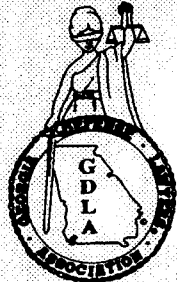


GEORGIA DEFENSE LAWYERS ASSOCIATION NEWSLETTER

Volume 1, Number 2

Summer, 1992



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Macon, Georgia 31202-1606

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The President's Column


Morton G. Forbes

As promised, the Annual Meeting at The Homestead was outstanding. Bruce Welch put together an excellent program that went very well. The weather was excellent and celebrities were everywhere. Sam Snead and Richard Gere were there. Rick Marchetti and Wiley Wasden had dinner with Sam Snead — and you will have to ask them how they pulled that coup. Kathleen Parnell and Richard Gere became fast friends. Jay Harper confirmed everyone's belief that he is a professional golfer who practices defense law. Next year, it's Bermuda! Mark your calendars because I understand Hendley Napier is going to have a fine program.

At the Annual Meeting, all of the proposed by-law changes were adopted. Bruce Welch was elected President, Hendley Napier elected Executive Vice President, and David Whitworth was elected Secretary/Treasurer. A complete list of all those elected at the annual meeting is inside the newsletter. Greg Spicer, our Executive Secretary, is at work and this is his first publication. I want to thank David Whitworth for all of his work in chairing the Newsletter Committee, and a special thanks to Hank Scudder for undertaking to edit and publish our first newsletter. The Association, in addition to employing an Executive Secretary, plans to conduct a three-hour CLE seminar every year in a different location around the state. The seminar will begin at 1:00 p.m. There will be a cocktail hour at 5:00 p.m. and either lunch preceding or dinner after for those who wish to attend. This mid-year meeting site will be announced later.

The Board, at the winter meeting in accordance with the by-laws, set the dues for the fiscal year 1992/1993. For all members who have been in practice for seven years or more, the dues will be \$125. For all members in practice less than seven years, the dues will be \$90. The increase is needed. Our dues over the past fifteen years have increased a total of \$5 from \$50 to \$55. The employment of an Executive Secretary, the expert witness bank, the newsletter, and the IADC In-House Training program cannot be supported by our present dues. The Board knows of no other organization similar to ours that charges less than \$100 a year to its members. The South Carolina Defense Lawyer dues are \$125 per year; Florida's dues are \$200. The dues structure as now adopted by the Board should not require adjustment in the near future.

It has been a pleasure and an honor to have served as your President for this past year, and I look forward to working with the new Board to better serve the members of the Association.


Morton G. "Salty" Forbes

1992 Annual Meeting Minutes

The following is a condensed version of the 1992 Annual Meeting minutes:

Hendley Napier,
Treasurer's Report

For the Treasurer's report, as you know, we have now gotten to where we have 400 members of the organization. We are hoping to increase that and at this time we have on hand \$9,104.22 in the bank account, \$13,373.86 in Shearson Lehman's account for a total of \$22,478.08. We do have some outstanding bills, about \$2000 that will come in in the next few days and, of course, the added expense of this meeting, which will cut down that figure that I have just given you considerably. We have had a very good year from the Treasurer's standpoint. People have been right prompt in paying their dues, and that's always appreciated. We've also, as I stated, increased the membership. Thank you.

Morton G. Forbes,
President's Report

Thank you Hendley. The next order of business is the President's Report. I want to thank some people who are present for articles that are appearing in the Journal. Fred Gleaton, Rick Rominger, Mason White, Danny Cohen--Danny's not here I don't believe. I think everyone who participated in the Journal did an

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
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outstanding job. I have not had an opportunity to read the entire Journal, but it's one of our largest and if size has anything to do with quality, then it ought to be one of our best.

We also need to thank Dick Richardson, who has again put on an outstanding annual meeting. I don't know how many times we can thank Dick for all of his work. I guess just about every meeting we have to thank Dick because he's put the program together. He has kept me on a straight and narrow line, even though I tried to vary it a little bit. He has really done a superb job, and I just don't know how to thank him enough for all of his efforts.

Rick Marchetti took on the task of working on the by-laws with Paul Painter, and their committee came back with some very fine recommendations, I believe. We will address those in a few moments. I want to thank Rick for jumping into the breach and helping us with this meeting. Paul was supposed to be here today to go over everything, but

of course he is unable to do that.

Greg Melton prepared the Journal; he took on the task with a little arm twisting and a little bit of pressure from the President, but I think he has done an outstanding job. He got together a bunch of good people to do the work.

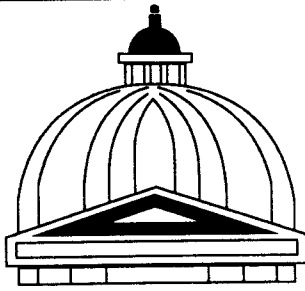
Kenny Carswell handled the Resolutions Committee and has submitted some resolutions.

David Whitworth chaired the Newsletter Committee and Hank Scudder published it. Hopefully everyone of you received this before you came up. This was one of the things I wanted to get done before the meeting and, in the end, the big hold-up was the President's Address. I got tied up in trial and I couldn't get out and I couldn't get this thing done, and I held it up. It was ready to go long before it was mailed.

Clay Porter has done an excellent job with the Amicus Committee. George
(Please see Minutes, page 4)

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Recent Georgia Judicial Decisions

By Pete Robinson
Self, Mullins & Robinson
Columbus, Georgia

DAMAGES

✓ Bad faith refusal to settle

Where an insurer had knowledge that its insured was clearly liable and that the plaintiff's special damages exceeded policy limits, a jury question existed as to whether the insurer's failure to accept a time-limited settlement offer constituted bad faith failure to settle. *Southern General Ins. Co. v. Holt*, Georgia Sup. Ct., No. S91G1556 (May 21, 1992).

✓ Punitive damages

Where an insured assigns the right to recover from an insurer for bad faith refusal to settle, the insured may not recover punitive damages from the insurer even if the assignee recovers compensatory damages. *Southern General Ins. Co. v. Holt*, Georgia Sup. Ct., No. S91G1556 (May 21, 1992).

CIVIL PROCEDURE

✓ Default (additional evidence of damages)

Where a defendant defaults on liability, the plaintiff is not prevented from recovering punitive damages and attorney's fees even though the prayer for them in the complaint had been in an unspecified amount. The plaintiff should be allowed to submit evidence to the Court on its claims for attorney's fees and punitive damages. *Floyd v. First Union National Bank of Georgia*, Georgia Court of Appeals, Case Number A91A1944, March 20, 1992.

✓ Default (opening default)

Where defensive pleadings were timely served on the plaintiff but were not filed with the clerk until a day after they were due and the plaintiff did not raise the issue until 30 months later, when it was too late to open the default as a matter of right, the trial court erred

in denying defendant's motion to open the default. *Evans v. Willis*, Georgia Court of Appeals, Case Number A91A1564, March 17, 1992.

✓ Default (stipulation for extension of time)

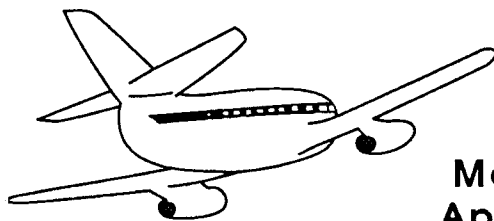
Where both parties stipulated to an extension of time for responding to a summary judgment motion, the stipulation was not binding on the Court because it was filed with the clerk after the original response time had expired. The trial court properly entered default in the matter. *Peterson v. American International Life Assurance Co. of New York*, Georgia Court of Appeals, Case Number A91A2245, March 17, 1992.

(Please see *Recent Cases*, page 9)

Briefly

We want to serve our membership better. One way we can do that is to provide ways for the membership to pool its resources. If you file a brief that you believe could be helpful to other members, please send us a copy. We will maintain a brief bank for the membership. Periodically, we will publish an index to the briefs in the bank. Of course, you can always call the Association Executive Secretary Greg Spicer for help with the brief bank.

Mark your calendars!



Next year, the
Association
will hold its
Annual
Meeting
April 28
through May 2 at the
Hamilton Princess in
Bermuda!



GDLA Hires Executive Secretary

The Georgia Defense Lawyers Association has hired Gregory J. Spicer, an instructor at Mercer University Law School, to fill the position of Executive Secretary to the Association.

Among his duties as Executive Secretary, Mr. Spicer will help with the

publication of the Newsletter and the Journal, will help facilitate the Expert Witness Bank, and will act as a clearinghouse of information for the organization.

Mr. Spicer is a 1989 graduate of Mercer Law School. He edited the Lead Articles II issue of the Mercer Law Review and

argued on Mercer's National Moot Court Competition team and Intrastate Moot Court team.

Mr. Spicer currently teaches legal research and legal writing at Mercer University Law School. He is married to Maria Spicer and, in his spare time, he is an avid tennis and chess player.

Minutes

(continued from page 2)

Duncan did an excellent job with the Trial Academy. Roy Paul worked on the Budget Committee; he and I met, and we came up with some very good suggestions for the Association, all of which were addressed in the committee reports in the newsletter.

My vision of the newsletter is to report to you following each Board Meeting, so that you know what's going on in the Association. One of the things we talked about when I first came on the Board in Asheville at the Biltmore Forest was getting

the membership more involved in the Association, getting the membership more informed. Hopefully this newsletter will do that. I would like over the next few years for the newsletter to become more like this. The only thing it shouldn't have in it would be the members' names and the by-laws. Periodically the by-laws need to be published in the Journal, so everybody knows what they are. It's a way for the Board to let ya'll know what's going on, and it's a way for you to get back to the representatives on the Board from your districts, from your town, to let us know what you're looking for.

Now Bruce, in his opening comments about the program, told you that he went by the questionnaires in forming

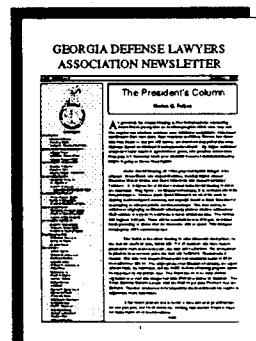
this program. Those of you who came to the last meeting were given questionnaires at the conclusion. A lot of you filled them out; some of you didn't. But those of you who did take the time to fill out the questionnaire influenced Bruce's planning of this program.

This is one of the best organizations that I know or belong to, and I am very proud to be a member of this organization, very proud to have been your President. The organization owes a duty to its members to get the members involved and to help the members as best they can. But in turn, the members owe an obligation to the organization, to improve it, so it will grow and provide the help that we all need.

You Can Call Us Names!

Right now we are calling this publication the Georgia Defense Lawyers Association Newsletter. That name may be just fine; it's hard to say that it doesn't accurately describe the publication. On the other hand, no one is going to accuse the Association of being excessively imaginative if we stick with that name.

Send us some suggestions for a name for this publication that has a bit more zest! While we won't offer



cash prizes, we will publish your name in an upcoming issue of the Georgia Defense Lawyers Association Newsletter (or whatever it will be called).

We don't have time in the practice of law to read everything, but I think we can help each other by publishing a few blurbs and things about what somebody has done in a particular area that might help each one of us in our area. Something that works in one part of the state might work in another part of the state.

Hendley has done an excellent job as Secretary/Treasurer, but, having been in that position, I can tell you that it is a hell of a job. Bruce has done an outstanding job; it's very difficult to set up one of these programs and to get it to run smoothly and you've

(Continued on next page)

done a good job to this point.

One of the things that is going to help our organization is the Executive Secretary. In the original by-laws--and I can't say enough about the people who drafted the original by-laws--Dick disputes this because he says there were two by-law changes, but in 24 years there is only one that can be found, and that's not bad. 25 years. And in the original by-laws, the founders of this Association provided for an Executive Secretary. We have now reached the point that we need one, and we have employed one, and Greg Spicer is that Executive Secretary. Greg would you stand up so that everyone can see you? That's the gentleman that everything is going to be funneled through. Questions that you have about the expert witness bank, about the Journal, about dues, about meetings, go to him, and then he will direct it to the proper person to respond to your question. Suggestions as to improving the organization should go to him. If we utilize the Executive Secretary the way it's outlined in the by-laws, this organization is going to grow and is going to become the voice of the Defense Bar in the State of Georgia, and I think that is one of our primary purposes, and we need to do that.

Let me get back. It has been a most rewarding year and whosoever the Nominating Committee selects as my successor, I think we are going to continue moving forward and give ya'll what you really need from the Association. And, with that I would like to call on Rick Marchetti to give the motion so we can get the by-laws before the body. Rick can I have a motion?

(At this time, Rick Marchetti moved that the membership adopt the by-law changes published in the first newsletter. The motion was seconded.)

== Mr. Forbes, presiding ==

Okay we have a motion made and

seconded. The first change, and this is going to take a little bit of time and I am not going to read the exact language, I am just going to tell you what the purpose of the changes are. The first one is proposed amendment to Section 1. Right now we have two classes of membership, Active and Associate, and the amendment will change it to Active, Retired, Associate and Honorary. We do have two honorary members, but we don't have a class for them. We also don't have any place for someone who has been in the Association and retired but still wants to come to meetings and be involved in the Association. You

must be actively engaged in the practice of law, in the practice of defense law, to belong to this Association, which excludes retired people or those that want to cut back. So, what I would like to do is have the amendment to Section 1 as to the class of membership, we will go through each one of them separately, vote on that and then move on to each one and try and take care of all of them as quickly as we can because we've got to vote on each one of them separately. We've got a motion on the floor. All in favor of the amendment to Section 1 as to increasing the class

(Please see Minutes, page 7)

Let's Keep in Touch!



If you move, get a new phone number, or change your affiliation in any way, be sure to give us a call at the Georgia Defense Lawyers Association. We don't want to lose track of you.

We are working hard to make the GDLA a more responsive and useful organization. We want to stay in touch with our members!

Tort Reform in Georgia:



Legislative Notes



Although the Georgia Legislature considered significant tort reform proposals during its latest session, once the dust had cleared, little legislation affecting defense law had passed. The enactment of the Georgia Tort Claims Act and a comprehensive revision of statutes governing Georgia workers' compensation law, however, deserve attention.

Act 1135 (Georgia Tort Claims Act)

This Act provides that the state waives sovereign immunity for the torts of state officers and employees while acting within the scope of their "official duties or employment." Except for the limitations and exceptions provided in the act, the state is liable for such torts in the same manner as private individuals under similar circumstances. Under the Act, the state does not accept liability for losses resulting from conduct by state officers and

employees that are not within the scope of their official duties or employment. The Georgia Tort Claims Act applies retroactively, governing causes of action that accrued on or after January 1, 1991. The Act will be codified at O.C.G.A. Article 2 of Chapter 50-21.

Act 1142 (Workers' Comp Overhaul)

This Act comprehensively revises Georgia Workers' Compensation law. In addition to increasing certain benefits, the Act gives guidelines for impairment ratings, subrogation liens, rights to proceed against third parties, and the assessment of penalties and fines by the State Board of Workers' Compensation. Additionally, the Act requires insurers to disclose annually certain information.

The Act changes rehabilitation benefits and redefines

"catastrophic injury." It also requires the release of certain medical records and information.

The defense bar should be aware of three other Acts:

Act 837 (Buses for Hire)

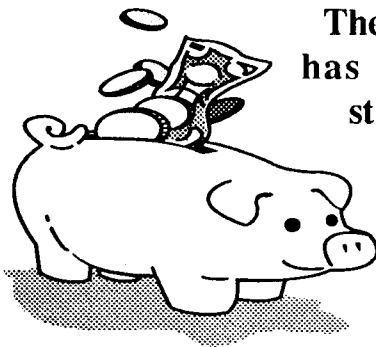
In civil cases, the presumption that certain common carriers are negligent no longer arises by the mere showing that injury was inflicted by their vehicles. The Act repeals O.C.G.A. § 46-2-94.

Act 1323 (Motor Vehicle Insurance)

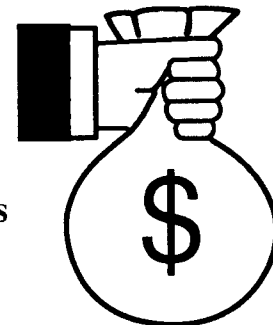
When a claim arises out of a motor vehicle accident covered by a liability carrier, and which may be covered by an uninsured motorist carrier, the acceptance by the claimant of a policy limits offer by the liability carrier bars certain claims. This Act enacts O.C.G.A. § 33-24-41.1.

(See Legislative Notes, page 10)

Important Announcement



The GDLA Board of Directors has established a new dues structure. If you have practiced law for seven or more years, your dues are \$125. If you have been practicing for less than seven years, your dues are \$90.



Minutes

(continued from page 5)

to four classifications for membership. All in favor.

(The motion carried.)

All right. Section 8, Article 3 has to do with the eligibility of a retired member, and it requires in the amendment that that member be in good standing for five consecutive years, for at least five consecutive years prior to his retirement from the Association and that he continues to manifest a genuine interest in or sympathy with the purpose of this Association, as expressed in Article 2. All in favor of that amendment to the By-Laws signify by saying aye.

(The amendment passed.)

Section 9, Article 2 has to do with Past Presidents and what it permits. Past Presidents in the Association are automatically ex-officio members of the Board, but a Past President who retires is not a member of the Association prior to the passage of the previous two articles. So what this amendment does is allow that retired Past President to remain a member of the Association and to continue to serve on the Board as long as he sees fit. All in favor of such an amendment signify by saying aye.

(The amendment passed.)

Proposed Section 10, Article 3 provides a definition of "Honorary Members" and that's all it does; could I have all in favor of amendment to Section 10, Article 3 signify by saying aye?

(The amendment passed.)

Amendment to Section 1, the dues and assessments. This amendment permits the Board to set the initiation fee and annual dues for the fiscal year for which new members are admitted to the Association. Right now the initiation fee in the by-laws is \$25--

we have been charging \$100 for quite a while, so that may be the other amendment that nobody could find. We can just make it where the Board can set it, as opposed to having to have a by-law change every time you set the dues or initiation fee. Everyone who is in favor signify by saying aye.

(The amendment passed.)

The amendment to Section 2 dealing with Associate Members does the same thing. It allows the Board to set the initiation fee and the dues for Association Members. All in favor of that amendment signify by saying aye.

(The amendment passed.)

The proposed amendment to Section 3 allows the Board to set the initiation fee and annual dues for Active Members. It must be set before the first of July at the Winter Meeting, and it allows the Board to set different

rates for different classes of membership. That would be Active, Retired, Associate, and Honorary, if Honorary's are charged any dues. Everyone in favor of that amendment signify by saying aye.

(The amendment passed.)

The Section 4 amendment has to do with the Associate Members and setting their assessment for the year. Everyone in favor of that amendment signify by saying aye.

(The amendment passed.)

Section 5 is the same thing for Retired Members. All in favor signify by saying aye.

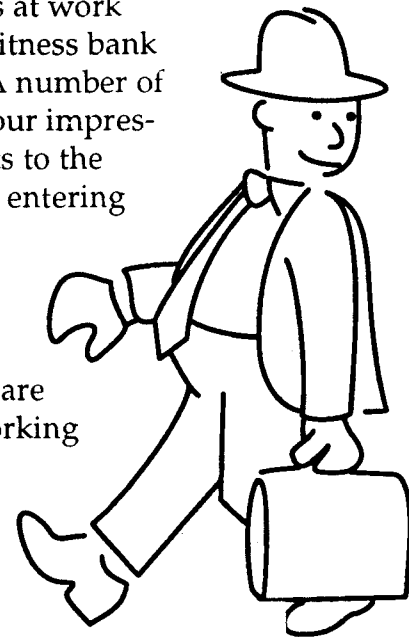
(The amendment passed.)

We're getting there. Now, we have a new Section 6, which simply adopts Section 5. Just changing the section numbers; Section 7 changes the

(Continued on next page)

How Do the Experts Rate?

As you know, expert witness testimony can play a vital role in the trial of an insurance defense case. The Georgia Defense Lawyers Association is at work compiling an expert witness bank to help its members. A number of you have submitted your impressions of various experts to the bank, and we are busy entering that data into the computer. Unfortunately, not all of the submissions were completed sufficiently, and some are not usable. We are working on a simplified questionnaire for use with the program. The GDLA will make the new form available as soon as possible.



section number of Section 6 to 7. All in favor of those changes signify by saying aye.

(The amendment passed.)

At present the by-laws in Article 7, Section 6 provide as to who the Executive Committee is. The Executive Committee runs the Association when the Board is not meeting; the Board meets twice a year. In between those times, the Executive Committee runs it. The way it used to be was the President, Executive Vice President, the immediate Past President and two other directors elected by the Board would be the Executive Committee. Now, this past year we had one vacancy in the Executive Committee that could not be filled because we didn't have a Board meeting. The reason we had the vacancy was because Hendley had been on the Executive Committee the year before and he became Secretary/Treasurer-- so he had two votes, and he exercised them, too. So we now have made a change in that which makes the Executive Committee the President, the Executive Vice President, the Secretary/Treasurer, and the three most immediate Past Presidents, so we will always have a full complement of members on the Executive Committee. All in favor of such amendment signify by saying aye.

(The amendment passed.)

The amendment to Article 8, Section 1 has to do with a change in the number of Vice Presidents. We now have three Vice Presidents and we want to change that to have four. All in favor signify by saying aye.

(The amendment passed.)

Good; now the Nominating Committee will be able to fill the slots. All right. Article 8, Section 4 defines the duties of the Executive Vice President and is a little more explicit than what his duties were before, and it has to do with how he will be replaced in the event he cannot perform his duties. All in favor signify by saying aye.

(The amendment passed.)

All right; all of them have been passed. Now, I would like for a motion to be made that the by-laws as passed be consolidated and that the membership be provided a full and complete copy of the by-laws in next year's Journal.

(Moved and seconded. The motion carried.)

Now do we have any new members of the Association present? Would you please stand? All of you stand up so we can recognize you and everybody can get to know you. Very good turnout. All right, Mr. Marchetti, do you have the report of the Nominating Committee?

Mr. Marchetti,
—Nominating Committee Report—

The Nominating Committee of the Past Presidents met and made the following nominations. For President - Bruce Welch, Executive Vice President - Hendley Napier, Secretary/Treasurer - David Whitworth, Vice Presidents - Charles Goetz, Clay Porter, George Duncan, David Hanks, for the Board for the northern District for a three year term - Robert Travis, for the Board for the Middle District for a three year term - Jerry Buchanan, Board Southern District three year term - Bill Pinson, State at Large for a one year term - Wiley Wasden, Ken Moormon, and Greg Melton. That concludes the recommendations.

Mr. Forbes, presiding

Are there any other nominations?

(At this time someone moved that the nominations be adopted as stated. The motion was seconded. The motion carried.)

Mr. Forbes

Congratulations. In 45 days they take office. That gives me 45 days to really

mess it up. Thank you.

The Annual Meeting is adjourned.
Bruce?

Bruce Welch

Each year, DRI examines the activities of the state and local defense groups and searches those that have done an outstanding job. Based on this, the Board of Directors of DRI is about to present a plaque, which I will read to you, that says after the initial description from DRI that this exceptional performance citation is awarded to Morton G. Forbes, President of the Georgia Defense Lawyers Association, for having supported and improved the standards and education of the Defense Bar and for having contributed to the improvement justice in the public interest. Salty was awarded this based upon his activities over the past year and several years, but also based upon the activities of this organization. Salty, where are you, congratulations to you.

Mr. Forbes

Thank you. I am happy to accept this on behalf of the Association. Whatever I have done to deserve this has been done by the Association; I just happen to be the person who was in office. This Association has done a great deal to help promote justice and the Defense Bar in this State and in this country. Thank you. One more thing before we start the program. Dick, I missed you and I would like you to report on the next annual meeting, as to the place and the dates, please.

Dick Richardson

Okay this is in the newsletter if you've still got it, but in case you lose that, you had better jot it down. '93 will be April 28 to May 2, Hamilton Princess in Bermuda.

Mr. Welch

Before we get into the actual program, on behalf of the organization I

would like to extend the thanks of the organization to Salty for what I feel has been an excellent year. His leadership has resulted in the changes to the by-laws, the establishment of many committees which have seen this organization do and accomplish much more than it has at any time in the past. We have had an excellent year and as a token of thanks to the outgoing President, Salty Forbes, I would like to present a plaque and a silver cup in the tradition of this organization to Salty. However, as I mentioned about defense lawyers yesterday--they are somewhat unreliable. I am adding to that category printers and engravers. The plaque and cup will be delivered shortly. Salty, we do thank you very much. Let's give him a hand for a great job.

Recent Cases

(continued from page 3)

✓ Jurisdiction - long arm statute

A non-resident corporation is not subject to jurisdiction under Georgia's long arm statute, O.C.G.A. §9-10-91, where the corporation or its agents did not commit a tortious act in Georgia, regularly engage in business in Georgia or derives substantial revenue from Georgia. The fact that a non-resident corporation owned and leased a plane which regularly flew to Georgia does not confer jurisdiction in Georgia. *McDonnell v Roy E. Beatty and Associates, Inc.*, Georgia Court of Appeals, Case Number A91A2131; March 20, 1992.

✓ Venue

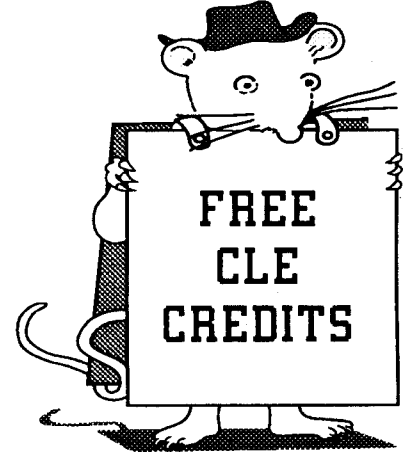
Where a local company, located in a county wherein defendant does not regularly maintain an office, agrees to serve as defendant corporation's agent for the purposes of storing defendant's products and collecting defendant's unpaid accounts,

Association Plans Luncheon

Try to keep your calendars clear for Friday, September 25. The Georgia Defense Lawyers Association has tentatively set that date for a three-hour Continuing Education seminar. The seminar will be preceded by a light lunch. The lunch and CLE seminar are free to GDLA members.

The seminar will likely be held at Mercer University School of Law in Macon. The seminar will probably begin around 2:00 p. m. and should be over by 5:30 p.m. We hope that Macon's central location in the state and the timing of the seminar will allow maximum attendance. We will be sending you further details as they become available.

The Association hopes to sponsor programs like this one on a regular basis. The Board plans to hold each seminar in a different location in order to make attendance convenient for all members.



defendant corporation maintains an office in that county within the meaning of O.C.G.A. §14-2-510(3). Venue against the defendant corporation is proper in said county. *McLendon v. Albany Warehouse Co.*, Georgia Court of Appeals, Case Number A92A0585, April 8, 1992.

GOVERNMENT

✓ Sovereign immunity

The ratification of the 1991 amendment to Article 1, Section 2, Paragraph IX of the Constitution of Georgia is valid and is prospective in its application. *Donaldson v. Department of Transportation*. Supreme Court of Georgia, Case Number S91A1351, March 17, 1992

✓ Municipal Liability

Where a municipality has waived immunity, it has a duty to exercise ordinary care to protect a person within its boundaries from crimi-

nal acts of other parties when it reasonably knows that its actions exposed the individual to a foreseeable risk of harm. *Jordan v. City of Rome*, Georgia Court of Appeals, Case Number A91A2148, March 20, 1992

INSURANCE

✓ Uninsured Motorist

Physical contact under O.C.G.A. §33-7-11(b)(2), the uninsured motorist statute, occurs when a vehicle or an integral part of it comes into contact with another vehicle. *State Farm Fire and Casualty Company v. Guest*, Georgia Court of Appeals, Case Number A91A1771, March 19, 1992

✓ Statute of Limitations on Uninsured Motorist Claims

Insurer was entitled to summary judgment when it was not served with a copy of the complaint until
(Continued on following page)

after the expiration of the statute of limitations even though it had received a courtesy copy of the complaint prior to the expiration of the statute of limitations. *Beasley v. Parks*, Georgia Court of Appeals, Case Number A92A0316, April 9, 1992

TORTS

✓ Medical Malpractice: sufficiency of affidavit

An affidavit of an professor of pharmacology and toxicology who is not a medical doctor does not satisfy the requirements of O.C.G.A. §9-11-9.1 because the affiant is not competent to testify about a practitioners standard of care. The affiant was not a practitioner and his affidavit did not described how he derived expert knowledge of the applicable standard. *Chandler v. Koenig*, Georgia. Court of Appeals, Case Number A91A1485, March 19, 1992.

✓ Dramshop/Premises Liability

O.C.G.A §51-1-40(b) does not impose liability upon the owner of the premises upon which alcohol is consumed. It imposes liability only upon one who furnishes the alcohol itself. *Vieu v. Fred Dean*, Georgia Court of Appeals, Case Numbers A91A2105 & A191A2248, March 17, 1992

✓ Seduction

O.C.G.A §51-1-16 (Seduction Statute) gives a right

of action to the parents of a seduced daughter. It does not give a right of action to the actual victim. The statute does not require virginity of the seduced daughter, only that she be unmarried and living with her parent. *Franklin v. Hill*, Georgia Court of Appeals, Case Number A91A1879, March 20, 1992.

✓ Negligence

Where an electrical utility has been granted a franchise to supply electrical power to a city, including an easement to use city streets to cut and trim trees as necessary for the maintenance of its power lines, the franchise was not an assignment of the cities duty to maintain the safety of the public roads. Neither the electrical utility nor the city has a duty to constantly check trees for nonvisible rot. *Carter v. Georgia Power Company and City of Macon*, Georgia Court of Appeals, Case Number A92A0088, April 8, 1992.

✓ Prejudgment interest

Where the plaintiff sends a settlement demand letter to the defendant's insurer, rather than the defendant or his attorney, the requirements of O.C.G.A. §51-12-14 have not been satisfied and prejudgment interest shall not be awarded. *Resnik v. Pittman*, Georgia Court of Appeals, Case Number A92A0073, April 7, 1992.

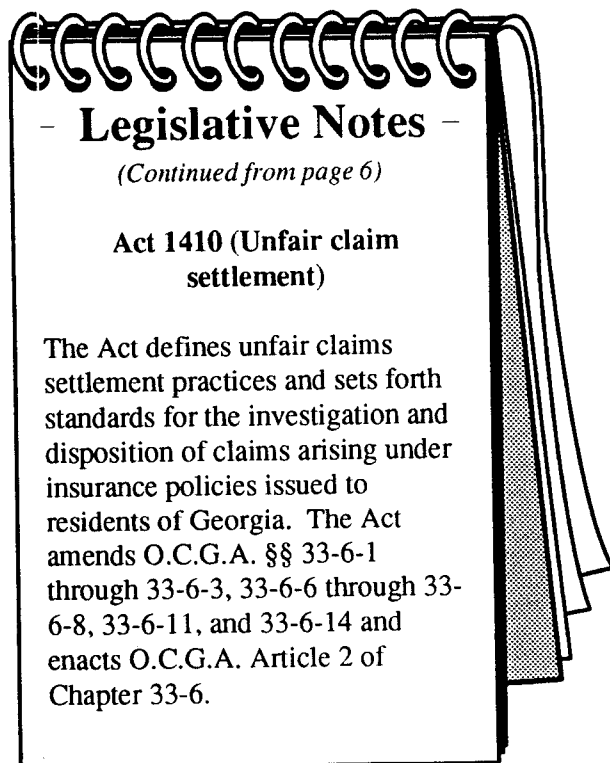
WORKERS' COMPENSATION

✓ Exclusive Remedy (false imprisonment claim barred by exclusive remedy)

Where an employee, for security reasons, was locked in a store on the premises until it opened the next and no one on the night crew had a key, there has been no showing that false imprisonment can be established because there has been no showing that the employee was retained against his or her will. Further, even if false imprisonment had been established, a tort action would be barred by the exclusive remedy provisions of the Georgia Workers' Compensation Act. *Bryant v. Wal-Mart Stores, Inc.*, Georgia Court of Appeals, Case Number A91A1712, April 3, 1992.

✓ Change of Physician

Where an employee is discharged by an approved physician, he or she is entitled to seek medical treatment from a physician of choice. The employee may relinquish this right by agreeing to limit authorized reimbursement to certain providers. *Owens-Illinois, Inc. v. Champion*, Georgia Court of Appeals, Case Number A91A2207, March 18, 1992.



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: _____

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City, State, and Zip Code

PHONE NUMBER: _____ FAX NUMBER: _____

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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.