



THE PRESIDENT'S MESSAGE

By: R. Clay Porter

You may be pleased to hear that your association is on course for another productive year. We will be in Cancun at the end of April for the 1996 annual meeting. Once again, Dick Richardson has secured top notch accommodations and reasonable transportation. The executive directors are planning the agenda for this year and our traditional programs are on target. Those programs include:

1. The Law Journal (editor: Rick Rominger, Savannah);
2. The Trial Academy (chairpersons: Sandy Owens and Kay Demming, Atlanta);
3. The Annual Meeting and Seminar (seminar chairperson: David Hanks, Augusta);
4. Winter CLE Seminar (chairman: Neal W. Dickert, Augusta);
5. Amica Curiae (chairman: Hank Scudder, Atlanta);
6. Legislative Activities (chairman: Hank Scudder, Atlanta);
7. Budget and Long Range Planning (chairman: Ken Moorman, Atlanta);
8. Brief and Expert Bank (chairman: Steve Kyle, Atlanta);
9. Newsletter (chairman, Salty Forbes, Savannah);
10. Membership (chairman: Dick Richardson, Savannah)

The Board of Directors will meet in the fall and winter to review the progress of these activities, attend to various administrative matters, plan future annual meetings and consider any new topics of interest.

Following our last annual meeting, I received a number of comments that the Association should consider addressing economic changes in the defense practice over the last few years. We are considering the formation of a separate committee on this subject. Other suggestions involved erosion of the professional working relationship between plaintiff and defense lawyers, particularly in connection with discovery. We experimented with this topic at the last annual meeting by inviting a representative of the Georgia Trial Lawyers Association to serve on a panel with one of our members and a trial judge. Those who attended witnessed a lively discussion with no shortage of strong opinions. Since then, there has been further discussion with the GTLA about a possible joint seminar on the subject, to include the judiciary. George Duncan, who served as the chairman of a new committee created for the purpose of developing this issue and arranging the seminar. Emory University Law School has tentatively volunteered to host and moderate the program. I personally feel the program has tremendous potential, particularly if the judiciary is involved.

Before the fall board meeting in early November, I would appreciate hearing your thoughts on this year's agenda and any suggestions for new programs. If you are interested in working on one of the committees, contact the chairperson directly. Please let me hear from you, and be sure to mark your calendars for the Cancun trip next April.



CALENDAR OF EVENTS

Nov. 3-5 Fall Board Mtg - Grove Park Inn Resort, Asheville, North Carolina

Winter CLE Seminar

Nov 30 -

Dec 1 Trial Academy - Callaway Gardens

1996 Events

Feb. 1996 Winter Board Mtg

Apr. 24-28 29th Annual Mtg - Cancun, Mexico

Nov. 1996 1996 Fall Board Mtg - President's Choice

Oct. 9-13 DRI First Annual Membership Mtg - Chicago, Illinois

29th ANNUAL MEETING

(April 24-28, 1996 - Cancun, Mexico)

Airplane Reservations:

I know it is early, but if you plan on attending the above meeting, please make your reservation to protect your seats NOW, OR AS SOON AS POSSIBLE.

The base "group" guaranteed ticket price (Atlanta-Cancun and return) is \$485.00 plus tax, passenger facility charge and/or surcharge if any, which will fluctuate from time to time, depending on when you make your reservation.

Telephone any American Airline ticket office and give them our "Star File No. 1846AB". They will handle your request and get you to the right number to make your reservation.

Flight 1741 leaves Atlanta at 8:45 a.m.; Flight 1887 leaves Atlanta at Both on April 24, 1995. Our reservations are split between those two flights.

10:48 a.m. Both on April 24, 1996. Our reservations are split between those two flights.

On the way down, both flights go through Dallas and arrive at Cancun at 12:39 p.m. and 2:24 p.m.

YOU PICK UP TWO HOURS GOING DOWN AND LOSE TWO HOURS COMING HOME.

The members that take Flight 1887 at 10:48 a.m. will return on Flight 2192 from Cancun to Miami and on Flight 1658 from Miami to Atlanta, arriving at 9:17 p.m.

The members that take Flight 1741 at 8:45 a.m. will return on Flight 355 from Cancun to Dallas and Flight 1142 from Dallas to Atlanta, arriving at 8:31 p.m.

Please drop a note or card to Willis J. Richardson, Jr. when you make your reservation so that he can keep a record. You will receive information on making hotel reservations at a later date.

28TH ANNUAL MEETING

The Twenty-Eighth Annual Meeting of the Georgia Defense Lawyers was held at the Grand Hotel at Point Clear, Alabama from April 27 through April 30, 1995. The Grand Hotel is an Alabama Institution with shady grounds, a marina, and posh golf courses. Point Clear is near Fairhope, which is one of the prettiest towns in Alabama. Magnolia Springs, just down the road from Point Clear is where Winston Groom, the author of Forrest Gump, grew up. Winson is now building a home at Point Clear.

The GDLA's CLE program was focused on "expert witnesses" and the speakers included Ray Eckle (Atlanta); Rex Smith (Atlanta); Bill Pinson (Savannah); Pat Rice (Augusta); George Duncan (Atlanta); Judge Alice D. Bonner (Atlanta); Tom Venker (a Plaintiff's

(Atlanta); Tom Venker (a Plaintiff's lawyer from Atlanta); and Davis Carr (Mobile, Alabama).

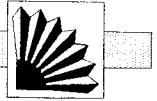
The program was superb. The golfing, tennis, and social activities of the Association were their usual excellence. The GDLA members had a very successful and enjoyable meeting. The Association elected its officers for the 1995-1996 year.

R. Clay Porter, of Atlanta, was elected President. David H. Hanks, of Augusta, was elected Executive Vice President. Joseph H. Chambless, of Macon, was elected Secretary-Treasurer. Charlie Goetz, of Atlanta, George Duncan, of Atlanta, Steve Kyle, of Atlanta, and Bill Pinson, of Savannah, were elected Vice Presidents. Robert Travis, Jerry Buchanan, and Wiley Wasden were elected to a three-year term on the Board of Directors from their respective districts to serve along with Greg Melton, Walter McClelland, Ron Mullins, Drew Hill, Wilson Smith, and Ken Carswell. Ken Moorman, Hank Scrudder, and Neal Dickert were elected Directors at Large for one-year terms.

THE DEFENSE RESEARCH AND TRIAL LAWYERS ASSOCIATION

FREE MEMBERSHIP

DRI is offering a Free Membership in DRI for one year to anyone who is currently not a member of DRI or GDLA but who joins the GDLA and meets DRI qualifications. This free membership period extends until April 1, 1996. All benefits of DRI membership are included. (For example, an attorney practicing less than five years who gains DRI membership will receive a certificate to attend any DRI seminar - a \$400.00 plus value).



Once a new member joins GDLA, the name(s) of the individual(s) will be sent to Sandie Swieca Schmidt at the DRI headquarters in Chicago. Sandie will then forward the standard membership packet to those individuals along with a membership application to be completed.

HALF-PRICE MEMBERSHIP

DRI is offering a Half-Price Membership for one year to all current members GDLA who qualify but are not yet members of DRI. THIS HALF-PRICE MEMBERSHIP PERIOD ALSO EXTENDS TO APRIL 1, 1996.

RECIPROCATION

At the same time that Patrick E. Maloney sent a letter to President Porter. In that letter, he asked President Porter and the GDLA to consider programs which could parallel the two above membership programs that DRI is offering. He is asked if GDLA will reciprocate by offering a one-year membership in their association for anyone who joins DRI in the next year and qualifies for membership in the GDLA, and whether the GDLA will offer a half-price membership to any current member of DRI that is qualified but not a member of GDLA. The goal is to enhance membership in GDLA as well as DRI. In Salty Forbes' role as Georgia State Representative, he acts as the liaison between DRI and GDLA.

DRI SOUTHEAST REGIONAL MEETING

The DRI Southeast Regional Meeting was hosted by the GDLA in Savannah on August 18 and 19, 1995. Present at this meeting were the DRI State Representatives for Alabama, Florida and Georgia. Also present were the President of DRI Steve Morrison, DRI board member Jack McEwan, and the President elect and Secretary/Treasurer of the Alabama Defense Lawyers Association, present officers of the Florida Defense Lawyers Association, and the current GDLA Officers.

As this region will elect a director next year, the main order of business concerned the method of nominating a person from the southeast region for that directorship as well as agreeing to the method of selection of that nominee in the future. It was agreed that for the purpose of nomination a regional director to DRI that each of the three states would have one vote and that a majority will be sufficient to name the nominee. It was also agreed that the states would rotate the nomination from term to term beginning with that director elected in 1996.

The remainder of the meeting consisted of remarks by DRI President Morrison and informal discussion amongst the states relating to increasing the contact at least by and between the officers of the various associations.

STATE REPRESENTATIVES MEETING

The State Representatives meeting was held on Friday, September 8, 1995, and Saturday, September 9, 1995, in Chicago. It was attended by 26 State Representatives, including Salty Forbes.

DRI FIRST ANNUAL MEETING

Every member will have the opportunity to actively participate in the new DRI! This is the first Annual Meeting of all members - Ever defense lawyer will benefit by being in Chicago in October of 1996. Plan on it!

- Up to 14 hours of "Bread and Butter" CLE Programming Planned
- Business and Organizational Meetings for All DRI Committees
- Regional Meetings and Workshops for National, State and Local Defense Bar Leaders
- Nominations for DRI Board of Directors and Officers



RECENT MATTERS OF POTENTIAL INTEREST

WORKERS' COMPENSATION - YEAR AT A GLANCE

By: N. Staten Bitting, Jr.
Flecher, Hagler, Reed, Hanks &
Harper
Augusta, Georgia

Most of the legislative changes to the Georgia Workers' Compensation Act are effective July 1 of each year. Reviewing the significant occurrences in case law, legislative amendments, and rule changes during this period makes an easy reference point in compiling a list of changes. During this recent period, the Board continued an active legislative agenda. It has also demonstrated a quick response capability to appellate decision. Decisions in several appellate cases during this period have been negated or codified by amendment to the Act.

APPELLATE DECISIONS

White v. Nantucket Industries, 214 Ga. App. 542 (1994). The appellate courts and the Board vigorously restrict Aden's Minute Mart and Eyco Plastics to their facts. The Court of Appeals declined to put the burden of proof on the claimant where there was an injury, followed by confirmed work with no compensable lost time, then a discharge for a reason unrelated to the work injury.

Wright v. Overnight Transp. Co., 214 Ga. App. 822 (1994). Change of physician not appropriate without Board approval if care is being provided by the employer/insurer, even though there is no posted panel or an improper panel.

Gleaton v. Hazelwood Farms, Inc., 214 Ga. App. 825 (1994). Board decision to resolve fee dispute by previous and subsequent counsel by splitting fee 50/50 held appropriate and affirmed as there was some evidence to support it.

Georgia Power Co. v. Leonard, 215 Ga. App. 383 (1994). On objection by claimant, slip from physician releasing claimant to return to work was held not to be a medical record with the reasoning of §34-9-102 as an exception to the hearsay rule. This decision was negated by statutory amendment to this code section, effective July 1, 1992, which is expressly retroactive.

Coca-Cola Co. v. Nicks, 215 Ga. App. 381 (1994). A temporary services worker of the defendant plant was considered a borrowed servant because of the plant's control over the activity of the claimant. The claim against the plant in tort was barred by the Workers' Compensation Act immunity. This decision was essentially codified in O.C.G. A. §34-9-11, effective April 7, 1995.

Fulton County Board of Workers' Compensation v. Robinson, 215 Ga. App. 378 (1994). On appeal to the Superior Court, where hearing was scheduled within the required 60 days and continued to be heard some time within the following 90 days, this was considered by the Court of Appeals to be enough of a "day certain" to keep appeal pending.

Bennett v. Williams Electrical Constr. Co., 215 Ga. App. 423 (1994). The Court of Appeals ruled that the subrogation statute (O.C.G. A. §34-1-11.1(c)) effectively created a one-year statute of limitations as to the employee's right to bring a claim against the tortfeasor. After one year, the right vests solely in the employer/insurer, regardless of the employer's attempt to reassign the

rights to the employee.

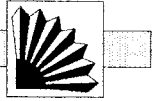
Old Dominion Freight Line, Inc. v. Anthony, 216 Ga. App. 267 (1995). Holds that the Appellate Division of the Board does not have plenary authority to grant a new trial based on newly discovered evidence. The Appellate Division must apply standards relating to admission of additional evidence following hearing.

Brown v. Weller, 217 Ga. App. 67 (1995). Not a true workers' compensation case. Holds that where a co-employee passenger claims against a third-party tortfeasor, and that tortfeasor files an indemnity/contribution action back against the co-employee driver, the suit against the driver is not barred by the Act's prohibition of employees claiming against one another.

Smart Professional Copy Corp. v. Dixon, 216 Ga. App. 825 (1995). Also not a true workers' compensation case. Does affirm the authority of the Act to set reasonable copy charges on health care providers and their servicing companies.

Muscogee Iron Works v. Ward, 216 Ga. App. 636 (1995). A case of first impression which holds that the Subsequent Injury Trust Fund is subject to an award of attorney's fees in a claim by an employer for reimbursement.

Redd v. Stanfield, A95A0573, June 12, 1995. Basically, an unremarkable statutory employer/workers' comp immunity case. Appellants make the novel argument that because the work activity was inherently dangerous and there were violations of OSHA guidelines, the occurrence should be exempt from the Act's exclusive remedies provision. The court rejected this argument.



CODE AMENDMENTS

Unless noted otherwise, the following amendments to the Workers' Compensation Act are effective July 1, 1995:

34-9-2.1 Only five corporate officers can be exempted by the Act. Names and offices must be identified prior to issuance by the Board of the certificate of exemption.

34-9-2.4 Volunteers for Olympic Committee work are deemed employees for the purpose of the Act. Automatic repeal 1231/92. Effective 4/19/95.

34-9-11 Businesses using temporary services contracting firms, and employee leasing services shall have statutory immunity under the Act if workers' compensation benefits are provided to the employee by either company. The company providing services will be deemed the statutory employer. Effective 4/7/95.

34-9-11.1 Addresses situation created by Bennett v. Williams Electric. Allows employee or employer/insurer to bring claim at any time during statute of limitations. Retroactive application to 7/1/92.

34-9-18 Maximum penalty for civil fraud increased to \$10,000. Allows assessment of collection costs against wrongdoer. Penalties collected go to general fund.

34-9-19 Maximum fine for criminal fraud raised to \$10,000. Allows for assessment of costs of collection. Fines go to general fund.

34-9-23 Creates fraud and compliance unit within the Board and establishes its authority and assist in prosecution.

34-9-30 Establishes truth in advertising requirements for workers' compensation attorneys; includes requirement of notice of criminal penalties in the ad.

34-9-100 Expressly gives Board the authority to require mediation.

34-9-102 Allows any signed physician's document to be admitted in workers' compensation hearing. Retroactive application provided.

34-9-200.1 Changes catastrophic definition from SSI definition to more flexible one.

34-9-203 Allows 20% penalty on medical bills not paid within 60 days, penalty paid to the provider.

34-9-265 Eliminates \$1,000 cap on death benefits to dependents not U.S. or Canadian citizens. Provides that where no qualifying dependents are left, general fund of the State Treasury is to receive \$10,000 or one-half of the benefits that would be due had there been dependents (whichever figure is less).

34-9-358 Eliminates payment to subsequent Injury Trust Fund to penalties, fines and forfeitures.

A severability clause is created.

Revisions to assigned risk plan (34-9-133). Effective 4/21/95.

Revisions to group self-insurer fund requirements, causing revisions to several code sections.

Revisions to self-insurer's guaranteed trust. Revises several code sections.

RULE CHANGES

Several rule changes were put into effect during the period from July 1, 1994, to July 1, 1995. Those of primary interest are as follows:

Rule 15 Now requires WC-1 to be attached to settlement documents. WC-4 required to be submitted with no liability stipulations.

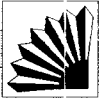
Rule 18 Deleted.

Rule 61

- WC-9 and WC9 combined.
- WC-30 and WC31 combined.
- WC-200(b) and (c) amended to be self-executing representations.
- WC-104 amended to conform to statutory changes.
- WC-102ga and gh amended to allow for mediation requests.
- WC-102(k) create job search form for use in Aden's situation.
- WC-207 Board recommended medical release form promulgated.
- WC-240 notice of suitable employment form.

WC-102 Penalties may be applied if case taken off calendar and judge not notified by 4:30 p.m. the day before the hearing. Also changes list of documents employer/insurer is entitled to without a hearing. Specifically applies Code of Professional Responsibility to attorney's practice before the Board and the possibility of penalty for violation of the code.

WC-104 Requires employer to send a copy of the WC-2 and WC-104, with attachments, to employee and their attorney, simultaneously with filing forms with Board.



Rule 200 Requires good faith effort to resolve dispute before change of physician request made and eliminates Board's requirement to mail ten-day notice to parties.

Rule 201 Addresses changes in the Act regarding physician panels.

Rule 208 Addresses managed care provided for in Act amendments.

Rule 240 Conforms rules to changes in the Act regarding offer of suitable employee of light duty work and procedure for suspending or reinstating benefits.

These synopses are not exhaustive. They simply create a checklist which can be reviewed in a glance to check for changes in workers' compensation law until those changes are incorporate in practice habits, at which time a new checklist will be necessary because of the changes that will occur between now and July 1, 1996.

PRODUCT LIABILITY REFORMS

On March 10, 1995, the House of Representatives approved its version of H.R. 956, now titled the "Common Sense Product Liability and Legal Reform Act," by a vote of 265 to 161.

On May 10, 1995, the Senate approved H.R. 956, the "Product Liability Fairness Act of 1995," as amended, by a vote of 61 to 37.

While the two versions of H.R. 956 are similar in many respects, the House bill is more expansive. Title II of the House bill, which contains the punitive damage and the joint liability reforms, applies to all civil actions affecting "interstate commerce." The equivalent sections in the Senate bill apply only to product

liability actions.

Other than the difference in scope, the liability provisions are substantially similar in both bills. Each version eliminates joint liability for noneconomic harm and requires that liability for such damages shall be several only. The House bill applies this requirement to all civil actions affecting commerce; the Senate bill only applies to product liability actions.

Under both bills, punitive damages may be imposed only after the claimant establishes by "clear and convincing evidence," that the defendant acted with "conscious, flagrant disregard" of the plaintiffs' rights or safety. Either party may request bifurcation of the proceedings so that a determination of whether punitive damages may be awarded is separate from the "compensatory phase" of a trial. Punitive damages may then be imposed up to a certain limit: in the House bill, punitive damages may be awarded in the amount equal to three times the claimant's economic damage, or \$250,000, whichever is greater; in the Senate bill, punitive damages may be awarded in an amount equal to two times the claimant's compensatory damage (the sum of economic and noneconomic damage), or \$250,000, whichever is greater. For companies whose net worth is less than \$500,000 or have fewer than 25 employees, punitive damages would be awarded up to two times compensatory damages or \$250,000, whichever is less. The Senate bill, also allows a judge to augment a punitive damage award when the "capped" award is "insufficient to punish the egregious conduct of the defendant." The House bill limits punitive damages in all civil action. The Senate bill applies only to product liability cases.

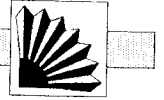
With respect to product liability reform, both bills contain the following: a provision limiting the liability of product sellers to their own negligence, an absolute defense if alcohol intoxication or

illegal drug use is the principal cause of an injury, and a provision reducing the claimant's award to the extent that the harm resulted from the misuse or alteration of a product. Both bills contain a statute of repose. The House bill contains a 15-year statute of repose applicable to all products — it preempts shorter state statutes of repose. The Senate bill contains a 20-year statute of repose for workplace durable goods, which does not preempt shorter state statutes of repose. Both bills also contain a separate title that limits the liability of biomaterial suppliers for medical device manufacturers. This provision will encourage companies to supply essential raw materials to manufacturers of life-saving medical devices.

The Senate bill contains two substantive provisions not found in the House version. It includes a voluntary alternative dispute resolution (ADR) procedure to encourage out-of-court settlements. It also includes a worker compensation subrogation reform provision to encourage workplace safety.

The House bill contains several provisions that are not in the Senate bill. These include a \$250,000 limit on noneconomic damages for all health care liability suits, and a mechanism to reduce the filing of frivolous pleadings in state product liability actions. The House bill also includes two additional rules for punitive damages:

- (1) a defense to punitive damages for drugs and medical devices that have received premarket approval from the Food and Drug Administration; and
- (2) specific factors for jurors to consider in determining the amount of the punitive award.



Also in the House bill is a requirement that foreign companies submit to the jurisdiction of the American courts in order to benefit from the bill.

MESSAGE FROM THE EDITOR

When I was President of the association, one of the main focuses of my administration was the creation of a newsletter so that all of the members would be informed of all the association activities. I want to thank and congratulate the prior editors for all of their hard work in keeping the newsletter alive. Since this is one of my pet projects, at the request of President Clay Porter, I have undertaken to be the editor of the GDLA Newsletter. I plan for the newsletter to be published following each board meeting and the annual meeting in order to apprise all members of upcoming events. In that connection, I want to thank N. Staten Bitting, Jr. for his contribution to this newsletter and to invite each of you to forward to me your suggestions as to matters which you believe to be of interest to members of the association, along with articles which may be of interest to the association.

Remember this is your newsletter and I need all of the help that I can get to make this a successful newsletter and I invite each and every one of you to send me articles or suggestions.