

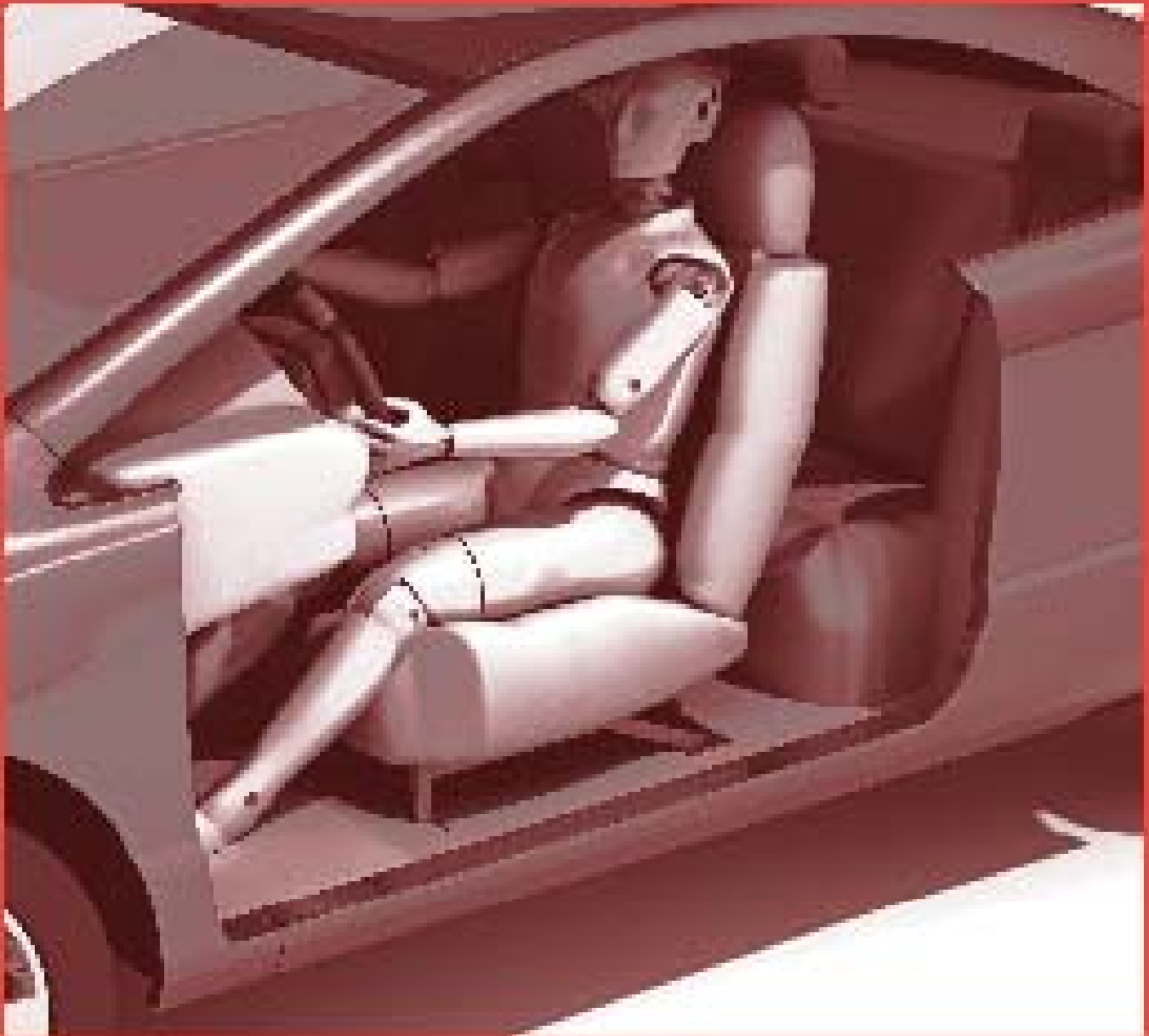
CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Vol. XIX

Spring/Summer 2014

No. 1



Automotive Crashworthiness: Trauma Biomechanics 101

See articles on pages 6 & 7

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GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

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ARTICLES

- Chairman's Corner
James W. Hurt, Jr. 2
- State Bar of Georgia Midyear Meeting
Justice Hugh P. Thompson 3
- Co-Editor's Corner
David A. Sleppy 4
- Automotive Crashworthiness: Trauma Biomechanics 101
Sri Kumar, Ph.D. 6
- Biomechanics of Side Impact Injuries: Evaluation of Seat Belt Restraint System, Occupant Kinematics and Injury Potential
Srirangam Kumaresan, Anthony Sances, Jr., Fred Carlin, Russell Frieder, Keith Friedman, David Renfroe 7
- Tech Tools to Help You Be Mobile
Binford Minter 11
- It Ain't Open Season on Folks Who Are Already Hurt: Joinder and Apportionment of Successive Incidents Contributing to Single Injury
Kenneth L. Shigley 14

Calendar Call is the official publication of the General Practice and Trial Section of the State Bar of Georgia. Statements and opinions expressed in the editorials and articles are not necessarily those of the Section of the Bar. Calendar Call welcomes the submission of articles on topics of interest to the Section. Submissions should be double-spaced, typewritten on letter-size paper, with the article on disk or sent via e-mail together with a bio and picture of the author and forwarded to Co-Editors: R. Walker Garrett, 200 13th St., Columbus, GA 31901, rwalkergarrett@gmail.com and David A. Sleppy, 649 Irvin St., P.O. Box #689, Cornelia, GA 30531, dsleppy@catheyandstrain.com.

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James W. Hurt, Jr.
Section Chair



In 2009, under the leadership of Pope Langdale, the General Practice and Trial Section, in conjunction with Georgia Legal Services and Mike Monahan of the State Bar of Georgia Pro Bono Project, began the "Ask A Lawyer" Day program. The "Ask A Lawyer" program was designed to give under-privileged Georgians access to local lawyers in their area to ask their legal questions in diverse practice areas.

Throughout the state, Georgia Legal Services set up meeting places for people that may not have access to attorneys an opportunity to meet with attorneys with specialties outside of the practice limitations of what Georgia Legal Services can typically provide, such as family law, consumer protection, criminal defense, and personal injury. The meetings were held in places throughout the state, including Augusta, Albany, Columbus, Valdosta, Macon, Gainesville, Tifton, Savannah, and Athens. In the Section's first year, we were able to meet and assist over 400 people in need. The Section has continually held this program since its auspicious beginning in 2009.

This year, the General Practice and Trial Section will be holding our "Ask A Lawyer" Day in October. Like in years' past, our locations will include Albany, Savannah, Augusta, Macon, Columbus, Valdosta, Brunswick, Gainesville, Athens, Dalton, Covington, and potentially others. As the immediate past chair, I will be recruiting local GPTS members to head up our recruiting efforts in each of the selected locations to assemble eight to ten volunteer attorneys versed in domestic law, consumer rights, wills and estates and probate, bankruptcy, personal injury, employment law, and criminal defense.

I am also very proud that the General Practice and Trial Section has sponsored and/or co-sponsored over seventeen Continuing Legal Education seminars this year, including Urgent Legal Matters (at the King and Prince on Sea Island), How to Run A Successful Personal Injury Practice, Inside the Courtroom, Seminar on Social Media, The Professional Ethics and Malpractice Seminar, The Georgia Law of Torts Annual Update, The Premises Liability Seminar, The Ten Commandments of Cross

Examination, Expert Testimony Seminar, Trial Advocacy (on Georgia Public Television), The General Practice Seminar for New Lawyers, Recent Developments in Georgia Law Annual Update, Carlson on Evidence, and The Trial Practice Institute. Our Section is the strongest and most active section of the State Bar, and each and every one of us should be proud of that.

Finally, as the soon-to-be Immediate Past Chair of the Section, and am delighted to be planning next year's Trial Practice Institute, which we have moved back to the beach! The upcoming 2015 Trial Practice Institute will be back at the King and Prince on Sea Island on March 12 - 14, 2015. I look forward to planning this event and will provide further details in upcoming editions of the Calendar Call.

State Bar of Georgia Midyear Meeting

Good afternoon everyone. And thank you, Ken, for that kind and gracious introduction. I am delighted to be here and honored to have been invited to speak to the General Practice & Trial Law Section. I have a number of friends in the audience this afternoon who are proud members of this section. I see Betty Simms, who has looked after this section for many, many years. People who belong to this section know how well she has served you. I know that you're very proud of her, and I want to assure you that everyone in the Bar is as proud as you are. Betty deserves our thanks.

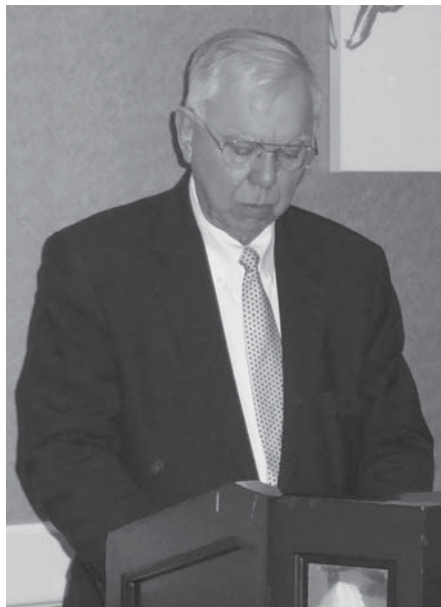
I want to speak to you today about Professionalism and Judicial Independence – two standards I believe we must all work hard to maintain, perhaps now more than ever.

The law, along with medicine and theology, has throughout history been considered one of the world's three great professions. Medicine because it preserves the body. Theology because it preserves the spirit. And the law because it preserves civilization.

The law is also an important part of this nation's history. In 1787, of the Constitutional Convention's 55 members, 33 were lawyers. And they went on to create the document of freedom and justice that is the very foundation of our democracy.

The practice of law continues to be an honorable profession. I am proud to say I have been a member of the bar for more than four decades. I continue to take pride in my profession even though, these days, lawyers are often resented and mistrusted. As you well know, for a while now, lawyers have found themselves the butt of cynical jokes. I won't bore you with the latest. In fact, I do not tell lawyer jokes. Un-

fortunately, though, there are some in our profession who have earned criticism. They have forgotten that the



Justice Hugh P. Thompson

practice of law is the search for truth – the search for justice. It is the application of legal knowledge and experience to the resolution of disputes and problems. Some lawyers, however, are concerned only with winning.

If we are to ensure public confidence and trust in our profession, lawyers must strive not only to maintain the ethical standards required by the Georgia Rules of Professional Conduct, but they must go further. Harold Clarke, the late Chief Justice of the Georgia Supreme Court defined Professionalism as, "honorable and upright conduct," which goes far beyond what is required under the rules of professional conduct.

When I was in law school at Mercer University, the general attitude from what we were taught was that

if a lawyer complied with the ethical standards, he or she would automatically meet the required standard of professional conduct. But professionalism is more than just following the rules and being careful not to walk too close to the line.

True professionalism is a matter of *character*.

The dictionary defines ethics as the discipline dealing with what is good and bad or right and wrong, with moral principles and values. I believe our first ethics and professionalism training come from our parents and grandparents when they tell us to always tell the truth, to work hard, to respect others and to treat people the way we would like to be treated.

The late Jerome Shestack, president of the American Bar Association and U.S. Ambassador to the United Nations Commission on Human Rights, believed there were six components of professionalism:

- Number 1. Ethics, integrity and professional standards;
- Number 2. Competent service to clients while maintaining independent judgments;
- Number 3. Continuing education;
- Number 4. Civility;
- Number 5. Obligations to the rule of law and the justice system; and
- Number 6. Pro bono service.

We should all ask ourselves how well we measure up in professionalism.

In today's society, lawyers must use sound business principles and practices in the administration of their law practices. But commercialism must not replace professionalism. If the legal community were primarily motivated by profit, rather than the ideals of justice and public service, then

continued on page 17



Personal Injury Pre-Litigation Claim Checklist

Recently, I have seen numerous inquiries and chatter on several “list serves” that I monitor regarding a pre-litigation/personal injury case checklist that can assist, particularly a younger lawyer, in making sure all of the “bases” are covered during the investigation and preparation of a (mostly routine) personal injury case prior to a lawsuit being filed. I had prepared one – which is always evolving – and thought it might be helpful for lawyers who focus on litigation/trials and are members of our General Practice and Trial Section.

I would welcome any comments, additions, edits, deletions, etc., to make this a more comprehensive and useful tool. You can send them directly to me at dsleppy@catheyandstrain.com. It is no masterpiece but here it is.

1. Write letter regarding liability limits. O.C.G.A. § 33-3-28
2. Get wreck report or incident report. Do you need an accident reconstructionist?
3. Consider existence of conflicts (e.g., guest passengers injured where your client/driver may be blamed and both want you to represent them).
4. Get copy of “guilty” plea if relevant.
5. Check all applicable statutes of limitations.
 - Applicable statutes of limitations
 - Statutes of Repose (Products/medical/construction)
 - Ante Litem Notices (FTCA; GTCA; County; Municipality)
 - Tolling of SOL theories (incompetence/minor/pending criminal case/unrepresented estate/fraud/agreement)
6. Write letter Re: spoliation of evidence – if relevant (e.g., the defective vehicle/product; videotapes of premises; “black box data” for tractor-trailers and autos.)
7. Photos of scene/vehicles.
8. Identify and contact significant witnesses. Interview and take recorded or written statement (this is work-product).
9. Open Records Request – police file/all tape/news coverage/911 calls
10. Put all UM carriers on notice (including the primary UM carrier and every UM carrier for each vehicle in the household in which the person is a member.)
11. Run asset check on potential Defendant – if coverage is insufficient.
12. Check the status of the Med Pay coverage with client’s insurance. This could be as much as \$50,000 (and is essentially a “No Fault” automatic payment).
13. Take photos of injuries and continue to do so through recovery of client.
14. Analyze *respondent superior*, vicarious and/or third party liability (e.g., product manufacturer/lessor, etc.)
15. Preserve and protect vehicle or other relevant physical

evidence (indoors) and take photographs. Without that, there will be no potential product liability/auto defect case. Do not disassemble or allow destructive testing on any physical evidence/component/product without having

- (a) the defendant's lawyer/expert present;
- (b) an agreed protocol; and
- (c) photographing and videotaping the process.

16. Do not let client give statements to any insurance carrier without your agreement and in your presence (in-person or on conference call). You should record statement also.
17. Get all hospital/medical/physical therapy/rehab records, etc.
18. Get each and every medical bill.
19. Gather all lost wage information, if any, or other "special damages" (those calculable with monetary/reasonable certainty).
20. Determine status of any possible subrogation claims (and consider hiring an independent firm which focuses their practice on this), including:
 - Private health insurance
 - ERISA liens (may be beatable depending on plan language)
 - Any Medicaid/Medicare or other government liens
 - Champus or Tri Care liens

It is urgent that these be evaluated early and in detail. The status of these subrogation liens can determine whether or not they are "beatable" or not and whether the subro carrier will negotiate.

21. Get at least one permanent partial impairment rating after the client reaches maximum medical improvement ("MMI"). It is advisable to use an independent doctor (as well as the treating physician if friendly) and one who is well-credentialed, creditable and known to the insurance industry/defense counsel to be a straight shooter.
22. Assemble a demand package and a demand letter (with a succinct outline of liability/damages – No Fluff!). If limits demand remember requirements of O.C.G.A. § 9-11-67.
23. Consider Affidavit/Pre-Litigation deposition (O.C.G.A. § 9-11-27) of potential Defendant– Re: e.g., no excess/umbrella coverage; not in course and scope of employment; no mechanical defects; assets.
24. Consider – at time of settlement – if this occurs:
 - A structured settlement (an annuity).
 - A Special Needs Trust to keep the client eligible for Medicaid. It is urgent that this be done before any funds are received from any insurance company directly by the client himself, his family or any attorney. It is also essential that this be done properly in order to preserve his right to Medicaid and not have to pay all of his assets and settlement monies to Medicaid for liens. This is highly complex and can almost certainly require a hearing before a judge to "apportion" the elements of damage.
 - Determine need for Court approval of settlement. *Protect minor's or incompetent adult's funds!*
25. Release – Do NOT sign the defendant's boilerplate Release – Preserve any other claims against other potential defendants. Remember "Limited Liability Release". (Product liability/medical providers/DOT, etc.) Include language that the client has not been "made whole"/fully compensated for all economic and non-economic losses. (This can help with lien challenges.)
26. If a lawsuit is necessary, send a copy to adjuster via certified mail. See O.C.G.A. §33-7-15(c) (no denial of coverage in motor vehicle case where third-party sends copy of summons/complaint to insurer within 10 days of filing). This avoids a claim of no notice/prejudice to insurer.

Automotive Crashworthiness: Trauma Biomechanics 101

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Dr. Sri Kumar is the President of Safety Research Institute in Atlanta, Georgia. Dr. Kumar's expertise in the field of biomechanics is based on his education, training, knowledge and over 20 years of experience. He received a Ph.D. in Biomedical Engineering from Marquette University, Milwaukee, WI. Dr. Kumar served as a faculty member at the Department of Neurosurgery, Medical College of Wisconsin, Milwaukee, WI, which is a leading research center in the biomechanical analysis of human injuries funded by federal government agencies. While at the Medical College of Wisconsin, he worked with the National Highway Traffic Safety Administration (NHTSA) to develop injury criteria for adult and child dummies. Dr. Kumar's research work includes biomechanical analysis of the head-neck system, thoracic-abdominal complex and extremities. His area of expertise also encompasses the biomechanical evaluation of vehicle restraint systems to assess injuries to the pediatric and adult population during frontal, rear, roll-over, under-ride and side impact crashes. In addition to motor vehicle related injuries, Dr. Kumar analyzed and evaluated the mechanism of injuries in off-highway, recreation, sports, aviation, treadmill, playground, industrial and utility equipment accidents. He has published 230 research articles and holds three US patents in the area of Biomedical/Biomechanical Engineering. Dr. Kumar is associated with many nationally recognized societies and experts in the field of biomechanics, occupant kinematics, accident reconstruction and other automotive disciplines. He taught a course on injury biomechanics at the University of California, Santa Barbara, CA. Dr. Kumar has been elected a Fellow of the American Institute of Medical and Biological Engineering (AIMBE).

In automotive crashworthiness cases, the field of "biomechanics" plays a vital role in explaining injury causation and in delineating the mechanism of injuries. Biomechanics is a sub-speciality of a broader discipline of biomedical engineering, which is an interdisciplinary field of engineering and medicine. In general, biomechanics studies the kinematic movement and forces of biological tissues in response to mechanical stimuli. Specifically, "trauma" biomechanics deals with the human mechanical response to impact forces seen in real

world accidents by integrating the medical and engineering data into the analysis. The trauma biomechanics in motor vehicle crashes focuses on the biomechanical injury causation with respect to vehicular interior structure and restraint systems in a given accident. On a global level, the findings of trauma biomechanics in motor vehicle accidents provide valuable data to the federal government in order to promulgate regulations to enhance transportation safety. A few examples of trauma biomechanics within automotive crashworthi-

ness issues are roof crush in rollover accidents, late-airbag deployment in frontal impacts, seat back issues in rear crashes, laminated glazing in rollover accidents, child seat padding in near-side crashes, side guardrails in under-ride accidents, seat belt performance in far-side crashes, and pedestrian kinematics in run-over accidents. A previously published scientific article is attached herewith to provide an outline of how trauma biomechanics assist in understanding injuries in side crashes.

Biomechanics of Side Impact Injuries: Evaluation of Seat Belt Restraint System, Occupant Kinematics and Injury Potential

Srirangam Kumaresan, Anthony Sances, Jr., Fred Carlin,
Russell Frieder, Keith Friedman, David Renfroe

Abstract: Side impact crashes are the second most severe motor vehicle accidents resulting in serious and fatal injuries. One of the occupant restraint systems in the vehicle is the three point lap/shoulder harness. However, the lap/shoulder restraint is not effective in a far-side crash (impact is opposite to the occupant location) since the occupant may slip out of the shoulder harness. The present comprehensive study was designed to delineate the biomechanics of far-side planar crashes. The first part of the study involves a car-to-car crash to study the crash dynamics and occupant kinematics; the second part involves an epidemiological analysis of NASS/CDS 1988-2003 database to study the distribution of serious injury; the third part includes the mathematical MADYMO analysis to study the occupant kinematics in detail; and the fourth part includes an in-depth analysis of a real world far-side accident to delineate the injury mechanism and occupant kinematics. Results indicate that the shoulder harness is ineffective in far-side crashes. The upper torso of the belted driver dummy slips out of the shoulder harness and interacted with the opposite vehicle interior such as the door panel. The unbelted occupants had a similar head injury severity pattern compared to belted occupants. The present study is another step to advance towards better understanding of the prevention, treatment and rehabilitation of side impact injuries.

I. INTRODUCTION

Motor vehicle crashes are a major cause of death and serious injuries. Approximately 41,000 people are killed and 250,000 people are seriously injured in motor vehicle accidents annually [1]. It is estimated that an annual economic cost of motor vehicle crashes in the past has reached over \$150 billion. Side impact crashes are the second most severe motor vehicle accidents resulting in serious and fatal injuries [2]. An annual average of 1.3 million occupants are involved in side crashes out of 5.2 million total occupants, and approximately 33,000 occupants sustained fatal and serious injuries in side impacts.

One of the occupant protection systems in the vehicle is the three point lap/shoulder harness. The lap/shoulder harness restraints have

been proven to reduce occupant movement inside the vehicle and provide ride down during frontal impacts [3]. Furthermore, it minimizes occupant ejection during lateral impacts. However, the lap/shoulder restraint is not effective in a far-side crash (impact is opposite to the occupant location) since the occupant may slip out of the shoulder harness. Numerous researchers have addressed the injury patterns of occupants in far-side impacts [4-11].

Augenstein, et al, studied the injury potential to occupants involved in far-side crashes by examining the database of National Automotive Sampling System (NASS) for the year from 1988 to 1998 [4]. Authors found that the contact with opposite side of the car interior was one of the most frequent causes of serious injury (Abbreviated Injury Scaling – AIS 3+) to the driver during the far-side

crashes. Digges conducted vehicle to vehicle crash tests and examined the NASS database and found that the most harmful injury source was the opposite side of the car and found the shoulder belt ineffective [12]. Fildes studied the injury sustained by drivers in side crashes in Australia. [7]. The study found that the AIS 2+ head injury was twice as much in far-side crashes compared to near-side crashes. Frampton studied the injury patterns of restrained occupants in far-side crashes and found that the AIS 2+ injuries were higher in perpendicular crashes compared to oblique crashes [8]. Digges, et al, studied the injury patterns in the far-side crashes by examining the NASS database on front seat occupants with serious or fatal injuries and by simulating the finite element models [6]. The authors found that

continued on next page

Biomechanics of Side Impact Injuries

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the head was the most frequently injured body region in far-side crashes. These studies have addressed some of the injury issues to occupants in far-side crashes. However, a comprehensive approach is lacking. Consequently, the present study was designed to conduct experimental car-to-car crash test analysis, epidemiological analysis, mathematical modeling and a detailed real world accident analysis.

II. MATERIALS AND METHODS

Part I

(Experimental study):

The first study involves a car-to-car test. The 1982 AMC Concord four door was impacted by a 1996 Crown Victoria four door. A belted 50% Hybrid III dummy was placed in the driver's seat of the AMC Concord and the seat belt restraint was equipped with an emergency locking retractor and cinching latch plate. The driver's seat was positioned at 1.5 inches (3.81 cm) forward of full rearward and at an angle of 20 degrees. The passenger seat was positioned at full rearward and at an angle of 20 degrees. The AMC Concord was impacted in the right front side. The Concord vehicle weighed about 3000 pounds and the Crown Victoria weighed about 4800 pounds. The dummy had three Endevco 7264-2000 accelerometers in the head and an ATA Dynacube SN 288 block angular accelerometer. The triaxial accelerometers were attached close to the center of gravity. Two interior high speed 1,000 frames per second cameras and a video camera recorded the crash event. To simulate an intersection collision the Concord was crabbed at an angle to obtain the principal direction of force of 58 degrees with respect to Concord. The speed of the Crown Victoria prior to impact was 55 mph (88 km/hr). The vehicle was instrumented with accelerometers at the center of gravity. All data were sampled at 10 kilohertz.

The accelerations were filtered at SAE class 1000 and the angular velocities at SAE class 180. The Head Injury Criteria (HIC) at 15 msec and 36 msec time intervals were calculated from the resultant tri-axial acceleration and the angular acceleration was derived from the angular rate sensor.



Figure 1: Position of the target vehicle (left) and bullet vehicle (right) prior to impact



Figure 2: Position of the belted dummy after impact

Part II

(Epidemiological study):

The second study involves the analysis of the injury database maintained by the National Highway Traffic Safety Administration (NHTSA). The database is called National Automotive Sampling System/Crashworthiness Data System database (NASS/CDS). The NASS/CDS is a stratified sample of light vehicles involved in highway crashes that were reported by the police. In this study, the NASS/CDS for the years 1988 to 2003 was evaluated to examine the serious head injury (AIS 3+) to belted and unbelted drivers involved in side crashes. The head injury patterns were examined for the accident severity of change in velocity of 20 to 30 miles per hour (32 to 48 kph) and more than 30 miles per hour (48 kph) with principal direction of force from 2 to 4 o'clock.

Part III

(Mathematical Modeling study):

The third part involves the mathematical simulation of crash using the MADYMO computer program [13]. The AMC Concord was modeled with ellipsoid surfaces attached to rigid bodies. The interaction between occupant and vehicle interior was modeled with appropriate force-deflection characteristics. The anthropometric dummy was used to simulate the driver. The seat belt restraint system was modeled using the finite element modeling approach. The Concord was subjected to a change in speed of 38 mph with a principal direction of force of 58 degrees (impact on the passenger side). The analysis was conducted until 280 msec. The 6th degree LaGrangian polynomial fit was used to define the input data pulse. The output included the Head Injury Criteria, angular acceleration, and linear acceleration.

Part IV

(In-Depth Real World study):

The fourth part involves an in-depth biomechanical analysis of real world accident involving the AMC Concord and the Crown Victoria. The belted driver of the AMC Concord in the real crash sustained serious head injury by impacting the passenger's side door panel. The vehicle was inspected and the medical records of the driver were analyzed to study the mechanism of injuries.

III. RESULTS AND DISCUSSION

Part I

(Experimental study):

The longitudinal change in speed of the AMC Concord was 14.5 mph (23.2 kph) and the lateral change in speed in Crown Victoria was 27.3 mph (43.7 kph). The resultant change in speed is approximately 31 mph (50 kph). The belted dummy in the vehicle measured the head injury po-

tential. The resultant peak acceleration in the Crown Victoria was 35.3 G at 57 msec. The longitudinal change in speed of the Crown Victoria was 28.2 mph (45.12kph) and the lateral change in speed in Crown Victoria was 9.7 mph (15.5 kph). The resultant change in speed was approximately 30 mph (48 kph). The resultant peak acceleration in the Crown Victoria was 23.2 G.

The dummy in the AMC concord impacted the upper portion of the right door. The dummy's head angular acceleration was 14,386.5 rad/sec² at 133 msec. This value was above the injury tolerance of 4,500 rad/sec² proposed by Ommaya [14], of 4,500 rad/sec² proposed by Lowenheim [15], of 8000 rad/sec² proposed by Newman [16], and of 13,600 rad/sec² proposed by Pincemaille [17]. The peak head resultant acceleration was 137.2 at 132 msec while the head acceleration with 3 msec clip was approximately 100 Gs. The 3 ms clip head acceleration value of 100 G was above the 80 G injury limit proposed by Berg [18]. The Head Injury Criteria (HIC with 15 msec) was 635. The HIC was close to the tolerance value of 700. Other injury values such as angular acceleration and 3 msec head acceleration were above the injury values. The dummy's head impacted the passenger side door panel and measured higher injury values.

Augenstein, et al, studied the injury potential to occupants involved in far-side crashes by examining the database of National Automotive Sampling System (NASS) for the year from 1988 to 1998 [4]. Authors concluded that the head accounted for 40% of serious injury (AIS 3+) to the driver during the far-side crashes. Digges and Dalmatos also found similar findings of higher percentage of head injury in far-side occupants while analyzing the NASS database [12]. Digges and Dalmatos also conducted vehicle to vehicle crash tests with 60 degree crash vector and found that the shoulder belt was

ineffective in preventing the head excursions. The dummy's head not impacted the door panel. The present study indicates that the dummy's head impacted the passenger door panel. The difference in the kinematic behavior is attributed to size of the vehicle, intrusion and restraint systems. Another issue in dummy kinematics is the entanglement of the seat belt with the upper extremity such as elbow and shoulder joints.

In a recent far-side crash study, Toomey, et al, have addressed the entanglement and injury potential to the partially restrained occupant by conducting three sled tests with dummies at a change of speed of approximately 22.5 mph (36 kph) and peak acceleration of 12.7 G. Authors concluded that the unrestrained seat belt entangled with the dummy's upper torso and significantly affected the kinematic response. Given the rigid upper extremity joints in the dummy and the difference between human tissue and dummy, the results should be carefully extended to real world accident analysis. For example, the rigid elbow joint of the dummy would easily entangle with the seat belt due to the cavity. It is well known that a significant difference in kinematic behavior exists between human cadaveric tissue and dummy in crash sled tests [19, 20]. Furthermore, many researchers have emphasized the limited far-side biofidelic nature of the Hybrid III dummy [12, 21]. The belt interaction force on the occupant depends on various parameters including, but not limited to, the position of the upper extremities, the crash severity, and the direction of crash force. A real world biomechanical analysis of occupant kinematic response such as ejection of belted occupants, showed no significant evidence of load marks on the occupant's body [22].

Part II

(Epidemiological study):

The NASS/CDS 1988-2003 data (Table 1) suggests that the probabil-

ity of injury to the head region for the drivers is comparable in magnitude for belted and unbelted conditions. Our findings match with Digges, et al, who found a similar trend in the injury patterns for the head region of the driver with belted (42%) and unbelted (55%) conditions [6].

Table 1: Distribution of MAIS 3+ head injury to drivers in far side impacts (2 to 4 o'clock) in far-side crashes for belted and unbelted conditions.

	Belted	Unbelted
Delta V 20 to 30 mph	41%	59%
Delta V more than 30 mph	46%	54%

Part III

(Mathematical Modeling study):

The MADYMO computer simulation of the car-to-car crash quantified the head injury parameters of a belted driver under the conditions similar to experimental car-to-car crash. In general, the modeling output of high probability of head injury matches with the crash test output.

Table 2: Head injury values of belted driver in far-side crash

HIC - 36 msec	2,314
HIC - 15 msec	2,314
Angular acceleration (rad/sec ²)	11,255 at 113 msec
Linear acceleration (G)	176 at 113 msec

Part IV

(In-Depth Real World study):

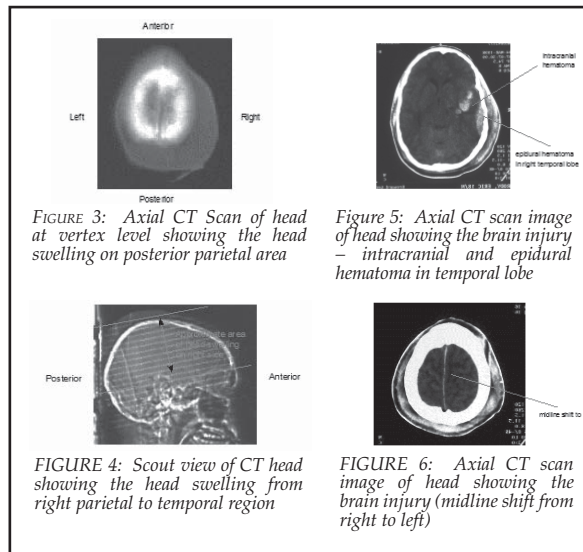
An in-depth analysis of a car accident involving a 1982 AMC Concord and 1996 Crown Victoria was conducted. The traveling speed of the AMC concord was approximately 19 mph and the traveling speed of the Crown Victoria was approximately 53 mph. The change in speed of the AMC Concord was 38 mph with a principal direction of force of 58 degrees (impact on the passenger side). After the impact, the AMC Concord rotated counterclockwise. The seat

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Biomechanics of Side Impact Injuries

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belted driver of the AMC Concord impacted the door panel and sustained severe head injury. The driver sustained the following injuries: right temporal skull fracture, right temporal epidural hematoma, bilateral intraventricular hemorrhage and midline shift to left (Figures 3 - 6). The swelling on the right side of the head from the parietal to temporal region indicates the stiff impact on the right side of the head with the vehicle interior. The inspection of the accident vehicle revealed a dent



on the door panel of the passenger side indicating the head interaction with the door panel.

In summary, the present comprehensive study addresses the ineffectiveness of a shoulder harness in mitigating the serious injury during far-side crashes. Furthermore, similar injury severity is noted with unbelted occupants in these types of crashes. The current work is another step to advance towards better understanding of the prevention, treatment and rehabilitation of side impact injuries.

IV REFERENCES

1. Traffic Safety Facts, in DOT HS 809 329 2000.
2. Federal Register. DOT, Oct. 21 2001.
3. Nahum, A. and J. Melvin, Accidental Injury: Biomechanics and prevention. 1993: Springer Verlag. 577 pp.
4. Augenstein, J., E. Perdeck, P. Martin, J. Bowen, J. Stratton, T. Horton, M. Singer, K. Digges, and J. Steps. Injuries to restrained occupants in far-side crashes. in 44th AAAM. 2000.
5. Cesari, D., Ramet, M. and Herry-Martin, D., Injury mechanisms in side impact. SAE, 1978: p. 431-447.
6. Digges, K., Gabler, H., Mohan, P., and Alonso, B., Characteristics of the injury environment in far-side crashes. 2005: p. 185-197.
7. Fildes, B.N., Lane, J. C., Lenard, J., and Vulcan, A. P., Passenger cars and occupant injury. 1991.
8. Frampton, R., Brown, R., Thomas, P., and Fay, P., The importance of non-struck-side occupants in collisions. 1998: p. 303-320.
9. Gabler, H., Digges, K., Fildes, B., Sparke, L., Side impact injury risk for belted far-side passenger vehicle occupants. SAE, 2005.
10. Mackay, G.M., Parkin, S., Hill, J., and Munns, J.A.R., Restrained occupants on the non-struck side in lateral collisions. 1991: p. 119-132.
11. Stolinski, R., R. Grzebieta, and B. Fildes. Vehicle far-side impact crashes. in ESV. 1998.
12. Digges, K. and D. Dalmotas. Injuries to Restrained Occupants in Far-Side Crashes. ESV paper number 351.
13. TNO, MADYMO. 2000.
14. Ommaya, A.K. Head Injury Biomechanics. in George G. Snively Memorial Lecture. 1984. Denver, Colorado: Association for the Advancement of Automotive Medicine.
15. Lowenhiem, P. Brain Susceptibility to Velocity Changes, Relative and Absolute Limits for Brain Tissue Tolerance to trauma and their Relation to Actual Traumatic Situations. in Proceedings of an International Interdisciplinary Symposium on Traffic Speed and Casualties. 1975. G1 Avemaess, Denmark.
16. Newman, J.A., Kinematics of Head Injury, in Frontiers in Head and Neck Trauma, N. Yoganandan, F.A. Pintar, S.J. Larson, and J. Sances, Anthony, Editors. 1998, IOS Press: Washington, D. C. p. 200-214.
17. Pincemaille, Y., X. Trosseille, P. Mack, and C. Tarriere. Some new data related to human tolerance obtained from volunteer boxers. in Proceedings 33rd Stapp Car Crash Conference., 1989. Washington, DC: Society of Automotive Engineers.
18. Berg, F.A., B. Schmitt, J. Epple, R. Mattern, and D. Kallieris. Results of Full-scale Crash Tests, Stationary Tests and Sled Tests to Analyse the Effects of Airbags on Passengers With or Without Seat Belts in the Standard Sitting Position and in Out-of-Position Situations. in 16th International Technical Conference on the Enhanced Safety of Vehicles (ESV). 1998. Windsor, Ontario, Canada, May 31- June 4, 1998.
19. Crandall, J., W. Pilkey, G. Klopp, B. Pilkay, R.M. Morgan, R. Eppinger, S. Kuppa, and C. Sharpless. A comparison of two and three point belt restraint systems. in Advances in occupant restraint technologies - Joint AAAM-IRCOB 1994.
20. Yoganandan, N., F.A. Pintar, D. Skrade, W. Chmiel, J.M. Reinartz, and A. Sances, Jr, Thoracic biomechanics with air bag restraint. SAE Transactions, 1994. **102**(6): p. 2597-2607.
21. Fildes, B., Linder, A., Douglas, C., Digges, K., Morgan, R., Pintar, F., Yoganandan, N., Gabler, H., Duma, S., Stitzel, J., Bostrom, O., Sparke, L., Smith, S., and Newland, C., Occupant protection in far side crashes. 2005.
22. Meyer, S., B. Herbst, S. Forrest, S. Syson, A. Sances, and S. Kumaresan, Restraints and occupant kinematics in vehicular rollovers. Biomedical Sciences Instrumentation, 2002. **38**: p. 465-469.

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Tech Tools to Help You Be Mobile

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Over the last seven years—will this “recovery” never end?—a weak economy and an oversupply of attorneys have been forcing the legal industry to evolve. As clients of all stripes have sought to become more efficient, attorneys have had to follow suit. This article is the third in a series of three addressing technological solutions available for cost-conscious attorneys who want to improve their efficiency. It is written with mid-sized to small firm or solo practice attorneys in mind because they are less likely to have access to the best and latest legal technology (and more likely to find themselves at a technological disadvantage as a result).

I had hoped to devote this third article in the series to recapping the Technology Roadshow CLE scheduled in Atlanta this February. Sadly, it was cancelled due to the “Snowpocalypse,” a cataclysmic transportation shutdown wrought by...snow. That said, I have instead combed legal tech blogs and conducted my own research to provide readers with the 411 on a few helpful apps. By “app,” I am of course referring to applications for your mobile device, be it an iPad, iPhone, tablet, or other smart-phone. Here goes:

Time Tracking Apps

As Justice Oliver Wendell Holmes Jr. said, we lawyers spend a great deal of our time shoveling smoke. Thankfully, there are countless apps out there to help us track that time spent shoveling. Lawyers can choose from a wide variety of time tracking apps in either iOS or Android, and they all offer the same basic functional-

ity. The standouts are those that let you export your data, integrate seamlessly with popular billing software packages (e.g. Amicus, Juris, Timeslips, ProLaw, Carpe Diem, etc.) and are more user-friendly. User-friendliness is generally a matter of personal opinion, but one of the most popular time tracking apps being touted by lawyers, **iTimeKeep** from Bellefield Systems was specifically designed to integrate with most billing software. What is more, it allows you to record information by matter number as well as case name. Available on both major mobile operating systems, iTimeKeep is free as a standalone product, but a visit to Bellefield’s website at www2.bellefield.com/itimekeep quickly confirms that the app is ancillary to the company’s desktop time billing software. The lack of any pricing information for iTimeKeep proper suggests that small

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Tech Tools

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firms would find it prohibitively expensive.

Another time tracking app I have seen on blogs is **HoursTracker** by cribasoft, LLC (or “Carlos Ribba,” in the iTunes App Store), identifiable by its piggybank and stopwatch icon. It too is free and available on both major operating systems, though it was designed for more generic use. Like almost all free time keeping apps, HoursTracker Pro offers enhanced functionality at a cost (\$6.99). HoursTracker lets you export data via e-mail, in text or .csv attachment (comma separated values, a simple format for data files). As the emblem suggests, its key feature is the ease with which you can “clock in” and “clock out” of a particular job like a stopwatch. A young Austrian software engineer named Florian Rauscha developed an award winning app called **Timesheet** in 2012 that does many of the same things as HoursTracker and even more with the purchase of a few \$1 add-ons. While more stylish, it takes a bit more time to master.

Currently, I am tracking my time with the free version of an app called **Swipetimes**, which is not available for iPhones. (I have a Samsung Galaxy S4). Swipetimes has a clean, neat interface that allows categorization of tasks by one of fifteen different colors as well as by name. As with TimeSheet, navigation comes with practice. Both Timesheet and

Swipetimes let you export data in an .xls or .csv file, but only Timesheets can also track location. On the other hand, you can back up Swipetimes more easily to Dropbox or Google Drive.

Timesheet and Swipetimes are not available to Apple users, but **TimeWerks Pro** (Sorth LLC), **OfficeTime** (OfficeTime Software), and **Bill4Time** (Broadway Billing Systems) all are. Of the three, TimeWerks Pro is most highly touted by *The Cyber Advocate*, a blog run indirectly by a Charlotte insurance defense attorney named Bryan Focht. You can follow *The Cyber Advocate* at www.thecyberadvocate.com. (Incidentally, for those with Android phones, there is *The Droid Lawyer*, by Oklahoma City attorney Jeffrey Taylor: www.thedroidlawyer.com).

Human Anatomy Apps

There are many anatomy apps available via the Apple App Store and Google Play, most of which offer free and pay versions, such as **Visual Anatomy** by Education Mobile. While free versions sometimes do in a pinch, limited features and unprofessional advertising make them ill-suited for a deposition. One of the more impressive anatomy apps, and one highlighted by legal blogs, is **Human Anatomy Atlas SP** by Visible Body. The app contains a comprehensive three-dimensional atlas of the human body, but the

free version only grants access to the skeletal system. For \$29.99, the pay version includes more than 3,600 anatomical structures throughout the entire body. Five separate animation packs are available at an additional \$5.99 to \$8.99 each, but the atlas is the real value. You can quickly learn how to highlight, fade, or even hide specific parts of the body that can be viewed from any angle. The app also lets you save views and create notecards. Thankfully, the app is available on both iOS and Android, and Visible Body’s support site offers tutorials for devices using either platform. In short, this is a terrific app for any attorney practicing in personal injury or medical malpractice.

Networking Apps

While the **LinkedIn** app helps you keep track of all your connections, it, like the **Facebook** app, is just the mobile face to a social network website. **Camcard** (IntSig Information Co., Ltd) and **ScanBizCards** (ScanBiz Mobile Solutions LP) and are two apps that help you keep track of business cards. Both apps use OCR (optical character recognition) to extract data from business cards you capture with your device’s camera. Camcard reads business cards and saves the information from them instantly to your phone contacts. ScanBizCards keeps the info, along with the business card images, within the app, so

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- Steve Jobs

to speak. Both apps, however, sync information across smartphones, tablets, computers, and the web, accessible at www.camcard.com and www.scanbizcards.com, respectively.

Other Useful Apps

SignNow by Barracuda Networks is a free app that has been featured in many major magazines. It lets you sign documents yourself or get someone else's signature just about anywhere. Any document uploaded from email, Dropbox, or even your camera can be signed with your finger, then emailed or saved to a free SignNow account. Apparently, Brooklyn Nets point guard Deron Williams used the app to sign his \$98M NBA contract in 2012, so you

would not be too avant-garde trying it out for something smaller in 2014.

Evernote is another great app that has been around for a bit. Touted as a Top 10 Must-Have App by The New York Times, Evernote simplifies the taking, editing, and organizing of notes taken with your device. I tried Evernote last year, but never really adapted to it. Perhaps it is time to give it another try.

If the short list above whets your appetite for more, UCLA's Hugh and Hazel Darling Law Library has compiled an excellent catalog of "Mobile Applications for Law Students and Lawyers." (<http://libguides.law.ucla.edu/mobilelegalapps>). The guide of mobile applications categorizes apps into four categories: Apps

for Legal Research and News, Apps for Law School and Bar Exam Study, Apps for Productivity, and Apps for Fun. While some listed apps are obvious (Dropbox, Adobe Reader) and others particular to California, it is still a great compilation, even for non-iPhone users.

Lastly, I close this series of articles with a choice quote for the Luddite in all of us. After all, every machine breaks down at some point or another.

"We're born, we live for a brief instant, and we die. It's been happening for a long time. Technology is not changing it much, if at all."

- Steve Jobs

It Ain't Open Season on Folks Who Are Already Hurt: Joinder and Apportionment of Successive Incidents Contributing to Single Injury

Kenneth L. Shigley



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For two decades, Georgia case law has prevented joining successive incidents in a single lawsuit. In *Brinks, Inc. v. Robinson*, 215 Ga.App. 865, 452 S.E.2d 788 (1994), the first of three inconsistent opinions disallowed joinder of two tortfeasors whose negligence in two motor vehicle accidents four months apart contributed to a single injury.

But *Brinks* is an anomaly ripe to be overturned. The lead opinion ruled without analysis that collisions four months apart were not a “series of occurrences” within the meaning of O.C.G.A. § 9-11-20(a). All cases cited in support of that opinion deal with questions of joint tortfeasors or venue, with no analysis of permissive joinder of successive occurrences. A tangential special concurrence discussed the plaintiff’s withdrawal of a request to charge on joint liability regarding psychological injuries. The dissent focused on permissive joinder, succinctly stating “this was an appropriate case for permissive joinder of the two defendants and the application of OCGA § 9-11-20(a), . . . [as the] claims arose out of a ‘series of occurrences [four months apart], [and] common questions of law and fact arose regarding the nature, extent, and causation of her injuries, the damages attributable to them, and which party or parties might be liable for them.”

This splintered decision is still cited as authority for barring joinder of successive incidents producing a single injury.

1. Brinks is a physical precedent only.

Georgia Court of Appeals Rule 33 provides that if there is a special concurrence without a statement of agreement with all that is said in the opinion or a concurrence in the judgment only, the opinion is a physical precedent only. A decision that is a physical precedent only is no more than persuasive authority, and not even persuasive if it “does not comport with the body of case law in this area.” Thus, “cases from other jurisdictions [may be considered] as persuasive authority.”

2. The apportionment statute changes the premise for *Brinks*.

Brinks was centered on an effort to gain venue over two tortfeasors in a single county in the days of joint and several liability. Two subsequent cases, both decided prior to adoption of mandatory apportionment under OCGA § 51-12-33(b), uncritically cite *Brinks* as authority for successive tortfeasors not being “joint tortfeasors” but without any analysis of permissive joinder under OCGA 9-11-20.

The enactment of O.C.G.A. § 51-12-33(b) in 2005 shifted the ground under the foundation of *Brinks* by requiring mandatory apportionment of damages as follows:

Where an action is brought

against more than one person for injury to person or property, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, **apportion its award of damages among the persons who are liable according to the percentage of fault of each person.** Damages apportioned by the trier of fact as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.

3. **Georgia courts are not required to perpetuate error.**

The doctrine of *stare decisis* is not “an imperative mandate, but a mere judicial custom, or convenient maxim, which the courts have evolved for their own guidance.” While “[t]he rule of *stare decisis* is a wholesome one, [it] should not be used to sanctify and perpetuate error Courts, like individuals, but with more caution and deliberation, must sometimes reconsider what has been already carefully considered, and rectify their own mistakes.” Rather than blind reliance upon *stare decisis*, the court should require careful analysis of factors such as the age of the precedent, the reliance interests at stake, the workability of the decision, and, most importantly, the soundness of its reasoning.

No driver relies upon an obscure misinterpretation of permissive joinder rules in deciding whether or not to negligently operate a motor vehicle. There is no reliance upon the *Brinks* ruling affecting any property rights or guiding human or business conduct that would provide a sound basis in public policy or

jurisprudential theory to perpetuate error in the application of Rule 20 on permissive joinder of successive tortfeasors. Thus, respect for *stare decisis* does not require the court to perpetuate error, when an erroneous decision is not so engrained in the law as to be relied upon in guiding human conduct and business.

4. **Brinks is contrary to the weight of authority in other jurisdictions that have adopted Fed. R. Civ. Proc. 20.**

In its confabulation of the procedural issue of permissive joinder with the substantive issue of joint tortfeasor status, the *Brooks* lead opinion ignores the weight of authority in other jurisdictions that had adopted the identical language of Fed. R. Civ. Proc. 20 and reaches an aberrational conclusion as to what constitutes a “series of occurrences.”

Georgia courts in applying provisions of the Civil Practice Act copied from the Federal Rules of Civil Procedure properly look to decisions applying the Federal rule in question. OCGA § 9-11-20(a) is identical to Federal Rule of Civil Procedure 20(a), and both provide in pertinent part as follows:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.

The leading commentator on the Federal Rules of Civil Procedures, from which OCGA § 9-11-20 was copied verbatim, explains the “series of occurrences” standard as follows:

Moreover, the flexibility of this standard enables federal courts to promote judicial economy by permitting all reasonably related

claims for relief by or against different parties to be tried in a single proceeding under the provisions of Rule 20. *Lucas v. City of Juneau* [127 F. Supp. 730 (D.C. Alaska 1955)] is illustrative of the liberal approach to the concept of same transaction or occurrence employed by many federal courts. *In that case, the court permitted an injured plaintiff to join both the original tortfeasor and a second tortfeasor whose subsequent negligence aggravated plaintiff’s original injuries.* (emphasis added).

“There is no strict rule for determining what constitutes the same occurrence or series of transactions or occurrences for purposes of Rule 20(a). Furthermore, Rule 20(a) does not require that every question of law or fact in the action be common among the parties; rather, the rule permits party joinder whenever there will be at least one common question of law or fact.” Federal courts applying this Rule have consistently held that a series of successive accidents contributing to or aggravating a single injury may be combined in a single action against multiple defendants. “[C]ourts have interpreted the requirements of Rule 20(a) liberally so as to promote judicial economy and to allow related claims to be tried within a single proceeding.”

Under FRCP 20, two or more discrete incidents involving unrelated defendants that contribute to an injury constitute a “series” of transactions under the permissive joinder rule. The application of the “series of transactions or occurrences” has extended to fact situations far more complex and attenuated than two car wrecks a few months apart contributing to a single injury. See, e.g., *Advantel LLC v. AT&T Corp.*, a collection action brought by sixteen competitive local

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It Ain't Open Season

continued from previous page

exchange carriers against two long distance carriers involving a series of transactions or occurrences arising in the continuous nature of call routing on all of phone networks.

In *Jacobs v. Watson Pharmaceuticals, Inc.*, numerous incidents of injury arising from an alleged product defect satisfied the “series of occurrences” requirement for joinder where they involved the same product in the same state within a year of each other and were reasonably related in time, location, and type. Similarly, in *Hamilton v. Breg, Inc.*, claims involving a model of pain pump in different patients with knee injuries were found to constitute a “series of occurrences” under Rule 20, as “common questions of law and fact predominate over the issues unique to

each case[.] . . . no unfair prejudice to the defendant . . . and [c]onsolidation will result in the substantial saving of time and expense to the parties and the witnesses and will promote judicial economy.”

Regarding successive automobile collisions, in *Bell v. Werner Enterprises, Inc.*, the court allowed joinder of defendants in automobile accidents occurring two months apart in different states, as “the injuries the plaintiff received from the two accidents are inextricably intertwined and accordingly arise from the same series of transactions or occurrences.” Other states that have adopted the language of FRCP 20 likewise allow joinder of successive tortfeasors contributing to a single injury.

CONCLUSION

It is time to challenge the anomalous *ipse dixit* lead opinion in *Brinks* -- which is physical precedent only, contrary to the weight of authority in other jurisdictions, and based not any analysis of the permissive joinder rule but on joint tortfeasor rules that have been changed by later legislation. The better rule is to allow permissive joinder of tortfeasors in successive incidents whose acts combine to produce a single injury that is indivisible but may be apportioned between them. However, in raising a test case to overturn *Brinks*, lawyers should be selective so as to present a case with compelling facts.

FOOTNOTES

1. *Southern Elec. Supply Co. v. Trend Const., Inc.*, 259 Ga.App. 666, 669, 578 S.E.2d 279, 282 (2003). See also, *BDI Laguna Holdings, Inc. v. Marsh*, 301 Ga.App. 656, 660, 689 S.E.2d 39, 44 (2009).
2. *Ivey v. First of Georgia Ins. Co.*, 209 Ga.App. 784, 787, 434 S.E.2d 556, 559 (1993).
3. See *Ferguson v. Carver*, 257 Ga.App. 849, 572 S.E.2d 700 (2002); *Smith v. Curtis*, 226 Ga.App. 470, 486 S.E.2d 699 (1997).
4. William M. Lile, Some Views on the Rule of Stare Decisis, 4 Va.L.Rev. 95, 101 (1916).
5. *City of Atlanta v. First Presbyterian Church*, 86 Ga. 730, 732-733, 13 S.E. 252 (1891).
6. See *Montejo v. Louisiana*, 556 U.S. 778, 129 S.Ct. 2079, 2088-2089, 173 L.Ed.2d 955 (2009). See also, *Hicks v. Heard*, 286 Ga. 864, 692 S.E.2d 360 (2010)(overturn precedent so as not to “perpetuate error”); *Harper v. State*, 286 Ga. 216, 686 S.E.2d 786 (2009)(overruling case that erroneously inserted an unnecessary step in post-conviction criminal procedure); *Garza v. State*, 284 Ga. 696, 703, 670 S.E.2d 73 (2008) (overruling three decades of precedent requiring only slight movement under kidnapping statute); *Ketchup v. Howard*, 247 Ga.App. 54(1), (2), 543 S.E.2d 371 (2000) (overruling 25-year-old precedent construing Georgia Medical Consent Law despite Legislature’s implicit acquiescence, where the courts’ past construction of the statute “went beyond the legislative intent” of the statute); *Humthlett v. Reeves*, 211 Ga. 210, 215(1)(b), 85 S.E.2d 25 (1954) (stare decisis not applicable where decision so recently rendered and in such direct conflict with precedent that “no one could have been led to rely upon it as permanently fixing the law and been misled by it to his hurt and injury”); *Humthlett v. Reeves*, 211 Ga. 210, 216(1), 85 S.E.2d 25 (1954); *Ellison v. Georgia R.R. & Banking Co.*, 7 Ga. 691, 13 S.E. 809 (1891).
7. (a) See, e.g., *Fuller v. Heartwood* 11, 301 Ga.App. 309, 312, 687 S.E.2d 287 (2009); *Barnum v. Coastal Health Svcs.*, 288 Ga.App. 209, 215(2)(b), 653 S.E.2d 816 (2007).
8. Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE, § 1653
9. *Guedry v. Marino*, 164 F.R.D. 181, 184 (E.D.La.1995), citing Federal Practice and Procedure § 1653, supra.
10. See, e.g., *Myers v. Dolac*, 2011 WL 4553107 (W.D.N.Y., 2011); *Barr Rubber Prods. Co. v. Sun Rubber Co.*, 425 F.2d 1114, 1127 (2d Cir.) (Rule 20 “specifically vests in the district court the discretionary power to make such orders as may be required to prevent delay or prejudice”), cert. denied, 400 U.S. 878, 91 S.Ct. 118, 27 L.Ed.2d 115 (1970); *Liegey v. Ellen Figg, Inc.*, 2003 WL 21361724, *3 (S.D.N.Y.2003) (“requirements of Rule 20(a) should be interpreted liberally”); *Kovian v. Fulton Cnty. Nat’l Bank and Trust Co.*, 1990 WL 36809, *9 (N.D.N.Y. 1990) (“there is no rigid rule as to what constitutes the same series of transactions or occurrences”); *City of New York v. Joseph L. Balkan, Inc.*, 656 F.Supp. 536, 549 (E.D.N.Y.1987) (requirements of Rule 20 are to be “liberally interpreted”) (citations omitted).
11. See, e.g., *Diehl v. H.J. Heinz Co.*, 901 F.2d 73, 73-74 (7th Cir.1990); *Poster v. Central Gulf S.S. Corp.*, 25 F.R.D. 18, 20 (E.D.Pa.1960); *Lucas v. City of Juneau*, 127 F.Supp. 730, 732 (D.Alaska 1955).
12. 105 F.Supp.2d 507, 513 (E.D.Va., 2000).
13. 2011 WL 2216257 (N.D.Okla.,2011).
14. 2011 WL 221919 (S.D.Ohio,2011).
15. 2011 WL 1297115 (N.D.W.Va., 2011).
16. See, e.g., *Ex parte Jenkins*, 510 So.2d 232 (Ala.1987)(joinder of a series of occurrences that began with a workplace injury and continued with exacerbation of that injury during medical treatment); *Sutterfield v. District Court*, 438 P.2d 236 (Colo. 1968)(two overlapping back injuries 10 months apart; “Proper apportionment can be more justly accomplished by one jury than by two juries sitting separately, each faced with the argument that the greater portion of the injury was caused by the defendants other than the ones in the case at trial.”); *Schwartz v. Swan*, 63 Ill.App.2d 148, 211 N.E.2d 122 (1965)(discussed many decisions involving multiple accidents and held that joinder was proper unless it could be determined with reasonable certainty to which occurrence the plaintiff’s injuries were attributable); *Treanor v. B. P. E. Leasing, Inc.*, 158 N.W.2d 4 (Iowa 1968)(two accidents months apart contributed to an indivisible injury so joinder was proper); *Shacter v. Richter*, 271 Minn. 87, 135 N.W.2d 66 (1965)(consolidation of actions involving accidents three and one-half years apart, finding that the common issue was the injuries sustained); *State ex rel. Nixon v. Dally*, 248 S.W.3d 615 (Mo.,2008)(if venue proper, where it is alleged that the second collision aggravated injuries resulting from the first accident, the two defendants may be joined in the same lawsuit.); *Hager v. McGlynn*, 518 S.W.2d 173, 174 (Mo.App.1974)(“When the injuries are alleged to be indivisible, or to have been aggravated in another accident, then joinder is permissible”; *Ryan v. Mackolin*, 14 Ohio St.2d 213, 237 N.E.2d 377 (Ohio, 1968)(joinder of actions against drivers for back injuries received in two separate collisions about six months apart); *Carr v. Higdon*, 665 S.W.2d 382 (Tenn.App.,1983)(“where (1) separate accidents which are reasonably close in point of time result in injuries to the same parts of the body, and (2) in the trial of the case against either of the tortfeasors the question of the extent of the injuries received in the other accident will be one of the issues, the conditions of [Rule 20] are met and the Court’s action was proper.”)

Midyear Meeting

continued from page 3



(l-r) Irwin W. Stolz, Justice Thompson and Chair James W. Hurt, Jr.



(l-r) Mark Dehler, Justice Thompson and Joel Wooten

lawyers would be no different than any other merchants engaged in selling goods or services for profit. Their sole goal would merely be to accumulate wealth.

A year before his death, the late Warren Burger, Chief Justice of the United States Supreme Court, wrote an article for the *Wall Street Journal* entitled: "The ABA Has Fallen Down on the Job." In it, he wrote – and I quote: "The law historically has been viewed as a learned profession rather than a trade. As such, a lawyer's 'calling' goes beyond his or her immediate financial interest. Lawyers have viewed themselves as statesmen and have served as problem-solvers, harmonizers, and peacemakers – the healers of conflict, not 'gunslingers.' The legal profession, in short, abided by standards that were above the minimum commands of the law. All of the profession's current problems – the eroding public respect for lawyers, the lack of professional dignity and civility on the part of some lawyers, and lawyers' insensitivity to the litigation explosion – are clear indications that the professionalism of the bar is in sharp decline." Justice Burger wrote that 17 years ago.

Are lawyers promoters of conflict? The First Amendment allows lawyers to advertise. But are lawyers just hired guns whose legal acumen can be purchased by the highest bidder with little or no regard for the search

for justice? Is win at any cost our philosophy? The Eleventh Circuit Court of Appeals, in a 1998 decision, *Falanga v. State Bar of Georgia*, upheld the possible imposition of sanctions against lawyers for this kind of conduct. And according to The Georgia Rules of Professional Conduct, while a lawyer must diligently represent his client, he or she is not bound to press for every advantage that might be realized for a client. Rather a lawyer has professional discretion in determining the means by which a matter should be pursued.

The legal profession must not use "diligent representation" and the need to win as an excuse for deviation from what is morally right. It is the responsibility of judges and lawyers to uphold the integrity of our legal system. Litigants have the right to have their cases adjudicated equitably and efficiently, regardless of their social position or financial resources.

Safeguarding our professionalism is a challenge we all face. But there is another related challenge that we continue to face, and it is one that we have had to confront since our nation's birth: Judicial Independence. This is a subject that people outside our legal profession rarely think about. Our citizens are concerned with presidential and gubernatorial elections. Many know who their senators and representatives are, and they may even be familiar with their local politicians. However, most would be hard

pressed to name a judge in their local circuit. And yet, as you already know, the law and the courts affect everyone.

Every day, thousands of Georgians around the state enter our court-houses. They're the business owner who's embroiled in a contract dispute; they're the woman who's seeking a protective order because she's in fear of her husband; and they're the middle-aged couple, whose car was stolen from them at gunpoint. They go to court, often with fear and trepidation, but always in search of justice. They go to court with the promise that regardless of their walk of life, the judge deciding their case will be fair, unbiased, impartial, and knowledgeable.

The judiciary is – and we must continue to remind people of this – the third branch of government. Just as there are three great professions, our founding fathers – in their brilliant concept of balancing powers – created three co-equal branches:

- The legislative branch to make the laws;
- The executive branch to execute the laws;
- And the judicial branch to interpret the laws in strict adherence to the Constitutions of our nation and our state.

Our government was set up this way for specific reasons. Immediately

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Midyear Meeting

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after the American Revolution, our forebears, having won their independence from England and the harsh hand of George III, were unwilling to create a strong central government. The thirteen former colonies were loosely held together by the Articles of Confederation, but they soon discovered that this was too weak a document to allow for effective government. George Washington is said to have described the states as being held together by “a rope of sand.”

And so “in order to form a more perfect union,” they drafted an amazing document: The Constitution of the United States of America, a document that serves us as well today as it did 226 years ago. To make sure that no person or branch of government could possess unbridled power, our forefathers wrote the Constitution to create a government with a built-in system of checks and balances.

The drafters designed the judiciary as an independent branch of government so it could render impartial decisions in individual cases. Independence would also allow the judiciary to check any over-concentrations of power in the political branches. It was most definitely the intent of the founding fathers that each of the three separate branches of government should have its own functions and powers and that the separate branches would provide checks and balances on each other.

This concept is critical to our understanding of the judiciary. The judiciary does not govern, as that is the function of the executive branch. The judiciary does not legislate or enact law, as that is the function of the legislative branch. The judiciary represents the law.

Above the bench of the Supreme Court of Georgia is a Latin phrase etched in stone. It says: “Fiat Justitia, Ruat Caelum.”

It means: “Let justice be done, though the heavens may fall.”

This pronouncement is the essence of an independent judiciary. It stands for the notion that above all else, the

rule of law is the foundation of our nation, and regardless of anything else, we must protect it. That is our duty as judges. It is our job to uphold the law regardless of the outcome, regardless of public opinion, regardless of political favor or disfavor.

The courts do not exist to propound any ideology, organization, religion, or special interest. Paramount among its functions is the duty to insure due process and equal protection to all parties without regard to race, religion, gender, ethnicity, economic position, or social standing. The judicial system *must* be fair and impartial in administering justice. And we must be vigilant in our protection of its mission to do so.

Chief Justice John Marshall once said:

“The Greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent Judiciary.”

From the very beginning, there has been considerable controversy as to how American judges should be chosen. Under English rule, the King selected the judges.

Today, states select their judges though an endless combination of schemes. Many states still elect their judges in partisan elections. I personally like Georgia’s system. In our state, many judges are first vetted and appointed by the Governor to fill vacant seats. But all must run for reelection, and they run in non-partisan elections.

With some recent exceptions, Georgia’s judicial campaigns have been relatively restrained and dignified. Not only because elections were non-partisan but because judicial candidates were bound by a code of ethics, which prohibited them from discussing their personal viewpoints or how they might rule on controversial issues. Judges were to uphold the law regardless of their personal viewpoints. Judicial candidates campaigned on their qualifications and what they could contribute to the ju-

dicial system.

However, in its 2002 decision in *The Republican Party of Minnesota v. White*, the United States Supreme Court held that prohibiting “a candidate for judicial office, including an incumbent judge” from expressing “his or her views on disputed legal or political issues,” violated the First Amendment guaranteeing free speech. Judicial candidates may now express their views on any subject they choose. But does that mean they should?

Increasingly, judicial campaigns in some parts of the country have turned into mudslinging contests. Special interest groups threaten judicial independence using political, social and financial resources to influence the selection and retention of judges. Political attacks on courts, special interest money flowing to judicial campaigns, and the loosening of ethical restrictions on judicial candidates – have the potential to blur the line between judicial accountability and political accountability. As we know, the two are different, very different.

Judicial independence allows judges to decide cases fairly and impartially, according to the facts of the case and the law. Individual judges and the judicial branch as a whole should work free of ideological influence. Although all judges do not think alike or always reach the same decision, their decisions should be based on determinations of the evidence and the law, not on public opinion polls, personal whim, prejudice or fear, or interference from the legislative or the executive branches or private citizens or groups.

Finally, to maintain judicial independence, the courts must be funded sufficiently to fulfill their constitutional mandates.

As you in this room know, the judicial branch provides a core government function by protecting the public safety. We in the judiciary are bound by the Constitutions of our state and nation to uphold the rule of law and mete out justice in a fair and impartial way to all who come be-

fore us. Our courts are the emergency rooms of society: We must respond to all who come before us.

In these last seven years, just as Georgia's families, businesses, public sector and private sector have struggled in the face of what seemed to be an intractable recession, so did our courts. We have begun to crawl out of bad times and into better times. Yet, change is slow, and we must remain vigilant that we do not slip behind. Georgia's entire judicial branch of government receives only 1 percent of the state budget. Many courts are still trying to climb out of the effects of state and local budget cuts and staff furloughs that they have undergone in recent years.

Civil trials in particular were delayed in a number of jurisdictions. As you know, that is because our Constitution guarantees the right to a speedy trial in criminal cases. As a result, some judges were forced to delay civil matters. Not long ago, one metro Atlanta judge said he worried about what would happen if a young mother found a closed courthouse door on the day she needed a temporary restraining order to protect her family from an abuser.

We are all proud that Georgia was recently ranked the Number 1 best state in the country for doing business by one of the country's leading trade publications. We in the judiciary want to do everything we can to protect that ranking by guaranteeing that businesses can resolve their disputes in a timely fashion. In addition, divorce cases and dispossessory cases have been affected by court delays from Jackson County to Houston County. In one Northeast Georgia court, people recently had to wait up to four months just to get a temporary hearing in a divorce – a situation that can grow volatile when children are involved. For a landlord, court delays

can mean an additional two-to-three weeks before a non-paying tenant is evicted and replaced with a paying tenant. For creditors, it can mean an additional three-to-four weeks before any collection efforts can be started.

Georgia's judiciary has never resisted sharing the burden of difficult economic times. The fact is we were lean before they struck. At the Supreme Court of Georgia – the state's highest court – until recently, we did

tice reform, we are expanding these courts statewide.

We have a governor who was a judge himself and many in the legislature who have a deep appreciation for the importance of the courts.

Judicial authority is dependent upon public respect so an informed electorate is vital. To preserve the impartiality of the courts for our children and our grandchildren, we must return to educating our citizens about the role of the courts in our constitutional democracy.

As much as possible, I take every chance I get to let people know the business of our courts and the challenges now before us. I urge you as lawyers to do the same. The judicial branch, our allies in the bar, leaders in the other branches of government, business leaders, and concerned citizens must take a well-crafted message regarding the role of the courts to our citizens, young and old alike, through the media, schools, civic groups, and any other public forum we can garner.

Respect for the law preserves our civilization and way of life. Upholding the law means not only prosecuting those who break the law, but protecting basic rights and liberties. An independent court system and a legal profession that upholds the highest standards of professionalism are essential to our democracy.

In closing, I leave you with the words of Learned Hand, a United States Judge and judicial philosopher: "If we are to keep democracy, there must be a commandment: Thou shalt not ration justice."

Thank you again for having me. And I wish you all continued success.



A nice size crowd to hear our keynote speaker

not even have a paid employee to greet visitors or answer our phones in the main office. Our small staff is still smaller than it was a decade ago, yet our caseload – like that of other courts – has grown. Justice is not a privilege; it is a right. Criminal cases must be heard; civil disputes must be resolved.

The good news is Georgia's courts and judges are problem solvers and have not sat idly by in the face of recession and economic difficulties. It was a judge who first identified the need for a drug court back in 1994, when Bibb County created Georgia's first. Since then, the number of accountability courts has grown to more than 100. And now with criminal jus-

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