

CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Vol. XXVI

Spring/Summer 2024

No.1



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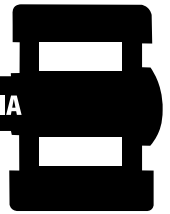
“Georgia’s Largest Law Firm”

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Calendar Call is the official publication of the General Practice and Trial Section of the State Bar of Georgia. Statements and opinions expressed in the editorials and articles are not necessarily those of the Section of the Bar. Calendar Call welcomes the submission of articles on topics of interest to the Section. Submissions should be double spaced, typewritten on letter-size paper, with the article on disk or sent via e-mail together with a bio and picture of the author and forwarded to Gregory C. “Greg” Sowell, One Press Place 200, Athens, GA 30601 or by email to gsowell@jamesbatesllp.com

From the Editor's Desk

Gregory C. Sowell



Welcome to another edition of the Calendar Call. As I write this, it is spring in Athens and, as always, countless students are lining up at the iconic Arch in their caps and gowns to have their pictures taken. It reminds me of my own college graduation (way back in the last century) as

I pondered the next step in my life. That next step was law school because I wanted to help people and “make a difference” in my little corner of the world. I suspect that you would say much the same. That’s most likely why you joined the General Practice and Trial Section of the State Bar—because these are the lawyers that handle the “real lawyering” for “real people.”

As you continue along this path, what would you say to your younger self, just starting out, in terms of what you would need in order to be successful in the general practice of law? Two things at the top of my list (other than a good coffee pot) would be (1) find good mentors, and (2) never stop learning. This issue of the Calendar Call should be helpful to all of us on both of these points.

First, we feature and celebrate our four Tradition of Excellence recipients, plus we have a conversation with David Bell of Augusta, a past Tradition of Excellence recipient. If you are looking for a good mentor, reach out to any or all of them. They would all be happy to help you in any way they can.

Second, we have three substantive articles in areas of the law that general practitioners and trial lawyers need to know about.

- When I was growing up, Georgia was known as an agricultural state. Our number one crop today is people. With the tremendous growth in our state, real property is getting more valuable, and county tax assessors have not been shy about reassessing values to the shock and lamentation of many property owners. Jay Roberts tells us what to do about that concern.

- A casual review of the decisions of our appellate courts will quickly indicate to you that many, if not most, of the reported civil cases involve some entity of local or state government, including cities, counties, school boards, development authorities, hospital authorities, and housing authorities, to name a few. But beware how you proceed. A condition precedent to bringing a lawsuit against a governmental entity most often requires prior, or ante litem, notice. John Hawkins gives us an ante litem notice primer.

- How many of you have routinely created a corporation or an LLC for a client? Again, take notice. The rules of reporting have changed, and you could find yourself having to do a good bit of “begging your pardon” to the federal government if you fail to comply with the new reporting rules. Warren Hedgepeth and Andrew Smith give us the dos and don’ts.

Finally, two housekeeping notes. First, we are thrilled to welcome Challie Smith of the State Bar and her expert leadership in putting together the Calendar Call to get it printed and out the door to you. For many years, our Section has done this privately, but we are glad to now have the help of the State Bar in this important effort. Second, we are always in search of interesting articles that busy practitioners can peruse and apply to our law practices. If you have an idea about such an article, please contact our Associate Editor Devin Hartness Smith at devinhsmith@cooktolley.com or me at gsowell@jamesbatesllp.com.

Abbey Patterson

Devin Hartness Smith



Message from the Chair

Adam L. Hebbard



In March of this year, the General Practice & Trial Section put on its annual CLE Institute. Along with our Traditions of Excellence Awards, the Institute is one of our biggest undertakings as a section.

As in years' past, the Institute is hosted by our immediate Past Chair; yours truly will have the honor next year, but the 2024 institute was hosted by our current Past Chair, W. Parker Sanders. Sanders, a Tulane Law alum and lover of New Orleans, elected to host this year's Institute at the Hotel Monteleone, located in the heart of New Orleans's French Quarter.

The Institute always features a high caliber of speakers and presenters, and this year was no exception. From a retired 11th Circuit Court of Appeals Judge to expert practitioners in the areas of tax, bankruptcy, and antitrust, attendees had the privilege of receiving high-quality legal education.

Admittedly, each year I have been to the Institute, there have been great speakers; however, I cannot remember an Institute that took place in a better setting or was

more enjoyable since I have been involved with the Section. Sanders arranged for a Second Line parade through the French Quarter, led by a brass band, and attendees also had the opportunity to take in some of New Orleans's long-standing St. Patrick's Day traditions. In addition, this Chair was thrilled to host our Section's first-ever Chair Social, a lunch at Galatoire's that was well attended and enjoyed by all who could make it. Personally, I hope this is a tradition that my successors will continue at our Institute next year and years to come; while full details have yet to be finalized in time for publication we are looking forward to being in Savannah for next year's institute, and I am optimistic that we will continue the tradition of providing quality legal education in an enjoyable and sociable setting for the members of our section and the Bar at large.

Please join us for our presentation of the Traditions of Excellence at the State Bar's Annual meeting in June at Amelia Island, and stick around for the reception afterwards. I look forward to seeing you there, and at the Institute next year as well.

TRADITIONS OF EXCELLENCE AWARD

Robert Ingram **DEFENSE**

Robert is a fourth-generation Cobb Countian who has successfully tried numerous cases to verdict in State and Federal Courts on a broad range of commercial, personal injury, wrongful death, and insurance defense litigation matters. He has also tried many cases before arbitration panels and workers compensation administrative law judges. Robert has also defended a wide array of class actions representing insurers, contractors, and manufacturers and has successfully represented many of the firm's clients in business and intellectual property disputes and probate litigation. He received his undergraduate degree from Kennesaw College with honors and his law degree from Emory University School of Law. He is a member of the Bar in both Georgia and Tennessee.



Acceptance Speech

It has truly been an honor and a privilege over the last 12 years to practice law with my son and Partner, Ryan Ingram. Fortunately, Ryan is a whole lot smarter than his dad and our firm has certainly benefited from his brain power and work ethic. While Ryan was the Editor In Chief of the Mercer Law Review, I can assure you my fellow Emory Law students never sought my input for any Law Review Article.

Thanks to Many

Hank Fellows: I was humbled to learn Hank Fellows, of Fellows LaBriola, nominated me for this award which was endorsed by several of my colleagues who also served as State Bar President. Hank is recognized every year as one of the top trial lawyers in Georgia and I have had the privilege of working with him on 11 different cases in Cobb County where Hank associated me over the last two decades. Hank personifies professionalism and

is certainly a gifted trial lawyer who has taught me a lot.

Also, thanks to my friends who also survived their tour of duty as State Bar President and who put their good reputations at risk by endorsing my nomination for this award.

General Practice & Trial Section Officers and Trustees

I also want to thank the Officers and Trustees of the General Practice and Trial Section for this award. I am truly honored to receive it. While some vilify trial lawyers, I am very humbled to join the impressive list of trial lawyers who have received this award.

I agree with lawyer Harrison Tweed who said:

I have a high opinion of lawyers. Even with all their faults, they stack up



well against those in every other occupation and profession. They are better to work with, play with, fight with or drink with than most other varieties of any kind.

The General Practice and Trial Section has many lawyers and judges who donate their considerable talent to improving our profession and the administration of justice. I've had the pleasure of working with many of them while serving as President of the State Bar of Georgia, President of the Cobb Bar, Chair of the Bench and Bar Committee, Chair of the Judicial Qualifications Commission, and while serving on the US Judicial Nominating Panel at the request of US Senator Johnny Isakson.

While some of us primarily represent Defendants and others primarily represent Plaintiffs, as advocates we share a common belief - our client is almost always right. However, good lawyers manage to work, play, fight, and drink professionally with their adversaries. That's why I prefer to have good lawyers as opposing counsel.

And many of those "good" lawyers are in the General Practice and Trial Section.

Fellow 2023 Traditions of Excellence Award Recipients

Lance Cooper: I am especially delighted and honored to be receiving this award along with my good friends Lance Cooper and Gerald Edenfield.

Lance and Sonja are fellow Cobb Countians who I have known for years. I supported Lance in his limited foray into politics and I have had the privilege of referring Plaintiffs cases to Lance for many years. Lance's success as a trial lawyer has also benefited me in many ways. I have defended wrongful death and product liability cases filed by Lance which often resulted in Lance and his clients getting paid a lot of money. However, my favorite way to work with Lance is to work together on cases. On those Plaintiffs cases where Lance and I worked together we both did very well. Lance is certainly one of the best trial lawyers I have had the pleasure to work with and he is a deserving recipient of the Tradition of Excellence Award.

Gerald Edenfield: Gerald and I have spent more time in State Bar Executive Committee and Board of Governor's meetings than either of us want to admit handling State Bar business and attempting to improve our profession. Gerald is also a great trial lawyer who I have often called upon when my clients needed insight from Southeast Georgia. Gerald followed me by a couple years as State Bar President. Fortunately, Kelly and I had the pleasure of going on many fun trips with Gerald and Sharon who are great people, public servants, and true assets to the legal community.

Judge Ethelyn Simpson: While I don't know Judge Simpson, I have heard nothing but great things about her as a lawyer and judge.

Cobb County Roots

My grandchildren are sixth-generation Cobb Countians. I grew up playing on the Marietta Square across from the Strand Theatre which my grandfather helped build in the mid-1930s in the middle of the Great Depression. I've had the privilege to play alongside my grandchildren on the same Marietta Square. My father, Harry Ingram was born in a small home just off the Marietta Square and eventually served as a Cobb County Commissioner.

I worked to put myself through Kennesaw College and became the first in my family to graduate from college and go to law school. Former Cobb Superior Court Judge and Georgia Supreme Court Justice Conley Ingram, who was a longtime friend of the family, encouraged me to attend Emory University School of Law and assisted me in getting admitted.

Out of law school, I went to work for what is now Hall Booth Smith but eventually was persuaded to leave Atlanta to start a new firm in Marietta, which I did in 1986.

I remember being anxious that no one would want to hire me to represent them, especially those who knew me as a rambler who had attended Sprayberry High School just a few miles down the road from the Marietta Square where our office is located. I had way too much fun in high school and developed a reputation for being rowdy. The best thing that ever came out of Sprayberry High School is my lovely wife, Kelly. Fortunately, her parents had the foresight not to allow

her to date me in high school because of my rowdy reputation. My junior year, while I was serving as Class President, I was suspended three times for fighting, streaking and drinking. Kelly, on the other hand, was a well-behaved young lady who was a class beauty on the Homecoming Court and the Varsity Cheer-leading Squad. The low expectations Kelly's parents had for me were appropriately shared by many others, although after high school I tried hard to clean up my act and knew I had a chance to be a decent lawyer when I persuaded Kelly to marry me.

Student loans and Kelly's job as a dental assistant put me through law school, and I will never forget attending my 10-year high school reunion and seeing the shock on everyone's face when they learned that I was a lawyer. In fact, at the reunion, our organizers posted a chart showing what everyone was doing for a living. I remember one of my high school buddies who I had not seen since graduation approached me and said, "Ingram, that's great that you're a lawyer yeah, and I'm a brain surgeon. What are you really doing?" The only way anyone would believe I was really a lawyer was for Kelly to confirm it.

Our law firm, Moore Ingram Johnson & Steele, now has 8 offices spread out over Georgia, Florida, Tennessee, Kentucky, and Pennsylvania and approximately 90 lawyers.

Recognition of God's Blessing

While I recognize how richly God has blessed me and our law firm, my true success is being blessed with many great friends and an awesome family including:

- My son, Ryan Ingram
- My daughter, Morgan Walraven
- My son in law, David Walraven
- My daughter in law, Pamela Ingram and
- Our awesome six grandchildren (Hudson, Evelyn, Lemma, Brackett, Lydia, and Liza Jill) who have all joined us for this occasion.

Finally, and most importantly I want to thank my long-suffering bride of 41 years for all of her support, words of wisdom, and encouragement. She has been a true asset to my legal career and those of you who know her understand why.

I agree with Ralph Waldo Emerson's definition of success:

"To laugh often and much: To win the respect of intelligent people and the affection of children, to earn the appreciation of honest critics and endure the betrayal of false friends; to appreciate beauty, to find the best in others, to leave the world a bit better ... This is to have succeeded."

While I'm confident I have fallen short of this standard, my faith in God has certainly motivated me to pursue it.

Advice to Young Lawyers

Treat other lawyers the way you want to be treated. I tell young lawyers if you want to have a successful legal career you need to do unto others as you would have them do unto you. What goes around comes around—especially in civil litigation.

State Bar of Georgia Work

I encourage all lawyers who have not become involved in State Bar work to do so. Kelly and I raised our 2 children Ryan and Morgan, taking them to State Bar Annual Meetings, Board of Governors meetings and making lifelong friends in the process. Those relationships have benefitted us and our firm's clients throughout my career and have certainly enriched our lives with friends we now have all over the State of Georgia.

What Next

I still love the practice of law and would slow down if I could figure out something to do which I enjoy more. Kelly tells our friends that she married me for better or worse but not for lunch. Until I figure out something to do for lunch, I plan to keep practicing law.

TRADITIONS OF EXCELLENCE AWARD

Judge Ethelyn Simpson **JUDICIAL**

Ethelyn is a native of Savannah and earned her undergraduate degree from the University of North Carolina at Chapel Hill. After working as a staff member for U.S. Senator Sam Nunn, she received her J.D. from the University of Georgia. Ethelyn served as an Assistant Solicitor, Municipal Court Judge, and part-

time Magistrate Court Judge in Athens-Clarke County before being appointed State Court Judge. She retired from State Court in December 2022 after 15 years of service. Ethelyn is a member of First Presbyterian Church of Athens where she serves as an Elder.

Acceptance Speech

To the members of the General Practice and Trial Law Section and to the recipients of the Tradition of Excellence Award:

You are an amazing group of attorneys, and I have tremendous respect for the work that you do.

You are relentless in seeking justice and truth on behalf of your clients.

You honor our profession with your energy, your intelligence, and your integrity.

You are servant leaders, which is pretty much the highest accolade I can give.

Please know that coming from you all, this award means everything.

I am so very grateful to you for this honor - thank you!



TRADITIONS OF EXCELLENCE AWARD

Gerald Edenfield GENERAL PRACTICE

Gerald M. Edenfield was born and raised in Bulloch County. Lessons on the value of hard work and the privilege of helping others were instilled in him from an early age as he was growing up on a tobacco farm in rural Stilson, Georgia. He translated these early lessons into a successful, thriving law practice which has spanned over 40 years. After graduating from Mercer University Walter F. George School of Law in 1970, Gerald practiced law in Atlanta for 9 years. While in Atlanta, he had the distinction of learning to practice law in the trenches with real trial lawyers. Before returning to practice law in Statesboro in 1979 with the law firm of Allen, Brown & Edenfield, he was a partner in the firms of Heyman & Sizemore and then Edenfield & Dailey.

In 1988, along with Susan Cox, Gerald formed the law firm which became known as Edenfield, Cox, Bruce & Edenfield. While he has enjoyed great success on the plaintiff's side of cases, Gerald has also handled numerous cases for the defense, ranging from personal injury defense to business litigation defense. He has appeared in courtrooms around the state and country on cases ranging from complex business litigation, catastrophic personal injury, and education law issues. He has argued cases before the Georgia Court of Appeals and Georgia Supreme Court on issues ranging from insurance law to estate law. Despite his success in the courtroom, Gerald was also very successful in negotiating settlements in excess of several million dollars. Additionally, he served as counsel for numerous businesses and public school boards.

Gerald is very dedicated to serving as a litigation attorney. He has served as president of The State Bar of Georgia. As president in 2007-2008, Gerald dedicated his term to increasing the public's awareness of the judicial system, the importance of the roles that judges and attorneys fill in upholding justice, and seeking judicial pay raises for the state and federal judiciary. Prior to serving as president, Gerald served as the State Bar secretary (two terms), Chairman of the Legislative Advisory Committee, member of the Executive Committee, and as a member of the Board of Governors for nearly 20 years. Additionally, Gerald is a member of the prestigious American College of Trial Lawyers, a Fellow of the American Bar Association, and a "Super Lawyer" in Atlanta Magazine,

Gerald has also been very active in his community and served Statesboro/Bulloch County as president of the Statesboro Rotary Club, president of the Statesboro-Bulloch Chamber of Commerce, and as a director of the Statesboro chapter of the American Lung Association. He also served as a Director and Chairman of the Board of Directors for Farmers & Merchants Bank. Gerald received the Deen Day Smith Service Founders Award for Outstanding Service to the Community. Gerald has also taught courses at Dekalb College, Georgia Southern University and for the State Bar.

Gerald and his wife, Sharon, have been married since 1968 and currently reside on their farm in Stilson, Georgia. Gerald and Sharon have two daughters, Sharri and Kristie, both of whom are lawyers, a son Gerry, and two grandsons, William Avant Piasta and Joseph Edenfield Piasta.

Acceptance Speech

I would like to first thank Susan Cox for nominating me for this award as well as those who seconded my nomination and wrote very nice letters. I was completely unaware that I was being considered for any award until my son-in-law, Ed Piasta, called me. He wanted to know if I would accept it and I told him yes, I would. To the members of the General Practice and Trial Law Section, thank you so much for considering me for this great honor. This reminds me of when Lou Gehrig received an award after he had developed the disease that had crippled him. I feel that same way now that he did when he received his award and addressed his Yankees fans. He stated, "I am the luckiest man alive."

Over the years, the Bar has been very kind to me and I have developed many friendships with its members, and previous members no longer with us. It all began at Mercer University Law School where I met some outstanding members such as Judge Griffin Bell. The lawyer who I met at Mercer that ultimately had one of the largest influences on my life was Lamar Sizemore. As a law student, I had been traveling around the state looking for a job, including in Savannah, Atlanta and other smaller towns.

On Law Day in 1970, I was the Vice President of the Student Body and was given the role of introducing the speaker for Law Day. I sat at the table with the speaker, Judge Griffin Bell and Lamar Sizemore. Following that event, Mr. Sizemore invited me to interview in Atlanta with his firm. My wife and I accepted the invitation and met others in his firm such as Bob Hicks, Neal Ray, Terry McKenna and Ted McLuffe, all who would play a role in my future as a lawyer. Following that fateful meeting, I moved to Atlanta and practiced law there until my brother was appointed as a Federal Judge. His firm called and asked if I would come to Statesboro and take his place in his law firm, practicing with Francis Allen and Charles Brown. By that time, Mr. Sizemore had passed away and I decided to return to Statesboro.



After about two weeks in Statesboro, I noticed an impressive lawyer next to my office and was introduced to Susan Cox. I had brought a heavy caseload and needed help. Almost immediately, Susan Cox became my main go-to person, and then in 1984, Susan Cox, Kenny Stone and myself setup our firm. The firm began to grow and expanded to draw clients from all of the surrounding southern states. Susan and I practiced decades together and I am proud of the firm we built and our service to our clients.

I always thought that working hard and achieving results for clients would result in a successful career. So, I worked hard and tried to be fair with clients.

One of the highlights of my career, was serving the State Bar. I was elected by the Ogeechee Bar Circuit to be their representative at the State Bar and was elected to the positions of Secretary, Vice-President and President of the State Bar. I was also elected by the State Bar to serve on the House of Delegates for the American Bar Association. I enjoyed all of these roles, and more importantly, the relationships I formed during my time with the State Bar.

I am so very thankful for this award. I want to thank my family who has traveled to attend the event. Most importantly, my wife Sharon, a retired teacher who taught middle grades, high school and at Georgia Southern University. My three children, Sharri, Kristie and Gerry, all of whom graduated from the University of Georgia. Two sons-in-law, Ed Piasta, who practices in Atlanta and Bill Lindsey, who is a county administrator for Johnson County. My sister-in-law, Melvis Edenfield. My cousin, Martha Lammey. And my nephew and his wife, Tom and Diane Waters. Roland Jackson who manages our farm and was also kind enough to attend. And last but not least, my number one pals, my grandsons, William Avant and Joseph Edenfield Piasta. I truly feel tonight like the luckiest man alive.

TRADITIONS OF EXCELLENCE AWARD

Lance Cooper PLAINTIFF

Lance Cooper is the founding partner of The Cooper Firm and represents clients in catastrophic injury and wrongful death cases. He specializes in product liability cases involving automobile design and manufacturing defects. Lance has been lead counsel for plaintiffs in a large number of jury trials including trials against General Motors, Ford, Toyota, Kia, Chrysler, Honda, as well as other motor vehicle manufacturers and large corporations.

His 2011 wrongful death case against General Motors (Melton v. GM, 2011-A-2652) exposed the cover-up of faulty ignition switches resulting in millions of recalled vehicles.

Lance received his law degree from Emory University in 1989 where he was a G. Joseph Tauro Scholar and

Editor of the Harvard Journal of Law and Public Policy. He received his Bachelor's Degree in Political Science and Economics from the University of California at Berkeley in 1985.

Lance served as the 2002-2003 President of the Georgia Trial Lawyers Association and is a past President of the Cobb County Trial Lawyers Association. He is also a member of the American Association of Justice and was honored to receive the Steven J. Sharpe Public Service Award in 2014. Lance was also a 2014 nominee for the Public Justice Trial Lawyer of the Year award.

In addition to his law practice, Lance is actively engaged in numerous community and charitable activities. He and his wife, Sonja, are the proud parents of five children, Rachel, Rebekah, Michelle, Asa, and Aaron.



Acceptance Speech

I turned 60 earlier this year. This was the first birthday when I really began to consider my mortality. Shortly after, Tom Cauthorn called and told me I had been nominated for this award. I then began to feel really old. Old and overwhelmed. Overwhelmed because the lawyers I know, particularly the plaintiff lawyers who have received this award, are lawyers I look up to and even revere. So many remarkable lawyers, and I am grateful and humbled to now be part of this distinguished group.

One lawyer on the list who was instrumental, not only in helping to start my legal career, but, more importantly, my family, is Hylton Dupree. Back in the early 1980s, I was a college student with no idea what I wanted to be or do. Hylton hired me as a favor to my aunt and uncle who also lived in Marietta. My time working with Hylton over the next few summers was invaluable. I knew I wanted to be a lawyer, but was still unsure as to what type of lawyer I wanted to be.

Also, fortunately, Hylton hired another law clerk one of those summers -- Sonja Payne. Sonja was in law school at the time. Sonja and I shared an office. I soon fell in love, she not so much. Over time, she relented. Sonja has been the greatest blessing in my life. She has been there to support me during the most difficult days of my legal practice. As many of you know, being a trial lawyer can be, to say the least, a challenge. There have been some tremendous highs, but also some deep and dark lows. Without Sonja's unwavering support, I don't believe I would have been able to withstand some of those lows.

Sonja worked for Tom Charron as a prosecutor in Cobb County while I was in law school in the late 1980's. When I graduated from Emory in 1989, I took a job with a firm in Southern California. We stayed there less than a year and moved back to

live and work in Marietta. Jean Johnson hired me. I am sure many of you know Jean. Jean was a wonderful mentor. Interesting aside, Jean told me he had offered Robert Ingram a job before me. Robert turned him down to go work with John Moore. I was obviously the beneficiary of Robert's decision.

Jean introduced me to plaintiff's work and I was immediately drawn to it. I loved having the opportunity to make a difference in the lives of individuals and families. Unfortunately, as a young lawyer I felt I had to prove myself. I was often strident with opposing counsel and took pride in my aggressive tactics. I learned over time that you can zealously advocate on behalf of your clients and be courteous and respectful at the same time. Both plaintiffs' lawyers and defense lawyers, often with great patience, including some who have received this award, taught me this lesson.

Over the years, I learned that trial lawyers who represent plaintiffs are not only professionals, but they are also entrepreneurs. They have a case (product) they have to sell to twelve strangers. If the strangers buy it, their clients get paid, as do they. If the strangers do not, they do not. Being told no by a jury is a humbling, and oftentimes costly, experience. I have learned over the years, however, that if the civil justice system is to thrive, we must all respect the jurors' decisions. One of my favorite quotes which distills the importance of the jury system to our constitutional form of government to its essence is from James Madison. President Madison stated, "Trial by jury cannot be considered as a natural right, but a right resulting from the social compact which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature."

This leads me to my final comments. There are dark forces



trying to undermine the civil justice system here in Georgia. These forces, which are primarily from outside of Georgia, have decided to label Georgia courts as civil “hellholes.” The pejorative term, hellhole, is used in an effort to pass laws which do two things – tilt the scales of justice to one side over another and delegitimize the civil jury system.

According to these forces, Georgia is now number one, meaning we are the worst civil justice system in the United States. Their mission is to convince all Georgians that juries, trial judges, and appellate courts in Georgia cannot be trusted. Ironically, they make these arguments at the same time Governor Kemp rightly

brags that a number of business and industry groups have named Georgia as the top state for doing business. Go figure. The proponents of these efforts want to undermine our social compact and, instead of jurors regulating the actions of the community, they want an unfettered ability to regulate themselves. We all know where that will lead if they are successful.

I am not saying we should not have robust discussions about what can be done to improve our civil justice system. I am, however, saying that we should all stand up and push back against these efforts. It is up to each one of us to take a stand or we face the potential for further erosion of our constitutional rights.

Traditions of Excellence: Interview of David B. Bell

David B. Bell



This article continues our series of conversations with recipients of the Tradition of Excellence Award, recognized annually by our Section in the areas of Plaintiff, Defense, General Practice, and Judicial.

Our featured guest is David B. Bell of Augusta. David was recognized with the Tradition of Excellence Award in the category of Plaintiff.

Tell us a little about your background and what prompted you to become a lawyer.

I grew up in Augusta, Georgia. For high school I attended the Academy of Richmond County, one of the oldest public high schools in the United States. Then I enrolled in The Citadel before entering the

Army. From the earliest days I wanted to attend law school, so I attended the University of Georgia School of Law, graduating in 1977. My father and uncle both practiced law. I always knew that the most admired profession is the legal profession.

Tell us about your law practice.

My first year out of law school, I clerked for a Superior Court. Then I spent six years with one of the most established law firms in Augusta: Hull, Towill, Norman & Barrett. These jobs prepared me to open

my own practice. For the last forty years, I have practiced plaintiff’s personal injury law. My desire is to help individuals who are the underdogs and to fight the establishment.

Tell us about a memorable case or two.

I represented the driver of a farm truck that was hit by a kaolin truck, rendering our client a paraplegic. Some facts were against us, and the MVA report was wrong. The case turned at trial when the defense witness was impeached and the safety director for the defendant admitted that his company's trucks were in the habit of driving at an excessive speed in order to increase the number of loads they carried each day. The settlement while the jury was out enabled the client to live the rest of his life to the fullest.

I brought a legal malpractice case against a lawyer who took unfair advantage of a widow in the sale of

timber. He led her to believe that he was her attorney, but he acted in the interest of the purchaser. In this case we protected not only our client, but also the integrity of our profession.

Pro bono cases preventing clients from being evicted are not big cases, but they make a tremendous difference in the life of the client. The personal rewards and memorable experiences of representing disadvantaged clients far outweigh any financial benefits in this area of law.

Tell us about any mentors you've had and why they were effective.

Bob Norman: Partner in the first firm I worked in and family friend. He was effective because of his values.

Pat Rice: Also a partner in my first firm. He taught me excellent work habits.

Don Bunch: Tennis coach at The Citadel. Coach Bunch set an example for his players with his positive attitude.

Judge Walter McMillan: He did things the right way and insisted that lawyers on both sides of the aisle got along with one another.

How has the practice of law changed, for the better or for the worse?

For the worse: Lawyers are not as collegial. TV advertising has diminished the reputation of our profession. Lawyers are more concerned with making money than with improving the profession.

For the better: Technology has expanded opportunities and reduced overhead.

Advice for young lawyers.

Make friends. Appreciate being part of the greatest profession. Act as a role model.

Advice for mid-career lawyers.

Don't forget why you became a lawyer. Don't become cynical.

Advice for older lawyers.

Know when to stop. Walk away gracefully.

Photos from the 2023 Traditions of Excellence Awards Celebration





The Basics of Ante-Litem Notices in Georgia

John M. Hawkins



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Georgia statutory law requires claimants to provide a written notice to certain state and local government entities before pursuing claims for money damages. This notice is usually called an "ante-litem notice," which is often abbreviated as "ALN." This article provides basic information concerning ALNs, addressing some of the most common issues that general practitioners might encounter.

A. Common Issues

Common Issue #1: The Type of Governmental Entity

Many issues, including the deadline for submitting an ALN and the content required for the ALN, will depend on the type of governmental entity. If the entity is a state entity, then O.C.G.A. § 50-21-26 will apply. If it is a county, then the ALN requirements of O.C.G.A. § 36-11-1 apply. For cities, O.C.G.A. § 36-33-5 is the applicable statute. For consolidated or unified governments, the charter provides whether it should be treated as a city or county for purposes of an ALN. See e.g. *City of Columbus v. Barngrover*, 250 Ga. App. 589, 596 (2001) (reviewing charter of the consolidated City of Columbus and Muscogee County for determining which ALN statute applied).

Common Issue #2: Serving the ALN

The type of government entity will also determine where and how to send an ALN. Under the state ALN statute, a claimant must send the ALN to two entities: (1) "the Risk Management Division of the Department of Administrative Services"; and (2) "the state government entity, the act or omissions of which are asserted as the basis of the claim." O.C.G.A. § 50-21-26(a)(2).

The claimant must submit the ALN to the Department of Administrative Services ("DOAS") via "certified mail or statutory overnight delivery" or by personal delivery to DOAS with "a receipt obtained." *Id.* The claimant must also submit a copy of the ALN to the applicable state entity via personal delivery or "first-class mail." *Id.* Failure to comply with both elements may result in dismissal of a subsequent lawsuit. See *Callaham v. Ga. Ports. Auth.*, 337 Ga. App. 120, 122-123 (2016).

The county ALN statute provides less specifics than either the state or municipal ALN statutes concerning service. However, case-law establishes that the notice must be in writing. See *Powell v. Co. of Muscogee*, 71 Ga. 587, 588 (1883); *Warnell v. Unified Govt. of Athens-Clarke Co.*, 328 Ga. App. 903, 904-905 (2014); *Meadows v. Houston Co.*, 295 Ga. App. 183, 186 (2008). As to the county official whom the claimant should serve with the ALN, *Croy v. Whitfield County*, 301 Ga. 380, 381-384 (2017), provides a good summary of the law concerning this topic. Another county-specific issue is service of an ALN for official-capacity claims against a county sheriff. This usually arises in the context of a motor vehicle accident where a person is allegedly injured in a collision with an automobile driven by a sheriff's deputy. In a recent opinion, the Supreme Court of Georgia cut through layers of confusing case-law by holding: (1) that the county ALN statute applies to official-capacity claims against a sheriff; and (2) service of the ALN to the county's governing authority is sufficient. *Collington v. Clayton Co.*, 318 Ga. 29, 897 S.E.2d 361, 365, 368 (2024).

Unlike the county statute, the municipal ALN statute is very specific. Under that statute, claimants must serve the ALN "upon the mayor or the chairperson of the

city council or city commission, as the case may be, by delivering the claim to such official personally or by certified mail or statutory overnight delivery.” O.C.G.A. § 36-33-5(f). Failure to comply with this provision is “fatal” to a claim. *City of Albany v. GA HY Imports, LLC*, 348 Ga. App. 885, 891 (2019).

Common Issue #3: Deadline to serve the ALN

Each statute provides the deadline by which a claimant must submit the ALN. For claim against state entities, the claimant must submit the ALN “within 12 months of the date the loss was discovered or should have been discovered.” O.C.G.A. § 50-21-26(a)(1) (emphasis added). The same generally applies to claims against counties, unless the claimant is a “minor[] or other person[] laboring under disabilities,” in which case the claimant has “12 months after the removal of the disability” to submit the ALN. O.C.G.A. § 36-11-1. For claims against cities, however, the claimant has “six months [from] the happening of the event upon which a claim against a municipal corporation is predicated” to serve the ALN. O.C.G.A. § 36-33-5(b) (emphasis added).

Common Issue #4: Content of the ALN

The required content for each type of ALN varies. The state ALN statute requires the claimant to provide specific information “to the extent of the claimant’s knowledge and belief.” O.C.G.A. § 50-21-26(a)(5). That statute lists six categories of information that the claimant must provide. See O.C.G.A. § 50-21-26(a)(5) (A)-(F). Failure to include all six categories “renders the notice insufficient.” *Langford v. Dept. of Community Health*, 363 Ga. App. 121, 124 (2022).

The county ALN statute does not contain specific requirements concerning content. Case-law suggests that a “proper ante-litem notice must notify the County that the Plaintiff has a claim upon which it may bring suit—generalized complaints about how the County conducts its business are insufficient.” *Jones v E.R. Snell Contractor, Inc.*, 333 F. Supp. 2d 1344, 1351 (N.D. Ga. 2004), *aff’d*, 120 Fed. Appx. 786 (11th Cir. 2004). An ALN to a county must give the county enough information “to investigate potential claims, ascertain the evidence, and avoid unnecessary litigation.” *Klingensmith v. Long Co.*, 352 Ga. App. 21, 25 (2019) (quoting *Barngrover*, 250 Ga. App. at 596). Thus, information like the identity of the claimant is essential

for a proper ALN to a county. See *id.*

The municipal ALN statute requires that a claimant provide specific information to a city, including the amount of money damages that the claimant is seeking. O.C.G.A. § 36-33-5(b), (e).

Common Issue #5: Applicable Claims

The state ALN statute, which is found in the Georgia Tort Claims Act, explicitly applies to “a tort claim against the state under this article.” O.C.G.A. § 50-21-26(a). The county ALN statute is much more expansive, requiring an ALN for “[a]ll claims against counties.” O.C.G.A. § 36-11-1. The municipal ALN statute applies to “injuries to person or property.” O.C.G.A. § 36-33-5(a).

Of note, the broad language of the county ALN statute applies “to claims arising from contract,” but does “not apply to a claim where the right to and amount of the claim is fixed by law.” *Terrell Co. v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 630 (1987).

Common Issue #6: Prerequisite to a lawsuit

One of the primary reasons that it is important to pay close attention to the various requirements of the ALN statutes is because a claimant must timely submit a proper ALN before the claimant may file an action in court. As explained throughout this article, failure to submit a complete ALN by the applicable deadline is fatal to a lawsuit.

The state ALN statute makes this concept explicit: “no action against the state under this article shall be commenced and the courts shall have no jurisdiction thereof unless and until a written notice of claim has been timely presented to the state.” O.C.G.A. § 50-21-26(a)(3). This is “a condition precedent” to filing a tort action against the state. *Dept. of Pub. Safety v. Ragsdale*, 308 Ga. 210, 212 (2020). The county ALN statute bars claims against counties unless the ALN is properly submitted to the county. See O.C.G.A. § 36-11-1. If a claimant fails to submit a proper ALN within the deadline, his or her claim against the county does not exist and is barred. *Warnell*, 328 Ga. App. at 904-905. Much like ALNs to the state, properly submitting an ALN to a city is “a condition precedent” to bringing an action. *City of Chamblee v. Maxwell*, 264 Ga. 635, 636 (1994); *GA HY Imports, LLC*, 348 Ga. App. at 888 (internal citations and quotations omitted).

B. Conclusion

The case-law surrounding ALNs has followed a winding path in Georgia, which makes the basic principles for things like service and content of ALNs confusing, at best. A lawyer looking through the ALN case-law will find many “red flags” next to case citations, and this article certainly does not cover all the eventualities that general practitioners may encounter. While lawyers should always double-check the applicable statute and the most recent case-law—which is still evolving—this article provides basic information for the usual issues that may arise in a general law practice.

Note: This article is for informational and educational purposes and is not intended to be, nor should it be construed as, an official written legal opinion of the Athens-Clarke County Attorney’s Office. Any opinions expressed in this article are solely the author’s opinions, and do not express any official position of the Athens-Clarke County Attorney’s Office or the Unified Government of Athens-Clarke County, Georgia.

Tax Appeals, Daubert Challenges, and Class Actions: Who Knew?

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Under the category of “you never know where life will take you,” as a law student, I thought I would be a securities or medical malpractice lawyer. Twenty-plus years later, I have fallen into a practice area that I did not know existed when my legal career started—ad valorem tax and related actions. The development of this practice happened somewhat accidentally. I was at a firm that needed someone to handle tax appeals at the administrative and superior court level, and I needed work. I quickly realized this seemingly benign area of practice provided a vehicle for exercising skills and tactics I always wanted to employ, including statutory construction, Daubert motions, and complex litigation. Now more than half of my practice is devoted to bringing class action tax refund cases under the Georgia Refund Statute codified at O.C.G.A. § 48-5-380. This article will give you the basics of the tax appeal and tax refund framework and point out some useful tools and strategies that most people do not think of when tax appeals are mentioned.

Tax Appeals: The Basics:

O.C.G.A. § 48-5-311 (the “Tax Appeal Statute”) sets out the framework for the tax appeal process. To begin, it is the board of tax assessors that has the burden of proving its **opinions of value** and **the validity of its proposed assessment** by a preponderance of evidence. Most people simply think of tax appeals as a battle of two appraisers arguing over market value. That is but one avenue for challenging a valuation. Frankly, a battle of experts ends up being a toss-up. There are many strategies that can tip the scales in favor of your client in a tax appeal. In addition to market value, grounds for appeal include taxability, *uniformity of assessment*¹, denial exemption, and the *validity of assessment*. O.C.G.A. § 48-5-311(e)(1)(A) and (e) (4). The uniformity and validity of an assessment are often overlooked avenues for appeal and create the opportunity for creative lawyering.

¹[A]ll taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax...” GA CONST Art. 7, § 1, ¶ III.

Definition of Fair Market Value

The definition of “Fair Market Value” itself provides a fertile field for attack of a valuation. “Fair market value of property” is defined as:

the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm’s length, bona fide sale. The income approach, if data are available, shall be considered in determining the fair market value of income-producing property. If actual income and expense data are voluntarily supplied by the property owner, such data shall be considered in such determination.

O.C.G.A. § 48-5-2(3). This section goes on to identify a list of criteria that must be applied by tax assessors in performing a valuation, including existing zoning, use, covenants and restrictions, other existing factors, and intangible rights included in the sale². These criteria provide a treasure trove of avenues to challenge a valuation. Chief among these for certain types of properties is the requirement that the property be valued based on its existing use rather than the highest and best

² O.C.G.A. § 48-5-2(B) provides in its entirety as follows:

The tax assessor shall apply the following criteria in determining the fair market value of real property:

- (i) Existing zoning of property;
- (ii) Existing use of property, including any restrictions or limitations on the use of property resulting from state or federal law or rules or regulations adopted pursuant to the authority of state or federal law;
- (iii) Existing covenants or restrictions in deed dedicating the property to a particular use;
- (iv) Bank sales, other financial institution owned sales, or distressed sales, or any combination thereof, of comparable real property;
- (v) Decreased value of the property based on limitations and restrictions resulting from the property being in a conservation easement;
- (vi) Rent limitations, higher operating costs resulting from regulatory requirements imposed on the property, and any other restrictions imposed upon the property in connection with the property being eligible for any income tax credits with respect to real property which are claimed and granted pursuant to either Section 42 of the Internal Revenue Code of 1986, as amended, or Chapter 7 of this title or receiving any other state or federal subsidies provided with respect to the use of the property as residential rental property; provided, however, that properties described in this division shall not be considered comparable real property for the assessment or appeal of assessment of properties not covered by this division;
- (vii)(I) In establishing the value of any property subject to rent restrictions under the sales comparison approach, any income tax credits described in division (vi) of this subparagraph that are attributable to a property may be considered in determining the fair market value of the property, provided that the tax assessor uses comparable sales of property which, at the time of the comparable sale, had unused income tax credits that were transferred in an arm’s length, bona fide sale.
(II) In establishing the value of any property subject to rent restrictions under the income approach, any income tax credits described in division (vi) of this subparagraph that are attributable to property may be considered in determining the fair market value of the property, provided that such income tax credits generate actual income to the record holder of title to the property; and
- (viii) Any other existing factors provided by law or by rule and regulation of the commissioner deemed pertinent in arriving at fair market value.

use. “[E]xisting use’ must be employed as ‘yardstick’ with which to measure fair market value.” *Inland Container Corp. v. Paulding Cnty. Bd. Tax Ass’rs*, 220 Ga. App. 878, 879, 470 S.E.2d 702, 704 (1996), overruled in part by *Gilmer Cnty. Bd. of Tax Ass’rs v. Spence*, 309 Ga. App. 482, 711 S.E.2d 51 (2011), citing *Dotson v. Henry Cnty. Bd. of Tax Ass’rs*, 155 Ga. App. 557, 559, 271 S.E.2d 691 (1980). This means that for undeveloped agricultural and timber land, properties that were purchased for development should not be used as comparable sales. This makes examination of the verification of sales both used and not used by the assessor an important part of the process. For property under appeal purchased in the last year, the sales price should be examined as the sales price sets the upper limit of value (it can be lower, but not higher). For any property that is income producing, such information, if supplied to the assessor, must be considered in determining the value.

The Georgia Appraisal Procedures Manual

The Georgia Department of Revenue publishes a set of rules that all tax assessors are required to use in performing valuations. O.C.G.A. § 48-5-297 provides: “[t]he county board of tax assessors shall adhere to the assessment standards and techniques as required by law, by the [Department of Revenue], and by the State Board of Equalization.”(emphasis added). The standards and techniques promulgated by the Department of Revenue (“DOR”)³ are set forth in the Georgia Appraisal Procedures Manual (“GAPM”). Ga Comp. R. & Regs. 560-11-10-.01, et seq. O.C.G.A. 48-5-269.1 provides for the creation of the GAPM and states that it “shall be utilized by county property appraisal staff in the appraisal of tangible real and personal property for ad valorem tax purposes.” Id. ⁴(emphasis added). For each type of property, the GAPM sets forth a methodology for assessment that must be followed by the tax assessor. Where it is not followed, the assessor cannot establish the validity of the assessment, and such assessment runs afoul of the uniformity provision of the Georgia Constitution. So what does that mean? It means that where you can prove that rules set forth in Title 48 and the

(B.1) The tax assessor shall not consider any income tax credits with respect to real property which are claimed and granted pursuant to either Section 42 of the Internal Revenue Code of 1986, as amended, or Chapter 7 of this title in determining the fair market value of real property.

(B.2) In determining the fair market value of real property, the tax assessor shall not include the value of any intangible assets used by a business, wherever located, including patents, trademarks, trade names, customer agreements, and merchandising agreements.

GAPM were not followed, the tax assessor cannot carry its burden of proof on its assessment and the valuation is invalid. Failure to follow the required procedures has led to entire digests being declared invalid. See, e.g., *Wayne Cnty. Bd. of Ass'rs v. Rayonier*, 13CV0364, Superior Court of Wayne County (aff'd, *Rayonier Forest Res., LP v. Wayne Cnty. Bd. of Ass'rs*, No. S13C1041, 2013 Ga. LEXIS 590 (June 17, 2013) (declaring entire large acreage tract valuation invalid due to failure to comply with GAPM). Moreover, where evidence exists that the assessor did not comply with the GAPM, the assessor's opinions concerning valuation can be excluded under Daubert (yes, it can even apply in tax appeals) as unreliable. Such a motion is typically used in conjunction with a motion for summary judgment on the invalidity of the assessment and highlights the flaws in the valuation at issue.

As you can see, the legislative and regulatory framework themselves create a host of opportunities to challenge the methodology employed by the tax assessor and change the debate from "what is the property worth?" to "was the correct process followed?" These strategies are most useful once an appeal is at the Superior Court level. Regardless, you will need to formulate an argument as to market value based on comparable sales, cost, or income as appropriate.

Refund Actions

The Tax Appeal Statute is not the only avenue to challenge an improper valuation. O.C.G.A. § 48-5-380 (the "Refund Statute") provides an avenue for taxpayers to recover "erroneously or illegally assessed" taxes. Under the Refund Statute, a taxpayer who has already paid taxes billed can either make a claim for refund with the governing authority or proceed directly to bring suit for a refund.

An illegal tax assessment is one imposed without authority or in violation of federal or state law. An erroneous tax assessment is harder to define; it includes clerical errors, assessments of tax-exempt property, and assessments based on the wrong millage rate, but not assessments based on the county's failure to consider every relevant fact in establishing an assessed value.

Nat. Health Network v. Fulton Cnty, 270 Ga. 724, 727,

514 S.E.2d 422 (1999) (emphasis supplied). A taxpayer has five years from the date of payment of taxes to bring suit for a refund. O.C.G.A. § 48-5-380(g). See also *Hojeij Branded Foods, LLC v. Clayton Cnty.*, 355 Ga. App. 222, 228, 843 S.E.2d 902, 907 (2020) (confirming five-year statute of limitation for initiating refund claim). This statute is applicable for situations where the appeal deadline has been missed or a taxpayer discovers an error either after the deadline or after payment of taxes. A factual error in acreage or square footage presents a relatively straightforward area to employ the Refund Statute. Please note that the Refund Statute cannot be used to simply attempt to challenge the market value. See *Slivka v. Nelson*, 328 Ga. App. 468, 762 S.E.2d 162 (2014)⁵. Claims that an assessment was reached by the use of illegal procedures, however, can serve as the basis for a refund claim. *Id.* at 471, 165. Accordingly, assertions that the mandates of Title 48 and the GAPM were not followed give rise to claims under the Refund Statute. See, e.g., *Altamaha Bluff v. Thomas*, No. 14CV0375, Superior Court of Wayne County, Order Granting Plaintiffs' Motion for Partial Summary Judgment dated Jun 29, 2019, aff'd, Georgia Court of Appeals, No. A19A0481.

Class Actions Under the Refund Statute

Many times, errors discovered in handling tax appeals for clients reveal larger systematic errors affecting hundreds if not thousands of similarly situated taxpayers. Where it is discovered that the assessors' office failed to follow the GAPM or other valuation protocols under Title 48, a claim for tax refunds on a class-wide basis can be brought. Matters involving property taxation are uniquely suited for class treatment, and it is the settled law of Georgia that actions under the Refund Statute may be brought on a class basis. See *Glynn Cnty. v. Coleman*, 334 Ga. App. 559, 779 S.E.2d 753 (2016). Whether it is the failure to follow the GAPM, failure to apply rules for preferential valuation program, or

⁵ "Taxpayers generally have two avenues for challenging an improper tax assessment: (1) the appeal process in O.C.G.A. § 48-5-311, and (2) the refund procedure in O.C.G.A. § 48-5-380. These distinct remedies, however, serve different purposes. An appeal under O.C.G.A. § 48-5-311 provides "the most expeditious resolution of a taxpayer's dissatisfaction with an assessment, preferably before taxes are paid." In contrast, an O.C.G.A. § 48-5-380 refund action has been described as a "procedure to protect taxpayers from later-discovered defects in the assessment process which have resulted in taxes being erroneously or illegally assessed and collected." Moreover, the refund procedure is available only to correct errors of fact or law that caused erroneous or illegal taxation. It cannot be used to address "a claim based on mere dissatisfaction with an assessment, or on an assertion that the assessors, although using correct procedures, did not take into account matters which the taxpayer believes should have been considered." *Slivka*, 328 Ga. App. At 469 (Citing *Fulton County v. Marani*, 299 Ga. App. 580 (2009)).

a litany of other errors, if the board of assessors, city or county, misapplied or failed to follow a statute, regulation, or ordinance uniformly to all those similarly situated, a refund claim can be brought on a class basis. See, e.g., *Altamaha Bluff, LLC, et al., v. Thomas, et al.*, No. 14-CV-0376, Superior Court of Wayne County; *Coleman v. Glynn Cnty.*, Nos. CE12-01785-063, CE13-01480-063, and CE14-00750-063, Superior Court of Glynn County; *Toledo Manufacturing Co., et al. v. Charlton Cnty.*, No. SUCV201900232, Superior Court of Charlton County; *Old Town Trolley Tours*

of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, No. SPCV20-007667-MO, Superior Court of Chatham County; *Bailey v. McIntosh Cnty.*, No. SUV2021000009, Superior Court of McIntosh County; and *VTAL Real Estate, LLC v. The Mayor and Aldermen of The City of Savannah*, No. SPCV21-00789-CO, Superior Court of Chatham County.

It is my hope that awareness of these strategies can help you to better serve your clients.

Corporate Transparency Act

Andrew Smith & Warren Hedgepeth



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Introduction

The Corporate Transparency Act (“CTA”) went into effect on January 1, 2024. Passed by Congress in 2021, the purpose of the CTA is to combat tax fraud, money laundering, human and drug trafficking, and other illegal activities by increasing transparency in entity ownership and control.

The CTA will require certain entities, known as “Reporting Companies,” to disclose information about the company itself, its Company Applicants, and its Beneficial Owners to the Financial Crimes Enforcement Network (“FinCEN”). This information, collectively referred to as a Reporting Company’s “Beneficial Ownership Information,” will be utilized by FinCEN to create a national registry of Beneficial Ownership Information for Reporting Companies. This information will be stored on a secure, nonpublic database and will allow law enforcement to more quickly investigate entities that are suspected of committing certain crimes. The CTA will apply to domestic entities as well as foreign entities that conduct business in the United States.

Is My Entity a Reporting Company for Purposes of the CTA?

A Reporting Company is defined as a corporation, limited liability company, or other similar entity that is: (1) created by filing a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or (2) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with the secretary of state or a similar office under the laws of a State or Indian tribe. If an entity qualifies as a Reporting Company, it will be required to disclose its Beneficial Ownership Information unless an applicable exemption applies (as described below).

Reporting Companies likely include limited partnerships, limited liability partnerships, limited liability limited partnerships, and certain business trusts (statutory trusts). Sole proprietorships, general partnerships, and most trusts are excluded from the definition of a Reporting Company under the CTA and are unlikely to be required to report.

Entities Exempt from Reporting

The CTA specifically classifies 23 types of entities as exempt from the definition of Reporting Company. These exempt entities do not need to submit their Beneficial Ownership Information to FinCEN. In general, exempt entities are those that are highly regulated and whose ownership information is already available to United States regulators. Some of these exempt entities include:

- Banks, bank holding companies, depository institutions, credit unions, licensed insurance companies, and money transmitting businesses
- Certain regulated public utility companies
- Accounting firms registered under Section 102 of the Sarbanes-Oxley Act of 2002
- Publicly-held issuers that file reports with the Securities and Exchange Commission, including registered broker-dealers, exchanges, clearing agencies, and licensed or registered investment companies
- Commodity pool operators and commodity trading advisors that are registered with the Commodity Futures Trading Commission
- Certain tax-exempt entities, including 501(c)(3) organizations
- Large operating companies
- Subsidiaries of certain exempt entities
- Inactive entities

Large Operating Company Exemption

Large operating companies are exempt from filing with FinCEN. Large operating companies are entities that: (1) employ more than 20 employees on a full-time basis; (2) filed in the previous year federal income tax returns demonstrating more than \$5,000,000 in gross receipts or sales; and (3) have an operating presence at a physical office within the United States.

Subsidiary Exemption

Entities that are wholly owned or controlled by other exempt entities will themselves be exempt from filing with FinCEN. Significantly, current regulations indicate that an entity must be owned entirely by one or more specified exempt entities to qualify for this exemption. The subsidiary exemption does not extend to subsidiaries of money transmitting or money services businesses, pooled investment vehicles, or entities that assist tax-exempt entities.

Inactive Entity Exemption

The inactive entity exemption applies to entities that: (1) were in existence on or before January 1, 2020; (2) are not engaged in an active business; (3) are not wholly or partially owned, directly or indirectly, by a non-United States person; (4) have not experienced a change in ownership in the prior 12-month period; (5) have not sent or received any funds in an amount greater than \$1,000 in the prior 12-month period; and (6) do not otherwise hold any assets, whether inside or outside the United States, including an ownership interest in any corporation, limited liability company, or other similar entity.

Special Rule - Owned by Exempt Entity

If a Beneficial Owner's interest in a Reporting Company is derived through one or more entities, all of which are themselves exempt from reporting, then there is no need to report that Beneficial Owner's Information to FinCEN. The names of all of the exempt entities may be reported instead.

Who Is a Beneficial Owner?

A Beneficial Owner is defined as an individual "who directly or indirectly exercises substantial control over a Reporting Company or owns or controls at least 25 percent of the ownership interests of a Reporting Company."

What Does it Mean to Have Substantial Control?

Individuals with substantial control include:

- (1) Senior officers of a Reporting Company, which includes "any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function";
- (2) Those persons with authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- (3) Individuals who exercise authority over significant business decisions, such as: selecting or terminating business lines; approving significant contracts; authorizing major expenditures or investments; approving business reorganizations, dissolutions, mergers, sales, or amending governance documents; and

(4) Any other person who exercises substantial control over the Reporting Company (catchall category).

What Does it Mean to Have a 25 Percent Ownership Interest in a Reporting Company?

The definition of “ownership interests” is broadly defined and includes an individual’s interests in stock or voting rights, equity, options, capital or profit interests, convertible instruments, or any other instrument, contract, or mechanism used to demonstrate ownership.

Trusts

If a trust owns 25 percent or more or exercises substantial control of a Reporting Company, it will be required to disclose the Beneficial Ownership Information for: (1) the trustee or any other individual with the authority to dispose of trust assets; (2) a beneficiary who is the sole permissible recipient of income and principal, or someone who has the right to withdraw substantially all of the assets from the trust; and (3) a grantor or settlor who has the right to revoke the trust or otherwise withdraw assets of the trust.

Those Exempt as a Beneficial Owner

The following individuals are typically exempt as Beneficial Owners and do not need to report their personal information to FinCEN:

- (1) individuals younger than the age of 18 so long as the information of a parent or legal guardian is reported instead;
- (2) those acting on behalf of another individual, such as nominees, intermediaries, custodians, or agents;
- (3) employees of a Reporting Company who are not considered senior officers and who do not derive economic benefit from the company apart from their employment status;
- (4) individuals whose interest in the Reporting Company is based on a future interest by means of a right of inheritance; and
- (5) creditors of the Reporting Company so long as the creditor does not exercise substantial control over the entity, or own or control at least 25 percent of the ownership interests in the company.

Who Is a Company Applicant?

Reporting Companies formed after January 1, 2024, need to report certain personal information about their Company Applicants to FinCEN. Reporting Companies formed prior to January 1, 2024, are not required to provide such information.

A Company Applicant is (1) the individual who directly files the formation or registration documents with the secretary of state or similar office and (2) the individual who is primarily responsible for directing, controlling, or overseeing such filing. A Reporting Company can have no more than 2 Company Applicants.

What Information Must Be Reported?

A Reporting Company must provide:

- (1) its name, or any names through which it engages in business, including any trade names or any doing business as names;
- (2) its business street address (which cannot be a P.O. Box);
- (3) the jurisdiction of formation or registration; and
- (4) its tax identification number.

Beneficial Owners must provide:

- (1) their full name;
- (2) their date of birth;
- (3) their residential or business address; and
- (4) an identifying number from an acceptable identification document, such as a passport or driver’s license, along with a photograph of that document.

Company Applicants of Reporting Companies must report the same information as Beneficial Owners.

When and How to Report

- Reporting Companies that exist prior to January 1, 2024, will have one year to file with FinCEN.
- Any Reporting Company created on or after January 1, 2024, will have 90 days after receiving notice of the Company’s formation or registration to file its Beneficial Ownership Information.
- Reporting Companies created on or after January 1, 2025, will only have 30 days to file.
- Any changes to a Reporting Company’s

Beneficial Ownership Information must be reported to FinCEN within 30 days.

All Beneficial Ownership Information must be filed electronically through FinCEN's secure online filing system.

FinCEN Identifier Number

Individuals can apply for a FinCEN identifier, which is a unique number issued to either individuals or Reporting Companies. A FinCEN identifier can be used for frequent filers and can be provided in lieu of a Beneficial Owner's or Company Applicant's personal information.

Who Can Access Beneficial Ownership Information

Federal, state, local, and tribal officials, as well as certain foreign officials upon request, will be able to access a Reporting Company's Beneficial Ownership Information.

Penalties for Failure to Report

FinCEN may impose civil and criminal penalties against a Reporting Company if it fails to report its Beneficial Ownership Information. Civil and criminal penalties will also apply against a Company Applicant and Beneficial Owner if an individual willfully reports false Beneficial Ownership Information or willfully fails to correct or update previously reported Beneficial Ownership Information. Civil penalties include fines of \$500 for each day that the violation continues. Criminal penalties include potential fines of up to \$10,000 and imprisonment for up to 2 years.

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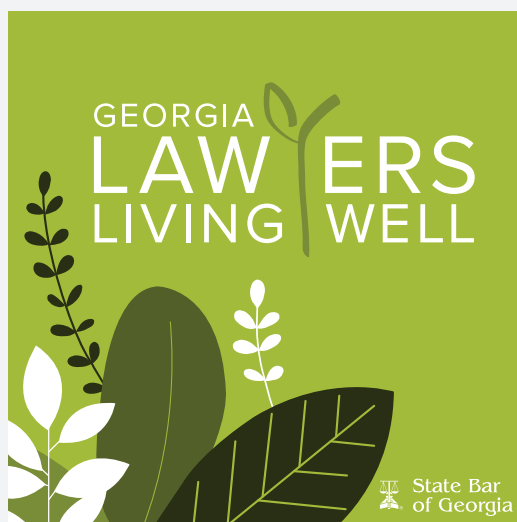
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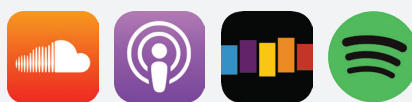
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