



Georgia Defense Lawyer[©]

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

Winter 2004

Coming Soon: Tort Reform in Georgia *A Look from Inside the Legislature*

Readers of this publication may recall that in the summer 2004 edition I predicted the Republican Party could gain control of the Georgia House of Representatives in the November 2004 elections. To the surprise of several Democrats, but fewer Republicans, this did occur. Republicans now control the Governor's Office and both Houses of the Legislature.

In the State Senate, Republicans strengthen their majority from 30 seats in the 56-member upper chamber to 34 seats after the November elections. It is noteworthy that approximately a half dozen new Republican Senators were elected against stiff opposition from

opponents perceived to be heavily funded by members of the Georgia Trial Lawyers Association.

On the House side, Democrats saw their 103-seat majority in the 180-member body shrink to a minority of 84 members the morning after the November elections. Since that time, three more Democrats have switched giving the Republicans a 99-seat majority. More defections may occur before the Legislature convenes formally on January 10, 2005.

What does all this mean to the possibilities of tort reform in Georgia? The probable result is that significant reforms are likely to pass out of the 2005 Legislative Session.

During the 2004 Legislative Session, a significant tort reform bill which, among other things, abolished joint and severe liability, reinstated vanishing venue, strengthened the expert witness rule, and prohibited non-economic damages awards in medical malpractice claims against emergency rooms, passed the Republican-controlled Senate.

The bill went on to die in the Democrat-controlled House. However, this legislative session, a Republican majority, likely friendly to several of these tort reform measures, and more, now rules the roost in the State House.

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Meet the Judges at the Second Annual GDLA Winter Judiciary Reception

Mark your calendars for February 10 to meet a variety of Georgia judges at the GDLA annual winter judiciary reception.

Judges and GDLA members will be invited for cocktails and heavy hors d'oeuvres at the Capital City Club in Atlanta, from 7 pm to 9 pm.

Last year's reception, the GDLA's first, included more than 20 judges and 40 GDLA members for a very intimate evening. We anticipate many more judges and attorneys this year, so don't miss out.

This reception will also be an opportunity to welcome the GDLA's new members, who will have been

voted into the organization earlier in the day at the GDLA winter board meeting, and their sponsors.

Many GDLA board and committee members, as well as a number of past presidents, will be at the function, since the GDLA's winter board meeting will take place earlier in the day at the law offices of Hawkins & Parnell in Atlanta.

GDLA members will receive an invitation by letter, as well as be notified by blast e-mail, with directions for submitting an RSVP.

Attendance is limited to current GDLA members only.



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President's Message

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Happy Holidays to all! As we navigate another holiday season, I want to let you know what is going on with your organization. Jim Elliott has just wrapped up another successful GDLA trial academy at Callaway Gardens. We had a large contingent of students who learned how to try a case from start to finish with a distinguished faculty of

Ponte Vedra. Ponte Vedra is traditionally our most popular venue because of the beautiful resort and attractive rates negotiated by the organization. Please make plans to bring your family to Ponte Vedra and get your CLE requirements out of the way early in the year. After a multiple year hiatus and due to popular demand, the Board is strongly

We are busily preparing for the second annual GDLA Judicial Reception at the Capital City Downtown Club on February 10.

prominent GDLA members. Thanks to Jim and the instructors who graciously volunteered their time for this worthwhile program.

Steve Milano is busily preparing for the second annual GDLA Judicial Reception scheduled at the Capital City Downtown Club on

considering holding the 2006 annual meeting in Bermuda. The Board will meet in Bermuda this spring to evaluate potential sites and plan the 2006 meeting.

If you haven't visited the GDLA web site at www.gdla.org lately, please do so. Steve Milano has

We anticipate attendance by several members of the Supreme Court of Georgia, Court of Appeals of Georgia, United States District Courts of Georgia, Atlanta Division and State and Superior judges from Fulton and De kalb Counties.

February 10, 2005 from 5:00 p.m. to 7:00 p.m. We anticipate attendance by several members of the Supreme Court of Georgia, Court of Appeals of Georgia, United States District Courts of Georgia, Atlanta Division and State and Superior judges from Fulton and DeKalb Counties. This is a wonderful opportunity to meet your judges in an informal setting. Please plan to attend this year's function.

We are currently scheduled to have the annual meeting June 16-18, 2005 at the Inn and Club in

recently given the site a facelift and it is an excellent tool to use in your practice. With the site, you can easily locate a member in any region in Georgia. In my experience, members are very generous with their time when you need to know about a judge, attorney or expert in another part of the state. Also, please check out our sponsors and give them a try.

Here's to you and your family this holiday season.

Grant B. Smith
President

Executive Director's Message

A GDLA member in his 40s with a wife and one child recently lamented that he was paying nearly \$20,000 annually for health insurance coverage, while a young lawyer with two children I met at the recent trial academy told me he was paying approximately \$10,000 annually in premium payments.

As some of you know, the GDLA, GTLA, Augusta Bar, DeKalb Bar, Atlanta Bar and Alabama State Bar are all part of a health insurance program that not only can save you significantly on your personal premiums, but extends to your employees, as well.

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According to Bill Bass of Insurance Specialists, Inc. (ISI), the company that administers our Health program, GDLA members are working with ISI to shop their coverage and in most cases saving considerable amounts of premium dollars. ISI can also advise you on the tax savings available through the new Federally approved Health Savings Accounts (HSA).

If you are struggling with high Health, Disability, Term Life and Professional Liability insurance premiums, contact Insurance

Specialists, Inc. today to see if you can significantly lower your premium payments. ISI is the founding sponsor of the GDLA and takes wonderful care of our members' children each year at our annual meeting with activities such as A Night with Nemo, Teen Pizza Party and Sand Castle Building contest.

Please see their ad on the inside front cover of this newsletter, or call 888-ISI-1959 or 404-814-0232.

Remember, this is the program that GDLA, GTLA, Augusta Bar, DeKalb Bar, Atlanta Bar and Alabama State Bar ALL have decided to endorse and offer their members.

The GDLA member insurance program is just one way the association serves the membership, and our board is committed to continuing to offer numerous benefits and services to you. If you have not been to the Defense Lawyers Services Directory at www.gdla.org, I urge you to go there and check out the expert witnesses, liability insurance carriers, trial services companies and other vendors who sponsor the association.

Steve Milano
Executive Director

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Join a Committee!

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

Member News

Burt Satcher of Jennings, **Sparwath & Satcher**, Marietta, received three favorable chiropractic malpractice trial verdicts for defendants this year.

The first case was before Judge Craig Schwall in Fulton State. The second case was in Cobb State before Judge Melody Clayton. Both cases involved allegations that the chiropractic treatments caused cervical disc herniations.

The third case was tried in Forsyth Superior and involved chiropractic treatments that allegedly caused a cervical vertebrae injury with loss of use of the patient's right extremity.

W. Earl McCall and his partner with **McCall, Phillips &**

Williams, Albany, successfully defended a general surgeon and his practice group in Coulquitt Superior Court in Moultrie. Plaintiff alleged she incurred \$120,000 in medical special damages and permanent damage as a result of injury during surgery. The jury was out for 1.5 hours before returning with a verdict.

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Barbara A. Marschalk is now a partner with with Drew Eckl & Farnham, Atlanta.

Fain, Major, Wiley & Brennan, P.C. has changed its name to **Fain, Major and Brennan, P.C**

Powell, Goldstein, Frazer & Murphy has changed its name to **Powell Goldstein, LLP**.

Weinberg, Wheeler, Hudgins, Gunn has opened has opened a Las Vegas, Nevada office.

L. Clint Crosby has joined **Baker, Donelson, Bearman, Caldwell & Berkowitz**, Atlanta, as an associate.

The GDLA welcomes new members **Cannon Alsobrook**, Savell & Williams, Atlanta; **Phillippa Victoria Ellis**, Owen, Gleaton, Eagan, Jones & Sweeney, Atlanta; **Anne Garliss Westbrook**, Callaway, Braun, Riddle & Hughes, Savannah; **Wayne S. Melnick**, Gray, Rust, St. Amand, Moffett & Brieske, Atlanta; **Carol P. Michael**, Weinberg, Wheeler, Hudgins, Gunn & Dial, Atlanta; **William L. Swank**, Greer, Klosik, Daugherty, Swank and McCune, Atlanta; **James R. Westbury, Jr.**, Mullins, Whalen & Westbury, Griffin.

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

Al Adams of Holland & Knight, referred **Caroline J. Tanner**; **Jo Jagor**, Carlock, Copeland, Semler & Stair, referred Eric Frisch; **Matt Moffet**, Gray, Rust, St. Amand, Moffett & Brieske, referred **Wayne Melnick**; **Rick Rominger**, Brennan, Harris Rominger, referred **Travis Windsor**; **George Talley**, Coleman, Talley, Newbern, Kurrie, Preston & Holland, referred **Timothy Talley**; **William Turnipseed**, Savell & Williams, referred **Canon Alsobrook**; **Doug Wilde**, Law Office of Douglas A. Wilde, referred **Tara Moulds**

Top 10 Georgia Law Firms by GDLA Membership

Hawkins & Parnell of Atlanta boasts the most GDLA members, with 24 active members. Almost 100 Georgia law firms have multiple GDLA members working at their firms. Rounding out the Top 10 firms with the highest number of GDLA members are...

- #2 **Fulcher Hagler**, Augusta
- #3 **Carlock, Copeland, Semler & Stair**, Atlanta
- #4 **Drew, Eckl & Farnham**, Atlanta
- #5 **Chambless, Higdon, Richardson, Katz & Griggs**, Macon
- #5 **Martin Snow**, Macon
- #5 **Mozley, Finlayson & Loggins**, Atlanta
- #8 **Dennis, Corry, Porter & Smith**, Atlanta
- #8 **Hall, Bloch, Garland & Meyer**, Macon
- #8 **Mabry & McClelland**, Atlanta
- #8 **Nall & Miller**, Atlanta

Other firms with at least five GDLA members include (in alphabetical order):

Brannen, Searcy & Smith, Savannah; **Brennan, Harris & Rominger**, Savannah; **Callaway, Braun, Riddle & Hughes**, Savannah; **Carter & Ansley**, Atlanta; **Coleman, Talley, Newbern, Kurrie, Preston & Holland**, Valdosta; **Crim & Bassler**, Atlanta; **Downey & Cleveland**, Marietta; **Ellis, Painter, Ratterree & Adams**, Savannah; **Hull, Towill, Norman, Barrett & Salley**, Augusta; **King & Spalding**, Atlanta; **Love Willingham Peters Gilleland & Monyak**, Atlanta; **Oliver, Maner & Gray**, Savannah; **Owen, Gleaton, Egan, Jones & Sweeney**, Atlanta; **Savell & Williams**, Atlanta; **Swift, Currie, McGhee & Heirs**, Atlanta; **Weinberg, Wheeler, Hudgins, Gunn & Dial**, Atlanta

Workers' Compensation Update

By N. Staten Bitting
Fulcher Hagler, Augusta

The State Board of Workers' Compensation presented its annual education seminar from August 29 through September 1 of this year in Atlanta. It was once again a popular event. Some 575 people registered for educational workshops in the subject areas of insurance/claims, rehabilitation, legal and medical topics. There were 62 speakers. Two hundred fifty-five exhibitors were present.

The Workers' Compensation Institute was held in October at Sea Palms in St. Simons. This was also well attended, with more than 400 registrants present. Judge Carolyn Hall gave her annual State of the Board overview as Chairperson.

She reported that Georgia was one of only eight states to receive an

A rating on its 2004 report from the Work Loss Data Institute. She also indicated that there is progress

Progress is being made in the major initiative known as the Integrated Claims Management System.

being made in the major initiative known as the Integrated Claims Management System. This will be implemented as a largely digital claims management and information retrieval system. The Board is also making a top-to-bottom review of the Workers' Compensation Fee Schedule in order to ensure meeting its goals of timely and high quality medical care.

At the Institute, Board Rules Chairman, Mark Gannon, reported that the committee is considering the new rules necessary to imple-

ment the Integrated Claims Management System, a new medical release authorization form for catastrophic rehabilitation coordinators, possible amendments to Rule 200 regarding physicians providing expert testimony and rules' changes pertaining to the Subsequent Injury Trust Fund.

The Board's Legislative Committee also met around the same time as the Workers' Compensation Institute. At present, the Board is reporting that no legislative agenda has been set for submission to the 2005 General Assembly. If you have any questions concerning the board legislative proposals, you may want to contact Janice Askin at the board.



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A comprehensive tort reform bill has been pre-filed in the Senate (SB3). This proposed legislation provides for the following:

- Changes to the venue law would be made so that where one defendant (the sole defendant for venue determination) is dismissed, the remaining non-resident motorist defendant may require venue be transferred to a more appropriate court.

- To be qualified to testify or provide an affidavit, an expert must have practiced or taught in the area to which the opinion relates.

- An offer of settlement is provided for. If the offer is rejected, and the judgment is less than 75% of the offer, fees and costs can be recovered by the offering party.

- Voluntary expression of sympathy by a physician would not be admissible as an admission of liability.

- Damages would be limited for emergency departments.

- Apparent agency for an independent contractor of a hospital would be eliminated.

- Joint and several liability would be eliminated and a plaintiff who is at least 50% responsible for the injury will be barred from recovery.

- Caps would be placed on non-economic damages of \$250,000 for health care providers, \$250,000 from a single medical facility and \$500,000 from all medical facilities, with a total cap of \$750,000. These damages could be paid by

providing payments through an annuity.

This legislation from the Senate, as well as other reforms expected to be introduced in the House, will probably culminate some time in March 2005 in a tort reform bill agreed upon by both bodies and forwarded to Governor Perdue for his signature. Although the final form of this bill is, of course, yet to be seen, stay tuned during this year's legislative session as changes are likely coming.

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



Congratulations to our "Send Your Secretary to Sandestin Beach" Contest Winner.

William R. Johnson of Moore, Ingram, Johnson & Steele, Marietta, submitted the winning contest entry in our dues renewal contest.

His assistant, Donna Gorman, will be treated to a weekend for two at the beautiful Sandestin Beach Golf Resort & Spa.

GDLA members who renewed their dues prior to their July 1 expiration had the opportunity to submit entries.

The winning entry was drawn by professor James McElhaney, the featured speaker at this year's annual meeting, held in Sandestin Beach.

Thanks to all of those who participated, and to the 60 percent of GDLA members who renewed their dues prior to expiration this year!

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An Introduction to Same-Level Falls and Falling Accidents

Accidental falls are a common and costly event, whether occurring in the workplace, at home, or during leisure-time activities. They are the primary cause of hospital admissions for trauma, and account for being the second leading cause of spinal cord and brain injuries. The dollar cost of fall injuries is exceeded only by that for motor vehicle injuries. The total lifetime cost of fall injuries in 1995 was estimated at \$64.4 billion. This cost is expected to increase by about one-third to nearly \$85 billion until the year 2020.

The study, investigation and analysis of falls and falling entails the crossing of borders that lie between and among numerous disciplines. They include anatomy, physiology, neurology, pharmacology, psychology, kinesiology, biomechanics, human factors, engineering and architecture. The detailed information embodied by such disciplines must ordinarily be developed independently of the information that is provided by the fall claimant. Moreover, it is important to determine if the claimant's account of the fall is in fact reasonably consistent with the current understanding and knowledge of the known characteristics and mechanics of falling accidents. This focus on same level accidental falls will include how, why and when a person will likely fall and the part of the body most likely to be injured.

Walking & Maintaining Body Stability

A knowledge and understanding of gait patterns during walking provides insight into analyzing same level falls. The human gait is a complex, integrated neuromuscular-skeletal activity which, if and when disturbed by the environment or personal factors, may cause large postural perturbations to the individual. These, in turn, may result in

an irreversible loss of balance.

A recognition of human body stability is also necessary for understanding same level falls. When there is a failure of one or more physiological mechanisms by which a person maintains stability, a fall will occur. Alternatively, these falls can occur when there is a loss or absence of body muscle tone to resist the effects or pull of gravity. An understanding of same level falls also requires insight into the concept of stable equilibrium of the body which, itself, is defined by a series of terms: center of gravity, gravity line and base of support. The center of gravity is a point about which the mass of the human body is equally distributed, and where the weight of the body is concentrated. It is located in a plane that is approximately 55 percent of the standing height and just in front of the 2nd sacral vertebral body.

The gravity line is a plumb line that originates and extends from the body's center of gravity to the base of support. When the gravity line falls within the support base, the individual is stable. However, when the gravity line falls outside of the support base, the person is unstable and will fall, unless the gravity line is promptly restored within the support base.

The base of support is the area encompassed by the location and spread of the feet and/or other supports. It is typically delineated as the area circumscribed by dashes surrounding and connecting the outside perimeter of the feet or a foot, and can include chair legs, a cane or walker, or crutch whenever they contact the ground or floor.

The Classification of Falls

Same level falls are classified by their mechanical causes. Essentially, this involves the identification and analysis of how and why

people become unstable, together with how and why the gravity line becomes positioned outside of the support base. Recognizably, the gravity line and its relative motion and position with respect to the support base will characterize the mechanism of any given fall.

There are five (5) categories of falls that provide an understanding of the biomechanics of falling accidents. They include the slip, trip, stumble, tumble and crumple. Each category has a defined injury pattern, and is also characterized by the following criteria: (a) if and where the gravity line intersects the support base and (b) the relative motion (when there is motion) between the center of gravity and the support base.

1. Slip

The most common cause of same level falls is slipping. In such instance, there is a sudden loss of footing that results from an unforeseen, unexpected and out-of-control slide of the foot. There is an abrupt and unexpected loss of all or a portion of the support base, thereby causing the gravity line to move rapidly outside of the remaining support base. The most predominant slip is one that results from a slippery walking surface. Slips occur quickly and may cause one or both feet (which comprise the support base) to move or slide forward and the trunk and head to move rearward. There is also angular rotation and motion of the center of gravity that occur at a relatively high velocity with respect to the support base. It is particularly noteworthy that the body's center of gravity always lands close to or directly over the slip situs. Consequently, there is little or no forward movement or displacement of the body in a slip and fall episode.

Slipping is caused almost exclusively by environmental factors that include such items as smooth soles

on shoes, ground ice, water, loose scatter rugs, grease or food spots, new floor wax, and the like. Therefore, slipping is often a preventable cause of falls.

2. Trip

In the course of a trip, one foot is abruptly arrested in its forward motion by contact with a near-ground obstacle. Consequently, the motion of all or a portion of the person's support base is retarded. However the inertial forward velocity of the upper body is not stopped, and the body's center of gravity continues to be in motion. This action carries the center of gravity and the gravity line out of the support base. If balance is not restored during the stumbling phase of a trip, the body will begin to fall in an anterolateral direction. The falling person may land in the prone posi-

tion (with the arms abducted), sideways or on hands and/or knees.

Tripping is caused by an abrupt change in elevation or by an obstacle or obstruction that is near the surface of the floor or ground. Some examples of trip causation would include a concrete expansion joint, the edge or a fold in a carpet, or a foreign object such as an electrical cord or cable on the floor. A trip has the potential to occur when such obstacles are greater than one-fourth of an inch in height. Tripping occurs only when a person is in motion; most often, this is forward motion. A trip is caused primarily by environmental factors.

3. Stumble

Stumbling is a trip that is followed by one or more steps by the person in an attempt to recover balance. The fall occurs when there is a fail-

ure to recover perturbed balance. Stumbling is caused by an abrupt arrest or an otherwise inappropriate relocation of all or a portion of the support base, and in the absence of a significant obstacle. The body's center of gravity is in motion at the time which then causes the gravity line to move out of the support base. Stumbling will most often result in a person falling in the direction of original travel or motion.

A stumble and subsequent fall are experienced primarily by the very young and the very elderly. Both categories of individuals may suffer from errors of gait, balance and/or insufficient corrective and protective responses to the challenges of body imbalance. In the case of the very young child, there is

Continued on page 10



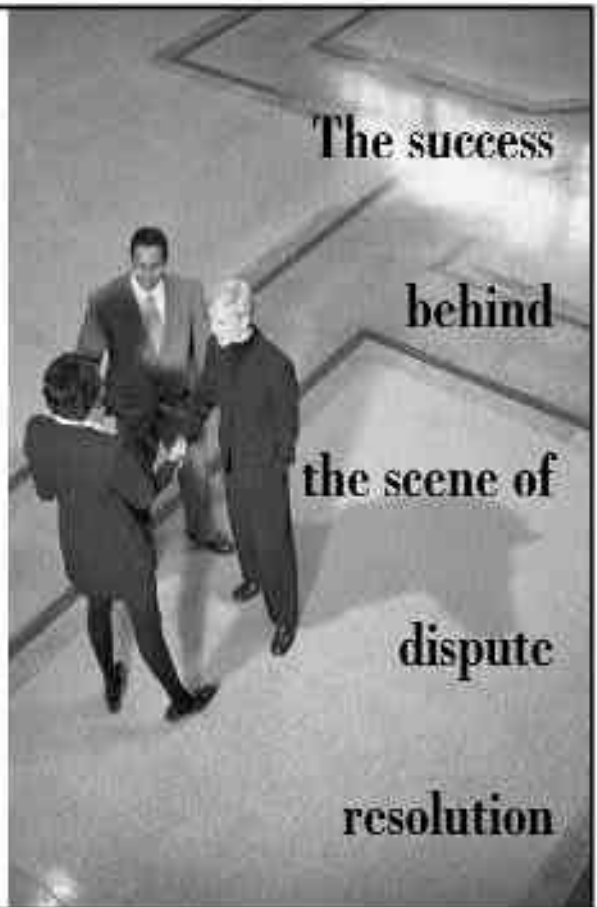
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Same-Level Fall and Falling Accidents

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an inadequately developed gait and relatively unpracticed balance and associated reflexes. At the other end of the spectrum are the very elderly who may have gait disturbances that originate in degenerative or other pathologic changes within the nervous, circulatory, respiratory and musculoskeletal systems.

Stumbling causes falls when the body's recovery reflexes are either too slow or simply absent altogether. It may also occur if the feet are not raised to sufficiently clear the ground or floor during the swing phase of walking or if they come down too early during a stride. A stumble fall can be viewed as a minimal trip-up that would not result in a fall in more agile persons. A stumble results primarily from biomedical factors, but minor environmental factors may also be contributory.

4. Tumble

Tumbling is a fall that occurs when the center of gravity is moved outside of the body or the gravity line is moved outside of the support base. An example of the former is sitting or rising from sitting, or getting in or out of bed. And, in the case of the latter, climbing or descending a flight of steps (particularly while carrying a package.) An additional component to tumbling involves the corrective responses which are either absent, diminished or too slow to effectively correct or reposition the gravity line to where it lies within the support base so as to prevent the fall. Primary and secondary causes of tumbling are biomedical and environmental factors, respectively.

5. Crumple

Crumpling is any one of several different types of total body collapse. In such instance the relative motions and positions of the center of gravity to the support base are irrelevant except, however, that

they may cause ground contact injuries. Crumpling occurs when there is a sudden loss of muscle tone of the body's anti-gravity muscles, i.e., a loss of the support base as is evident when a person loses consciousness or sustains a seizure. These muscles reflexly oppose the pull of gravity and thereby maintain body posture. In most instances, there is no warning of the impending collapse.

Crumpling falls are caused nearly exclusively by biomedical factors which include preexisting femoral stress factors that later became displaced; hence, the fracture preceded the fall. Other factors include cardiac dysrhythmia (irregularity in the rhythm of the heart), occlusive (blocking) disease involving the vertebral and basilar arteries, catalepsy (abrupt attacks of muscular weakness), akinetic epilepsy (seizures characterized by the sudden loss of postural control), normal pressure hydrocephalus (dilation of the cerebral ventricles due to obstruction of cerebral spinal fluid pathways, resulting in drop falls), cryptogenic drop attacks (sudden loss of muscle tone/strength that instantaneously and without other symptoms causes a fall), or a simple faint.

Injuries Associated with the Various Classifications of Falls

In the case of a slip, as the sliding foot accelerates and moves forward, the same side of the body (as the sliding foot) rapidly falls to the floor or ground in a posterior (backside) or posterolateral (backside and side) direction. There also occurs a concomitant protective extension of the upper extremities (hands and arms) unconsciously initiated by the body's fall protective reflex to "break the fall." In such instance, the person falling will land centrally on the buttocks or on the side of the

buttock, hip, thigh and shoulder/arm complex. Occurring injuries are in the form of soft tissue trauma and/or bone fractures. Upper extremity injuries are indicative of the body's fall protective reflex. There are no front facial injuries, and on rare occasion will there be an impact of the back of the head with the floor or ground.

When a person falls as a result of tripping, injuries can occur to the head (face) and neck, shoulder and elbow, hands and wrists, hip, thigh, knees, ankle or foot. Such injuries can be in the form of soft tissue trauma and/or bony fractures. Generally, injuries to the trunk are extremely rare.

The injuries attributed to stumbling are of the same type as those from tripping. Included are injuries to the head and neck as well as to the upper and lower extremities, and the hip. Soft tissue trauma and/or bony fractures characterize stumbling injuries.

Injuries resulting from tumbling would be expected to involve primarily the head (face) and trunk. The incidence of upper extremity injuries is rare, largely due to the fact that tumbling is generally caused by biomedical factors which diminish the existence and/or effectiveness of recovery reflexes and protective upper extremity extension reflexes.

In crumpling falls, head injuries are by far the most common and can involve the face, other sections of the skull and the brain itself. But other ground contact injuries represented by soft tissue trauma and bony fractures also are possible, and include those to the upper and lower extremities, the shoulder complex and the hip.

Conclusion

Historically (and even currently by some investigators), the investigation of a same level fall accident

simply involved a measure of the floor's slip resistance, the adequacy of lighting, an inspection of the claimant's shoes and a determination of the usefulness of corrective lenses worn or not worn by the claimant.

This was sometimes followed by examining and identifying defective construction, and citing violations of the appropriate building code. This kind of investigation and analysis, alone, is no longer adequate. It is now necessary to examine and evaluate issues of stability, balance, gait behavior, illnesses, use of medications, medical treatments and age-related disabilities at the time of the fall accident.

Ultimately, any description of a fall accident offered by a claimant must be consistent with the alleged accident causation as well as with

the current knowledge and understanding of the biomechanics and mechanisms of the five categories of falls. Adherence to a comprehensive and meticulous methodology in each case will insure the correct and proper resolution of a fall accident in terms of causation assessment. Moreover, it will enable claims personnel to determine the extent and magnitude of liability exposure at an early stage in the case and to set case strategy. In addition, it will increase leverage in early negotiations, causing some claims to simply evaporate. In the end, the benefits of using a comprehensive methodology can be realized in the form of reducing loss and expense dollars by promoting efficient claims resolutions.

Michael Romansky, Ph.D., J.D. has an educational background that includes industrial engineering, human factors, biomedical engineering, and accident and injury epidemiology. He has conducted accident and injury investigation and reconstructions, directed and performed product liability and reliability investigations, and has provided litigation support work involving issues of vehicular and work-place accident and injury epidemiology, personal injury mechanisms, human factors engineering and ergonomics, biomechanics and physiology, and safety engineering. He can be contacted by calling 770-717-7254 or by calling **Forcon International** at 770-390-0980.



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2004 GDLA Trial Academy Highlights

GDLA Trial Academy a Resounding Success

More than 35 young lawyers from across Georgia holed up at the Callaway Gardens Resort in Pine Mountain for three days in early December to learn the ins and outs of trial practice, working with some of the best defense lawyers in Georgia.

The GDLA Trial Academy drew attorneys from around the state to study expert witness examination, designing a trial strategy, voire dire/jury selection, opening and closing statements, presenting evidence, cross-examination, ethics and other related topics.

The weekend included social functions which gave attendees a chance to commiserate with fellow classmates and to network with the



faculty. The Thursday evening dinner was followed by "war stories" from the faculty and a "retreat" to the lounge for more camaraderie.

GDLA executive director **Steve Milano** stopped by on Thursday night for the academy dinner and spoke to the students the next

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morning about the many benefits and services provided by the GDLA to its members.

"We're pleased with the continued success of the trial academy and its role in providing invaluable experience to young lawyers who want to try cases," said **James Elliott**, trial academy chairman.

The faculty included Elliott, of Elliott, Blackburn, Barnes & Gooding, Valdosta; **Jerry Buchanan**, Buchanan and Land, Columbus; **Bill Harrison**, Mozley, Finlayson & Loggins, Atlanta; **Kelly Amanda Lee**, Womble, Carlyle, Sandridge & Rice, Atlanta; **Tom Magill**, Magill & Atkinson, Atlanta; **Sandy Owens**, Nall & Miller, Atlanta; **Ray Persons**, King and Spalding, Atlanta; **Lynn**

Roberson, Swift, Currie, McGee & Hiers, Atlanta; **Richard Willis**, Nelson, Mullins, Riley & Scarborough, Columbia, SC; and special guest speaker, **Michael Sullivan**, of Finch McCranie, Atlanta.

Trial academy attendees who are not members of the GDLA are now eligible for complimentary first-year membership, and those approved for membership at the winter board meeting of the GDLA will be recognized February 10 at the "Meet the Judges" reception at the Capitol Cities Club in Atlanta.

Special thanks to **Lisa Proctor** of Elliott, Blackburn, Barnes & Gooding for her able administrative work before and during the trial academy.



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GDLA 2005 Annual Meeting

June 16-19

**Ponte Vedra
Inn & Club**
Ponte Vedra, FL

Mark your calendar to join us for a fantastic weekend of CLE, family vacation, golf, tennis and camaraderie with your fellow defense lawyers from across Georgia!

GDLA Policy Regarding Amicus Curiae Briefs

It shall be the policy of the Association to authorize the filing of briefs amicus curiae sparingly and only in appropriate cases as described. Briefs amicus curiae authorized by the Association shall be filed only in the name of the Association.

A. APPROPRIATE CASES

1. Only at the appellate level and only in the highest court where the issue is likely to be determined.

2. Only when such a brief would constitute a significant contribution to the determination of the issue or issues involved and only where the issue or issues sought to be determined is:

a. Of peculiar significance to the interests of the defense trial bar; or

b. Of peculiar significance to the administration of justice.

3. Only when the case has some general application to the defense bar in general, and as a general rule, the Georgia Defense Lawyers Association should avoid cases which have application only to the insurance industry.

4. Only to advance argument with respect to the legal issues and not factual questions.

5. The GDLA desires to have the reputation at the Appellate Court level of:

a. Being extremely careful in choosing the cases in which it appears; and

b. Producing briefs of extremely high quality, so that the Georgia Defense Lawyers Association will have greater influence as an Association in the selective few cases in which it submits an amicus curiae brief.

B. AUTHORIZATION

Briefs amicus curiae filed on behalf of the Association shall be authorized by the Executive Committee (president, executive vice-president, secretary/treasurer and past president) plus the Chairperson of the Amicus Curiae Brief Committee [five voting members]. To the extent possible, the five members should discuss the case by telephone conference before voting whether to accept the case. Furthermore, this committee of five has the option of discussing how the substantive law issues should be approached by the Association's representative, with this additional direction being passed on to the author of the brief. The decision regarding whether to accept a particular case will be made by the majority of the voting members of this five member committee.

C. APPLICATION

1. Application for authorization of briefs amicus curiae may be submitted to the GDLA president and/or chairperson of the Amicus Curiae Brief Committee, who will refer the matter to the committee set forth in Section B above.

2. Each application shall be accompanied by:

a. A full statement of the facts of the controversy and the status of the litigation;

b. A statement whether the present appeal is likely to be the highest court where the issue will be determined [see Section A(1) above];

c. A statement of the principle or principles of law to be supported together with an explanation of the applicant's reasons for believing that the case is an appropriate one for Association involvement [see Section A above]; and

d. A full disclosure of any personal or professional interest in the matter of any applicant or proponent of the application.

D. JOINT BRIEFS

As a general rule, the Association will not join in briefs amicus curiae with other organizations except other local defense associations.

E. COSTS

1. The Association will accept NO payment from any applicant for the preparation or argument of briefs amicus curiae.

2. Costs of printing and filing the brief, and the costs of telephone conferences related to the authorization process and brief-writing process shall be borne by the Association. The attorney volunteering his or her time to write the brief shall not be paid any fee, but can be reimbursed for his or her out-of-pocket expenses such as long distance telephone calls, etc.

F. APPEARANCES

The brief amicus curiae shall show as counsel for the Association the author of the brief, the president of the Association and the chairperson of the Amicus Curiae Brief Committee.



Workers' Compensation Academy Announced

The Workers' Compensation Committee of the Georgia Defense Lawyers Association is planning its first Workers' Compensation Academy. This will be a one-day event presented on February 11, 2005. It will generally be modeled after the association's very successful annual Trial Academy.

There will be tutorials by experienced practitioners, and opportunities for the students to engage in practice exercises.

The first Workers' Compensation Academy will be limited to 20 students. If the first academy is successful and there a positive response from the defense community, this seminar may be expanded and may become an annual event for the GDLA.

Generally, the topics to be covered by the faculty will be discovery (with an emphasis on depositions of the physician and the claimant), preparation for the hearing, presentation of evidence and cross-examination at the hearing and the post-hearing brief. The practice exercise areas will be the deposition and conduct of the hearing itself, with the students participating based on a hypothetical set of case facts.

Enrollment is limited. If you are a young lawyer interested in attending, or if you would like for young lawyers in your firm attend, please contact Steve Milano to determine space availability.



GDLA Workers' Compensation Academy

February 11, 2005

Metro Atlanta (TBA)

Schedule

- 8:15-8:45 Registration
- 8:45-9:00 Welcoming Remarks
- 9:00-12:00 Group Workshop
- 12:00-1:00 Working Lunch
- 1:00-5:00 Group Break-Outs (5:1 student/faculty ratio)
- 5:00-6:00 Social Hour

6 CLE Hours - Limit 20 Students

E-mail contact@gdla.org
for more information

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GDLA Fall Board Meeting Highlights

GDLA Fall 2004 Board of Directors Meeting Highlights Lake Oconee, Georgia, October 16, 2004

The meeting was called to order by President **Grant Smith**. In attendance were: President Grant Smith; Vice President **John A. Foster**; Secretary/Treasurer **Warner Fox**; board members: **Staten Bitting, Bubba Hughes, Bob Travis, David Whitworth, David Nelson, George Hall, Luanne Clarke, Steve Kyle, Mel Haas, Walter McClelland, Lynn Roberson, Jo Jagor**, past presidents **Steve Kyle** and **George Duncan** and executive director, **Steve Milano**.

The winter board meeting minutes were adopted unanimously.

Warner Fox reported the association's current cash on hand and receiveables. The association's current debts were primarily composed of charges owed to San Destin, for Web site development, printing and CLE expenses.

There was a discussion of the amicus committee and that Johnny Foster would contact Ted Freeman to get an update. It was noted that there should be a mention of the amicus committee in the newsletter. It was determined that guidelines for the publication of an amicus brief would be set forth in an upcoming GDLA Journal.

Johnny Foster presented the membership report. A motion was made to admit the following new members, and all were adopted and approved unanimously:

Cannon Alsobrook, Savell & Williams; **Phillippa Victoria Ellis**, Owen, Gleaton, Egan, Jones & Sweeney; **Anne Westbrook Garliss**, Callaway, Braun, Riddle & Hughes; **Wayne S. Melnick**, Gray, Rust, St. Amand, Moffett & Brieske; **Carol P. Michel**, Weinberg, Wheeler, Hudgins,

Gunn & Dial; **William L. Swank**, Greer, Klosik, Daugherty, Swank and McCune; **James R. Westbury, Jr.**, Mullins, Walen & Westbury

Thereafter, there was a discussion regarding a list of delinquent/removed/resigned members. This was a list compiled by Steve Milano. On this list were 33 delinquent members. It was determined that Steve Milano would divide those names among the board members and that each board member would call the delinquent member assigned to him/her and try and convince them to return to good standing within the organization. As to the removed/resigned list, again, Steve Milano is going to divide those names and some of these individuals will receive follow up calls from board members.

George Duncan discussed his concerns about the membership policies of the organization. He believes a comprehensive study needs to be undertaken regarding the possibility of dropping the GDLA initiation fee. It was determined that a committee should be appointed to study the economics of this and George volunteered along with Mel Haas, Jo Jagger, and George Hall. It was also discussed that there has been a comparison of DRI members in Georgia who are not also GDLA members. A letter was sent to approximately 450 such individuals and we obtained 10-12 new members from this. Steve Milano proposed putting together a packet of information regarding the association to send to potential members.

It was also mentioned that perhaps a luncheon could be held for targeted non-members.

Additionally, George Duncan, as he goes through the list of delinquents/removed/resigned members, will try to identify a number of large firms who seem to have lim-

ited participation in the organization. Past presidents will be asked to approach these firms with the inclusion of young lawyers from the organization to press these firms to support the organization. Steve Kyle will attempt to pick past presidents along with young lawyers to assist in this endeavor. Steve Milano will prepare a list matching firm names of members so that we can identify larger firms that have only a few members.

Johnny Foster discussed our current sponsors. We now have nine sponsors, one of which is Silver (S), five Gold (G) and three Platinum (P). Those sponsors are:

A.J. Gallagher - S
Benedict Engineering - G
Exponent Failure Analysis - G
Forcon International - P
Georgia Lawyers Ins. - P
Insurance Specialists - P
Minnesota Lawyers Mutual - G
Rimkus Consulting - G
Special Counsel - G

Steve Milano reported the income from sponsors over the last 12 months. Most of them, as far as we know, are renewing in the Spring. There was also a discussion of adding additional sponsors in different categories and several suggestions were made regarding different areas of sponsorship.

Staten Bidding discussed the Workers' Compensation Academy. This will be held the day after the GDLA winter board meeting and the Judge's Reception. The Judge's Reception will take place on Thursday night, February 10th at the Capital City Club. The Board Meeting will be from 2:00 p.m. to 5:00 p.m. on February 10th at Hawkins & Parnell in Atlanta.

A brief discussion was held about the Trial Academy. The plans are progressing well, although it was noted that more immediate advertising needs to be done in order to

secure appropriate attendance. The annual meeting was discussed by Steve Kyle. This year we initially incurred a penalty of \$6,500 relating to food costs. This has been negotiated down to \$2,100. We narrowly avoided a room penalty. Mr. Kyle discussed at length the problems we are having with last minute no-shows and cancellations which continue to cost the association significant funds. It was determined that for the time being we will not ask members to pay if they cancel unless we incur expenses on their behalf, but it will be reiterated to members the importance of attending if they have indicated that they will do so. Steve Kyle is developing a systematic marketing approach for the upcoming annual meeting in Ponte Vedra. It is noted that this meeting will conflict with

the State Bar Meeting on June 16th. Johnny Foster is trying to develop a program that will rely primarily on judges, but notes that this is somewhat problematic given the conflict with the State Bar meeting.

A discussion was held about having the annual meeting for 2006 in Bermuda. It was determined that this will likely be accomplished with a date in early June. It was also noted that we are going to try and hold the spring board meeting in Bermuda, probably April 14 through April 17. It was also discussed that we are going to try and make every third year of the annual meeting a "couples program" as opposed to a program catering to the family. It is hoped that this will increase attendance.

The newsletter was also discussed at length. It was noted that

Steve Milano has done a great job putting together the newsletter and that the format has looked much better than it has in the past. The cost for the current newsletter is \$1,628 whereas the cost for the Fall 2004 newsletter was \$1,881. A discussion was held as to whether or not we should submit the newsletter to Apex for the potential of an award. It was decided that we should not submit it.

The GDLA *Law Journal* was discussed by Luanne Clarke. The *Law Journal* is ready to go although she is waiting on a few items. There was a discussion held as to whether the new *Law Journal* should be forwarded to members as an electronic version or as a hard copy. It was

Continued on page 18

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Fall Board Meeting Highlights

continued from page 17

also discussed whether the *Law Journal* should be mailed to all Judges in a hard copy and that it must look professional for this purpose. Steve Milano will get bids on the *Law Journal* in either the hard format or the electronic format (CD). A decision will be made by the Executive Committee as to which route to go with respect to the *Law Journal*. With this year's dues notice there will be a question asked of the members as to whether or not they want the *Law Journal* on disc or print. We will use this "questionnaire" to determine how we want to proceed with the *Law Journal* in the future.

There was also a discussion about abandoning the journal format and instead, incorporating it into the newsletter. It was determined that the newsletter itself would not be sent to judges. However, it was determined that we will publish, to the extent possible, journal-type articles in the newsletter and at the end of the year these articles will be put into a compilation as the GDLA Journal and sent to Judges.

Steve Milano discussed that the Web site is updated and now up and running. A discussion was held about an expert witness database and discovery tools/brief banks. It was noted that on a questionnaire sent last year this was the number one request of members. Gary Seacrest is to send follow-up e-mail blasts to the members regarding expert witness and brief banks. During the Board Meeting Steve Milano circulated a list of 17 different areas regarding discovery tools/brief banks and various members of the board volunteered to send to Steve Milano, for inclusion within the brief bank/discovery tools those items. Steve is to remind the board members of the areas in which they volunteered.

Jo Jagor discussed the younger lawyers section committee and

noted that she has the names of a number of people who want to write for either the *Law Journal* or the newsletter. Jo was also asked if she could put together another CLE and suds program which was successful last year. There was also discussion of the possibility of the younger lawyers section of the GDLA holding a career-oriented program at the annual meeting.

There was a discussion of the legislative liaison, Barry Fleming. It was noted that it is not against tax laws for us to be active, but the bylaws of the organization are against it. It was noted that not all members are "on the same page" with respect to legislative concerns.

A discussion was held regarding the board members attendance at the DRI Annual Meeting. It was determined that reasonable expenses would be paid for the executive committee members and the executive director who attended as well as the DRI liaison. This is not to include any expenses associated with spouses.

A discussion was held regarding GDLA blast e-mails and the fact that there have been some complaints regarding the content of certain e-mails. It was discussed that these blast e-mails need to be limited to certain types of inquiries, primarily about judges, jurisdictions, experts and legal issues. No political announcements or certain agendas should be contained within the content of a GDLA blast e-mail. George Ellington and George Hall are to put together a policy regarding GDLA blast e-mails which will be published on the GDLA site.

It was also determined that the executive committee and Steve Milano are to come up with a "slogan" for the GDLA so as to better identify it in its position within the state's legal organizations.

There being no further business, the meeting was dismissed.



GDLA 2005 Calendar of Events

February 10
Winter Board Meeting
Hawkins & Parnell, Atlanta

February 10
Judge's Reception
Capital City Club, Atlanta

February 11
**Workers' Compensation
Academy**
(location TBA)

April
Spring Board Meeting
(location and time TBD)

June 16-19
Annual Meeting
Ponte Vedra, FL

June 16
Summer Board Meeting
Ponte Vedra, FL

June 18
Annual Business Meeting
Ponte Vedra, FL

June 30
Memberships Expire
(Members no longer eligible for
GDLA insurance program
discounted premiums)

October
Fall Board Meeting
(location and time TBD)

December
Trial Academy
Callaway Gardens,
Pine Mountain, GA
(dates TBA)

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- Electric Utility Plant Equipment
- Elevators
- Erosion & Sedimentation
- Fire Protection Systems
- Fuel gases
- Glass & window systems
- Heating & Air Conditioning Systems
- Heavy construction machinery
- Indoor Air Quality
- Low Speed Vehicle Accidents
- Manufacturing Machinery
- Marine Structures
- Mold
- Packaging
- Polymers & Plastics
- Power Tools
- Pulp & Paper Mill Equipment
- Refractory
- Roof Damage & Failures
- Sawmill Equipment
- Slip and Fall
- Toxic Chemical Exposure
- Welding
- Workplace Accidents

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