

# GDLA NEWSLETTER

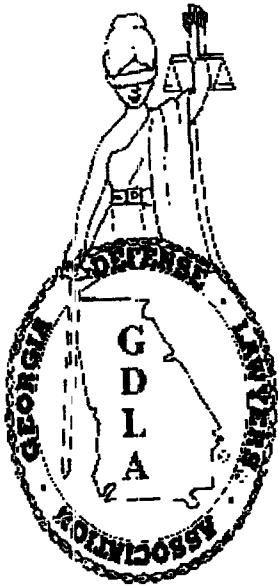
Volume 8

Editor: Morton G. Forbes

June 1999

## THE PRESIDENT'S MESSAGE

BY: Steven J. Kyle



We are on our way to Ponte Vedra!

By now, I hope that each of you has received one of the several mailings sent out announcing our Annual Convention to be held at the Ponte Vedra Beach & Spa Resort on June 17-20, 1999.

We have changed the time of our annual meeting from late April to mid-June to accommodate and encourage families to attend this meeting. We have tried to incorporate all of the ingredients into a "can't-miss" meeting. The cost of registration is only \$125. The Alabama Defense Lawyers charges \$350 for their annual summer meeting. We have persuaded Ponte Vedra to give us a reduced room rate of only \$195 plus tax per room. Jacksonville Beach is gorgeous at this time of year and it is excellent opportunity for you to bring your children or grandchildren and enjoy the Florida sand, surf and sun.

If you want to extend your vacation by coming earlier or staying

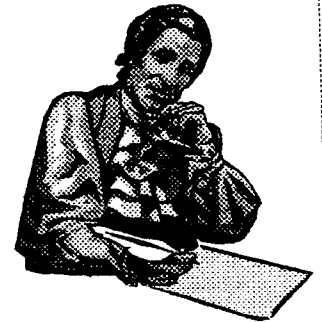
later, Ponte Vedra will accommodate you.

We will have two cocktail parties and a dinner that will cost you, your spouse and family members absolutely nothing. At the dinner, we will have a special children's menu. At the cocktail parties, there will be Kool-Aid and snacks for the children.

We have a dynamite program already approved for 6 hours of CLE credit. Our keynote speaker is Jo Ellen Dimitrius who will conduct a mock trial and assist us with a program on jury selection.

The most important ingredient of the GDLA is the networking and camaraderie among insurance defense lawyers. We will have a competition for the kids.

The substantive law committees will hold their meetings. There is a good deal of information we need to pass along to you on issues that affect the Association and the insurance defense practice.



Please make plans to join us as we usher in the new millennium.

Yours truly

Steven J. Kyle  
President

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## MINUTES OF THE GDLA WINTER BOARD OF DIRECTORS MEETING The Mills House, Charleston, S.C. February 20, 1999



The GDLA Winter Board of Directors Meeting was held at The Mills House in Charleston, S. C., February 19-20, 1999. The business meeting, convened at 8:00 A.M. on Saturday, February 20, 1999 and adjourned at 11:30 A.M.. The meeting was called to order by Executive Vice President Duncan. Other officers in attendance were vice Presidents McLelland, Hill and Buchanan and Secretary-Treasurer Melton. President Kyle attended by teleconferencing connection from Waco, Texas. Past Presidents Richardson, Welch, Whitworth, Forbes, Brooks and Love were in attendance. Directors Scrudder, Smith, Travis, Griggs, Rominger, Brown and Foster were in attendance. vice President Penson, Immediate Past President Chambless and Directors Young, Edwards, Wasdon, Demming and Clark were unable to attend. The minutes of the 1998 Fall Board of Directors meeting were approved.

Mr. Kyle recognized the aforementioned past presidents and stated appreciation for the continued commitment of the past presidents to the vitality of the organization.

Mr. Melton delivered the treasurer's report. The organization had a positive bank balance as of February 8, 1999.

Mr. Melton and Mr. Buchanan delivered the Trial

Academy Committee report. This was probably the most Successful Trial Academy to date. We budgeted for 50 students and 46 students attended. The student evaluations were overwhelmingly positive. Revenues totaled approximately \$13,500 and expenses totaled approximately \$15,500. The deficit was below what was expected. Ms. Denning has consented to serve as "Exalted Leader" for the 1999 Academy. Rusty Gunn has consented to assume that post for the 2000 Academy. The 1999 Academy faculty will be Kay Demming, Jerry Buchanan, Wade Monk, Greg Melton, Rusty Gunn, Sandy Owens, Greg Hodges, Mary Katz, Gordon Smith, Jim Elliott and George Duncan. President Kyle appointed the aforementioned faculty members as the 1999 Trial Academy Committee.

President Kyle presented the Amicus Curiae Committee report advising that the committee had received several requests and had, in fact, published two briefs. Mr. Buchanan requested that Chairman Tom Alexander advise the Board of the organizations position as set forth in any subsequently published brief so that Board members might respond informatively to any inquiry or comment.

President Kyle reported that the just completed Winter CLE Seminar, chaired by Jimmy Singer, was the most successful to date. The seminar was held in

Atlanta and was attended by 70 members. It was discussed that the organization has historically absorbed the expense of this seminar which, over the last three years, has averaged costing \$3,000. A motion by Mr. Forbes, seconded by Mr. Brown, unanimously passed that the organization would henceforth charge for attendance at the Winter CLE Seminar in an attempt to "break even." Based on the projected costs of the just completed seminar, a charge of \$50.00 per attendee would have resulted in an estimated break-even status.

Mr. Forbes reported on the GDLA Newsletter. The organization is not supporting the Newsletter. Mr. Forbes urged the membership to submit news worthy items or attempts at dubious scholarship for publication. President Kyle advised he would remind each Chair of a standing committee to generate an article on a quarterly basis for publication.

Mr. Buchanan reported on the status of the 1999 Law Journal. All authors have committed and publication in time for the annual meeting is anticipated. A general discussion was held concerning the cost/benefit of the Law Journal. The 1996 Journal cost \$10,500. The 1997 Journal cost \$11,100. The 1998 Journal cost \$12,800. It is estimated that the 1999 Journal, if published in the normal fashion

will cost approximately \$13,500. It was discussed that the Law Journal does not generate any revenue for the organization. Mr. Forbes and Mr. Rominger strongly felt that our membership needed to receive certain things, such as the Law Journal in return for dues payments. It was discussed that the organization has historically provided a copy of the Journal to all trial court and appellate judges. It was discussed that significant cost savings might be realized by publishing the Journal on the Internet. Mr. Duncan suggested looking at the cost of publishing the Journal on compact disc. President Kyle directed that Mr. Melton determine the publication cost of roster pages and present that information at the next Board of Directors meeting. No official action was taken.

Mr. Buchanan reported on the up and running GDLA web page. An open letter to the membership concerning the web page was published in the February Newsletter and is recommended reading for anyone seeking to use this new resource.

President Kyle confirmed that the new Younger Lawyers Committee of the organization would be for members under the age of 36 with fewer than five years in practice.

Mr. Scudder reported for the Long Range Planning Committee. The committee met with Bill Smith, General Counsel for the State Bar of Georgia to discuss the issue of whether litigation guidelines and third party fee bill audits constitute interference with an attorney's exercise of pro-

fessional judgment in violation of CPR Rule 41. Mr. Smith was clearly of the opinion that these practices "could" amount to such a violation. He stated that no State Bar complaint had yet been filed against an attorney under these circumstances. The pros and cons of the State Bar issuing an "advisory opinion" were debated. Mr. Rominger advised that at least one of his clients had specifically asked whether such a State Bar opinion had been issued in Georgia. The matter remains unsettled and troubling. Mr. Scudder will announce a meeting of this committee prior to the next Board of Directors meeting.

Mr. Rominger reported for the Ethics and Professionalism Committee. He advised that his committee believes that the pervasiveness of litigation guidelines and third party fee bill audits is the single most important ethics problem facing our membership. President Kyle appointed the members of Mr. Rominger's committee to the Long Range Planning Committee to facilitate a joint approach to this problem.

President Kyle delivered the Legislative Committee report. Two pieces of proposed legislation which could impact defense practice are the vanishing venue and corporate venue bills. It was the sense of the Board that our organization should oppose passage of this legislation. Unless either or both bills appear on the Senate Subcommittee Rules Calendar, it was felt that no action need be taken by the committee or the organization prior to the expira-

tion of this Legislative term.

President Kyle reported on the status of the Substantive Law Committees. It was the sense of the Board that President Kyle instruct each chairperson of each committee that it was the responsibility of the committee to author a law journal article.

Mr. Richardson delivered the membership Committee report. Blair Cleveland, Robert L. Barry and Anthony A. Rowell were proposed by Mr. Richardson for membership. The motion was seconded by Mr. Forbes. Approval was unanimous. Mr. Richardson advised that he was reviewing applications from ten additional individuals. Mr. Richardson expected to be able to make a recommendation regarding these applicants at the next Board of Directors meeting.

Mr. Duncan reported on the status of preparation for the 1999 annual meeting (June 17-20, 1999 at Ponte Vedra, Florida). The focus is on jury selection and jury dynamics. A mock trial format will be used with local residents serving as jurors. The key note speaker is nationally prominent jury consultant JoEllen Demetrius. It was the sense of the Board that we need to advertise early and often to stimulate attendance. A motion by Mr. Brown, seconded by Mr. Whitworth that we publish an advertising flyer was unanimously approved. A motion by Mr. Whitworth, seconded by Mr. Duncan to raise the annual meeting registration fee by \$25.00 not to exceed

\$125.00 was unanimously approved.

Items of new business were as follows:

A motion by Mr. Whitworth, seconded by Mr. Forbes to hold a Spring Board of Directors meeting was unanimously approved. It was the sense of the Board that such a meeting would fill the void created when the annual meeting was moved from April to June. It was the sense of the Board that the Spring meeting should occur during the last two weeks of April, if possible. Mr. Richardson was asked to explore the availability of Callaway Gardens, Reynolds Plantation or Chateau Elan as proposed sights for the Spring, 1999 Board of Directors meeting.

President Kyle reappointed Mr. Forbes as the organization's representative to the DRI.

Mr. Melton presented financial information which showed that organization expenses were increasing faster than revenues. A general discussion regarding the concept of increasing revenues ensued. Mr. Forbes proposed investigating advertising revenues. A question was posed as to whether we should "sell" our membership mailing list to vendors. It was noted that our mailing list is very readily accessible from back issues of the Law Journal and on our website. There was discussion about allowing vendor participation for a fee at the annual meeting. President Kale appointed Mr. Melton to Chair

the Alternative Revenue Committee.

Items of old business were as follows:

A reminder that the 2000 annual meeting will be held at the San Destin Hilton Hotel at San Destin, Florida. Mr. Richardson was requested to confirm a weekend in June, 2000 after the conclusion of the school year that did not conflict with the annual meeting of the State Bar of Georgia.

Mr. Melton advised he would present a proposed FY99 Budget to the Board at the Spring meeting. There being no other business, the meeting was adjourned.

## Mark your Calendars!



**\*June 17-20, 1999 Annual Convention at Ponte Vedra Beach & Spa Resort**

**\*October 6-10, 1999 Defending Liberty's Dream  
DRI'S Fourth Annual Meeting  
in New York City**

## CASE SUMMARIES

### U.S. SUPREME COURT RESOLVES SIGNIFICANT REMOVAL ISSUE

The United States Supreme Court just resolved one of the recurring dilemmas involving cases that are subject to removal to federal court on diversity jurisdiction. 28 U.S.C. § 1446 (b) provides that a notice of removal "shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the [complaint]." The Fifth and Seventh Circuit Courts of Appeal held that the time for removal was triggered upon receipt of a complaint by any means, including a courtesy copy sent by regular mail and presumably a facsimile copy. *Reece v. Wal-Mart Stores, Inc.*, 98 F.3d 839,841 (C.A.5 (1996)); *Roe v. O'Donohue*, 38 F.3d 298, 303 (C.A. 7 1994); Moreover, the cases were unclear whether the complaint must have been filed to trigger the 30 day time period for removal. District Courts in South Carolina and New York held that the 30 day time period was triggered only upon service of the summons and complaint. *Bowman v. Weeks Marine, Inc.*, 936 F.Supp. 329,333 (D.S.C. 1996); *Baratt v. Phoenix Mut. Life Ins. Co.*, 787 F.Supp. 333, 336 (W.D. N.Y. 1992).

In *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, \_\_\_ U.S. \_\_\_ (1999) (Case no. 97-1909, decided April 5, 1999), the Supreme Court held that the 30 day time limit to remove a case to federal court

based on diversity of jurisdiction is triggered by service of process on the first defendant, not the receipt of a courtesy copy of the summons and complaint. Justice Ginsburg noted that the "or otherwise" provision in 28 U.S.C. § 1446(b) was added "in 1949 to govern removal in States



where an action is commenced merely by the service of a summons, without any requirement that the complaint be served or even filed contemporaneously." Moreover, the court's holding was based on a "bedrock principle: An individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court's authority, by formal process.

This decision should allay defense lawyers' fears who receive a courtesy copy of a complaint in a case where remove is advisable.

### COURT OF APPEALS KILLS DIRECT ACTION STATUTE, AT LEAST TEMPORARILY

On September 11, 1998, the Georgia Court of appeals

killed the Georgia Direct Action Statutes, at least until the Georgia Public Service Commission or Legislature responds. O.C.G.A. §§ 46-7-12(e) and 46-7-58(e) (hereinafter the Direct Action Statutes) permit a plaintiff to join a motor carrier's liability insurer in a tort action. Of course, this is in direct conflict with the traditional rule that the mere mention of liability insurance can be grounds for a mistrial. However, the Georgia Supreme Court upheld the constitutionality of the direct action statutes in [insert]. However, a little-known provision in the rules of the Georgia Public Service Commission has effectively voided the Direct Action Statutes.

In *McAdams v. United States Fire Insurance Company*, 234 Ga. App. 324 (1998), the plaintiff filed a wrongful death action against C.T. Harris (a motor carrier) and joined United States Fire Insurance Company (hereinafter "USFIC"), allegedly pursuant to O.C.G.A. § 46-7-58 (e). USFIC filed a motion for summary judgment on the ground that plaintiff failed to prove the essential elements to join USFIC. The trial court granted USFIC's motion and the Court of Appeals affirmed.

In analyzing *McAdams*, the Court of Appeals started with the premise that the Direct Action Statute is in derogation of the common law and must be strictly construed. The court further held that the plaintiff has the burden of proving that the

policy of liability insurance coverage was filed with and approved by the Public Service Commission. See *Canal Ins. Co. v. Farmer*, 222 Ga. App. 539, 540 (1996). In lieu of filing the entire policy, the rules of the PSC permit carriers to submit a certificate of insurance, as long as it conforms to "the forms prescribed and approved by the Commission." Rule 1-8-1-.07(a). The Court of Appeals has interpreted these rules to require the filing of a Form E certificate of insurance and a Form F endorsement. See *Kinard v. Nat. Indem. Co.*, 225 Ga. App. 176 (1997). Moreover, the stan-

dard Form E certificate of insurance used by the PSC states on its face that the Form F endorsement must be attached to the Form E. In *McAdams*, the motor carrier had filed a Form E certificate of insurance, but not a Form F endorsement. Under these circumstances, the Court of Appeals affirmed the trial court's grant of summary judgment in favor of USFIC. The Supreme Court denied certiorari on January 15, 1999.

As a practical matter, I believe the PSC has never filed a Form F along with the Form E. In fact, I believe it was the PSC's policy that they would not have accepted a Form F if a carrier had attempted to file one. In other words, it appears that the Direct Action

Statutes are dead for the time being.



## GDLA WEBSITE

Just a reminder that the GDLA website is up and running.

The bulletin board have gotten some use, but not as much as needed in order to make the web site most beneficial to our members. If you have any new, go to the "Members Area" of the website and post a note on the appropriate bulletin board.

Also, starting very soon, we will have instant e-mail capability. The organization can e-mail all of you with important reminders, and each of you will have the ability to e-mail, with the sin-

gle click of a mouse button, all members of GDLA who are "on line." For example, if you are about to take the deposition of an expert, you can instantly e-mail all of your fellow GDLA members to see if they have any information about the particular expert. Or, if you are involved in a case that results in some significant law development, it would be helpful if you would e-mail the entire membership with a "law alert."

By the time you receive this newsletter, each of you will probably have received one or more e-mail messages from the Association, providing you with details on this

new service, and reminding you about our annual meeting in Ponte Vedra. We invite and encourage you to use the web page and the instant e-mail feature to enhance your law practice.

In the meantime, if you have any questions, comments or suggestions about the web page, please be sure to write or e-mail me ([jablaw@msn.com](mailto:jablaw@msn.com)). It's your web page; help us tailor it to your needs.

## SUMMARY

### 1999 WORKERS' COMPENSATION LEGISLATION

#### **Section 1 - Amends O.C.G.A. 34-9-103**

This section provides for cross appeals to the Appellate Division by the Appellee within 30 days of the notice of award by the Administrative Law Judge.

#### **Section 2 - Amends O.C.G.A. A. 34-9-127**

This amendment allows the Board to review the status of a self-insured after the self-insured has been involved in a merger or acquisition. The Board will determine whether the employer continues to meet the self-insurance requirements of O.C.G.A. 34-9-121.

#### **Section 3 - Amends O.C.G.A. A. 34-9-200.1**

This amendment corrects a typographical error by changing a reference from 34-9-21 to 34-9-18.

#### **Section 4 - Amends O.C.G.A. A. 34-9-221**

This section reinstates the reference to code section 34-9-127 that was accidentally deleted last year. The amendment last year should have been made to delete the reference to subsection (b) of O.C.G.A. 34-9-127 and not the entire reference to 34-9-127.

#### **Section 5 - Amends O.C.G.A. 34-9-226**

This amendment provides the Board with authority to appoint guardians of minors or legally incompetent persons in limited circumstances. The circumstances include: the receipt and administration of income benefits for a period to not exceed 52 weeks; to compromise and terminate any claim and receive any sum paid in settlement where the net settlement amount approved by the Board does not exceed \$25,000.00; and in the event the minor or incompetent person does not have a duly appointed guardian, the Board may appoint a tempo-



rary guardian ad litem, for a period not to exceed 52 weeks, to bring or defend an action under the Workers' Compensation Act.

#### **Section 6 - Creates O.C.G.A. 34-9-245**

This section empowers the Board to order a reimbursement of the overpayment of income benefits to a claimant. The request for reimbursement must be made within two years of the date the overpayment was made.

#### **Section 7 - Amends O.C.G.A. 34-9-261**

This amendment increases the maximum amount of

temporary total disability benefits paid to a claimant from \$325.00 per week to \$350.00 per week and increases the minimum amount of temporary total disability benefits from \$32.50 per week to \$35.00 per week.

#### **Section 8 - Amends O.C.G.A. A. 34-9-262**

This amendment increases the maximum amount of temporary partial disability benefits paid to an injured employee from \$216.67 to \$233.33 per week.

#### **Section 9 - Amends O.C.G.A. A. 34-9-265**

This section deletes language regarding the payment of reasonable expenses for the employee's last sickness in a death case, as the payment of these benefits is required elsewhere and as written in this section can be misinterpreted to be limited to \$5,000.00. The amount paid for burial expenses increases from \$5,000.00 to \$7,500.00.

12/02/98

# Defending Liberty's Dream

FOURTH ANNUAL MEETING

New York City  
OCTOBER 6-10, 1999

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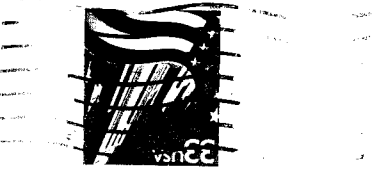
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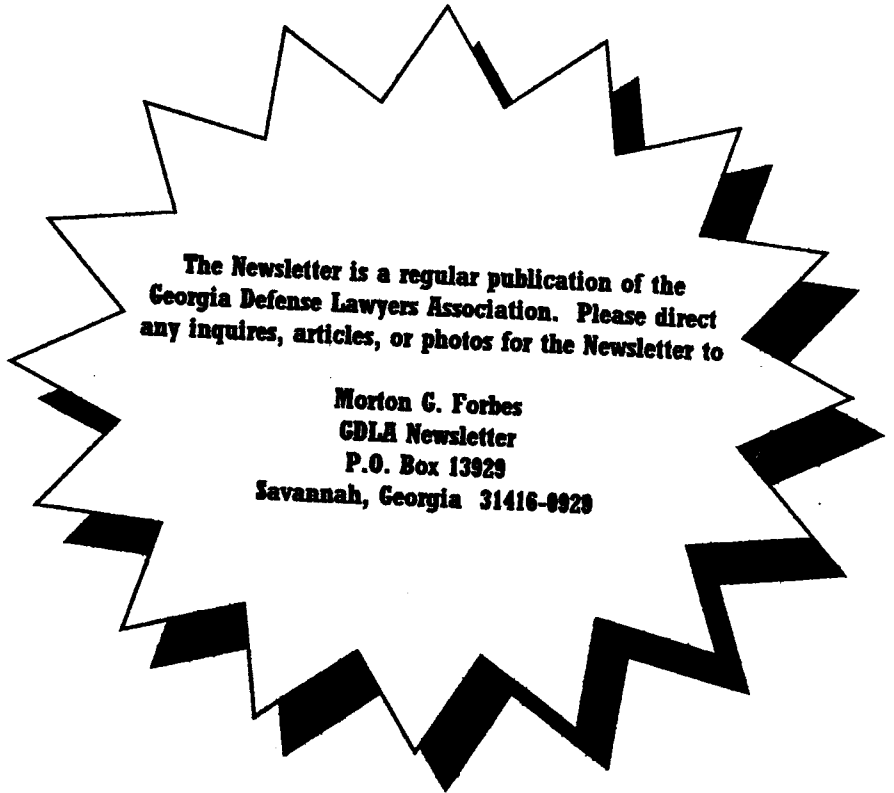
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