



# Georgia Defense Lawyer<sup>®</sup>

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

Summer 2005

## GDLA Creates "Tort Reform" Database

The GDLA has created an area on the Members Area of [www.gdla.org](http://www.gdla.org) which contain briefs, motions and other work product pertaining to Georgia Senate Bill 3, according to Bob Travis, GDLA board member and chairman of the association's Tort Reform committee.

The committee met to discuss a request by GDLA member Ken Hall, Hall, Bloch, Garland & Meyer, who had received a brief in a case in which plaintiff's counsel attacked the constitutionality of Senate Bill 3. Mr. Hall asked if the GDLA had

any work product pending on Senate Bill 3, or if the association would consider it. Coincidentally, at the GDLA's spring board meeting, Travis had volunteered to lead a committee to look into the ramifications of SB 3 on the practice of civil defense law in Georgia.

The committee met at the GDLA Annual Meeting on June 16 and discussed Senate Bill 3, including recent rulings by Georgia judges who had already ruled parts of Senate Bill 3 unconstitutional. GDLA members attending the

meeting included Joe Chambless, Chambless, Higdon, Richardson, Katz & Griggs; Salty Forbes; Forbes & Bowman; Johnny Foster, Forbes & Bowman; Warner Fox, Hawkins & Parnell; Ted Freeman, Freeman, Mathis & Gary; Mel Haas, Constangy, Brooks & Smith; Grant Smith, Dennis, Corry, Porter & Smith; and Travis, Powell Goldstein.

A decision was made to solicit work product from GDLA members

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## Judges a Hit In Ponte Vedra

Georgia defense attorneys were treated a variety of entertaining, stimulating, inspirational and informative presentations with six distinguished judges at the GDLA annual meeting, held June 17 and 18 in Ponte Vedra, Florida.

**Honorable Gino Brogdon**, Superior Court of Fulton County, shared his experiences regarding common mistakes made by trial lawyers and gave recommendations for avoiding them.

**Honorable James C. Hill**, U.S. Court of Appeals for 11th Circuit, asked attendees to help save the jury system -- from us!

**Honorable Michael L. Karpf**, Superior Court, Chatham County, spoke on tort reform to an all-ears audience.

**Honorable Tommy Day Wilcox, Jr.**, Superior Court, Bibb County, discussed ex parte communications and rehabilitation of prospective jurors subject to challenge for cause.



**Honorable John J. Ellington** (pictured), Georgia Court of Appeals, both informed and entertained with his speech on ethics and professionalism.

**Honorable William C. O'Kelley**, U.S. District Court, Northern District of Georgia, discussed newly important Daubert issues in the wake of Senate Bill 3.

The program concluded with a forum moderated by **Jerry Buchanan**, Buchanan and Land, Columbus, in which the judges and GDLA members debated and discussed a variety of topical issues.

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



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### GDLA Office

Steve Milano, Executive Director

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

## President's Message

Shortly after I was elected president of the GDLA last year at Sandestin, I met with executive director, Steve Milano, who asked me what my top priority was for my presidency.

I told Steve that I wanted to spread the word about the Georgia Defense Lawyers Association and make membership recruitment and retention our main goal in 2004-2005.

I'm proud to report that for the first time in the association's history, we welcomed more than 100 new members. This resulted in nearly a 20 percent increase in overall membership last year, thanks to the efforts of

**Salty Forbes,**

Forbes & Bowman, Savannah, his membership committee and those of you who referred members to the association.

Many of these new members came through our popular Trial Academy, chaired for the last time by **Jim Elliott**, of Elliott, Blackburn, Barnes & Gooding, Valdosta. Jim has done a great job with the Trial Academy and we came close to selling out last year. We expect high attendance again this year and look forward to incoming Trial Academy Chairman, **Tom Magill**, Magill & Atkinson, Atlanta, at the helm.

The association inaugurated a new Workers' Compensation Academy under the leadership of **Staten Bitting** Fulcher Hagler, Augusta, and **Luanne Clarke**, Moore, Clarke, DuVall & Rodgers, Albany. Not only did we meet our attendance goal, but the Workers' Compensation Academy was actually oversold.

We were able to run both of our academies at no cost to the associa-

tion, and based on significantly increased sponsorship revenue, the GDLA ended our fiscal year with increased cash on hand.

Our annual meeting also saw an increase in attendance this summer thanks to an outstanding program put on by **Johnny Foster**, Forbes and Bowman, Savannah, and the dedication of meetings chairman, **Steve Kyle**, Bovis, Kyle, Burch, Atlanta, who is involved in eight or more events for the GDLA each year.

Not only did we get the GDLA *Law Journal* back on line with the help of **Jimmy Singer**, Bovis, Kyle, Burch, but we published the

G D L A newsletter four times, winning

an APEX award for most improved newsletter.

I enjoyed my time working with an outstanding board and the more than 25 Georgia attorneys who have donated their time as committee chairs and members, academy faculty members and advisors to the association, and am looking forward to continuing my association with the GDLA.

I know I am passing the torch to a very dedicated and capable leader, Johnny Foster. Johnny has been invaluable to the GDLA acting as the newsletter editor, sponsorship liaison, secretary/treasurer and this year's annual meeting program chairman.

Thank you for allowing me to serve the Georgia Defense Lawyers Association. It has been one of the most rewarding experiences of my career. I encourage each of you to get involved in the organization and recruit one new member this year.

Grant B. Smith, Esq.  
Dennis, Corry, Porter & Smith

# Executive Director's Message

On Saturday, September 17, 2005, the executive committee of the GDLA will conduct a retreat to discuss the current status of the GDLA and chart its future direction. The retreat will take place at the offices of Hawkins & Parnell in Atlanta.

Every association must take regular stock of its position in its industry or field and look at how the association is not only doing in terms of membership and financial growth, but how it is serving the membership and the profession it serves. Short-, medium- and long-term plans are made at such retreats to give boards ongoing goals and measuring sticks to track its progress.

**Based on the discussions and presentations made at the executive committee retreat in September, the board of directors will consider and vote on recommendations made regarding the future of the GDLA at the October 8 board meeting. Now is the time to give us your input.**

In addition to the executive committee (comprised of the current president, executive vice president, secretary/treasurer and the three immediate past presidents), various board and committee members will be attending afternoon sessions to discuss specific aspects of the association's mission.

Because the GDLA represents you, the civil defense attorney in Georgia, it's imperative that the board has input from members on not only the activities the association is currently pursuing, but suggestions for ways to make the organization continue to better serve the membership and civil defense arena.

On the agenda so far, are included, but not limited to, the following topics:

- New tort reform database
- Improving diversity of membership (e.g., gender, race, age)
- Younger lawyer recruitment and retention
- Relationship and work with DRI
- Membership growth/retention
- Financial oversight
- Newsletter
- Web site
- Annual meeting
- Trial academy
- Workers' compensation academy
- Law Journal*
- Sponsorship program
- Blast e-mail
- Amicus

If you would like to comment on or make suggestions regarding the direction of, services offered by or have suggestions for the GDLA, please e-mail [contact@gdla.org](mailto:contact@gdla.org) with your thoughts. If you would like to meet with the executive committee on the day of the retreat, please feel free to contact the association, as well.

Based on the discussions and presentations made at the executive committee retreat in September, the board of directors will consider and vote on recommendations made regarding the future of the GDLA at the October 8 board meeting. Now is the time to give us your input.

Steve Milano  
Executive Director

## Membership

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

## Memb. Recruitment & Retention

John A. Foster, Lynn Roberson,  
Arthur Glazer, Bob Travis,  
Bubba Hughes

## Young Lawyers

### Recruitment & Retention

Greg Ellington, Jo Ann Jagor,  
George Duncan

## Meetings

Steve Kyle, Chairman  
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Clay Ratteree

## Amicus

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## Trial Academy

Tom Magill, Chairperson

## Workers' Comp. Academy

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## Legislative Liaison

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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

On May 26, 2005, a Baltimore City Circuit Court jury returned a verdict for Scapa Dryer Fabrics, Inc., in a mesothelioma case. Scapa was represented by GDLA member **Lane Young**, Hawkins & Parnell, Atlanta and colleagues Elizabeth O'Neill, Hawkins & Parnell, Atlanta and Margaret Fonshell Ward of Moore & Jackson, local counsel in Towson, Maryland. The plaintiff spent three years in the U.S. Navy and more than 30 years working at the MeadWestvaco Paper Mill in Luke, Maryland. Plaintiff claimed that his mesothelioma was caused by exposure to Scapa's asbestos-containing products that were used for a brief period of time at the paper mill to assist in the drying of paper pulp. Scapa was the only defendant left at the time of trial. The jury deliberated for less than two hours before returning the defense verdict. Defense counsel was advised that this is the first defense verdict in a mesothelioma case in Baltimore City Circuit Court in more than 10 years.

*Reprinted with permission from DRI's, The Voice.*

**Frank Brannen**, King & Spalding, Atlanta obtained a directed verdict for Kia Motors America, Inc. in the March trial of a breach of warranty case in Cobb County, Georgia using the newly-enacted tort reform statutes in Georgia. In February, Georgia adopted the Daubert standard for expert witness testimony. In this case, plaintiff's expert witness attempted to offer value testimony regarding the vehicle at issue in the lawsuit. After Mr. Brannen's cross-examination of the witness outside the presence of the jury, the court found that the expert's opinion was not based on reliable methods and principles and that the expert had not applied the principles and methods reliably to the facts of the case. Without this testimony, plaintiff was unable to provide evidence

of damages, and the court granted Kia's motion for directed verdict. In previous trials before the adoption of the new evidentiary standard, this particular expert witness had been allowed to offer similar testimony. This result is likely the first application of the Daubert standard in a Georgia state court trial and shows the importance of the new legislation.

*Reprinted with permission from DRI's, The Voice.*

**Lynn Roberson**, Swift, Currie, McGhee & Hiers, Atlanta, recently received the following favorable ruling, Sotomayor et al. v. TAMA I, LLC, et al., Case No. A05A0198 (Ga.App., July 12, 2005). In this premises case involving the death of a tenant's child, the Court of Appeals affirmed summary judgment to the landlord. The child was killed when a driver drove across marked parking spaces, over a raised concrete curb, four feet of sidewalk, and 13 feet of grass before striking the child and crushing her against the brick wall of her apartment building. The tenant plaintiffs claimed that the landlord was negligent by failing to install a higher curb, called a barrier curb or bumper stop instead of the lower, mountable curb over which the visitor drove, in front of the parking spaces adjacent to the sidewalk. The court held that there was no competent evidence that the landlord had a duty to install bumper stops in spite of the plaintiff's expert's testimony that the "reasonable person" standard required it. The court further held that the incident was not foreseeable so the landlord had no duty to guard against it.

**Joe Chambless**, formerly of Chambless, Higdon, Richardson, Katz & Griggs, Macon, has retired and relocated his "body, brain and soul" to Newnan to be closer to the kids and grandkids.

**Powell Goldstein** has relocated. The new address is One Atlantic Center, Fourteenth Floor, 1201 West Peachtree Street, NW, Atlanta, GA 30309

## New Members

The GDLA welcomes the following new members:

**Bill Anderson**, Hamilton, Westby, Antonowich & Anderson, Atlanta; **Chris Anulewicz**, Balch & Bingham, Atlanta; **Josh Archer**, Balch & Bingham, Atlanta; **Stacy Blackman**, Carlock, Copeland, Semler, & Stair, Atlanta; **Spencer Bomar**, Hakwins & Parnell, Atlanta; **Lynda Chapman**, Carlock, Copeland, Semler & Stair, Atlanta; **Sun Choy**, Freeman, Mathis & Gary, Atlanta; **Assunta Deevey**, Hakwins & Parnell, Atlanta; **Caroline Dixon**, Hunton & Williams, Atlanta; **Sally Evans**, Hawkins & Parnell, Atlanta; **Jonah Flynn**, Hakwins & Parnell, Atlanta; **Alex Galloway, III**, Moore, Ingram, Johnson & Steele, Marietta; **Kim Cofer Harris**, Ellis, Painter, Ratterree & Adams, Savannah; **Lee Hicks, II**, McClure, Ramsay, Dickerson & Escoe, Toccoa; **Keri Hochgesang**, Gray, Rust, St. Amand, Moffett & Brieske, Atlanta; **James Hollis**, Balch & Bingham, Atlanta; **Stacey Hydrick**, Gray, Hedrick & Edenfield, Atlanta; **Brian Ingram**, Savell & Williams, Atlanta; **Kim Jackson**, Hakwins & Parnell, Atlanta; **Michael Loebel**, Fulcher Hagler, Augusta; **Greg Michell**, Balch & Bingham, Atlanta; **G. Melton Mobley**, Lokey, Mobley and Doyle, Atlanta; **Lynn Blasingame Olmert**, Hollowell, Foster & Gepp, Atlanta; **Jason Pedigo**, Ellis, Painter, Ratterree & Adams, Savannah; **Susan Rutherford**, Gray, Hedrick & Edenfield, Atlanta; **Fred Sager**, Weinberg, Wheeler,

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Hudgins, Gunn & Dial, Atlanta; **James Shea, Jr.**, Shell, Fleming, Davis and Menge, Pensacola; **Rita Sheffey**, Hunton & Williams, Atlanta; **David Smith**, Drew, Eckl & Farnham, Atlanta; **John Stewart**, Hakwins & Parnell, Atlanta; **Jane Taylor**, Sommers, Scrudder & Bass, Atlanta; **Daniel Turner**, Ashe, Rafuse & Hill, Atlanta; **James Valbrun**, Owen, Gleaton, Egan, Jones & Sweeney, Atlanta; **Sheetul Wall**, Mullins, Whalen & Westbury, Griffin; **Michelle Rothenberg Williams**, Balch & Bingham, Atlanta

## Member Referrals

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

**Andy Hamilton** referred Bill Anderson; **Cannon Alsbrook** referred Brian Ingram; **Clay Ratterree** and **Tracy O'Connell** referred Kimb Cofer; **Dart Meadows** referred Chris Anulewicz, Josh Archer, Jim Hollis, Greg Michell, Michelle Rothenberg Williams; **Doug Wilde** referred James Shea, Jr.; **George Duncan** referred G. Melton Mobley; **Jerry Blackstock** referred Caroline Dixon and Rita Sheffey; **Jim Westbury** referred Sheetul Wall; **John Dickerson** referred Lee Hicks, II; **John Ferguson** referred David Smith; **Ken Moorman** referred Fred Sager; **Lane Young** referred Sally Evans; **Lawrence Ashe** referred Daniel Turner; **Matt Moffet** referred Keri Hochgesang; **Michael Goldman** referred John Stewart; **Robert Ingram** and **Bill Johnson** referred Alexander Galloway, III; **Ryan Mock** referred Spencer Bomar, Assunta Deevey, Jonah Flynn and Kim Jackson; **Ted Freeman** referred Sun Choy; **Tracy O'Connell** referred Jason Pedigo; **William Gray** referred Stacey Hydrick and Susan Rutherford

## Georgia Defense Lawyer Wins National Award

The *Georgia Defense Lawyer* received an APEX award of excellence in the category of most improved newsletter.

The annual judging attracts more than 5,000 entrants in a variety of design, editorial, illustration and other publishing categories.

The GDLA joins DRI, which won an award of excellence for its newsletter, *The Voice*.



## GDLA/Dick Richardson Scholarship Recipient

**Megan Kreitner** was the 2005 recipient of the \$1,000 **Willis J. "Dick" Richardson, Jr. Student Award** sponsored annually by the GDLA.

Megan, pictured with GDLA board member, **Jo Jagor**, Carlock, Copeland, Semler & Stair, Atlanta, was a business management first honor graduate of the University of Georgia with a 4.0 and was named Honors Program senior of the year in 2002.

She also managed to find time to play on and serve as captain of the UGA women's club soccer team for four years. In addition to being very active in Mock Trial activities at the Law School, Megan has been a member and served as a mentor in both the Student Bar Association and the Women Law Student Association.

Megan currently works for Paul Hastings Janofsky & Walker in Atlanta.



## Al Shurley Honored

The GDLA recently recognized and thanked its former executive secretary, **Alverne Shurley**, for her years of dedicated service to the association. Past president **Joe Chambless** presented "Al" with an engraved clock and gift certificate at a ceremony at Chambless, Higdon, Richardson, Katz & Griggs, where she works with GDLA member member, **Mary Katz** (right).



"I was caught completely by surprise when Mr. Chambless presented me with the beautiful clock and the gift certificate," wrote Al. "It was very thoughtful and very much appreciated. I thoroughly enjoyed my position with the GDLA and I feel honored to have worked for all of you and to have met and gotten to know some of you."

## Send Your Assistant to Ponte Vedra Contest Winner

Congratulations to **Joni D. Huey**, legal assistant to **John A. Harris** of Tisinger, Tisinger, Vance & Greer, Carrollton, who won this year's GDLA membership renewal contest.

Joni will receive a 3-day/2-night stay at the **Ponte Vedra Inn & Club**, in Ponte Vedra, FL, a favorite of GDLA members for many years.

GDLA members who renewed their dues by June 30 were eligible to enter an assistant in the contest.

# GDLA Creates "Tort Reform" Database

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regarding Senate Bill 3 and to put these documents in the Members Area of the GDLA Web site for members to use as a resource when researching applicable cases.

"We encourage any GDLA member who has information pertinent to Senate Bill 3 to share this information with his or her fellow defense attorneys members via a database of such materials on the organization's Web site," said Travis, who volunteered to form and chair the sub-committee at the GDLA's spring board meeting on April 21.

"While the GDLA's bylaws prohibit the association from political lobbying, it certainly serves our mission to provide a forum for the exchange of ideas and information among Georgia's civil defense lawyers," he said.

The GDLA's purpose, stated on its Web site, includes the following objective:

...to provide for the exchange among the members of this Association of such information, ideas, techniques of procedure and court rulings relating to the handling of litigation as are calculated to enhance the knowledge and improve the skills of defense lawyers ...

"The GDLA knows that many of its members are being asked questions about the recent Georgia tort reform legislation," said Warner Fox, a member of the committee. "We're asking any GDLA member involved in cases interpreting Senate Bill 3 or in challenging or defending the constitutionality of Senate Bill 3, we would request that you send us electronic copies of all briefs or orders that address any Georgia tort reform issues. "

To contribute documents to the GDLA Tort Reform Database, please send submissions in pdf (preferable) or text (MSWord or rtf preferred) format to [contact@gdla.org](mailto:contact@gdla.org). As soon as a sufficient number of documents are

received, the association will create the new area of the Web site and send a blast e-mail to current (dues paid) GDLA members.

When submitting your contribution, please alert us as to what section of the Senate Bill your submission relates. We will place these under the following sections:

1. Vanishing venue
2. Affidavits
3. Medical Authorization Form
4. Offers of Settlement
5. Statements of Apology and Benevolence;
6. Daubert and Expert Qualifications;
7. Insurer Reports
8. Physician Reports and Board Investigations
9. Limitation of Liability for Emergency Service Providers
10. Actual and Apparent Agency
11. Joint and Several Liability
12. Limitation of Non-Economic Damages
13. Effective Date

By forwarding materials with notations as to the specific area in which they should be placed, it will allow our executive director to update this section of the Web site easily and quickly.

"We hope that this new section on our Web site will allow members to keep abreast of developments in the area of tort reform in Georgia," said Fox.

If you have any questions, comments or suggestions on this effort by the GDLA, please contact Bob Travis at [btravis@pogolaw.com](mailto:btravis@pogolaw.com).



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

- #1 Go to [www.gdla.org](http://www.gdla.org)
- #2 Go to Members Area in upper right-hand corner
- #3 Login using your e-mail address and bar number (if it's your first time logging in to the Members Area)
- #4 Review your profile information and change your password to something you'll remember (if it's your first time logging in to the Members Area).
- #5 Hit "Save" and you are in

### Having Problems?

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

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

#2 Hit "forgot your password?", enter your e-mail address, and it will be sent to you.

#3 E-mail [contact@gdla.org](mailto:contact@gdla.org) and the executive director will look up and e-mail your userid and password to you. Please use Step #2 first.

# Technological Advances in Vehicular Accident Reconstruction

*Note: The complete version of this article, with all text and photos, is available in pdf file format at [www.gdla.or/accident.htm](http://www.gdla.or/accident.htm).*

## I. Introduction

Traditionally, accident reconstructionists rely on the principles of conservation of momentum and/or conservation of energy to reconstruct vehicular accidents. Physical evidence including the accident vehicles and the scene measurements are manually measured and used in the analysis. Theoretical calculations are performed by hand to calculate and determine the time, distance, speed, perception reaction, last clear chance, and avoidance scenarios associated with the parties involved in the accident. New technology primarily in the area of computing power is bringing advances to vehicular accident reconstruction. Some of the technology tools are discussed below.

**Reflectorless Survey Total Stations:** Electronically surveying the scenes of accidents has for years been the most accurate way to document evidence left by automobiles on roadways. An electronic survey allows all the evidence to be mapped to scale, including three-dimensional aspects of the roadway, such as hills, sloped roads, and ditches. Until recently scene surveying was a two-person operation. One person would man the total station or survey "head," while the second person held a rod and "prism" at the desired location. The "rod-man" was often subject to dangerous traffic in an effort to obtain evidence. Of course employing a second person on scene was also more costly to the client. Reflectorless total stations make use of laser technology, and do not require a rod man and a prism to reflect a signal back to the survey head. If positioned properly, the reflectorless total station can docu-

ment an entire scene without subjecting the surveyor to dangerous traffic. Since there is only one person spending time at the scene, reflectorless total stations are less expensive for the client without compromising accuracy.

**Laser mapping of vehicles:** Using the same technology as that employed by reflectorless total stations. Laser mapping of vehicles provides an accurate three-dimensional computer model. The information obtained by laser mapping can be used to evaluate vehicle crush and to create computer graphic models for use in animations, simulations and other demonstrative aides.

**Event Data Recorders (EDR's) or "Black Box":** General Motors first offered airbags as an option in vehicles in 1974. Beginning in 1990 GM began storing some of the data associated with deployment of the airbag in the vehicle's "black box." Since then, the amount of information stored by vehicles has gradually increased. Today, GM vehicles store five seconds of vehicle information prior to the deployment or near-deployment of airbags. However, only recently have the auto manufacturers allowed systems with the ability to read and interpret the EDR information to be sold to the public, and only a limited number of Fords and GM vehicles have systems that can be downloaded by those outside the manufacturer. In certain cases the vehicle EDR can provide very useful information about the vehicle's change in velocity, engine rpm's, speed, percent throttle, braking, and seatbelt usage.

**Computer Simulations:** Vehicle crash simulations have existed since the seventies. Constant improvement to computing power has brought powerful simulation capabilities to the desktop computer. The most recent advancement in desktop simulation

software is the ability to simulate multi vehicle accidents, avoidance scenarios and concurrent occupant motion with vehicle motion. Litigation arises most frequently, of course, because someone was injured. The ability to simulate occupant motion allows for the detailed investigation of contact points within the vehicle and the matching of injuries claimed to the specifics of the vehicular accident. Additionally the recent simulation software has excellent graphic output including the ability to reproduce the exact make and model of cars, model the actual vehicle damage, and input surroundings that match the accident scene. The simulation output can be viewed from any position within the model, including from inside the vehicles. The simulation output provides powerful visual images to reinforce opinions generated in conjunction with the simulation.

For the purposes of this paper we will be focusing on the use of simulation software, specifically PC-Crash.

## II. PC-Crash Software

PC-Crash is a software program used to simulate motor vehicle collisions, covering a plethora of accident scenarios. It can simulate accidents involving passenger vehicles, tractor-trailers, trucks, buses, motorcycles, bicycles, and pedestrians, and simulate avoidance scenarios, vaults, vehicle rollovers and occupant kinematics.

The simulation program is based on a mathematical model that takes into account vehicle forces, dynamic collisions, road conditions, and driver inputs. For a given vehicle, it calculates tire forces, and from tire forces, it calculates vehicle accelerations/decelerations. Employing the calculated vehicle accelerations/decelerations, it then numerically integrates and solves equations of motion over a 5-mil-

lisecond time interval. As a result of these numerical integrations, the speed, rotation angle and position of the vehicle are calculated and the accuracy of the results is evaluated within an acceptable range of engineering and scientific values.

From these values, new tire forces are then calculated. This process continues until the speed goes to zero or time/distance reaches the end-of-sequence duration, if any is specified. PC-Crash takes into account suspension properties, tire parameters, steering inputs, ABS and normal braking, individual wheel braking, engine and gear ratio parameters, and wind resistance. It can also produce a full, 3D animation with a fixed or moving camera from any simulation. These animations are directly rendered from the simulation and nothing

can be changed in the animation without affecting the simulation.

The process of simulating an accident requires several steps. The first step is to load or create the incident vehicles using databases available within the PC-Crash. Once the vehicles are loaded, their geometry and various other vehicle parameters are reviewed and may be modified. The next step is to specify vehicle pre and post-impact braking, steering, driver reaction, and other control inputs. These inputs are specified by the expert, based on the physical evidence and the expert's education, experience, and training. The next phase is to load the scene information and the vehicle's rest, intermediate, and impact positions. This information is typically obtained from the physical evidence, photographs, police reports

and witness statements. The final step is to use PC-Crash's Collision Optimizer to determine vehicle impact parameters. The optimizer performs hundreds of calculations and finds the optimum solution. Once an optimum solution for the impact-to-rest simulation has been achieved, the pre-impact vehicle motions are added to the simulation.

After the simulation is completed, all input and output values in terms of tables or graphs are captured. Finally, a full 3D animation is rendered from the simulation.

Animations may be rendered with a fixed or moving camera depicting the accident from different angles, including the driver's view.

*Continued on page 20*



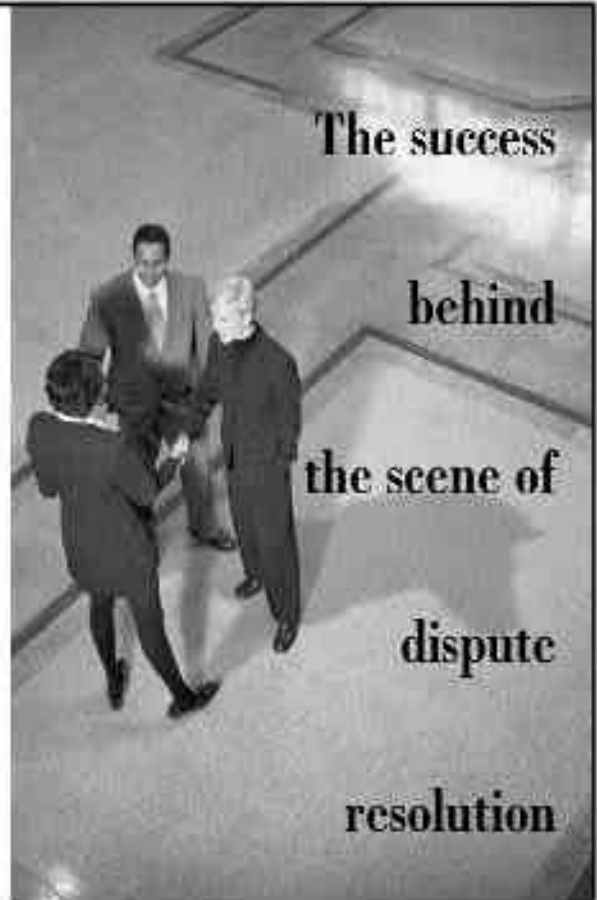
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"the ADR work horse" in the Southeast.

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# Workers' Compensation Case Law Update

Any party dissatisfied with the decision of an administrative law judge in a Georgia workers' compensation claim may appeal that decision to the State Board of Workers' Compensation appellate division. The findings of fact made by an administrative law judge must be accepted by the appellate division if supported by a preponderance of the competent and credible evidence of record. O.C.G.A. §34-9-103. An unfavorable decision issued by the appellate division may be appealed to the superior court in the county where the injury occurred. The grounds for review of the decision issued by the appellate division are set forth at O.C.G.A. §34-9-105(c). Findings of fact are subject to an 'any evidence' standard. A party aggrieved by the decision of the superior court may file an application for discretionary appeal to the Georgia Court of Appeals. O.C.G.A. §34-9-105(e); O.C.G.A. §5-6-35(a)(1). An appeal beyond the Georgia Court of Appeals is by petition for writ of certiorari to the Georgia Supreme Court.

This article compiles and briefly analyzes the most recent decisions issued by the Georgia Court of Appeals in workers' compensation related cases, and in addition provides an overview of the 2005 legislative changes to the Workers' Compensation Act.

1) Davis v. Carter Mechanical, Inc., No.A04A2047, 2005 Ga.App. LEXIS 334 (March 30, 2005)

The dispute involved whether Davis' injury was catastrophic within the meaning of O.C.G.A. §34-9-200.1(g)(6), the so-called 'catch all' provision. The case demonstrates the critical importance of the use of vocational expert testimony in catastrophic claims.

O.C.G.A. §34-9-200.1(g)(6) provides that an injury is 'catastrophic' and thus not subject to the 400 week cap on income benefits, if it is

"of such a nature and severity that prevents the employee from being able to perform his or her prior work and any work available in substantial numbers within the national economy for which such employee is otherwise qualified." Id. (But see HB 327 for amendments to this section effective July 1, 2005). In the Davis case, the evidence showed that he was unable to perform his prior job. Thus, the dispute arose as to whether Davis could perform any other jobs available in substantial numbers and for which he was otherwise qualified.

Davis suffered a debilitating knee injury resulting in two surgeries. The authorized treating physician found Davis could only work in a sedentary category; however, an FCE showed he could work in a medium to medium/heavy capacity. Both the claimant and the employer used vocational experts. Claimant's expert focused on Davis' low I.Q., limited education, and limited writing and communication skills. The employer's expert performed a job search and located several jobs in the local area for which the claimant was qualified.

The Court of Appeals upheld the finding of the superior court and appellate division that the employee/claimant's injury was not catastrophic.

On appeal, Davis first argued that the employer's vocational expert testimony was not sufficient because it only showed the existence of jobs suitable to the employee/claimant's condition, and did not show the actual availability of any such jobs. The Court of Appeals rejected this contention, finding that the term 'availability' as used in O.C.G.A. §34-9-200.1(g)(6) was satisfied by a showing of the existence of such jobs, and did not require a showing of an actual job opening or job offer.

The Court next addressed the discrepancies between the testimony

offered by the dueling vocational experts, and found that any such discrepancies went to the weight to be accorded the employer expert's report, and not to the competence of the testimony. Accordingly, the appellate division's determination was upheld under the 'any evidence' standard.

Finally, Davis argued that the employer's vocational expert improperly relied on 'accommodated jobs' in determining that there were jobs available in substantial numbers for which the employee/claimant was qualified.

Since O.C.G.A. §34-9-200.1(g)(6) draws heavily on language from the federal Social Security Act regarding the availability of disability benefits under that Act, the Court of Appeals looked at federal case law addressing this issue. The federal standard states that SSA should not consider 'accommodated jobs', i.e., jobs which may be modified to meet the claimant's restrictions, but should consider whether the claimant is able to perform the jobs "as generally required" throughout the national economy. See, Swanks v. Washington Metropolitan Area Transit Auth., 325 U.S. App. D.C. 238 (D.C. Cir. 1997).

While the Court of Appeals apparently found this reasoning to be persuasive, the Court determined that the testimony of the employer's vocational expert, taken as a whole, did not indicate that the jobs identified would have to be accommodated in order for Davis to be capable of performing the jobs.

Accordingly, the Court of Appeals upheld the appellate division's determination that Davis was capable of performing light duty work, that such work was available, and that Davis's injury thus was not catastrophic under the Workers' Compensation Act.

2) Collie Concessions, Inc. v. Bruce, No.A04A1735, 2005 Ga.App. LEXIS 341 (March 30, 2005).

Proving, perhaps, that a fine sense of humor still has its place in the legal profession, the Court of Appeals issued the opinion in this fascinating case a mere five days before the start of the 2005 Masters golf tournament.

Bruce worked for a concessionaire at the Masters and had done so every year since 1981. On April 10, 2002, she rode to work with co-workers and parked in a lot where her employer had secured 25 parking spaces. The employer, however, did not own, maintain, or control the lot. After parking, Bruce was required to cross Berckman Road to reach Gate 7, where she was required to enter Augusta National to reach her concession. As Bruce crossed Berckman Road in a temporary pedestrian crosswalk, she was struck and injured by a motor vehicle.

Thus, the decision in this case involved the interplay between the general rule that accidents going to or coming from work are not compensable, the so-called 'parking lot' exception to the general rule, and the employer's contention that the exception did not apply because it did not own, maintain or control the lot.

The ALJ and the appellate division found that the claim was not compensable, citing the general rule that accidents that occur while going to or coming from work are not compensable. The superior court reversed, finding that the temporary crosswalk was part of the employer's premises and that, therefore, the claim was compensable. As is often the case, the Court of Appeals ultimately upheld the findings of the ALJ and appellate division.

The Court of Appeals first addressed the application of the 'parking lot' rule. Generally, injuries occurring during reasonable ingress and egress to/from the employer's facilities to a parking lot

owned, controlled or maintained by the employer are compensable. Control over the mere allocation of parking spaces is not sufficient to bring an accident within this rule where the employer neither owns, maintains or controls the lot. See, City of Atlanta v. Spearman, 209 Ga.App. 644 (1993). The evidence showed that the lot at issue was owned by Berckman Residential Properties, LLC, the sole member of which was Augusta National. Since the employer did not own and maintain the lot, the parking lot exception did not apply.

The Court next considered the superior court's conclusion that the injury was compensable because the temporary pedestrian crosswalk was part of the employer's premises. The Court rejected this argument, finding that the crosswalk was part of Berckman Road, a public street, and thus not part of the employer's premises. The Court distinguished its decision in Peoples v. Emory University, 206 Ga.App. 213 (1992), because the accident in Peoples occurred in a street which was owned by Emory University.

Finally, the Court addressed the superior court's reliance on the positional risk doctrine and Johnson v. Publix Supermarkets, 256 Ga.App. 540 (2002). Finding that the positional risk doctrine did not apply to the facts of this case, and that Johnson had been disapproved by the recent Court of Appeals decision in Chaparral Boats v. Heath, 269 Ga.App. 339 (2004), the Court held that the positional risk doctrine did not apply, and upheld the determination of the ALJ and appellate division denying benefits.

The opinion in this case is physical precedent only, see, Court of Appeals Rule 32(a), because two out of three judges concurred in the judgment only and not in the full opinion. Of particular note, Judge

Blackburn wrote a special concurrence arguing that issues of whether the crosswalk and parking lot were part of the premises of Augusta National should not have been addressed, since the employer was Collie Concessions and the evidence clearly showed that Collie Concessions did not own, maintain or control the lot or the crosswalk. Finally, it is worth noting that this decision may be seen as part of a trend, along with the recent decisions in Chaparral Boats, supra and Hill v. Omni Hotel at CNN Center, 268 Ga.App. 144 (2004) to circumscribe the limits of the exceptions to the general rule that accidents occurring while going to/from work are not compensable. But see, Longuepee v. Georgia Tech, 269 Ga.App. 884 (2004).

3) Eudy v. Universal Wrestling Corp., Inc., 272 Ga. App. 142 (2005) This is a straightforward case involving application of the exclusive remedy provisions of O.C.G.A. §34-9-11. It deserves mentioning primarily because of its interesting factual background. The claimant, Sidney Eudy, was a professional wrestler who wrestled under the moniker of 'Sid Vicious'. On January 14, 2001, Vicious suffered compound fractures of his left tibia and fibula while performing a choreographed move that required him to jump from the second rope on the ring and land on his opponent. After his contract was subsequently terminated, Vicious sued his former employers under several theories sounding in both contract and tort. The workers' compensation issue was whether Vicious' tort claims were barred by the exclusive remedy doctrine and a corresponding contractual provision. Interestingly, there was a dispute of fact regarding whether Vicious was an employee or an independent contractor (which would theoreti-

*Continued on page 12*

# Workers' Compensation Case Law Update

continued from page 11

cally affect whether the exclusive remedy applied). However, the Court of Appeals found that the contractual provisions limited Eudy's recovery to workers' compensation benefits and that the employer had indeed provided such benefits and, therefore, his tort claims were barred.

An interesting issue would be whether the tort claims would have been barred had the employer failed to provide workers' compensation benefits under the terms of the contract. Under those circumstances, the decision might have turned on a substantive determination of whether Eudy was an employee or independent contractor.

#### 4) **Ferqueron v. State Farm Mutual Automobile Insurance Co., 271 Ga. App. 572 (2005)**

Ferqueron sought damages under an uninsured/underinsured motorist policy issued by State Farm for injuries suffered in a motor vehicle accident. Since Ferqueron was in the course and scope of his employment at the time of the MVA, his employer paid \$33,044.68 in workers' compensation benefits. At trial, the jury awarded \$50,000 in damages on a general verdict form, which was reduced by \$15,000 previously paid by the other driver's insurance company pursuant to a limited liability release.

State Farm sought to reduce the remaining \$35,000 in damages by the amounts paid by workers' compensation, pursuant to a contractual set-off provision contained in the uninsured/underinsured motorist insurance policy. The trial court allowed the set-off, and the plaintiff appealed.

Ferqueron apparently attempted to argue that the contractual set-off was analogous to workers' compensation subrogation under O.C.G.A. §34-9-11.1 and that, therefore, State Farm was not entitled to a set-off unless it was determined that Ferqueron had been fully and com-

pletely compensated for all of his economic and non-economic injuries.

The Court of Appeals did not directly address whether the set-off provision was analogous to workers' compensation subrogation and whether the full and complete compensation standard applied. Instead, the Court found that the plaintiff consented to the use of a general verdict form and that there was an incomplete record on appeal and that, therefore, the Court could not determine whether the trial court committed any error in allowing the set-off.

There is no question that the 'full and complete' compensation rule applies to workers' compensation subrogation liens and can often defeat recovery on the lien. Whether the rule would apply in the opposite situation of a UM carrier attempting to obtain a set-off due to payment of workers' compensation benefits is doubtful. As was pointed out by the Court of Appeals in Ferqueron, contractual set-off language like that contained in the State Farm policy is neither precluded by statute nor contrary to the public policy of the State. See, Northbrook Ins. Co. v. Merchant, 215 Ga. App. 273, 276 (1994).

#### 5) **Minter v. Tyson Foods, Inc., 271 Ga. App. 185 (2004)**

On December 31, 2004, the Georgia Court of Appeals decided three issues in Minter v. Tyson Foods, Inc., which were presented to the Court on appeal from the superior court of Marion County. The first issue before the Court was whether the superior court erred in remanding the award of TTD benefits to the State Board because it was unclear as to whether or how the standards and requirements of the Padgett v. Waffle House, Inc., 269 Ga. 105 (1998) and/or Maloney v. Gordon Cty. Farms, 265 Ga. 825 (1995) decisions were applied. The second issue was whether the supe-

rior court erred in affirming the appellate division's decision vacating an award of assessed attorney fees. Lastly, the Court decided whether the provisions of O.C.G.A. § 34-9-108(b)(4) regarding assessment of litigation costs would be applied retroactively.

With regard to the first issue, the ALJ found that the employer only offered the employee/claimant employment beyond her physical restrictions and that her injury was therefore reason for her continued unemployment. Therefore, under the reasoning of Padgett v. Waffle House, *supra*, the ALJ found that the injury was the reason for the employee/claimant's continued unemployment and that she was accordingly entitled to commencement of income benefits. The ALJ also noted that even if Padgett did not apply, the Employee was entitled to benefits under Maloney v. Gordon County Farms, *supra*, because the employee had conducted a diligent job search but was unable to secure suitable employment.

The Court of Appeals stated the evidence arguably did not support the ALJ's conclusion that Padgett applied to the facts of the case. In the decision the Court noted that in Padgett, the employee was terminated from her employment for reasons which were directly related to her job injury. However, in this case, the Employee's job loss originally stemmed from a general lay-off, rather than termination by reason of her on the job injury.

On the other hand, under the Maloney reasoning the Court held there was some evidence supporting the findings that the employee sustained a compensable work-related injury, was unable to return to work, and had made a diligent but unsuccessful attempt to find employment elsewhere. Therefore, the award of TTD benefits for the Employee was upheld under the

'any evidence' standard.

On the second issue the Court of Appeals held the appellate division was entitled to find an additional award of attorney's fees excessive and not supported by a preponderance of the evidence. The ALJ initially awarded attorney fees under O.C.G.A. § 34-9-108(a) in the amount of 25 percent of the employee's weekly benefits and also awarded a lump sum attorney fee of \$3,000 in accordance with O.C.G.A. § 34-9-108(b). The appellate division found the additional award of attorney's fees excessive which was affirmed by the Court of Appeals, again under the 'any evidence' standard of review.

Finally, the Court of Appeals held that O.C.G.A. § 34-9-108(b)(4), which allows for the recovery of litigation expenses, creates a substantive right and therefore may not be applied retroactively to cases with dates of injury prior to its enactment. O.C.G.A. § 34-9-108(b)(4) was enacted on July 1, 2001, and there was no right to an assessment of litigation expenses under the Workers' Compensation Act before that date. The employee's injury occurred in September 1999, and, accordingly, she was not able to use the provisions of O.C.G.A. §34-9-108(b)(4) to obtain an award of assessed litigation expenses.

#### 6) 2005 Legislative Enactments

HB 200, signed into law by the Governor on May 10, 2005, moves up the cut-off date for new SITF claims. The amendment provides that "The Subsequent Injury Trust Fund shall not reimburse a self-insured employer or an insurer for an injury occurring after June 30, 2006. The Subsequent Injury Trust Fund shall continue to reimburse self-insured employers or insurers for claims for injuries occurring on and prior to June 30, 2006, which qualify for reimbursement".

There exists some misconception that the law now prevents any

claims from being filed after June 30, 2006. However, the statute does not provide such, but instead provides that no claims shall be reimbursed for an injury occurring after June 30, 2006. Thus, any new injuries occurring on or before June 30, 2006 may still be submitted to SITF for a reimbursement agreement, in accordance with the statute and SITF rules.

HB 327, also signed into law on May 10, 2005, contains several provisions amending portions of the Workers' Compensation Act.

O.C.G.A. §33-9-40.2 was amended to remove an eight year cap on premium discounts for certified drug free workplaces.

O.C.G.A. §§34-9-40 and 34-9-60 were amended to clarify the State Board's authority to promulgate rules regarding electronic filing, in anticipation of implementation of an electronic filing program within the next year.

There were three amendments addressing the issue of catastrophic injury.

Most importantly, O.C.G.A. §200.1(g)(6), the 'catch-all' provision, was rewritten so that it now consists of two subsections, (A) and (B). O.C.G.A. §34-9-200.1(g)(6)(A) now provides a rebuttable presumption, within 130 weeks from the date of injury, that an employee released to return to work with restrictions is not catastrophically injured. O.C.G.A. §34-9-200.1(g)(6)(B) now provides a rebuttable presumption that an injury is no longer catastrophic once the employee/claimant reaches the age of eligibility for Social Security retirement benefits as defined at 42 U.S.C. §416(l). However, a determination under this new subsection may only be made by the Board after an evidentiary hearing.

O.C.G.A. §34-9-102(a) was amended to provide that the evidentiary hearing called for in

O.C.G.A. §34-9-200.1(g)(6)(B) shall not be scheduled less than 90 days after the hearing is requested.

Finally, a new subsection was added to O.C.G.A. §200.1, subsection (i), which clarifies that either party may, upon reasonable grounds, request a new determination after a decision determining whether a claim is catastrophic.

The remaining changes were to adjust the TTD and TPD rates. O.C.G.A. §34-9-261 was amended to increase the maximum TTD rate to \$450 per week and the minimum to \$45 per week. O.C.G.A. §34-9-262 was amended to increase the maximum TPD rate to \$300 per week.

As with all areas of the law, the workers' compensation laws are constantly undergoing change and refinement, due to legislative enactment and judicial interpretation. Some areas of interest in the upcoming months may include litigation regarding application of the recent amendments to the catastrophic statute, continued refinement of the ingress/egress, parking lot and positional risk doctrines, and continued litigation regarding the circumstances of illegal immigrant workers. A trio of cases decided in 2004, Earth First Grading v. Gutierrez, 270 Ga. App. 328; Wet Walls v. Ledezma, 266 Ga. App. 685; and Continental Pet Technologies, Inc. v. Palacias, 269 Ga. App. 561, made clear that illegal immigrant status, alone, does not foreclose receipt of Georgia workers' compensation benefits. However, these cases did not address every conceivable fact pattern involving illegal immigrant cases, and with the continued influx of immigrants, legal and illegal, into Georgia, there is likely to be more litigation on this issue.



# GDLA Annual Meeting Highlights

## Minnesota Lawyers Mutual Kool-Aid & Cocktails

Clockwise from top left: **Ken Moorman**, GDLA past presidents **Bruce Welch** and **Steve Kyle**; outgoing GDLA president **Grant Smith** and new board member **Hall McKinley**; **Alison Wilde**, board member **Jo Jagor** and **Donna Chambers**; board member **Bubba Hughes**, SEA Consulting's **David Randall** and **Debbie Hughes**; **Marcia Welch**, **Jan Moorman** and **Becky McKinley**; GDLA board members **George Hall**, executive vice president **Warner Fox**, **Grant Smith**, incoming president **Johnny Foster** and secretary/treasurer **Bob Travis**; **The Avery girls**; **Matt Moffett**, **Lance Greene** and wife **Jennifer**





Clockwise from top left: **Tifani and Scott Pool**; **Jim Purcell** and GDLA board member and Worker's Comp Academy co-chair, **Staten Bitting**; the **Wilde Bunch**; **Judge Michael Karpf** with GDLA board members **Clay Ratteree** and **Gary Seacrest**; the GDLA's new first lady, **Bobbie Foster**, with **Susan Karpf**; assorted munchkins take advantage of the great weather and beach; **Judge Gino Brogdon** with **John Straus** of Exponent Failure Analysis

# GDLA Annual Meeting Highlights

## Forcon International Annual Dinner & Dance



Clockwise from top left: Johnny Foster, Edie and Travis Windsor, Bobbie Foster and Heather Slamenick; Sun Choy, Art Glaser, Kimberly Young and Wayne Glaser; Kasey Ratteree, Bubba and Debbie Hughes and Clay Ratteree; Judge Michael and Susan Karpf with Scott and Tifani Pool; Patti Singer and Bunny Gamble; Kimberly and Lane Young, Lynn Roberson, Judge Henry Newkirk; Alison and Doug Wilde and Hall McKinley; GDLA's Foster-Grants?; Top left: Diane and Matt Moffett with Alabama Defense Lawyer's Association president Bill Gamble and wife Bunny





Above: GDLA Annual Dinner & Dance sponsor Forcon International's **Bill Vereecke** with wife **Susan**, and GDLA past president **Walter McClelland** and wife **Kathy**; at left, GDLA executive director **Steve Milano** with **Steve Kyle**

# GDLA Annual Meeting Highlights

Clockwise from top right: Judge William C. O'Kelley; Judge James C. Hill; Judge John J. Ellington



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## Benedict Engineering Co. Golf Tournament

Lower left: GDLA Annual Golf Tournament sponsor, Benedict Engineering's **Judi McGinnis**, with new GDLA board members **Hall McKinley** and **Jamie Weston**, still smiling after 18 holes with GDLA executive director Steve "the club" **Milano**; lower right, the golf tournament winners



## Brown Reporting Co. Tennis Tournament



Clockwise from far left: Tournament sponsor Brown Reporting Company's **Marcia Welch** with the tennis crew; at left: **Hall McKinley** and **Donna Chambers**; **Larry Hogan** and **Alison Wilde**; **Grant Smith** and **Jo Jagor**



A limited capability of MADYMO (Mathematical Dynamic Model) software is also incorporated in to PC-Crash. Utilizing the MADYMO software, the interaction of a driver or a front passenger with the airbag and/or seat belt may be simulated for the duration of an impact (maximum of two seconds).

Comparison tests have been performed to validate the PC-Crash simulations with real world results, and those validation results are published in SAE International Technical Papers.

PC-Crash Case Study Avoidance Scenario: In this case study an accident between a 1989 Dodge Dynasty, V1, and a 2002 Ford F350, V2, is examined. This accident happened on SR1, at the intersection of 2nd Street. SR1 is a four lane divided roadway in an east-west direction.

Speed limit for SR1 is 45 mph. 2nd Street is a two lane undivided roadway in a north-south direction. V2 was traveling in the westbound lane of SR1. V1 was traveling in the southbound lane of 2nd Street and was stopped at the stop bar. V1 proceeded forward and into the path of the V2. The front of the V2 impacted the left side of the V1. V1 traveled 94 feet in a southwesterly direction from impact to final rest, laying skidmarks and gouge marks. V2 traveled 138 feet in a westerly direction from impact to final rest, leaving skidmarks on the road. Figures 1-3 show the accident scene and the vehicles at final rest.

Figure 4 illustrates the simulation of this accident. The simulation showed that at impact V2 was traveling at the speed of 67 mph and V1 was traveling at the speed of 14 mph. Thus, the driver of the

Ford (V2) was exceeding the speed limit by 22 mph.

The driver of the Ford stated that he applied his brakes right at impact, therefore his perception and reaction for braking started 1.5 seconds prior to impact. An avoidance simulation was performed by placing both vehicles at their positions 1.5 seconds prior to impact and simulating the accident with V2 traveling at speed of 45 mph (speed limit). Figure 5 illustrates this avoidance simulation. The avoidance simulation demonstrated that by the time V2 reaches the point of impact, V1 would have cleared the westbound lanes of SR1 and this accident would have not happened. As a result, if the driver of the Ford (V2) had been traveling at the speed limit at the start of his perception and reaction this accident would have not occurred.

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### III. Conclusion

As with most technical fields, the advent in the information technology has had a great impact on vehicular accident reconstruction. The use of electronic gadgets to collect scene and vehicle data will continue to evolve and improve measurement sensitivity. This will result in more tools being readily available to enhance such documentations. As computing power continues to increase, simulation programs will be more capable of simulating complex accidents and scenarios. And the output of simulations will be further evolved from numbers and tables to graphical representations and animations, allowing experts to more effectively express opinions to attorneys and jurors.



### About the Authors

**M. Reza Vaghar**, Ph.D., P.E. is a consulting engineer at Benedict Engineering Co. He is a registered Professional Engineer, an authorized trainer in OSHA for General Industry and a Certified Fire and Explosion Investigator. Dr. Vaghar joined Benedict in 2000 and has been involved in several areas of forensic engineering, including vehicle and pedestrian accident reconstruction, product failure, safety analysis and industrial accident reconstruction. Dr. Vaghar is an adjunct professor at Florida A&M University - Florida State University College of Engineering.

**Farhad Boeshaghi**, Ph.D., P.E. leads a team of engineers and technicians at Benedict. His primary job is to provide engineering consulting to manufacturers, designers, legal professionals,

insurance companies, risk managers, academia and government. He is a registered professional engineer in Florida, California and Alabama. He has extensive experience in evaluation of process control capability systems, automation, kinematics, and dynamics of machinery for industrial applications including material handling. He is an adjunct professor at Florida A&M University - Florida State University College of Engineering. He has taught courses in Engineering Design Methods, Safety Engineering, Ergonomics and Human Factors Engineering, Mechanics of Materials, Mathematics, and Nano-Technology.

*Note: The rest of this article, complete with all text and photos, is available in pdf file format at [www.gdla.or/accident.htm](http://www.gdla.or/accident.htm).*

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# GDLA Trial Academy Dates Set

The GDLA Trial Academy will take place November 30-December 2, 2006 at Callaway Gardens in Pine Mountain Georgia.

The long-running academy is one of the most popular CLE for young lawyers and attracts dozens of young or new trial lawyers each year to work with some of the top defense attorneys in Georgia.

**Tom Magill**, Magill & Atkinson, Atlanta, will be taking the reins as chairman of the academy this year, succeeding the three-year tenure of immediate past chair, **Jim Elliott**, Elliott, Blackburn, Barnes & Gooding, Valdosta.

Enrollment is limited to 42 students to maintain a low faculty-to-student ratio, and you are encouraged to register early.

The Trial Academy was developed for lawyers who are ready to begin trying cases or who want to

improve their courtroom skills. Participants will learn by observing experienced defense lawyers and by practicing their own skills in small break-out sessions.

The Academy was designed for attorneys who have intermediate-level training. The program is too advanced for those who have never taken a deposition, argued a motion or assisted in a trial and too basic for experienced trial lawyers.

The GDLA Trial Academy is usually approved for 21 hours of CLE credit with 1.5 ethics hours, 17.5 trial hours and two professionalism hours.

Registration fees for the Trial Academy, includes the academy program, course materials and CLE and will be forthcoming, with multiple contacts made to the GDLA membership.



## How to Enroll In the GDLA Trial Academy

A brochure, complete with registration information, will be mailed to GDLA members in the coming weeks.

Information will also be posted online, with downloadable registration forms, and a blast e-mail will alert the membership that registration is now open.

If you wish to make certain that you receive registration materials in time to secure one of the 42 spots available, please e-mail the GDLA office at [contact@gdla.org](mailto:contact@gdla.org) and you will be sent registration materials to your e-mail address.

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# GDLA Spring & Summer Board Meeting Highlights

## **GDLA Spring 2005 Board of Directors Meeting Highlights Hamilton, Bermuda April 21, 2005**

The meeting was called to order by President Grant Smith. In attendance at the meeting were board members:

Salty Forbes, Johnny Foster, Warner Fox, Ted Freeman, Mel Haas, Steve Kyle, Steve Milano, David Nelson, Clay Ratteree, Lynn Roberson, Jimmy Singer, Grant Smith, Bob Travis, Bruce Welch

A motion was made to approve the Winter Board Meeting minutes which had been circulated amongst the board previously and this motion was adopted.

### **Treasurer's Report**

Warner Fox gave the treasurer's report, including the association's assets and liabilities.

### **Amicus Committee Report**

An Amicus Committee report was given by Ted Freeman, Chairman of the Committee. It was determined that the requirements for Amicus Briefs on the part of GDLA would be posted in the web site in the Member's Only Section.

### **Membership Report**

Salty Forbes, Chairperson of the Membership Committee reported that 37 new members were being recommended for membership by his committee. The list was read and discussed and all 37 members were approved for membership. Forbes notified the board that committee Member David Hanks had resigned from the committee and was being replaced by David Whitworth. Membership recruitment and retention were discussed and it was noted that the association is doing an excellent job this year of bringing in new members. All board members were encouraged to keep up the efforts so as to

continue to grow the association. It was also discussed that membership retention is enhanced by demonstrating that the GDLA provides valuable resources to its members such as the web site and ability to send GDLA blast emails. Additionally, the necessity of continuing excellent CLE programs was discussed.

### **Sponsorships and Exhibitors**

Committee chair Clay Ratteree discussed sponsorships and exhibitors. The necessity of keeping these sponsors and exhibitors was discussed, and attempts will be made on the part of committee members to ensure that sponsors and exhibitors all feel that they have the attention of the GDLA and its members. The importance of trying to send business to the sponsors and exhibitors was also discussed and all members are encouraged to send as much business as possible to our sponsors and exhibitors, understanding that they provide valuable services to the organization.

### **Workers' Comp Academy**

Steve Milano gave the report on the Workers' Compensation Academy. The Academy this year was oversold and made a minimal profit, which resulted in no expense to the GDLA. Dates for the next Worker's Compensation Academy were discussed as well.

### **Trial Academy**

A discussion was held about the upcoming Trial Academy. The new Chairman of the Academy will be Tom Magill. There will be a meeting at the Annual Meeting in Ponte Vedre to discuss the Trial Academy in more detail. A contract is in place with Calloway Gardens for next year's Trial Academy.

### **Future Meetings**

Steve Kyle led a discussion

regarding the Annual Meeting and Long Range Planning Committees. It was noted that for the 2005 Annual Meeting, the Ponte Vedra Inn is sold out, but extra rooms have been retained at The Lodge in order to handle overflow capacity. We expect this to be one of the best Annual Meetings in years, and the early attendance figures support that.

Next year's Fall Board Meeting was also discussed and it was determined that the meeting will take place on October 8 at the Grove Park Inn in Asheville, North Carolina.

The 2005 Spring Board Meeting is being held at the Southampton Fairmont in Bermuda and the meeting is serving as a site visit for the members of the Board.

A lengthy discussion was held regarding the attributes of the hotel and whether or not it should be considered as the location for the 2006 Annual Meeting. After some concerns about the hotel were discussed, it was determined that Steve Kyle would discuss those concerns with the management of the hotel, but that it was fully expected that the Annual Meeting would occur at the Fairmont Princess next year from June 7 through June 11, 2006.

It was noted that due to the cost of holding a meeting in Bermuda, we need to heavily promote this event and get as much information out to the members as early as possible regarding it. It is anticipated this will be more of a "couples" meeting, and a discussion was held regarding the possibility of making every third annual meeting a "couples" event as opposed to a more family-oriented event. The cost of presenting a program in Bermuda was discussed and the Board is hopeful that between sponsors and members, we will be able to utilize

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# Spring Board Meeting Highlights

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internal speakers in order to save expenses.

Finally, it was determined that the likely site of the 2006 Spring Board Meeting will be in Key West, Florida.

## Newsletter

A report was given on the newsletter and the Spring Newsletter was being prepared at the time of the meeting. It was anticipated that it would go to the members within several weeks.

## Law Journal

Jimmy Singer discussed the *Law Journal*. It was determined that the *Law Journal* will be submitted to the membership on CD's, but that judges will actually get a printed copy of the book. Various issues regarding the cost, benefits and alternatives of the *Law Journal*

were discussed. It was determined to keep the *Law Journal* in its current format for the foreseeable future. Finally, status of various articles were discussed.

## Web Site

The web site was briefly discussed. It was noted that traffic on the web site is much higher than in prior times.

## Younger Lawyer Section Membership/Recruitment

YLS membership recruitment in the Younger Lawyer's Section of the GDLA were discussed. Plans are being made for a winter CLE program for younger lawyers and, additionally, at the next judge's reception there will be an attempt made to have a younger lawyer's reception prior to the judge's reception.

## DRI

Salty Forbes discussed the DRI and the upcoming Southeastern Regional Meeting of the DRI which will be held in conjunction with the Alabama Defense Lawyers Association Meeting. Several members of the Board indicated that they may attend the Alabama Defense Lawyers Meeting which would include the DRI Southeastern Regional Meeting. Mr. Forbes also discussed briefly the DRI Meeting in Chicago meeting for State Representatives which was held in the Fall of 2005.

## Old Business

Under old business, the status of DNO or liability insurance for GDLA and its agents were discussed. Salty Forbes is currently

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# Spring Board Meeting Highlights

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looking into this on behalf of the organization and will offer a report at subsequent meetings.

## **New Business**

It was noted that the GDLA has been asked by the Judicial Nominating Commission to meet briefly with the commission prior to interviews regarding the vacancy to fill Atlanta's Judicial Circuit Superior Court bench opening created by the tragic death of Judge Rowland Barnes. Additionally, the GDLA has been asked to participate in evaluating the various nominees for the Supreme Court position of retiring Justice Fletcher. It was determined that the GDLA will participate in this process to the extent allowed.

A discussion was held as to whether a slogan or motto is needed for GDLA marketing purposes. This boils down to the question of how does the GDLA brand itself and do we really need a "brand" or slogan. This will be a subject of continuing consideration.

Additionally, the issue of continuing tort reform legislation was discussed. Included within this discussion was the potential impact on defense lawyers from the recently passed legislation as well as potential impact on legislation that may come before the Legislature in 2006. Because of varying issues, including the Association By-Laws, there was no consensus on how to respond to these issues.

Finally, a discussion was held regarding a gift for Al Shurley. It was agreed that Al will be provided a gift certificate and an engraved piece of crystal or other memento for her home as a tribute to her many years of service to the GDLA.

The meeting was adjourned at approximately 11:30 a.m.

## **GDLA Summer 2005 Board of Directors Meeting Highlights Ponte Vedra, FL June 16, 2005**

In attendance Joe Chambless, Salty Forbes, Johnny Foster, Warner Fox, Ted Freeman, Mel Haas, Steve Kyle, Steve Milano, Jimmy Singer, Grant Smith, Bob Travis.

## **Membership**

Ten members were elected, bringing total new members elected during 2004-2005 to 101. The new members were: Lynda Chapman; Sun S. Choy; Sara A. Evans; Alexander T. Galloway, III; Keri Hochgesang; Michael N. Loeb; Britt K. Prevost; James A. Shea, Jr.; James Valbrun; Sheetul S. Wall.

A discussion was held on approving members who live out of state, and a consensus was reached that if they met the membership requirements of the GDLA bylaws, they should be accepted.

## **GDLA Annual Business Meeting Highlights Ponte Vedra, FL June 18, 2005**

In attendance were approximately 60 members of the GDLA board and general membership.

Grant Smith called the meeting to order. Warner Fox delivered the treasurer's report, reporting that the association was projecting an increase in cash on hand of approximately \$15,000 at the end of the fiscal year from the previous fiscal year, despite many new efforts pursued in 2004-2005.

## **New Officers and Directors**

Salty Forbes presented a new slate of officers and directors for the association. The positions were as follows: State at Large: Luanne Clark, Hall McKinley, and Gary Seacrest. Southern District: Bubba Hughes until 2006, Jamie Weston

until 2007, Kirby Mason until 2008. Middle District: David Nelson until 2007, Craig Avery until 2008. Northern District: Jo Jagor until 2006, Lynn Roberson until 2006, Ted Freeman until 2006. Vice President: N. Staten Biting, Mel Hass, Jimmy Singer and Clay Ratterree; Secretary/Treasurer: Bob Travis; Executive Vice President: Warner Fox (Program Chair 2006 meeting) President: Johnny Foster

## **Trial Academy Report**

Tom Magill gave a brief update on the Trial Academy, held the first weekend in December at Calloway Gardens. It will offer approximately 20 hours of CLE credit and is aimed at young lawyers who have one to three years of practice. Firms are invited to look at their young lawyers and determine who they want to send to the program at an early a date as possible.

## **Future Meetings**

Steve Kyle reported that the 2006 Annual Meeting will be held at the Southampton Fairmont Hotel in Bermuda from June 8 - 11. More information will be forwarded to the membership shortly regarding this. Steve was kind enough throughout the various meetings in Ponte Vedra to wear his Bermuda shorts and knee high socks as a marketing effort.

At the conclusion of the meeting, Executive Vice President Johnny Foster awarded President Grant Smith with a plaque in recognition of his excellent work on behalf of the GDLA this year. Additionally, Lynn Roberson awarded Grant a DRI award for the GDLA's work in 2004 and 2005. The association as a whole owes a large thank you to Grant for his work in past years and his excellent work as the President of the GDLA in 2004 and 2005.

The meeting was then adjourned.



## GDLA Visits Bermuda

The board of directors of the GDLA held its spring board meeting in Hamilton, Bermuda in order to visit the proposed site of the 2006 annual meeting. Board members used the same transportation, stayed in the same rooms, dined in the same restaurants and met in the same meetings facilities as members will use next year in order to get a feel for costs, travel time, ease of check-in, quality of food and beverage, etc.

The GDLA does not pay for the travel, lodging or day-to-day meals of board members attending quarterly board meetings.

Among other work-related items, the spring board meeting produced the association's new tort reform sub-committee, which led to the creation of the new online tort reform documents database.



From top to bottom: **Clay Ratteree** and **Mel Haas** wonder where they can get some pink shorts, while **Lynn Roberson** prays they don't; **Steve Kyle** fills in **Clay** and **Kacey Ratteree**, **David** and **Jennifer Nelson** and **Steve Milano** on the weekend's upcoming events; Board members kicked off the weekend with a private cocktail party outside the Waterlot restaurant; The board holes up on Saturday to discuss a wide variety of issues of importance to the membership and association, including SB 3.

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