



## GDLA SLC Chairs/Vice-Chairs Named

GDLA President Johnny Foster is pleased to announce the first chairs and vice chairs of the association's Substantive Law Committees.

"We are well on our way to getting our SLCs off the ground, and these new appointees will begin seeking committee members to help with articles, case law updates and other functions of the committee," said Foster. "For a small time contribution, Georgia's civil defense lawyers have an opportunity to make a substantial contribution to the bar through these committees," he added. The new committee

chairs and vice chairs are:

### **Appellate**

Chair - **Amy R. Snell**, Fulcher, Hagler, Augusta; Vice Chair - **Matthew G. McLaughlin**, Carlock, Copeland, Atlanta

### **Auto**

Chair - **Edward R. Stabell, III**, Brennan, Harris & Rominger, Savannah; Vice Chair - **Valerie E. Pinkett**, Swift, Currie, McGhee & Hiers, Atlanta

### **Business / Commercial Litigation**

Chair - **Alfred B. Adams, III**, Holland & Knight, Atlanta; Vice

Chair - **Kimberly C. Harris**, Ellis, Painter, Ratterree & Adams, Savannah

### **Construction**

Chair - **Kenneth Sisco**, Hawkins & Parnell, Atlanta; Vice Chair - **Tracy Ann O'Connell**, Ellis, Painter, Ratterree & Adams, Savannah

### **Employment**

Chair - **Catherine M. Bowman**, Forbes & Bowman, Savannah; Vice Chair - **Christopher E. Parker**, Freeman, Mathis & Gary, Atlanta

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## 2006 Willis J. "Dick" Richardson, Jr. Student Award

On March 31, 2006, the Willis J. "Dick" Richardson, Jr. Student Award for outstanding trial advocacy was presented at the University of Georgia School of Law awards program. Johnny Foster, on behalf of the GDLA, presented the award to Mary Rae Phelps. Mary Rae is a third-year law student from the Macon area. She was selected as the recipient because she had been elected chair of the Law School's Mock Trial Board.

The ceremony was held in the Law School's Hatton-Lovejoy Courtroom. Approximately 150 people attended including faculty, students and students' family members. Approximately 45 awards were presented, but only the GDLA and one other organization had a representative on hand to make the presentation. The other awards were presented by the Dean of the Law School, Rebecca H. White.



GDLA president, Johnny Foster, Forbes & Bowman, Savannah, with scholarship winner Mary Rae Phelps.

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## President's Message

As I look back on the last ten months, I am thrilled at the progress this association has made toward advancing the civil defense bar in Georgia; and coincidentally, that is the new slogan the GDLA adopted this year to better explain what we do.

Shortly after taking the reins as president, I met with the executive committee for a one-day retreat to take a broad look at the GDLA, its mission, service to members and impact on our profession in Georgia.

Two major goals coming out of the executive committee retreat were to increase the diversity of the organization and to re-start our substantive law committees. We are well on our way to realizing both of those goals, with many new members becoming more involved on GDLA committees and the board, and with the announcement of the chairs and vice chairs of our SLCs.

In addition, we will break last year's record of 102 new members - proof that attorneys in Georgia are now recognizing that the GDLA provides an extremely valuable professional benefit to the state's civil litigation defense attorneys.

Another first included our recent judicial reception held in Savannah in April at which we honored Senior Superior Court Judge Frank Cheatham and at which our members from that area of the state had an opportunity to meet and mingle with the judges in front of whom they try cases.

Additional judicial receptions are currently being planned for Macon and Augusta.

Speaking of judges, we have also established a GDLA Judicial Relations Committee which will, among other things, serve as a liaison between our members and the judiciary in Georgia. Doug Stewart of Gainesville has graciously agreed to serve as chair of this new committee.

We have also improved the association's Web site with the launch of our "tort reform" database consisting of a collection of briefs and orders relating to SB3, and we have

**We have also established a GDLA Judicial Relations Committee which will, among other things, serve as a liaison between our members and the judiciary in Georgia.**

added to our brief bank and discovery tools area as well.

Our second workers' compensation academy was a success, convincing us that

we are offering a valuable service in this area, and we will be reintroducing our popular Skits & Suds CLE for younger lawyers soon.

I encourage all of you to take a closer look at today's GDLA. I'd hate for you to miss out on any benefits of membership of which you may not be aware. I would also encourage you to get involved, whether as an article author, donor to our brief bank, CLE speaker or by helping to recruit a new member or two.

Remember our new slogan . . . "Advancing the Defense Bar" . . . and realize that it really is more than just a slogan. The GDLA is moving forward!

Johnny Foster

## Do You Know a Younger Lawyer?

If you know a younger lawyer or have an associate at your firm who you would like to help develop their legal skills, the new GDLA Substantive Law Committees are an excellent way for them to work with seasoned attorneys and get involved in a variety of worthwhile and interesting projects -- that won't demand significant amounts of their time.

Our SLCs each have a chair and vice chair to lead the activities of their respective committees, but committee members are needed to help write newsletter articles, provide quarterly case law updates for the GDLA Web site, help us

down the hall to someone who you think would benefit from being more involved in helping the GDLA advance the interests of the civil defense bar in Georgia.

Serving on an SLC committee is great not only for a younger lawyer's resume, but will give them the chance to work with some top-notch civil litigators and give back to the profession.

SCL committee participation requires membership in the GDLA. . . if your younger lawyer is not a member, now would be a great time to let them know about the many benefits of membership

**The new GDLA Substantive Law Committees are an excellent way to work with seasoned attorneys and get involved in a variety of worthwhile and interesting projects -- that won't demand significant amounts of time.**

expand the Brief Bank and Discovery Tools area of the site, and plan and execute CLE seminars specific to the committees specialty.

On page 15 of this newsletter is an application form to apply to serve on one of the GDLA's committees. Our new chairs are just starting to actively recruit committee members, so now is the time to get your associates and younger lawyer acquaintances involved.

When you are finished reading this newsletter, please walk it

in the GDLA (including their first year of DRI membership FREE!).

Download our brochure ("17 Reasons to Join the GDLA") and membership application today and pass it on.

Thanks in advance for your helping a younger lawyer or other associate grow in their professional developments, and thanks for helping spread the word about the GDLA to potential members.

Steve Milano  
Executive Director

## GDLA Committees

### Membership

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

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Lynn Roberson, Bubba Hughes

### Young Lawyers

#### Recruitment & Retention

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## **Congratulations, Recognitions & Announcements**

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

## **Condolences**

The GDLA is saddened to announce the passing of one of our members, **Jerry Blackstock**, who passed away in early April.

In lieu of flowers, the family asks that donations be sent to:

The Jerry B. Blackstock Scholarship Fund at the University of Georgia School of Law, 120 Herty Drive, Athens, GA 30306 or The Jerry Blackstock Scholarship Fund at Riverside Military Academy, 2001 Riverside Drive, Gainesville, GA 30501.

## **Cases of Interest**

**Paul E. Weathington** and associate Wayne D. Toth of The Weathington Firm, Atlanta, recently received a favorable decision from the Supreme Court of Georgia on behalf of a cardiologist and his practice on a Fair Business Practices Act claim in a medical malpractice case.

During the plaintiff's decedent's hospital stay, the cardiologist identified a pressure ulcer. The cardiologist then ordered that the decedent be treated by hospital nurses specializing in wound ostomy care. The cardiology group's policy allowed the wound ostomy nurses to manage the decedent's wound treatment, as well as the wound treatment of other patients. Plaintiff alleged that this policy fell within the scope of the Fair Business Practices Act, because the policy affected members of the consumer public. The Georgia Supreme Court rejected plaintiff's arguments and held that professional judgment which involves medical competence is not

within the scope of the Fair Business Practices Act.

The question before the court was one of first impression. *Henderson v. Gandy*, 280 Ga. 95, 623 S.E.2d 465 (2005)

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**Timothy J. Buckley, III** of Finley & Buckley, Atlanta, obtained an affirmation of the grant of summary judgment for his client, General Mechanical Services, in a personal injury suit. The Georgia Court of Appeals found the defendant was not liable for injuries incurred when a forklift operator used one arm to lift an unusually heavy trash receptacle onto his motorized forklift.

The court reasoned it was not a foreseeable consequence of placing metal parts in a bin marked "paper only" that plaintiff would engage in dangerous conduct resulting in his injury; the rule allegedly violated was not meant to protect individuals such as the plaintiff.

The defense also proved the plaintiff violated safety procedures and overlooked conditions easily ascertainable by the senses, thus voluntarily exposing himself to the hazard.

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## **11th Circuit Decision re Spoliation**

*Bryant Flury v. DaimlerChrysler Corp.*

On October 5, 2005, the United States Court of Appeals for the Eleventh Circuit reversed the trial court's entry of judgment for Plaintiff Bryant Flury following a jury verdict in favor of the Plaintiff in the sum of \$250,000. The basis of the appellate court's reversal was a finding that

Plaintiff's spoliation of the allegedly defective vehicle manufactured by DaimlerChrysler Corporation ("DCC") deprived DCC of the opportunity to present a complete defense to Plaintiff's claims. The Court found that the resulting prejudice to DCC was incurable by any sanction other than a complete dismissal of the case and the entry of judgment in favor of DCC.

The Court also held that Plaintiff failed to present evidence he sustained an enhanced injury as a result of the allegedly defective airbag.

The case was tried by M. Diane Owens and Anandhi S. Rajan of Swift, Currie, McGhee & Hiers, LLP in Atlanta, GA. The appellate briefing was handled by national airbag litigation counsel for DCC Ray Kethledge, and M. Diane Owens and Tippi Burch of Swift, Currie, McGhee & Hiers, LLP.

DRI members **Matthew G. Moffett** and **Wayne S. Melnick** of Gray, Rust, St. Amand, Moffett & Brieske, Atlanta, recently won a case brought pursuant to Section 1983 and various state law claims. In that matter, an African-American plaintiff sued an African-American Superintendent of Schools and the school district, claiming racial discrimination and Fair Labor Standards Act violations. Mr. Moffett and Mr. Melnick represented the Superintendent, while separate counsel represented the school district.

The plaintiff claimed that she was the victim of racial discrimination when she was initially hired and, then again, when she was terminated. She also contended that she was terminated because she complained about co-workers being due overtime under the FLSA. Various state law claims, including slander and tortious interference with contract claims, were also tried.

*Continued on page 6*

The defense contended the plaintiff's termination had nothing to do with race, but rather, because she attempted to write herself overtime checks she was not authorized to draft and in amounts greater than what she was due. In a bench trial before Judge Clay Land (Middle District of Georgia), the court ruled entirely in the Superintendent's favor on all counts.

**James S. (Sandy) Owens, Jr.** and partner, Nall & Miller, Atlanta, recently obtained a Judgment Notwithstanding the Verdict in a product liability death case in which a Kansas jury awarded \$1.7 million (reduced to \$1.2 million by caps) to the plaintiff. The plaintiff contended a defective dishwasher caused the house fire in which the plaintiff's daughter died and presented expert testimony from an electrical engineer to the effect that the product was defective.

Numerous Daubert objections were made by the defense to the expert's testimony but the trial court overruled the objections. In granting the Judgment Notwithstanding the Verdict, the district judge found that she had erred in allowing the testimony of the expert.

## New Members

The GDLA welcomes the following new members: **Kevin D. Abernethy**, Drew, Eckl & Farnham, Atlanta; **Seth A. Bader**, Savell & Williams, Atlanta; **Blair L. Ballard**, Fulcher Hagler, Augusta; **Alex Barfield**, Hawkins & Parnell, Atlanta; **Jonathan Bledsoe**, Minor, Bell & Neal, Dalton; **Elizabeth Holland Brabham**, Downey & Cleveland, Marietta; **Edward C. Bresee, Jr.**, Mozley, Finlayson & Loggins, Atlanta; **Eric Brewton**, Brock, Clay & Calhoun, Marietta; **Jason E. Bring**, Arnall Golden Gregory, Atlanta; **George W. Brinson**, Drew, Eckl &

Farnham, Atlanta; **Douglas K. Burrell**, Drew, Eckl & Farnham, Atlanta; **Carmen Butler**, Ashe & Rafuse, Atlanta; **Connell Cannon**, Oliver, Maner & Gray, Savannah; **Amy Combs**, Freeman, Mathis & Gary, Atlanta; **Nikole Marie Crow**, Carter & Ansley, Atlanta; **Charles M. Dalziel, Jr.**, Brock, Clay & Calhoun, Marietta; **Drew D. Dropkin**, Sutherland, Asbill & Brennan, Atlanta; **Douglas C. Dumont**, Drew, Eckl & Farnham, Atlanta; **Davis Dunaway**, Hull, Towill, Norman, Barrett & Salley, Augusta; **Melanie C. Eyre**, Drew, Eckl & Farnham, Atlanta; **Jonathan H. Fain**, Jonathan H. Fain & Associates, Atlanta; **Annette M. Freeman**, Drew, Eckl & Farnham, Atlanta; **Mary Katherine Greene**, Carlock, Copeland, Semler, & Stair, Atlanta; **Eugene S. Hatcher, Jr.**, Jones, Cork & Miller, Macon; **Jonathan E. Hawkins**, Love, Willingham, Peters, Gilleland & Monyak, Atlanta; **Daniel C. Jenkins**, Brennan, Harris & Rominger, Savannah; **Julie Y. John**, Drew, Eckl & Farnham, Atlanta; **Colby Jones**, Downey & Cleveland, Marietta; **Edtora T. Jones**, Owen, Gleaton, Egan, Jones & Sweeney, Atlanta; **Min J. Koo**, Downey & Cleveland, Marietta; **Victor Lai**, Drew, Eckl & Farnham, Atlanta; **Susan W. Langlais**, Hawkins & Parnell, Atlanta; Philip W. Lorenz, Hawkins & Parnell, Atlanta; **Carrie N. Lowe**, Carlock, Copeland, Semler, & Stair, Atlanta; **T. Case Maner, Jr.**, Owen, Gleaton, Egan, Jones & Sweeney, Atlanta; **Charles M. McDaniel, Jr.**, Insley & Race, Atlanta; **Laura McDonnell**, Drew, Eckl & Farnham, Atlanta; **Evelyn Miller**, Gray, Rust, St. Amand, Moffett & Brieske, Atlanta; **Andrea P. Mitchell**, Drew, Eckl & Farnham, Atlanta; **G. Randall Moody**, Drew, Eckl & Farnham, Atlanta; **Brian T. Moore**, Drew, Eckl & Farnham, Atlanta;

**Christopher O'Donnell**, Drew, Eckl & Farnham, Brunswick; **M. Elizabeth, O'Neill**, Hawkins & Parnell, Atlanta; **Mahaley C. Paulk**, Hawkins & Parnell, Atlanta; **Christian A. Pecone**, Savell & Williams, Atlanta; **James Ponton**, Downey & Cleveland, Marietta; **Leigh Lawson Reeves**, Drew, Eckl & Farnham, Atlanta; **Brandon Rhodes**, Drew, Eckl & Farnham, Atlanta; **Terry Rock**, Drew, Eckl & Farnham, Atlanta; **J.C. Roper, Jr.**, Drew, Eckl & Farnham, Atlanta; **Bobby L. Scott**, Hatcher, Stubbs, Land, Hollis & Rothschild, Columbus; **Sharon A. Stewart**, Drew, Eckl & Farnham, Atlanta; **Matthew P. Stone**, Freeman, Mathis & Gary, Atlanta; **Nicole Wolfe Stout**, Strawinski & Goldberg, Atlanta; **Ararati Subramaniam**, Drew, Eckl & Farnham, Atlanta; **David Thomas**, Drew, Eckl & Farnham, Atlanta; **Terry-Dawn Thomas**, Thomas & Kane, Atlanta; **David M. Van Sant**, Dennis, Corry, Porter & Smith, Atlanta; **Lisa A. Wade**, Swift Currie McGee & Hiers, Atlanta; **Robert L. Welch**, Drew, Eckl & Farnham, Atlanta; **Ashley D. Witzgreuter**, Goodman McGuffey Lindsey & Johnson, Atlanta

**Gray, Rust, St. Amand, Moffett & Brieske** has moved to 1700 Atlanta Plaza, 950 East Paces Ferry Rd., Atlanta, 30326.

**Fulcher Hagler** has moved to One Tenth Street, Suite 700 (30901), Post Office Box 1477, Augusta, 30903-1477.

**King & Spalding** has moved to 1180 Peachtree St. NE, Suite 1700, Atlanta, 30309-7525.

**Barrickman, Allred & Young** has moved to 5775 Glenridge Drive. Bld. A - Ste. 100. Atlanta, GA 30328

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## Consortium

*Magill v. Kirby Chevrolet*, \_\_\_ Ga. App. A05A858 (Feb. 15, 2006). Appeal from jury verdict finding equal fault. The Court of Appeals held that lost wages are not an element of damages in a consortium claim and the consortium claim is moot if the husband does not recover. An additional holding is that the proper remedy for violation of discovery is not to exclude the evidence, but to allow for a continuance or mistrial.

## Damages

*Lee v. Thomason*, \_\_\_ Ga. App. \_\_\_, A05A1945 (Feb. 13, 2006). Road wreck resulted in jury verdict and judgment for damages of \$1,437,000 to the injured driver and \$938,000 in the consortium claim to the wife. The Court of Appeals affirmed finding that the evidence justified the amount of damages.

## Evidence

*EHCA Dunwoody, L.L.C. v. Daniel*, \_\_\_ Ga. App. \_\_\_, A05A2141 (Feb. 28, 2006). Jury verdict resulted in a judgment in favor of the plaintiff. The Court of Appeals affirmed holding that the medical expert's testimony was sufficient to establish causation, any error in admitting a letter from the emergency room physician was harmless, admission into evidence of medical narratives was harmless error, and the hearsay testimony from the plaintiff regarding statements made to her by her physician was harmless.

## Jury

*Brown, et al. v. Columbus Doctors Hospital, Inc.*, \_\_\_ Ga. App. \_\_\_, A05A 2092 (Feb. 10, 2006). Plaintiff appealed from a

jury verdict in favor of the defendant hospital. The Court of Appeals reversed finding that a prospective juror should have been struck for cause because the statements indicated he could not put aside sympathy or prejudice and felt the verdict might affect his economic livelihood.

## Medical Consent

*Prince v. Esposito*, \_\_\_ Ga. App. \_\_\_, A05A2012 (2006). The court found that the patient consented to a chiropractic adjustment, that the adjustment was in the scope of treatment, and the patient failed to unequivocally withdraw his consent.

## Premises

*Green v. Home Depot, Inc.*, \_\_\_ Ga. App. \_\_\_, A05A2096 (2006). Property owner was found not liable for injuries suffered by a customer injured when an independent contractor caused a box of light bulbs to fall on a customer's head because the proprietor did not have superior knowledge.

*Norman v. Jones Lang LaSalle Americas, Inc.*, \_\_\_ Ga. App. \_\_\_, A05A2097 (2006). Manager was not liable for an employee's injury where the employee's knowledge of a hazard was equal to or greater than that of the manager.

*Alexander Properties v. Doe, et al.*, \_\_\_ Ga. App. \_\_\_, S05A1992 (Feb. 13, 2006). This is a premises case brought by a 13 year old rape victim. The trial court granted a protective order refusing to require the production of a sexually explicit videotape. The Supreme Court reversed and remanded with instructions saying that it was not criminal to produce such materials in response to discovery or court order.

## Summary Judgment

*Mowell v. Marks*, \_\_\_ Ga. App. \_\_\_, A05A2118 (Feb. 8, 2006). Summary judgment in favor of homeowner reversed. Held that there was a question of fact to whether the adult intentionally supplied alcohol to minor. Ruling also held that plaintiff can recover punitive and compensatory damages in addition to damages under § 51-12-6 for injury to peace, happiness, and feelings if there is more than one distinct tort.

*Barrington Hills Condominium Association, Inc. v. Lewis*, \_\_\_ Ga. App. \_\_\_, A05A2047 (Feb. 6, 2006). Plaintiff may not obtain summary judgment based solely on opinion evidence. Opinion evidence requires a factual determination by a jury whether to accept or reject it, and how much weight to be given.

## Workers' Compensation

*TRAX-FAX, Inc., et al. v. HOBBA*, \_\_\_ Ga. App. \_\_\_, A05A0397 (Feb. 2, 2006). The Court of Appeals held that O.C.G.A. § 34-9-245 is a two-year statute of repose and was not applied retroactively to the insurer's claim for reimbursement so improperly paid benefits.

*Ray Bell Construction Company, et al. v. King*, \_\_\_ Ga. App. \_\_\_, A05A2216 (Feb. 5, 2006). An employee was killed in an automobile accident while driving a company truck back to his job site on a company apartment after a personal errand. The court found that the incident was compensable under the doctrine of continuous employment and found that the personal mission had ended.

*Roberts v. The Jones Company, et al.*, \_\_\_ Ga. App. \_\_\_, A05A2333 (Feb. 7, 2006). An employee returned to work with restrictions at a lower wage. ALJ found that she had failed to demonstrate that the lower earnings were proximately caused by her compensable work injury. The Court of Appeals reversed holding that this was not a requirement of the employee's proof and remanding the matter to the State Board for further findings.

*Martines v. Worley & Sons Construction*, \_\_\_ Ga. App. \_\_\_, A05A1985 (Feb. 14, 2006). The injured employee was offered light duty work driving for the employer. The employee testified that he was unable to accept the job because he could not read and write and obtain a driver's license.

He additionally argued that the employer should be estopped from asserting that his inability to accept the job was due to his status as an illegal alien. The Court of Appeals held that the job was suitable and the claimant was not justified in refusing to accept it. It further found that his inability to drive was due to his choosing to enter the country illegally and apparently not jeopardizing his situation by attempting to obtain a driver's license.

#### Venue

*EHCA Cartersville, LLC v. Turner*, \_\_\_ Ga. App. \_\_\_, S05A1560, S05A2066 (Feb. 13, 2006). This involves two medical malpractice cases. The Supreme Court held: (1) the statute authorizing nonresident defendant to

require transfer of venue violated constitutional provision allowing for suits against joint tortfeasors residing in different counties to be tried in either county; (2) the term "Superior Court" in the constitutional provision change of venue should be read to include "State Court;" (3) statute providing for transfer of venue on a ground of forum non conveniens did not violate constitutional venue provisions; and (4) statute governing transfer of venue on ground of forum non conveniens was procedural and would apply retroactively.



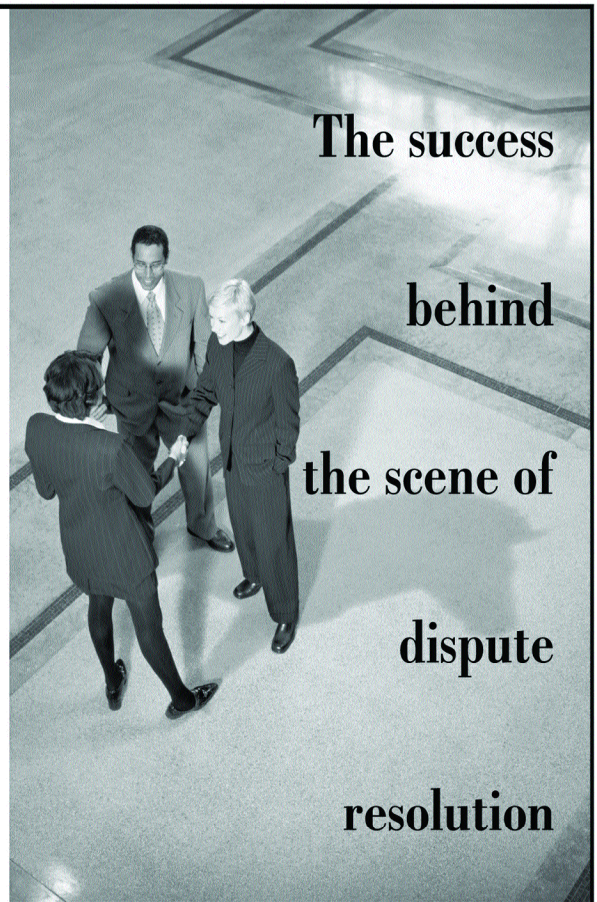
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# 2006 Overview of Changes in Georgia Law and Practice

By Scot V. Pool,  
Forbes & Bowman, Savannah



A very broad overview of legislative "passings" and court rulings is an annual occurrence at both the GDLA annual meeting and within the newsletter. Last year's law update in the newsletter followed the meeting by several months. For this reason, the cases in this interim update, preceding the annual meeting this June, are many months old. At this point in time they remain good law; legislative changes since the last law update are handled elsewhere within this newsletter.

In *Webb v. Day*, 273 Ga. App. 491, 615 S.E.2d 570 (2005), neither a worker's statement that the head of the construction company had asked him to use a forklift to trim trees nor evidence that the negligent manner that injured the Plaintiff (copied by the worker) had been done previously with (and per) the construction boss prevented summary judgment for the head of the construction company and his company. The Georgia Court of Appeals found, first, that the worker was not his agent since the right of control was in another and, perhaps more amazingly, second, "it is true that Day [the boss] had previously used the forklift to raise Boling [the worker] into the air to trim tree limbs. Even so, however, evidence concerning Day's uses of the forklift is not evidence of Day's actual knowledge that Boling intended to use the forklift in the same unsafe manner as Day had." The larger benefit to defense lawyers may be in *Webb v. Day's* precedent value as indicative of the very high standard we have for negligent entrustment claims. Next, in a case proving a church is a good client to have even under the worst of circumstances, *Poole v. North Ga. Conference of the Methodist Church Inc.*, 273 Ga. App. 536, 615 S.E.2d 604 (2005) sees the church escape on summary judgment where its pastor counseled the Plaintiff regarding his

marital problems while maintaining an affair with the Plaintiff's wife! Negligent hiring, supervision and retention all failed since nothing in the pastor's background should have enabled the church to foresee this sort of conduct. The Court dismisses affidavits showing a tendency towards "touching" parishioners and a suggestion that he had tried to date a "young adult lady at the church" while he was married. The Court concludes, confidently, that this "evidence does not show Warren's [the minister's] background information would have placed North Georgia Conference and Sixes United on notice that it was "reasonably foreseeable from [Warren's] tendencies or propensities that [Warren] could cause the type of harm sustained by [Poole]. . . ."

In a case deciding that Delta has one less problem to worry about at the moment, the Supreme Court of Georgia in *Delta Airlines Inc. v. Townsend*, Ga. 511, 614 S.E.2d 745 (2005), reversed the Court of Appeals and granted Summary Judgment to Delta, ruling that it was not liable under the dram shop statute, no matter how drunk it allowed an airline passenger to get on a flight from Milwaukee to Atlanta. They found the proximate cause connection too remote, since an air carrier moves passengers between airports and not necessarily to an ultimate driving destination. The Court found the airline had no control over its passengers' activities once they deplane. The statutory remedy was the only one available to Plaintiff. The Court says: "unlike the clientele of land-based establishments, airline passengers generally do not have direct and immediate access to their vehicles after they deplane. Moreover, while an airline knows or should know that an intoxicated passenger will shortly be leaving the plane where the alcohol was served, it has

no way of knowing whether any of its passengers will 'soon' be operating a vehicle as opposed to remaining at the airport or departing by some other means of transportation."

Then, in a case whose facts will scare just about any land-owner, *Harrison v. Plant Imp. Co., Inc.*, 273 Ga. App. 884, 616 S.E.2d 183 (2005), the land-owner does receive Summary Judgment after the wife of a deceased husband brings a wrongful death action after his throat is slashed by an unmarked half-inch cable stretched across a dirt trail and hanging approximately three feet in the air. The key, as is the long-standing rule, was whether the cable wire constituted a hidden peril or a "mantrap" so that its existence could be used to find a willful and wanton intent to harm the decedent trespasser. Besides the gruesomeness of the facts, the opinion includes a laundry list of holdings where mantraps existed (spring gun, sawdust pile under electric line where children played, unlit walkway from dock to ships) and where they did not (unlit stairway, logs next to public street, concealed ditch, gasoline and matches accessible to children, excavation pit). As demonstrated by just those examples alone, this area of law is very fact intensive and the land-owner should pray that there is no prior evidence of any notice problem.

Related to that subject of prayer, in *Clack-Rylee v. Auffarth*, 273 Ga. App. 859, 616 S.E.2d 193 (2005), the Court of Appeals considered, on appeal following a defense verdict for a physician on medical malpractice, the claim that a juror's bias was not adequately addressed through the trial court's allowed voir dire. Specifically, a minister in the jury

*Continued on page 11*



Several bills of interest to members of the civil defense bar were passed during the 2006 legislative session. Among those were amendments to O.C.G.A. § 9-11-68, which pertains to offers of judgment. Several problems with the 2005 version of this code section came to light. The 2006 amendments were intended to eliminate the problems and provide a more workable offer of judgment procedure.

O.C.G.A. § 9-11-68 now will provide that the plaintiff must obtain a final judgment of at least 75% of the amount of the offer or be subject to an assessment of attorneys' fees and litigation expenses incurred after rejection of the offer and through entry of the final judgment. On the other side of the coin, if the plaintiff obtains a final judgment in an amount greater than 125% of an offer of judgment, the plaintiff will be entitled to recover reasonable attorneys' fees and expenses incurred after the date of the rejection

of the offer. This amendment also provides for this code section to be applicable only upon remittitur from the appellate court affirming the judgment, when an appeal is timely taken.

O.C.G.A. §9-11-34(c) was also amended. The section now requires the party receiving information or documents from a non-party to make that information available to all parties. The amendment also provides for 20 days from the date of service of the request on a medical provider for filing of objections to the request. Additionally, the non-party on whom the request is made is provided immunity for a production of confidential or privileged information if no objection is filed timely and the response is made to the request. Lastly, subsection (d) provides that the Section makes it clear there is no repeal of certain specified confidentiality provisions in the Georgia code.

O.C.G.A. § 51-1-51 has been amended to provide immunity from liability for personal injury or to property damage for anyone who supplies only financial sponsorship or support for charitable fund raising event. There has been some miscommunication about the content of this Bill. It is very clear that it is for the protection only of those who provide only financial support. It is not designed to provide immunity for those actually involved in the planning or presentation of the event.

**Barry Fleming** is a partner in the law firm of Fulcher Hagler in Augusta, the Republican Majority Whip in the Georgia House of Representatives and the GDLA's legislative liaison.



## 2006 Overview of Changes in Georgia Law and Practice

continued from page 10

pool had said that it was wrong for one Christian to sue another and, in elaboration, gave the opinion that "that is not to say that I don't think just anybody out here ought to be suing each other. I think they should operate within the justice system. The justice system allows them to do that, and their conscience, the moral conscience, their business conscience doesn't prevent them from doing that, I say have at it. But would I sue somebody that was not a Christian brother who had through negligence wronged me? Yes." Believe it or not, this lead to questions about

whether the Defendant was a Christian and, as such, subject to the juror's rule that the Plaintiff could not sue another Christian but was free to sue any non-Christians. The Court of Appeals concludes there was ample voir dire and no error on appeal. Obviously, the question is, for us as potential strikers of potential jurors, was there enough voir dire from that witness to lead one to strike him just for good measure. The answer probably is, if we are representing a Christian defendant, "Hell" no, but in all other situations yes. The Court does decide that there was no

disqualifying bias in that juror. Finally, on a more serious note, in Jones v. Frickey, 274 Ga. App. 398, 618 S.E.2d 29 (2005), the Court of Appeals found no enforceable settlement agreement - regardless of whether State Farm's time-limited response was timely - because it imposed the condition of resolving liens on the Plaintiff. The case is yet another example of the hazards of time-limited demands and the powerful weapon the Georgia judiciary has created in the same in the hands of Plaintiffs. Be wary.



# Electronic Discovery: 21st Century Roadmap

By Robert J. Moody, JD, CISA, CISM  
Berenfeld, Spritzer, Shechter & Sheer, Sunrise, FL



Information and records once stored on paper now inhabit hard drives, back-up tapes and file servers. Gaining access to this information is the science of electronic discovery, and it is quickly becoming routine in cases related to fraud, breach of contract, and intellectual property theft. The penalties for failing to properly gather and disclose information can be costly—one only needs to say "Morgan Stanley" to strike fear in the hearts of attorneys everywhere.

The Supreme Court recently approved proposed amendments to the Federal Rules of Civil Procedure concerning the discovery of "electronically stored information." Unless Congress enacts legislation to reject, modify or defer the amendments, they will take effect, December 1, 2006. The amendments may be accessed at [www.uscourts.gov/rules/newrules6.html#cv0804](http://www.uscourts.gov/rules/newrules6.html#cv0804).

These changes in the rules will be an important first step toward more coherent electronic discovery. While the new rules suggest a destination, they do not provide a roadmap for the trip.

## Developing an Electronic Discovery Roadmap

The proposed Amendments to Rule 16, Rule 26(a) and (f), and Form 35 provide for early attention to electronic discovery and create a vaulting off point for your electronic discovery roadmap.

Essential to the roadmap process is an understanding of the organization's technology infrastructure. Each company's infrastructure is unique in the design of its equipment, use of its programs, and the storage of its information. Systems often take on the characteristics of the company, its managers and most importantly the information technology (IT) personnel operating and maintaining the back office systems. Begin this process by

interviewing the IT staff and obtaining a detailed diagram of all systems, both macro level, Wide Area Network and micro level, Local Area Network.

Since most companies do not maintain current system diagrams or for the most part have a true understanding of their digital environment, they will have difficulty explaining it to you, so, bring a pencil and be prepared to erase. As you look further into the environment you will find discrepancies between what has been explained and how the system actually functions. Don't get frustrated, keep in mind that the job of the IT staff is to keep the system running and they rarely focus on anything else. The goal of this step is to obtain as much information about the technology infrastructure in question.

The next step on your electronic discovery road map is to gain an understanding of the company's software. Computer software programs provide critical tasks such as e-mail, creating memo and spreadsheets, mission critical databases and inventory-accounting systems. When attempting to understand computer software use the 5 W's;

1. What software program is this?
2. Where is the program stored on the network?
3. When was the program accessed? Identify dates of operation and dates of data.
4. Who are the persons of interest using this software program?
5. Why was this software program used? What purpose did it serve (i.e. storage within the program? communication, collaboration, inventory maintenance, or schedule deliveries)?

Once you have gathered information of the organization's technology infrastructure and computer software you are ready to finish your roadmap for either acquiring

or delivering electronic discovery relevant to your case.

## Integrating Your Roadmap and Case

Now that you have obtained your system diagrams (Wide Area Network and the Local Area Network), hardware inventory, and knowledge of the software programs, you are ready to overlay the facts and issues of the case. Once you do this, you will be able to specifically identify data caches containing relevant information. In addition to the information caches, it is possible to identify missing issues, other sources of information, and possibly, the ever elusive "smoking gun."

## Conclusion

The proposed changes to the FRCP suggest that early attention to electronic discovery is the most effective strategy. Early attention should help reduce cost, increase efficiency, create uniformity of practice and encourage the judiciary in case management.

Proposed FRCP 16(b), 26(a), and 26(f) directs judges and attorneys to give early attention to electronic discovery issues. Taking the intent these proposed rules along with the afore-described approach, one can insure that the court's most precious asset, time, can be maximized.

**Robert D. Moody, J.D., CISA, CISM**, is a Principal in charge of the Forensic Information Technology Practice at Berenfeld, Spritzer, Shechter & Sheer, a Florida-based accounting firm. An attorney by education, Mr. Moody has fifteen years of technology experience in working closely with attorneys, business owners and governmental agencies on complex litigation cases. Mr. Moody can be reached at 954-854-6004 or [rmoody@bss-cpa.com](mailto:rmoody@bss-cpa.com)



# ARTICLES OF INCORPORATION Change Announced

The GLDA Board of Directors Approved the following changes to the association's bylaws at the April 28, 2006 board meeting.

## **Exculpation and Indemnification Provisions for Articles of Incorporation of a Georgia Non-Profit Membership Corporation**

### Article

To the fullest extent permitted by the provisions of the Georgia Nonprofit Corporation Code, including without limitation the fullest extent permitted by Section 14-3-202 thereof, as any of those provisions may be amended and supplemented (but only to the extent that any such amendment or supplement permits more extensive limitations of liability than the Georgia Nonprofit Corporation Code permitted prior to the amendment or supplement), directors shall not be liable to the Corporation or its Members for monetary damages for any action taken, or any failure to take any action, as a director. Nothing herein shall be construed to reduce, impair or affect any immunities or limitations of liability to which the directors and officers of the Corporation may be entitled under other provisions of the Official Code of Georgia, the United States Code or principles of Georgia or federal common law.

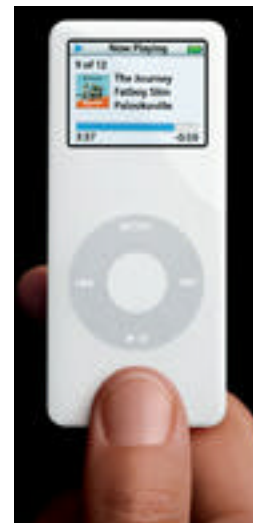
### Article

To the fullest extent permitted by the provisions of the Georgia Nonprofit Corporation Code, including without limitation the fullest extent permitted by Section 14-3-856 thereof, as any of those provisions may be amended and supplemented (but only to the extent that any such amendment or supplement permits more extensive indemnification rights than the Georgia Nonprofit Corporation

Code permitted prior to the amendment or supplement), the Corporation shall, and is hereby authorized and obligates itself to, indemnify its directors and officers from all liabilities and reasonable expenses they incur with respect to any proceeding, regardless of whether they shall have been successful, wholly or otherwise, in the defense thereof, and advance funds, prior to the termination of the proceeding, to pay for or reimburse the reasonable expenses they incur in the defense of the proceeding. The Corporation shall also pay or reimburse the expenses incurred by its directors and officers in connection with or in preparation for their appearance as witnesses in a proceeding at a time when they are not parties to the proceeding. The Corporation shall, in addition, pay all reasonable expenses they incur in successfully enforcing their rights to indemnification or to advancement, payment or reimbursement of expenses by the Corporation, whether under this Article or otherwise. Any indemnification or advancement, payment or reimbursement of expenses effected under this provision shall not be deemed exclusive of rights that directors and officers may have under any Bylaw, resolution, agreement, vote of the Members or disinterested directors, or otherwise, shall apply both to actions and omissions in their official capacity and to actions and omissions in another capacity while serving as directors or officers, shall continue as to persons who have ceased to be directors or officers, and shall inure to the benefit of their heirs, executors, and administrators. All the terms used in this Article shall be read to include the meanings provided in Section 14-3-850 of the Georgia Nonprofit Corporation Code.



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## Substantive Law Committees

continued from page 1

### Insurance

Chair - **David R. Smith**, Bovis, Kyle & Burch, Atlanta; Vice Chair - **Brian T. Moore**, Drew, Eckl & Farnham, Atlanta

### Mass Torts

Chair - **Karen Raby Monson**, Alembik, Fine & Callner, Atlanta; Vice Chair - **M. Elizabeth O'Neill**, Hawkins & Parnell, Atlanta

### Premises Liability

Chair - **Patricia M. Peters**, Hawkins & Parnell, Atlanta; Vice Chair - **Kimberly D. Stevens**, Hawkins & Parnell, Atlanta

### Products Liability

Chair - **W. Ray Persons**, King & Spaulding, Atlanta; Vice Chair - **Franklin P. Brannen, Jr.**, King & Spaulding, Atlanta

### Professional Liability

Chair - **Daniel J. Huff Huff**, Powell & Bailey, Atlanta; Vice Chair - **William Hunter**, Oliver, Maner & Gray, Savannah

### Trucking

Chair - **John D. Dixon**, Dennis, Corry, Porter & Smith, Atlanta; Vice Chair - **Michael L. Miller**, Drew, Eckl & Farnham, Atlanta

### Workers' Compensation

Chair - **Lisa Wade**, Swift, Currie, McGhee & Hiers, Atlanta; Vice Chair - **Tracy Ann O'Connell**, Ellis, Painter, Ratterree & Adams, Savannah

Each committee will have a chair, vice-chair, committee members, and a chair emeritus. The GDLA is seeking volunteers for these committees and position descriptions appear in the column on the right and on the GDLA Web site.

Lynn Roberson, Swift, Currie, McGhee & Hiers, Atlanta, and David Whitworth, Whitworth Law Firm, Brunswick, were appointed as SLC Steering Committee co-chairs by president Foster, and take helped approve committee positions.



## 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.



# GDLA Substantive Law Committee Position Application

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Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Appellate                | <input type="checkbox"/> Automobile         | <input type="checkbox"/> Commercial Litigation |
| <input type="checkbox"/> Construction             | <input type="checkbox"/> Mass Torts         | <input type="checkbox"/> Employment            |
| <input type="checkbox"/> Insurance coverage       | <input type="checkbox"/> Premises Liability | <input type="checkbox"/> Products Liability    |
| <input type="checkbox"/> Professional malpractice | <input type="checkbox"/> Trucking           | <input type="checkbox"/> 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.

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Include any other comments relevant to your application:

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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 2000 Winter Judiciary Reception



Clockwise from upper left: Joan Catalano, Hawkins & Parnell and Tracy Wagner, Fain, Major & Brennan with the Honorable Janice C. Gordon, DeKalb County State Court; Sylvia Goldman, DeKalb State Court Division 5, GDLA President Johnny Foster, Forbes & Bowman, Honorable Barbara J. Mobley, Dekalb State Court Division 5, Victor Lai, Drew, Eckl, Farnham; the Honorable Charles Pannell, Jr. and Jack Slover, Hall, Booth, Smith & Slover, with the Honorable T. Jackson Bedford, Jr., Fulton Superior Court; GDLA Board Member, Bruce Welch, Hawkins & Parnell with Alec Galloway, Moore, Ingram, Johnson & Steele and Doug Dumont, Drew, Eckl & Farnham; Honorable Richard Thompson, State Board of Workers' Compensation with Aarati Subramaniam, Drew Eckl & Farnham; the Honorable Hugh P. Thompson, Georgia Supreme Court and the Honorable Carolyn C. Hall, State Board of Workers' Comp, with Doug Stewart, Stewart, Melvin & Frost; Bill Major and Charles Bean, Hawkins & Parnell, with the Honorable Wendy Shoob and company, Fulton Superior Court; Eckl & Farnham; GDLA past presidents Joe Chambless and Grant Smith, Dennis, Corry, Porter & Smith with the Honorable Hugh P. Thompson, Georgia Supreme Court; Honorable Anne Barnes, Court of Appeals of Georgia with GDLA Board Member Hall McKinley, Drew, Eckl & Farnham



Clockwise from upper left: Barbara Marschalk, Drew Eckl & Farnham and Jack Slover, Jack Slover, Hall, Booth, Smith & Slover, with the Honorable John J. Ellington, Georgia Court of Appeals; GDLA Board Member Lynn Roberson and GDLA Automobile Substantive Law Committee Vice Chair Valerie Pinkett, both of Swift, Currie, McGhee & Hiers, with the Honorable John R. Mather, Fulton County State Court; the Honorable Henry Newkirk with Mark Forsling, Schreeder Wheeler & Flint and Frank Bedinger, Hawkins & Parnell; Matt Stone, Sun Choy and Ted Freeman of Freeman, Mathis & Gary with Shalena Cook, Cruser & Mitchell; Honorable Harold Melton, Supreme Court of Georgia, with Rick Brown, Brown, Readick, and Steve Miller, Owen, Gleaton, Egan, Jones & Sweeney; Wayne Melnick, Gray, Rust, St. Amand, Moffett & Brieske, Jim Budd, Mabry & McClelland, the Honorable John R. Mather, Fulton County State Court, Doug Wilde, Law Offices of Douglas A. Wilde and Matt Moffett, Gray, Rust, St. Amand, Moffett & Brieske; Honorable Susan B. Forsling with Michael Goldman, Hawkins & Parnell and Jo Jagor, Carlock, Copeland, Semler & Stair; Charles Beans, Hawkins & Parnell, Rex Smith, Mabry & McClelland and Steve Miller, Owen, Gleaton, Egan, Jones & Sweeney; Douglas Burrell Doug Dumont and and Laura McDonnell, Drew, Eckl & Farnham; GDLA Board member Jimmy Singer, Bovis, Kyle & Burch with past presidents Rick Rominger, Brennan, Harris & Rominger and Walter McClelland, Mabry & McClelland

**Special Thanks to our evening's sponsor!**



# MEET THE GDLA'S NEW SLC Chairs & Vice Chairs

Below are a few of the new chairs and vice chairs of the GDLA's substantive law committees.

Each committee is actively searching for members. Please contact the GDLA office or the chair or vice chair of a committee if you are interested in serving on one of the association's SLCs.



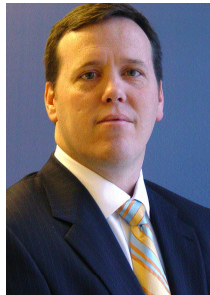
**Alfred B. Adams, III**  
Holland & Knight, Atlanta  
**Commercial Litigation - Chair**



**Catherine M. Bowman**  
Forbes & Bowman, Savannah  
**Employment - Chair**



**John D. Dixon**  
Dennis, Corry, Porter & Smith, Atlanta  
**Trucking - Chair**



**Daniel J. Huff Huff**  
Powell & Bailey, Atlanta  
**Professional Liability - Chair**



**William Hunter**  
Oliver, Maner & Gray, Savannah,  
**Professional Liability - Vice Chair**



**Christopher E. Parker**  
Freeman, Mathis & Gary, Atlanta  
**Employment - Vice Chair**



**W. Ray Persons**  
King & Spaulding, Atlanta  
**Products Liability - Chair**



**Valerie E. Pinkett**  
Swift, Currie, McGhee & Hiers, Atlanta  
**Auto - Vice Chair**



**Karen Raby Monson**  
Alembik, Fine & Callner, Atlanta  
**Mass Torts - Vice Chair**



**Lisa Wade**  
Swift, Currie, McGhee & Hiers, Atlanta  
**Workers' Compensation - Chair**

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# GDLA Winter 2006

## Board Meeting Highlights

On February 3, 2006, the Board of Directors of the Georgia Defense Lawyers Association met in the offices of Hawkins & Parnell. In attendance were Bubba Hughes, Jimmy Singer, Grant Smith, Rick Rominger, Ted Freeman, Walter McClelland, Salty Forbes, Lynn Roberson, Jo Jagor, Mel Haas, Steve Kyle, Johnny Foster, Joe Chambliss, David Nelson, Bruce Welch, Hall McKinley, Clay Ratterree and Steve Milano, Executive Director.

President Johnny Foster called the meeting to order and the Board approved the Fall Board Meeting Minutes.

Secretary/Treasurer Travis gave the treasurer's which reflected a positive cash balance.

President Foster then expressed the Board's appreciation to Bob Brinson and Georgia Lawyers Insurance for their sponsorship of the previous evening's Meet the Judges Reception at the Capital City Club.

Secretary/Treasurer Travis gave a report of the Dues Committee. After discussion, it was decided to raise the dues from \$150 to \$170 with younger lawyers' dues being \$85. It was also decided that once a member had reached 65 with 10 years of service to GDLA, the dues would be one-half of the then-existing dues rate. The same for the younger lawyers.

It was further moved and approved that past presidents, once they reached the age of 65, would be exempt from dues.

Although there was discussion of awarding free CLE registration for large firms bringing in more than five people, it was not approved by the Board. Board members were also reminded that they do not, while actively serving on the Board, get credit for free CLE registration, when bringing in new members.

There was a discussion of what to do with large firms to encourage

them to join GDLA. There was a discussion of a proposal that once 10 members from one firm join GDLA, new members come in with no initiation fee. Salty Forbes will review our 501(c)(6) status before any further action on what might be contended as separate classes of dues.

Lynn Roberson moved that the Board review waiving the initiation fee for younger lawyers with less than five years of practice. We will look at and discuss this at the Spring Board meeting.

Membership Chairman Salty Forbes gave an extensive membership report. Board members were encouraged to talk to attorneys in their individual firms to encourage delinquent people to renew dues. Chairman Forbes moved to enforce our By-Laws canceling the membership of delinquent members, approximately 35 at this time. Article IV of our By-Laws provide for the suspension of membership upon nonpayment of dues.

The motion was made and passed that all applications and dues are forwarded directly to Salty. After review, he will forward checks and applications to the Secretary/Treasurer/Executive Director so that checks may be deposited.

Chairman Forbes moved the admission of 61 new members of GDLA and all were approved for membership.

Lynn Roberson gave a membership recruitment and retention report. There was a discussion of meeting with the Litigation Chairs and any member of GDLA already in the larger firms. There was a discussion of doing a show-and-tell at each of the larger firms.

President Foster reported that the younger lawyers CLE and worker's comp seminar planned for February 3 were cancelled when we found out that the Claims Association was having a worker's comp seminar and the State Bar

was having a Meet the Judges' Reception that same day.

Craig Avery is preparing a list of competing organizations and we are going to check with them before we schedule future events of GDLA.

Jo Jagor is going to pick a date for the CLE for younger lawyers. Staten Bitting will pick a date and get it done before April 28 so we can vote new members in after the worker's comp seminar.

We are going to try to cover our cost and break even with our CLE seminars. A discussion of CLE seminar fees followed. Presently those who attend seminars get their initiation fee and first-year dues waived. They also get free DRI membership if they join the GDLA and have not previously been a DRI member. The three or four people who prepare the younger lawyer CLE with Jo will have no application fees and no dues in the year in which they assist her.

The substantive law committees, chairs and vice chairs were announced by President Foster. President Foster will invite four new chairs to our Spring Board Meeting. The SLC Steering Committee will continue to monitor our Substantive Law Committees and Johnny will remain active after his term of President ends.

Kirby Mason and David Nelson will help reorganize our Web site.

Sally Aiken of Clay Ratterree's firm has agreed to begin work on our charge book.

There was consideration and discussion of having a prize for the person who posts the most briefs in our brief bank. There was some discussion that those who donated the most within thirty days would get free registration to Bermuda but most thought that this would be too much.

A motion was made for blast e-mails soliciting briefs and jury charge. Those participating and providing a document ultimately

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*Medicare Set-Aside Trusts*

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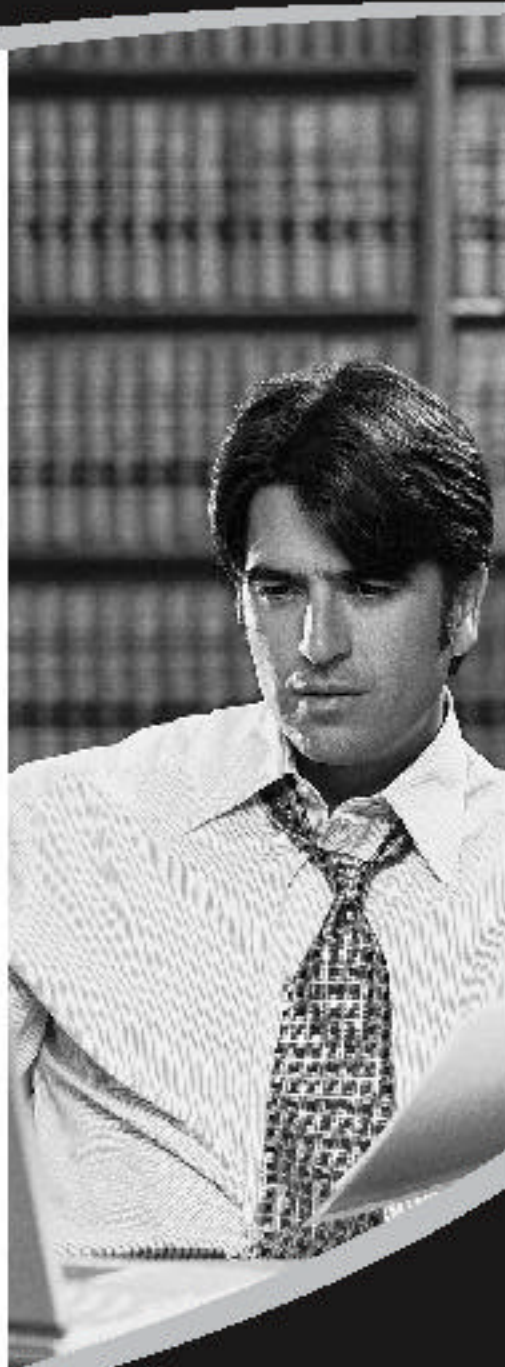
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# Board Meeting Highlights

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used on the web site would be eligible for a prize by way of a random drawing in the nature of a \$100 certificate redeemable by anyone in the firm of the winning member. The Web site committee would be the final arbiter of the winner and how the award will be administered. Board members are exempt.

There was a report from the Judicial Relations Committee. Johnny will appoint new members to the Superior Court Council and State Court Judges as our representatives.

Lynn Roberson reported on the Judicial Qualifications Commission. Nothing is presently pending. Typically Lynn gets a three- to four-day notice and is invited to the Commission Board for five minutes. Lynn and Walter solicit comments in the outlying counties. Lynn needs more help.

The resumes are very extensive in a very short review period. She needs input from the entire Board.

We cannot adhere or respond to requests from judges for our mailing list since that would interfere potentially with our By-Laws.

Steve Kyle then gave a report on our Annual Meeting on June 8-11 in Bermuda. Executive Vice President Warner Fox is putting together a great program.

Steve Kyle also gave a report on our Fall Meeting on October 20-21 at Barnesly Gardens in Adairsville. Steve Kyle also said that Clay Ratterree would be his backup on meetings coordinator.

We then had a report from Bubba Hughes on the Law Journal. There is apparently not enough time to coordinate with all of our new committees. Clay and Bubba are planning to meet next week. We need to

solicit our partners for articles about tort reform, lien law change, Medicare liens, illegal aliens, etc. There were several possibilities of articles on offer of judgment and Daubert which Bubba will follow up on as well as the potential decision on the venue provision of tort reform. We need a good quality product. Lynn Roberson suggested an article on punitive damages. We are trying to set an April 1 deadline and then get our bill dues notice out on June 1. We want the Journal out before we send our renewal notices.

It was suggested that the speakers at Bermuda turn the speeches to articles for the Law Journal. It was recommended that the new president appoint the Law Journal editor right after the Annual Meeting in order that we can get a head start

*Continued on page 24*



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# Board Meeting Highlights

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on the Journal. Mel Haas is going to help Bubba and Clay on the Journal. Perhaps we could have one Journal devoted solely to the Substantive Law Committees and each Committee appoint a liaison to the Journal.

We also want to put the memorial resolutions in the Journal. It was moved and approved by the Board that the resolutions honoring Willis J. "Dick" Richardson, Jr. and James A. "Bubba" Dunlap would be included in our Journal.

There was some discussion that the Richardson award is now given to the student head of the mock trial board and maybe the award winner could contribute to our Journal.

There was also a report by our DRI representative Bruce Welch on the DRI Annual Meeting and SLDO Conclave in Chicago (summary was attached and circulated in Agenda

to Board members). Bruce notified us of the March 2006 State Representative meeting in Chicago and the Southeastern Regional meeting on June 2 in Orlando.

It was at this time that the Board held a discussion on Secretary/Treasurer Travis' research into insurance coverage for the organization as well as exculpatory and indemnity clauses for Board members. It was approved and authorized by the Board to go ahead and get liability coverage and if in the opinion of Secretary/Treasurer Travis we needed the multimedia coverage to also purchase that coverage.

The language circulated by Secretary/Treasurer Travis on indemnity and exculpatory paragraphs will be reviewed by the Board and voted upon in April. If approved in April, they will then be

sent to the members pursuant to our By-Laws. The two paragraphs were tabled and will be taken up on April 28. There was a suggestion that "INC" be added to our coverage sheet with Wachovia Insurance Services.

There also was a specific comment about the meeting chairman being included in the indemnity paragraph along with the ex officio past presidents. (Executive Committee includes last three past presidents.)

There was a report that the newsletter was on track.

Clay Ratterree gave a report on our sponsors and exhibitors. Steve Kyle moved and approved that we line up our sponsorship coverage to go from January to December and that we would pro rata our current billing on sponsorships. The Board gave a vote of thanks to Steve

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Milano for his work on increasing our sponsorships.

Salty Forbes gave a report on the GDLA history project, notifying us that there would be a meeting of a subcommittee with Frank Love and Mac McClendon on today's date.

The Board also asked Secretary/Treasurer Travis to express its appreciation to Travis' partner, Tom Richey, for his work on insurance coverage, By-Laws and Articles, including the indemnity and exculpatory provisions.

The regular Board meeting concluded at which time the Board went into executive session to discuss and act upon Executive Director's compensation. The Board adjourned from executive session.



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# spy vs. spy: The Gift that Keeps Sending

Remember the 'good ol' days' when surveillance was the province of a highly-skilled private investigator who might be called upon to sit upon sun-drenched bleachers filming a minor leaguer with a pending dental claim masticate mouthfuls of sunflower seeds over the course of nine innings? No reasonable privacy expectation for his expectorating, your honor!

Or perhaps the intrepid investigator sitting on the back porch wiping moist coffee grounds from discarded pay stubs as he catalogues the refuse snatched from the curb outside a claimant's dwelling.

Or the two-vehicle surveillance team that needed three weeks to map the tortuous route taken each Wednesday by the disabled ironworker on his way to the golf links?

Well all that's in the past—Twentieth Century war stories

swapped among attendees of high-tech personal security expos held in Las Vegas convention halls. Get Ready for the Next Big Thing

Witness the Invisible Hand being cupped to the Uninvited Ear as telecom companies and savvy entrepreneurs gear up for the Next Big Thing. New business models are being prepared, capital raised and marketing departments primed to respond with a new wave of next generation "personal security" technology designed to allay the fear in every mother's breast, if not to relax every potential cuckold's tormented brow. Dubbed, person-to-person (P2P) surveillance devices, researchers report that nearly one in three Americans express a high degree of comfort with this new technology, and also indicate they are likely to use a tracking device to monitor a loved one in the future.

Americans warming up to the idea of surveillance was the surprising finding of a nationwide survey of adults and their attitudes towards P2P Surveillance devices conducted last year by graduate students at Boston University's College of Communication. The survey results were released this past February. Among the findings:

- \*70% were aware of P2P surveillance devices;
- \*88% expressed reservations about monitoring other adults, but 66% were comfortable with being monitored themselves by loved ones in cases of illness or emergency;
- \*60% believe it appropriate to monitor "latchkey" children home alone after school;
- \*58% cited crime prevention (such as abduction) as a valid reason for adult-to-adult surveillance.

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By Jonas Berwick  
President, Delve Information Resources, Inc.



These sentiments are not going unnoticed by a growing number of companies offering products and services like a global positioning system (GPS) device inserted into the heel of a toddler's shoe, the medical alert pendant for an aging parent, a son's cell phone, implanted under the skin or attached to the family SUV, for tracking and monitoring from a cell phone, laptop or PDA.

Some privacy advocates view this growing acceptance of surveillance as symptomatic of a less-benign trend. At what point does the electric leash become the electric yoke? Such concerns can no longer be dismissed as the paranoid ranting of the lunatic fringe when not a day goes by without another privacy violation: Internet "phishing" scams, identity thefts, DNA profiling, domestic eavesdropping, retinal scanning plans and security breaches that can spill the most personal or financial and medical information into the World Wide Web's virtual consciousness.

And public policy makers are beginning to wonder out loud whether we as a nation can continue to safeguard privacy as an integral aspect of our inalienable right to liberty, while simultaneously engaging in voluntary P2P surveillance—not to mention the potential for abuse of that technology. Will the general acceptance of tracking whereabouts and behavioral histories necessarily result in a lower reasonable expectation of privacy?

The answer to that is important because sooner or later, courts will need to address the due process and tort concerns inevitably arising as new biometric and surveillance technologies converge and sweep across the commercial landscape.

GA State Rep. Ed Setzler (R-Acworth) believes getting out ahead of that curve is a good idea. In this year's legislative session, Setzler sponsored a resolution creating the

House Study Committee on Biological Privacy, which he now chairs. The committee studies the use of radio frequency identification, nanotechnology and satellite technology for identifying and monitoring individuals.

With the rapid emergence of biometric technologies such as retinal scanning, digitalized finger printing and DNA profiling coming to market along side personal GPS tracking systems, Setzler said he sees a danger in the potential misuse of these new technologies.

"If you don't get out in front of the issue, it becomes a *fait accompli*," said Setzler, who wants public policy set by legislators not industry lobbyists. "Without public policy in place to prevent abuses, we might be just a step or two away from intrusion of privacy."

He pointed to a new California law that will require law enforcement agencies to obtain a DNA sample from every person arrested on felony charges after January 2009.

If you don't get out in front of this issue, you're going to see some world-class lobby interests exerting influence on state and national lawmakers. "I want to see public policy come out of this (the committee). The committee is expected to make its report to the House in December 2006.

*Jonas Berwick is the president and owner of Delve Information Resources, Inc., which he founded in 1996. Delve is a new GDLA sponsor. You can meet Mr. Berwick at this year's annual meeting.*



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