Georgia Defense Lawyer ©

Advancing the Civil Defense Bar©

Summer 2007

"Insuring" a Fair Trial:

The Direct Action Statute and the Single-State Registration System

The fact pattern by now is all too familiar: A tractor-trailer is involved in an automobile accident. The occupant of the other vehicle brings suit for personal injuries. Under the Georgia Direct Action Statute, O.C.G.A. § 46-7-12, opposing counsel also names as a defendant the insurance company that provides third-party liability insurance to the motor carrier. This is done, of course, in an attempt to increase any award of damages to the plaintiff. Defense counsel thus find themselves looking for a way to remove the insurance company from the case. Under the federal Single State Registration System, 49 U.S.C. § 14504, if the trucking company is registered with the federal government, and files proof of insurance in another state, a good argument can be made that the Direct Action Statute -- which is contrary to the common law and thus must be strictly construed -- has no application. Defense counsel should consider this argument as a means of removing insurance from the jury's consideration.

A. The Georgia Direct Action Statute

The Georgia Direct Action Statute, O.C.G.A. § 46-7-12, sets forth the requirements that a motor carrier must satisfy in order to obtain a certificate of public convenience and necessity from the Georgia Public Service Commission ("PSC") in order to do business here. One of those requirements is the filing of proof of insurance, which serves as the "hook" by which an insurance company is added to the case. Addressing the propriety of naming insurance companies in personal injury cases, the Georgia Supreme Court explained fifteen years ago that the insurance company "is not, in reality, a separate party for purposes of liability, but, rather, is equivalent to a provider of a substitute surety bond, creating automatic liability in favor of a third party who may have a claim for damages for the negligence of the motor common carrier." Thus, the purpose of permitting joinder of the insurance company is "to protect the public against injuries caused by the motor carrier's negligence."

However, Georgia courts also recognize the well-established rule that "[t]he joinder of a defendant's insurer in a tort action has long been disfavored in this state." As the Court of Appeals explained:

The rationale for the prohibition of direct actions against insurers is that the injured party is not in privity of contract with the insurer and may not maintain a direct action on the contract for payment of a claim unless a judgment obtained against

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Inside This Issue

Blast E-mail System Changed

Your Replies Now Public

The GDLA's blast e-mail system has been improved to allow attorneys to search for specific questions and answers previously asked or submitted by members, prior to sending a blast e-mail query.

When you respond to a blast e-mail, your answer will now be available to other attorneys, not just the member to whom you respond.

This new database will allow GDLA members to search terms (e.g., "IME," "HIPAA") and names, (e.g., "Dr. John Smith," "Judge Robert Jones) in order to locate others who have tried similar cases.

This new database will provide a wealth of information for conducting case research, finding experts, depositions, briefs and more.

Please understand that your responses to blast e-mails will now be public. For personal responses, you may simply respond, "please call me," or contact the attorney directly.

See this issue's President's Letter on page 3 for more details.

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President's Message

Changes to Blast E-mail System

Would you like a searchable database of plaintiff's expert witnesses provided by defense lawyers working in Georgia?

Would you like depositions, briefs, interrogatories and other work product, specific to your cases, available at no charge and online?

Earlier this year, the GDLA's blast e-mail system was upgraded to catalogue all responses to blast e-mails and make them searchable by the membership.

Would you like to be able to type a word or phrase into your Web site browser, such as, "accident reconstruction," "Dr. John H. Smith," "IME," "joint and several" or other specific topic and instantly find information provided by your peers across the state?

You already have at the Members' Area of www.gdla.org.

Earlier this year, the GDLA's blast e-mail system was upgraded to catalogue all responses to blast e-mails and make them searchable by the membership.

As a safeguard of your privacy, each response also goes directly to the association's executive director, who deletes any inappropriate responses (e.g., "This guy's an idiot!" or "When are you and Martha coming over for dinner?").

The informality of the GDLA's blast e-mail system has been a nice benefit of the program, but does it outweigh the benefit of creating a monster database of plaintiff's expert witnesses and valuable work product we can use for years to come?

That is one of the questions the GDLA board of directors will be discussing at the upcoming October board meeting.

Please feel free to send your comments, thoughts and inputs on this subject to our executive director with an e-mail to contact@gdla.org.

In the meantime, you may still keep that personal contact with your peers by simply responding to the e-mail with, "Lisa, please contact me at 404-555-1212."

Your peers can also reply directly to you if you have a signature on your e-mails (name, address, phone, e-mail address, etc.).

As I look back on my recent tenure as GDLA president, I see this change to the blast e-mail system as a big step forward for the association, and one the incoming president, Bob Travis, and our board, will continue to improve.

I am also pleased with the strides we made in increasing the diversity of the organization, with many female and younger lawyers being appointed to committee positions and becoming more involved in the organization. I truly enjoyed my time as GDLA president and encourage all of you to get more involved with your peers and making our slogan more than just a slogan . . . "Advancing the Civil Defense Bar."

Thanks for your input on the very important subject of our blast e-mail system and any other comments on the association's direction you'd like to share with us.

Warner Fox
Immediate Past President

Member & Legal News

Robert A. Barnaby, II has joined the firm of **Donahue, Hoey, Nelson & Cohen**, Atlanta.

Catherine M. Bowman, formerly of Forbes & Bowman, has opened the **Bowman Law Office**, Savannah.

Ed Ennis, *Constangy Brooks & Smith*, Macon and a former U.S. Attorney, is registered as a mediator with the Georgia Office of Dispute Resolution.

Duke Groover has joined the firm of **James, Bates, Pope & Spivey**, Macon as a partner.

L. Hugh Kemp, *Leitner, Williams, Dooley & Napolitan*, Dalton, has been selected to receive the General Practice and Trial Section of the State Bar of Georgia's Tradition of Excellence Award for a Defense Lawyer for 2007. The award recognizes a preeminent lawyer in general practice, the defense bar, plaintiff bar and an outstanding jurist.

Mike Miller, *Drew, Eckl, Farnham*, Atlanta, will become the chair of the Commercial Transportation Litigation Committee of the ABA at its August annual meeting.

Matt Moffett, *Gray, Rust, St. Amand, Moffett & Brieske*, Atlanta, was elected into membership of the American Board of Trial Advocates.

Joe Murphey, *Crim & Bassler*, Atlanta, has become a registered mediator and is currently mediating in the Atlanta area, and beyond, through Miles Mediation & Arbitration, Inc.

Paul W. Painter, Jr., *Ellis, Painter, Ratterree*, Adams, Savannah received the State Bar of Georgia Chief Justice Thomas O. Marshall Professionalism Award The award honors a lawyer who demonstrates the highest professional conduct and paramount reputation for professionalism.

Christopher E. Parker has recently joined **Mozley Finlayson & Loggins**, Atlanta as a partner.

Lynn Roberson, *Swift, Currie, McGhee, Hiers*, Atlanta, was selected as one of the 50 top women attorneys in Georgia by the Super Lawyers group in March 2007.

Baker, Donelson, Bearman Caldwell & Berkowitz has moved to Six Concourse Parkway, Suite 3100, Atlanta, GA 30328.

Forbes & Bowman, Savannah, is now **Forbes, Foster & Pool**.

McCall, Phillips & Williams, Albany changed the firm name to **McCall Phillips Williams & Powell**.

Smith Moore and *Carter & Ansley*, Atlanta, have joined forces. Carter & Ansley brings 13 attorneys to the new firm. More information, including new contact information for former Carter & Ansley attorneys, can be found at www.smithmoorelaw.com.

Condolences

The GDLA is saddened to report the passing of **James E. Humes, III**. Mr. Humes was with *Hatcher, Stubbs, Land, Hollis & Rothschild, Columbus.*

New Members

The GDLA recently welcomed the following new members: **Evelyn M. Fletcher**, *Hawkins & Parnell*, Atlanta; **William B. Hill, Jr.**, Ashe, Rafuse & Hill, Atlanta; **Matthew L. Hilt**, *The Hilt Firm*, Atlanta; **Nicholas Hinson**, *Mabry & McClelland*, Atlanta; **Matthew Jordan**, Carlock, *Copeland, Semler & Stair*, Atlanta; **Bryce Mowbray**, *Gray, Rust, St. Amand, Moffett & Brieske*, Atlanta; **Scott Porch**, *Callaway, Braun, Riddle & Hughes*, Savannah; **Elliot Dustin Tiller**, Atlanta; **T. Daniel Tucker**, *Callaway, Braun, Riddle & Hughes*, Savannah; **Amy Jones Urban**, *Carlock, Copeland, Semler and Stair*, Atlanta; **Peter Werdesheim**, *Carlock, Copeland, Semler and Stair*, Atlanta; **Mark W. Wortham**, *Hall, Booth, Smith & Slover*, Atlanta

GDLA Increasing Visibility

Lynn Roberson, *Swift, Currie, McGhee & Hiers*, Atlanta, and **Evelyn Fletcher**, *Hawkins & Parnell*, Atlanta, represented the GDLA at separate induction ceremonies for new admittees to the State Bar. Most bar associations were there represented.

The GDLA recently held its first reception for the Judiciary in the Augusta area this August. Attending were Judges **Roper**, **Blanchard**, **Jolly**, **Hamrick**, **Jennings** and **Christine**. More than 25 members were able to spend valuable face time with these judges in a casual setting. GDLA board member **Jamie Weston**, *Hull, Towill, Norman, Barrett & Salley*, Augusta, planned the event. GDLA president **Bob Travis**, *Powell Goldstein*, Atlanta, spoke briefly to recognize and welcome the judges, express the appreciation of GDLA for their attendance and provide some information on the efforts of GDLA to benefit the civil justice system.

GDLA members **Charles McDaniel**, Insley & Race, Atlanta; **Kenneth Sisco**, Hawkins & Parnell, Atlanta; and **Matthew Stone**, *Freeman, Mathis & Gary*, Atlanta, recently presented a seminar to the Council of Magistrate Court Judges. Approximately 75 judges attended. McDaniel presented a seminar on Georgia contract law, while Stone presented a seminar on damages. In the afternoon Sisco made a presentation on construction defect claims under Georgia law. The seminar was a tremendous success and the Council of Magistrate Court Judges greatly appreciated the seminar and looked forward to future presentations by GDLA members.

Cases of Note

Randy Moody, Drew, Eckl, Farnham, Atlanta, obtained a defense verdict on behalf of his client in a lawsuit tried in Cobb County, Georgia. The plaintiff alleged that Randy's client was vicariously liable for a driver who crossed the center line while under the influence of cocaine and struck the plaintiff head-on, causing multiple broken bones and more than $129,000 in medical expenses.

Randy also obtained summary judgment in a declaratory judgment case in the U.S. District Court for the Northern District of Georgia, working with Mike Mills. The court ruled that undertaking defense of the putative insured within a month or so before the insurer sent out a reservation of rights did not waive the insurer's right to challenge coverage by a petition for declaratory judgment. Civil Action File No. 1:06-cv-376.

Shoplifting can't be used for impeachment as a "crime involving dishonesty" under 2005 impeachment statute (0020070329142748) 2005 statute which changed rules for impeachment from "crimes of moral turpitude" to "acts involving dishonesty" effected a change in standard -- "acts involving dishonesty" does NOT include theft offenses, a Court of Appeals panel rules. Adams v. State, A06A2124 (Ga.App., March 27, 2007). Under OCGA § 24-9-84.1(a)(3), a prior theft conviction is not a crime involving "dishonesty" which is admissible to impeach a witness or defendant. Following a majority of federal circuit courts' interpretation of Federal Rules of Evidence Rule 609(a)(2), upon which the 2005 Georgia statute is based. "In Georgia, prior to the enactment of OCGA § 24-9-84.1, a witness could be impeached by proof of general bad character or by proof that the witness had been convicted of a crime of moral turpitude. Sapp v. State, 271 Ga. 446, 448(2) (520 S.E.2d 462) (1999). Under that rule, theft and shoplifting were considered crimes of moral turpitude. Id. Instead of expressly codifying the existing law, the legislature adopted the language of the federal rule, thus using 'dishonesty or false statement' instead of 'moral turpitude.' Had the legislature intended for the new law to be applied in the same manner as the existing law, it seems logical that it would have used the same language. We are persuaded by the reasoning of the Eleventh Circuit, other federal circuit courts and many state courts that, for impeachment purposes, crimes of 'dishonesty' are limited to those crimes that bear upon a witness's propensity to testify truthfully. While we are not bound by decisions of the federal circuit courts, they are persuasive. McKeen v. FDIC, 274 Ga. 46, 48 n. 1 (549 S.E.2d 104) (2001); see Hinton [v. State, 280 Ga. 811, 819 (631 S.E.2d 365) (2006)]." "Accordingly, we conclude that Adams's prior conviction for misdemeanor theft by receiving stolen property is not a crime involving dishonesty within the meaning of OCGA § 24-9-84.1(a)(3). The trial court therefore erred by admitting it." Harmless error, however. Smith concurs specially, would hold that theft is a crime involving dishonesty based on dictionary definition of dishonesty, without regard to federal precedent.

Lynn Roberson, Swift, Currie, McGhee & Hiers, Atlanta prevailed again in representing a liability insurer on a coverage question. In *First Specialty Ins. Corp. v. Flowers*, Case No. A06A2186 (Ga. App., March 27, 2007), an appeal of a denial of the insurance company's Motion for Summary Judgment in the trial court in a declaratory judgment action, First Specialty Insurance Corporation prevailed in its argument that the assault and battery exclusion in its liability policy barred coverage for the claims in the underlying action wherein the claimant was suing an apartment complex for the robbery and shooting death of the decedent on the premises.

Robert R. "Rusty" Gunn, II, assisted by associate **Slade Edwards**, both of Martin Snow, Macon and Greg Hodges, Oliver, Maner and Gray, Savannah, recently received a defense verdict for an insurance company in a bad faith (refusal to settle) lawsuit which saved the insurance company from having to pay an excess verdict of over $7,200,000.00

The original case involved a car wreck where the plaintiff was hit head-on by Grange Mutual Casualty Co's insured, who was DUI. The Plaintiff and his wife sustained serious injuries. He was hospitalized for a couple of months with broken bones and internal injuries. The plaintiff was in a medically induced coma for part of his hospitalization. His family retained counsel in while he was still hospitalized. The Plaintiff's lawyer filed suit before he was discharged from the hospital and then presented a policy limits demand to settle as soon as the suit was answered. The Grange automobile insurance policy had a $50,000 bodily injury limit. Defendant was also arguably covered by a commercial policy issued by Auto Owners which had a $1,000,000 limit. The demand was made expressly contingent on Auto Owners paying its limit in addition to Grange paying its $50,000. It made no reference to what the Defendant and Grange would get in return. It simply said Plaintiff would "settle all claims". Auto Owners responded that they did not have enough info to respond and made no offer.

The defense firm, after numerous consultations with Grange, responded in writing that Grange would pay its full policy limit in return for a "full release with indemnification language and dismissal with prejudice of the lawsuit." Plaintiff's counsel took the response as a counteroffer and refused further negotiations. The case proceeded to trial where the Plaintiff obtained a verdict in the amount of $7.2 million.

Upon taking an assignment of the Defendant's rights, the Plaintiff (represented by the same lawyer) then sued Grange saying it negligently refused to settle and should be responsible for the entire verdict. Plaintiff contended Grange should have offered to settle by paying its limits in return for a limited release and that Grange should have known Plaintiff couldn't accept under Grange's "contingencies" which would have prevented Plaintiff from being able to pursue Auto Owners' excess policy. (He later settled with Auto Owners for $750,000.) Grange's position was that it responded to the offer as made and had done everything in its control to accept the demand by offering its limit and, if Auto Owners had done likewise, the case would have settled. See Cotton States v. Brightman, 276 Ga. 683, 580 S.E.2d 519 (2003).

The bad faith suit was tried in Chatham State Court before pro hac Judge Rick Gnann on Dec. 11-13th. The jury was out about an hour and a half before returning a defendant's verdict. The jury apparently agreed that the plaintiff's lawyer had tried to set up the insurance company so that there would be a chance at a bad faith verdict.

Plaintiff has filed a Motion for New Trial, currently pending.

Gunn says that the verdict is important not only because it saved Grange from a verdict of over $8,000,000.00 (with interest) but because the firm representing the Plaintiff has a well-known reputation for using similar tactics in almost all their cases.

Paul E. Weathington and **Wayne D. Toth** of The Weathington Firm, Atlanta, successfully represented Lawrence S. Weiss, M.D. and ENT of Georgia, LLC in a week-long trial in Fulton County. The plaintiff Raymond Banks was being seen by Dr. Weiss, an otolaryngologist, for treatment associated with severe epistaxis (severe nosebleed).

Due to continuing problems associated with these nosebleeds, the plaintiff went to Fayette Community Hospital on October 31, 1998, for recurrent nosebleed of the right nasal passage. His nasal passage was repacked by an emergency room physician. The plaintiff returned to the hospital on the early morning of November 1, 1998, for continuing problems associated with the nosebleeds. Dr. Weiss removed the Surgical packing, inserted an Epistat balloon pack into the right nasal passageway and inflated it, thereby resolving the nosebleed. Mr. Banks was admitted to the hospital for further medical evaluation.

On November 2, 1998, Dr. Weiss discussed with the plaintiff the idea of performing a nasal endoscopy on November 4, 1998, to evaluate the plaintiff's nasal passageways. The plaintiff agreed to the nasal endoscope evaluation. On November 3, 1998, the plaintiff subsequently decided to leave the hospital against medical advice; Dr. Weiss recommended that Mr. Banks stay in the hospital and pursue the course they previously discussed.

The plaintiff was subsequently treated by another ENT who performed a nasal endoscopy, which led to a complete ethmoidectomy. The plaintiff alleged that Dr. Weiss repeatedly tried to incorrectly insert the nasal balloon packing into his nostril. Allegedly, this caused his airway to become obstructed, which led to necrosis in his nasal passage and a perforation in his septum. The plaintiff further alleged that because of the pain and trauma he experienced, he was unable to work as a landscaper. The plaintiff's wife, Mary Elizabeth Banks, was a co-plaintiff in the matter, asserting a loss of consortium claim.

After a week of trial, the jury deliberated for approximately one and one half hours before returning a defense verdict.

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Brad Marsh and Jim Johnson, Swift, Currie, McGhee & Hiers, Atlanta, along with an associate, successfully defended Caterpillar Inc. in a nuisance action brought by 30 plaintiffs in a lawsuit filed in Stephens County, Georgia. The jury awarded no damages to the plaintiffs who individually sought damages, alleging the operations of the Caterpillar Facility in Stephens County interfered with the use and enjoyment of their property. At the close of more than two weeks of trial, the 12-person jury deliberated three hours before rendering 30 separate defense verdicts on all claims.

At trial, each of the plaintiffs offered testimony on their own behalf, with representatives from Caterpillar and the Stephens County Development Authority testifying for the defense, along with expert testimony provided by Brian Soucy, president of Global Environmental Solutions, Inc. While plaintiffs' testimony centered around their individual claims of loss of use and enjoyment, Caterpillar countered with descriptions of the extensive efforts made to bring Caterpillar to Toccoa, the

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positive economic impact Caterpillar has made on Stephens County and the surrounding community, as well as the measures Caterpillar has taken to ensure compliance with all pertinent statutes and environmental regulations, along with concerted efforts to act as a considerate neighbor to surrounding properties. At the close of trial, Caterpillar successfully moved for a directed verdict on plaintiffs' punitive damages and attorneys' fees claims which was granted by Senior Judge Robert B. Struble before the jury considered plaintiffs' remaining individual claims for compensatory damages. At the close of deliberations, no damages were awarded to any of the plaintiffs.

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GDLA members **Alan F. Herman** and **Sharon A. Zielmanski** of *Hawkins & Parnell*, Atlanta, earned a defense verdict recently for a chiropractor in a case of alleged malpractice. The plaintiff, a gentleman employed as a service manager for a service station's repair department, contended that improper chiropractic adjustments required him to have back surgery in the form of a gill procedure at L5/S1, which involved surgery to encompass that area, along with a previously fused area at L4-5.

The plaintiff suffered from longstanding spondylolisthesis and had traumatically injured his back, leading to an initial fusion at L4-5 in 1989. Plaintiff contended that he was essentially symptom-free with respect to leg pain and that he only had occasional soreness in his back after overdoing activities in the ensuing years after his initial surgery.

On January 30, 2002, the plaintiff began a course of chiropractic care for his midback, although he complained of some low back pain. During the course of the chiropractic treatment for the midback pain, plaintiff complained of thigh and leg pain. The chiropractic adjustments changed from those targeting the midback to lower back adjustments, which the plaintiff contended were contraindicated in light of the coexistence of the spondylolisthesis and the previous surgery at L4-5. Plaintiff contended, through expert testimony, that the defendant chiropractor began treatment of the lower back without taking an appropriate history, performing a proper physical examination, taking additional x-rays and without properly informing the plaintiff of the procedures undertaken and prior to the time that the plaintiff's diagnosis changed.

The defendant contended that the adjustments to the lower back were not forceful in nature and that manipulation of the sacrum, even in the presence of the prior fusion at L4-5 and the spondylolisthesis at L5/S1, did not violate the standard of care. The defendant stressed that he did not deviate from the standard of care in any way and that no act or omission on his part proximately caused or contributed to the plaintiff's injury and damage. The defense claimed that the plaintiff's second back surgery was the combined result of the spondylolisthesis caused by mother nature and actions taken by the plaintiff, which, in essence, overstressed his back.

On August 10, 2006, a jury in the State Court of Fulton County rendered a verdict in favor of the defendant chiropractor.

Lynn M. Roberson and **Christopher Reeves** of Swift, Currie, McGhee & Hiers, Atlanta, recently obtained a very favorable verdict in the case of Coralyn Banks v. Cajun Construction General Contractors, Inc., et al., State Court of Fulton County; Civil Action File No. 04-VS-072015-C, before the Hon. Myra Dixon, Feb. 5-12, 2007. Defendant Cajun Construction admitted negligence at trial. Following 7 days of trial, the jury of 12 deliberated 4 hours and 35 minutes and returned a verdict for the Plaintiff against defendant Cajun Construction only in the amount of $38,000 for compensatory damages and $37,000 for attorney's fees and costs of litigation. Cajun's workers had operated some gasoline powered equipment indoors next to plaintiff's health food store. This work caused a build up of carbon monoxide in the work area, some of which escaped into plaintiff's store. Plaintiff was exposed to carbon monoxide of 75 parts per million for 45 minutes. She claimed that the exposure caused permanent brain injury and total disability. Plaintiff sought $6-9 million in closing argument. The Defendant had made a pretrial offer of judgment in the amount of $125,000.

Al Parnell and Jack Sibley, *Hawkins & Parnell*, Atlanta, received a defense verdict in an asbestos products liability jury trial in Alameda County, California recently. The plaintiff, Neil Lesage, a living mesothelioma patient, was a life-long painter who claimed that his exposure to joint compounds and other materials increased his risk of cancer. The plaintiff, his nephew and one employer testified about his product exposure, work history, and exposure to joint compound and other products. Mr. Parnell and Mr. Sibley were assisted at trial by local counsel, Larry Margoles of the San Francisco firm of Dryden, Margoles, Schimaneck & Wertz.

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Georgia State Legislature Update

By Rep. Edward H. Lindsey, Jr. (R-Atlanta)
Goodman McGuffey Lindsey & Johnson, Atlanta

Although the 2007 Session of the General Assembly lacked the fireworks surrounding the 2005 fight over Tort Reform and the 2006 Legislative av lanche surrounding Imminent Domain, the Legislature did pass significant legislation that will have an impact either directly or indirectly on attorneys practicing Georgia. Following are some of the highlights of the session.

I. General Civil Litigation

HB136 – Public Policy; Contract of Insurance; Indemnification

Georgia law already prohibits construction related contracts which allow one party to the contract to require the other party to indemnify the first party for the first party's own acts of negligence or willful misconduct. HB136 extends this prohibition to also prohibit the first party from requiring that the second party's insurance carrier provides such indemnification.

HB139 – Estates and Wills; Dissent and Distribution

House Bill 139 seeks to deal with situations in wrongful death actions and estate distributions in which one of the parents of a deceased minor child had previously abandoned the child but now seeks recovery for his or her portion of the proceeds from a wrongful death action or recover from the minor's estate. The Bill allows for an action in Probate Court which would strip the abandoning parent from any right to recover either for the wrongful death of a child or for a portion of the child's estate if the child died intestate.

HB221 - Professional Malpractice Charges; Affidavit

House Bill 221 modifies O.C.G.A. § 9-11-9.1 which requires that an Affidavit be filed with a Complaint for professional malpractice. The Bill expands this requirement to include not only actions against individual professionals but also against professional partnerships and corporations performing duties recognized under Georgia law as professions.

In addition, the Bill also allows for the delayed filing of the Affidavit in a limited situation. Specifically, if the plaintiff's attorney is retained within 90 days of the statute of limitations, the plaintiff will have 45 days after the filing of the Complaint to supplement the pleadings with the Affidavit. The law requires an Affidavit from the attorney affirming the date in which his or her firm was retained. In addition, the law does not require the defe dant to answer the Complaint until 30 days after the Affidavit has been filed.

HB551 – State False Medicaid Claims Act

Federal law has long recognized the right of individuals with knowledge of fraudulent claims being made against the federal government to file suit on behalf of the federal government against wrongdoers. HB 551 now creates a state false claims cause of action to deal with fraudulent Medicaid claims. The act is similar in construction to the federal QuiTam litigation procedures which require the suit first be reviewed by the State Attorney General's office. The State Attorney General can either bring the action directly, allow the private individual to pursue the action, or seek to dismiss the action altogether. If found liable, the defendant may be required to pay in damages fines between $5,500 to $11,000 per claim and triple the amount of the initial claim, plus attorney's fees. Similarly, if the defendant prevails he or she is entitled to recover his or her attorney's fees.

This state cause of action has been very successful in other states in attacking fraudulent Medicaid claims. Since 2002, Texas has recovered more than $200 million in fraudulent claims. In 2005, the Florida recovered $50 million in fraudulent claims in one year .

SB94 – Dispossessory Proceedings; Clarify the Process for Judgments by Default

SB94 requires that at the time of the commencement of a dispossessory action the landlord set out by Affidavit any and all damages they are seeking in the way of past due rent. If the tenant fails to answer this action, the Court will not require any further evidence nor hold any hearings and the plaintiff shall be entitled to a verdict in judgment by default for all rents due if the proper Affidavit was filed with the commencement of the action.

In addition, SB94 also requires that non-refundable fees be expressly segregated from security deposits in leases.

SB101 – Agricultural Facilities in Nuisance Suits

Already under Georgia law, the timber industry already enjoyed certain protections from nuisance laws where surrounding landowners subsequently move close to a lumber plant already in operation. This Bill simply extends that protection to plants which also manufacture sheetrock. These nuisance limitations do not apply if the plant is operating in a negligent fashion or in violation of any state or federal law or environmental regulation.

SB182 – Torts; Asbestos/Silica Claims

In response to a recent Georgia Supreme Court decision, SB182 seeks to limit certain asbestos and silica claims. In regards to claims which have accrued before the

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effective of the statute, the bill simply codifies existing law which requires that the claimant provide evidence from a qualified physician who certifies to a reasonable degree of medical probability that the personal exposure to either silica or asbestos was a contributing factor to the claimed injury. In regards to claims after the effective date of the statute, the doctor will need to provide a certification to a reasonable degree of medical probability that the asbestos or silica was the primary cause of the resulting injury. The bill further requires that for all future claims mere exposure to silica or asbestos is insufficient to bring a cause of action. In the future there must be prima facia evidence of actual physical impairment or injury. Furthermore, the statute of limitations will not begin to run on these claims until such injury has been discovered through the exercise of reasonable diligence.

II. Domestic and Juvenile Court Proceedings

A. HB153 – Juvenile Court Oversight of DFACS

HB153 requires greater Juvenile Court oversight of the placement of children in the custody of the Department of Family and Children Services. Under the present law, DFCS was required to notify a court of changes in the placement of a child but had no actual jurisdiction to object to such placement. HB153 closes this seemingly incongruous loop hole. It now requires not only must the court be notified of such changes in the child's custody plans but also allows the court to conduct a hearing and to overrule the placement. The Juvenile Court's role is still somewhat limited. The court has the power to overrule the placement of a child in the custody of DFACS but still cannot direct where such placement will be made.

HB369 – Child Custody Reform

HB369 is a major rewrite of how child custody proceedings will be held in Georgia courts. It requires or allows for the following:

(1) Direct right of appeal of all child custody orders;

(2) Submission of a parenting plan to the court by both parties prior to a contested child custody hearing;

(3) Upon request of either party, the court is required to provide within 30 days of the hearing written Findings of Fact and Conclusions of Law in support of a child custody placement;

(4) The parties are allowed to enter into an agreement to have child custody matters decided by binding arbitration; and,

(5) The court is permitted to award attorney's fees in child custody matters.

In addition, the bill also lays out a series of factors for the court to consider in determining the best interest of the child. Finally, the bill curtails the unique Georgia rule allowing 14-year-olds to elect which parent to live with. The Bill allows for the child's election to be overruled by a finding of the court that the election is not in the best interest of child and limits the child to making election no more than once every two years.

HB497 – Adoption; Surrender Rights

HB497 helps to streamline the adoption process in Georgia. Currently, a father cannot voluntarily terminate his parental rights for adoption purposes until after the child is born. Under this bill, any putative biological father may voluntarily surrender his parental rights at any time during the pregnancy. By allowing for this prebirth surrender, it is hoped that the adoption process can be expedited.

III. ... And Justice for All

HB16 – Public Employees; Fraud, Waste, Abuse in State and Local Operations

Georgia law already provides certain protections for state employees who come forward as whistle blowers with information about fraud, waste and abuse in state operations. HB16 extends these protections to local and county employees as well.

SB139 – Georgia Public Defender Standards Council; Transfer from Judicial to Executive Branch

SB139 transfers the operation of the Georgia Public Defenders Standards Council from the judicial to the executive branch.

This transfer was the result of concern that there existed an inherent conflict with the council remaining under the judicial branch, since it is also the responsibility of the courts in criminal matters to determine the adequacy of the defense being provided by the state to indigent criminal defendants. Therefore, the transfer was intended to provide greater checks and balances in our indigent defense system.

SR246 - Study Committee on Indigent Defense

SR246 creates a study committee on indigent defense to review the operations of the present system and suggest improvements.

HB274 – Notary Public Applications

HB274 revises the requirements for individuals applying to be a notary. The bill requires individuals be either a U.S. citizen or legal resident of Georgia. In addition, the bill requires the notary to provide certain identification at the time of application and provide residence and valid telephone number. The bill also requires the individual

attesting to the character of the applicant to have known the applicant at least 30 days. HB274 is in response to a request by the Superior Court Clerks to tighten up the application procedures for notaries. The clerks are concerned with the tracking of notaries given the recent expediential increase in mortgage fraud in Georgia.

HB24 - Georgia's Advance Directive

HB24 is an overhaul of Georgia's Advance Directive Procedures in terms of living wills and durable powers of attorney. The bill creates a unified advance directive written in plain English which will consist of the patient laying out what he or she wants done if they are incapacitated, and assists the individual's agent and healthcare providers.

III. Coming Up in 2008

There are several bills still pending before the General Assembly which may come up again during the 2008 Session. These include:

•HB115 dealing with State Bar admission procedures;
•HB119 which increases the salaries for trial and appellate court judges;
•HB292 which expands the use of private process servers in Georgia;
•HB872 allows for juries to consider the failure of a plaintiff to wear a seatbelt as evidence of contributory negligence;
•HB97 & 102 provides for a judicial election reform;
•SB276 expands uninsured motorist coverage in Georgia

IV. Conclusion

I encourage all attorneys to get actively involved in the legislative process. There are only 22 lawyers in the Georgia House, so your input into laws effecting your practice are invaluable. For more information on any of the bills mentioned in this update or any other litigation, please visit www.legis.state.ga.us.

Employment Law Case Law Update

By David A. Cole,
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GDLA Employment SLC

The following case law update was provided by the GDLA's Employment Law Substantive Law Committee.

Title VII: Knowing and Voluntary Release

Myricks v. Federal Reserve Bank of Atlanta, __ F.3d __, 2007 WL 675341 (11th Cir. 2007).

Dwight Myricks, a former employee of the Federal Reserve Bank, filed a complaint of race discrimination under Title VII. During that lawsuit, the bank restructured its operations and eliminated approximately 200 jobs, including Myricks's job. All employees were offered a choice between two severance packages: one year of salary and enhanced retirement benefits in exchange for a release of claims or two weeks of salary continuation without a release.

The bank sent a draft of the release to Myricks's attorney, along with a letter explaining that the release was intended to settle Myricks's pending lawsuit. Myricks and his attorney tried to negotiate a more generous severance package over the next two months, but they could not reach an agreement with the bank. On the last day of the severance offer, Myricks signed the severance agreement without any alterations. The bank then sought a judgment of dismissal of the pending lawsuit.

Myricks argued that the release did not prevent him from continuing with his lawsuit because it was not knowing and voluntary. Specifically, he argued that, because he and the bank were attempting to negotiate a more generous settlement package, the jury could infer that he did not understand that his execution of a severance agreement available to all employees would compromise his pending lawsuit. The Court of Appeals rejected this argument, however, and held that "an employee's decision to consult an attorney before signing a clear release creates a presumption that the release is enforceable." Since Myricks consulted with a lawyer and had more than two months to review the release, this created a presumption of enforceability. "A genuine issue of fact may exist when an employee has not been given enough time to review the agreement after being terminated, is not educated enough to understand the waiver, or is misled to believe that the release was necessary to prevent the employer from taking an unlawful action, but an educated employee with ample time to consider an agreement cannot profess ignorance about its clear terms after consulting an attorney." Since Mryicks presented no other evidence rebutting this presumption of a knowing and voluntary release, the bank was entitled to summary judgment.

Title VII: Retaliation; Pretext

Crawford v. City Of Fairburn, __ F.3d __, 2007 WL 926052 (11th Cir. 2007).

Title VII: Legitimate, Non-Discriminationary Reason

Title VII: Sexual Harassment; Timeliness

Chambless v. Louisiana-Pacific Corp., __ F.3d __, 2007 WL 865854 (11th Cir. 2007).

Title VII: Faragher/Ellerth Defense

Baldwin v. Blue Cross/Blue Shield of Alabama, __ F.3d __, 2007 WL 805528 (11th Cir. 2007).

Fela: Standard of Causation

Norfolk Southern Ry. Co. v. Sorrell, 127 S. Ct. 799 (2007).

Section 1981: Ministerial Exception

Ross v. Metropolitan Church of God, 471 F. Supp. 2d 1306 (N.D. Ga. 2007).

State Law: Negligent Hiring

Underberg v. Southern Alarm, Inc., ___ S.E.2d ___, 2007 WL 704589 (Ga. App. 2007).

State Law: Master and Servant; Scope of Employment

Marwede v. EQR/Lincoln Ltd. Partnership, __ S.E.2d __, 2007 WL 641527 (Ga. App. 2007).

To read the entire quarterly employment law case law update, please visit the Brief Bank of the GDLA Web site (www.gdla.org and login to the Member's Area).

Professional Malpractice Case Law Update

By William J. Hunter and Andrew M. Wilkes
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The following case law update was provided by the GDLA's Professional Malpractice Substantive Law Committee.

The appellate courts of Georgia have continued to issue opinions on Senate Bill 3 since its enactment in 2005. During 2006, the appellate courts issued opinions addressing the medical authorization, expert qualifications and venue provisions.

O.C.G.A. § 9-11-9.2– Medical Authorization

Northlake Medical Center, LLC v. Queen, 280 Ga. App. 510, 634 S.E.2d 486 (2006). In *Northlake*, the Court of Appeals held that O.C.G.A. § 9-11-9.2 was preempted by HIPAA because it did not provide the privacy protections afforded to patients by HIPAA and it was not possible to comply with the state statute without violating the federal statute. The Court found that O.C.G.A. § 9-11-9.2 did not have certain safeguards related to the disclosure of protected health information provided by HIPAA. In contrast to the majority's finding, the dissent concluded the provisions of 9-11-9.2 were consistent with the core elements provided by HIPAA. The opinion begs the question as to whether the legislative addition of the privacy safeguards alleged to be lacking by the majority could ultimately bring the statute into compliance with HIPAA.

Allen v. Wright, 280 Ga. App. 554, 634 S.E.2d 518 (2006). The Court of Appeals affirmed the trial court's denial of defendant's motion to dismiss based on a defective medical authorization. In a short opinion, the Court of Appeals found Northlake Med. Ctr. to be controlling precedent. The defendants were granted certiorari by the Georgia Supreme Court, and oral arguments were scheduled.

Two additional reported decisions addressing O.C.G.A § 9-11-9.2 were also issued by the Court of Appeals. See *Crisp Regional Hospital, Inc. v. Sanders*, 281 Ga. App. 393, 636 S.E.2d 123 (2006); *Griffin v. Burden*, 281 Ga. App. 496, 636 S.E.2d 686 (2006). Both opinions cited the holdings in *Northlake* and *Allen* in concluding O.C.G.A. § 9-11-9.2 is preempted by HIPAA.

O.C.G.A. § 24-9-67.1— Expert Opinions

The Georgia Court of Appeals issued several opinions addressing the admissibility of expert witness testimony in medical malpractice cases in light of the provisions found in O.C.G.A. § 24- 9-67.1, which was also part of Senate Bill 3. In *Cotten v. Phillips*, 280 Ga. App. 280, 633 S.E.2d 655 (2006), the Court rejected the proposition that O.C.G.A. § 24-9-67.1(c)(2) required that an expert testifying about the standard of care in a medical malpractice case actively practice in the same specialty or practice area as the professional whose conduct was alleged to be negligent. Instead, the statute requires simply that an expert must have knowledge and experience in the area of practice or specialty about which the expert is providing testimony. See also *Mays v. Ellis*, 2007 Ga. App. LEXIS 9 (January 5, 2007)(the statute's plain language "contemplates that the expert may very well have a different area of practice than the defendant doctor."); *Canas v. Al-Jabi*, 2006 Ga. App. LEXIS 1431 (November 20, 2006).

The application of O.C.G.A. § 24-9-67.1(c)(2) to expert affidavits was examined by the Court of Appeals in *Abramson v. Williams*, 281 Ga. App. 617, 636 S.E.2d 765 (2006). In Abramson, the defendants alleged that the expert affidavit was defective because it was executed by a physician (orthopedist) who practiced in a different specialty than the defendant (neurosurgeon). Consistent with the findings in Cotten, the Court held that section 24-9-67.1(c)(2) did not require that a plaintiff's expert be a member of the same specialty as a defendant doctor, so long as the affidavit showed he had the requisite knowledge and experience to give his opinion on the alleged professional negligence within the Complaint.

In *Tenet Healthcare Corporation v. Gilbert*, 277 Ga. App. 895, 627 S. E.2d 821 (2006), the Georgia Court of Appeals addressed whether a physician who signs an affidavit pursuant to O.C.G.A. § 9-11-9.1 must be licensed at the time the affidavit was signed in light of O.C.G.A. § 24-9-67.1. The Court found the affidavit in this case was not deficient pursuant to O.C.G.A. § 9- 11-9.1. The Court further noted, "[w]hether the execution of the affidavit constitutes a criminal violation may be used to challenge its credibility, but such is not relevant to the fact that the affidavit is valid testimony duly sworn to and executed before an authorized official, who has affixed the proper certification." Id. at 898, 627 S.E.2d at 825.

The Court addressed whether this physician was competent to sign an expert affidavit after the enactment of O.C.G.A.§ 24-9-67.1. Finding O.C.G.A. § 24-9-67.1 only requires the expert be licensed by the appropriate regulatory agency to practice his profession "at the time the act or omission is alleged to have occurred," the Court affirmed the trial court's denial of the motion to dismiss; "in a twist of irony, appellant's argument that the 2005 enactment should apply here would only strengthen [the physician's] credentials for giving the affidavit." Id. at 900, 627 S.E.2d at 827.

To read the entire case law update (including more cases than on this page), please visit the Brief Bank of the GDLA Web site (www.gdla.org and login to the Member's Area).

Insurance Coverage Case Law Update

By David P. Dekle
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GDLA Insurance Coverage SLC committee

The following case law update was provided by the GDLA's Insurance Coverage Substantive Law Committee.

Statutory Amendment Requiring Insurers to Offer UM Coverage Equal to Liability Coverage did not Increase Amount of UM Coverage on Existing Policies, Even Upon a Subsequently Added Vehicle.

Soufi v. Haygood, 282 Ga. App. 593, 639 S.E.2d 395 (Nov. 29, 2006)

FACTS: Named insured's wife suffered injuries while driving her Toyota Sequoia and served their UM carrier, Nationwide, seeking $300,000 of UM coverage, an amount equal to the liability coverage offered under the policy instead of amount of UM coverage shown on declarations page. Prior to the accident, the named insured placed all the family cars under one policy which had initially been issued in 1998. That policy carried liability coverage of $300,000 per person with a cap of $300,000 per occurrence. On January 9, 1998, the named insured signed a form electing UM coverage in the amount of $100,000 per person and $300,000 per occurrence. The named insured's wife never signed any UM election form in conjunction with any policies. On August 20, 2001, the insureds added the Sequoia to the policy and paid an additional premium.

HELD: The 2001 amendment to O.C.G.A. § 33-7-11 requiring insurers to offer UM coverage in an amount equal to liability coverage unless the insured selects otherwise did not increase the amount of UM coverage in a policy issued prior to the statutory amendment's effective date. The addition of a new vehicle to the policies after the amendments effective date did not entitle the insureds to additional UM coverage. The insurer was not required to obtain a separate election form from the named insured's spouse.
RATIONALE: The Court of Appeals reasoned that the 2001 amendment to O.C.G.A. §33-7-11 was intended to make the policy's liability limits the default provision for UM coverage unless the insured affirmatively elected UM coverage in a lesser amount, and it retained the insured's option to reject all UM coverage. The statute as amended expressly states that it is not applicable where the insured named in the policy rejects the coverage in writing, need not be provided in a renewal policy where a named insured has previously rejected coverage, and need not be increased upon renewal of the policy from the amount shown on the declarations page for coverage existing prior to July 1, 2001.

Other Updates Include . . .

Intra-Family Exclusion in Supplemental Liability Policy is not Against Public Policy.

Hoque v. Empire Fire & Marine Ins. Co., 281 Ga. App. 810, 637 S.E. 2d 465 (Oct. 6, 2006)

No-Fault Insurance Required for School Children Riding School Buses is Satisfied More Appropriately by Medical Payments Coverage and its Limits, not Liability Coverage Limits.

Coregis Ins. Co. v. Nelson, 282 Ga. App. 488, 639 S.E. 2d 365 (Nov. 20, 2006)

Insurers for Owner and Property Manager were Co-Primary and Shared Indemnity and Defense Costs on 50-50- Basis.

Graphic Arts Mut. Ins. Co. v. Essex Ins. Co., 465 F.Supp. 2d 1290 (N.D.Ga. Dec. 8, 2006)

Insurer does not Waive the One-Year Contractual Limitations Period by Investigating Claim or Making Settlement Offer that is Rejected.

Georgia Farm Bureau Mut. Ins. Co. v. Pawlowski, 2007 WL 465765 (Ga. App.) (Court of Appeals No. A06A2011)(Feb. 14, 2007)

Automobile Policy did not Provide Liability Coverage for Vehicle Where Insured had Purchased Only Proper Coverage.

Simalton v. AIU Ins. Co., 2007 WL 738761 (Ga. App.) (Court of Appeals No. A06A1878)(March 13, 2007)

Without Corroborating Witness, UM Coverage not Afforded for Ladder Left in the Road.

Hohman v. State Farm Fire & Casualty Auto. Ins. Co., 283 Ga. App. 430, 641 S.E. 2d 650 (Court of Appeals No. A06A2107)(Feb. 5, 2007)

Insurer is not Estopped from Denying Coverage for Deleted Vehicle After Stating that Coverage Exists.

Danforth v. GEICO, 282 Ga. App 421, 638 S.E. 2d 852 (Nov. 16, 2006)(cert. denied, Feb. 5, 2007)

To read the entire quarterly insurance case law update (including more cases than on this page), please visit the Brief Bank of the GDLA Web site (www.gdla.org and login to the Member's Area).

Construction Case Law Update

By Ken Sisco,
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Chair, GDLA Construction SLC committee

The following case law update was provided by the GDLA's Construction Substantive Law Committee.

McKinney v. Regents of the University System of GA et al.
Court of Appeals of Georgia
284 Ga. App. 250;
February 8, 2007

This was a personal injury case. Plaintiff was an employee of a subcontractor who was injured when he contacted an enclosed power line while operating a jack hammer. The trial court granted summary judgment to the defendant general contractors and property owner concluding they were not liable to plaintiff because his supervisor had been adequately notified about the location of the buried electrical duct bank. The court found that any duty defendants had to warn plaintiff of buried electrical lines was satisfied by notice to plaintiff's supervisor.

Britton et al. v. Farmer el al.
Court of Appeals of Georgia
283 Ga. App. 733
February 23, 2007

This is a personal injury action. Plaintiff, a telephone company employee, was injured when he fell through an opening in the floor of the second story of a garage. The Court of Appeals found the company which built the garage and its president were entitled to summary judgment as they could not be liable for negligent construction unless they fraudulently concealed it, which was not the case here.

J. E. Black Construction Company, Inc. v. Ferguson Enterprises, Inc.
Court of Appeals of Georgia
284 Ga. App. 345
March 20, 2007

A contract between a subcontractor and general contractor provided the subcontractor would charged actual cost plus 10 percent for materials. The general contractor alleged the subcontractor did not charge actual cost, but a higher amount that it supported with price quotes from the supplier. The Court of Appeals upheld the trial court's ruling on the fraud claim, finding the general contractor had not shown it reasonably relied on the quotes. The court stated the general contractor had presented no evidence the supplier intended to induce it to act or to refrain from acting. The supplier's general manager and showroom consultant both testified the supplier did not know what the subcontractor did with its price quotes because it was not their business to know or care what kind of agreement a general contractor had with its subcontractors. As for negligent misrepresentation, the general contractor had shown neither reasonable reliance nor economic injury. The general contractor had presented no evidence it could have otherwise obtained the material for less money than the amount the general contractor paid the subcontractor. Indeed, the evidence was to the contrary.

Green v. Eastland, Homes, Inc. et al. Eastland Homes, Inc. v. Green
Court of Appeals of Georgia
284 Ga. App. 643
March 28, 2007,

This is a stormwater run off claim brought by a home owner against a developer and contractor which performed various clearing and development activities on an adjoining property. The issue presented in the appeals was whether the landowner presented evidence showing that both the contractor and the developer engaged in activities that artificially increased the water runoff from their upper land onto her lower land. The Court of Appeals held that the combination of the lay testimony as to the excessive runoff and the expert testimony that such run off was caused by the development and construction activities required that summary judgment in favor of the contractor be reversed, but that the denial of summary judgment to the developer be affirmed. Neither the trial court nor the Court of Appeals could consider the credibility of the testimony presented. Moreover, merely because the county approved the development activities did not mean that either or both could be not be held liable for nuisance. Finally, the landowner's action against the alleged creators of the water-runoff nuisance was authorized, regardless of their having sold the property.

Langfitt et al. v. Jackson et al.
Court of Appeals of Georgia
284 Ga. App. 628
March 28, 2007

The Court of Appeals found home owners were required to arbitrate claims against their builder pursuant to an arbitration provision contained in a warranty insured by a third party. This case is significant since it addressed several critical issues involved in the enforcement of arbitration agreements.

To read the entire quarterly insurance case law update (including more cases than on this page), please visit the Brief Bank of the GDLA Web site (www.gdla.org and login to the Member's Area).

Use of Electronic Data in Accident Reconstruction

As the auto industry progresses in the digital age, more vehicle components such as engines, transmissions, anti-lock brakes and air bags are being monitored and/or controlled by onboard computer systems. Several of these systems store data which can be downloaded and utilized as a tool for accident reconstruction, driver training and log auditing. The primary systems from which useful data can be extracted are electronic control modules (ECM) from diesel truck engines and air bag control modules (SDM, EDR, or RCM) on certain vehicles. Unlike the Flight Data Recorders (black boxes) used in the aviation industry, which have standardized information and a governmental agency designated to extract and interpret the data, the data available in automotive applications varies from system to system.

Ten states have passed laws requiring the disclosure of the presence of a data recorder when a vehicle is purchased and clarification that the data is the property of the vehicle owner. Other states, including Georgia, have no laws addressing data ownership, and in those jurisdictions special consideration must be given to this issue. It is generally accepted that the ownership of the data is with the owner of the vehicle, however this may or may not be true in all cases, i.e. leased, rented, or financed vehicles. Ownership should be clearly established and/or permission obtained prior to the extraction of any data.

When a post-crash investigation establishes that one or more of the crash involved units has a device that may contain data related to the crash, steps should be taken to preserve and obtain the information. If the vehicle is owned by an adverse party, it is important to immediately communicate with the owner of the vehicle to assert your desire to obtain the data, and clearly state that the owner should take whatever steps are required to preserve this important evidence. Driving the vehicle or the use of improper techniques during the extraction process can reset and/or corrupt some of the data available, therefore these issues should be addressed as soon as possible.

Other states, including Georgia, have no laws addressing data ownership, and in those jurisdictions special consideration must be given to this issue.

Failure of the owner to comply with your request may give rise to a completely different claim.

Commercial Vehicles

Electronic engine control for diesel truck engines was introduced in 1985. The technology has been refined over the years and based on the date of manufacture, Caterpillar, Cummins, Detroit Diesel, Mack and Mercedes Benz diesel truck engines have various data that can be downloaded from the ECM.

This data can include vehicle speed, engine RPM, percent of throttle, brake switch status, clutch switch status and cruise control status from hard brake/quick stop reports. This data is captured by the ECM when the vehicle decelerates a set value in one second (typically 7 miles per hour). Detroit Diesel and newer Mack engines also capture this information from the vehicle's last stop, however, this information will be overwritten if the truck is driven after an incident.

The vehicle speed is obtained via the vehicle speed sensor located on the output shaft of the transmission which makes the speed data dependent on the status of the wheels loss of traction due to road conditions, i.e. wet or icy road surfaces, contact to the wheels by other vehicles/ objects during the crash, or loss of contact with the road surface (rolling over or becoming airborne), can affect the accuracy of vehicle speed information shown in ECM reports. The size of the tires mounted on the unit as related to the tire size programmed into the ECM also has an effect on the speed data and should be considered.

Another factor in determining the use of ECM data is the recorded information's relationship to the subject incident. Each ECM report is date/time stamped by an internal clock within the ECM and the ECM mileage. The ECM clock is subject to time loss/gain during normal operation and can be set to accommodate different time zones. During the data extraction the differences between real time, ECM time and PC time MUST be documented. The ECM mileage can also vary from the vehicles odometer because the ECMs mileage is calculated based on set values programmed into the ECM.

ECMs control the engine functions and are mounted on the engine. Therefore the units are subject to damage from the crash. It has been our experience that in some instances, damaged ECMs can be downloaded and valid information can be extracted; however crashes which disrupt the electrical system of the vehicle can prevent the ECM from capturing data and can produce anomalies and/or invalid data. Any use of the ECM data without a complete accident reconstruction by a qualified accident reconstructionist can lead to erroneous conclusions. (For list of available ECM information by manufacturer see attached chart.)

Passenger Vehicles

All passenger vehicles manufactured today have air bags that deploy when the vehicles air bag

system senses a collision. In the absence of a government mandated protocol each manufacturer uses a different system, some of which can be downloaded. The National Highway Traffic Safety Administration (NHTSA) is currently working on new rules to standardize the data collection by air bag control modules.

Sensing Diagnostic Modules (SDM), Event Data Recorders (EDR), and Restraint Control Modules (RCM) from select vehicles manufactured by General Motors and Ford will record data which can include speed, change in velocity (DeltaV), brake switch status, percent of throttle and seatbelt status during an air bag deployment and near deployments. With late model GM vehicles the data typically includes five seconds of information prior to algorithm enable. Data recorded during near deployments can be overwritten if the data is not extracted prior to the vehicle being driven again or if proper techniques are not followed during data extraction.

As with ECM, speed data stored in the SDM, EDR or RCM is obtained from sensors on the drive train and is dependent on the status of the vehicle's wheels. The same issues with loss of traction due to road conditions (i.e., wet or icy road surfaces, contact to the wheels by other vehicles or objects during the crash, or loss of contact with the road) can affect the accuracy vehicle speed information shown in SDM, EDR and RCM reports.

Electronic data from various vehicle components can have valuable information which can be used in investigations, including, but not limited to, crashes. This information should be used as one tool in a comprehensive investigation/ reconstruction. Like all tools, it requires a skilled, knowledgeable and experienced user to ensure results are accurate and defensible.

It should be noted that this topic is much too broad for complete coverage in this forum. Please contact us at 800-877-3260 for questions or further discussion of your particular situation.

For the complete article, including complete text and charts, visit www.gdla.org/forconelectronic - data.pdf.

A Winning Appellate Record

This article is the first of a three-part series on "nuts and bolts" of appellate practice presented by the Appellate Practice Substantive Law Committee.

As lawyers, we understand appellate courts in Georgia can base their decisions only on evidence that appears in the record. See *Sheffield v. Darby*, 244 Ga. App. 437 (2000).

The purpose of this article is to provide you with enough information to know how to procedurally ensure the evidence you need to support your appeal, or to defeat an opponent's appeal, makes its way into the record. This article is not intended to be an end-all, be-all of appellate practice in Georgia. It is intended to give a nuts-and-bolts understanding of the procedural steps to follow to ensure the record contains the necessary ammunition to win your case on appeal.

It is the responsibility of the appellant to prepare the record for appeal. O.C.G.A. § 5-6-41; see Dept. of *Human Resources v. Allison*, 276 Ga. 175. "Without question, it is an 'appellant's obligation to complete the record.'" *Holy Fellowship Church of God in Christ v. First Community Bank of Henry County*, 242 Ga. App. 400, 402 (2000). The appellant is obligated to designate in the notice of appeal "[t]hose portions of the record to be omitted from the record on appeal" and "whether or not any transcript of evidence and proceedings is to be transmitted as part of the record on appeal." O.C.G.A. § 5-6-37. After filing a timely notice of appeal, the appellant is then obligated to make timely payment of costs and file the requisite transcripts within thirty days. O.C.G.A. §§ 5-6-42 and 5-6-48; see also *Holy Fellowship*, 242 Ga. App. at 402. Once the appellant has fulfilled his obligations, the clerk of the court is responsible for preparing the record. Id.

It is fair to say that the appellate court rules allow transmission of the entire trial court record when necessary while preventing the unnecessary transmission of a voluminous record to the appellate court when only a narrow issue is being raised on appeal. When preparing your notice of appeal, be certain to err on the side of too much rather than too little. Better to have portions of the record transmitted and unused than to find yourself without the support you need in the record the day before your brief is due. However, that is not to say you should not strive for brevity when possible. Be diligent in getting the record prepared and costs paid. If you fail to adhere to the time constraints, the trial court may dismiss your appeal. O.C.G.A. § 5-6-48. If the court finds unreasonable and inexcusable delay on the part of the appellant in causing the record to be prepared or in paying costs, dismissal of the appeal is proper. *Holy Fellowship*, 242 Ga. App at 403, citing Sellars v. Nodvin, 262 Ga. 205 (1992).

If you are the appellee, you can designate additional portions of the record your opponent decided to leave out of the record. Within 15 days of service of the notice of appeal an appellee may file a designation of record identifying for inclusion all or part of the record omitted by the appellant. O.C.G.A. § 5-6-42; see *Long v. City of Midway*, 251 Ga. 364. Be sure to examine your opponent's notice of appeal carefully. If there is something else you want or need in the record, file your designation in a timely fashion. Be sure to recognize that, even as an appellee, you may responsible for costs and causing the transcript to be prepared and filed for those portions you have designated. Do not assume the appellant is on the hook for paying for the entire record if you designate portions of the trial court record for inclusion after the appellant has designated those same portions for omission from the record.

The record on appeal may also be prepared by recollection or by stipulation. O.C.G.A. § 5-6-41(g, i). If the case was not reported, the recollection must be agreed to by the parties but may be prepared in narrative form. O.C.G.A. § 5-6-41(d, g). Where the parties cannot agree, the trial court shall determine the correctness of the submission to the appellate court, and the court's ruling is not subject to review. O.C.G.A. § 5-6-41(g). Failure to adhere to the proper procedure in preparing the record from recollection will give the appellate court nothing to review and no basis to reverse the trial court's decision. *Perry v. City of Hampton*, 200 Ga. App. 329 (1991) (where appellant appealed his conviction and only document transmitted by clerk of court was a letter stating no transcript of the proceeding in the trial court existed. Defendant did not prepare a record either by stipulation or from recollection as permitted by statute. Court of Appeals upheld the conviction because it had nothing to review on appeal.) The common thread throughout is that the appellate court will not review documents or evidence that is not properly made part of the record. Stick to the rules, and most importantly, get the trial court to intervene when necessary.

The parties may also send a stipulation containing a statement of the questions that arose and were decided in the trial court along with a sufficient statement of facts in lieu of transmission of a transcript or record. O.C.G.A. § 5-6-41(i). The stipulation must be approved by the trial court before being sent to the appellate court. Id. This section of the code may be a particularly useful tool when the trial court proceeding giving rise to the appeal was unreported or where the issue to be decided on appeal is only a portion of the underlying case. The

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parties may save considerable costs in limiting appellate court review to only the questions that have arisen and based only upon an agreed fact pattern. Therein lies the challenge, however. It would be nice if parties could agree to such matters, but it may not be possible to reach an agreement if the issue appealed is particularly critical to the outcome of the case. Nevertheless, be aware that this option exists.

Should the need to supplement the record arise, you must adhere to the statutory procedure or risk having necessary portions of the record disregarded by the appellate court. The record may be corrected by stipulation or the trial court may agree to supplement the record after a hearing to determine what correction or supplementation is needed. O.C.G.A. § 5-6-41(f). The court may also correct or supplement the record sua sponte. Id. The trial court may then order the record corrected. Id. Failure to adhere to this procedure will prevent you from successfully supplementing the record. *Hardy v. Tanner Medical Center, Inc.*, 231 Ga. App. 254, 255 (1998) (where plaintiff's counsel attempted to supplement the record by filing affidavits it contended was omitted from the record. The Court of Appeals did not consider the affidavits, however, because the procedure for supplementing the record was not followed.)

The last hope of amending the record is O.C.G.A. § 5-6-48. This code section allows the appellate court "[a]t any stage of the proceedings" by motion or otherwise to make "all necessary amendments" or corrections to the record to allow the appellate court to rule on the case rather than dismiss the appeal. O.C.G.A. § 5-6-48. A motion for reconsideration, with attachments cannot be used to supplement a record for appeal. Griffin v. Loper, 209 Ga. App. 504, 505 (1993). Once the appellate court renders its decision, O.C.G.A. § 5-6-48 becomes the exclusive means by which to supplement the record. *Hirsch v. Joint City County Board of Tax Assessors*, 218 Ga. App. 881, 884 (1995) (in which the appellant submitted evidence to the appellate court never filed or made part of the record. The court held the evidence could not be made part of the record on a motion for reconsideration.) If you find yourself in the unenviable position of having an appellate court decision go against you because the record is insufficient to support your case, you can file a motion to supplement the record with the appellate court. The appellate court has the authority to correct or amend the record. O.C.G.A. § 5-6-48 is your last bite at the apple in terms of supplementing the record. Use it, if necessary.

Who pays cost for preparing the record? It depends. As noted above, the appellant must pay the costs of preparing the record on appeal. see *Holy Fellowship*, supra at 402. However, the appellant's responsibility for paying is limited to costs necessary to transmit those items in the record designated for inclusion by either the appellant or appellee the trial court deems necessary to complete the record. *Morris v. Budd*, 226 Ga. App. 455, 458 (1997). If the appellee designates items for inclusion in the record not necessary for consideration on appeal, the appellee bears the cost for preparing that portion of the record. Id. See also *Long v. City of Midway*, 251 Ga. 364 (1983); and *Jones v. Spindel*, 239 Ga. 68 (1977). In case you are inclined to ask for voluminous portions of the record to be sent to the appellate court to make life expensive and difficult for your opponent, the joke may be on you. Do not incur the cost of a monstrous record when only a limited issue is at stake and a short, concise record can be created. A concise record will allow the necessary evidence and proceedings to be considered without incurring unnecessary expense. Defense lawyers are often retained by insurers who would like us to be as cost conscious as possible.

Whichever side of the appeal you are on, try to limit the size and scope of the record sent to the appellate court to those items that are necessary to decide the issue(s) raised on appeal, and save your client money in the process.

This article highlights the means by which to get the proper and necessary portions of the trial court record to the appellate court for review. The object is to prepare a record which is thorough enough to give the appellate court the evidence necessary to render a proper ruling while not burdening the appellate court with useless documents. If you are he appellant, you can focus on what you need in the notice of appeal. It may be necessary to transmit virtually the entire trial court record for appeal. If the entire record is not needed, though, be thorough but concise. There is no need to prepare a record that resembles *War and Peace* when a sonnet is sufficient. If you are the appellee, be sure to designate what you need if the appellant has omitted it from the record. The consequences for failure to include evidence in the record can be fatal to an appeal. How many cases have we all read in which the Court of Appeals or Supreme Court refuses to review an enumeration of error because the evidence required for appellate review is absent from the record? Regardless of which side you are on, be aware that amending the record is possible if you adhere strictly to the statute. The rules provide ample opportunity to create an appellate record needed to win your appeal. Use every tool at your disposal. Good luck.

GDLA Spring Board Meeting Highlights

The following highlights from the GDLA's Spring, 2007 board meeting, held April 21, 2007 on Hilton Head Island, were submitted by Secretary Treasurer Jimmy Singer and edited by Executive Director Steve Milano.

The meeting began at 9:00 a.m., and adjourned at 11:32 a.m.

In attendance: Craig Avery, Jamie Weston, Ted Freeman, Hall McKinley, Jimmy Singer, Bubba Hughes, Clay Ratterree, Peter Muller, Mel Haas, Warner Fox, Jo Jagor, Bob Travis, Salty Forbes, Bruce Welch, Johnny Foster, David Whitworth, Joe Chambless, Sally Akins.

Special guests were Valerie Shea, DRI Regional Director from Fort Lauderdale; Kathy Maus, Florida Association of Defense Lawyers from Tampa; and Elizabeth O'Neill, Hawkins & Parnell, Chair of the Mass Tort Substantive Law Committee.

Jimmy Singer provided the treasurer's report, anticipating, as in prior years, ending the year with a bank balance greater than the preceding year.

Salty Forbes gave the membership report. We have 536 members currently on role, but 39 are delinquent in their dues. Salty reported that each of the prior two years we have received more than 100 new members; however, this year, we well below that.

Eight individuals were proposed for membership, and unanimously accepted (see page 4 of this newsletter for these individuals).

Bob Travis and Warner Fox reported on their efforts to meet with large firms. Due to the misconception of the makeup purpose and goals of the GDLA, Bob and Warner will meet with the managing partner, and/or litigation partners of each firm with more than 500 members prior to the annual meeting. They recently met with Troutman Sanders and the meeting was well received. It is Bob's plan to continue over the next year with firms between 250 and 500 members, then meet with those between 100 and 250.

Jo Jagor reported on the status of the younger lawyers section. At the previous day's DRIs Southeast Regional Meeting, the Alabama defense lawyers discussed numerous programs they have for younger lawyers, particularly a deposition boot camp. Jamie Weston agreed to assist Jo in evaluating and researching the possibility of approaching law students as members, and also approaching law schools to use the facilities at law schools, such as Georgia State, for seminars and training of younger lawyers, with programs such as a deposition boot camp. Elizabeth O'Neill agreed to help Jo with evaluating what type of specific functions the GDLA can plan for younger lawyers. A suggestion was made that since we will be in Ponte Vedra and not traveling a long distance for the 2008 annual meeting, we consider a specific function, or separate part of the program, for younger lawyers.

In Staten Bitting's absence, Steve Milano reported on the Workers' Compensation Academy, including attendance and financial results.

Johnny Foster and David Whitw0rth reported on the Substantive Law Committees. Elizabeth O'Neill also reported on the Mass Torts SLC. It was agreed that rather than simply publishing the quarterly updates online, they will be published in the newsletter.

Neither Kirby Mason nor David Nelson were present, so the report was given by Steve Milano. Very importantly, the blast e-mail system, even the "to sender" reply function, has changed so that now replies go into a searchable database. Discussion was held concerning alerting or other instructional language to the effect that when replying to one of these e-mails, they will be saved and made available to the membership.

On Judicial Relations, Steve Milano reported the GDLA was present at the Magistrate Judge's Conference and someone from the GDLA will be invited back when the Magistrate Judges meet again. Jamie Weston reported that though a date had been set and a place reserved for the Augusta Judicial Reception, it was learned the date was only one week from a previously scheduled Augusta Bar Association Reception for a new federal judge, Judge Wood. It was therefore agreed to move the GDLA reception to mid-summer.

The fall Board Meeting has been scheduled for Barnsley Gardens the last weekend of October. The Board had previously discussed at the winter meeting, and as a result of a motion, passed unanimously, decided that rather than doing a winter Board Meeting in Atlanta, and a Judicial Reception, that meeting will now be moved to the spring. The spring Board Meeting, rather than a travel meeting, so close to the annual meeting, will now be in Atlanta, and the winter meeting will be a travel meeting with an effort to evaluate possible sites for future annual meetings.

Steve Milano reported on the Trial Academy. Approximately 40 attended the Trial Academy, and a special lunch dealing with marketing was provided by Al Parnell this year. The Trial Academy continues to be one of the shining examples of the benefit of the Association. It provides a tremendous benefit to our member firms, has been cited as attractive to the larger firms interviewed by Bob and Warner and breaks even for the GDLA.

Clay Ratterree and Steve Milano reported on sponsorships. It is anticipated that the sponsorships will increase and we may receive as much as $30,000.00 this year. The

Board was reminded to make every effort they can, when possible, to use those sponsors who provide such support for our Association.

Ted Freeman reported on the Amicus Committee. The committee recently wrote an amicus brief on a petition for certiorari to the Supreme Court on the issue of the admissibility of a statement when mention was made in the statement of settlement. The Supreme Court has not yet decided whether certiorari will be granted.

There was no report from the legislative liaison. However, the GDLA has circulated information which comes to one or more officers of this association, simply advising of new legislation or proposed legislation. The GDLA does not take a formal position on this legislation, but will continue to circulate it to its members for informational purposes.

Bruce Welch provided the DRI Report. He said the State Representative and SLDO meeting recently held in Chicago was very beneficial. As DRI state rep, Bruce shares information not only about the state and local defense organizations (what others in the country are doing), with our executive committee and executive director, but also with the various chairs of committees so that GDLA can benefit from work previously done by the DRI. Bruce also reported on the Southeast regional meeting of Florida, Alabama, and Georgia held the day before. This was hosted by the GDLA, which is done once every three years on a rotational basis by each of the states.

Under new business discussions were held concerning winter CLE. It was the general consensus that it would be difficult for the association to do both a worker's compensation academy and winter CLE, given the timing and judicial receptions. While the winter CLE was successful for the Association, and of great benefit to its Members, it was usually held in January and was a benefit for those seeking CLE hours. Now given the substantial number of third parties offering CLE's, as well as the increase in DRI seminars, and even online CLE's, there is concern that a winter CLE may not be of sufficient benefit to the members. Informal inquiry will be made between now and the fall Board Meeting and the issue will be again discussed.

There being no other business the meeting was adjourned.

continued from page 1

the insured under the liability policy remains unsatisfied. Thus, the Direct Action Statute, "being in derogation of the common law, must be strictly construed." Applying this rule of strict construction to the Direct Action Statute as it read prior to 2000, the Court of Appeals consistently held that in order to maintain an action against a motor carrier's insurer, the claimant had to prove that the insurance policy was filed with, and approved by, the PSC. Furthermore, it was the motor carrier -- and not the insurance company -- who bore the responsibility of ensuring that the policy was filed.

In 2000, the legislature amended the Direct Action Statute to change the "dubious result" by which companies who did file proof of insurance were at a "disadvantage" as compared to those companies who failed to do so. To remedy what the Court of Appeals described as this "anomalous statutory scheme," the General Assembly penned two significant changes to the Statute. First, it was amended to put the burden on the insurance company (rather than the motor carrier), to file the proof of insurance with the PSC. Second, the statute was amended to remove the mandatory precondition to suit that the proof of insurance be on file with, and approved by, the PSC. The 2000 amendment expressly provides that "[t]he failure to file any form required by the commission shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer."

B. The Federal Single-State Registration System

For decades, the federal government has required interstate motor carriers to obtain a federal permit reflecting compliance with various federal requirements. In 1965, Congress authorized states to require proof that the operator of an interstate truck had obtained such a permit. Dozens of states accepted the invitation, and began requiring proof of the federal permit. In 1991, however, Congress enacted the Single State Registration System ("SSRS"), 49 U.S.C. §14504. The SSRS "allows a trucking company to fill out one set of forms in one state (the base state), and by doing so to register its federal permit in every participating state through which its trucks will travel."

Of importance here, the SSRS provides that "only a state acting in its capacity as registration state under such single state system may require a motor carrier ... to file satisfactory proof of required insurance," and that "such single state registration shall be deemed to satisfy the registration requirements of all other states." Thus, "when a state registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden." In recognition of the federal scheme, Georgia Code § 46-7-16 says that a carrier engaged solely in interstate commerce is not required to file the policy or certificate of insurance required under § 46-7-12. Instead, a carrier need only obtain from its base state a "registration receipt" issued pursuant to the SSRS. § 46-7-16(a).

C. The Inapplicability Of § 46-7-12 To Interstate Motor Carriers

Against the backdrop of the SSRS, defense counsel confronting an attempt to add their out-of-state motor carrier's insurer as a defendant under the Direct Action Statute should first confirm neither the motor carrier nor the insurance company has filed proof of insurance with the PSC. Likewise, if the trucking company is engaged in interstate commerce governed by the U.S. DOT, counsel should determine which state has been designated as the company's registration state under the SSRS. If counsel can establish that the motor carrier has already filed proof of insurance in a state other than Georgia, a compelling argument can be made that the Direct Action Statute has no application, and therefore the insurance company cannot be joined in the lawsuit.

As an initial matter, any challenge to application of the Direct Action Statute should emphasize that it is in derogation of the common law and requires strict construction/compliance. Thus, the Direct Action Statute, by its own terms, contemplates the filing of proof of insurance only in order to obtain a certificate of public convenience and necessity from the PSC. While the 2000 amendment to § 46-7-12 amended certain "anomalous" results and relieved claimants of particular evidentiary burdens, the Direct Action Statute still states that the failure to file documentation -- namely proof of insurance -- as "required" by the PSC does not affect the right of a plaintiff to join an insurance company. Thus, interpreting the statute strictly, a plaintiff attempting to join an insurer must prove that either: (1) proof of insurance was filed with the PSC; or (2) if such proof was not filed, that the company was "required" to do so.

An interstate motor carrier, however, is not "required" to obtain such a certificate in order to travel through the state of Georgia, if they follow the SSRS and file somewhere else. In those circumstances, under § 46-7-16, the motor carrier need only carry the registration receipt issued by the base state. This receipt serves as evidence the company carries liability insurance. But as the Court of Appeals has already recognized, simply proving that the company has liability insurance is

insufficient to join the insurer as a defendant under § 46-7-12.

Counsel will find that they are not without case law support for such an argument. The Georgia Court of Appeals has held that this filing of insurance in the motor carrier's base state does not permit a claimant to sue the motor carrier's insurer under the Direct Action Statute. In Caudill v. Strickland, 230 Ga. App. 644, 498 S.E.2d 81 (1998), the plaintiff failed to prove (under the pre-2000 version of the Direct Action Statute) that a policy of insurance had been filed with the PSC. In response, the plaintiff asserted that he should be allowed to substitute the motor carrier's Arkansas registration for the requisite filings with the PSC. Rejecting that argument, the court explained that to adopt the plaintiff's theory "would mean that all insurers of interstate carriers who registered in other states under federal law could be joined in direct actions in Georgia." Because this was clearly not the intent of the legislature, the Court of Appeals held that the insurance company could not be joined as a defendant in the case.

Counsel should anticipate an argument in response that cites several state and federal decisions holding that interstate motor carriers are subject to the Direct Action Statute. Such an argument, however, is misplaced. In each of those cases, the courts addressed earlier versions of the Motor Carrier Act, under which the companies in question were required to (and did) file proof of insurance in Georgia. Without such a requirement, however, joinder of the insurance companies in those cases would not have been proper.

D. Conclusion

Defense counsel should continue efforts to remove any reference to insurance from their case when possible. With respect to interstate motor carriers, the federal Single State Registration System—combined with the rules of strict construction that apply under Georgia law—provides counsel with a strong argument for the dismissal of an insurance company as a defendant under the Direct Action Statute.

Brian J. Schneider is a graduate of the University of Richmond School of Law and former law clerk to James P. Jones, U.S. District Court for the Western District of Virginia. Prior to joining Watson, Spence, Lowe and Chambless, Albany, he practiced with Hunton & Williams in Richmond.

GDLA Annual Meeting Highlights

The 40th GDLA Annual Meeting took place at the Amelia Island Plantation in early June of this year, and featured an expanded CLE, trade show, cocktail parties, kids events and the annual GDLA Dinner & Dance.

More than 175 members, guests and industry representatives attended the weekend, which also included the annual GDLAbusiness meeting and election of new officers.

Bob Travis, Powell, Goldstein, Atlanta, was elected president. **Jimmy Singer**, Bovis, Kyle & Burch, Atlanta, was elected executive vice president. **Staten Bitting**, Fulcher, Hagler, Augusta, was elected secretary treasurer. **Evelyn Fletcher**, Hawkins & Parnell, Atlanta, was another new electee to the board. The entire board of directors can be found on page three of this issue.

The CLE portion of the weekend was coordinated by Bob Travis, and featured a morning of marketing topics and one morning of jury analysis.

Once again **Insurance Specialists, Inc.** took care of GDLA members' children during the weekend, with tennis, golf and spouses events rounding out the weekend.

Next year's annual meeting will take place June 12-15 at the beautiful **Ponte Vedra Inn & Club**.

Valerie Shea, DRI Southeast region director, presents outgoing GDLA president, **Warner Fox**, Hawkins & Parnell, Atlanta, with DRI's Exceptional Performance Award. Far left: **Nancy Anderson** of NutriFitGA takes questions at the annual Spouse/Guest breakfast.

Merrill Legal Solutions Welcome Y'all Cocktail Party

Clockwise from top left: Merrill Legal Solutions representatives **Patrick Estes**, **Doug Pristach** and **Jon Grace**: **Jimmy Singer**, **Tommye** and **Ben Easterlin**, King & Spalding, Atlanta and past president, **Jerry Buchanan**, Buchanan & Land, Columbus; **Bob Travis** chats with **Charles Norton**, general counsel of the Coca-Cola Bottlers Association and his family; the GDLA annual meeting is family friendly with kids made welcome; **Warner Fox** enjoys the perks of being GDLA president for one last night; new secretary/treasurer, **Staten Bitting**, keeps tabs on a passle of youngsters.

GDLA Annual Meeting Highlights

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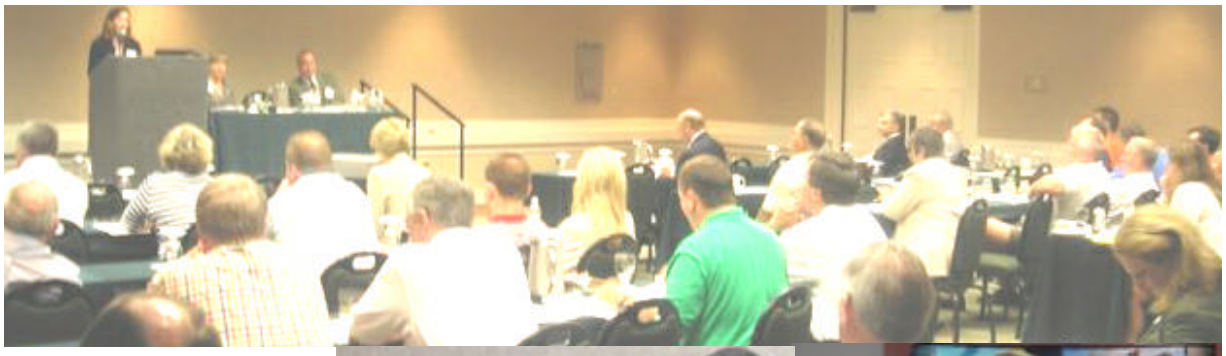


GDLA Annual Meeting Speaker Roster

Lin Wood - Powell Goldstein
& **Cari Brunelle** - Jaffe Associates

Lane Young - Hawkins & Parnell

Charles Norton - Gen. Counsel,
Coca-Cola Bottlers' Association

Mari Henry Leigh -
Meckler, Bulger & Tilson

Paul Talmadge
The Partners Group

Scott Sorrells & **Erin Meszaros**
Powell Goldstein

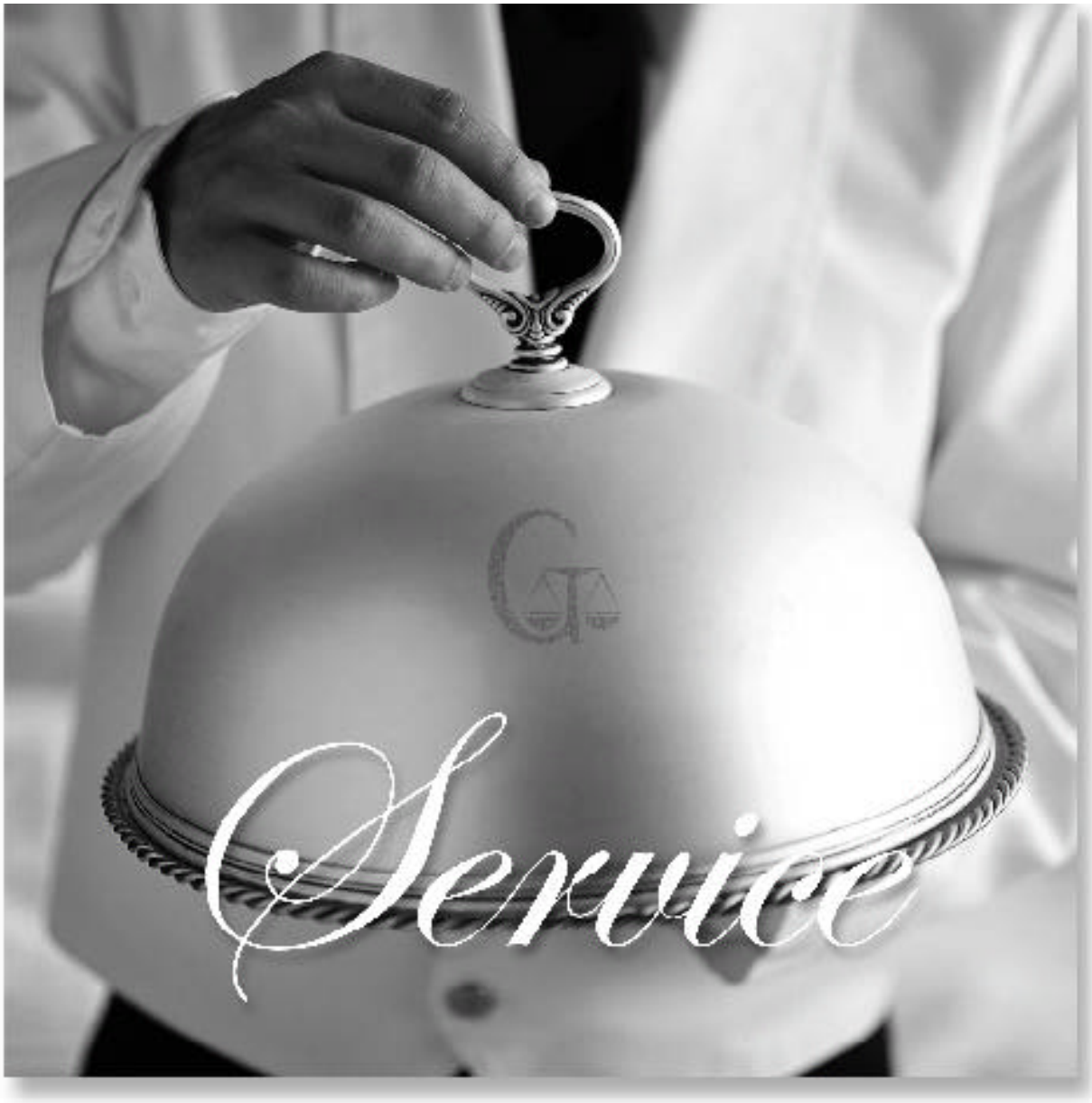
Ben Easterlin - King & Spalding

Gov. Roy Barnes
The Barnes Law Group

Jacqueline B. MacMillan &
Dr. Angela Mayer - Exponent,
Inc.

Robert "Rusty" Gunn
Martin Snow

Clockwise from top left: Attendees earned CLE hours in trial, professionalism and ethics during two days of dynamic sessions. Incoming GDLApresident **Bob Travis** presents **Warner Fox** with the GDLA's president's service award. **Grant Smith** follows up with one of the weekend's most popular speakers, Exponent's **Jackie MacMillan**; **Jon Grace** of Merrill Legal Solutions discusses trial services with **Rick Fields**; GDLA "Super Volunteer" and new vice president, **Lynn Roberson**, was recognized for outstanding service to the association.



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Benedict Consulting Golf Tournament

Clockwise from top left: Glenn Bass and Benedict's Chris Stewart; Chris Stewart congratulates the winning foursome of Dale Akins, Cindy and Forrest Brown and Craig Avery; Phil Lorenz, George Duncan and Jerry Buchanan; individual hole winners.

Brown &Gallo Tennis Tournament

Back row: Marcia Welch (Brown & Gallo), Holly and Grant Smith, Diane Moffett Bobbi Foster, Alison and Doug Wilde, Craig Avery, Marie Barnes, Teri Lorenz. Front row: Ellen Francis and Forrest Brown (Brown & Gallo), Resa Avery and Cindy Brown (Brown & Gallo). Left: Patty Singer and Doug Wilde.

GDLA Annual Meeting Highlights

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Once again, **Forcon International** sponsored the annual GDLA Dinner and Dance, ending the weekend on a high note. After a Lowcountry buffet, the tennis and golf winners were announced and prizes were distributed. After more mingling with friends, guests finished the evening dancing to showband, The Rigg. Forcon has already pledged to sponsor next year's Annual Dinner, with some new twists planned!

Left: Hosts Bill and Susan Ver Eecke and Jim and Patsy Robinson of Forcon with Warner Fox. Below: Ginger Ewerth of SEA and GDLA board member, Matt Moffett.

Forcon International Dinner & Dance

Top right: GDLA board member, **Peter Muller**, sings, "I Feel Good." Middle right: **Ginger Ewerth**, SEA, with **Holly Smith**, **Teri Lorenz** and **Resa Avery**. Below left: **Pat Fox** removes Warner's "President" tag and replaces ushers him into the ranks of Past President as **Salty Forbes** looks on. Bottom left: **Clay** and **Kasey Ratterree** and **Sally Akins** with the weekend's lone representative of The Dark Side, **Dale Akins**. Bottom right: **The Honorable Henry Newkirk** relaxes with GDLA board members **Steve Kyle** (meetings chair and past president), **Grant Smith** (past president); **Lynn Roberson** (vice president and SLC steering committee) and **Johnny Foster** (past president and SCL steering committee).

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Insurance Specialists, Inc. Kids Night

As they do every year, **Insurance Specialists, Inc.** took care of GDLA members' children during the week, with a sandcastle building contest during the day on Saturday, and a complete night of activities later that evening. Kids were treated to pizza, arts and craft, a variety of arcade games movies . . . and a nap, for the little ones! ISI is the official life, health and disability sponsor of the GDLA, and can work with you to provide insurance for your employees or your family.

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Annual Meeting Speakers Dinner

To show the association's appreciate to our annual meeting speakers (who provide their time free of charge to the GDLA), the executive committee treats speakers and their spouses and guests to a thank-you dinner. Clockwise from top right: **Jo Jagor**, **Honorable Henry Newkirk**; **Lynn Roberson**, **Ben Easterlin**, **Johnny Foster**; Powell Goldstein was well-represented at the annual meeting, with **Erin Meszaros**, **Lynn Wood** and **Scott Sorrels** presenting lectures; **Peter Muller**, **Gov. Roy Barnes**, **Steve Kyle**, **Marie Barnes**, **Patty Singer**; **Lynn Wood** and **Patty Singer** hit the dance floor with other speakers and spouses in the lounge after the dinner.

Thanks to the GDLA Sponsors who help make the Annual Meeting possible each year!

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GDLA 2007 Trial Academy

November 29 - December 1, 2007
Callaway Gardens, Pine Mountain, GA

What is the Trial Academy?

The GDLA 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.

Who Should Attend?

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.

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Buchanan & Land, Columbus

Richard W. Fields
Perry & Walters, Albany

Mary Katherine Green
Carlock, Copeland, Semler and Stair, Atlanta

Robert R. Gunn, II
Martin Snow, Macon

Kelly Amanda Lee
Womble, Carlyle, Sandridge & Rice, Atlanta

Tom Magill
Magill & Atkinson, Atlanta

S. Owens, Jr.
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Hawkins & Parnell, Atlanta

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Finch McCranie, Atlanta

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•How to cross-examine fact witnesses

•How to cross-examine expert witnesses

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•The dynamics of a closing argument

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