE ASSESSMENTS*
- *CAT RESPONSE*

CONTACT:
Melissa Roberts, Business Development Officer (AL & GA)
404.670.8773
mroberts@grindleywilliams.com



From a human factors perspective, it is critical to have insight into people's perceptions about the products they use. A better understanding of users' risk perception and acceptance can lead to the development of appropriate and relevant education and training to minimize fall occurrence.

wear flip-flops, think they are easy and comfortable to wear, agreed they are more likely to experience a slip, trip, or misstep while wearing flip-flops, and had, in fact, experienced such an adverse event. Further, when asked whether this risk affects their decision to wear flip-flops, over three-fourths of the respondents reported that the risk of an adverse event does not usually affect their decision. When considering combinations of survey questions, it was discovered that nearly 40% of participants provided the same responses to Q3, Q5, Q6, Q7, Q8, and Q9. This group of frequent flip-flop wearers thought flip-flops were easy to wear and comfortable and acknowledged that they had experienced an adverse event while wearing flip-flops but do not allow that to influence footwear choices despite the known increased risk. Based on the results of the current study, the comfort and ease of use, in the context of the disparity between the frequency of an adverse event and a resultant injury, are likely the compelling factors leading most people to accept the increased risk of an adverse event occurring while wearing flip-flops.

While an adverse event did seem to give affected individuals some pause in their decision to wear flip-flops, the data clearly demonstrated that people are aware of the increased risk associated with wearing flip-flops and accept that risk. This result parallels the previous biomechanical investigations of flip-flop wearing that found that gait is altered while wearing flip-flops, and the observed gait changes are consistent with an increased risk of slipping while wearing flip-flops (Chander, 2015; Chander, 2016).

The results of the current study, particularly the finding that most participants had, in fact, experienced an adverse event, are also consistent with the relatively lower available friction values found between wet walking surfaces and flip-flop materials (Grieser, 2018). The continued growth in popularity of flip-flops, combined with the current study's results, support the hypothesis that flip-flops are a common footwear choice despite the increased risk of adverse events.

Several interesting, if not predictable, patterns emerged regarding age, usage, and experience of flip-flop wearers. Older people were less likely than their younger counterparts to find flip-flops easy and/or comfortable to wear, were less likely to wear flip-flops on a frequent basis, were more likely to have their footwear choice be influenced by the risk of an adverse event, and therefore were less likely to experience an adverse event.

While research analyzing footwear choices in older adults has been unable to specifically identify the risks associated with elderly individuals wearing flip-flops, data from the current study suggest that older adults appear to be choosing not to wear flip-flops more often than their younger cohorts. Awareness of the increased risk and a comparative lack of ease and comfort in wearing flip-flops may contribute to older participants' decision to wear flip-flops less often.

The results of the current study, when combined with previous biomechanical research related to footwear choice, are a stepping-stone to numerous potential applications. From a human factors perspective, it is critical to have insight into people's perceptions about the products they use. A better understanding of users' risk perception and acceptance can lead to the development of appropriate and relevant education and training to minimize fall occurrence.

The current study showed that most users are aware of the increased risk of an adverse event and accept that risk. Therefore, it may be beneficial for fall risk prevention specialists to focus on limiting the frequency with which people wear flip-flops in higher risk situations (e.g., wet environments) rather than advocating for the strict prohibition of flip-flops.

While the current study was able to capture the responses of a large group of respondents across a wide range of ages and experiences, the study was not without limitations. The self-reporting nature of the survey facilitated the efficient gathering of a large amount of data. However, self-reported data can have limitations due to respondents' conscious or unconscious bias.

Further, the survey did not include questions related to geographical location, and it is likely that regional climate differences could affect participants' attitudes regarding flip-flops. Further, the age distribution of the current sam-

ple was not fully representative of the U.S. national population, skewing towards the median.

A larger sample that included more participants in the older and younger age groups would be helpful in generalizing the results. Future research could include an observational study of flip-flop wearers to give objective insight into the prevalence of falls, as opposed to relying upon self-reported data.

Future studies could also further explore whether flip-flop wearers know why there is an increased risk of an adverse event associated with wearing flip-flops or if they are only generally aware of this risk. Such survey questions could ask about users' awareness and knowledge of things like gait changes, frictional properties, and dry versus wet conditions.

CONCLUSION

Most people who wear flip-flops are aware of the increased risk of a slip, trip, or misstep while wearing them. In fact, most people have experienced such an adverse event while wearing flip-flops. Despite this awareness and previous history, the risk is accepted and the decision to wear flip-flops is infrequently influenced by this risk. This risk acceptance is likely associated with the perceived ease and comfort of wearing flip-flops and the comparatively low risk of injury following an adverse event. Older adults may be less likely to hold the same attitudes and manifest the same usage and experience patterns as their younger cohorts. ◆

REFERENCES

Carl, T. J., & Barrett, S. L. (2008). Computerized analysis of plantar pressure variation in flip-flops, athletic shoes, and bare feet. Journal of the American Podiatric Medical Association, 98(5), 374–378.

Center for Disease Control and Prevention. (2017). National Estimates of the 10 Leading Causes of Nonfatal Injuries Treated in Hospital Emergency Departments, United States—2017. NEISS All Injury Program, operated by the Consumer Product Safety Commission.

Chander, H., Garner, J. C., & Wade, C. (2015). Heel contact dynamics in alternative footwear during slip events. International Journal of Industrial Ergonomics, 48(2015), 158–166.

Chander, H., & Wade, C. (2015). Ground Reaction Forces in Alternative Footwear during Slip Events. International Journal of Kinesiology and Sports Science, 3(2).

Chander, H., Wade, C., Garner, J. C., & Knight, A. C. (2017). Slip initiation in alternative and slip-resistant footwear. International Journal of Occupational Safety and Ergonomics, 23(4), 558–569.

Chen, T. L. W., Wong, D. W. C., Xu, Z., Tan, Q., Wang, Y., Luximon, A., & Zhang, M. (2018). Lower limb muscle co-contraction and joint loading of flip-flops walking in male wearers. PLoS ONE, 13(3), 1–12.

Davis, A., Haines, T., & Williams, C. (2019). Do footwear styles cause falls or increase falls risk in healthy older adults? A systematic review. Footwear Science, 11(1), 13–23.

Grand View Research. (2019). Flip Flops Market Size, Share & Trends Analysis Report By End User (Female, Male), By Distribution Channel (Online, Offline), By Region (North America, APAC, Europe, MEA), And Segment Forecasts, 2019—2025, Report ID GVR-3-68038-730-8.

Grieser, B. C., & Frantz, J. (2018). Slip resistance assessment of common shoe sole materials on selected floor surfaces. Proceedings of the Human Factors and Ergonomics Society, 1, 435–439.

Meister, D. (1985). Behavioral Analysis and Measurement Methods. John Wiley & Sons.

Menant, J. C., Steele, J. R., Menz, H. B., Munro, B. J., & Lord, S. R. (2008). Optimizing footwear for older people at risk of falls. Journal of Rehabilitation Research and Development, 45(8), 1167–1182.

Sharpe, T., Malone, A., French, H., Kiernan, D., & O'Brien, T. (2016). Effect of flip-flops on lower limb kinematics during walking: a cross-sectional study using three-dimensional gait analysis. Irish Journal of Medical Science, 185(2), 493–501.

Shroyer, J. F., & Weimar, W. H. (2010). Comparative Analysis of Human Gait While Wearing Thong-Style Flip-flops versus Sneakers. Journal of the American Podiatric Medical Association, 100(4), 251–257.

Tennant, L. M., Fok, D. J., Kingston, D. C., Winberg, T. B., Parkinson, R. J., Laing, A. C., & Callaghan, J. P. (2021). Analysis of invoked slips while wearing flip-flops in wet and dry conditions: Does alternative footwear alter slip kinematics? Applied Ergonomics, 92, 103318.

World Health Organization. (2021). Falls. https://www.who.int/news-room/fact-sheets/detail/falls. Accessed 5/11/2021.

Zhang, X., Paquette, M. R., & Zhang, S. (2013). A comparison of gait biomechanics of flip-flops, sandals, barefoot and shoes. Journal of Foot and Ankle Research, 6(1), 45.

Each author works with ESi, a GDLA Platinum Sponsor. David Fortenbaugh is a consultant and project manager for matters related to product liability, premises safety, and accident reconstruction. He specializes in the human factors and biomechanics/injury aspects of accidents. He has forensically investigated over 750 accidents, including over 150 falls following a slip, trip, or misstep. He has extensive experience in multidisciplinary studies of automotive, marine, consumer, and industrial products.

Peggy Shibata specializes in mechanical engineering and biomechanics, with particular expertise in accident reconstruction, whole-body kinematics, balance, gait, human injury tolerance, and injury analyses associated with transportation, recreational activities and equipment, and falls. Relevant experience includes the evaluation of biomechanical and safety issues related to consumer products, assessment of product design relative to applicable safety standards, and adult and pediatric surrogate testing.

Manuel Meza-Arroyo has significant experience in the field of human factors and ergonomics. He specializes in human perception and attention, eye movement behavior during collision detection, lighting and visual conspicuity, human learning and performance, and the effects of aging on visual perception and attention. He also has significant experience developing psychophysical experiments, experimental designs, and advanced statistical analyses.

Keith Thobe has over 27 years of experience in engineering, which includes working with powertrain, construction equipment, marine, locomotive, power generation, and medical devices. He has been involved in the design, analysis, testing, and manufacturing of engineered products, as well as having extensive involvement in the application of statistical methods. His capabilities include data analysis, Failure Mode and Effects Analyses (FMEA), Design of Experiments (DOE), and statistical modeling.

Torrence Welch specializes in the biomechanics of human injury, vehicle accident reconstruction, slip-and-fall events, occupational injury, reactive muscle activity, and human balance control and stability. Dr. Welch has offered expert testimony in the fields of accident reconstruction and injury biomechanics in Federal, State, and local Courts throughout the United States.

Whiplash

Continued from page 36

rear-end collision increases, the risk of injury also increases. In moderate and severe cases, we see the soft tissue neck pain turn into a whiplash diagnosis.

Signs of a whiplash injury from a rear-end collision include headaches, shoulder pain, and/or neck pain. When serious whiplash symptoms from a motor vehicle collision are left untreated, the initial symptoms could develop into chronic symptoms. How long the whiplash symptoms will persist depends on physical therapy interventions, the severity of the collision, and other unique factors that are case and occupant depe

What Can a Forensic Biomechanical Engineer Do?

Biomechanical engineering analysis applies the concepts of mechanical engineering to biological structures of the human body (such as joints, bones, muscles, tendons, or ligaments). This is a forensic biomechanical engineer's area of expertise, and it helps determine how different parts of a person's body would respond to the forces resulting from rear-end collisions.

A forensic biomechanical engineer can also assess the severity of the collision, along with other contributing factors, and compare all the evidence to the risks of short-term and long-term whiplash, as well as other reported injuries from a rear-end collision. A forensic biomechanical engineer can also take into account an occupant's past medical history when assessing these risks. ◆

Karla Cassidy is a Senior Engineer in J.S. Held's Accident Reconstruction Practice. J.S. Held is a GDLA Platinum Sponsor. Ms. Cassidy has been an active member in the biomechanics community since 2006 and in the accident reconstruction industry since 2010. Her expertise spans both biomechanical and mechanical engineering. She has been involved in hundreds of cases involving vehicles, pedestrians, motorcycles, farm equipment, and cyclists. Her specialty areas are biomechanics, personal injury, injury probability, seatbelt usage, slip, trip and falls, and determination of occupant position. Ms. Cassidy also conducts collision reconstruction and damage consistency analyses. She is a published author and has provided litigation support.

Support GDLA's Sponsors

The GDLA sponsors can be a key piece of your case strategy puzzle. When hiring a sponsor, please let them know their support for GDLA was a factor. Log into the members only area and click GDLA Sponsors to see company descriptions, services offered, and contact info.

PLATINUM

AccuMed Healthcare Research

ARCCA

Avalon Health Economics

BAY Mediation & Arbitration

Bennett Thrasher

Collision Specialists, Inc.

Courtroom Sciences, Inc.

Delta |v|

DigiStream Investigations

Elite Medical Experts

ESi

Exponent

FORCON

Grindley Williams

Henning Mediation & Arbitration

InQuis Global

J.S. Held

LexisNexis

MDD Forensic Accountants

Point to Point Forensics

Relevant Data Technology

R&D Strategic Solutions

Veritext

Weed Reconstruction & Expert Consulting (WREC)

GOLD

Biodynamic Research Corporation

Elizabeth Gallo Court Reporting

Georgia Academy of Mediators & Arbitrators

Injury Claims Solutions

Rimkus Consulting Group

YOUNG & Associates

www.GDLA.org


1-855-CSI-6776
www.collisionspecialistsinc.com
CSI
Collision·Specialists·Inc
ACCIDENT RECONSTRUCTION
CMV COMPLIANCE
VEHICLE/SCENE INSPECTIONS
UAV
FARO 3D SCANNING
EXPERT TESTIMONY
NIGHT-TIME TESTING
24/7 IMMEDIATE RESPONSE
DOWNLOADS