Georgia Defense Lawyer ©

Advancing the Civil Defense Bar©

Fall 2005

GDLA Starts Substantive Law Committees

In its continuing effort to be the organization of record for civil defense attorneys in Georgia, the GDLA is re-instituting its Substantive Law Committees effective immediately, according to the association's president, Johnny Foster.

The committees will provide GDLA members continuing updates on case law, informative newsletter articles, specific CLE seminars and an annual update for the GDLA *Law Journal*.

Each committee will have a chairperson, vice-chair, committee members, and beginning next year, a chair emeritus. The GDLA is seeking volunteers to serve on these committees and position descriptions are available on page 14 of this newsletter and on the GDLA Web site.

Lynn Roberson, Swift, Currie, McGhee & Hiers, Atlanta, and David Whitworth, Whitworth Law Firm, Brunswick, have been appointed Substantive Law Steering Committee co-chairs, and will take on the task of helping to select committee positions for approval by the GDLA president.

"Re-starting the Substantive Law committees will really strengthen the GDLA in its mission to advance the civil defense bar in Georgia and provide our members yet another member benefit to help them in their practices," said Foster.

"The committees also provide a younger lawyer an excellent way to elevate his or her profile in the defense community via articles and attendance at the various functions related to their involvement," he said.

Continued on page 14

Inside This Issue

President's Message - 3

Executive Director's Message - 4

Member News - 5

GDLA News - 6

Premises Liability Case Updates - 8

Workers' Compensation & Tort Immunity Opinions - 11

"Skits & Suds" YL CLE Coming Back! - 16

2005 Executive Committee Retreat Highlights - 17

Fall Board Meeting Highlights - 21

2005 Overview of Changes in Georgia Law and Practice

As an annual feature of this newsletter, this article appears later than usual in the year and, as a result, faces a greater risk of being superceded by recent events. That is certainly true of the preeminent litigation—related focus of the 2005 legislative session, Senate Bill 3 and "tort reform." Because of its able and abundant coverage elsewhere, particularly at the June, 2005 GDLA annual meeting, it, along with the class action reforms passed at both the federal and state levels, is not a focus of this update.

Effective changes to the guardianship rules passed in 2004 were made on July 1, 2005. The good news is, while HB 229, introduced in 2003 and signed in May, 2004, revises much structure and terminology, many substantive rules and procedures are unchanged. One main revision is that a guardian of a person remains a "guardian," but a guardian of the property is now known as a "conservator." For defense lawyers, in settlement contexts, a natural guardian (custodial parent) can receive up to $15,000 now without being named conservator, a big increase from the $5,000 of past years under O.C.G.A. §29-3-1. Elsewhere in the probate code there are some expansions of powers in the conservatorships of minors and adults.

Remaining outside of "tort reform" per se, House Bill 416 from 2005 sets forth the requirements of "prima-facie evidence of physical impairment" to be established in any asbestos or silica claim case, prior to discovery commencing. It is stringent and lengthy, but it does make the discovery rule applicable to any limitations period. In other

Continued on page 10

FORENSIC CONSULTING & EXPERT WITNESS SERVICES

- Since 1984 -

FORCON INTERNATIONAL

www.forcon.com

GENERAL AREAS OF EXPERTISE

- Accident Reconstruction
- Architecture
- Automotive Fires & Failures
- Biomechanics
- Boat Accident Reconstruction
- Catastrophe Engineering
- Chemical Engineering
- Chemistry
- Civil Engineering
- Codes & Standards
- Construction
- Electrical Engineering
- Electronics
- Geology
- Geotechnical Engineering
- Highway Engineering
- Industrial Hygiene
- Injury Causation
- Materials Engineering
- Marine Engineering
- Mechanical Engineering
- Metallurgy
- Roofing
- Safety/OSHA
- Soils Science
- Structural Engineering

EXAMPLES OF SPECIALIZED EXPERTISE

- Adhesives
- Amusement Ride Accidents
- Batteries
- Blasting Damage
- Boilers & Furnaces
- Brake Failures
- Coatings
- Commercial vehicles
- Construction defects
- Container Handling Equipment
- Conveyor Systems
- Corrosion
- Cranes & Lifting Equipment
- EIFS
- Electrical Fires & Failures
- Electric Utility Plant Equipment
- Elevators
- Erosion & Sedimentation
- Fire Protection Systems
- Fuel gases
- Glass & window systems
- Heating & Air Conditioning Systems
- Heavy construction machinery
- Indoor Air Quality
- Low Speed Vehicle Accidents
- Manufacturing Machinery
- Marine Structures
- Mold
- Packaging
- Polymers & Plastics
- Power Tools
- Pulp & Paper Mill Equipment
- Refractory
- Roof Damage & Failures
- Sawmill Equipment
- Slip and Fall
- Toxic Chemical Exposure
- Welding
- Workplace Accidents

1534 Dunwoody Village Parkway, Suite 105 - Atlanta, GA 30338
770-390-0980 - Fax 770-390-0981

Georgia Defense Lawyer
Volume I1, Issue 111

Editor: N. Staten Bitting, Jr.

Georgia Defense Lawyer, the official publication of the Georgia Defense Lawyers Association, is published four times annually. For editorial information, please contact Staten Bitting at sbitting@fulcherlaw.com.

GDLA Officers & Directors

President
John A. Foster

Executive Vice President
Warner Fox

Secretary-Treasurer
Robert M. Travis

Vice Presidents
N. Staten Bitting, Jr.
W. Melvin Haas, III
R. Clay Ratterree
James E. Singer

Northern District
Jo A. Jagor (2006)
Lynn Roberson (2007)
Ted Freeman (2008)

Middle District
James L. Elliott (2006)
David Nelson (2007)
Craig Avery (2008)

Southern District
Edward "Bubba" Hughes (2006)
Jamie Weston (2007)
Kirby Mason (2008)

State At Large
Luanne Clarke
Hall McKinley
Gary Seacrest

Immediate Past President
Grant B. Smith

GDLA Office

Steve Milano, Executive Director
P.O. Box 8558
Atlanta, GA 31106
Tel: 404-817-9377
Fax: 404-817-9373
E-mail: contact@gdla.org

President's Message

It's an exciting time for the GDLA.

It's exciting first because of where we are. Thanks to the fine leadership, stewardship and hard work of my predecessors, we are financially sound, we are growing steadily in terms of membership, and various initiatives enacted in the past few years are proving to have been great ideas.

Last year, for the first time anyone can remember, we welcomed more than 100 new members in one year. Steve Milano has now been with us going on two years as our first ever executive director and he is doing a tremendous job. Our first workers' compensation academy was a success. Our sponsorship program is thriving. Our tort reform database is up and running. We have held two judicial receptions in Atlanta and these have been very popular for our membership and for the judiciary alike.

We are going to invite into our membership Georgia lawyers . . . whose practice may not be what has traditionally been thought of as "insurance defense."

It is also an exciting time for the GDLA because of the challenges that face us. Two challenges come to mind: How can we offer more services to our membership and how can we continue to increase and diversify our membership?

We will take on these challenges in several different ways. We are going to invite into our membership Georgia lawyers whose practice is primarily devoted to the defense of civil litigation but whose practice may not be what has traditionally been thought of as "insurance defense." For example, we intend to do more to make a place in our association for those whose practice is concentrated in areas such as employment law, construction law, commercial litigation, government liability, etc. We are going to continue to reach out to minorities and female lawyers who are eligible for membership. We are going to provide CLE tailored to the needs of younger lawyers who are members of, or are eligible for membership. We are going to offer deeply discounted annual meeting registration fees to new members to encourage them to attend our annual meetings. My bet is that once they have attended one GDLA Annual Meeting, they and their families will be hooked for life.

We are also going to re-establish our Substantive Law Committees. If successful, this initiative will go a long way towards conquering both of the major challenges we have identified. Our members will have available to them on a regular basis easily digestible case law updates in the traditional insurance defense areas as well as the other substantive law areas listed above. We will encourage practitioners in these defense (albeit non-insurance defense) practice areas to take active and leadership roles in these committees. We will encourage women, minorities and younger lawyers to do the same.

Finally, I want to encourage each of our members to mark their calendars for two dates. February 2, 2006 will be the date of our third annual judicial reception in Atlanta; and June 8 through 11, 2006 are the dates of our upcoming annual meeting which will be held, for the first time since 1993, in Bermuda.

Thank you for the opportunity to serve your Association during such an exciting time.

Johnny

Executive Director's Message

On September 16, members of the GDLA Executive Committee met in downtown Atlanta to discuss the current status of the association and to help plot its future.

Many issues were discussed and an ambitious course was set by new president, Johnny Foster.

Highlights of the meeting can be found on page 17 of this issue of *Georgia Defense Lawyer*. Attendees included President Foster, Executive Vice President Warner Fox, Secretary/Treasurer Bob Travis, Past President, Rick Rominger, Membership Chairman Salty Forbes and myself. In addition, board member and Premises Liability Chair Lynn Roberson and board member and Young Lawyer Recruitment and Retention Chair Jo Jagor attended to put forth suggestions for expanding the diversity of the GDLA membership.

One of the main issues to come out of the meeting was the goal of expanding of the organization to include more types of Georgia lawyers, from both practice and diversity standpoints.

A question the group first had to answer was, "What is the GDLA?" For too long, the organization has been viewed as representing primarily the insurance defense sector. Other criticisms leveled at the association included its status as a social or "party" organization, and, as one board member put it, being "male, pale and stale."

The discussion led to the conclusion that while the social and networking aspects of the GDLA are extremely important reasons to join, more and more attorneys ar joining the GDLA for the many substantive professional benefits offered, including blast e-mail capability, tort reform database, *Law Journal*, CLE opportunities, Judge's receptions, etc.

If there is any doubt in anyone's mind that the GDLA is changing (and that these changes have been accelerating since 2004), and that a civil defense attorney in Georgia needs to belong to the GDLA, all one has to do is to visit our information-packed Web site.

With the addition of more than a dozen substantive law committees which will perform valuable work throughout the year, our participation in Georgia's judicial review process, the creation of an online repository of recent work product, motions and rulings concerning SB3 and many other valuable contributions to the practice of civil defense law in Georgia, the GDLA will only continue to expand its value to member attorneys and potential members.

To help communicate this growth of the association and to let the legal community know what the association is all about, the executive committee agreed that an appropriate slogan was needed to help "brand" the association to help it put out a consistent message on brochures, our Web site, the newsletter, etc.

After some discussion, Lynn Roberson and Warner Fox offered, "Advancing the Civil Defense Bar," and at the fall GDLA board meeting, this slogan was unanimously approved as the official tagline for all GDLA collateral materials.

Please help spread the word to your fellow lawyers about the new direction of the GDLA, send them to our Web site and let them know why you join.

The GDLA is only as strong and valuable as the members who support it. If you haven't been involved, please consider doing so in 2006. If you have taken advantage of our many offerings and opportunities to participate, thanks, and stay active.

Steve Milano
Executive Director

Other criticisms leveled at the association included its status as a social or "party" organization, and, as one board member put it, being "male, pale and stale."

GDLA Committees

Membership
Morton G. Forbes, Chairman
Rick Marchetti; Bruce Welch;
David Whitworth

Memb. Recruitment & Retention
Lynn Roberson, Bubba Hughes

Young Lawyers Recruitment & Retention
Jo Ann Jagor, George Duncan

Meetings
Steve Kyle, Chairman
Clay Ratteree; Grant Smith;

Amicus
Ted Freeman, Chairman

Tort Reform
Bob Travis, Chair
Joe Chambless, Salty Forbes,
Warner Fox, Mel Haas, David
Nelson, Lynn Roberson

Judicial Nominations Review
Walter McClelland,
Lynn Roberson

Sponsors & Exhibitors
Clay Ratteree, Chairman
Ted Freeman, Gary Seacrest,
Grant Smith

Law Journal
Bubba Hughes

Newsletter
Staten Bitting

Web Site
Kirby Mason, Chair
Greg Ellington, George Hall,
Grant Smith

Trial Academy
Tom Magill, Chairperson

Workers' Comp. Academy
Staten Bitting, Luanne Clarke

DRI Liaison
Bruce Welch

Legislative Liaison
Barry Fleming

Member News

Congratulations, Recognitions & Announcements

Nicole D. Tifverman and Robert T. Tifverman announce the establishment of Tifverman Law Firm, LLP and the opening of their new offices at 1775 Woodstock Road, Ste. 320, Roswell, GA 30075 on November 15, 2005. The firm will continue its concentration in workers' compensation defense, construction litigation, business contracts, elder law and estate planning.

Robert R. "Rusty" Gunn, II, Martin Snow, Macon, was the recipient of the Macon Bar Association's Wm. Augustus Bootle Award this year (for professionalism and ethics).

Lynn M. Roberson, Swift, Currie, McGhee & Hiers, Atlanta, recently spoke on *Defending a Third-Party Criminal Act Case - Summary Judgment and Trial Strategy*, at ICLE's annual Premises Liability seminar October 28.

Steve Kyle, Bovis, Kyle & Burch, Atlanta, has been asked to speak at the DRI's Fire and Casualty Seminar, to be held in Chicago, Illinois on Nov 17-18, 2005. His speech will be titled *Why Gamble on the Spoliation Defense?: a Better Bet, the Rapid Response Plan*.

Al Parnell, Hawkins & Parnell, Atlanta. . . contributed to the recent success of DRI's newest seminar, *Becoming a Preeminent Trial Lawyer*.

The law firm of **Brinson, Askew, Berry, Seigler, Richardson & Davis**, Rome, proudly announces The Honorable Norman Fletcher, Chief Justice of the Supreme Court of Georgia, retired, has joined the firm practicing law in the areas of mediation, arbitration, litigation, general business matters and appellate practice.

Rex Smith, Mabry & McClelland, Atlanta, is now mediating at Henning Mediation.

Condolences

The GDLA is saddened to announce the passing of **James A. "Bubba" Dunlap**. Mr. Dunlap was a past president of the association (1976-1977). A resolution recognizing his passing and contributions to the association will be included in this year's "Law Journal."

New Members

The GDLA welcomes the following new members:

Christopher Cosper, Hull, Towill, Norman, Barrett & Salley; **Wright Dempsey**, Hawkins & Parnell; **Joseph P. Durham**, Langley & Lee, Albany; **Jack Gresch**, Hall Booth, Smith & Slover, Atlanta; **William J. Hunter**, Oliver, Maner & Gray, Savannah; **Julie S. Irvin**, Moore, Clarke, DuVall & Rodgers, Albany; **Michael Johnson**, Troutman Sanders, Atlanta; **Michelle Roback Kraynack**, Sommers, Scrudder & Bass; **Janis LaBorde**, Savell & Williams; **James R. Oxford**, Moore, Clarke, DuVall & Rodgers, Albany; **Gregg Porter**, Savell & Williams; **Robert Ryan**, Moore, Clarke, DuVall & Rodgers, Albany; **Susan Speer**, Savell & Williams; **Kimberly Stevens**, Hawkins & Parnell; **Lynda Williams**, Savell & Williams; **Mary Wilson**, Savell & Williams.

Member Referrals

The following GDLA members referred new members to the association and receive a $50 credit good toward GDLA CLE seminars.

Mike Taylor referred Christopher Cosper; **Jo Jagor** referred Jack Gresch and Michael Johnson; **Andrew Wilkes** referred William Hunter; **Jason Willcox** referred Julie Irvin; **Jane Taylor** referred Michelle Roback Kraynack; **Mark Gannon** referred Janis H. LaBorde, Gregg Porter, Susan Speer, Lynda Williams and Mary Wilson; **Luanne Clarke** referred James Oxford and Robert Ryan; Gregg Porter ; Susan Speer; **Warner Fox** referred Wright Dempsey, Kimberly D. Stevens; Mary E. Wilson.

Cases of Interest

In a case brought under Section 1983, Section 1981 and various state law claims, an African-American Plaintiff sued an African-American School Superintendent and the School District making claims of racial discrimination and Fair Labor Standards Act ("FLSA") Violations. Plaintiff claimed that she was the victim of racial discrimination when she was initially hired and then again when she was later terminated. She also contended that she was terminated because she complained about co-workers being due overtime under the FLSA. Various state law claims were also asserted. The defense contended that Plaintiff was terminated not because of anything to do with race, but because she attempted to write herself overtime checks that she was not authorized to write and in amounts greater than what she was due. In a bench trial before Judge Clay Land (Middle District, Columbus Division), the Court ruled in Plaintiff's favor against the School District only on her FLSA claim, and even then, for a nominal award. The Court also ruled entirely for the Superintendent on all claims. The Superintendent was represented by GDLA member **Wayne S. Melnick** of Gray, Rust, St. Amand,

Continued on page 6

Moffett & Brieske, in Atlanta. The School District was represented by GDLA member David A. Siegel, Page, Scrantom, Sprouse, Tucker, & Ford, Columbus.

Hugh McNatt, McNatt and Greene, Vidalia, won a defense verdict for Mercury Marine in a wrongful death case in Toombs County. The Plaintiff was a young white male. Plaintiff was represented by Bobby Jones and Al Pierson.

Lynn Roberson recently received a favorable decision from the Georgia Court of Appeals on behalf of an owner and manager of an apartment complex in a wrongful death case. In this case, the Sotomayors filed a wrongful death action against the owner and manager of the apartment complex where they lived, claiming the landlord negligently failed to prevent the death of their five-year-old daughter who was struck and killed by a car driven onto the property by Suarez. "Suarez drove across marked parking spaces, over a raised concrete curb, four feet of sidewalk, and 13 feet of grass before striking Leslie and crushing her against the brick wall of her apartment building. Suarez immediately fled the scene and has not been apprehended. The Sotomayors assert that the landlord was negligent by failing to install a higher curb, called a 'barrier curb' or 'bumper stop' instead of the lower, mountable curb over which Suarez drove, in front of the parking spaces adjacent to the sidewalk." The trial court granted the landlord's motion for summary judgment, "holding that there was no competent evidence that the landlord had a duty to install bumper stops; that [the child's] death was unforeseeable because it was caused by the intervening criminal act of Suarez; and that the equal knowledge rule barred the Sotomayors' recovery." The Court of Appeals affirmed. "Viewed most favorably to the Sotomayors, the evidence shows that on October 23, 2000, at approximately 5:30 p.m., Araceli Sotomayor was watching her three young children play in the grassy area adjacent to her apartment building. Araceli deposed that it was still light outside. She noticed a car coming very slowly across the bridge leading into the complex. Araceli estimated the speed at approximately five m.p.h. The car turned into the parking area. As the car came closer, Araceli recognized it as the one her husband had sold to Suarez one month earlier. The next thing she knew, the car was pinning [her daughter] against the wall. By the time the ambulance arrived, the child was dead." "[The mother] testified that Leslie had been standing three feet away from the wall of the building. According to Araceli's deposition and the police report, it appeared that Suarez was going to park her car, but she did not slow down or stop. She continued onto the sidewalk, crossed the grassy area, struck Leslie, 'clipped' her younger brother, and, finally, hit the wall." The owner "testified that when TAMA purchased the 30-year-old complex in 1997, there were bumper stops at between five and ten percent of the parking spaces. In June 1998, [he] decided to install additional bumper stops to protect the landscaping because residents were parking haphazardly on the grass. [He] was concerned with making the property more attractive to prospective tenants, so the new bumper stops were concentrated in the parking area around the leasing office. [He] testified that the devices were not installed to prevent collisions between pedestrians and vehicles." The Sotomayors retained an expert in traffic engineering and accident reconstruction, Herman Hill, who opined that the landlord was required to install bumper stops in front of the apartment building and that a bumper stop either would have stopped Suarez's vehicle or would have slowed it down so the children would have had the opportunity to get out of the way. "Hill based his opinions on 'the reasonable person standard' and on the 'standard of practice or the reasonableness of design and operation based on the principles of separating conflicts between vehicles and pedestrians . . .that is covered by state and national standards.' Specifically, Hill relied on the manual *Geometric Design of Highways and Streets*, issued by the American Association of State Highway & Transportation Officials (AASHTO). However, Hill deposed that there were no state, federal, or local laws or ordinances mandating the use of bumper stops. Specifically, he testified he was unaware of any regulation in Georgia requiring the application of AASHTO standards to parking lot construction. However, he testified the same principles of separating conflicts between vehicles and pedestrians on residential streets apply to parking lots as well." The court rejected the Sotomayors' argument that Hill's testimony created an issue of fact as to whether the landlord had a duty to install bumper stops "because Hill deposed that there were no state, federal, or local laws or ordinances mandating the use of bumper stops. There is no evidence that such devices were required by any housing code. Moreover, the AASHTO manual upon which he relied does not specifically reference the construction of residential parking lots; rather, as its title suggests, the manual is intended to provide guidance in the construction of highways and streets. In addition, the manual states that 'barrier curbs are not adequate to prevent a vehicle from leaving the roadway.' According to

the manual, 'the barrier curb has limited capacity as a shield for pedestrians, but acts to discourage the mingling of vehicular and pedestrian traffic.' Accordingly, Hill's opinion testimony that the landlord was required to install bumper stops in front of the plaintiff apartment building is not supported by probative evidence and amounts to bolstering, particularly with regard to his opinion as to what measures would be reasonable." The court also rejected the Sotomayors' argument their child's death was reasonably foreseeable. The court found that the incident that killed this child was a remote possibility and an "extraordinarily rare event." Since the event was not reasonably foreseeable, the landlord had no duty to guard against it.

Frustrated with Your Complex Medical Cases?

M.D./J.D. Peer Review Expert Wants to Help!

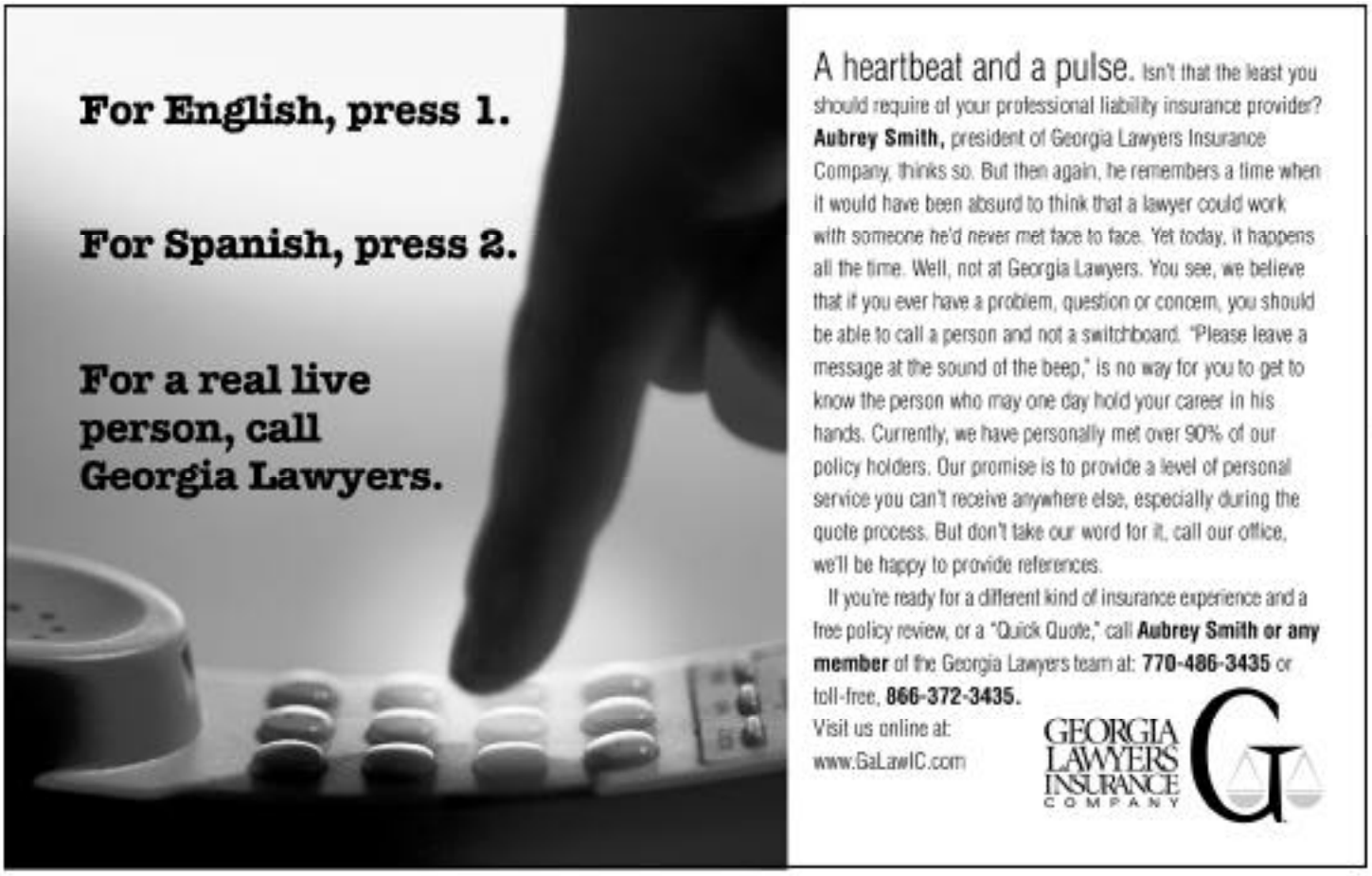
*Vast Experience in Disability
(Group and IDI) & Workers Compensation
*Understands Medical and Legal Aspects
*Available for Medical Negligence, Hospital
& Medical Licensure cases
*Unrestricted Georgia and Florida medical licenses
*Member of Georgia Bar

Mitchell S. Nudelman, MD, JD, FCLM

Principal, Nudelman & Ass., Ltd.

Tel: 770-499-0398 x205 Fax: 770-499-8299
Nudelman@bellsouth.net

Resume/references upon request



Recent Cases of Interest to Those Who Defend Proprietors in Premises Liability Cases

Foreseeability in Negligent Security Cases

The Court of Appeals has recently examined the issue of foreseeability in the negligent security case. As you know, in order for a plaintiff to recover under O.C.G.A. § 51-3-1, s/he must prove the traditional elements of negligence: (1) duty, (2) breach, (3) causation, and (4) damages. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 492, 405 S.E.2d 474 (1991). A landowner only has a duty to protect against the foreseeable criminal acts of third parties. Sturbridge Partners, Ltd. v. Walker, 267 Ga. 785, 482 S.E.2d 339 (1997). One way foreseeability may be determined is by analyzing whether the proprietor has notice of substantially similar prior criminal acts. Id. at 786. In determining whether a given crime is substantially similar, a court must analyze the "location, nature and extent of the prior criminal activities and their likeness, proximity or other relationship to the crime in question." Id. In the recent cases of Baker v. Simon Property Group, 273 Ga. App. 406, 614 SE2d 793 (2005) and Agnes Scott College Inc. v. Clark, 273 Ga. App. 619, 616 S.E.2d 468 (2005), cert. denied, the foreseeability issue was addressed by the Court of Appeals.

Jason Baker appealed from the trial court 's order granting summary judgment to Simon Property Group, the manager of the mall, and IPC International Corp., the security company for the mall, in his suit to recover damages for personal injuries arising from a shooting in a mall parking lot. The Court of Appeals affirmed summary judgment to the defendants.

The evidence showed "that Baker was shot during a carjacking in the parking lot of a mall on Christmas Eve. . . The incident occurred shortly after Baker parked his car in the crowded parking lot while it was still light outside. He heard a noise on his right side, and saw a man pointing a gun at him through the partially open front passenger's window of his car. The man said, 'Give it up playboy, you know what time it is,' and shot into the car's front windshield. Baker, believing that the man wanted him to get out of the car, jumped out of the car and ran about 15 steps before being shot in the chest while turning to look back at his attacker. When he looked back toward his car, he saw a second man on the driver's side of the car and the two men left with his car."

Baker claimed "the shooting was foreseeable to the defendants based on a computer printout listing crimes at the mall for the 30 months preceding his injury. This printout was obtained from the local police department and [was] not certified or authenticated. Baker also relie[d] on uncertified and unauthenticated police incident reports." The Court reaffirmed that such evidence was not admissible so could not be considered on summary judgment. The Court further noted that "even if these documents had been admissible, Baker failed to show that the defendants were aware of the reports made to the police. Thus, this evidence could not be used to support Baker's claim that his attack was foreseeable.

"The only admissible evidence of other criminal incidents in the parking lot of which the defendants were aware in the year before Baker's shooting was five thefts or burglaries from unoccupied vehicles, two reports of criminal damage to unoccupied vehicles, and three cars stolen from the parking lot while the customers were inside the mall shopping."

The Court (Judges Phipps, Andrews and Mikell) found tat, "[a]lthough we recognize that the question of whether a criminal attack was reasonably foreseeable is generally for the jury, . . . the prior property crimes in the mall's parking lot are insufficient to create a factual issue whether the defendants could reasonably anticipate that a carjacking and shooting resulting in personal injury might occur."

On reconsideration in the Baker case, the Court of Appeals disagreed with the Plaintiff's assertion "that he did not need to show that the crime against him was foreseeable because the defendants had already undertaken a duty to provide security" so that he only needed to show an issue as to whether the defendants provided security in a negligent manner. " 'The fact that this particular crime was unforeseeable establishes that there was no duty to protect against this specific attack. The evidence which [Baker] present[s] regarding alleged deficiencies in the security system ignore[s] the fact that there was no duty to protect against this type of attack..' Undertaking measures to protect patrons does not heighten the standard of care; and taking some measures does not ordinarily constitute evidence that further measures might be required."

In Agnes Scott College Inc. v. Clark, 273 Ga. App. 619, 616 S.E.2d 468 (2005), cert. denied, the Court of Appeals (Judges Miller, Blackburn, and Bernes) also rejected the Plaintiff's claim that her attack was foreseeable. The Agnes Scott student "sued the college, alleging that Agnes Scott negligently failed to keep its premises safe, after the student was kidnapped from one of Agnes Scott's parking lots and raped off campus. Although there was no evidence of any kidnappings, rapes, attacks or other similar crimes occurring in the parking lot prior to the incident involving the student, the trial court denied Agnes Scott's motion for summary judgment." The Court of

By Lynn M. Roberson,
Swift, Currie, McGhee & Hiers, Atlanta

Appeals asserted that the trial court's ruling was contrary to "Georgia Supreme Court precedent requiring that prior similar crimes must occur before a landowner can be held liable for injuries suffered in connection with a future crime on its premises" so it reversed.

The evidence of record showed that "[p]rior to the September 1997 incident involving Clark, there had been no reported incidents of kidnapping, rape, or any other violent crimes occurring in the South Candler lot at Agnes Scott. Only crimes against property, such as car break-ins, and other crimes not involving person-to-person contact had been reported. Even reports of suspicious persons in the lot involved people who were seen late at night and who had no direct contact with students in the lot. It is undisputed that neither Agnes Scott nor Clark had any knowledge of Hunter prior to his abducting and raping Clark.

"In opposition to summary judgment, Clark did not come forward with evidence of violent crimes occurring in the South Candler lot prior to the incident involving Hunter. Instead, she produced general crime statistics for the City of Decatur and other areas and evidence that students were afraid of going to the South Candler lot alone at night. Acknowledging such evidence in its order denying summary judgment to Agnes Scott, the trial court reasoned in part that although '[t]here had been no carjackings on or near campus, . . . Agnes Scott was aware that carjackings were on the rise across the nation. . . .' The trial court further focused on the fact that the South Candler lot was farther away from campus than the other parking lots, and that students expressed concern for their safety in the lot at night, in reaching its conclusion that a jury question existed regarding whether Agnes Scott could have foreseen the daytime attack against Clark." Citing to the Supreme Court decision in Doe v. Prudential-Bache/A.G. Spanos Realty Partners , 268 Ga. 604, 606 (492 SE2d 865) (1997), the Court held that the attack on Clark was not foreseeable to Agnes Scott. "As a matter of law, break-ins to unoccupied cars and other incidents that did not involve person-to-person violence or contact would not make the daytime abduction of Clark foreseeable. . . Nor would general crime statistics and student concerns about walking alone in a parking lot at night

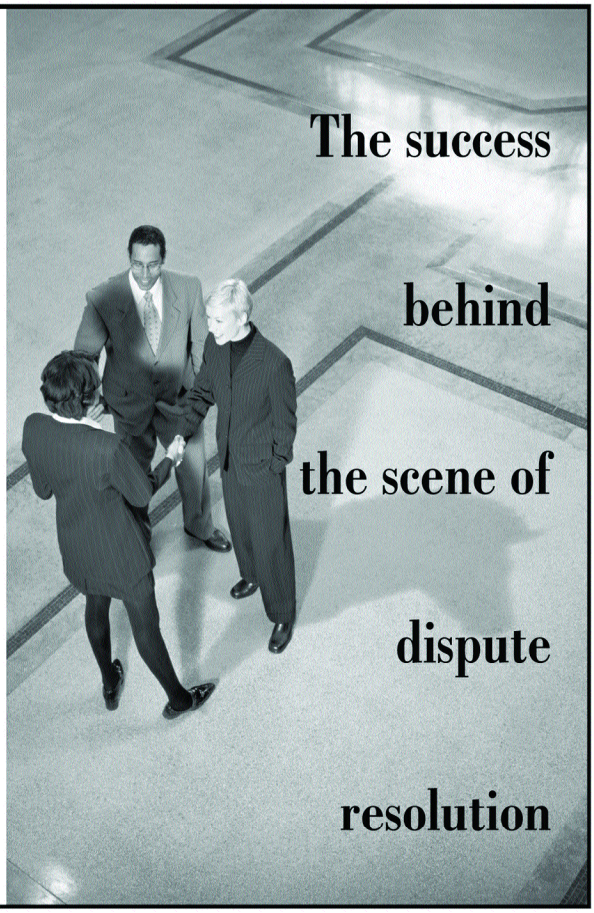
Continued on page 12

Strength, Dependability, Persistence... For over forty years Henning has been "the ADR work horse" in the Southeast.

Clifford F. Altekruse, Esq.
Thomas H. Asselin, Esq.
Hon. Dorothy Toth Beasley
Mike Bowers, Esq.
Hon. G. Grant Brantley
William B. Brown, Esq.
A. Dennis Caniglia
Terrence Lee Croft, Esq.
Hon. Alex Crumbley
Hon. Jack Etheridge
Arthur Glaser, Esq.
William S. Goodman, Esq.
Harry L. (Buck) Griffin, Esq.
Lendon D. Gibbs, Esq.
Hon. Ralph Hicks
James B. Hiers, Esq.
Lloyd Hoffspeigel, Esq.
Homer A. Houchins, Jr., Esq.
Hunter R. Hughes, Esq.
Hon. Robert N. Leitch
Carol Levine, Esq.
Ronald Arthur Lowry, Esq.
Thomas E. Magill, Esq.
James E. Mahar, Esq.
A. Lee Parks, Esq.
Chad Shultz, Esq.
Hezekiah Sistrunk, Esq.
Patricia A. Siuta, Esq.
Rex D. Smith, Esq.
Hon. John W. Sognier
Kent T. Stair, Esq.
Thomas Tobin, Esq.

HENNING
Mediation & Arbitration Service, Inc.

Contact Us Today to Settle Your Case with a Henning Professional
770-955-2252 • 800-843-6050 • www.henningmediation.com



Georgia Law and Practice

continued from page 1

By Scot V. Pool,
Forbes & Bowman, Savannah

limited contexts, Senate Bill 139 limits liability for liquid gas providers and Senate Bill 140 concerns a patient's right to an independent review within managed healthcare plans. New O.C.G.A. §43-41-3 sets in motion provisions now requiring licensing and approval for residential and general contractors in the state.

Shifting focus to some appellate opinions of interest, certainly any time the Georgia Supreme Court ends an Opinion with a sentence like, "If the legislature disagrees with our construction, it is free to amend the statute to make its intent clear, as it has on other occasions." some trepidation is due. That could not be more true with Gordon v. Atlanta Cas. Co., 279 Ga. 148, 611 S.E.2d 24 (2005), wherein the Supreme Court seems to suggest that policy defenses for a UM carrier are moot once any damages are owed by the uninsured motorist. The specific question addressed by the Court was whether Georgia's UM statute "requires an insurer to pay damages for the death of an insured's son when the insured's son is not a 'covered person' under the terms of the insurance policy." 611 S.E.2d at 25. The Supreme Court finds that, yes, the insurer is required to pay damages, and points to the statute, requiring the insurer to pay "all sums which [the] insured shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle" Id. (emphasis supplied). The Court says "all means all," including persons not covered under the policy. Id.

Outside of the UM context, Southern Guaranty Inc. Co. v. Dowse, 278 Ga. 674, 605 S.E.2d 27 (2004) stands for the proposition that policy defenses to third-party claims may themselves still be valid, but an insurer that refuses to defend or indemnify its insured may not later argue that a settlement entered into by the insured and third-party relieves the insurer from its obligations under the policy. Where the settling parties does not release the funds under the insurance policy, not defending under reservation of rights causes the insurer to be estopped from contesting its insured's liability, the plaintiffs' right to recover, and its obligation to pay to the extent the policy provides coverage.

For what appears to be a final word on the constitutionality of the narrative medical report statute, Bell v. Austin, 278 Ga. 844, 607 S.E.2d 569 (2005) observes that the statute, O.C.G.A. §24-3-18, simply extends to civil cases the same hearsay exception long applicable in workers' compensation, and then rejects: arguments that it denies the right to cross examination of the author; concerns that the expert qualifications need not be set forth in the report itself; and equal protection and due process arguments, which the Court negates in part by saying that any one party has the same right as any other party to rely upon the statute.

In McQuaig v. Tarrant, 269 Ga. App. 236, 603 S.E.2d 751 (2005) a co-defendant wins summary judgment on the factual evidence of proximate cause. The Court acknowledges evidence of negligence by the co-defendant in that she was following too closely, yet notes this did not obscure her view of the other co-defendant. The Court then rejects Plaintiff's argument that she could not see the defendant because she was, following too closely, since "even if [Plaintiff's] view of [defendant's] car was obscured, [Plaintiff] was obligated to wait until she could see why the traffic had cleared before she drove her car into the intersection." 603 S.E.2d at 753.

A similar summary judgment case on proximate cause, Ferrell v. United Water Services Unlimited Atlanta, LLC, 271 Ga. App. 887, 611 S.E.2d 126 (2005), finds the Court of Appeals rejecting not only factual evidence of a failure to set out traffic cones or warnings for vehicles parked in the curb lane but also expert opinion testimony that the Court disputes "since the van was clearly visible before McClellan first noticed it," the expert having predicated his opinion on an inability to stop in time after he first noticed the van. 611 S.E.2d at 128. With McQuaig, the lesson of these two cases seems to be to never give up hope of summary judgment, because you just never know.

Thompson v. Thompson, 278 Ga. 752, 605 S.E.2d 30 (2004), rejects ever calling proximate cause "the dominant cause" in jury charges. Also, in the jury charge context, Roswell v. Bolton, 271 Ga. App. 1, 608 S.E.2d 659 (2004), is useful for the proposition that jury charges must be specifically applicable to the subjects of the case; in other words, a charge may not be introduced merely because the language cited is advantageous to the case but the facts are wholly dissimilar. In a food case, Wilson v. Melton, 270 Ga. App. 1, 606 S.E.2d 47 (2004) is a summary judgment case for the defendant restaurant, despite facts (blood on the packaging of the french fries) that would scare most any claims adjuster. Here, as is the Georgia rule, recovery for "fear" is not allowable without any proof of actual exposure to potential harm. Finally, in Guoth v. Hamilton, 273 Ga. App. 435, 615 S.E.2d 239 (2005), the Court of Appeals sets out in a lengthy opinion perhaps the definitive illustration of when jurors are beyond rehabilitation and demand being excused for cause by the trial judge. As a practical matter, approaching the bench with this case may save the prudent defense attorney a strike later.

Recent Workers' Compensation & Tort Immunity Opinions

N. Staten Bitting, Jr.
Fulcher Hagler, Augusta

Builders Insurance Group v. Ker-Wil Enterprises, Inc., ___ Ga. App. ___, 618 S.E.2d 160 (July 19, 2005). The insurer denied a workers' compensation claim, contending that it had timely and properly cancelled the employer's policy prior to the date of accident. After filing its controvert, it filed suit in Superior Court seeking a declaratory judgment that it had no coverage for this injury. This suit was dismissed on the basis that the Board was the proper forum to have issues concerning proper termination of coverage decided. The Court of Appeals agreed, ruling that the Board had the authority to resolve workers' compensation insurance coverage issues that bear upon the payment of benefits to an injured employee.

Food Star, Inc. v. Stephens, (September 1, 2005). A claim was found compensable after a hearing before an ALJ, but only medical benefits were found to be due. The employer later changed insurers. The employee's condition then deteriorated until he was forced to cease work. The prior insurer argued that it was a fictional new injury date and should be the responsibility of the subsequent insurer. The subsequent insurer argued it was a change of condition. The Court of Appeals affirmed the Appellate Division's finding that it was a change of condition. Even though no income benefits had been paid, there was a "compensable injury" because of the prior award of the ALJ.

Metropolitan Atlanta Rapid Transit Authority v. Bridges, (September 23, 2005). The employer attempted to reduce benefits under O.C.G.A. § 34-9-104, then attempted to unilaterally suspend benefits using a medical release which was more than 60 days old (in fact it pre-dated a surgery). The Court of Appeals, citing City of Atlanta v. Sumlin, 258 Ga. App. 643 (2002), held that the reduction and suspension of benefits were invalid because of the employer's failure to strictly comply with the provisions of the Workers' Compensation Act.

Crisp Regional Hospital v. Oliver, (September 23, 2005). The hospital employee sustained a work-related injury. The employee then received medical treatment from nurses and physicians working at the hospital's clinic. The employee sought to sue the hospital in tort alleging it was vicariously liable for simple negligence of its employees and agents in delaying proper diagnosis and in professional negligence for malpractice in treating the injury. The Court of Appeals held that the exclusive remedy provision of the Workers' Compensation Act barred the employee's tort claims for vicarious liability against the hospital for simple and professional negligence. The Court also ruled that the employee was not a third-party beneficiary of the contract between the hospital and the physicians and therefore had no standing to enforce its terms against the physician. Lastly, the Board found there was a genuine issue of material fact as to whether there was a physician/ patient relationship between the employee and the physician prior to the examination for the workers' compensation injury.

Georgia Pacific Corp. v. Cross, (September 28, 2005). An employee developed work-related arthritis as a result of exposure to sulphuric acid on August 22, 1995. The employee ceased work altogether on January 4, 2002 and filed a workers' compensation claim on January 28, 2002. The Appellate Division found that the employee's claim arose from an injury because of work-related aggravation of his work-related arthritic condition. It rejected the employer's assertion that the claim was barred since it was not brought within one year of the 1995 date of accident. The Court of Appeals held the statute of limitations began running the date the employee stopped working.

2006 GDLA Worker's Comp Academy

Mark Your Calendars -- The GDLA Workers' Compensation Academy will be held February 2, from 9 am to 5 pm (location TBA).

Last year's academy sold out, so make sure to keep an eye on the GDLA Web site for an announcement soon.

How to Log in to the Members Area of the GDLA Web site

#1 Go to Members Area.

#2 Login using your e-mail address and bar number (if it's your first time logging in.)

#3 Review your profile information and change your password to something you'll remember (if it's your first time logging in).

#4 Hit "Save" and you are in

Having Problems?
If you aren't able to log in, you have three options:

#1 If your bar number begins with a zero, login without the zero or zeros (we had a problem with our database when setting up the system)

#2 Hit "Forgot My Password", enter your e-mail address, and it will be sent to you.

#3 E-mail contact@gdla.org and the executive director will look up and e-mail your password to you. Please use Step #2 first.

continued from page 9

create an issue of fact regarding the foreseeability of a random attack on a student in broad daylight in the parking lot." This holding was demanded in spite of expert testimony offered by Clark that the attack was foreseeable.

Discovery Sanctions of Concern

In the negligent security field there is a recent decision of concern affirming serious sanctions imposed by the trial court against the proprietor. In Bouve & Mohr, LLC v. Banks, 274 Ga. App. 758, ___S.E.2d ___ (2005), the Court of Appeals affirmed Fulton State Court Judge Myra Dixon's order imposing sanctions on the defendant apartment complex owner in this premises liability rape case in which the plaintiff claimed that the defendant was negligent in not timely repairing a window in her apartment which allegedly caused the rape. The complex employed some off duty police officers to act as security guards at the complex. One of those officers, Det. Gray, was assigned by the police department to investigate Banks' rape complaint. Quite some time later, after the criminal case had been closed due to Banks' "lack of interest", Det. Gray ordered the rape kit destroyed, even though he was aware of the civil case going on at that time and even though the plaintiff's attorney had asked the police department to maintain all evidence related to the rape for use in the civil trial. The trial court found that Det. Gray was acting as the owner's agent when he ordered the destruction of the rape kit. As a sanction, the judge ordered that the jury would be instructed that Banks had been raped and the defendant was prohibited from arguing otherwise.

Recent Dram Shop decisions of Interest

Where the Plaintiff seeks only damages derivative of the injuries sustained by the consumer of alcohol in the motor vehicle accident, s/he cannot recover as such damage claims are barred in Georgia. See Sutter v. Hutchings, 254 Ga. 194, 199, 327 S.E.2d 716, 720 (1985), wherein the Supreme Court held that damages recoverable under OCGA § 51-1-18(a) by a parent are limited to general and special damages suffered directly by the parent, as opposed to damages the parent may have to pay to a third party. Petitioner was barred from recovering damages arising out of the accident involving his son as such damages are barred by the public policy of this State. See e.g., Leach v. Braswell, 804 F.Supp. 1551, 1554 (S.D. Ga. 1992), aff'd 8 F.3d 37 (11th Cir. 1993). Otherwise the action is viewed by the courts as a "thinly veiled attempt to circumvent the prohibition against a consumer of alcohol recovering against a provider." Eldridge v. Aronson, 221 Ga.App. 662, 664, 472 S.E.2d 497, 499 (1996); Steedley v. Huntley's Jiffy Stores, 209 Ga.App. 23, 24, 432 S.E.2d 625 (1993) (minor and his parents barred from recovering damages for the minor's injuries suffered in a serious motor vehicle collision); Burch v. Uokuni Int'l, 192 Ga.App. 861, 862, 386 S.E.2d 889 (1989). See also Brent v. Hin, 254 Ga. App. 77, 561 S.E.2d 212 (2002), in which the Court of Appeals stated, "It therefore follows that "the right to recover a minor's medical expenses in a tort action is vested solely in the child's parents. [Cits.]". . ."Significantly, even though the right to recover medical expenses incurred by a minor belongs to a parent, we concluded in Mitchell that the expiration of the two-year statute of limitation for personal injury barred the mother's claims for medical expenses incurred by her daughter." Thus, the parent's right to recover the medical bills for treatment of the child IS dependent upon the child having a viable claim himself against the tortfeasor. If the child is barred from recovery on his personal injury claim, then the parent cannot recover for medical expenses.

A Plaintiff's claim for recovery of the medical bills for the treatment of the injuries to the consumer of alcohol is also barred by O.C.G.A. § 51-1-40(a), which provides in relevant part:

The General Assembly finds and declares that the consumption of alcoholic beverages, rather than the sale or furnishing or serving of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person, except as otherwise provided in subsection (b) of this Code section.

Such a claim against the dram shop to recover for injuries to the consumer arising out of a motor vehicle accident allegedly caused by that consumer's intoxication is also barred by the public policy of this State pursuant to O.C.G.A. § 51-1-40(b). See e.g., O.C.G.A. § 51-1-40(b); Leach v. Braswell, 804 F.Supp. 1551, 1554 (S.D. Ga. 1992), aff'd 8 F.3d 37 (11th Cir. 1993). O.C.G.A. § 51-1-40(b) provides in relevant part:

Nothing contained in this Code section shall authorize the consumer of any alcoholic beverage to recover from the provider of such alcoholic beverage for injuries or damages suffered by the consumer.

See also Mowell v. Marks, 269 Ga.App. 147, 152, 603 S.E.2d 702, 706 (2004), in which the Court of Appeals held that the consumer defense set forth in the dram shop statute barred wrongful death claims asserted by the mother of a consumer.

Dram Shop cases/no recovery in non motor vehicle accident cases

O.C.G.A. § 51-1-40 provides that "the consumption of alcoholic beverages, rather than the sale or furnishing or serving of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person, except as otherwise provided in subsection (b)" which provides for liability only in situations where (1) a person willfully, knowingly, and unlawfully sells, furnishes, or serves alcoholic beverages to a person (2) who is not of lawful drinking age or is noticeably intoxicated, (3) knowing that such person will soon be driving a motor vehicle, and (4) injury or damage results from the intoxication of the consumer.

Dram Shop cases/no recovery where consumer was not driving

The Court of Appeals recently affirmed summary judgment for a restaurant which sold beer to a minor in Lumpkin v. Mellow Mushroom, 256 Ga.App. 83, 567 S.E.2d 728 (2002). In that case, the court held a restaurant was not civilly liable for the minor's subsequent death in a fall from the passenger seat of a friend's jeep for violation of O.C.G.A.§3-3-23 which prohibits serving alcohol to minors as such a claim is barred unless specifically permitted by O.C.G.A.§51-1-40.

Dram shop law does NOT apply to airlines who overserve patrons

The Court of Appeals held "the Georgia legislature intended the dram shop statute to apply where an airline serves alcoholic beverages to a person over the state of Georgia, and such person proceeds to operate a motor vehicle on a Georgia highway while under the influence of the alcohol and injures another." Townsend v. Delta Airlines, Inc., 269 Ga.App. 645, 605 S.E.2d 54, 57 (2004), but this decision was wisely overturned by the Supreme Court in Delta Airlines, Inc. v. Townsend, 279 Ga. 511, 614 S.E.2d 745 (2005).

Dram shop cases/no recovery where no proof consumer appeared to be intoxicated or no proof of knowledge consumer would soon be driving

In Hodges v. Erickson, 264 Ga.App. 516, 591 S.E.2d 360 (2003), cert. denied, the Court of Appeals held that where there is no evidence that the party guest was in a state of noticeable intoxication when he was furnished with alcohol, and/or there was no evidence that the hosts knew or should have known the guest would soon be driving a motor vehicle, plaintiff is not allowed to recover. See also Sugarloaf Cafe, Inc. v. Willbanks, 279 Ga. 255, 612 S.E.2d 279 (2005), wherein the Supreme Court recently held that circumstantial evidence that the alcohol server did business in a "remote" location and that most customers drove to the business was not sufficient to show that the server "knew" the customer would soon be driving, particularly in light of the evidence that the drinker was driven to and from the restaurant by a co-worker.

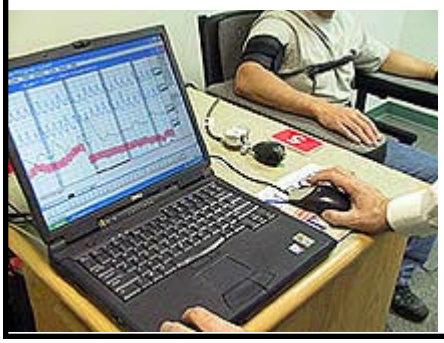
Lynn Roberson is the Chair Emeritus of the GDLA Premises Liability Committee.

When the Need for the Truth is Important

Donald J. Imbordino

*U.S. Department of Justice - (Retired)
*Former DOJ Polygraph Program Supervisor
*18 Years of Polygraph Experience
*State-of-the-Art Computerized Polygraph
*Expert Witness
*American Polygraph Association
*American Association of Police Polygraphists
*Georgia Polygraph Association

Independent assessments of exams administered by other polygraphists



Imbordino Polygraph Examinations, LLC

678-986-9600

dimbordino@earthlink.net
www.ImbordinoPolygraph.com

Substantive Law Committees

continued from page 1

The following committees are being started: Employment, Professional malpractice, Premises, Automobile, Construction; Mass torts, Products liability, Insurance coverage, Appellate, Workers' compensation, Trucking, Commercial Litigation.

"Substantive law committees were first created within GDLA 10 years ago, when I was President," said Whitworth. "Various members, including most of the Board, believed then that such committees offered our membership at least two significant things: a forum within which to associate more closely with other members who share interest in particular areas of the law, and an educational opportunity arising from the exchange of ideas and the publication of articles spawned within the committees.

"The same is true today, and such committees may prove even more valuable than when first conceived due to the increasing specialization and complexity of our practices. What is required to make such committees viable is simply commitment; commitment by the Association's leadership to keep the committees energized and responsible, and commitment from members to lead the committees.

"I continue to believe that substantive law committees can benefit our membership and add value to their active participation in the Association," said Whitworth.

The new substantive law committees also offer GDLA members an opportunity to serve help the association advance the civil defense bar in Georgia in a more active way.

"I encourage all interested members to join one of these subcommittees in order to be more active and involved with GDLA," said Roberson, adding "We particularly encourage women and minority candidates to apply."

GDLA Substantive Law Committee Position Descriptions

In general, committees will:

- Prepare an annual case law update for the GDLA *Law Journal*
- Provide one or more articles annually for the GDLA newsletter
- Provide quarterly case law updates for the GDLA Web site
- Help populate and keep current the Brief Bank, Discovery Tools and Tort Reform Database areas of the GDLA's Web site
- Hold an annual or bi-annual CLE
- Present a CLE lecture at the GDLA annual meeting every 2-3 years
- Hold annual or semi-annual meeting(s) of the committee
- Send a representative to one of the quarterly GDLA board meetings
- Send representatives to the GDLA annual meeting
- Communicate with DRI's substantive law committees
- Annually update the GDLA Charge Book

Chair

The Chair will be a one-year position and would oversee the activities of the committee. The chair must have specific expertise and experience in the committee's area. The chair will write or direct the writing of his or her committee's article for the GDLA Law Journal and take the lead in planning any CLE the committee chooses to do. The Chair would participate in any CLE put on by the committee if available to do so. The chair will direct the committee members who will provide quarterly case law updates for posting on the GDLA Web site and in the newsletter. The Chair will be invited to attend one GDLA board meeting per year.

Vice Chair

The Vice Chair will write or assign and deliver to the GDLA's newsletter editor one or two articles per year. The Vice Chair would participate in any CLE put on by the committee if available to do so. After his or her term, the Vice Chair will become the Chair. In his or her capacity as Vice Chair, he or she will take the lead in fulfilling the position of Chair in the event that the current Chair can no longer fulfill his or her duties.

Committee Member

Younger lawyers are especially encouraged to serve as committee members in support of the Chair and Vice Chair. Committee members will assist in updating case law for the GDLA Web site and providing articles for the newsletter. They will review committee articles prepared for the newsletter and Law Journal and will have the opportunity to write or contribute to these articles. Committee members would participate in any CLE put on by the committee if available to do so.

Chair Emeritus

After his or her term, the Chair will become the Chair Emeritus for one year and will review committee materials and continue to advise the committee when asked. The Chair Emeritus would participate in any CLE put on by the committee if available to do so. The Chair Emeritus will assist the vice-chair in running the committee in the event that the current Chair can no longer fulfill his or her duties.

Advancing the
Civil Defense Bar©

GDLA Substantive Law Committee
Position Application

Name: _____

Firm: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____

Committee of Interest (use separate forms if applying for more than one committee)

__ Appellate
__ Automobile
__ Commercial Litigation
__ Construction
__ Mass Torts
__ Employment
__ Insurance coverage
__ Premises Liability
__ Products Liability
__ Professional malpractice
__ Trucking
__ Workers' Compensation

Expertise

Briefly describe your experience and expertise in this area. Include years of experience, number of cases tried in this area (if any), articles written, lectures given, awards received and/or other similar committee participation. You may use a separate sheet of paper, if you wish.

_____
_____
_____
_____
_____
_____
_____
_____

Include any other comments relevant to your application:

_____
_____
_____
_____

Please fax this form to the GDLA President Johnny Foster at 912-352-1471
You may also submit this form online at http://gdla.infomedia.com/SubLawCommApp.asp

GDLA Bringing Back "Skits & Suds" CLE For Younger Lawyers

After a one-year hiatus, the GDLA is bringing back its popular "Skits & Suds" program for younger/newer lawyers.

The program will feature CLE delivered by several Georgia judges and an opportunity for younger/newer lawyers to make presentations in front of more experience GDLA member attorneys and the judges.

Heavy hors d' oeuvres and beverages will be available during the meet-and-greet and networking portions of the event, which will be held February 2 at Max Lager's in downtown Atlanta.

The Honorable Gino M. Brogdon, who entertained and informed GDLA members at this summer's annual meeting, has agreed to moderate this year's event, which will include trial strategies from seasoned attorneys trial advice from Georgia judges and presentation opportunities for the younger/newer lawyers.

"The Skits & Suds program has always been hugely popular with younger lawyers," said Jo Jagor, Carlock, Copeland, Semler & Stair, Atlanta. "This year the attendees will be introduced to trial strategies that work from the perspective of judges as well as attorneys," said Jagor, who chairs the GDLA Younger Lawyers Recruitment & Retention Committee.

"This year's CLE offers an added bonus, as it it takes place directly before the GDLA's annual Judge's Reception, held immediately following the Skits & Suds program," said Jagor.

The program will begin at 2:30 pm with a 30-minute networking/social period, then proceed with a two-hour CLE, followed by more networking, then on to Thursday evening's Judge's Reception down the street at the Capital City Club, where dozens of Georgia judges will be present.

For more information on this year's Skits & Suds program, keep an eye on the GDLA Web site. Notice will be sent to members via mail and e-mail.

South Georgia ADR Service, LLC

Specializing in MEDIATION and ARBITRATION of personal injury, wrongful death, commercial, real estate and other complex litigation cases, South Georgia ADR Service offers a panel of distinguished and experienced Middle and South Georgia trial lawyers, serving exclusively with SGADR as independent contractors, from which to select a neutral.

Jerry A. Buchanan - Columbus
John A. Draughton - Macon
James L. Elliott - Valdosta
Benjamin M. Garland - Macon
Robert R. Gunn, II - Macon
Jane M. Jordan - Macon
Jerome L. Kaplan - Macon
Stanley Karsman - Savannah
Bert King - Gray
Michael S. Meyer Von Bremen - Albany
S. E. Moody, III - Perry
Philip R. Taylor - St. Simon's Island
Craig A. Webster - Tifton
F. Bradford Wilson, Jr. - Macon

Robert R. Gunn, II, Managing Partner
Rachel D. McDaniel, Scheduling Coordinator
240 Third St., Macon, GA 31201
800-863-9873
or 478-746-4525
Fax: 478-743-4204
www.southgeorgiaADR.com

GDLA Fall 2005
Executive Committee Retreat Highlights

Prepared by Robert M. Travis; amended by Steve Milano

Dinner Meeting
September 16, 7:30 pm

Business Meeting
September 17, 9:00 am - 3:30 pm

Attendance:
President - Johnny Foster; Executive - Vice President Warner Fox; Secretary/Treasurer - Bob Travis; Executive Director - Steve Milano; Membership Chairman - Salty Forbes; Past President - Rick Rominger (Call-In). Appearances by Lynn Roberson (Saturday) and Jo Jagor

On Friday evening, Johnny Foster, Salty Forbes, Warner Fox, Bob Travis and Jo Jagor met for a business dinner at Morton's.

During the Friday evening meal, Salty brought up free membership and suggested reviewing the renewal and retention rate of members who come in this way. We also discussed creating a YLS of GDLA. Jo Jagor advised that the younger lawyers will join if they can be involved. They do not want to just join— they want to be involved in substantive law issues.

The Executive Retreat was convened at 9:00 a.m. at Hawkins & Parnell on Saturday, September 17, 2005. The Executive Committee of the GDLA is made up of the past three presidents, the current president, the executive vice president and the secretary/treasurer.

Salty presented current membership figures and discussed various policies and procedures regarding membership acceptance and termination.

We have 78 younger lawyers, which is fewer than five years in practice; they pay the younger lawyer dues rate of $75. Females comprise approximately 18 percent of the membership.

Salty will make a motion at the Board meeting that we collect the application fee and first-year dues at the time of the application, rather than just the application fee as currently happens. Johnny said that we need to keep a record and contact people who do not renew after getting a free membership. After October 1, we will call and ask why not renewed. Milano will do this and conduct exit interviews.

Milano handed out the budget for our fiscal year (July 1- June 30). He reported the GDLA had a positive revenue during the last fiscal year.

The GDLA annual meeting expenses were reviewed. Sixty attorneys and 50 spouses attended. We were down on sponsors' and exhibitors' money and we will need to work on sponsor fees and take care of our exhibitors. The annual meeting had a net loss.

We reviewed the Trial Academy. There were 36 attendees, 10 faculty, and the academy generated enough revenue so that there was no net cost to the association. The profit was probably due in large part because Jim Elliott, who no longer will run the program, and his secretary did the program book and for three years essentially ran it out of Jim's office with no cost to the association. The executive director will take over these duties. The Workers' Comp Academy was held with 23 attendees and 10 faculty and basically broke even. There was a discussion of whether we should do a Workers' Comp Academy every two years or attempt to do one each year. Five major firms now do workers' compensation. We will attempt to hold the Workers' Comp Academy on the day of the Judges' reception if we go forward. We charge $175 for the Workers' Comp academy, which is an all-day seminar. We were giving the first year of GDLA free, the first year of DRI free—a value of perhaps an additional $300.

Last year, we renewed almost 60 percent of our dues before the renewal date. This year, we picked up slightly more than that before the renewal date. This was part of Send Your Secretary to the Beach campaign—pay your dues before July 1 and you get a chance on a free trip. Secretaries tell their boss to pay the dues. We have been told that GDLA dues notices or communications from the GDLA have been treated as personal communications and secretaries do not open so we went with the Beach campaign to encourage assistants to make sure boss paid on time.

We send e-mails to delinquents, asking for a receipt. If no receipt, Steve follows up with a phone call and makes them respond. Twenty people did not respond who were members in 2003-2004. This year's dues renewal went in with the *Law Journal*, which was seen as a great member benefit and reason to renew. Second notices were sent with the Summer *Georgia Defense Lawyer* and a letter.

On October 1, e-mails will be sent by Steve to non-payers notifying them of termination of Web site password.

The group discussed contacting 12 large firms, the chair of the litigation department, to find out if they are interested in having members of GDLA.

There was a discussion by Salty Forbes about the history of the GDLA and why it was founded. Five people founded it primarily as a social group. There was an educational component, a CLE component, before CLE was required. Now it is educational more than social. Salty commented that members bond with each other so that is why they want to come. Warner said that as we get bigger and bigger, bonding is much harder, and there is more and more transformation to the GDLA being a place where we come and get informa-

Executive Committee Retreat Highlights

continued from page 17

tion. The highest use now of the GDLA is, of course, the blast e-mails. It was suggested that we focus our marketing on folks who need assistance to practice defense law. The group thought it would be a good idea to use pictures of members in newsletter articles. The newsletter is much better this year. The interaction with judges is good. The judges' reception in Atlanta got a very positive response (led by Rick Rominger's comments).

It was suggested that we set the annual meeting program so that at least one judge attends. Most lawyers in Savannah know the judges even though they do not see the judges as much as they formerly did. Younger lawyers in many firms never had a conversation with a judge. Warner suggested that we we hold a judges' reception in Savannah, August and Columbus every other year. In Atlanta, we invited 100 judges and had 20 attend with 40 members.

Salty mentioned drawing judges from the Ogeechee, Atlantic and Brunswick Circuits, expand to get a larger crowd. There are not a lot of members in Savannah and less in Columbus even though we are beginning to grow.

It was still the consensus of the group that we do Atlanta every year as and every third year outside of Atlanta, perhaps combined with a younger lawyers seminar or workers' comp academy.

There was a discussion of holding the Savannah reception at the Chatham Club this year, next year Columbus and then Augusta. Rick Rominger and Salty will be co-chairs of the reception in Savannah.

There was also a discussion as CLE requirements increase that we need more substantive law committees.

Steve Milano handed out the "14 Reasons to Join the GDLA" brochure. We learned that DRI is copied on blast e-mails and that the DRI expert database of 55,000 experts is automatically searched and they will call you and ask if you would want to buy a response if DRI gets a hit.

There was a discussion of the *Law Journal* and how valuable it was to the members. Salty said we had to have the journal because it was helpful if you do not read the advance sheets every week. We need fresh talent to write articles.

There was a survey of members approximately 1-1/2 years ago and the *Law Journa*l was the second most valuable activity of the GDLA. For the fall meeting, there is to be a discussion of some substantive articles for the newsletter.

There was also a discussion of compiling the newsletter into the *Law Journal.* There was still a consensus that a hard copy has to go to the judges even though we put the *Law Journal* online for the members and send a CD to the members because of the cost.

We have had substantive law committees in the GDLA in the past. According to Salty, it has never worked. In DRI, they move through the committees. It is normally three years and out, someone is always moving into the position. Our Board does not function that way. Initially, the development of the substantive committees, Dave Whitworth put more effort into this than anyone else in the past. We need dedicated chairmen of these committees to make it happen and to reward them. State Bar has substantive law committees, DRI has them, Atlanta Bar has them, the Federation is doing it, so is ADTA. Rick Rominger commented that we should focus on what we have done well in the past rather than try to be everything to everyone.

There is the possibility that the new Rules of Evidence will be adopted (Daubert situation) and legislature adopt Federal Rules in January. Warner said that presently at the annual meeting he was contemplating holding a tort reform section and a paper and put it in the *Law Journal*. There was discussion of substantive law committees including premises liability, workers' compensation, employment law, construction practice and commercial litigation.

A discussion was held about making it slightly more difficult to join the GDLA to give the perception that it is a more "elite" organization, and would therefore be more attractive to Georgia's defense lawyers. Warner mentioned it was too difficult to make this an elite organization. Salty mentioned that the purpose of the GDLA should be good enough reason to join. We need to develop the need to join to attract business and exposure to more experienced attorneys. The DRI is the voice of the defense bar.

Lynn Roberson joined us at this time. There was a discussion of whether you join the GDLA for good benefits or do you join to be part of a network. The reason Salty joined was to network. Reasons that the survey found that people joined were: (1) blast e-mail; (2) Law Journal; (3) affiliation with a professional organization; (4) newsletter; (5) Web site; (6) annual meeting.

What is the main function of the GDLA? Why would you join? To promote civil defense. Something in it for me, the blast e-mail and the *Law Journal.* Also, to show insurance companies that you are a member, build your resume, book of business, share information, and have easy access to lawyers with similar interests, even if a two-person office. Meet judges, keep me informed and help me network were three reasons Lynn offered.

There was a discussion of a slogan for branding GDLA. Warner Fox suggested, "Advancing the Civil Defense Bar."

We need to get more in the commercial litigation and employment areas. We should hold an employment law seminar in Georgia. The plaintiffs and defense are on both sides of the construction law and commercial litigation.

There was a further discussion of having 10-12 substantive law committees and possibly the chair being a member of the Board. Each committee responsible for two articles in the *Law Journal*. Johnny mentioned that the hot sheet by the Alabama Defense Lawyers Association is monthly or four times a year and has short blurbs on each case. He pointed out that the executive director of Alabama Defense is a lawyer. There was also then a discussion that if we had 12 committees, we could rotate with three articles per issue. See chairs of committee to do articles on new cases and then recognition and encourage people with special expertise as being recognized in the field. Give them a speaker slot at the annual meeting. Each committee has a speaker slot at the annual meeting every three years. We discussed one- to two-year terms. Start now through appointment, personal contact with diversity, create the perception or expand the perception beyond middle-age white men doing insurance defense.

Jo Jagor joined us for the meeting to join with Lynn to discuss seeking diversity in the organization. It was suggested that we put photos of the Board members on the Web site to show our members our diversity, encouraging them to be more active.

The President should contact possible committee chairmen in each area and solicit the Board. We mentioned 24 slots; a chair and a vice-chair for each committee. Solicit members at Grove Park or send in advance for the following committees: professional malpractice, employment, premises, construction, mass torts, trucking, products liability, insurance coverage, appellate, workers' comp. Develop a written job description for each which would include periodic blast e-mails on new cases sent to Milano for the Web site and once a month update the Web site.

Salty suggested that the chair not be on the Board, but that we invite four chairs to a Board meeting each year and rotate. The vice chairman would move up next year.

We need to get more people involved, get more on the Board and get more out of the annual meetings. Get more Board exposure to more people with the substantive law committees.

Milano was directed to feature a front page story in the newsletter of the substantive committees. When committees are set, the GDLA will create a brochure with committee descriptions, member photos, etc. DRI sends one publication annually on all of the committees of DRI and what to do if you want to join.

There was a discussion of taking out an ad in the Fulton County Daily Report that the GDLA is pleased to announce the appointment of the following committee chairs and perhaps a profile of each committee, maybe one-half page and a picture of the committee chair.

The FCDR has a new section of what's happening outside of your firm and is read across Georgia .

By the fall board meeting, we should solicit appointments and make them at that meeting.

Johnny will send solicitation e-mails.

It was agreed that committee positions should rotate, keep people moving, and that we should pay attention to diversity.

We had a discussion of the diversity statement. Johnny reads that we are principally civil defense, open membership. It was pointed out in our diversity statement that sexual orientation is not included. The committee directed to Steve Milano to put the diversity statement on the Web site. One of the Board agendas at Grove Prove will be a discussion of whether we should include sexual orientation in the diversity statement.

Jo discussed a YLS seminar she is putting together to be presented by four judges, followed by the judges' reception. The two-hour CLE for younger lawyers will be held on February 2, prior to the Judicial reception at the Capital City Club.

At this point, Lynn Roberson departed.

There was a discussion of hiring a PR firm to get members and the consensus was that we not do that.

There was a discussion of members sending out blast e-mails on behalf of non-members. Johnny said there should be a message on the Web site directing members not to do this. No one should think that one person out of a firm can join and get benefits of the GDLA for the whole firm?

It was suggested that the board discuss approving terminating memberships of members giving out their password to the Web site (for others to use blast e-mail or Tort Reform Database) or sending blast e-mails on behalf of others. The committee recommended staying with the policy of members only at the Judge's reception. Non-members may attend if they fill out and submit an application and pay the requisite fees. The same policy holds for the annual meeting.

Salty is doing a history of the GDLA and will go through boxes presently in possession of Milano.

Destin was not a good location for our annual meeting. We should consider doing Ponte Vedra every two years and rotating the third to an exotic "couples" location. Approximately 50% who attended last year's annual meeting came

Executive Committee Retreat Highlights

continued from page 19

back this year. The third year should be couples with no kids. Vote at the Board meeting in October on Ponte Vedra for every two years and the third year exotic.

There are 30,000 to 40,000 lawyers in the state. Maybe 1,500 eligible for us. 600 attend the annual Bar meeting. Our goal is to get 100 to 125 members to the annual meeting.

Board members should specifically commit to attend annual meetings when they join the Board (before they are nominated). We need to address pulling them off if they don't attend the annual meeting and Board meetings.

Further discussion of the annual meeting was the content of the program. Does it influence you to come?, Is it the family-oriented theme? Really, the consensus is it is location, location. Primarily location. Secondarily, cost. Start promoting Bermuda asap. Get it in to the newsletter. E-mail to the members to save the date.

There was a discussion of the GDLA presenting annual awards for GDLA members and others in the civil defense community, but it was considered too much to handle and too many repercussions, but Johnny will ask the past presidents if we should give awards.

Milano discussed of our annual meeting marketing brochure. Both Salty and Warner thought that the present brochure should have a little more pizzazz, it should be bigger. For the GDLA annual meeting, brochures are sent to the office, as well as to the home. Last year, these followed a "save-the-date" postcard, which the committee recommended doing again.

We discussed that Key West is not a good location for the annual meeting. Spring board meeting should be a site visit to a potential "couples" location for the annual meeting at least the year before these types of annual meetings.

We had another discussion of sponsorships. We need to approach companies like Lexis/Nexis and DecisionQuest. In October, the committee on sponsorship should meet with Steve and Johnny. Milano will set up while we are in Asheville.

Put on the Web site that if you call a sponsor, identify yourself as with GDLA. Steve thinks we are leaving significant dollars on the table.

Each Board member needs to give the name to contact the vendors of your firm. Ask at the Board meeting. E-mail before the board meeting to bring a list of sponsors to the Board meeting.

We have $15,000 is in the Dick Richardson fund.

Regarding out relationship with DRI -- GDLA is totally separate from DRI and we want to go on a co-equal path with DRI.

Save the Dates!

Georgia Defense Lawyers Association

Annual Meeting

June 8-11

Fairmont Southampton
Southampton, Bermuda

Featured Speakers:

John Leffler
Forcon International
Effective Use of Surrogates in Investigating Bodily Injury Claims

Roger McCarthy
Exponent Failure Analysis
TBA

Al Parnell
Hawkins &Parnell
Ethics & Professionalism

Rex Smith
Mabry &McClelland
Mediation

Chris Stewart
Benedict Engineering
Trucking Accidents

Morton "Salty" Forbes
Forbes & Bowan
Food-Borne Illnesses

SB3 Tort Reform Round Table

Scot V. Pool
Forbes & Bowman
Georgia Law Update

For more info, visit www.gdla.org

GDLA Fall 2005
Board Meeting Highlights

The GDLA Board of Directors met at Grove Park Inn on October 8, 2005.

Attendees: Johnny Foster, president; Warner Fox, executive vice president; Bob Travis, secretary/ treasurer; Steve Milano, executive director; Directors: Craig Avery, Staten Bitting, Salty Forbes, Ted Freeman, Mel Haas, Bubba Hughes, Jo Jagor, Style Kyle, Walter McClelland, Hall McKinley, David Nelson, Clay Ratterree, Lynn Roberson, Jimmy Singer, Bruce Welch, Jamie Weston, David Whitworth

On Friday, October 7, 2005, members of the Board Directors of the GDLA and spouses and guests gathered in the President's Suite at the Grove Park Inn, in Asheville, NC, for cocktails preceding dinner in the Blue Ridge Dining Room.

President Foster called the meeting to order at 9:00 am on Saturday, October 8, and recognized new Board members, all of whom were present except Kirby Mason, who was prevented from joining us by a family emergency.

Recognition of new Board members: James S.V. Weston, Hull, Towill, Norman, Barrett & Salley, Augusta, GA; Kirby G. Mason, Hunter, Maclean, Exley & Dunn, Savannah, GA; Craig C. Avery, Cowsert & Avery, Athens, GA; Hall F. McKinley, Drew, Eckl & Farnham, Atlanta, GA

The Board held a moment of silence in memory of James A. "Bubba" Dunlap who was GDLA President from 1976-77. Forbes will prepare a memorial and give it to Hughes for inclusion in the Law Journal.

The Spring and Summer Board meeting minutes were presented by Travis and approved unanimously by the Board.

Secretary/Treasurer Travis gave the Treasurer's report.

Forbes gave a membership report and recapped that to be a member of the association, you must be an active member of the Georgia Bar and your primary practice must be more than 50 percent in civil defense. You may be an associate member of GDLA if you do claims work such as a vice president of an insurance company. The third class of membership is honorary for those esteemed members recognized. He emphasized that attendance at Board meetings is expected of Board members.

Milano circulated a list of delinquent members requesting that each Board member contact three in a final attempt to get them to pay dues. The Executive Director will follow up with an e-mail after they are 90 days delinquent notifying them that their Web site password has been de-activated. If we still get no response after six months, delinquent members will be automatically suspended via Article IV of our By-Laws . During the period of suspension, you may not hold an office or attend any function of the GDLA. If you do not pay within 12 months, you are dropped automatically and must reapply.

Board members reviewed the delinquent list and during the meeting each member initialed a specific delinquent member to contact. We are going to keep records

Continued on page 24

GDLA Board members listen in rapt attention to Executive Vice President Warner Fox, who arrived earlier and stayed later than anyone else, eschewing the weekend's social functions to focus on matters of great importance to the GDLA and civil defense bar of Georgia.

Board Meeting Highlights

continued from page 21

of why people leave in order to respond to these reasons and do a better job of keeping our members..

According to our procedure, once you are approved you must send the dues in order to have access to the members' area of the GDLA Web site. Forbes moved that at the time of the application, each prospective member pay not only the application fee of $100 but also the first-year dues. If the applicant applies at mid-year, then it would be pro-rated. The motion was approved unanimously.

Forbes moved the admission of 16 new applicants which were seconded and passed.

Foster reported on the GDLA Executive Retreat, commenting upon highlights reflected in the minutes from the retreat. Foster touched upon the Amicus Committee and Trial Academy saying that everybody thought there was no real room for improvement. We need to increase our membership and identify what we provide most of value to our members.

We also discussed diversity in our leadership and representation of minorities and younger lawyers. The diversity would be included in our substantive practice areas and law committees. Foster commented that our member survey taken last year found that our most valuable member benefit was blast e-mails and second place was *Law Journal.*

There was discussion about diversifying our leadership and doing so through the Substantive Law Committees to give a one-year term to the chair and vice chair and encourage women, minorities and younger lawyers to participate. The committees could also provide recent developments and articles for the *Law Journal* and speakers for CLE.

Kyle thought that we needed a survey of where our members spend most of their time. Haas thought that he could get 50 members involved with the Employment Law Committee. Singer commented that the committees should meet semi-annually; it was also suggested that committees consider a lunch every quarter to get to know each committee member. Roberson commented we need to do a very specific job description for each position.

It was suggested the committees provide case law updates for each quarterly newsletter. It was suggested that each committee have two people attend the annual meeting.

Continued on page 24

Benedict
Half-Page Ad

HOLD ON TO WHAT MATTERS

and let us help

Look for **Comprehensive Accident Coverage** member mailings from **Insurance Specialists, Inc.**

PROGRAM ADMINISTRATOR:

ISI INSURANCE SPECIALISTS, INC.

UNDERWRITTEN BY:

The Hartford, Rated A+ by A.M. Best[1]
The Hartford is the Hartford Financial Services Group, Inc. and its subsidiaries, including issuing company of Hartford Life and Accident Insurance Company.

[1]Based on Ratings as of 12/30/04. A+ is the second Highest of 15 A.M. Best Categories.

ADISGDLAHLCA0505

BENEFITS OF THE PLAN:

- Offered to Georgia Defense Lawyers Members, their spouses and their employees under age 60
- Guaranteed medical acceptance
- Insureds are protected with three types of coverage:
  Accident Disability Income
  Accidental Death
  Accident Hospital Confinement
- Coverage provides protection 24 hours a day - worldwide - on and off the job

For more information (including costs, exclusions, limitations and terms of coverage), contact ISI SALES DIRECT LINE at: 1-888-ISI-1959

Board Meeting Highlights

continued from page 23

Younger lawyers would want to be on the committees, according to Jagor. It was suggested that we put pictures of directors and committee members on the GDLA Web site, and possibly, resumes or short bios.

In addition to the list of committees recommended in the Board's agenda packet, it was suggested that we add an Automotive Committee.

It was discussed and urged that we get the committees in place now. Perhaps send a survey of willingness to assume role on these committees, include the job description and invite committee chairs to a Board meeting.

There was discussion that we go outside the Board for the committee chairs and not appoint Board members.

Milano provided a suggested job description of the Substantive Law Committees. These will be used as the basis for the final job description.

It was requested that Board members send suggestions for chair and vice chair of each committee to Foster. Roberson thought we should get the committees in place by the next Board meeting and the chairs should be invited to the Winter Board meeting. She thought we should increase diversity and that the Substantive Law Committees were the best way to get women and minorities involved. Roberson and Jagor have been having lunches with women and these potential members really want to get involved, more than just join.

Board members need to send photos for our Web site. The Substantive Law Committee chairs will also need to send pictures for the Web site and a brochure to be produced about the new committees.

There was discussion of free memberships given in 2002, 2003 and 2004, which came with registration in the Trial Academy, Skits and Suds and Workers' Compensation Academy. It appears there is a 50 percent renewal rate during the past three years, but renewals are still coming in for the previous year, so we do not have an accurate gauge as of this meeting.

Forbes thinks we should revisit free memberships at the Fall 2006 Board meeting. He said that in three years of free membership, we need at least 50 percent to pay for itself and in the exit survey we need to find out why they did not renew. Others argued that even if only a small amount of free new members renew, they may become active members for decades we would not otherwise reach.

When we solicit people for the Workers' Compensation and Trial academies, we should emphasize many reasons to join, such as no application fee, no first-year dues to GDLA and free DRI membership, a value of nearly $500.

There was a discussion of how the GDLA could get the large law firms in Atlanta interested in the association and increase our membership. Travis suggested contacting the litigation chairs of each of these firms to commence a dialogue.

There was further discussion that we need to change our perception in these large firms that the GDLA represents lawyers engaged solely in work for insurance companies. We need to increase our credibility by showing that our work is much more varied and includes across-the-board civil defense. For example, we currently have members from Georgia Power and Home Depot. Even though captive law firms cannot be members, in-house counsel can be members if they send out claims work.

There was a discussion of this year's younger lawyer seminar, a two-hour seminar followed by optional attendance at the GDLA's Judicial Reception. Perhaps the seminar at Manuel's and then the Judicial Reception at the Capital City Club. The next day would be a winter Board meeting. We hope to have 35-40 younger lawyers.

There was comment that the association has to be relevant to members, that we have to be more than just an annual meeting.

There was a further discussion that we have the younger lawyers seminar at the Capital City Club, but it was decided that we would keep the younger lawyers seminar at Manuel's or another similar venue and that three or four judges would participate with a tentative date of February 2.

A motion made by Kyle and seconded by Forbes that we waive the application fee and give six months free membership to those younger lawyers attending the winter seminar and paying the $35 fee.

A motion was also made and passed that the people who help Jagor put the seminar together would have their application fee waived, receive free membership and attend the seminar at no cost.

Fox pointed out that we need to charge higher for a non-member for CLE seminars since we have to admit all people to CLE whether or not a member of the association.

After the break, Bitting reported on the Workers' Compensation Academy. We are going to set the date for February 2 and do it in connection with the Winter Board meeting and the Judges' Reception. We want the Board meeting held after the academy and YL CLE in order to act upon the free memberships. It was decided that the Judges Reception would be held February 2 at the Capital City Club and that the Board meeting would be held on Friday the 3rd at Hawkins & Parnell starting at 10:00 a.m.

Last year we invited 101 judges and 20 attended. We need to call, invite and send a "save-the-date" letter from President Foster and a

follow-up with a call asking if they received the letter.

It was also suggested that we invite administrative law judges of the Workers' Compensation Board to the Judges' Reception in addition to all judges in Metro Atlanta, members of the Supreme Court and Court of Appeals. Each Board member should invite five judges.

There was also a report from Forbes on the Judicial Reception that we are planning to hold judges receptions in other cities. We will try it in Savannah first and then rotate between Columbus and Macon. We will also invite Brunswick-area attorneys and judges. David Whitworth will help with the Brunswick members and judges. It will be open to the entire membership and Board members across the state will be urged to attend. We are hoping to do these in March or May 2006, or perhaps even do it around the spring Board meeting.

There was discussion of the 2006 annual meeting. It is June 8-11. Milano will get out a "save-the-date" postcard and a brochure to the membership and develop an information area on the Web site.

Kyle is looking into lower-cost flights but there is only one non-stop flight from Atlanta to Hamilton via Delta and other carriers are actually more expensive, even with multiple stops.

There was a discussion about the rotation of annual meetings. The Board had previously discussed holding the annual meeting for two years at Ponte Vedra and the third year would be a couples event at an "exotic" location. Our membership survey showed that there were two reasons that people did not attend the annual meeting: too far and too expensive.

Kyle thought that we should do Ponte Vedra every third year, then an couples location and then another family location.

The Board set a goal of 120 to 125 members attending the annual meeting each year. Achieving this centers on choosing a good location and a good time of the year for. Kyle then announced that Ratterree has agreed to serve as his understudy on the Meetings Committee in the event Kyle ever decides to step down.

Continued on page 26

Laws of Science No. 2: Uncertainty

To err is human.

Human actions and errors, and not mechanical failures, are responsible for the majority of accidents. At Exponent, our team of scientists and engineers analyzes human behavior, warnings and labels, and the limitations and capabilities of people as they use a product or participate in an activity—enabling us to provide your legal team with a better understanding of how accidents occur.

Exponent®

185 Hansen Court, Suite 100, Wood Dale, IL 60191
(630) 274-3200 www.exponent.com

Board Meeting Highlights

continued from page 25

A motion was made, seconded and approved that during the first two years of their membership in the GDLA, new members will receive one-half off the annual meeting registration fee for one, but not both, meetings.

There was further discussion that we do not cover our costs with registration fees and that more attendance would not solve our problems as we price and run the annual meeting at a below-registrant cost. Despite this, several Board members including Kyle, Forbes and Roberson felt that we should not raise our registration fee. Forbes and Kyle argue that if there is a deficit in running the annual meeting, we should raise our membership dues to cover it.

Forbes pointed out that we have not had a dues increase since 1991 when we went from $55 to $150. The Board agreed to leave the registration fee for the 2006 annual meeting at $375.

A committee of Travis, Foster and Kyle will look at our history to determine if we need to raise dues. Milano will poll other executive directors about increasing dues.

Roberson gave a report on the GDLA's Judicial Nominations Committee and its interaction with the Judicial Qualifications Commission. Roberson reported that she had been invited three times to appear before the Commission and appeared twice. For the these meetings, she and committee members Luanne Clark and McClelland reviewed applications and submitted a chart which listed the GDLA's evaluation of potential judges as either qualified, very qualified, not qualified or no knowledge.

The last time there were some 50 candidates from four circuits. Roberson said the GDLA's efforts received a positive reception from the Panel. She thought it was worth continuing to do. The Committee had solicited input from the Board on judicial candidates but not the total membership and suggested we solicit more members to join the Committee from Tifton, Valdosta, Macon and Columbus. She suggested that we put a notice in the newsletter to do this. She also suggested that the general membership be allowed to offer their confidential evaluations of potential candidates.

Roberson mentioned that we should continue to get knowledge of the GDLA in front of the superior court judges and state appellate judges to build up the reputation and status of the association as GTLA does. We need to have a presence at the state judges' meetings.

Milano will attempt to get the handbooks that other states give to new judges or which the plaintiffs' bar gives to judges for Board review.

Forbes recommended we list the past presidents, officers, Substantive Law Committee chairs and vice chairs on the *Law Journal*'s title page. Editor Hughes should also solicit recent case updates from committees (three to four cases for each area).

There was also a discussion about the *Law Journal*'s CD format for the members and the printed book that goes to the judges and the dues invoice going out with the *Law Journal*. There is a strong feeling that the dues invoice should be sent separately around the time the *Law Journal* is sent, even if at additional cost. We should include in the next dues notice a comment that we have not raised dues since 1991. The invoice which currently allows members to check an area of interest in GDLA activities should include the Substantive Law Committees.

The new Chair of the Web Site Committee is Kirby Mason. She will help with the tort reform brief bank and review, update and direct Milano in keeping the Web site up to date and attorney friendly.

It was suggested that we send blast e-mails every six months asking if any members have done a brief they would consider donating to our brief bank, and to submit it to the Executive Director.

Travis reported that a case is pending in the Supreme Court from the State Court of DeKalb County and would be orally argued on October 11. He gave the amicus brief in that case to Ted Freeman, Chairman of the GDLA Amicus Committee. Freeman reported that we had a request from State Farm's attorney which he, after appropriate review, had turned down. It was decided that the Amicus Committee would screen cases. It would be the sole decision of the Committee to accept or reject requests for amicus briefs from the GDLA. There will be a conference call of the Executive Committee and Chairman of the Amicus Committee if the Committee feels we should file a brief. The Amicus Committee will be the gatekeeper. If the committee decides not to file a brief then it does not go to the Executive Committee.

Board members are urged to give the Tort Reform Committee and the Executive Director briefs, motions, orders, etc.

Milano gave a report on the Trial Academy. We are getting brochures out now and confirming the faculty. There will not be a change in curriculum.

Ratterree gave a report on sponsors. Board members were asked to e-mail Ratterree with potential sponsor candidates. The initial contact for sponsors should be made by Board members and then followed up by Milano. We have four engineering consultants as sponsors, which is probably at or near the maximum number we should have in order to avoid diluting the benefit they receive in working with the

GDLA. We should expand into other areas. Board members were urged to look at their own individual firm's vendors and send Ratterree and Milano an e-mail of proposed sponsors.

Foster gave a report on General Assembly and legislature on behalf of Legislative Liaison Barry Fleming. Apparently the report back from the legislature is that most changes in legislation will be made in the criminal area but if the Supreme Court holds any part of SB3 unconstitutional, then there will be action there.

Some legislators feel that the Federal Rules of Evidence are an attempt to water down tort reform and criminal reform, so it is highly unlikely that there will be any action in this area.

Foster announced that our new DRI liaison is Bruce Welch.

He also announced that our history project is being chaired by Forbes who is reviewing old material and will request material from the GDLA archives from the Executive Director, who currently keeps most past GDLA records in his office. Forbes is missing about one year's worth of Board meeting minutes.

There was a discussion of the charge book that we had in the past. The most recent book was in the 1991-93 timeframe. A member of Ratterree's firm had offered to do it in the past. It was determined that we would solicit requests to charge and post on the Web site, basically submitting those requests not covered in pattern instructions. Many in the old charge book were deemed by the judges as argumentative.

Kyle and Forbes felt that we should do this as a project but we needed someone to head the committee, perhaps roll it into the Substantive Law Committees but appoint a chair. Ratterree is going to ask the person who previously did this for the GDLA if she will do the charge book again.

Foster reported on D&O coverage including a quote from Hartford and he requested Travis to get a competing quote. The quotes will be given to the Executive Committee. The Executive Committee has the power to approve it and do it without Board approval.

Forbes reminded us that the Executive Committee acts for the Board at all times except when the Board is in session.

Next there was a discussion of an apparent discrepancy between the minutes from October 2000 Board meeting, when at the time it was determined that the DRI state representative, the GDLA Meetings Chair and officers would be reimbursed for airfare, meals and hotels. In reviewing the minutes from the Fall 2004 Board meeting, the Board discovered that a motion clarifying and approving reimbursement of DRI annual meeting expenses for the officers eligible to attend on behalf of the GDLA apparently left out the Meetings Chair. A motion was made and passed that we reaffirm the policy of 2000 regarding who is eligible to attend on behalf of the GDLA and what is paid for. It would in fact include the Meetings Chair, and the meeting registration fee would be reimbursed by GDLA. If at the annual meeting, as part of the registration fee, DRI provides meals, then there will be no reimbursement for meals purchased during those times. The GALA is an extra expense and will be the individual's responsibility.

If the Executive Director attends, the DRI waives his registration fee. Milano felt that he would be an unnecessary attendee this year, based on the fact that five GDLA representatives were already attending and that generally, DRI-sponsored events for SLDO executive directors had not been a good use of his time and the GDLA's expense. It was agreed that because their primary function of attending the DRI annual meeting on behalf of the GDLA was to gather information relevant to the activities of the GDLA, the five GDLA representatives going this year should attend the SLDO portions of the DRI annual meeting.

There were two items of new business. If one member of a law firm is a GDLA member and there are other members of that firm who are not, can the one member send our blast e-mails on behalf of the others and give access to our tort reform database and other materials from the members area of the Web site? It was decided that we need to send a periodic reminder that you may not share the member resources of GDLA with non-members. Most thought we could not police this and terminate memberships based on this, but we could send a message that sending e-mails on behalf of others is forbidden. If we wanted to gauge password sharing, we could probably track password use emanating from multiple IP addresses (see who is sharing their password) in the future.

The Board can in fact vote a member out for this infraction, but it was decided to send out reminders periodically that members need to use member resources solely for their own behalf and not abuse membership privileges.

Milano suggested that the new GDLA slogan "Advancing the Civil Defense Bar" go on the GDLA web site, brochures, and any other relevant GDLA documents, with © after its use. It was approved and passed unanimously.

The meeting was adjourned at 12:22 p.m.

A Proud Sponsor of the Georgia Defense Lawyers Association

In recognition of the superior loss experience of defense attorneys Minnesota Lawyers Mutual has developed a *Defense Firm Program* that offers outstanding coverage and premium savings to law firms that specialize in civil and criminal defense work.

Firms that meet the following criteria may qualify for the *Defense Firm Program*:

- Practice consists of 50% or more defense work and less than 15% plaintiff personal injury work.
- No claims.
- No adverse disciplinary rulings.
- Firm does not do any SEC work.
- Utilization of proper office procedures.

Minnesota Lawyers Mutual specializes in legal malpractice coverage and the related needs of lawyers. As a mutual company that was created by lawyers over twenty years ago, we are able to provide stable pricing, outstanding coverage and fair and efficient claim handling to our policyholders. In addition, we have returned dividends to our policyholders every year since 1988.

To learn more about our new *Defense Firm Program* and other benefits, please contact Keisha Robbins. You can also visit our web site at www.mlmins.com to apply online and **save an additional 10%.**

Keisha Robbins
krobbins@mlmins.com
770.576.1948 or 800.422.1370

MINNESOTA LAWYERS MUTUAL®
INSURANCE COMPANY