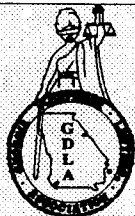


GEORGIA DEFENSE LAWYERS ASSOCIATION NEWSLETTER

Volume 1, Number 3

November, 1992



OFFICERS

PRESIDENT

J. Bruce Welch
4000 One Peachtree Center
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3243

EXECUTIVE VICE PRESIDENT

Hendley V. Napier
P.O. Box 1606
Macon, Georgia 31202-1606

SECRETARY-TREASURER

David T. Whitworth
P. O. Box 1996
Brunswick, Georgia 31521

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R. Clay Porter
George Duncan
David H. Hanks

BOARD OF DIRECTORS

NORTHERN DISTRICT

Steven J. Kyle (1993)
Walter B. McClelland (1994)
Robert Travis (1995)

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Jerry Buchanan (1995)

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Kenneth R. Carswell (1994)
William H. Pinson, Jr. (1995)

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Ferdinand Buckley
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Wilbur C. Brooks
Morton G. Forbes

The President's Column

J. Bruce Welch

The fall board meeting held in Asheville, North Carolina, indicates that our year for the Georgia Defense Lawyers is off to a very good start. The treasurer's report indicated that raising our dues to allow for additional services to the members (including hiring a full-time executive secretary) had not produced any decline in membership whatsoever. On recommendation of the membership committee, 21 new members were approved, bringing our membership to an all-time record high of 410 members.

I would like to urge all of you to consider your partners, associates, and colleagues and nominate them for membership in the organization. Our upcoming annual meeting in Bermuda is certainly an incentive to inspire them to join, and it is imperative that you get the application in immediately in order to allow the membership committee to consider the application and make recommendations at the winter board meeting at the end of February.

Ken Moorman is to be congratulated on running an outstanding Trial Academy this year. Forty-six registrants participated in an excellent program conducted by the faculty of GDLA members. I have heard nothing but glowing remarks from the young lawyers who attended the academy.

Hank Scrudder had kindly agreed to chair the Georgia Defense Lawyers Journal Committee for the coming year, and we anticipate another fine publication. I am certain that Hank would appreciate contributions of articles from any member of the organization, and if you have recently had occasion to research a topic that you feel would be of timely interest to the membership, please contact Hank in Atlanta at 404/436-4777.

On behalf of the association, I would like to extend our thanks to Greg Spicer, our newly hired Executive Secretary, who has done an outstanding job during his first months in the position. His work has certainly lightened the burden on the officers, particularly the Executive Vice President and Secretary-Treasurer, by handling the day-to-day tasks which had

(continued on page 8)

Recent Judicial Decisions

Tolbert v. Duckworth. Shelton v. Smith

Nos. S92G0604, S92G0607

Supreme Court of Georgia

November 23, 1992

The Supreme Court held that the jury instruction on accident should be eliminated as a defense in civil cases. Although the Court affirmed the trial courts because the accident charges given at trial conformed with the suggested pattern jury instructions and existing case law, the Court held that the accident charge should not be given in future civil cases.

The Court reasoned that the word "accident" creates confusion because the legal definition of "accident" differs from the commonly understood meaning of the word. The Court stated that the standard jury instructions covering negligence, proximate cause, and burden of proof sufficiently instruct the jury that the plaintiff may not recover when the defendant is not at fault.

Bowling v. Gober

No. A92A1376

Court of Appeals of Georgia

October 29, 1992

This case clarifies the method of calculating damages to an automobile. Recovery for damages is based on (1) the difference in fair market value before injury and after OR (2) the reasonable value of necessary repairs together with the hire value of the vehicle while it cannot be used and the value of permanent impairment, provided the aggregate amount of those items does not exceed the fair market value of the automobile

before the accident with interest. When a vehicle cannot be repaired economically, its value is its salvage value.

Georgia Mutual Insurance Company v. Gardner et al.

No. A92A1031

Court of Appeals of Georgia

September 11, 1992

An insurer (or an entity with power of attorney for the insurer) must provide statutory proof of mailing both the notice of intent to cancel and the notice of cancellation itself. In *Gardner*, a premium finance company with power of attorney for the insurer mailed a 10-day notice of cancellation to the insured. At the expiration of the 10-day period from the date of mailing, the finance company mailed a notice of cancellation to the insured. Although the company provided statutory proof of mailing the notice of cancellation (a receipt provided by the U.S. Postal Service), the company could not provide such proof with regard to its mailing of the cancellation itself. Summary judgment was properly entered in favor of the insured and the insurer was obligated to defend.

The Newsletter is a regular publication of the Georgia Defense Lawyers Association. Please direct any inquiries, articles, or black and white photos for the Newsletter to

Greg Spicer

Ga. Defense Lawyers Ass'n

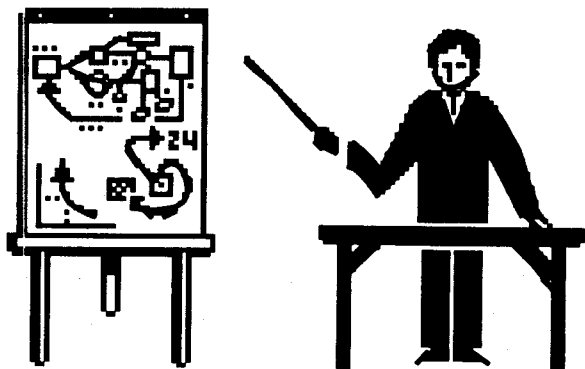
P.O. Box 5391

Macon, GA 31208

(912) 757-8475

Board Meeting Minutes

MINUTES OF THE BOARD MEETING
GEORGIA DEFENSE
LAWYERS ASSOCIATION
Saturday, November 7, 1992
Grove Park Inn
Asheville, North Carolina



In attendance:
Kenny Carswell
Joe Chambless
Charlie Goetz
David Hanks
Drew Hill
Steve Kyle
Walter McClelland
Rick Marchetti
Greg Melton
Ken Moorman
Hendley Napier
Bill Pinson
Clay Porter
Dick Richardson, Jr.
Wilson Smith
Greg Spicer
Bob Travis
Wiley Wasden
Bruce Welch
David Whitworth

The meeting was called to order by President Bruce Welch. Reading of

minutes was dispensed with and the minutes of the last meeting stood approved as disseminated.

SECRETARY-TREASURER'S REPORT

Secretary/Treasurer David Whitworth reported that as of 10/30/92 the Bank South (checking account) balance was \$28,688.15, and the Shearson account balance was \$1,274.47. Due to negligible differences in interest being earned on the Bank South account as compared to the Shearson account, no funds have been transferred to the Shearson account.

Total membership stood at 389 with only 24 members' dues unpaid. The list of those who had not paid was reviewed and assignments for follow-up contact to various directors was made.

MEMBERSHIP COMMITTEE

Chairman of the Membership Committee, Dick Richardson, was called upon and recommendation was made for approval of fifteen new members.

NATIONAL CONFERENCE OF DEFENSE BAR LEADERS

Motion was made, seconded and passed that the organization pay the expenses of Mr. Napier and Mr. Whitworth to attend the DRI National Conference of Defense Bar Leaders to be held in 1993 in San Francisco. Moorman reported that preparations for the upcoming trial academy are going well.

FALL LUNCHEON

Hendley Napier reported that the fall luncheon and seminar had been

postponed and, subsequent to discussion, motion was made seconded and passed that it be rescheduled for December 17, to include three hours of trial practice CLE credit, and one hour of professionalism, to commence at 10:00 a.m. in Macon. It was further voted that lunch would be furnished at the expense of the association for any member or for one associate substituted for a member who was unable to attend. Any additional firm members or associates, beyond the one substitution, would be required to pay a fee, the amount of which will be established by Mr. Welch, Mr. Napier and Mr. Spicer

ANNUAL MEETING

Hendley Napier reported that preparations for the annual meeting for 1993 in Bermuda are going well and on schedule. Dick Richardson reported that anyone desiring to attend the annual meeting needs to complete airline reservations immediately as seats are filling up.

1995 ANNUAL MEETING

Dick Richardson reported having visited the Grand Hotel in Point Clear, Alabama, scheduled site for the 1995 annual meeting and was favorably impressed. It had previously been decided that the 1994 meeting will be at Ponte Vedra, Florida.

WINTER BOARD MEETING

It was moved, seconded, and passed that the winter board meeting will be held at the Omni Hotel in Charleston, South Carolina. Exact date to be announced.

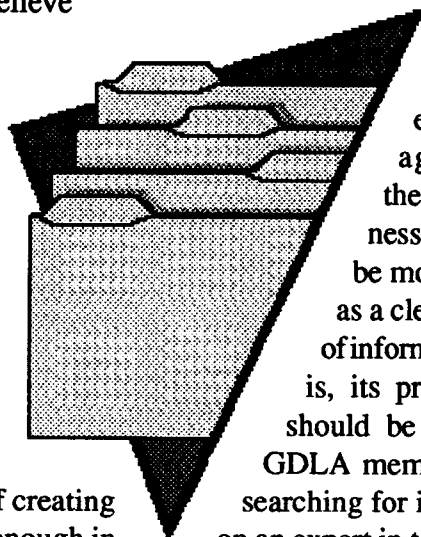
Respectfully submitted,
David T. Whitworth
Secretary/Treasurer

Expert Witness Bank Update

By Greg Spicer

The expert witness bank is available for use by Georgia Defense Lawyer members. While I still have a lot of data to enter into the computer, I believe I have entered enough records make the witness bank useful. What I cannot pull up on the computer, I can find manually.

Please take a minute to familiarize yourself with the expert witness bank form on the next page. Steve Kyle has done a great job of creating a form that will offer enough information to be valuable to the



membership and yet is short enough that it can be filled out in a matter of minutes. Steve and I talked with many of the board members in Asheville; nearly everyone agreed that the expert witness bank would be most valuable as a clearinghouse of information. That is, its primary goal should be to get the GDLA member who is searching for information on an expert in touch with a member who has used that ex-

pert.

My brief experience with the bank is that lawyers consult it for one of two reasons: either to seek information on a specific expert that they expect to cross-examine or to find an expert in a particular area. Please fill out the form completely. I should then be able to index our bank by name, specialty, defense lawyer, etc

Do not hesitate to request for information on experts. I have had far fewer requests than I thought I would.

Please take a moment to photocopy an ample supply of the blank form and make it a standard practice to include one when you open a file.

Bermuda: April 28-May 2, 1993

Annual Meeting Information

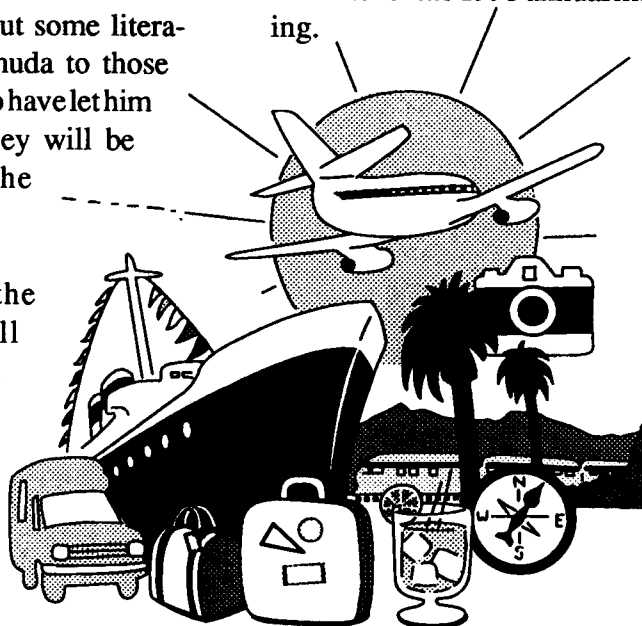
If you have not yet made your reservations for the annual meeting in Bermuda, please do so immediately. As Dick Richardson has been pointing out for months, flights in and out of Bermuda are extremely limited. Do not delay.

The annual meeting should be terrific! Hendley Napier has lined up a great roster of speakers. GDLA members attending the meeting will earn at least six hours of continuing legal education credit, including two hours of professionalism. And, of course, the Hamilton Princess

provides a glorious site for the meeting. Dick Richardson will be sending out some literature on Bermuda to those members who have let him know that they will be attending the meeting.

In 1994, the GDLA will meet at Ponte Vedra, Florida for its annual meeting. The Grand Hotel in

Point Clear, Alabama is the scheduled site for the 1995 annual meeting.



Georgia Defense Lawyers Association Expert Brief Bank Information

- 1. Expert's Name: _____

- 2. Specialty: _____

- 3. Office Location: City _____
State _____

- 4. Expert's Status: Hired by Plaintiff
 Hired by Defendant
 Treating Physician

- 5. Style of the Case: _____

- 6. Court: Federal Court
 State Court

- 7. Year of Testimony: _____

- 8. Form of Testimony: Deposition
 Trial
 Both

- 9. Expert's Effectiveness: On Deposition At Trial
 Exceptional Exceptional
 Average Average
 Poor Poor

- 10. Attorneys:

 For the Plaintiff: _____

 For the Defendant: _____

Return completed form to

Greg Spicer
Georgia Defense Lawyers Association
P. O. Box 5391
Macon, Georgia 31208

(912) 757-8475

A GDLA Lawyer's Satisfied Client Describes His Day in Court

(Everyone wants happy clients. Sometimes a client is so pleased with the defense of a case that he is driven to artistic expression--or something vaguely resembling art. While it is a safe bet that the following effort will not win this year's Pulitzer Prize, it is nice to see a client so inspired that he picks up pen and gives it a try.)

It was the morning of the trial when the two gladiators entered the arena. Everyone was tense and awed when the older, larger gladiator flexed his worn out muscles. His appearance resembled a tacky goliath, and seemed fearless, but he possessed a complacent and confused attitude.

Then the young gladiator stood erect and, with a warm, vigorous motion, he saluted the Emperor and his court. His composure and professionalism was obviously unexcelled. Many of the Emperor's court referred to him as a real live Prince Valiant.

Almost immediately, both gladiators came into center court; the older was dragging and very slow afoot. The young gladiator sprung into center court, showing complete confidence and once again featured dazzling footwork.

Both gladiators offered opening remarks to the Emperor and

his court. The older gladiator's remarks were somewhat meaningful, but lacked imagination, and the Emperor and his court seemed bored.

The younger gladiator came out strong, with meaningful verbal jabs. His remarks were well organized and had depth. The Emperor and his court seemed



The Happy Client

appreciative and listened attentively to every word.

Then the fight began. The old gladiator was disorganized, swinging wildly at the young, fast movements of Prince Valiant. He did, however, strike our Prince Valiant several low blows which were staggering and somewhat stunning. When the day ended the Emperor and his court and the young gladiator were tentative as to the outcome.

Then came the morning of the next day. The young gladiator came out swiftly, dazzling everyone with his command of

the language. His defense was incredible and his thrust of the sword was true on many occasions. It was obvious our young Prince Valiant was fully in command. The older gladiator was desperate, striking below the belt again and again trying to dismember the young gladiator. The attack was relentless by the old warrior, but the young gladiator anticipated every move, and when the day was over, the elder gladiator was barely able to motivate. At this point the Emperor and his court were well aware of the hopeless situation and were anticipating the kill.

The third day the older gladiator could barely come out of his corner and needed help in order to continue. Our young Prince Valiant leaped out of his corner and delivered the devastating blow. To all concerned the young gladiator was well organized and he approached the old worn out gladiator, who bowed his head in submission.

Both the Emperor and his court realized the end was near, which was due to the calculated, never-ending blows of our Prince Valiant. When the fight was over the Emperor awarded a most generous gift to Prince Valiant, and the court passed out many well deserved accolades.

GEORGIA DEFENSE LAWYERS ASSOCIATION

1992 MEMBERSHIP APPLICATION

NAME: _____ STATE BAR NO.: _____

AGE AND BIRTH DATE: _____ SPOUSE'S FIRST NAME: _____

DATE ADMITTED TO BAR: _____ DATE BEGAN PRACTICE: _____

FIRM NAME: _____

OFFICE ADDRESS: _____

Street and P.O. Box Number

City, State, and Zip Code

PHONE NUMBER: _____ FAX NUMBER: _____

NUMBER OF YEARS WITH PRESENT AFFILIATION: _____

NUMBER OF INDIVIDUALS IN FIRM PRESENTLY MEMBERS OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION: _____

I certify that I am substantially engaged in trial litigation primarily for the defense in the State of Georgia, am a member in good standing of the State Bar of Georgia, and have been a member of the State Bar or a State Bar Association for a period of at least three (3) years.

(Date)

(Signature of Applicant)

(Type or Print Name of Nominator)

(Type or Print Name of Sponsor)

(Signature of Nominator)

(Signature of Sponsor)

Upon completion of the form by applicant, **applicant must mail same along with letter of recommendation from the nominator and sponsor** above (who must be members in good standing of the GDLA) to the Executive Secretary of the Association, Gregory J. Spicer, c/o Georgia Defense Lawyers Association, at the following address: P.O. Box 5391, Macon, GA 31208. If you need further information, call Gregory J. Spicer at (912) 757-8475.

If you are approved for membership, you will be notified and billed \$100 covering the initiation fee plus the amount of annual dues in effect at the time of your admission to membership.

The President's Column

J. Bruce Welch

(continued from page 1)

become a real burden on the officers. In addition to billing and collecting dues, handling registrations for association events, and keeping track of the membership roster, Greg has assumed responsibility for maintaining the expert witness bank and managing the International Association of Defense Counsel video series. We ask that you contact Greg with information regarding expert witnesses who you have used or who have been used against you and also feel free to seek information from Greg about experts with who you are confronted. The IADC videotape series is an excellent means of in-house training of associates, and if you have a group of five or more viewing a tape or tapes, CLE credit is available

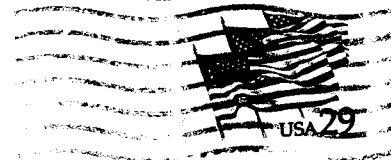
upon proper application to the State Bar. Feel free to contact Greg about these programs or any other questions you may have about the Georgia Defense Lawyers Association at 912/757-8475.

I urge all of you to make your plans to attend our annual meeting in Bermuda. The last time we were there, everyone who attended had a wonderful time. Under the auspices of Hendley Napier, we have an excellent program planned, and I can personally think of no better place in the world to obtain CLE credits. Be certain to make your travel arrangements immediately, as the number of seats available to Bermuda is quite limited and we want as many of the members as possible to be in attendance.

Please feel free to write or call me with any suggestions you may have as to ways in which the Georgia Defense Lawyers Association can be more meaningful to you personally and of greater service to the defense bar in general.

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Greg Spicer
GDLA
P. O. Box 5391
Macon, GA 31208



Morton G. Forbes
Forbes & Bowman
7505 Waters Avenue
Suite D-14
P. O. Box 13929
Savannah GA 31416-0929