

A CLAIMSCENE

THE NEWSLETTER OF

ACA ATLANTA CLAIMS
ASSOCIATION

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March 2015 • A Monthly Publication of the Atlanta Claims Association



Atlanta Claims Convention
April 15th - 16th, 2015

Bravely moving forward with the



The Braves are
moving to Cobb County,
...and so are WE!

From the President

Dear Fellow ACA Members,

We had a wonderful turn out and program for the last Workers' Compensation Seminar held last month at Villa Christina. The seminar was outstanding both in quality of topics and speakers. I would like to thank the Honorable Frank McKay, Chairman, and State of the Board Workers' Compensation for taking the time to be a part of this seminar. His support and commitment, along with the other speakers, is the reason for this successful seminar. I would also like to give special thanks to our sponsors, Greg Presmanes, Emile Gastley and the others on the committee for a job well done! Lastly, I had the privilege of announcing the start of the "Debby Darrell Achieve Award". This annual award is being developed to recognize an outstanding individual in the insurance industry. It's in memory of the late Debby Darrell who faithfully served as the Workers Compensation Chairperson.

On March 11th we will have our joint luncheon with the CPCU association at Villa Christina. We will be voting on the new slate of officers so it's very important that all ACA members attend and cast your votes. It's also a chance to meet the new officers and volunteer for one of the many committees in the association. This event fills up quickly so please register as soon as possible. I look forward to seeing you there.

Our annual convention at the Cobb Galleria April 15th and 16th is quickly approaching. Our theme this year is "The braves are moving to Cobb and so are we". I recently toured the facility. I must say I was impressed with the layout and accommodations. I know our convention committee has been working hard to insure the success of this event. The convention will be highlighted by the educational or CEU credits. The fellowship at the hospitality suites are must attend events as well. The nominees for the "Claims Person Of The Year" are in. The winner will be announced at the convention.

The golf and tennis Committee is hard at work making changes to this annual event. The tournament will be held on May 12th at the Rivermont Country Club in Roswell GA. I can personally say this event gets better and better each year.

Remember to visit our website www.atlantaclaims.com for updates, links and registration forms for upcoming events and opportunities.

In Fellowship,
Kowalski M. Brown
ACA President



Wednesday, March 11th, 2014

Villa Christina
4000 Summit Boulevard
Atlanta, Georgia 30319
678-539-1234

12:00 - 1:00 PM

11:30 AM Registration
Luncheon Cost:
\$25.00 Members
\$30.00 Non-members

Reservations Required
Limited Seating
RSVP Required

Online Registration and payment
is now available for monthly meetings
www.atlantaclaims.com

Contact:
Nancy Reynolds
nancyr08092@gmail.com

2014–2015 Officers

President	Kowalski Brown	770-901-3048
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Ass't. Treas.	Nancy Reynolds	678-591-0941
Financial Adv.	Lester V. Hanks	404-630-5862
Website Contact	hostmaster@atlantaclaims.com	

A ClaimsScene Editorial Staff

CH & Editor	Pamela Glick	770-394-3718
Advertising	Evelyn Brown	770-870-2827

Atlanta Claims Association Mission Statement:

To strengthen the professional life of those involved in the claims industry by providing members with education and network opportunities while promoting a positive public image of the claims industry.

ACA membership, meetings, information,
address changes, etc.— mail to:
P.O. Box 724627 • Atlanta, GA 31139
Articles, letters, photos, etc.— mail to:
Kowalski Brown
Phone 770-901-3048
Kowalski.Brown@sedgwickcms.com

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March Speaker



Mr. Mike Miller, Clear Point Claims, LLC “A Strategic Approach to Everyday Success”

Mark your calendar to plan on joining us for our annual joint luncheon with CPCU. The date is Wednesday March 11, 2015 at Villa Christina. Registration begins at 11:30 am

CE credits are pending approval at this time. We anticipate this event to be well attended by both associations so early registration is suggested to ensure a seat. ACA members will also be voting on our new slate of Officers for the ACA 2015-2016 term and the 2015 CPOY nominees will be introduced at this luncheon. We will have door prizes and announcements for upcoming activities for both associations. This will be a fun, educational, and motivational meeting and we look forward to seeing you there.

Interests in sponsorship of this event or door prize donations should be submitted to Linda Mihyar at ll.mihyar@gmail.com

Clear Point Claims, LLC, Chief Financial Officer

Business Consulting – 23 Years

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- KPMG (Charlotte, NC), Advisory Services Director
- McGladrey & Company
 - National Managing Director-IT Consulting
 - Regional Managing Director-Consulting (North Carolina)
 - Regional Managing Director-South Dakota Operations
 - Partner-Consulting Services (Minneapolis, MN)
- Grant Thornton (Minneapolis, MN)

Executive Positions-15 Years

- Network Communications (Minneapolis, MN)
 - President, CEO
 - Board Member
- Telident, Inc. (Minneapolis, MN)
 - President, CEO
 - Board Member
- Hickory Tech Corporation (Mankato, MN)
 - President, CEO-Non-Regulated Enterprises
- Collins Communications (St. Paul, MN)
 - Chief Operating Officer
 - Chief Financial Officer

Education & Professional

- University of Chicago
 - Executive Program (3 Years)-Business Advisor Program (Global Strategy)
- Indiana University-Masters in Business Administration
- St. Joseph's College (Indiana)-Bachelors in Finance
- Certified Public Accountant (Minnesota, North Carolina, South Dakota)

Civic

- Mecklenburg County Council Boy Scouts of America (Executive Board Member 2008-2012)
- First Book Volunteer-Boys and Girls Club-Boulevard Homes (Charlotte)
- Peninsula Yacht Club-Fleet Committee Treasurer

Other

- Federal Aviation Administration-Licensed Private Pilot
- United States Coast Guard-Licensed Charter Captain

Save The Date

Wednesday March 11, 2015

Joint CPCU Luncheon
Location: Villa Christina

Friday, March 20, 2015

Atlanta CPCU I-Day
Ritz-Carlton Hotel, Atlanta, GA

If you would be interested in attending this annual event for a great educational and networking opportunity please visit the CPCU website at atlanta.cpcusociety.org for more information and registration.

Friday, March 25, 2015

Atlanta Claims Association Scholarship Program
Application Deadline

Thursday April 16, 2015

THE BRAVES ARE MOVING TO COBB AND SO ARE WE!
Please mark your calendar for the newly revised Atlanta Claims Convention on April 16th at Cobb Galleria Centre. Look for exciting training opportunities, vendor expo and networking with your peers.

When: April 16, 2015

Where: Cobb Galleria Centre
2 Galleria Parkway SE
Atlanta, GA 30339

Invitations and enrollment instructions will follow in the coming weeks Watch the ClaimsScene newsletter for more information.

Tuesday, May 12, 2015

We are pleased to announce that this year's Atlanta Claims Association Golf & Tennis Outing will be held at Rivermont Country Club (www.rivermontcountryclub.com). For those of you who have joined us in the past for this event, we look forward to seeing you again this year. And for those of you who are new to Atlanta Claims or who just haven't joined us in the past, we welcome you to this fun event and look forward to meeting you! This Outing is one of the most anticipated and well-attended events of the year.

New this year is that Atlanta Claims Association is partnering with The Wounded Warrior Project as our charity sponsor. A portion of the proceeds from this Outing will be donated to The Wounded Warrior Project. We are very excited about this commitment that Atlanta Claims Association has made and believe it will make this fun Outing that much more special. Registration to be available on line in March.



Atlanta Claims
Association's
4th Annual

Insurance Day At the Capitol

Tuesday, March 24, 2014
10:00 – 2:00 pm

**Georgia Capitol
Conference Room 230**

Past Invited Distinguished Speakers Have Included:

Ralph Hudgens, State Insurance Commissioner

David Ralston, Speaker of the House

David Shafer, Senate President Pro Tempore

Edward Lindsey, House Majority Whip

Richard Smith, House Insurance Committee Chair

House Committee Chairs Rich Golick, Joe Wilkinson and Howard Maxwell

There is no cost to attend.
Complimentary lunch provided.

To RSVP, or for more details, contact
Duane Cochenour at DCochenour@hallboothsmith.com or 404-954-6979

NOTE: Attendance is limited to the first 30 RSVPs.

The Law of Apportionment:

A departure from tradition culminating in the Georgia Supreme Court's decisions in *McReynolds v. Krebs*, *Couch v. Red Roof Inns, Inc.*, and *GFI Management Services, Inc. v. Medina*

By: Teri Zarillo, Edward H. Lindsey, Jr., Peter D. Muller, and Kevin C. Patrick

I. A HISTORICAL PERSPECTIVE

Under the doctrine of joint and several liability, each defendant is responsible to the plaintiff for the entire verdict. Also, each defendant is liable to the plaintiff for all damages caused by other tortfeasors, even those who are immune from suit and others who are not parties. This resulted in numerous cases in which the plaintiffs focused on suing and/or collecting from only those defendants who had "deep pockets," leaving those defendants to try and recoup some of their payout through contribution or indemnity. This doctrine also resulted in tortfeasors having to pay for damages that were caused in part by the plaintiffs' employers, family members, and other immune persons against whom the defendants had no right of contribution or indemnity.

In 2005, Senate Bill 3 made significant changes to O.C.G.A. § 51-12-33 which reshaped the entire landscape of apportionment and non-party fault. This statute codified the old common-law rule that the plaintiff's award is to be reduced by his proportion of fault, but the statute directed the judge, rather than the jury, to apply that math. The Legislature also removed the language that the plaintiff had to be at fault in order for apportionment to be triggered and required that the jury consider the fault of all persons, regardless of whether that person is a party to the suit, when assessing percentages of fault.

II. McREYNOLDS v. KREBS

On March 23, 2012, the Georgia Supreme Court issued its opinion in *McReynolds v. Krebs*, 290 Ga. 850. The plaintiff, who was not at fault, had brought an action against the other driver, *McReynolds*, and against General Motors ("GM"), the manufacturer of the plaintiff's vehicle. *McReynolds* brought a cross-claim against GM for contribution and set-off. GM eventually settled with the plaintiff. The trial court dismissed *McReynolds*' cross-claims, under the rationale that O.C.G.A. § 51-12-33 had abolished joint and several liability and had replaced contribution and set-off with apportionment. At trial, *McReynolds* did not pursue apportionment against GM. Following the trial of this case, the jury returned a verdict against *McReynolds* only. The trial judge refused *McReynolds*' request to set off GM's payment from the recovery against

McReynolds. *McReynolds* appealed, claiming in part that O.C.G.A. § 51-12-33 applies only where a plaintiff was at fault, and therefore no apportionment applies, so that *McReynolds* could pursue a cross-claim and set-off.

After a ruling in the court of appeals, the Georgia Supreme Court issued certiorari to consider whether O.C.G.A. § 51-12-33 requires the jury to apportion an award of damages among multiple defendants even when the plaintiff is not at fault. The supreme court held that the provision on apportioning among tortfeasors applies even if the plaintiff was not at fault. Contrary to *McReynolds*' suggestion that the language contained in O.C.G.A. § 51-12-33(a) involving the fault of the plaintiff should be imported to the remaining subsections, this statute does not state that these remaining subsections are dependent on the above limitation. In fact, O.C.G.A. § 51-12-33(b), regarding apportioning among defendants after reducing the damages for the fault of the plaintiff, qualifies the fault of the plaintiff with the use of the phrase "if any." The supreme court held that the phrase means apportionment applies even if the plaintiff was not at fault. The court then noted that the former version of this statute did specifically restrict apportionment of fault to when the plaintiff was actually liable, and the Tort Reform Act of 2005 removed such language when the Legislature drafted O.C.G.A. § 51-12-33(b).

III. COUCH v. RED ROOF INNS, INC.

On July 9, the Georgia Supreme Court issued its opinion in *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359 (2012). The plaintiff, a guest at the defendant's hotel, had brought suit in federal court against the hotel for injuries received during a criminal attack by an unknown assailant, alleging that the hotel had failed to exercise reasonable care to protect its guests from foreseeable attacks. The hotel had attempted to apportion fault and damages toward the assailant, citing O.C.G.A. § 51-12-33 (c), which instructs the jury to "consider the fault of all persons...who contributed to the...damages, regardless of whether the person...was...named as a party to the suit."

The federal district court, recognizing that Georgia law was unsettled on those issues, certified the questions to the Georgia Supreme Court for guidance. In a 5-2 decision, the Supreme Court held that O.C.G.A. § 51-12-33's apportionment based on "fault" applies to apportionment not only of negligence but also to fault of any type, including intentional acts. "Fault" is a common term which routinely is broad enough to include negligence, reckless conduct, and intentional acts. By using the phrase "[n]egligence or fault," the Legislature indicated that it was using the term "fault" more broadly than mere negligence; otherwise, the phrase would contain "mere surplusage," which is avoided in construing statutes. If the Legislature had intended to exclude intentional or reckless conduct from the term "fault," then it could and should have.

IV. GFI MANAGEMENT SERVICES, INC. v. MEDINA

On June 13, 2012, the Georgia Supreme Court addressed the issue of whether the language of O.C.G.A. §§ 51-12-31 and 51-12-33 were unconstitutionally vague in *GFI Management Services, Inc. v. Medina*, 291 Ga. 741 (2012). The plaintiff was shot in the leg on October 9, 2007 by an unknown assailant at an apartment complex that was managed by the defendant. The plaintiff brought a premise liability lawsuit against the defendant and several others. The defendant filed a Notice of Non-Party Fault against the assailant in accordance with O.C.G.A. 51-12-33, but the plaintiff filed a motion in limine to exclude all evidence relating to apportionment.

The trial court concluded O.C.G.A. §§ 51-12-31 and 51-12-33 contained inherent contradictions rendering the apportionment as a whole unconstitutional; however, the Georgia Supreme Court reversed the decision of the trial court. The supreme court did not find that apportionment as a whole was unconstitutional. This decision was not surprising, particularly given the decisions in *Couch* and the other predecessor case *McReynolds*.

V. CONCLUSION

For the time being, these decisions appear to put rest a number of the once highly contested issues. Some questions still remain. The Georgia Supreme Court has recently granted certiorari to determine whether apportionment is proper in the context of vicarious liability in *Zaldivar v. Prickett*, 328 Ga. App. 359 (2014). Regardless, Notices of Non-Party Fault are now more than ever a useful tool in the apportionment of damages, but it is still important to keep in mind that there needs to be a factual basis for making a claim for apportionment under *Union Carbide Corp. v. Fields*, 315 Ga. App. 554 (2012).

Atlanta Claims Association Scholarship Program

Applications are to be submitted through the schools' Insurance and Risk Management departments and through Kids Chance, Inc.

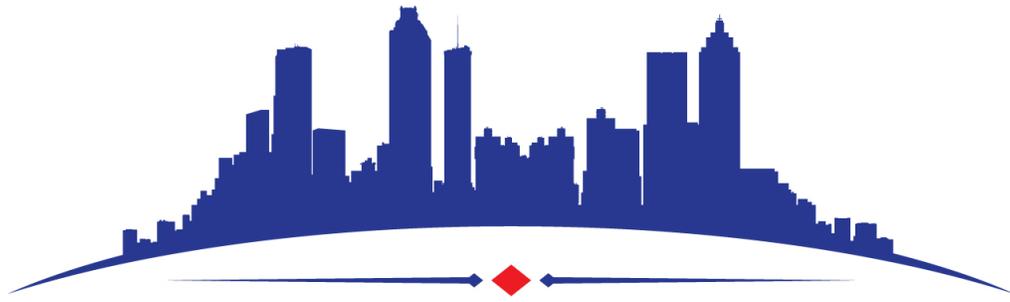
For questions contact:

Patty Bakmaz Education Chair, Atlanta Claims Association
7100 Peachtree Dunwoody Rd.,
Suite 300 Atlanta, GA 30328
pbakmaz@national-law.com
Phone: 678-687-0198

Atlanta Claims Association is awarding three \$1000 Scholarships: Kids Chance of Georgia, University of Georgia, and Georgia State University. Scholarships will be presented at the Atlanta Claims Association's Annual Convention Luncheon on April 15, 2015. Applicants must meet the following guidelines:

1. Full time student
(12 or more credit hours per semester or quarter)
2. Pursuing a major course of study in Risk Management and Insurance.
3. Be a junior or senior with at least 1 semester or internship remaining.
4. Must have a 3.0 or higher overall GPA
5. Preferably involved in insurance related extra-curricular activities, organizations, etc.
6. Priority given to family and/or close relatives of the Atlanta Claims Association.
7. Submit attached application form, documentation of the above (1-6), and a 200-300 word essay explaining why you believe you are deserving of this scholarship.

Application Deadline March 25, 2015



Atlanta Claims Convention

April 15th - 16th, 2015

93rd Annual Atlanta Claims Convention

The Atlanta Claims Association's 93rd Annual Claims Convention will be held Wednesday and Thursday, April 15-16, 2015, at the Cobb Galleria Centre. We are all very excited about the change in venue and hope everyone will be able to attend!

On Wednesday, April 15, 2015, we will have our Officers and Board of Directors meeting and awards luncheon, where we pass the gavel from our outgoing President, Kowalski Brown, to our incoming President, Linda Mihyar.

From 1:00pm until 5:00pm on Wednesday, our Exhibitors will be setting up their booths. This year, we are pleased to announce we will be throwing a Convention Kick-Off Party immediately following our Exhibitor set-up. This takes the place of the Exhibitor Reception from years past and is a special recognition of our Exhibitors. Please see the ACA website for additional details on how you can attend the reception.

On Thursday, April 16th, the Exhibition Hall will be open from 10:00am until 6:00pm. Various activities are being planned and door prizes will again be offered as they have in previous years. Hospitality suites will open at 6:00pm.

Throughout the day on Thursday, our educational seminar will be ongoing. We have changed the format this year and are pleased to be providing a selection of several speakers to entertain and educate. CE credits will be offered for attendance at the seminar. Please see the ACA website for additional details on registration.

There are several hotels in the area that offer accommodations, namely, the Renaissance Waverly, which is directly connected to the Galleria. Their number is 770-953-4500.

Please continue to check the ACA website for additional details regarding registration, exhibition spaces, and sponsorship opportunities. If you have specific questions, please feel free to contact any of the Convention Committee members listed below:

Jaclyn Chapman-Convention Chairperson-404-300-0950
Teri Zarillo-Education Chairperson-404-926-4109
Stephanie Fuller-Sponsorship-404-852-4030
Jessica Schmidt-Hospitality Suites-770-842-0743
Monica Jobin-Exhibitors-678-686-6244
Darlene Terrell-Exhibitors-678-686-6246



We heard your feedback from years previous, and this year, we are pleased to offer our exhibitors a new approach to exhibiting at the Claims Convention. Exhibitors will have the option of picking between four exhibit levels to best suit their organization's needs.

As has always been done, we have hospitality suites available for sponsorship. Hospitality suites provide a great opportunity to network and meet industry professionals and attendees to the Convention.

There will be plenty of other great chances to sponsor events during, and leading up to, the Convention on Thursday, April 16, 2015! Check the website often for more details and we look forward to seeing everyone at this year's New Claims Convention!

Additional Sponsorship Opportunities Exist!
For more information, go to the Atlanta Claims Association website at: www.atlantaclaims.com

2015 ACA CONVENTION EXHIBITOR INFORMATION:

PLATINUM EXHIBITOR - \$1,500.00

- Double exhibit space
- Exhibitor's name listed as Sponsor of Educational Event
- Exhibitor's name and exhibit level listed on conference signage
- Special recognition given to Exhibitors at specific times during the conference
- Attendee List for All Events (Kick-Off Party, Education Seminar & Convention)
- Four Tickets for luncheon to Education Seminar & 5 minute presentation during Educational Lunch
- Recognition in ACA Newsletter

GOLD EXHIBITOR - \$1,000.00

- One exhibit space
- Exhibitor's name and exhibit level listed on conference signage
- Special recognition given to Exhibitors at specific times during the conference
- Attendee List for Kick-Off Party & Convention
- Two Tickets for luncheon to Education Seminar
- Recognition in ACA Newsletter

SILVER EXHIBITOR - \$850.00

- One exhibit space
- Exhibitor's name and exhibit level listed on conference signage
- Special recognition given to Exhibitors at specific times during the conference
- Attendee List for Convention
- Two Tickets for luncheon to Education Seminar
- Recognition in ACA Newsletter

BRONZE EXHIBITOR - \$750.00

- One exhibit space
- Exhibitor's name and exhibit level listed on conference signage
- Special recognition given to Exhibitors at specific times during the conference
- Attendee List for Convention
- One Box Lunch
- Recognition in ACA Newsletter

HOSPITALITY SUITE SPONSOR - \$300.00

- Sponsor's name listed on conference signage
- Two Tickets to the Kick-Off Party
- Recognition in ACA Newsletter
- Sponsor bears the cost of all food, beverage, and entertainment within their Hospitality Suite

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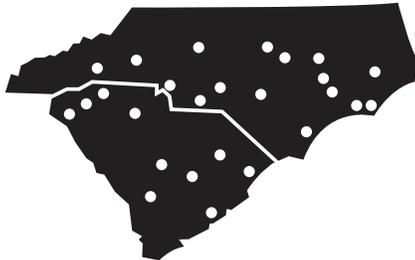


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