



2006

Tradition of Excellence Awards



The General Practice and Trial Section 2006 “Tradition of Excellence Award” Recipients

(l-r) Hylton B. Dupree, Jr.(General Practice), Judge Willis B. Hunt, Jr. (Judicial), Wallace E. Harrell, (Defense), James B. Franklin, (Plaintiff) and Section Chairman, Myles Eastwood

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March 16 - 18, 2007

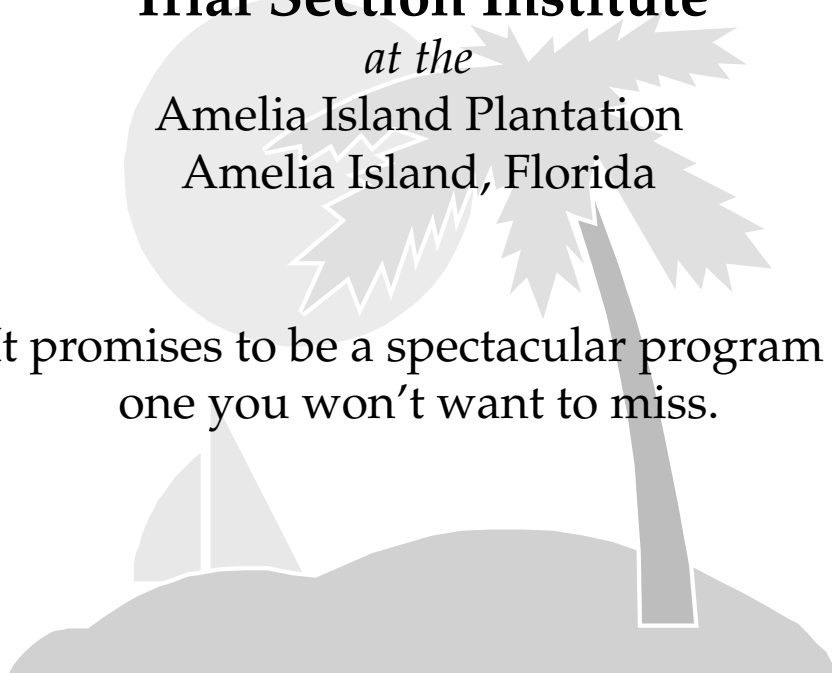
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CALENDAR CALL

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ARTICLES

- Chairman's Corner
Cal Callier 2
- Recovering "Medical Monitoring" Damages
Douglas A. Henderson
Lynette E. Smith
Jeffrey J. Hayward 3
- 2006 Tradition of Excellence Awards
Wallace E. Harrell
Introduced by Lisa Godby Wood 4
Hylton B. Dupree, Jr.
Introduced by Tom Cauthorn 8
Judge Willis B. Hunt, Jr.
Introduced by Justice George H. Carley 12
James B. Franklin
Introduced by Rebecca Franklin 16
- Tradition of Excellence Breakfast and Reception 26
- Audio/Video Tape Library 28

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I never had the privilege of knowing Hank O'Neal. I do know that he was a great lawyer and a tremendous influence in the lives of many. I have heard the stories. At the close of the business day, Hank would lock the office door and the attorneys would gather round, often until late in the evening, and discuss the "one consuming passion" of Hank's life - that is "the law the way the law ought to be." From these round table discussions emerged some of the most

influential and respected attorneys in our state, along with timeless kernels of knowledge.

The events of this past year, and particularly the recent challenge to the independence of our judiciary, remind me of one of Hank's timeless lessons. "All you can ever want or ask for is an impartial forum where book and page number will be followed."

As we have witnessed, there are individuals and groups who seem to care nothing about impartiality, nor book and page. Thankfully, Georgians have once again resoundingly declared that the independence of our judiciary is not for sale. In the race for Justice Hunstein's seat, the opponent's camp declared that attorneys were not influential enough to swing the election. I do not know whether that is true or not. What I do know is that my friends, most of whom declare themselves republicans, agree with Hank. They believe our courtrooms should remain impartial forums where book and page are followed. I do not attribute Justice Hunstein's recent victory solely to the work of attorneys, but to the good judgment and sound fundamental values of the citizens of this state.

The rumor now is that the same

forces who brought the recent challenge to Justice Hunstein will now turn their efforts towards making judicial elections partisan and/or packing the Supreme Court through the creation of additional judgeships. We will again be presented with an opportunity. The opportunity is to spread the word that the impartiality and independence of our judiciary is not to be tampered with. One of the people at the round table with Hank years ago was Manley Brown. From Manley, I learned this - "When you are dead wrong you deserve to lose." If we keep up the fight and continue to spread the word, the opponents of our justice system will get what they deserve.

"All you can ever want or ask for is an impartial forum where book and page number will be followed."

H. T. O'Neal, Jr .

Recovering “Medical Monitoring” Damages

Douglas A. Henderson, Lynette E. Smith, and Jeffrey J. Hayward

Douglas A. Henderson is a partner at Troutman Sanders LLP, specializing in toxic torts and environmental litigation. Henderson earned a Ph.D. from the University of Michigan and a J.D. from the University of Kentucky. He also teaches at the University of Georgia College of Public Health.

Lynette E. Smith is also a partner at Troutman Sanders LLP, specializing in complex litigation. She earned her B.A. from Emory University and a J.D. from the University of Florida.

Jeffrey J. Hayward is an associate at Troutman Sanders LLP. He earned a B.S. in pharmacology & toxicology from the University of Wisconsin, and an M.S. in public health and J.D. from the University of North Carolina.

In 2005, while filling your car with gasoline, you begin to feel lightheaded from breathing the fumes, and you then notice a warning on the pump that gasoline vapors have been “shown to cause cancer in laboratory animals.” Your physician, an environmental health specialist, explains that you have elevated levels of benzene metabolites in your blood with an associated one hundred-fold increased risk of cancer, likely due to the gasoline vapors. Other than being distraught over the prospect of developing cancer at a young age, you have no symptoms of cancer. Is this sufficient physical impact to support a tort claim in Georgia? Can you recover simply for being exposed to potentially carcinogenic vapors? Can you recover the costs of monitoring your health to determine if you actually develop cancer in the future?

Like many legal questions, the answer to these questions is “maybe.” Despite the absence of a traditional physical injury, plaintiffs in several states have sued and won damages for medical monitoring costs on facts not substantially different from those described above. But many more plaintiffs, perhaps a majority, have lost on similar facts, and recent decisions from the U.S. Supreme Court and several state courts suggest a trend against such claims.

In Georgia, few published opinions have addressed the merits of these toxic exposure claims. *Parker v. Brush-Wellman*, however, a recent case

arising out of the U.S. District Court for the Northern District of Georgia, changes that situation, providing a long overdue exposition of relevant state and federal case law against the backdrop of Georgia traditional tort law. *Parker* provides a useful roadmap for Georgia state courts considering damages for medical monitoring costs, and it may finally usher in a period of reduced uncertainty concerning the viability of this and other “innovative” toxic tort claims in Georgia. Parties considering or defending against such claims in Georgia state courts would be wise to pay close attention to *Parker* and its analysis and ultimate holdings.

Medical monitoring claims in Georgia

It is a fundamental maxim of tort law that a plaintiff must prove a compensable injury.¹ In recent years, however, parties began pleading for recognition of *latent* injuries – those that are initiated by a tortious act, but may not manifest in any clearly identifiable form for many years. A prime example involves exposure to carcinogens, which can initiate the process of cancer development but without giving rise to a clinically identifiable tumor until years or even decades later.²

This increased appreciation for disease latency and concerns about fairness and justice prompted several courts around the country to issue damage awards for “medical monitoring.” These courts, seeking to

continued on page 20

DEFENSE

WALLACE E. HARRELL



Introduced by
Lisa Godby Wood

Tradition of Excellence Award

We gather this morning to identify and celebrate excellent people. My former law partner and constant friend, Wallace Harrell, is an excellent person. To say that he's a "lawyer's lawyer" is accurate, but incomplete. He's the son of a lawyer, and the father of a lawyer. He is the pride of tiny Quitman, Georgia. He's an Eagle Scout, Editor of the Law Review, Student Body President, Fellow of the American College of Trial Lawyers, State Bar Examiner, Chairman Emeritis of the Southern District Advisory Committee, and a named partner in one of the oldest law firms in the state of Georgia. In short, he's lived his life the way we all wish we had lived ours.

While his list of achievements is impressive, his greatness lies in the effect he has had on the rest of us. To his firm and to his clients, he's the sporting equivalent of the go-to guy. He's the man you want at the podium when the case is on the line. And it is hard to believe, given his athleticism, and his grace and his debonair appearance, but Wallace has been trying cases for 50 years. He's done so using techniques that never go out of style, cool judgment, measured temper, thorough preparation,

constant courtesy, and good humor. He's been lead counsel in literally hundreds upon hundreds of cases. Additionally, when big multinational corporations get sued in Brunswick, Wallace gets hired as local counsel. What the general counsel would have in mind initially for Wallace would be for him to serve as a spot of local color, certainly no heavy lifting for the small town lawyer. But it never took long for that role to change, because general counsels don't get to be general counsels by being slow or poor assessors of ability. They would realize very quickly that the best lawyer in the room was the silver-haired, silver-tongued gentleman from Brunswick, Georgia. So what began as a cameo appearance for Wallace would end as a starring role.

My fondest memory of watching this unfold was when we were hired to defend a manufacturer in a well-publicized rollover case. The plaintiff's lawyers were the best of the best. The trial judge was the most demanding of the demanding. I don't want to reveal his name. Just know that he's a federal judge, he sits in Brunswick, he's of Sicilian descent, and he was a POW War II.

But, again, I don't want to reveal his identity.

By the final night of this long embattled trial, the general counsel at the last minute changed the lineup and decided to have Wallace present the crucial expert witness, a former head of NHTSA in the morning. I learned that night what separates a good trial lawyer from a great trial lawyer. I learned that it is either fearlessness or dead calm in the face of fear. Whichever it is, I saw it in Wallace that night as we drove to meet and prepare this crucial expert.

I realized this was potentially a very dangerous case. These talented plaintiff's lawyers had secured a multi-million dollar verdict against this same client in this same type of accident a few months earlier in a different state. It was late at night, and we rode in silence to meet this head of NHTSA whom we had never met. While it was still just Wallace and me, before we got in front of other people, I asked him the question I was too embarrassed to ask in front of other people. I said, "Wallace, what does this NHTSA stand for? As long as I live, I will never forget his answer. He said very casually, "I have no idea."

Of course, my point is, he prepped that witness masterfully. The testimony went in beautifully, and the case was won due in no small part to Wallace's efforts. I don't know whether it was fearlessness or dead calm in the face of fear, but I do know that Wallace is a great trial lawyer.

As trial lawyers, jurors see us more clearly than is comfortable for some. The real secret to Wallace's success is that jurors have always seen him for exactly what he is, an honest, decent man. There are often louder lawyers in the courtroom, on rare occasions there are more eloquent ones, but never is someone more believable than our Wallace. That's his gift.

To have practiced trial law for 50 years, is to have run many a gauntlet: The punishing pace, the temptation to coast, the crowd of competitors, and the only abiding constant, change in technology, change in personnel, change in the law, and change in yourself. Wallace has run all of these gauntlets and will finish as he began, with his honor and his talent intact. Some people reach the pinnacle of their profession at the expense of their personal life. Not so with Wallace. He has a bright family life, illuminated by his beloved wife, Mary, his sons, his step-children, and his grandchildren. He has outside interests, chiefly golf. The golfers among us know, that like the practice of law, golf doesn't build character, but it does reveal it. Wallace plays

golf like he practices law. He makes it seem so easy to be so good.

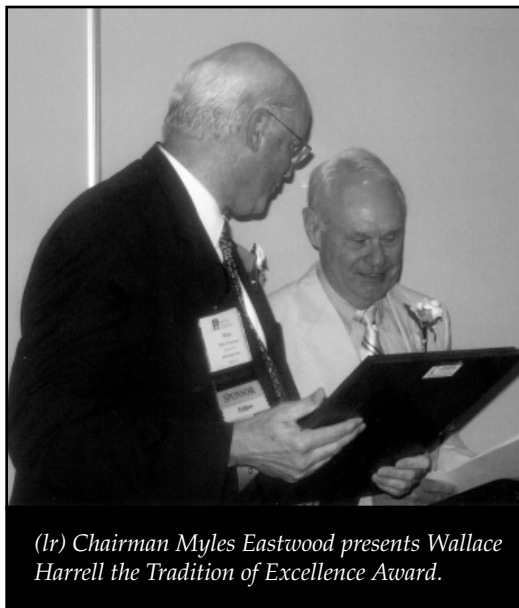
He's a natural mentor. Those of us trained by him know we're blessed. You see, in our area of the state, there's still time for training, still a method for mentoring. For in south Georgia, you travel to get to your witnesses and to your courthouses. Those of you from Atlanta stop thinking London, Paris, Venice, The Hague. I'm talking Ludowici, Pembroke, Vidalia, and Hazlehurst.

It was on these these trips during long conversations that I truly learned from Wallace how to practice law, and I also learned that he is, above all else, always two things: a lawyer and a gentleman.

In closing, I reserve for Wallace and Wallace alone my highest compliment. Those of you who are parents will know its import. When I look at my own son, occasionally I do what every parent does. I wish for him the very best. I hope that he will find a wife who lights up his life, I hope he will have a child who thinks enough of him to follow in his career path, I hope he will reach the very summit of a noble career, and do so having never lost his manners, never lost his joy. In short, I hope he turns out like Wallace Harrell.

Wallace is an excellent lawyer, an excellent person, and it is my honor to introduce to you our 2006 winner of the Tradition of Excellence Award in the Defense Category, Wallace E. Harrell.

Continued on next page



(lr) Chairman Myles Eastwood presents Wallace Harrell the Tradition of Excellence Award.

Tradition of Excellence Award

continued from previous page

Remarks by Wallace B. Harrell

Thank you. When Lisa Wood introduces you, you can be assured the introduction always is going to be better than the speech. I really appreciate the introduction. I think almost everybody here knows Lisa, and knows what a fine lawyer she is, and I'm really so proud of her in becoming the United States District Attorney for the Southern District of Georgia and I am sure that she will live a lifetime of public service. Lisa is a great lawyer and I truly learned more from her than she ever learned from me.

You really don't know what to say at a time like this. I read some speeches from last year and I noticed that Ben Weinberg talked about physics and I told him this morning that I started just to read his speech. But my wife, Mary, said, just talk about whatever you want to talk about, so that's what I am doing today.

And I sort of settled on a point that Lisa made, even though she didn't know what I was going to talk about, and that is, how did I decide to become a lawyer and especially a trial lawyer. And it goes back to being born in Quitman, Georgia, and being the son of a lawyer. I was named after him, and he practiced law in Quitman starting in about 1928. He did not go to college and did not go to law school. In those days, in the 1920s, they "read" law. If you couldn't afford to go to law school, you could read law in a law office for two years and then take the bar exam and you were admitted to the Georgia Bar. This was in the great depression, so times were very hard back then and many lawyers did what my father did.

He died in 1948 when he was 46 years old, and I was 16 years old. He practiced law in Quitman as a general practitioner. He served in the Georgia Senate for several terms. He was a great supporter of Governor Ellis Arnall, and in the early forties helped Governor Arnall rewrite the Georgia Constitution.

I remember Governor Arnall being in our kitchen and my father and he scribbling on paper, working on a rewrite of the Georgia Constitution. As I look back at that, I was ten or eleven years old at the time. Now, I know how important Governor Arnall was at that time, but then he was just somebody else in the kitchen.

But I could tell at an early age that what my father liked the best was trying lawsuits, and the Brooks

County Courthouse is where he tried his cases, and that was just a great place for people to go and see cases tried. There were two terms of court each year there and every term of court, the courtroom was simply packed with people, no matter what case was being tried. That's where people came for their entertainment.

And there was one particular case that, I don't personally remember, of course, but I came to find out about this case because my mother had saved all of his speeches that he made. He was constantly called upon to make speeches on Armistice Day and on Confederate Memorial Day, and graduation speeches for graduating classes and for some reason my mother had saved the closing argument that he made in this case that was tried in the Brooks County courthouse.

This case involved an African-American woman who was named Carrie, and Carrie was charged with murder. And here's what I understand about the facts of that case. Carrie had a husband, and the husband was having an affair with Fannie. And it was well known to Carrie and it was well known to the people in the community that her husband was having this affair. She begged her husband not to, not to have this affair, just to stop what he was doing and he refused to do it.

She went to Fannie and said, "Please stop doing this. This is just not the right thing to do," and Fannie laughed at her and refused to stop. So the affair kept going on and kept being more widely known. And so one night Carrie and her husband were at home, and Fannie came to the door and called out for Carrie's husband to come see her and the husband left and went with Fannie.

Carrie begged him not to go. So Carrie decided she would do something about that, and she knew where they were going and went to that house and called out for her husband to come out and he would not come. So she went in the house, confronted them and what happened then is in dispute but the long and short of it is that Carrie killed Fannie with a knife.

So she was charged with murder. Now, the question is how do you defend that case, with the fact that it is perfectly clear as to what happened. How does a lawyer in the late 1930s in Quitman, Georgia, defend

this woman? I have his closing statement and I'm certainly not going to read all of it but just a couple of paragraphs I think that give you the flavor of the defense that he offered.

"The thief who steals your property may have hunger or want or poverty to palliate his crime, but the thief who deliberately robs a home of domestic happiness, knows that he may pillage unmolested unless there is courage in the heart and nerve in the right arm of the injured member to redress that wrong. Without regard for the sacredness of marriage or the sanctity of the home, Fannie begun her nefarious scheme to rob Carrie of her husband and dared anyone to interfere with her."

He goes on to say:

"The lawmakers, in their wisdom and in their effort to do justice to all men and all races, after setting forth the different instances in which a person may be justified in taking human life, in Section 75 of the Criminal Code say: 'And all other instances, which stand upon the same footing of reason and justice shall be justifiable. This law embraces and includes what is commonly called the unwritten law and its purpose is to protect every person, regardless of race or color, who after exhausting all reasonable and proper measures is compelled to destroy another in order to preserve that relationship which the law establishes and all religions sancify.'

Then he goes on to say later in his closing argument:

"Let us not view too lightly our responsibility to those of the darker race. If there be one among you, who would discard principle for this reason, let me only remind you that your responsibility before a higher court will not be altered by race or color, but with what measure you mete, it shall be meted unto you on that final date. There can be no distinction here, and justice will prevail and truth will shine as an everlasting star. Consider truly your duty and let your verdict be molded that no one shall ever have cause to question it."

The outcome of the case was that Carrie was acquitted. And I don't know what happened to her after that but I suspect that after that her husband stayed at home most of the time. There was great entertainment in that courtroom, and my father was my inspiration in becoming a lawyer. And with my family here today, I wanted to say this about him publicly for myself and for them because he left us with a great heritage.

I am really grateful for this award. It is quite an honor. And I am really proud of my law firm, almost every member of my law firm is sitting over here at this table. We have 16 lawyers in our firm and I think about 12 of them are here and I really appreciate their coming.

I also appreciate my family being here. My son, Wallace, III, is a lawyer in our firm. He's here with his lovely wife, Anne, with their children, Laura Ann and Elizabeth, my granddaughters. My son, Bill, is here. He's a school teacher in Macon. He's here with his sons, William and Zack, my grandsons. And I am just so proud of them; and Richard Ivens, my stepson, is here and he's one of my favorite people of all time, and I really appreciate him being here.

I'm also particularly honored – and I get to say this first before anybody else does – I'm honored to be given this award with these great people that are getting awards today.

Hylton Dupree and Kathy have become dear friends of ours. Hylton and I have both been on the board of bar examiners, but not at the same time. However, we get to meet together because once you've been on the board and served that duty for five years, it is something that bonds people together because it's the most difficult and unheralded job at the State Bar.

We meet together once a year with the current bar examiners, with Alumni that have served on the board and we just have a good time while the current bar examiners work. Hylton is a very good friend and we all admire his intelligence and integrity and is well deserving of this honor.

Jimmy Franklin and I have known each other for many years. Jimmy is an outstanding trial lawyer, and a great advocate. I have opposed him on many occasions. You can trust what he says. He will do what he promises to do, and that I think is one of the greatest things you can say about a lawyer.

Then Willis Hunt and I have become good friends through the Judicial Invitational Golf Classic. He's taught me all I know about golf. To be a superior court judge is a great honor in one lifetime, to be on the Supreme Court of Georgia is a great honor in one lifetime, to be a United States District Court Judge in one lifetime is also a great honor. He has held all of these positions in one lifetime, and he really is a remarkable person.

The only thing I would say, however, is he can't

continued on page 25

GENERAL PRACTICE



HYLTON B. DUPREE, JR.

Introduced by
Tom Cauthorn

Tradition of Excellence Award

Well, good morning, everyone.

I will be blessedly brief for those of you who have had that third cup of coffee. For those of you who don't know, it is my privilege to introduce you to — and present but primarily introduce — you to somebody that we in Cobb County are exceedingly proud of.

We have a permanent inferiority complex in Cobb County. We can't help it. We are across the river from Atlanta, down the highway from Decatur, and it is just something that we've always had. But one of the things that we also have is one of the most fantastic bars in the state of Georgia. We're real proud of it. And it is my privilege today to be able to tell you a little bit about Hylton Dupree, my friend, and I think it goes without saying one of the all time stars of our local bar.

Hylton has been a very successful lawyer in Marietta for a long number of years. He graduated from the Mercer Law School in 1969. He came to Marietta with his bride, the former Patsy Spinks. They have been there ever since.

And Hylton came out of the gate fast practicing law. He was determined to be a general practitioner and early

on in the third year of his practice, he helped handle one of the biggest murder cases that's ever been tried in our community. Governor Barnes, who is also here this morning, was on the other side of the case and helped prosecute it.

So Hylton has had not only a lot of success but he's had a lot of scrutiny and a lot of attention from everyone there. He is noted in our local bar for his tenacity. Now, that's interesting because he's also noted for his courtly manners, his good grace, and his diplomatic treatment of adverse parties and adverse witnesses. But beneath the good grace, is a tenacious, unrelenting indefatigable actor.

I want to give you some examples from the reported cases. Gosh knows, Hylton has tried numerous civil and criminal cases in both the federal and the state courts, but let me give you some examples of what I'm talking about, about this tenacity and this unrelenting approach he has to the practice of law.

In 1982, his work led the Supreme Court of Georgia to overturn the English common law doctrine of caveat emptor and merger by deed. Tenacity, not giving up. That thereby permitted lawsuits by plaintiffs in

Georgia who were homeowners for building and construction negligence after the sale of a residential dwelling by a builder/developer. This was a case of first impression.

In 1986, he argued the seminal case in Georgia on vested rights of property owners to rely upon government pronouncements in the cities affecting the use of property. This decision established the parameters of the government decision and the level of reliance that the property owner had to demonstrate in order to cause the government decision to vest as a right of the property owner, and the local governing authority would not be permitted to recant the right. Indefatigable!

In 1989, he convinced the Court of Appeals to promulgate dram shop liability standard along with the case of Tibbs versus Studebaker, where the provider of alcohol could be liable for the wrongful death of a motorist who was killed by the served individual.

In 1985, he obtained a new trial from the Court of Appeals of Georgia for the county tax commissioner for the misappropriation of several hundred thousand dollars provided by a depository bank in exchange for the maintenance of county tax deposits, where the trial court had dismissed the jury and later brought the jury back for the jury's instructions. Not giving up.

In 1990, he convinced the Supreme Court of Georgia that the county was required to condemn a sewage outfall

sewage access in order to provide sewage disposal, including the banning of lift stations and septic tanks. And on behalf of the developer where the county had arbitrarily and capriciously prevented all other means of sewage disposal, including the banning of lift stations and septic tanks. And at the time this was the only known case where a county government had been required to exercise its powers of eminent domain.

This is a man who doesn't give up. He is indefatigable. He is determined. And that is why Hylton has been such an important asset to our local bar, and such an important role model for all the lawyers in Cobb County.

In 1986, he persuaded the Supreme Court to refine the doctrine of equitable legitimation, permitting inheritance by an illegitimate son from a father.

In 1984, he convinced the Georgia Supreme Court that a wife in a divorce action was entitled to the value of the split shares, where the stock had split but prior to the termination of the restrictions on transfer.

Hylton and I have tried cases together. We have tried cases against one another. I have had the privilege of watching him try cases and I've had

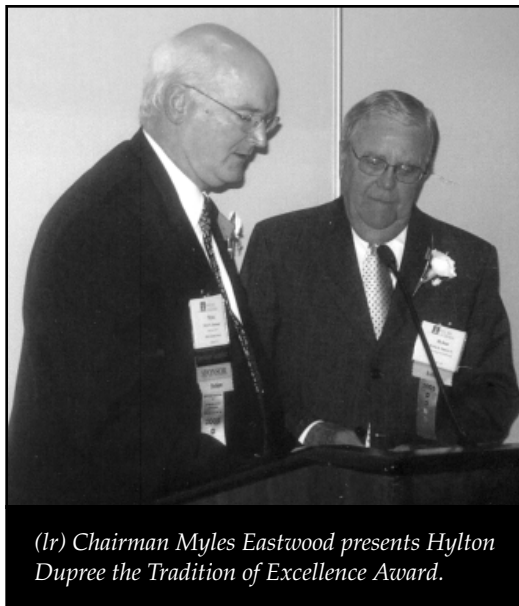
the privilege of presiding in the cases that he has tried from the bench. He has this rare ability to pursue with great determination the cause of his client and this rare ability to do so with good manners, good humor, and good grace.

His greatest asset by his side has always been Patsy. I will give you an example of Patsy's attitudes, Patsy's approach. This morning she came into the breakfast and she said, "you've lost some weight." I hugged her and kissed her. And then she said, "No no, no, you look younger." I hugged her again. Patsy has been Hylton's great asset, not necessarily his secret asset but his great asset during the entire marriage and their entire time together.

They have two wonderful daughters and two sons-in-law and Hylton has four grandsons that he is extremely proud of and that he keeps up with with on a daily basis.

Hylton is one of those people that is in the midst of an energetic trial practice but has accomplished great things, and we hope to see him practice for many, many more years to come.

So it is my pleasure to present to you Hylton B. Dupree, Jr., the 2006 Recipient of the General Practice Tradition of Excellence Award by this Section.



(lr) Chairman Myles Eastwood presents Hylton Dupree the Tradition of Excellence Award.

Continued on next page

Tradition of Excellence Award

continued from previous page

Remarks by **Hylton B. Dupree, Jr.**

Thank you, Tom, for those kind words. Before we actually get into the text of the speech that I have rewritten I want to comment just a few moments about the ones that I tore up.

I, like Wallace, was instructed to read and scrutinize the previous speeches given by the former recipients of this award; and I, like Wallace, read with great enthusiasm Ben Weinberg's speech. And I, like Wallace, don't understand it either.

So, then, I decided that I would emulate Hugh McNatt. Well, you obviously know you can't emulate Hugh McNatt, so I tore that speech up, too. Then, I picked up *The Atlanta Journal* and I saw this -- I don't know whether y'all have seen it or not -- but I cut it out. That's the picture of a shark. Got a tie on. That says, "Are you now?" That's supposed to be a lawyer. Quite frankly, that somewhat irritated me when I saw it, so I decided I would just rewrite my speech again. And I did.

Before I get into it, I want to thank my wife, Patsy, for being my partner throughout law school and throughout my career. Like Tom said, she's there always for me and my family. My daughters, Kimbrell and Ellen are here with their husbands. Scott is a lawyer in our firm, I'm proud of him. Lance is a State Farm agent in Hickory, North Carolina. I think that's somewhat ironic. He has supported his family through State Farm and prior to tort reform I supported mine through State Farm.

And I also have my extended family here today, and they are members of the Cobb Bar Association, and I am deeply honored that they are here and so proud of being a part of that great organization.

The central theme that I have seen through most of the acceptance speeches has been around the pride of being a lawyer, about implementing civility in the courtroom and presenting an image to the public that we could all be proud of, and I don't think anyone could improve on those subjects.

But when I think of the attacks that we're experiencing today, such as *The Atlanta Journal* article I just showed you, and another article that I clipped out a moment ago, wherein a very prominent member of the General Assembly of Georgia is talking about tort reform made this comment, and I'm just going to quote out of the Atlanta paper. "The spotlight now turns to the Judicial Branch, which will interpret the law that we,

the elected representatives of the people, have created. It is important to see whether the judges will attempt to supercede the wishes of the people's representatives in the General Assembly who brought about through a Democratic process this needed temperance to our civil justice system."

In other words, the General Assembly of Georgia, at least to this particular scrivener, has decided that the judicial branch is a nuisance and, therefore, it should be abated. In other words, the separation of powers today is no longer in existence and they just need to do away with the judicial branch. And I think we, as lawyers, have got to do something about that and it is time that we defend our profession.

So when we do that, I think about this and you know, I, too, about this pride of being a lawyer.

My dad was not a lawyer. I had two uncles that were lawyers. The three of them had a profound influence on my decision to become a lawyer. The A&P store in Athens, Georgia, where I grew up through my teenage years, was one block from the federal courthouse. And someday when I was on the way to work at the the grocery store parttime, I'd just drop by the federal courthouse to see what was going on.

It was always interesting to me because every case I would see when I would go in there, they were trying somebody for making liquor, and there was never a conviction. Well, you know, just find somebody that makes good liquor, you pay some money, you get them off and everybody slaps you on the back and (laughter) you go back to the office. Nothing to this lawyer job. How wrong I was! And one day I walked into the federal courthouse and there was Judge Bootle sitting up on the bench, and a friend of mine's dad was on the witness stand, Mr. Danner, who was the Registrar at the University of Georgia. And at the table to the right something very unusual for Athens, Georgia, in the sixties, there was an African-American woman cross-examining the Registrar of the University of Georgia.

And what made it even more unique she was from New York. We didn't have many lawyers from New York coming down to Athens during that time, and we didn't have many African-Americans either. Little did I know as I was standing there just watching what was going on, that I was watching one of the landmark cases ever to be tried in this country, which was the

desegregation of the University of Georgia System, Hamilton Holmes and Charlayne Hunter against Danner, the Registrar. I was really impressed with that because Constance Motley, of course, became a federal judge in New York, and Donald Hollowell was there, who was a very prominent lawyer in this community.

A few months later or maybe a few years later I had the opportunity to walk into that same courthouse and observe great lawyers trying a landmark case under the Civil Rights Act. And this was a case in which the Ku Klux Klansmen were nightriding and killed a man by the name of Lemuel Penn in the adjoining county next to Clarke County.

The jury in that county acquitted the Klansmen of murder, but the United States decided at that time to indict and prosecute him as a violation of Lemuel Penn's civil rights. And I watched that trial with great interest and observed one of the great lawyers in Georgia, Nick Chilivis, defend these people. They were convicted, but the point is that I had an opportunity again to see history in the making at that time.

So that was very influential to me in becoming a lawyer. And after I decided to go to law school and I was down in Macon, I would from time to time go down and watch the trials at the courthouses in Macon. And, of course, that's where a great trial lawyer, Hank O'Neal, practiced. I had the opportunity to watch him try cases.

I guess the point I'm trying to make is, that as lawyers today we have a responsibility to the younger people who are thinking about becoming lawyers. I know a lot of us were influenced in some degree by our mentors and others in a great part by fictional advocates such as Atticus Finch. Today, it is our time and our duty to mold a desire in the young student to not only be advocates, but to be an advocate that can balance passion with civility.

On the other hand, some of us may be influenced by the great crooner, Willie Nelson, who said, "Mama don't let your babies grow up to be cowboys, let them be doctors, and lawyers, and such."

Well, a lot of us who are lawyers, can't wait now to be cowboys. Well, I was thinking yesterday, you know, this is a great decision I made. Number one, I wasn't smart enough to be a doctor. But number two, yesterday I was sitting in a war stories seminar and I was thinking what do doctors do when they have to (laughter and applause) to present a program? Do doctors stand up and tell war stories? You have the doctors up there and

one of them, the oldest person says, I want to tell you about this hernia that I did.

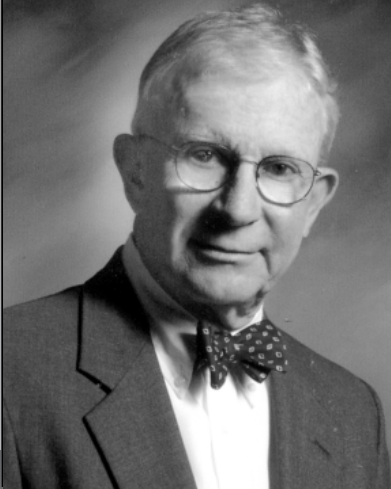
Great to be a lawyer, because you get the opportunity to hang out with lawyers. And we have great stories to tell and share. And we have a great humor and wit to survive in this particular environment. And I think one of the best examples of humor and wit that I've ever seen occurred in the Supreme Court. And incidentally, I have been in the appellate courts a lot, and I'm usually the appellant. I've enjoyed being the appellee on occasion.

One morning I was in the Supreme Court to argue my case. The marble doors parted and Chief Justice Harold Clarke and the six Justices entered. An eighth individual entered and Justice Clarke, Chief Justice Clarke, introduced him as his counterpart in England I don't recall the man's name nor his title, but he was referred to as His Lordship. The first case to be heard that morning was a case involving whether or not hospital authorities enjoyed sovereign immunity. Representing the hospital authority was John Marshall. You all know John, a very eloquent speaker. Representing the victim or the plaintiff in the case, was Hardy Gregory. Hardy, like myself, is the appellant. So, naturally, the appellant goes first but John stood up and made the following statement: May it please the Court and Chief Justice, if I may take a point of personal privilege, on behalf of the lawyers in the state of Georgia welcome your Lordship to this great state and to this great court. And if upon your return to London you happen to see the queen, please inform her that she has a champion of her sovereignty here in Georgia.

Here comes the great line. Hardy Gregory stands up. He said, I likewise would like to take a point of personal privilege, and on behalf of the lawyers in this great state and the members of this great bar, welcome your Lordship. And if per chance on your return to London you happen to run into the common man, please inform him that he has a champion of his rights, in Georgia too.

I tell you, that's what it's all about. I want to thank this Section and those of you who made this possible for me to receive this honor. I am deeply honored, and I promise you that I will cherish this moment for the rest of my life. Thank you.

JUDICIAL



Tradition of Excellence Award

JUDGE WILLIS B. HUNT, JR.

Introduced by
Justice George H. Carley

It is a pleasure and privilege to be asked to present the Honorable Willis B. Hunt, Jr. to receive the 2006 Tradition of Excellence Award given by the General Practice Section of the State Bar of Georgia.

It is always fun to introduce someone who is humble, self-effacing, lacking in self-confidence, neither sharp-tongued nor quick-witted, and always considerate of those with extra sensitive feelings. Yes it would be interesting to do that . . . but I'm going to introduce Hunt anyway!! In finally sending me the biographical information I requested, Willis' wrote: "I say keep it short and insulting and remember to wear a coat and tie." I will comply: I am always short; the stuff he sent me is pretty insulting, and Willis has never seen me not properly attired!

Judge Willis B. Hunt, Jr. was born in Malden, Massachusetts, December 10, 1932, but he was conceived in Atlanta in March of that year. He recalls that former Chief Justice Harold Clarke, introduced him to the Atlanta Lawyers Club and referred to this as "reverse carpetbagging." He did come South and was raised in Raleigh, North Carolina until age 11, but then he became a Yankee again

because he lived in Miami, Florida until he graduated from high school. He served in the Army from 1955 to 1957 and was a special agent with the F.B.I. from 1957 to 1960. He then went with the Atlanta law firm of Shoob & McLain in 1960 where he stayed until 1966. From 1966 to 1971 he was a partner in Nunn, Geiger & Hunt in Houston County, Georgia. The "Nunn" was of course our former great and respected Senator Sam Nunn, who was later to be more than a little help to our honoree today.

Willis served as a Superior Court Judge in Houston County from 1971 to 1986, including a stint as Chief Judge. While on the trial bench he thought he might want to sit on the Supreme Court of Georgia and he qualified to run for an open seat in 1982. But his heart wasn't in it, so he chose to stay out of the limelight by finishing 4th in a six person race won by the late Richard Bell who campaigned so vigorously all over Georgia. However, in 1986, his dream came true when Governor Joe Frank Harris appointed him to the Court for the unexpired term of Chief Justice Hill. That appointment was well thought out and well received because Willis was selected from a group of very highly-

qualified people on the short list. However, some time later when Governor Harris was asked about some opinion that Willis had written, the Daily Report quoted our esteemed governor as responding: "Who is Willis Hunt?"

Judge Hunt did serve with distinction on the Supreme Court from 1986 to 1995 during which he was both Presiding Justice and Chief Justice, the latter being during 1994 - 1995. So he was Chief when he was enticed to apply for the position of United States District Judge for the Northern District of Georgia. With a little help from the aforementioned Senator Nunn he was successful and he has been on that Court since July 1995, having taken Senior status in July of last year. He has been an excellent Federal Judge. Although some wondered about his transition from the Georgia Supreme Court to the District Court, please remember that Willis had already learned from his fifteen (15) years on the Superior Court how to shoot from the lip every day and he has taken it to a new level including controlling counsel table dancing!!

Seriously, Willis is greatly admired and respected by the Bench and Bar and his accomplishments are legion. He went to Emory University undergrad and Law School, getting his LLB in 1954. Also, while he was on the Supreme Court, he earned an LLM in the Judicial Process from the University of Virginia School of Law. According to information he gave me, he also attained additional higher education: he graduated from the Federal Judges Arrogance School in 1995 and took a remedial course in 1996! He is a member of the ABA, ALI, State Bar of Georgia, the Atlanta Bar, Houston County Bar, Atlanta Lawyer's Club, Old War Horse Lawyers Club, Judicial Invitational Golf Classic, the Advocates Club, and Gridiron Secret Society. He has been Chair of the Judicial Council of Georgia and of the Institute of Continuing Judicial Education. He also Chaired the Chief Justice's Commission on Professionalism from 1994 - 1995. He was President of Council of Superior Court Judges and of the Old War Horse Lawyers Club. He has been Chair of the Judicial Invitational Golf Classic. He was five (5) times Captain of the 18th Hole Tour Championship of East Lake Golf Club.

Judge Hunt included two (2)

topics in his resume which I want to read verbatim. Under the classification "Off-Duty" he states the following:

Likes to shoot and eat small birds,

Likes to catch and eat small fish,

Likes to three-putt

Likes to listen to the roar of falling pine cones as they hit the turf in his vast pine plantations.

Under the heading "KEY TO SUCCESS," he states: Has Friends in High Places. While all of us who have managed to attain any public office know that one can never do so on his own, I think that it is clear that Willis B. Hunt, Jr., has demonstrated at every level of his career his extraordinary intelligence, his unimpeachable integrity, his knowledge and grasp of the law and his great wit, both latent and patent. He is truly deserving of this award. However, his greatest accomplishment was persuading the lovely and beautiful Ursula to marry him. They have two (2) sons, Chris an Atlanta lawyer (Georgia Power Company) and Pete who represents Merrell Performance Footwear in Charlottesville, Virginia. They also have a daughter, Amy in Perry, Georgia and three (3) grandchildren. Right after Willis was named to the federal judgeship and I started calling him things like "Your Excellency," and "Your Majesty" Ursula pulled me aside and whispered "George, he really prefers "Your Federal Highness." He was a fine Chief and a great Judge and Justice and is an outstanding Federal Deity. One thing I recall from our sometimes contentious Supreme Court Conferences that we call "Banc" is that when Willis would think of a viable resolution for whatever issue was under discussion, he would say "Here's the ticket" and proceed to give us the solution. So, I say to you, here's the ticket for the judicial category for the 2006 Tradition of Excellence Award, His Federal Highness Willis B. Hunt, Jr.



(lr) Chairman Myles Eastwood presents Willis Hunt the Tradition of Excellence Award.

Continued on next page

Tradition of Excellence Award

continued from previous page

Remarks by Judge Willis B. Hunt, Jr.

Before I begin, and let me say this, again, you followed again pretty quickly, unlike some of my fellow honorees. On June the 15th of this year, my bride and I will celebrate our 49th anniversary, and unlike what I did when I was sworn in as a member of the Georgia Supreme Court, I totally forgot she was there. I even introduced my dog. I want her to stand.

You know, I gave George Carley a lot of notice about this months ago. I told him that I would like for him to introduce me. Well, I particularly wanted somebody who I knew would be here. I mean, I wouldn't ask somebody to come here to do this unless I knew he was going to be here. And you would think, given months of opportunity to prepare and given the subject of his address, he could have done something like Lisa did.

And I want to say, Wallace, because I know you had something to do with it, that's one of the finest pieces of legal writing I've ever heard. She didn't tell you what Wallace's real claim to fame is. He is the one who runs from start to finish the Judicial Invitational Golf Classic, which is the most important venture — Hugh Thompson is our president — most important venture that lawyers and judges have in this state.

And it is my rare privilege to be chairman of that organization. At one time I was chairman of the Judicial Invitational Golf Classic and President of the Old War Horse Club, and I mentioned that to my mentor, Griffin Bell, who responded quickly, all that shows is that nothing plus nothing still equals nothing.

It really is an honor for me and my bride to be here among such fine lawyers and judges to receive this prestigious and what I think is a largely undeserved award. And I'm especially honored to have it presented by my longtime friend and former colleague on the Supreme Court, George Carley.

Carley has been a mainstay, a bellwether of the Supreme Court for 13 years I think. I don't know what bellwether means, but I like it and I thought it sounded good. It has to do with leadership, and it has to do with consistency and reliability, somebody you can count on. Like you can always count on George to have read the record. He reads the record on Saturday mornings. I actually used to go down there on Saturday mornings. I don't know how to get in the Richard Russell Building on a weekend, but I did go down there.

George would be in his office, from who knows when

on, and he always had this very dainty coffee cup deal, nice pot, you know, and small and dainty little cups and doilies and things like that.

And I would go down and have coffee with him, and he would have these enormous stacks of paper. And I'd say, "What the hell is that, George?" I know you have briefs, and I'd say, where are your law clerks? I mean, to read the briefs. Not only that, he insisted you could always count on him to wear a tie, right? I mean, that's important, things like that.

He's authored many important, even elegant opinions while he's been on the court but he is best known for his special concurrence in the case in which the Supreme Court threw out the Georgia sodomy statute. You may remember that. In his special concurrence, he said, "I agree with the majority but I write separately just to remind the parties that sex is nobody's business except for the three people involved." (Laughter and applause).

We had some great times together. But I will have to say this: George and I did not always agree. We did agree some of the time, but not all the time. But he and Chief Justice Harold Clarke were birds of a feather. They agreed almost all the time. They were practically inseparable. In fact, over time it actually got to where they looked a little like each other. And if you can picture Chief Justice Clarke and George Carley for a moment, I think you will agree with me when I say, when the two of them put their heads together, they made a perfect ass of themselves. (laughter and applause)

I said not a pretty sight, if you can handle the manufactured eggs — you can handle that. Day after tomorrow, which is June the 4th, I will have completed a judicial journey which spans 35 years. On June the 4th of 1971, Governor Jimmy Carter swore me in the Superior Court of the newly created Houston Judicial Circuit. That's 35 years, 14 on the Superior Court, and 10 on the Supreme and 11 now on the Federal Court. Can you imagine how many lives I've ruined? I mean, just thinking about it is immensely satisfying. So, to say that I am blessed and lucky to have had this journey is a pure understatement, and I am very grateful for this award, which is a perfect anniversary gift.

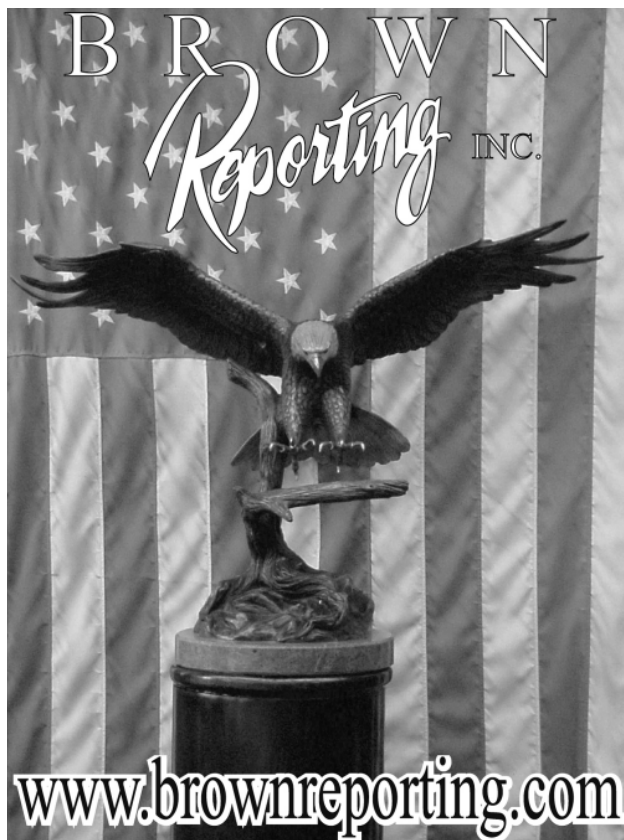
I end my remarks by reminding you that judges are part of an infrastructure of the operation of the rule of

law, but it is lawyers like you, not judges, who make the wheels roll. Little has been done to address the problems of society or to improve the administration of justice which has not been done by lawyers. If you don't do it, nobody will. You have been, you are, and you will be the defenders of the rule of law in a troubled and chaotic world. It is you who truly deserve respect and recognition.

My friend and classmate, Alex Sanders, who lives up the road in Charleston and who is known to most of you I think, speaks metaphorically. He rarely speaks otherwise. He says the position of a judge is like that of an oyster, and like an oyster, a judge is static, anchored in place, unable to take

the initiative, digesting whatever washes his or her way from the currents churned up by lawyers. I like that. I was going to say I like that metaphor, but it is not a metaphor, it's a simile. But am I right about that? George, am I right about that? But I also like oysters. I can't think of a better place to have them than right

here in Hilton Head among the greatest people on the face of the planet, Georgia Lawyers. Thank you so much.



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PLAINTIFF

JAMES B. FRANKLIN



*Tradition of
Excellence
Award*

Introduced by
Rebecca Franklin

Good morning. It's my pleasure to introduce the next and last honoree of this year's Tradition of Excellence Award, Jimmy Franklin. I have to begin by saying that he was sitting next to me yesterday at the Bench and Bar Seminar, and sitting on the other side of me was Court Appeals Judge Ruffin. Judge Ruffin leaned over and he asked, "Are you related to that guy?" I said, "Yes." Judge Ruffin then said, "He must be your grandfather." But, actually the next recipient is instead my father, Jimmy Franklin. And again, I am honored to introduce him today.

I apologize that I'm nervous. It's intimidating for a young lawyer to speak to this group of distinguished lawyers and judges. I am, by far, the least experienced trial lawyer in this room, and I'm not near as funny as Judge Hunt. But, I do think that I am qualified to introduce my Dad; because, after all, I've known him my entire life.

But his journey leading up to this award began long before I was born. You know, kids often think that their parents didn't have any life before they were born, but looking at my Dad's resume and talking to some of these folks here, I realize that he

actually did have a life B.C. -- "Before Children."

He was born and raised Statesboro, Georgia. After high school, he went away to college, to Georgia Tech. There he earned a bachelor's degree in industrial engineering, which is still hard for me to believe because he can't program a VCR or DVD player, but this is in 1962, so I don't think that they had DVDs or VCR's for that matter. But, anyway, he graduated from Georgia Tech on a Friday and then began law school the following Monday in Athens, where he was president of the -- I think first president -- of the UGA Law School Student Bar Association.

In those days, apparently you could take the Bar Exam after your second year of law school which he did. He passed the Bar and started his own practice during his third year of law school, which amazes me because during my third year of law school I spent most of my time sitting outside at "Son's Place" - which is a place many of you know - where I was definitely *not* practicing law and instead just enjoying being a student. But, in Dad's third year, he started his own practice with one partner. After they graduated, they paid their debts and split their profits which was only

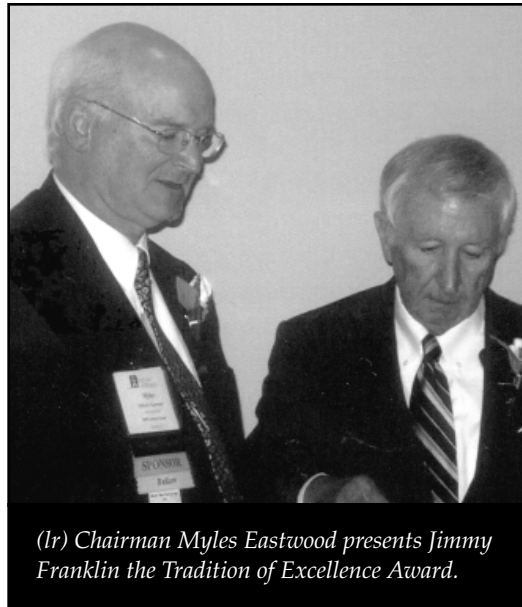
enough money for a few steaks and a case of beer. Dad says that to this day that law firm was one of his most profitable partnerships.

After he graduated, he went into the military for a couple of years and then came back to Statesboro and started practicing law, where he's been since. Several years later he married my mother, who -- few people know -- was actually his next door neighbor as a child. But, luckily, they both went away to college before they returned to Statesboro and got married because my mother was only eight years old when her next door neighbor left for Georgia Tech. So we're glad he waited on that one.

He's spent the last forty years in

Statesboro, and during that time, along with my mother, he raised me and my sister. My mother and sister are both here today. You know, he doesn't look like it, and you might

not believe it, but my Dad has spent a lot of time attending piano recitals; he's learned to braid hair; he's picked out prom dresses; he's repaired - or more accurately - *paid for* many fender-benders. My Dad has heard about all sorts of objects which his girls purported to have "jumped out" in front of vehicles. Garages have jumped out, trees have jumped out, a boat one time jumped out in front of one of my cars. But, he did all of these things -- these "Dad duties" -



(lr) Chairman Myles Eastwood presents Jimmy Franklin the Tradition of Excellence Award.

Remarks by James B. Franklin

Thank you, Rebecca. You know, I've been blessed in so many ways and, of course, this is a great blessing to be here today. Before I make any other remarks, I want to again tell you how blessed I am to have my family here, my wife Fay Foy and my daughters Rebecca and Julie who are here.

As Rebecca alluded to, the law is a jealous mistress and I am so, so thankful for their patience, their understanding, in allowing me to spend the time away from them when I probably should have been there, particularly trying to keep Rebecca from backing into those oak trees. It's been a wonderful ride, and I wouldn't -- if I had to do it over again, I'd do the same thing.

You've heard the introductions and the responses from the other three recipients, and you understand that this is a country boy standing in a patch of tall cotton here today. These are outstanding lawyers and judges. You know how inadequate I may feel, when Rebecca commented I've aspired to be a federal judge,

I've aspired to go on the Supreme Court, and I never made either one of them and Willis Hunt has done both.

I've known all of these recipients for years. As Wallace said, we've litigated against each other, and he's certainly an icon of the bar in our part of the state and really the entire state and the nation. What a gentleman, what a pleasure it has been to litigate with him as an adversary.

Hylton, I really appreciate your comments. I had written a little editorial as part of my speech about our profession and how proud we are or should be working in it on a daily basis, but that we are under siege from so many fronts and truly under siege by politicians. It is our responsibility to stand up, particularly in this political season, and speak out for the civil justice system and what we do and how we protect the very rights of every American.

Continued on next page

Tradition of Excellence Award

continued from previous page

I also wanted to just briefly thank Dan Snipes, my partner. Dan is my litigation partner. In our firm we have a transactional section and a litigation section, and Dan was the guy who stood there during my years when I was involved in the leadership of the State Bar, while I was riding up and down the road, and in litigation trying to get permission of the courts to cut down eight dying oak trees so we could build our bar center, Dan was there holding down the fort and I do appreciate that support. I couldn't have done many of the things that I've been able to do without good partners.

When I got the call saying I had been selected for this award, I was in awe. My first reaction was why, why me. And then I asked, Who were the others receiving the award. When I was given the names of the other three recipients today that was even more sobering. Gosh, why did I get the right to stand with these kind of folks. Then Betty Simms sent me a list of the past recipients, most of whom I have known, I went over that list and it was again awesome. I sincerely could not answer my own question, why me?.

I tried to think about how was I going to respond to the presentation, particularly in the company of the other three recipients, I remembered I had heard Senator Zell Miller tell the story about how he walked out the back door of his house and found a turtle sitting on the top of the fence post. It was pretty obvious that that turtle had a hand up. He didn't get on the top of that fence post by himself. And I think that explains how I may have gotten here because I have been so fortunate and so blessed to have so many people give me that hands up.

So many mentors, and I've had partners who have helped. Of course, my family has helped. I've had many of you in this room who are much brighter lawyers than I am who helped. When I called upon you, you've always been there. I've had judges who have been very patient, help me cover up some of the stupid things I may have done in the courtroom or outside of the courtroom.

It's been a collection of people supporting me and I will always be grateful. I have had so many broad shoulders to stand on. So many shoulders have been there and are still there each time I reach and try to get up on the top of that fence post.

When I was a young boy, we had a preacher that came to Statesboro's First Baptist. It was a pretty good size church for most of the country back in the fifties. This preacher stayed there for a while and the

congregation got split up over whether he had the necessary "horsepower" to lead that church.

There were some folks that didn't think he quite, you know, met the qualifications. And one day I heard a discussion from some of the older folks in the church and they were on both sides of the issue, and one of them said after it got pretty heated, "Well, let me tell you one thing, when I look at him and see his abilities and what he's done and where he's gotten, he reminds me of the fact that sometimes a little frog can jump a long way."

Sometimes I feel like that little frog who maybe jumped farther than he should but only because so many people were there to help him. So many people were there to support me. I love being a lawyer. I love lawyers. I can't stand lawyer jokes. I don't listen to them. When my friends get up and begin to tell a lawyer joke, I get up and walk away. And you know what, I started that about five or six or seven years ago, and I don't have lawyer jokes told in my presence any more.

But I think we all — every one in this room — is proud to be a lawyer or be a spouse of a lawyer or a child of a lawyer. We need to everyday, like Hylton, impress our pride upon those who are not lawyers and those who, for the short-term political expediency, would undermine the very system that is so valuable to this country and our system of government and in the protection of our individual rights.

As Rebecca said, practicing law is not a path to riches, except for the Jim Butlers of the world. But it's satisfying. So satisfying! Roy Barnes and I were talking yesterday about what it means to find a person who has been injured by the wrongdoing of somebody and find them down, despondent and hurting, their quality of life has been virtually destroyed, and to be able to take that person and help them, handle their case, and at the end, hopefully apply an objective standard to where we found them and where we were able to bring them, and measure the help that we have been able to provide.

Nothing can be more professionally satisfying.

That's one reason I'm so proud of Rebecca in doing plaintiff's work. And as she said, I've represented both plaintiffs and defendants and I think you have to do that to really be effective. But the most important thing is being able to participate in our system, our civil justice system, and know that there's a place where our clients can solve their disputes in a peaceful way rather than in the streets.

I've rattled on and I still don't know the answer to the question why me. There's probably some of you by now sitting out there thinking, why you. Former Governor Marvin Griffin said one time that the worst thing a politician could do was filibuster against the barbecue. In a setting like this I think the worst thing I can do is filibuster in front of the people who have been so kind to honor me in such a wonderful way.

Early on in my practice, I had an older lawyer, who much wiser much more experienced tell me, "Son, When you are arguing a case before a judge or a jury

and you think you've got your case won, sit down and shut up because you might keep on talking and give them the opportunity to change their mind and take away that ruling or that verdict that he's already decided to give you."

Well, I'm not going to give you the opportunity to take this award back. I'm going to shut up and sit down and just tell you one more time, thank you.

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March 15, 2007

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Chairman: Myles Eastwood**

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May 11, 2007

JURY TRIAL SEMINAR

**Bar Center, Atlanta
Chairman: Adam Malone**

June 15, 2007

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June 15, 2007

TRADITION OF EXCELLENCE RECEPTION

Sawgrass Marriott Resort ♦ Ponte Verde Beach, Florida

Recovering “Medical Monitoring” Damages *continued from page 3*

provide redress for parties put at greater risk of future disease through exposure to carcinogens or chronic toxicants, validated claims that permit affected parties to receive reimbursement for funds expended to monitor the progression of the latent disease. Remarkably, physical injury was *not* a universal prerequisite to recover for medical monitoring costs. Instead, some courts permitted recovery where mere exposure or increased risk of future disease was proved.³

The New Jersey Supreme Court was one of the first courts to recognize a medical monitoring claim in a toxic tort case.⁴ Its path-breaking opinion was based in large part on the following policy rationale: “it is inequitable for an individual wrongfully exposed to toxic chemicals but unable to prove that disease is likely, to have to pay his own expenses when medical intervention is clearly reasonable and necessary.”⁵ The Court upheld an award of medical monitoring costs to a group of plaintiffs that proved significant exposure to toxic pollutants from a nearby landfill, but were otherwise free from injury.⁶ Subsequent cases at the state and federal level adopted similar holdings, granting relief to asymptomatic plaintiffs that sought medical monitoring costs as a result of exposure to toxic chemicals and an increased risk of future disease.⁷

These holdings created considerable uncertainty in the legal community. For example, in many opinions it is unclear what definition of “injury” is being utilized to support the claim. Must the plaintiff merely demonstrate exposure to the harmful substance or must there be a manifestation of injury? If the former, what is the appropriate element of proof? If the latter, must the injury be readily identifiable, or might more subtle, precursor conditions suffice? Some early holdings seemed to define injury as the financial impact of the need for medical surveil-

lance.⁸ Other courts described a balancing test, in which the significance of the risk, the seriousness of the latent disease, and the feasibility of methods for early diagnosis and treatment should all be considered.⁹ But what are the proper benchmarks for defining the significance of risk? And is the seriousness of a condition defined by its predicted prevalence in the exposed population or by the prognosis for those who ultimately develop the disease? The medical monitoring decisions also introduced administrative problems, including the burdens of overseeing medical monitoring funds and confronting enormous and poorly defined classes of plaintiffs.

The Supreme Court of the United States addressed these issues in *Metro-North v. Buckley*, an asbestos exposure case involving tort claims brought under the Federal Employers Liability Act (FELA).¹⁰ Although framed much in the context FELA, *Buckley* provided a remarkably wide-ranging discussion of existing state law and policy considerations. In *Buckley*, a former railroad worker sued his employer under FELA for negligently causing him to be exposed to asbestos, a lung carcinogen, at his workplace. His claims included negligent infliction of emotional distress and medical monitoring. The District Court dismissed the case because the worker proved only exposure to asbestos and not a “physical impact” prior to or concurrent with his emotional distress. The Second Circuit disagreed, characterizing his “massive, lengthy and tangible” exposure to asbestos as a sufficient physical impact to permit a claim for negligent infliction of emotional distress, and citing the reasonable necessity for medical monitoring costs as an economic injury sufficient to support an independent cause of action.¹¹

The Supreme Court reversed, concluding that a physical impact sufficient to support a claim of negligent infliction of emotional distress

did not include “a simple physical contact with a substance that might cause a disease at a substantially later time – where that substance, or related circumstance, threatens no harm other than that disease-related risk.”¹² It also rejected the premise that a lump-sum award of damages should be provided to asymptomatic plaintiffs for medical monitoring costs.¹³ In support of its conclusions, the court cited several concerns, including the potential for a “flood” of less important cases that could drain resources available to more seriously harmed individuals, and the marginal benefit of creating a full-blown tort liability rule where alternative sources of redress exist.¹⁴

Without question, *Buckley* has proven influential at the state court level. Several recent state court decisions have denied recovery for medical monitoring costs to plaintiffs who were unable to demonstrate physical injury, citing the factors discussed in *Buckley* as support. For example, in *Hinton v. Monsanto Co.*, plaintiff sought to recover medical monitoring costs after an alleged exposure resulting from defendant’s negligent release of PCBs to the environment.¹⁵ Plaintiff cited the exposure and increased risk of contracting a latent disease as sufficient “injury” to support a recognizable claim under Alabama law.¹⁶ The Alabama Supreme Court disagreed, finding that such a holding would be “based upon nothing more than speculation and conjecture.”¹⁷ The Court stood by Alabama’s requirement of “manifest, present injury” for recovery in tort and declined to broaden that definition to include mere exposure or increased risk.¹⁸ *Buckley* was cited at length in support of the court’s determination that a cost-benefit analysis could not sustain such a broad definition of injury.¹⁹

In *Wood v. Wyeth-Ayerst*, a Kentucky Supreme Court case, plaintiff asserted that the defendant pharmaceutical corporation’s negligence caused her

to be exposed to a hazardous diet drug.²⁰ The “injuries” she alleged were increased risk of future drug-related disease and the financial expense of medical monitoring.²¹ The court, however, rejected the “creative” argument that monitoring costs were a sufficient harm to support a medical monitoring claim, instead adhering to a definition that involved physical impairment of the body.²² In its opinion, the Kentucky Supreme Court court embarked on a wide-ranging discussion of the policy concerns raised in *Buckley*, citing concerns over the administrative difficulty of overseeing a medical monitoring fund, potentially limitless plaintiff classes and the proper role for the judiciary in expanding traditional bases for tort recovery.²³

The modern trend requiring present physical injury continued in *Henry v. Dow Chemical Co.*, a recent decision by the Michigan Supreme court.²⁴ There, the Court rejected plaintiffs’ arguments that injury should be defined broadly as to include the financial burden of medical monitoring costs or the fear of future physical injury.²⁵ *Buckley* was cited extensively to support the Michigan court’s concerns about a “stampede of litigation” that would provide recovery for those with claims of questionable merit and the expense of the truly injured.²⁶ The *Henry* court also cited concerns about creating a novel cause of action that would result in “potentially limitless class[es] of plaintiffs” that might “wreak enormous harm on Michigan’s citizens and its economy.”²⁷ Such action, the court concluded, was best left to the legislature.²⁸

Medical monitoring claims in Georgia

Wood, *Hinton* and *Henry* are all part of a recent judicial trend against granting medical monitoring costs to asymptomatic plaintiffs. Nevertheless, numerous courts recognize exposure and increased risk as sufficient to support a cause of action for

medical monitoring, and the landscape of state and federal case law can best be described as unsettled.²⁹ Remarkably, the issue has very rarely arisen in Georgia. Indeed, only one reported state case deals with the issue directly: *Boyd v. Orkin*.³⁰

Boyd v. Orkin

In *Boyd*, plaintiffs brought a claim for damages based on an alleged increased risk of cancer resulting from defendant’s misapplication of pesticides in their home. Plaintiffs offered evidence their children had increased levels of pesticides in their blood and medical testimony that this exposure constituted an injury that would require medical monitoring over a period of years. Plaintiffs sought compensatory damages to cover, among other things, the expenses of medical monitoring.³¹

The Georgia Court of Appeals affirmed the directed verdict for the defendant. The court emphasized the absence of proof of any recognizable injury resulting from defendant’s conduct, pointing to the unremarkable findings from medical visits and normal organ function tests.³² Of particular noteworthiness is the court’s refusal to allow testimony that elevated heptachlor metabolites in the children’s blood constituted a compensable injury. “Absent any indication that the presence of these metabolites had caused or would eventually cause actual disease, pain or impairment of some kind,” the *Boyd* court held, “this testimony must be considered insufficient to support an award of actual damages.”³³

The *Boyd* court also rejected the plaintiffs’ claim for damages based on increased risk of cancer, emphasizing that the plaintiffs’ had failed to show with “reasonable medical certainty” that the feared disease would arise.³⁴ It is not clear whether the court was articulating the appropriate test for increased risk of cancer claims in Georgia because it cited only a test employed in other juris-

dictions and observed that the appellants’ testimony “falls far short of that standard.”³⁵ Indeed, the *Boyd* opinion left unanswered the question of whether such claims are even viable in Georgia, and if so, what burden of proof must be met.

While the *Boyd* court did appear to cast a skeptical eye on the plaintiffs’ requests for medical monitoring and increased risk damages, its analysis was limited and disorganized. On the surface, the court seemed to indicate a more conventional requirement of injury in support of a claim for medical monitoring costs.³⁶ Significant ambiguities remain, however, including by the court’s suggestion that evidence of metabolites that “had caused or would eventually cause actual disease” might permit recovery for asymptomatic plaintiffs.³⁷ This language could be read to suggest that an exposed plaintiff who could show that a future injury was probable or medically certain to follow might be entitled to recover damages.

Parker v. Brush-Wellman

Fifteen years passed before another Georgia court addressed these ambiguities in a published opinion. In *Parker v. Brush-Wellman*, plaintiff workers and their family members sued Lockheed Martin for allegedly exposing them to respirable beryllium, a metal with toxic and carcinogenic properties.³⁸ Plaintiffs alleged in their complaint that they “already have suffered and will suffer in the future personal injuries in the form of subclinical, cellular, and sub-cellular damages and some have suffered from acute and chronic lung disease, dermatologic disease, and chronic beryllium disease.”³⁹ They sought damages for those injuries, as well as the fear, anxiety, and emotional upset, and increased risk of “catastrophic chronic disease” arising from their injuries.⁴⁰ Plaintiffs also sought the establishment of a medical monitoring fund for those exposed to

continued next page

Recovering “Medical Monitoring” Damages *continued from previous page*

beryllium.⁴¹

The *Parker* court seized on the importance of establishing whether “subclinical injuries” constituted compensable physical injuries under Georgia law.⁴² The court identified *Boyd v. Orkin* as the sole case addressing the issue in Georgia and read that case’s rejection of elevated metabolite levels as injury as an “apparent rejection of subclinical effects as actionable ‘injuries.’”⁴³ The court also evinced a strong disinclination to expand the definition of injury to include subclinical effects given the lack of authority from the Georgia Supreme Court and the unsettled case law at the state and federal level.⁴⁴ Ultimately, the court decided that such an act should be carried out by the Georgia General Assembly or Georgia Supreme Court, rather than a federal court.⁴⁵

The *Parker* court was no more inclined to accept the argument that subclinical injuries or “increased risk of catastrophic chronic disease” would support a claim for negligent infliction of emotional distress under Georgia law.⁴⁶ In Georgia, a party seeking to recover for negligent infliction of emotional distress must plead and prove a physical impact to his person, causing a physical injury that in turn is the cause of the emotional distress.⁴⁷ The court acknowledged a relaxed application of the impact rule in “especially compelling cases,” but distinguished those cases as involving some physiological manifestation of injury or, in cases involving exposure to HIV, “a unique subspecies of emotional distress doctrine.”⁴⁸ In short, the physical injury component of the impact rule was viewed as a barrier to those suffering only subclinical injuries, consistent with the court’s earlier analysis.⁴⁹

The court cited *Boyd* and the Georgia code in rejecting the argument that increased risk of future disease could serve as a basis for recovery, either independently or in support of a claim

for negligent infliction of emotional distress.⁵⁰ As discussed above, the Georgia Court of Appeals’ treatment of the increased risk of future disease claim was ambiguous in *Boyd*, and might be read to suggest that such a claim would be viable if the plaintiff could prove that a future condition was probable or reasonably medically certain to follow. However, the *Parker* court’s reading of *Boyd* is the most sensible one, given that the *Boyd* court specified elsewhere in its opinion that there was no “specific injury” resulting from the defendant’s conduct and no damages were awarded despite testimony of significantly elevated blood toxin levels.⁵¹ In addition, as the *Parker* court pointed out, the merits of an increased risk of cancer claim are questionable given language in the Georgia Code that rejects recovery for remote or possible injuries.⁵² Also noteworthy is the absence of any award of damages based solely on increased risk of future disease in the Georgia case law, further evidence of the Georgia courts’ resistance to such wholesale changes in existing legal principles.⁵³

Although the *Parker* court’s effort to distinguish *Boyd* and the HIV cases is tortured at times, its ultimate conclusion is consistent with both the plain language of the law and judicial and legislative trends in Georgia. Application of a relaxed standard of physical impact or injury in the context of exposure to toxic substances would erase the bright line the Georgia judiciary has drawn to prevent a flood of emotional distress claims and would stand in stark contrast to Georgia’s current tort reform environment. The *Parker* court was correct to adhere to a consistent definition of physical injury that excludes the type of subclinical injuries alleged by the plaintiff workers, and was also correct to resist altering the landscape of Georgia tort law by recognizing the poorly defined cause of action for increased risk of future disease.

The court’s in-depth analysis of

actionable injury permitted it to deal efficiently with the plaintiffs’ request for a medical monitoring fund. The court conceded that several jurisdictions had approved of medical monitoring funds, even permitting recovery for those who had not yet suffered “manifest physiological injury.”⁵⁴ However, it also noted a clear trend against the creation of such funds and described the remedy as “controversial.”⁵⁵ It declined to establish the creation of a medical monitoring fund, citing the controversial nature of the claims, the limited role of the federal courts and absence of precedent under Georgia law.⁵⁶ The court also rejected the alternative argument that medical monitoring costs could be recovered by those who suffered only from subclinical injuries, citing its earlier determination of compensable tort injury.⁵⁷

More certainty in Georgia tort law

Parker provides what the Georgia case law had heretofore been missing—a thorough, up-to-date assessment of the viability of medical monitoring claims in Georgia, including a canvassing of case law from other state and federal courts and a discussion of relevant policy issues. The *Parker* court’s findings and conclusions are likely to prove influential for Georgia state courts considering similar claims. Its holding is consistent with recent trends at the state and federal court level, cites many valid policy concerns including the eroding of boundaries established by the Georgia judiciary to limit speculative claims, and exhibits a prudent modicum of judicial restraint. In addition, it provides a meaningful discussion of several loosely related lines of authority that might otherwise be misinterpreted to approve of claims that are non-existent in Georgia. Of particular importance is the court’s logical reading of the *Boyd* opinion, and the clarity that is lent to

at least one important ambiguity in that opinion's language.

There are other reasons why courts would be wise to follow the *Parker* court's lead. First, due to uncertainties in the characterization of exposure or the proper definition of significantly increased risk, there would be no clear boundaries on potential plaintiffs' classes. The resulting rush to dole out medical monitoring damages would create a tremendous drain on financial resources, which in turn would further increase the likelihood that those who later develop the disease would be denied recovery.⁵⁸ The administrative challenges would also be overwhelming. Georgia courts, already confronted with burgeoning case dockets, are ill-equipped to handle the administrative challenges of overseeing medical monitoring funds. Also unanswered is the potential preclusive effect of a successful cause of action for increased risk of future disease. It is unclear whether the principles of *res judicata* might prevent later claims that are brought if the latent disease actually manifests itself. Although denial of immediate recovery for exposed parties seems inequitable on the surface, it does not foreclose the possibility of financial compensation for injured parties. Plaintiffs would be protected by Georgia's "discovery rule" that permits them to bring claims when the disease manifests itself.⁵⁹ At that time, recovery would include remuneration for the costs of monitoring the disease in addition to the costs of

disease treatment.

While well reasoned, *Parker* cannot foreclose all possibility of these claims finding traction in the state courts.⁶⁰ Given its careful exposition into Georgia tort law, however, and the agreement between it and recent cases from the U.S. Supreme Court and other state and federal cases, it seems unlikely that a state court would deviate significantly from its conclusions.

There are residual areas of uncertainty, nonetheless, including the issue of defining compensable "physical" or "manifest physiological" injuries. *Boyd* seemed to foreclose the possibility of elevated metabolite levels – understandable since those are merely a biomarker of exposure. *Parker* went further, by ruling out conditions that lack "any contemporaneous physiological manifestations" and even suggesting that subclinical injuries should be ruled out as a matter of law.⁶¹ But if evidence was offered of radically altered enzyme activity, or a signature pattern of chromosomal damage related to exposure to a particular carcinogenic agent, it is less clear what the ultimate outcome might be.⁶² Inevitably, the *Parker* court's attempt at establishing a bright line for recognizable injury will be challenged as the fields of chemical carcinogenesis and molecular epidemiology continue to mature. There is also the more remote possibility that a party could succeed in convincing a court that the "requirement" of medical monitoring suffices as a

cognizable financial injury. However, while this premise has been accepted by a handful of courts,⁶³ it does not represent the recent view,⁶⁴ and would represent a questionable basis for supporting a novel and controversial claim in Georgia.

Not the last word

Prior to *Parker*, Georgia was one of a dwindling number of states not to have dealt head-on with the issue of recovery for medical monitoring costs. What little case law existed on the books in Georgia provided ambiguous precedent. *Parker* changed that. The court's opinion provides, at long last, a clear and well-reasoned exposition into a confusing area of the law, melding Georgia tort law principles with overarching policy concerns to provide a sensible direction for future courts to take. While *Parker* almost certainly will not represent the last word on medical monitoring or increased risk claims, it should act to reduce the uncertainty concerning the fate of these claims in the Georgia courts ■

Endnotes

¹ W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 1 at 4 (5th ed. 1984). Even the more ethereal tort actions, such as negligent infliction of emotional distress, nearly always require an accompanying physical injury or impact. *Id.* at 363-64.

² Cancer is a disease that begins with the disruption of the cells' internal genetic code and ends with the uncontrolled growth of transformed cells. Carcinogens are those agents capable of causing the subcellular damage that may ultimately lead to the growth of tumors. See HENRY C. PITOT & YVONNE P. DRAGAN, *Chemical Carcinogenesis*, in CASARETT & DOULL'S TOXICOLOGY: THE BASIC SCIENCE OF POISONS (C. Klaassen ed., 2001).

³ In jurisdictions that recognize the claim, the viability of the plaintiff's claim typically depends on such factors as the extent of exposure and the significance of the risk of future disease, as well as the seriousness of the future injury and the benefit of early diagnosis and treatment. See *In re Paoli R.R. Yard PCB Litigation*, 916 F.2d 829 (3rd Cir. 1990).

⁴ *Ayers v. Jackson Township*, 525 A.2d 287 (N.J. 1987).

⁵ *Id.* at 312.

⁶ See *id.* at 313-15. The court upheld the grant of lump-sum damages in the case before it, but suggested a court-supervised fund would be advisable in future cases.

⁷ See, e.g., *In re Paoli*, 916 F.2d at 852 (predicting that Pennsylvania law would recognize medical monitoring causes for asymptomatic plaintiffs); *Redland Soccer v. Dept. of Army*, 696 A.2d 137, 145-46 (Pa. 1997) (reciting a seven part test for medical monitoring claims); *Bower v. Westinghouse Electric Corp.*, 522 S.E.2d 424, 432-33 (W. Va. 1999).

⁸ *In re Paoli*, 916 F.2d at 850 ("The injury in a medical monitoring claim is the cost of the medical care that will, one hopes, detect that injury.")

⁹ See, e.g., *In re Paoli*, 916 F.2d at 852; *Redland Soccer*, 696 A.2d at 145-46; *Bower*, 522 S.E.2d at 432-33.

continued next page

- ¹⁰ Metro-North v. Buckley, 521 U.S. 424 (1997). FELA appears at 45 U.S.C. § 51 et seq. (2005).
- ¹¹ See Buckley, 521 U.S. at 427-28.
- ¹² Id. at 430.
- ¹³ Id. at 444.
- ¹⁴ Id. at 442.
- ¹⁵ Hinton v. Monsanto Co., 813 So.2d 827 (Ala. 2001). The Alabama Supreme Court was answering a certified question from the U.S. District Court for the Northern District of Alabama: "Does a complaint which does not allege any past or present physical injury to the plaintiff state a cause of action for medical monitoring and study when the plaintiff alleges that he has been exposed to hazardous contamination and pollution by the conduct of the defendant?" Id. at 828.
- ¹⁶ Id. at 829-30.
- ¹⁷ Id. at 830.
- ¹⁸ Id. at 832.
- ¹⁹ Id. at 830-31 (citing the Buckley court's concerns over a flood of less important cases and its observations concerning existing alternative sources of payment).
- ²⁰ 82 S.W.3d 849 (Ky. 2002).
- ²¹ Id. at 851.
- ²² Id. at 854-55.
- ²³ Id. at 856-58. The court also raised the issue of claim preclusion under Kentucky law, which permits only one claim for a given cause of action. Id. at 858-59. The effect of granting an award for an early stage injury would be to preclude recovery for the later, potentially more severe condition.
- ²⁴ Henry v. Dow Chemical Co., 701 N.W.2d 684 (Mich. 2005).
- ²⁵ Id. at 691-92. The court also cites favorably an earlier Michigan Supreme Court case in which mere exposure and increased risk of future disease were rejected as compensable tort injuries. See id. at 688-89 (citing the holdings in Larson v. Johns-Mansville Sales Corp., 399 N.W.2d 1 (Mich. 1986)).
- ²⁶ Henry, 701 N.W.2d at 695.
- ²⁷ Id. at 696-97.
- ²⁸ Id. at 697.
- ²⁹ Badillo v. American Brands, 16 P.3d 435, 438-40 (Nev. 2001) (describing the landscape of case law at the state and federal level).
- ³⁰ 191 Ga. App. 38, 381 S.E.2d 295 (1989), overruled on unrelated grounds by Hanna v. McWilliams, 213 Ga. App. 648, 446 S.E.2d 741 (1994).
- ³¹ Boyd, 191 Ga. App. at 38, 381 S.E.2d at 296.
- ³² The court conceded that the children had suffered from symptoms such as sore throats, runny noses, rashes and nausea, but noted that these conditions could easily have arisen from common viral infections and were not definitively traced to pesticide exposure. Id. at 40, 381 S.E.2d at 297-98.
- ³³ Id. at 40, 381 S.E.2d at 298.
- ³⁴ Id.
- ³⁵ Id.
- ³⁶ See id. (indicating injury would include "actual disease, pain, or impairment of some kind").
- ³⁷ Id. (emphasis added).
- ³⁸ Parker v. Brush-Wellman, 377 F.Supp.2d 1290, 1292-93 (N.D. Ga. 2005). Family members were allegedly exposed when workers carried beryllium dust home with them on their skin, clothing and belongings.
- ³⁹ See id. at 1293.
- ⁴⁰ Id.
- ⁴¹ Id.
- ⁴² The court determined that subclinical conditions were those that lacked any "contemporaneous physiological manifestations" and established that for the purposes of its analysis of recognizable injury, subclinical, cellular and subcellular effects could be lumped together. Id. at 1296.
- ⁴³ Id. at 1297.
- ⁴⁴ Id. at 1298 (citing federal case law).
- ⁴⁵ Id. at 1299. The Parker court also cited what it viewed as a singular reluctance on the part of the Georgia courts to effect sizable shifts in existing law. See id. at n. 8.
- ⁴⁶ Id. at 1299.
- ⁴⁷ Lee v. State Farm Mut. Ins. Co., 272 Ga. 583, 586, 533 S.E.2d 82, 85 (2000).
- ⁴⁸ Parker, 377 F.Supp.2d at 1301.
- ⁴⁹ Id. at 1300.
- ⁵⁰ Id. at 1299 (citing O.C.G.A. § 51-12-8 (2005)).
- ⁵¹ Boyd, 191 Ga. App. at 40, 381 S.E.2d at 297. Toxins were allegedly present at twenty six times background levels in the exposed childrens' blood.
- ⁵² See O.C.G.A. § 51-12-8 ("If the damage incurred by the plaintiff is only the imaginary or possible result of a tortious act or if other and contingent circumstances preponderate in causing the injury, such damage is too remote to be the basis of recovery against the wrongdoer.').
- ⁵³ See Parker, 377 F.Supp.2d at 1299 n. 8 (noting the Georgia courts' aversion to making radical changes in existing law).
- ⁵⁴ Id. at 1302.
- ⁵⁵ Id. at 1302. The court cited numerous recent state and federal opinions, including Wood and Hinton (cited supra).
- ⁵⁶ Id.
- ⁵⁷ Id. at 1302 n. 9. The court did, however, note that plaintiffs with compensable injuries could potentially recover costs of medical surveillance as future medical expenses. Id. at 1302.
- ⁵⁸ See Henderson, J.A. Jr. and Twerski, A.D., *Asbestos Litigation Gone Mad: Exposure-Based Recovery for Increased Risk, Mental Distress, and Medical Monitoring*, 83 S.C. L. REV. 815 (2002) (discussing the effect of speculative exposure-based claims on financial compensation for injured plaintiffs).
- ⁵⁹ See Boyd, 191 Ga. App. at 41, 381 S.E.2d at 298 (finding that plaintiffs' claims were barred by statute of limitations under O.C.G.A. § 9-3-33 where they waited over three years to sue after first feeling ill).
- ⁶⁰ Obviously, as a federal court case the holding can be taken under advisement by Georgia state courts but does not carry the weight of binding precedent.
- ⁶¹ Id. at 1296.
- ⁶² Some courts have found specific evidence of cellular damage to be compelling. For example, in *Werlein v. U.S.*, the court refused to grant summary judgment to the defendants where plaintiff offered evidence of chromosomal damage related to an earlier exposure to environmental toxicants. 746 F.Supp. 887 (D. Minn. 1990), vacated in part on other grounds, 793 F. Supp. 898 (D. Minn. 1992). *Accord* Brafford v. Susquehanna Corp., 586 F. Supp. 14 (D. Colo. 1984) (refusing summary judgment where evidence of radiation-induced chromosome damage was offered as proof of present physical injury). *But see* Rainer v. Union Carbide, 402 F.3d 608, 622 (6th Cir. 2005) (rejecting chromosomal abnormalities as evidence of physical injury because "DNA damage is harmful only insofar as it is predictive of future disease").
- ⁶³ See supra, note 8.

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Remarks by Wallace B. Harrell

continued from page 7

follow instructions very well. Those of us who are honored got the instructions to have an 8 x 10 black and white photograph taken to be put on a board, which I did, Hylton did, and Jimmy did, but Willis had his picture taken in color. But after all he is a Federal Court Judge!

As Lisa said, I am in my fiftieth year of practicing law, and as I get to the end of it, to the "short rows" as the farmers in Quitman used to say, I really look back with a great deal of pleasure in trying cases, and trying cases against great lawyers. I look with pleasure at the list of people that have been honored with this award over the years and that I have litigated with or against. Judge Alaimo is on it. I tried cases against him when he was a trial lawyer and he was such an outstanding trial lawyer. Edgar Neely's name is there, and I tried cases with him; Paul Hawkins is a great lawyer and we litigated together; Jim Butler, one of the great trial lawyers of our time is here and we have also litigated against each other. Also Paul Painter, Hardy Gregory and Jay Cook, all of whom have received this award.

Trial law is great drama. It is hard work. There's an enormous amount of pressure that you have

when you are trying cases and you trial lawyers know that; and it is not just the trying cases, it is getting there, all the pitfalls, the procedural pitfalls that you can have. But it's been great fun and I've enjoyed every minute of it.

I want to say one more thing before I close. My wife, Mary, is here and I cannot let this go unsaid. She has been the light of my life for the past 14 years. She has many great attributes, probably the greatest of which is that she knows how to live with a trial lawyer when he is "on trial."

Finally, I want to close with this: about two or three weeks ago, I was riding to work and on the radio there was an announcer who was giving little excerpts of graduation speeches from famous people who were speaking at colleges. And they would play a little clip from the speech and announce who was making the speech. General Colin Powell's speech was recorded. And he said to the graduates that when they go out into the world "to love what you do, and do what you are good at." Well, I have loved what I've done for the past 50 years and I hope I've been good at it.

Thank you.

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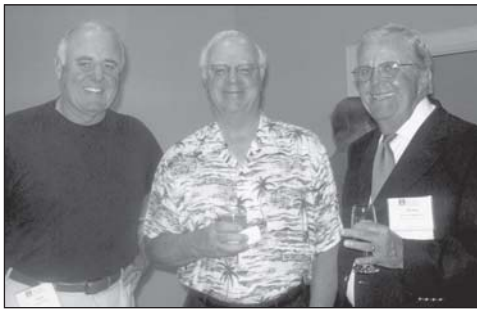
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