



Georgia Defense Lawyer[®]

The official publication of the Georgia Defense Lawyers Association, Inc.

Summer 2004

The Politics of Tort Reform *A Look Inside the Legislature*

This year's session of the Georgia General Assembly, as usual, saw several changes to our legal system. Some were minor, such as revising our corporate code to match changes in other states' law or instituting new authority for lawyers in real estate closings to resolve unrecorded lien satisfactions. Some were more prominent like rewriting the guardianship code and funding Georgia's new statewide public defender program, which was the subject of a special session of the Legislature called by Governor Perdue in May.

However, the most noteworthy changes that could affect GDLA members were the changes that came close to passing but did not. For the first time in memory, some would say in history, one house of the legislature passed a significant tort reform bill. Two years ago this would have been unheard of.

When Roy Barnes was governor, Tom Murphy Speaker of the House, and prior to Lt. Governor Mark Taylor being stripped of his power in the Senate, the GTLA had three lawyers sympathetic to their cause in the highest positions of

power in this state. They made sure no tort reform legislation was ever allowed even a committee hearing much less a vote on the floor of the legislature.

In November 2002 things changed. Although outspent by more than five to one, Sonny Perdue beat Barnes, Murphy lost his seat, and the Georgia Senate came under Republican control.

Businessman Purdue became Governor, insurance agency owner Terry Coleman became Speaker of

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Annual Meeting Expanded!

Nationally renowned CLE speaker and trial expert Jim McElhaney headlines the 37th GDLA Annual Meeting, held at the Hilton Sandestin Beach Resort and Spa, August 6-8.

McElhaney is one of America's most popular writers and CLE speakers on trial advocacy.

In addition to featuring a national speaker, this year's annual conference includes an improved family vacation component, including pre-teen and teen nights and a luxury spa and fitness center for spouses.

"We listened to the members and made several changes to make the weekend even more enjoyable for families and spouses," said Steve Kyle, GDLA meetings chair.

The annual GDLA golf and tennis tournaments, sand castle building contest, trade show and



other social activities round out a fantastic, affordable weekend of education, vacation and relaxation.

Complete details are available at www.gdla.org, including the weekend's schedule, room pricing and registration form.

**See page 15 of this issue
for more details!**



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President's Message

This is an exciting time to be a member of the Georgia Defense Lawyers Association. We are building on the foundation which was laid in 1967, the year our association was formed.

We have greatly expanded the opportunities for direct participation in the association for those members interested in serving on committees, participating in CLE programs, sending younger lawyers to attend our Trial Academy, our newly minted Workers Compensation Academy and more. GDLA was created by and is maintained for lawyers in private practice substantially engaged in litigation, primarily for the defense, in the state of Georgia.

We have expanded our blast e-mail benefit by including the DRI on our recipient list. If you are seeking information on a plaintiff's expert witness, the DRI will search their database and contact you if they have information on that expert.

We welcome lawyers who meet the requirements set forth above and we are especially pleased to have many members of our association who want to actively participate in the organization and its functions. We do manage to remember that one of the goals of our organization is to have fun.

We are fortunate to have found and brought on board Steve Milano as our first executive director. Steve is enthusiastic, detail oriented and has already become a tremendous asset for the association. He has experience managing other associations and has used this knowledge to improve the GDLA.

Officers and Board Members met on April 30, 2004 along with representatives of DRI and the defense lawyers organizations of Florida and Alabama. We plan to continue interactions with defense associations in other states.

It is the goal of the association to provide value to its members through a CLE program, a Trial Academy, our newsletter, a Workers' Compensation Academy, Meet-the-Judges functions, the *Law Journal*, and a Younger Lawyers section, among others.

Our annual meeting is held at enjoyable places, and while we do work through a seminar, we also have a good time and lots of camaradery. Our annual meeting includes a dinner dance, golf tournament, tennis tournament, program for pre-teens, teen pizza party and sand castle contest.

This year's meeting is at the Hilton San Destin Beach Golf Resort & Spa, August 6-8.

One of the most popular programs the GDLA has for its members is the expert witness blast e-mail program. Our members are able to contact all other members to inquire about their knowledge of particular experts. We have expanded this member benefit by including the DRI on our recipient list. If you are seeking information on a plaintiff's expert witness, the DRI will search their database and contact you if they have information on that expert in their national database. For more information on this new program, see page 16 of this newsletter.

Join us and take advantage of the many opportunities afforded by your Georgia Defense Lawyers Association.

Richard A. Rominger
President

Executive Director's Message

I am excited to be on board the GDLA and working with one of the most talented and dedicated Boards I have had the pleasure to work with. I also had the pleasure of meeting many of you at our first Judge's Reception in Atlanta at the Commerce Club in February.

One of the most important initiatives the Board has undertaken has been to conduct a survey of the membership to help prioritize our activities. Approximately 80 members answered our 12-question survey which provided us with more than 35 pieces of useful information. Results from the survey are available on page 16.

Would you be willing to donate one deposition transcript, brief, or discovery request to the GDLA?

The action item most important to GDLA members was the creation of an online expert witness database. The Board made this an agenda item for our spring Board meeting. I met with the director of the Alabama Defense Lawyers Association, which has a fee-per-use expert witness database, to discuss their program. At the DRI Southeast regional meeting, held in conjunction with the GDLA spring Board meeting, our Board queried DRI's national representatives about their expert's database.

The conclusion was to immediately improve GDLA members' access to information on plaintiff's witnesses without re-inventing the wheel or expending significant time and funds for such an effort.

To that end, we will be keeping our current blast e-mail system allowing members to survey other defense lawyers across the state. In addition, we will now be including a DRI employee on our blast e-mail list who will research any GDLA requests for information on plaintiff's expert witnesses. The DRI currently has information on more than 50,000 expert witnesses. This

information is available to DRI members on a fee-per-use basis. Any GDLA member who is not a DRI member is eligible for their first year of membership in the DRI free in order to ensure all GDLA members have access to this fantastic benefit (see page 14). In addition, because the DRI will be monitoring our blast e-mails, you will not have to make separate requests to the GDLA membership and the DRI -- the DRI will go to work for you immediately!

The second- and third-most important items on our to-do list (as requested by our members) was to update our Discovery Tools and Briefs Bank. We are commit-

ted to this and can do it even more quickly with your help. Would you be willing to donate one deposition transcript, brief or discovery request to the GDLA? Please visit page 17 to see the items we are currently seeking. If you have other resources you feel would be a benefit, please let us know. All we need you to do is to provide, in text or pdf format, one item. If your item is in text format, e-mail it to the GDLA and we'll get it on the Web site. If it's hard copy, just ask your assistant or IT person to make a pdf, or mail us a copy and we'll get it done! If you wish to donate more than one, we'll appreciate that.

We have many opportunities to make the GDLA more important to you in your practice, and much is already in motion, including the update of our Web site, improvements to our newsletter and annual meeting and much more.

Please feel free to contact me with any other suggestions you may have for the GDLA.

I look forward to serving you.

Steve Milano
Executive Director

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Join a Committee!

Do you want to help serve the interests of defense lawyers in Georgia? There are opportunities for you to serve on GDLA committees or sub-committees. Call or e-mail the GDLA today and let us know your area of interest.

Member News

Congratulations to **William Claxton** of Claxton and Claxton in Atlanta, who had damages reduced against an insurer in a fire case, *McCullough v. ANPAC* (Clayton Superior Court). The plaintiff, a dentist, had her business property destroyed by fire. The property was insured by American National Property & Casualty. The plaintiff's estimate to rebuild the structure was 58% greater than the estimate obtained by ANPAC.

Furthermore, the plaintiff's personal property claim contained items which others testified were owned by them. At trial, the plaintiff admitted that she had \$41,000 in building materials in her estimates which was not in the original building including antique ash hardwood floor, sheetrock ceiling, etc. Plaintiff also included personal

property in contents which belonged to previous owner. ANPAC had offered to settle the claim for \$75,000. At trial, the jury returned a verdict in the amount of \$127,000. ANPAC filed a Motion for New Trial based on reverse *Batson* due to improper strikes of three caucasian jurors by the plaintiff. ANPAC also filed a Motion for Judgment Notwithstanding the Verdict. The Court granted ANPAC's Motion for New Trial premised on reverse *Batson* as well as ANPAC's JNOV Motion and ordered a new trial unless plaintiff accepted a verdict in the amount of \$51,000. Plaintiff eventually accepted the \$51,000, which was \$76,000 less than the amount she claimed at trial as damages which she sustained in the fire.

Lynn Roberson of Swift, Currie, McGhee & Hiers in Atlanta, received another favorable decision from the Court of Appeals for Capitol Indemnity Corporation on a coverage matter. Capitol claimed in its declaratory judgment action that there was no coverage for the underlying claim for assault and battery because there was an assault and battery exclusion in the policy. The trial court judge denied the insurer's Motion for Summary Judgment, as well as the claimant's counter Motion for Summary Judgment, and Capitol took an interlocutory appeal. The Court of Appeals did not address the assault and battery exclusion issue because it was essentially conceded by all that the exclusion barred coverage for the underlying claim. The claimant argued that



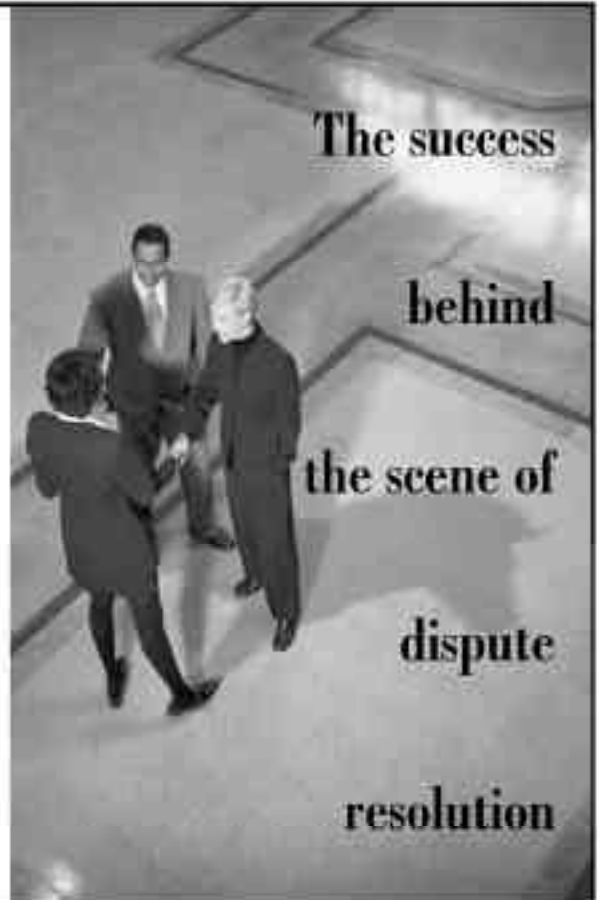
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Member News

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the insurer was estopped from relying on the exclusion because the insurer "waited two and one half months after learning of the claim before sending the reservation of rights notice, and then waited another month before filing its declaratory judgment action." The Court of Appeals held that the claimant lacked standing to complain the insurer did not provide a timely notice of its reservation of its rights to its insured. "In the absence of policy provisions to the contrary, one who suffers injury is not in privity of contract with the insurer under a liability insurance policy and cannot reach the proceeds of the policy for the payment of his claim by an action directly against the insurer."

Reprinted with permission from the DRI's The Voice.

Comings, Goings, Etc.

Mark Barber has joined Hall Booth Smith & Slover, Atlanta.

Ann Bishop and **Nicole Tifverman** are now with Bishop & Tifverman, Marietta.

Lauren Hansford has joined the Office of the Fulton County Attorney as a staff attorney.

Ian Matthes is the new Director of Litigation Management at **AIG Personal Lines Claims** in Alpharetta.

Lynn Roberson is the incoming chair of the Atlanta Bar Association litigation section for '04-'05.

Jeffrey Schwartz is now with Larry Newlin & Associates.

Tom Sippel has joined Leitner, Williams, Dooley & Napolitan, Chattanooga, TN.

Rex Smith, Mabry & McClelland, has joined Henning Mediation as a neutral.

New Members

The GDLA welcomes the following news members:

Frank Brannen, Jr., with King & Spalding, Atlanta; **L. Sandy Fine** of Savell & Williams, Atlanta; **John Harris** of Tisinger, Tisinger, Vance & Greer, Carrollton; and **Chris Ray** of Oliver, Maner & Gray, Savannah.

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In Memory

The GDLA regrets the passing of **George Grant**, a past president of the GDLA. According to GDLA member Albert Parnell, "George was a fine man. My most vivid memory of him is as a competitor. When I first came on the Board as a kid, I was invited to play (using that term loosely for me) golf with him in Ashville. I asked if we were playing for money, and he replied, "Of course. For a 50 cent Nassau." (I did not know what that meant) When we approached the 18th, I asked him where we stood. He said that he was \$1.00 up. I asked if he would play the 18th hole "double or nothing." He thought a minute, turned to me and said: "No son, I always want to go home a winner." He was a winner.

Meet the Judges!

The Mid-fulton Democrats are sponsoring a meet and greet for all candidates for judge in contested seats for the following courts:

Fulton County Superior, Georgia Appeals and Georgia Supreme Courts.

The meet and greet will be held at Manuel's Tavern on June 15, 2004 from 6 - 8 pm.

All are Welcome!

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State Legislative Session Highlights

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the House, and the Senate was now lead by an architect, Eric Johnson, and a surgeon, Tom Price.

In the 2003 legislative session, a bill making minor tort reform changes passed the Senate, but nothing of substance happened in the House. However, by the 2004 session things began to stir. Speaker Coleman began before the session by appointing a special committee to look into possible options for tort reform. The Senate followed during the session by passing a bill making significant changes. The GTLA was in retreat. They attempted to give the appearance of being willing to compromise on several issues, but failed to receive support among legislators for their proposed bills. Their leg-

islation was seen as making very minor changes, and in some cases going in the opposite direction of

For the first time in memory, some would say in history, one house of the legislature passed a significant tort reform bill.

reform. Their hope of inoculating the demands for change failed.

With the clock running out on the 2004 session and the House Judiciary Committee having failed to address any tort reform legislation before a critical legislative deadline, Speaker Coleman took the extraordinary step of removing the GTLA-friendly Chairman of the Judiciary Committee. This was an unheard of act that caught even

supporters of tort reform by surprise.

Even with these events, the opponents of reform succeeded in running the clock out on the 2004 session and once again delaying any substantive changes to the tort system.

The outlook for the 2005 legislative session which begins next January looks more promising for supporters of tort reform in the state. In March 2004 a three-judge federal panel threw out and redrew gerrymandered Senate and House districts.

The odd lines were drawn in 2002 by Democrats who, sensing the changing political and philosophical direction of the state, attempted to maintain control of

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the General Assembly by drawing significantly gerrymandered districts.

With the new court-drawn maps, most political observers now believe that Republicans will maintain control of the Senate and Democrats stand a real chance of losing the House. It takes 91 votes to control the 180 member House, and Democrats currently hold 103 seats under their prior maps.

In the new court-drawn districts, in the 2002 election Sonny Purdue received a majority of the votes in more than 110 of the new House districts. Since the decision, five Democrats have switched to the Republican party, with more expected to follow suit.

Generally seen as more pro-business and open minded to tort

reform, Republicans could gain complete control of the legislature after the November election. If that happens, a look back at the tort reform bill passed by the Senate in the 2004 session is a good place to start when trying to predict what could pass in 2005.

The significant portions of the Senate tort reform bill did the following:

- abolished joint and several liability
- strengthened the expert witness rule and applied it to the expert affidavit needed to file a professional malpractice suit
- reinstated the vanishing venue rule

- eliminated liability of hospitals for healthcare providers who are not employed by the hospital but work on contract
- prohibited non-economic damage awards for malpractice claims against emergency rooms by plaintiffs unless the patient had a prior relationship to the hospital and preexisting conditions were known.

Barry A. Fleming is partner in the law firm of Fulcher Hagler in Augusta, a member of the Judiciary Committee in the Georgia House of Representatives and the GDLA's legislative liaison.



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Georgia's Direct Action Statute

By John A. Foster
Forbes & Bowman, Savannah

Is there still an escape even after *Devore*?

In *Devore v. Liberty Mutual Insurance Company*, 257 Ga. App. 7, 570 S.E.2d 87 (2002), the Court of Appeals rejected a common carrier's insurer's effort to escape applicability of the direct action statute when it held that the 2001 Amendments to that statute were retroactive. However, in spite of the *Devore* case, in spite of the amendments to the direct action statute itself, and in spite of the Georgia Public Service Commission's (GPSC) amendments to its own rules following the *McAdams* case, *infra*, the direct action statute still does not mean that the liability insurer of a motor common carrier is automatically a proper defendant in a suit arising out of the motor carrier's operations.

Common law prohibits naming an alleged tortfeasor's liability insurance carrier as a defendant in a tort suit against that alleged tortfeasor. Georgia's direct action statute, O.C.G.A. §46-7-12, has for many years carved out an exception to that rule in cases against motor common carriers. Prior to the *Devore* case, our appellate courts strictly construed the direct action statute and held that proof of insurance coverage alone is not sufficient to name the insurance carrier, but instead, it must be proven that the filing requirements under the direct action statute had been met. Plaintiff had to prove that the motor carrier had either posted a bond with the GPSC, or filed an approved policy of insurance with the GPSC. The GPSC rules provided that, in lieu of filing the policy, a Form E Certificate of Insurance could be filed.

In *Kinard v. National Indemnity*

Co., 225 Ga. App. 176, 483 S.E.2d 664 (1997), the Court of Appeals intimated that proof of the mere filing of a Form E Certificate of Insurance should not be enough to sustain a direct action since the direct action statute itself did not authorize the filing of a certificate of insurance in lieu of filing an approved policy or posting a bond.

Then, in *McAdams v. U.S. Fire Insurance Co.*, 234 Ga. App. 324, 506 S.E.2d 679 (1998), the Court of Appeals was poised to toss out the direct action on the ground that the Form E Certificate of Insurance had been filed in lieu of

...in spite of the *Devore* case, in spite of the amendments to the direct action statute itself, and in spite of the GPSC amendments to its own rules following the *McAdams* case, *infra*, the direct action statute still does not mean that the liability insurer of a motor common carrier is automatically a proper defendant in a suit arising out of the motor carrier's operations.

filing the policy or posting a bond, but found that it did not need to reach that issue because it found the Form E Certificate of Insurance itself to be defective. The Form E Certificate of Insurance has language on it which the Court of Appeals construed to mean that, in order to be effective, it had to be accompanied by a Form F Endorsement. Since there was no Form F Endorsement in the *McAdams* case, no direct action statute could be maintained. In practice, up to that time, Form F's were rarely, if ever, filed.

The GPSC responded in April 1999 by deleting Form F from its forms. The legislature responded as well during the 2000 legislative session amending the direct action statute so as to provide that, effective July 1, 2001, it is the insurance

carrier's responsibility (rather than the motor carrier's) to file the correct forms with the GPSC (now known as the Georgia Department of Motor Vehicle Safety ("GDMVS")), that the GPSC (or GDMVS) is authorized to accept certificates of insurance in lieu of the posting of a bond or the filing of an approved policy, and finally that the failure to file the correct required paperwork could not serve as a bar to a direct action.

Subsequently, some insurers still escaped the direct action statute at the trial court level by arguing that the amendments were not retroactive.

However, when the issue presented itself at the Court of Appeals, the Court held that the amendments did not affect vested substantive rights and therefore, applied retroactively. *Devore*, *supra*. But see, *Morgan Driveaway, Inc. v. Canal Insurance Company*, Court of Appeals Case No. A03A1741, 4 FCDR 1188 (March 24, 2004) wherein the Court of Appeals held

that Amendment to O.C.G.A. §46-1-1 removing the dump truck exemption from the definition of motor contract or common carrier and thereby allowing direct action against insurers insuring dump trucks was substantive in nature and could not be retroactively applied.

However, all of these administrative, legislative, and judicial efforts to close any loop-holes to the direct action statute still do not mean that a liability insurer of a motor common carrier is always a proper party to a tort suit against that motor carrier arising out of its motor carrier operations.

In *Jones v. Clarendon National Insurance Company*, State Court of Chatham County, Georgia, Civil Action No. I01-3743-G, the trial

court granted the insurance carrier a summary judgment on March 25, 2004. The plaintiff has not appealed.

In the Jones case, plaintiff alleged that he was injured in a motor vehicle accident involving a motor common carrier and that Clarendon at the time provided liability insurance coverage to that motor common carrier and that, "Pursuant to the authority of O.C.G.A. Section Title 46, Chapter 7, Clarendon National Insurance Company is a proper party to this litigation."

Clarendon filed a motion for summary judgment based upon an affidavit given by an employee of the Georgia Department of Motor Vehicle Safety who was familiar with registration of motor carriers and filing of proof of motor carrier insurance with the GDMVS.

According to the GDMVS employee's affidavit, the motor common carrier was not a company that is or had been registered with the GDMVS or the GPSC at the time of the accident or at any time since. The employee's affidavit further provided that no policy of insurance covering the motor common carrier is or had been approved by the GPSC or by the GDMVS at the time the affidavit was given or since the date of the accident. The affidavit further provided that the motor common carrier had since the time of the accident not had any intrastate authority on file with the GPSC or with the GDMVS nor any insurance policy, endorsements, or certificates. Finally, the affidavit showed that, due to federal preemption, states no longer require carriers to register and file proof of

insurance with each state. The carrier is only required to register with their base state; therefore, if an interstate carrier were based in another state, the registration information on that carrier would be filed with the base state.

Clarendon did not contend that it did not insure the motor carrier. However, it did rely upon *Dundee Mills, Inc. v. John Deere Insurance Company*, 248 Ga. App. 39, 545 S.E.2d 64 (Feb. 12, 2001). In that case, on cross-motions for summary judgment, the trial court had concluded that the direct action statute was inapplicable, in part, because plaintiff failed to prove the insurance policy was approved by the GPSC. On appeal, the plaintiff enumerated that ruling as error. In its argument at the trial court

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\$1.7 million dividend declared in 2003

When I began practicing law and needed to purchase malpractice insurance I asked a number of my colleagues where to look. Their responses were invariably Minnesota Lawyers Mutual.

I took their advice and have never regretted it. MLM has always been there for me. When I was starting out their knowledgeable staff was helpful with advice in setting up my practice. The new online purchase option makes renewing my policy quick and easy. The annual dividend checks I have received prove I am receiving the best value for my money. Minnesota Lawyers Mutual has earned my loyalty.

Now whenever I am asked to recommend a legal liability insurance company, I always suggest Minnesota Lawyers Mutual. It comes as no surprise to me that other lawyers feel the same way.

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Georgia's Direct Action Statute

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level, the insurance company had noted that the plaintiff had not alleged or proved that the insurance policy was approved by the GPSC. It and the other defendants further refuted any such contention with un rebutted evidence that the trucking company had no intrastate authority on file with the GPSC, nor any insurance policy or endorsements. The Court of Appeals affirmed the trial court's ruling that the direct action statute was inapplicable. The court said that the issue of GPSC approval of the insurance company's policy was clearly raised by the evidence submitted by the defendants. The court held that:

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Just direct someone you feel will benefit from membership in the GDLA to www.gdla.org, or download and print our membership brochure and a membership application, which can be found at:

www.gdla.org/recluitamember.htm

In addition to your \$50 reward, you'll be acknowledged in an issue of *Georgia Defense Lawyer!*

Thanks for spreading the word about the GDLA!

The trial court did not err in ruling that [plaintiff] bore the onus of proving that the PSC had approved [the insurance's company] motor truck cargo insurance policy, as this is a pre-requisite to a direct action against the insurer under O.C.G.A. §46-7-12(e).

Clarendon argued that the *Dundee Mills* case was on point.

In opposition to Clarendon's motion for summary judgment, plaintiff argued that the *Dundee Mills* case was outdated law as evidenced by the court's reference to O.C.G.A. §46-7-12(e); under the amended version of the direct action statute, there is no subsection (e). Plaintiff also relied on the *Devore* case arguing that in that case the Court of Appeals appropriately separated form from substance in denying the insurer's motion for summary judgment and holding that, "the substance of the statutory scheme was to create a direct cause of action against insurers which issued the required policies to motor carriers."

The plaintiff also relied upon language from *Jackson v. Sluder*, 256 Ga. App. 812, 569 S.E.2d 893 (2002) to the effect that, "[T]o remedy the anomalous statutory scheme, the legislature amended the direct action statute to dispense with the mandatory precondition to suit that the [motor common] carrier's insurance policy or certificate of insurance be on file with [GPSC]." (Emphasis added)

In an order entered March 25, 2004, the trial court granted Clarendon's motion for summary judgment. The trial court first noted that plaintiff had presented no evidence to dispute the facts set forth in the affidavit of the GDMVS employee. The trial court also noted that the parties agreed that it was the amended version of the direct action statute that applied. The trial court then pointed out an

amendment to another statute which it deemed pertinent: Prior to April 15, 1996, O.C.G.A. §46-7-16(a) required motor common carriers engaged solely in interstate commerce and operating in Georgia to secure a registration permit from the Georgia Public Service Commission.

However, after April 15, 1996, the statute allows such carriers to, rather than securing a registration permit from the GPSC, to obtain a registration receipt from the carrier's designated base state pursuant to rules adopted by the Interstate Commerce Commission.

Citing a lack of any evidence to the contrary, the trial court held that pursuant to the April 15, 1996 amendment to O.C.G.A. §46-6-16(a), the motor carrier was not required to secure a registration permit from the GPSC or the GDMVS. The trial court then held that the direct action statute was not applicable to Clarendon regardless of whether it is the new or the old version of the direct action statute that is applied.

That is because the amendment to the direct action statute prevents insurers from relying upon, "the failure to file any form required by the Commissioner" whereas Clarendon was relying upon the failure to file a form which was not required by the Commissioner. Plaintiff did not appeal.

Where an insurance carrier is named as a defendant pursuant to the direct action statute, a determination should be made as to whether the motor carrier is an interstate carrier not based in Georgia. If so, it may not be required to secure a registration permit from the GDMVS and even the amended version of the direct action statute may not be applicable to its insurer.



Workers' Compensation Update

By N. Staten Biting, Jr.
Fulcher Hagler, Augusta

Governor Perdue Appoints New Director

Governor Perdue recently appointed State Representative Warren Massey as a director of the State Board of Workers' Compensation (SBWC) on April 22. Massey, who has served in the Georgia House of Representatives since 1996, was sworn in May 14.

Legislative Changes

The SBWC and its Advisory Council had a light legislative agenda. The primary legislation it proposed was a change in the guardianship rules to allow the Board to accept an order appointing a guardian from a court of competent jurisdiction in any state and also to increase the amount for a temporary guardianship to \$50K.

Legislation introduced to phase out the Subsequent Injury Trust Fund was passed and signed by the Governor. The Subsequent Injury Trust Fund is scheduled to stop accepting claims for dates of accident occurring on June 30, 2008 and after. All pay-outs are to be concluded by 2020.

News from the Board

The State Board is sending notices of oral argument in appellate cases by e-mail to counsel willing to receive them this way. The Board is also interviewing vendors for an integrated claims management system, allowing most paper filing to be replaced by e-mail.

Recent Case


In *Wet Walls, Inc. v. Ledezma*, A04A0284; A04A0285, the Court was asked to rule an employer is not required to pay temporary total disability benefits to a non-citizen incapable of working in the U.S. due to an illegal status. The injured employee was incarcerated, allowing the employer to suspend TTD. The employee was released and deported due to his illegal status.

He sought recommencement of TTD and the Board reinstated it.

The employer appealed, arguing that the rationale in the U.S. Supreme Court case of *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 122 SC 1275, 152 LE2d 271 (2002) should apply. Hoffman held that "awarding back pay to illegal aliens runs counter to the policies underlying [the Immigration Reform and Control Act of 1986] (IRCA) which prohibits employment of illegal aliens in the United States." The employer also cited *Dynasty Sample Co. v. Beltran*, 224 Ga. App. 90, 479 SE2d 773 (1996) to support its contention that it should not be required to pay temporary total disability benefits to an injured employee not authorized to work in the United States.

The Court in *Ledezma* noted that the question of whether there is a conflict between the IRCA and a state's workers' compensation

statute is one of first impression in Georgia. The decision did not turn on this question, however. The Court concluded that implicit in the employer's argument is the contention the injured employee is capable of returning to work in some capacity. Because the Board found the employee remained totally disabled after TTD was suspended, the Court of Appeals rejected the employer's arguments. The Court also rejected an equal protection argument on this basis.

In a footnote in *Ledezma*, the employer supplemented its brief after filing the appeal asserting a new basis for denying the claim. The employer cited *Gonzalez v. DOT*, A03A1975 (Feb. 13, 2004), arguing that an alien who resides in a foreign country could not bring suit in Georgia. The Court declined to consider this because it was not raised in the proceedings before the Board and was asserted for the first time on appeal. 



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Understanding Mold

by Delno D. Malzahn
Exponent Failure Analysis

What is mold?

Mold is a fungus that grows indoors. Most are microorganisms that reproduce by releasing microscopic spores into the air.

What conditions are necessary for mold to grow indoors?

Fungi require oxygen, temperatures between 15°-30°C, nutrients such as cellulose, and moisture to grow. Because oxygen favorable temperatures and nutrients are always present in indoors, moisture is the deciding ingredient for mold growth. In other words, find a moist or wet condition indoors and you will likely find mold.

How can indoor mold spore levels be measured?

Determining indoor mold levels is simple. Mold spores behave like airborne dust particles, adhering to most indoor surfaces after settling out of the air. Applying a piece of cellophane tape to a surface and lifting it off will capture any spores that have settled there. Drawing air over an adhesive-coated microscope slide or a plate covered with gelatinous material captures airborne spores. Once captured, mold spores can be counted or examined under a microscope or grown into colonies to quantify and identify the type.

How can exposure to indoor mold be determined?

Determining an individual's exposure to an indoor mold is not so simple, because of the diversity and variability of the fungal material potentially present, and limitations in sampling methods. Indoor air concentrations of mold spores can vary considerably over space and time. Also, the size, shape and density of spores vary tremendously. Additionally, the relative abundance of fungal species found in an environment under investigation can change once they are

captured and grown in the laboratory. All of these factors can affect the accuracy of sampling and our ability to determine exposure.

When is exposure to indoor mold a health concern?

Whether exposure to indoor mold poses a concern depends on one's overall health. Healthy individuals are least likely to experience negative effects from indoor mold. Individuals with allergies (atopic) or hypersensitivities are more likely to experience symptoms, including allergic rhinitis (hay fever), allergic conjunctivitis (irritated and inflamed throat and eyes) and allergic asthma (wheezing and coughing). Persons with chronic respiratory disease, including asthma, could find high levels of mold spores intolerable. Persons with immune deficiencies, such as AIDS patients, are at greater risk for fungal infections.

A person's response to exposure also depends on the environmental conditions. Health studies have shown that there is an increased risk of respiratory disease when living in damp environments. While mold flourishes in these environments, other indoor microorganisms, like dust mites, are generally present.

Finally, fungi's ability to cause an untoward health effect, like that of all microorganisms, requires a certain level and duration of exposure. Because some exposure to mold spores always occurs in our daily lives, finding a threshold above this background condition where possible adverse health effects may begin to occur is desirable. Research in this area is continuing, but it has not yet been possible to establish thresholds.

Is there a toxic mold?

Ingestion of mold contaminated foods has produced toxic effects. The few toxicological studies that

have been conducted to date suggest that extremely high levels (i.e., much higher than typically found in mold-infested indoor environments) are necessary for a fungus to produce sufficient amounts of toxic metabolites to cause an adverse reaction from inhalation exposure. Health studies to date have also been inconclusive.

What can be done to reduce exposure to indoor mold?

Exposure to mold spores is unavoidable. However, reventing wet and moist conditions indoors will stop mold growth before it becomes a problem.

Where can I find more information?

Exponent recently formed a Mold Task Force to address the interdisciplinary nature of mold issues. More information on Exponent's Mold Investigation Services is available at: [/www.exponent.com/practices/health/mold.html](http://www.exponent.com/practices/health/mold.html).

We suggest these Web sites:

*EPA -- www.epa.gov/iaq/molds

*American Ind. Hygiene Ass. -- www.aiha.org/GovernmentAffairs-PR/html/mold-intro.htm

*American College of Occupational and Environmental Medicine -- www.acoem.org/guidelines/article.asp?ID=52.

Delno D. Malzahn, C.I.H., is a sr. managing scientist specializing in environmental and industrial hygiene problem solving, including air quality (chemical and mold), occupational health compliance and studies, regulatory compliance negotiation, environmental liability and air quality. He can be reached at 248-324-9114 or dmalzahn@exponent.com.



37th GDLA Annual Meeting

Hilton Sandestin Beach Golf Resort & Spa -- August 6-8

What is the GDLA Annual Meeting?

Educational Seminars

See our exceptional CLE program at right.

Golf & Tennis Tournaments

Compete in the GDLA's Annual golf tournament, sponsored by Benedict Engineering, played on the beautiful Links course.



The Brown Reporting Company Tennis Tournament will be a "meet-'em-all" doubles round robin.

Kool-Aid & Cocktails

On Friday evening, join us for our fun, family evening event. Enjoy light hors d'oeuvres and socialize with other members, spouses and guests.

Sand Castle Building Contest

The contest starts on Saturday afternoon just for the kids. Pails and shovels will be provided courtesy of Insurance Specialists, Inc.

Kids Night with Nemo!

Insurance Specialists, Inc. hosts a fun-filled children's party (ages 4-11). Find Nemo fun as we fish for prizes, enjoy dinner and watch "Finding Nemo."

Teens Night Out

Insurance Specialists, Inc. hosts an evening for teens. Join us for a pizza, bingo, prizes and a beach bonfire.

Annual GDLA Dinner & Dance

Our weekend concludes with the Annual GDLA Dinner & Dance. After a sumptuous meal and excellent conversation, the GDLA will honor its outstanding members in a brief awards ceremony. Then, it's on to dancing with a great band until we say our fond farewells.



Serenity by the Sea Spa

Enjoy a fitness center with state-of-the-art equipment, personal trainers, private lounges, steam room, sauna, whirlpool, refreshments, private dressing rooms and vanities fully stocked with grooming amenities. In addition, a full service image center is available featuring make-up, nail and hair care.

Featured Speaker Jim McElhaney

Jim McElhaney is one of America's most popular writers and speaker on trial advocacy. In addition to teaching law, he has an active practice as a trial strategy consultant and is also known for his immensely popular *Trial Notebook* column which appears in *Litigation Journal*.



Planning to Win

- A Winning Opening Argument
- The Psychological Theory of the Case
- The Keys to Effective Case Organization
- Seven Qualities of a Persuasive Story
- Visualization -- Making the Jury Become Eye-Witnesses to Your Facts
- Brainstorming the Language of the Case

Keys to Effective Trial Advocacy

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Make Your Expert a Respected Teacher
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Make Final Argument Winning
"Testimony" -- Not Empty Cliches**

- Make the Jury Want You to Win
- Tap Into the Power of Sense of Justice
- A Treasury of Winning Arguments

**More Information
Available at
www.gdla.org!**

Discovery Tools & Briefs Needed

Discovery Tools

The GDLA is currently seeking the following Discovery Tools for the Members Area of our Web site...

- *Deposition outline for deposition of plaintiff in Auto Collision case
- *Deposition outline for deposition of plaintiff in Slip and Fall case
- *Deposition outline for deposition of plaintiff in other Premises Liability case
- *Deposition outline for deposition of plaintiff in Medical Malpractice case
- *Deposition outline for deposition of plaintiff in Products Liability case
- *Deposition outline for deposition of plaintiff in other Professional Liability case
- *Defendant's Interrogatories to Plaintiff in Auto Collision case
- *Defendant's Interrogatories to Plaintiff in Premises Liability case
- *Defendant's Interrogatories to Plaintiff in Medical Malpractice case
- *Defendant's Interrogatories to Plaintiff in other professional liability case
- *Defendant's Interrogatories to Plaintiff in Products Liability case
- *RFP to Plaintiff in Auto Collision Case
- *RFP to Plaintiff in Medical Malpractice case
- *RFP to Plaintiff in other professional liability case
- *RFP to Plaintiff in Products Liability Case to Plaintiff in Products Liability case
- *Rule 30(b)(6) Notice of Deposition directed to Corporation
- *Notice of Deposition to Plaintiff
- *Motion to Compel Discovery and Brief in Support of Motion

Briefs

The GDLA is currently seeking the following briefs for our Web site...

- *Motion for Summary Judgment and Brief in support of motion for summary judgment, auto-mobile collision case
- * Motion for Summary Judgment and Brief in support of motion for summary judgment, products liability case
- *Motion for Summary Judgment and Brief in support of motion for summary judgment, premises liability case
- *Motion for Summary Judgment and Brief in support of motion for summary judgment, professional liability case
- *Motion in Limine and Brief in support of Motion in Limine
- *Brief in support of Motion for protective order re overbroad and burdensome discovery
- *Brief in support of Motion for protective order re discovery of confidential material or trade secrets

Please e-mail contact@gdla.org if you are willing to donate one or more of these documents. Ideally we would like these in text form or as a pdf. Thank you in advance for your submission(s).

GDLA's Dates That Rate

2004

July 1 -- Dues renewals
August 6-8 -- Annual Meeting, Sandestin, FL
October 15-16 -- Quarterly Board Meeting -- Lake Oconee, GA
December 2-4 -- Trial Academy

2005

February 10 -- Quarterly Board Meeting -- Atlanta
February 10-- Judge's Reception, Capital City Club, Atlanta (tentative)
February 11-- Workers' Compensation Academy, Hyatt, Atlanta (tentative)
June 16-19 -- Annual Meeting, Ponte Vedra, FL

GDLA Member Survey Highlights

Approximately 80 members of the GDLA participated in an online member survey in late April. Highlights from the survey follow.

#1 Please list the three (3) MOST valuable benefits of membership in the GDLA

- 66 Blast e-mail capability
- 39 *Law Journal*
- 31 Opportunity to be affiliated w/ a professional organization
- 30 Newsletter
- 23 GDLA Web site
- 20 Annual Meeting
- 6 Online Membership Directory

#2 Which THREE of the following items would you like to see the GDLA complete first?

- 64 Online Expert Witness Database
- 64 Online Brief Bank
- 62 Online Discovery Tools
- 11 Online Defense Lawyer Directory, searchable by area of practice and city (for consumers)
- 8 Increased Judges' receptions
- 7 PR/Mktg./Comms. Committee (to promote the interests of defense lawyers in the media)
- 2 Workers' Comp Academy

#3 Would you be willing to pay a per-use fee for a searchable, online expert witness database?

Yes 67% No 33%

#4 If you have not attended a GDLA meeting in the last three years, what most likely kept you from attending?

- 29 Conflicting dates
- 15 Too expensive
- 14 Distance too far
- 10 Vacation component did not appeal to my family
- 5 Educational component did not interest me
- 4 Did not know about it

#5 What would most likely change your mind about attending the GDLA annual meeting:

- 23 Closer to home
- 22 Lower cost
- 14 Better educational component
- 11 None of the above
- 11 Better family vacation aspect
- 8 More advance notice
- 7 Better time of year

#6 What time of year is the best for you and your family to attend a GDLA annual meeting?

- 18 Early to mid June
- 14 Mid to late June
- 13 Mid to late July
- 9 Early to mid July
- 8 Early to mid August
- 5 Mid to late August

#7 I have visited and used the GDLA Web site...

- 23 In the last month
- 20 In the past year
- 18 In the last three months
- 12 In the last six months

#8 I visit and use the GDLA Web site...

- 35 Rarely
- 22 Sometimes
- 11 Never
- 6 Frequently



New GDLA/DRI Plaintiff's Expert Witness Database Program

The DRI's Expert Witness Database is a top source of expert witness information today and is now available to GDLA members through a new joint program...

- A DRI contact is now included on all GDLA blast e-mails sent with expert witness requests.
- Upon receipt of an inquiry from the GDLA, our DRI contact will check the DRI Database, which contains more than 50,000 experts, for any documents pertaining to that expert.
- If documents exist for that expert, the DRI will contact the inquiring GDLA member.
- If a GDLA member elects to place an order, he or she receives 15% off their first order.*

- Since the inquiring party must also be a member of DRI to place an order, DRI is offering a free 12-month membership** to any attorney who wishes to join in order to purchase a given expert's documents.
- Cost: Transcripts and Depositions (\$50 each); Curriculum Vitae, Articles, Reports, Misc. documents (\$20).

For more info, call 312-792-1101 x228 or e-mail cskarson@dri.org.

* Not valid with any other offers or discounts. Void where prohibited by law.

**Must be a first-time member of DRI and a member of the GDLA

Georgia Jurisdictional Characteristics by Region

By Deric J. Beaudoin
Mabry & McClelland, Atlanta

This past winter one of our firm's clients extended an invitation for me to speak to their claims staff on various topics specific to Georgia. One of the requested topics was information on the various jurisdictions throughout Georgia insofar as likely characteristics of any potential jury as well as the defense's chances for success on motions for summary judgment.

With the date of my seminar in snowy Detroit looming near I found myself in need of some assistance on my jurisdictional survey so I did what any young associate in my place would do – "Hey Walter! You got a second?" After giving me his "brief" ideology on jurisdictional data, Walter suggested I take advantage of one of the benefits of membership in the GDLA by sending out an e-mail query to the membership of the GDLA. I'm sure some of you remember the message:

"I have a Detroit client for whom I am doing an in-house seminar this month and they've requested one of my topics be on overall characteristics of jurisdictions throughout Georgia.

If any of you can share some input on the matter it would be greatly appreciated. The simplest way to respond to this would be by including a) the name of the county (as many as you are knowledgeable of and/or have experience with) and b) whether you think it is (from a defense perspective) GOOD, BAD or MODERATE.

Hopefully I will get a good cross section of what defense lawyers think of counties across the state. I will be happy to share out the results of this poll.

This is an example of the format I am looking for:

Typical Jury from a Defense Standpoint:

Fulton	-	Bad
DeKalb	-	Bad
Gwinnett	-	Good
Cobb	-	Good
Clayton	-	Moderate

Additionally, if you have any input on the chances of succeeding on summary judgment (particularly in premise liability cases) that would be helpful as well. An example of how I would like to compile these results would be:

Summary Judgment Success Rate:

Fulton	-	Good
DeKalb	-	Moderate
Gwinnett	-	Good
Bibb	-	Bad
Coweta	-	Bad
Cobb	-	Moderate

I think just a few minutes to think this over and respond will go along way to assembling some valuable information for all to share and benefit.

Thanks in advance for your time and help. I look forward to assembling the results."

Within minutes I was receiving valuable input from GDLA members and was able to package the survey results with my seminar materials. I presented them to our client who greatly appreciated the information and was impressed when I informed them of how I was able to assemble my "map of Georgia jurisdictions." Of course, the number of members who provided feedback was merely a fraction of the overall membership but I understand not only the difficulty in taking the time to prepare an informative and detailed response to the survey, but also in providing accurate information on the question presented. Nonetheless, the response was sufficient enough to compile at least a starting point on

Continued on page 20

What will our jury be like?

What are our chances on summary judgement?

Should we hire local counsel?

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- 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

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Georgia Jurisdictional Characteristics by Region

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what others have expressed to be a valuable, if not vital, statistic to help Defense attorneys and their clients informatively conduct their cases towards the best resolution possible. Therefore, as promised I am happy to share the results of the survey here and also welcome any further input regarding these issues. For purposes of my presentation, I broke the state into various regions for ease of use.

Here are the results for the jury characteristics:

Atlanta Proper

Fulton - Liberal shifting to moderate with the advent of the increasing N. Fulton jury pool
DeKalb - Liberal

Atlanta Metro

Clayton - Moderate to Conservative but quickly changing to more urbanized/Liberal
Cobb - Conservative
Gwinnett - Conservative shifting to Liberal
Henry - Conserv. to Moderate
Forsyth - Conservative
Douglas - NR
Rockdale - NR
Fayette - NR
Cherokee - Liberal
Paulding - NR

NW Georgia

Dade - NR
Walker - NR
Catoosa - NR
Murray - NR
Gilmer - NR
Fannin - NR
Pickens - NR
Bartow - Conservative
Floyd - Conservative
Polk - Liberal
Haralson - NR
Chattooga - Liberal
Gordon - NR
Whitfield - Conservative shifting to Liberal

NE Georgia

Union - NR
Townsend - NR
Rabun - NR
Lumpkin - Conservative
White - Conservative
Habersham - Moderate
Dawson - Conservative
Hall - Conservative
Banks - Conservative
Franklin - Conservative
Stephens - Conservative
Hart - Conservative
Elbert - NR
Jackson - NR
Madison - Conservative
Barrow - Conservative
Walton - NR
Clarke - Conserv. to Mod.
Oconee - Conservative
Oglethorpe - NR
Wilkes - NR
Taliaferro - NR
Greene - Moderate
Morgan - Conservative

Savannah & Coastal Georgia

Chatham - Moderate
Bulloch - NR
Bryan - Conservative
Liberty - Conservative
Glynn - Conservative
Camden - Moderate
Effingham - Conservative
McIntosh - Moderate
Brantley - Conservative

Central Georgia

Bibb - Moderate - Liberal
Monroe - Moderate - Liberal
Jones - Moderate - Liberal
Lamar - NR
Spalding - Liberal
Butts - NR
Jasper - NR
Newton - NR
Peach - NR
Houston - NR
Crawford - NR
Pike - NR
Upson - NR
Taylor - NR

Macon - NR
Twiggs - NR
Baldwin - NR
Bleckley - NR
Wilkinson - NR
Laurens - NR
Dodge - NR
Dooly - NR
Crisp - NR
Sumter - Conservative
Pulaski - NR
Putnam - NR

East Georgia

Hancock - NR
Warren - NR
McDuffie - NR
Columbia - NR
Richmond - Liberal
Burke - NR
Jefferson - NR
Glascok - NR
Washington - NR
Jenkins - NR
Screvin - NR
Johnson - NR
Emanuel - NR
Toombs - NR
Montgomery - NR
Wheeler - NR

West Georgia

Carroll - Moderate
Heard - NR
Muscogee - Moderate
Coweta - Moderate
Meriwether - NR
Troup - Conservative
Harris - Conservative
Talbot - Liberal
Chattahoochee - NR
Marion - Conservative
Stewart - NR
Webster - NR
Quitman - NR

NOTE:
NR = Not Rated

South Georgia

Randolph -	Moderate
Clay -	Conservative
Calhoun -	Conservative
Dougherty -	Liberal
Baker -	Conservative
Worth -	Conservative
Early -	NR
Miller -	NR
Mitchell -	Moderate
Terrell -	Moderate
Lee -	Conservative
Colquitt -	Conservative
Grady -	Moderate
Thomas -	Conservative
Decatur -	Moderate
Seminole -	NR
Brooks -	Conservative
Lowndes -	Conservative
Echols -	Conservative
Clinch -	NR
Lanier -	NR
Ware -	Moderate
Tift -	Moderate
Atkinson -	NR
Coffee -	NR
Irwin -	NR
Turner -	Conservative
Ben Hill -	NR
Jeff-Davis -	NR
Appling -	Moderate
Bacon -	Conservative
Cook -	NR
Berrien -	NR
Pierce -	NR
Wayne -	Conservative
Charlton -	Conservative
Long -	NR

The feedback for the likelihood of success on a Defense Motion for Summary Judgment was a mixed bag of sorts and there really wasn't enough feedback to prepare a chart of that information. However, the limited feedback we did receive seemed to indicate that the Defense would get a fairer read on the legal issues in the more populated counties than in the more rural counties where the judges seem more inclined to let their cases go to the jury - even in what some would call "obvious sum-

mary judgment cases". DeKalb judges got quite a bit of positive feedback as did Fulton with one or two exceptions that shall remain nameless. This illustrates an important point that although you may have a case in what is considered by most a very liberal jurisdiction where a client may want to think carefully about submitting their case to the jury, the defense may posture itself well for a fair settlement by filing its motion for summary judgment because, although the jury may be way off to the left, your judge is likely to give you a very fair shot at summary adjudication if the law appears to be on your side. In questionable cases, the judges in outlying areas appear to be much more likely to leave the issues of your case to the jury for resolution.

As you can see, there are many unrepresented counties in the survey results. Although many of us could draw our own conclusions about the characteristics of many of the counties in our state, the most accurate way to assemble this information is with the input of those with practical experience in those counties. Through the assistance of Steve Milano and his staff, we plan to circulate a more detailed jurisdictional information questionnaire to assist with the preparation of a much more comprehensive and statistically more valid source of information on the various jurisdictions throughout Georgia. Be on the lookout for the updated survey in the coming months. I sincerely thank each of our members who contributed to the information contained in the current survey results and encourage everyone to take the time to contribute to the next survey, even if your experience is very limited, any input helps make the data more complete and accurate.



Help Us Finish this Chart!



As you can see, there are numerous counties for which we were not able to collect information on jurisdictional characteristics.

Those who respond

receive updates and additions to this chart.

Please take a few moments to help us add information for counties which have none

Just visit

[www.gdla.org/
jurisdiction.htm](http://www.gdla.org/jurisdiction.htm)

and take a few moments to fill out the form.

If your county shows information, please add your vote to strengthen the information we have.

Thanks in advance for helping to make the GDLA a valuable resource for Georgia's defense lawyers!

Spring Board Meeting Highlights

GDLA Spring Board of Directors Meeting Highlights

Ponte Vedra, Florida
May 1, 2004

1. Call to Order – The meeting was called to order at 8:38 a.m. In attendance were: Rick Rominger, Steve Milano, Jim Elliott, Lynn Roberson, George Duncan, Bruce Welch, Salty Forbes, Mel Haas, Gary Seacrest, Clay Ratterree, Bob Travis, Grant Smith, Ted Freeman, Staten Bitting, Jimmy Singer, Luanne Clarke, and Johnny Foster.

2. Recognition of Board Members – All board members and past presidents in attendance were recognized.

3. Approval of Minutes – Minutes of the February 6, 2004 board meeting were previously distributed by mail and again distributed to all those present. A motion was made, seconded and passed to dispense with their reading and for their approval.

4. Treasurer's Report – Johnny Foster reported the current balance as of April 30, 2004. Major expenses since the winter meeting were Callaway Gardens for the Trial Academy, the Commerce Club for the winter judicial reception, and the newsletter. Johnny Foster reported that we could expect sponsorship money to come in in the next couple of months. Jimmy Singer reported the approximate estimated cost of the upcoming *Law Journal*.

Johnny Foster reported that the Dick Richardson Award for Excellence in the Study of Practice and Procedure was awarded and presented to Stacy Carroll of DeFuniak Springs, Florida in Athens on April 9, 2004. Mr. Carroll is employed with Love,

Willingham, Peters, Gilleland & Monyak in Atlanta. It was noted that the recipient of the award is selected by the Georgia Practice and Procedure Professor. This year, Salty Forbes attended the ceremony and, on behalf of the GDLA, presented the award to Mr. Carroll. Salty noted that, in the future, it should be the responsibility of the GDLA president to attend the ceremony to present the award.

5. Amicus Committee Report – Jimmy Singer and Ted Freeman reported that there have been no inquiries.

...dues notices go out June 1 and if they are unpaid after 60 days ... [GDLA will] ... terminate access to the list serve and to the members-only portion of the Web site...

6. Membership Report – Salty Forbes reported that there have been four applications for membership: Franklin P. Brannen, Jr., with King & Spalding in Atlanta; Lewis Sandford Fine of Savell & Williams in Atlanta; John A. Harris of Tisinger, Tisinger, Vance & Greer in Carrollton; and Christopher L. Ray of Oliver, Maner & Gray in Savannah. A motion was made, seconded, and passed that all four be approved for membership.

Steve Milano suggested that, in the future, dues notices go out June 1 and if they are unpaid after 60 days, to terminate access to the list serve and to the members-only portion of the Web site and that, at the fall meeting, arrearages be discussed by the board. There was a consensus in favor of this.

7. Membership Recruitment and Retention Report – Steve Milano circulated a proposal for an annual mailing to potential GDLA

members to include a cover letter from the president; one-page list of GDLA member benefits and services; copy of the GDLA annual calendar of events; copy of the GDLA newsletter; copy of the GDLA's health, medical and disability insurance program; contents page from the *GDLA Law Journal*; copies of the annual meeting, trial academy and workers' compensation seminar brochures; membership fact sheet; membership application; contents of discovery tools and briefs bank; and a self-addressed, stamped envelope.

Steve Milano raised a question as to where he could obtain names of potential members.

At the suggestion of Steve Milano, we will also send a copy of this mailing to those whose membership is being terminated due to arrearage.

Due to the fact that we have a membership incentive program which rewards members who recruit a new member with a \$50 discount on the registration cost of any GDLA event, the membership application form will be amended to include a question asking the new member whether they have been referred to the GDLA by any existing member. At the suggestion of Salty Forbes, the membership recruitment program will be put on the winter meeting agenda for further discussion.

The discussion of the annual mailing to potential new members also led to a discussion of the health, medical and disability insurance program offered by our original sponsor, ISI, exclusively to GDLA members. ISI will be invited to have a representative give a 5 or 10 minute presentation at the annual meeting explaining the benefits of this exclusive program.

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Is this your last issue of *Georgia Defense Lawyer*?

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Georgia Defense Lawyer
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GDLA memberships expire on June 30

If you have not received your dues renewal notice yet, please check our new, online membership directory to make sure we have the correct contact information for you.

Please e-mail contact@gdla.org if you have new contact information.

Why Join the GDLA?

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*Discovery Tools/Brief Bank

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for you and your Staff

*Trial Academy

*Information-Packed
Web site

*Workers'
Compensation
Academy

*Online Defense
Attorney Directory

*Social and Networking Events

*Improved Newsletter

*First-Year
DRI Membership -- Free!

Memberships Expire Annually on June 30.

Please contact the GDLA office
if you have not received your dues renewal notice.

Spring Board Meeting Highlights

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Steve Milano also circulated the results of a member survey which he conducted during the week of April 26, 2004. There were 78 responses. This led into a discussion of a number of items, including the expert witness database, brief and discovery bank, and the status of our substantive law committees. A decision was made that future dues notices will provide members a space in which to select a substantive law committee in which they will participate. Then, once all of those committees are up and running again, perhaps they can provide material for the brief and discovery bank. Lynn Roberson was commended for keeping the Premises Liability Committee active.

There was also discussion of whether the annual meeting should fall at the same time each year and also as to what is the best time of year for the annual meeting to be held. There was no resolution of these issues.

Steve Milano, Clay Ratterree and Lynn Roberson will head-up an effort to rejuvenate the Substantive Law Committee program.

8. Sponsorships and Exhibitors – Steve Milano passed out sponsorship program packets containing information on the sponsorship program.

There was a consensus in favor of a suggestion that sponsors be given demographic information concerning the Trial Academy so they might make an educated decision as to whether to host or sponsor some portion of that event.

9. Workers' Compensation Academy – Luanne Clarke and Staten Biting reported that we are shooting for January 2005 for this program. The program will be open to GDLA members and non-members as well. There was a dis-

ussion about whether to solicit third-year law students to attend this program. The decision was that Luanne and Staten will look into this and might possibly get input from certain firms regarding whether they would encourage their recruits to participate.

Each member would have a unique user name and password ... [to the GDLA Web site] ... and there would be a quick and easy system in place for forgotten passwords.

10. Trial Academy – A discussion began as to whether to hold the Trial Academy and Workers' Compensation Academy at the same time and venue. This evolved into a discussion of whether to attempt to hold a board meeting or judicial reception in conjunction as well. The consensus was that any attempt to hold the Trial Academy in conjunction with any other event was a bad idea. Holding the other events in conjunction with each other is discussed in more detail below.

Jim Elliott reported that the Trial Academy works best with approximately 40 to 45 students.

11. Annual Meeting – Grant Smith reported that the speaker will be James W. McElhaney and that Scot Pool will give a short law update Saturday morning. Brochures will be mailed to members' offices, to their homes, and will be posted on the Web site.

12. Law Journal – Luanne Clarke reported that she has all the articles. She needs only to burn the CDs. There will be six articles. Steve Milano will do the layout. Target date is June 1, 2004 so that these can go in the annual mailing.

13. Web site Committee – Steve Milano encouraged everyone to visit the Web site to see the recent changes that have been made.

Steve also distributed a proposal for updating and keeping up-to-date the Web site. A Web site company would be employed and we would receive the following benefits: Each member would have a unique username and password and there would be an easy system in place for forgotten passwords. Every six months, members would be prompted to update their membership record or verify that the information is correct.

This on-line directory would be searchable by the public who wish to find a lawyer in a certain field of practice in a certain geographic area. The on-line directory would also serve as the association's membership directory. The association would be able to use this tool to keep track of dues paid, delinquent members, personal information, etc. This program could be exportable allowing the GDLA to run its mailing labels for the newsletter, dues notices, etc. The program would continue to allow for blast e-mails.

The system, once it is up and running and paid for, would belong to us and would be considered proprietary. We do not have to maintain it with the same company that gets it up and running to start with. In addition, the company proposed to do the start-up work would host our Web site at no extra charge. Finally, the program can be developed and launched in about two weeks. A motion was made by Jimmy Singer and seconded by practically everyone in attendance to go forward with Steve Milano's proposal. The motion passed.

14. YLS Membership Recruitment – George Duncan suggested that board members volunteer a younger lawyer in their firm to solicit other younger lawyers to attend our annual meeting. It was noted that Alabama's association has a successful YLS program. Luanne Clarke indicated a member of her firm, Jason Willcox, may be interested in working with this committee to try to get a younger lawyer section up and running.

15. YLS of GDLA – See Item 14.

16. Legislative Liaison – It was noted that Barry Fleming is available to address questions regarding legislative issues.

17. Annual Meeting Committee – We had previously envisioned a three-year rotation including Ponte Vedra, Sandestin and Amelia Island. It was suggested that the Westin at Hilton Head be put into the rotation in place of Amelia Island. The consensus was in favor of Hilton Head over Amelia Island.

18. Newsletter – Johnny Foster reported that he and President Rominger made a decision to exceed the budget for the last edition slightly due to the fact that we had skipped the fall edition. The additional cost in this edition was attributable to color photographs from the 2003 annual meeting.

19. Old Business – Clay Ratterree commented that there had been a lengthy discussion of the need for an executive director at the spring 2003 meeting and that a committee had been appointed and had selected and hired an executive director. Steve Milano was commended with a round of applause from those present for a job well done. The committee was commended as well.

20. New Business – A decision was made that the by-laws will be updated by Salty Forbes and will be posted on the Web site.

It was noted that at this year's winter meeting, a decision was made to hold the judge's reception the evening of February 10, 2005, that Walter McClelland would tie this date down with the Capital City Club, and that the winter board meeting would be held in conjunction therewith. It was further decided that the winter board meeting would be February 10 beginning at noon and could take place either at the Capital City Club or at Grant Smith's office. The workers' compensation seminar will be held beginning the morning of February 11 and we are targeting the Hyatt (across the street from the Capital City Club) as the venue. It was suggested the Hyatt is a convenient location for out-of-town board members to stay.

The fall board meeting will be held October 15-16 at Lake Oconee.

Steve Milano reported that DRI is currently considering using the GDLA as a pilot organization to examine how to help SLDO's create a PR/Marketing/Communications Committee. A discussion was held as to what advantages, if any, would ensue from having such a committee. Salty Forbes' motion to table this discussion to the fall board meeting so that it could first be discussed at the Southeast DRI meeting was seconded and passed.

There was a discussion also of having a toll-free number for the GDLA. The consensus was to table this issue and revisit it at the fall meeting as well.

21. Adjourned – The meeting was adjourned at 11:37 a.m.



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GDLA Hosts DRI's Southeast Regional Meeting

The GDLA recently hosted the Southeast regional meeting of the Defense Research Institute, which brought together DRI's state representatives from Georgia, Alabama and Florida, along with members of DRI's national staff and invitees from each state's defense lawyers association.

The agenda for the meeting centered on DRI's efforts to support state defense lawyer organizations (SLDO) through a variety of initiatives, including cross-promotion, co-member benefits, national public relations on defense-related issues, discounts on DRI publications and services to members of SLDOs, seminars for executive directors, etc.



SE DRI Meeting Attendees

Bob Travis, GDLA board; Steve Milano, GDLA executive director; Bubba Hughes, GDLA board; Rick Rominger, GDLA president; George Duncan, GA DRI rep/GDLA board; Bruce Welch, GDLA board; Ed Livingston, ADLA executive director; Whit Torbert, ADLA president-elect; John Martin, DRI secretary-treasurer; Chuck Stewart, DRI SE director; Valerie Shea, FL DRI rep; Johnny Foster, GDLA board; Salty Forbes, GDLA board.

DRI's Southeast region director, Chuck Stewart of Alabama, gave an overview of DRI's ongoing national efforts. Each state presented information on the legal activities in their state and the efforts of their state defense organization.

Highlights of the meeting for the GDLA included the discussion of DRI's plaintiff's expert witness database and the suggestion that GDLA members have better access to the database by including a DRI representative on the GDLA blast e-mail list who will now contact GDLA members to notify them if the DRI has information on an

expert witness the GDLA member is researching (see page 16 for more details on this new program). In addition, the DRI offers all GDLA members their first year of membership in the GDLA free.

DRI regional meetings are usually held in conjunction with an SLDO annual meeting. Due to a conflict between the GDLA and FDLA annual meeting, GDLA hosted the meeting in conjunction with its recent spring board meeting, allowing GDLA board members greater opportunity to attend the meeting.



GDLA premises liability committee chair, Lynn Roberson with John Martin, DRI's secretary-treasurer.

GDLA membership committee chair, Salty Forbes (lower right) and wife Lee at the DRI/GDLA dinner, with GDLA board member Bubba Hughes (facing) and wife Debbie, and GDLA secretary-treasurer, Johnny Foster



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