

DAILY REPORT

A SMART READ FOR SMART READERS



AFTERHOURS

Sam Olens receives the Weltner Award from Betsey Weltner at Georgia First Amendment Foundation banquet. Photos, page 5.

HD8001 30338105 ##
BOVIS KYLE & BURCH
200 ASHFORD CTR N STE 500
ATLANTA GA 30338
00216326

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Newsreel

Columbus Firm Hatcher Stubbs to Disband at End of Year

● A major Columbus law firm, Hatcher, Stubbs, Land, Hollis & Rothschild, is breaking up, the Columbus Ledger-Enquirer reports.

Hatcher Stubbs announced on Sept. 29 that the firm will disband. Its 18 lawyers will go their separate ways on Jan. 1. "Until that time, it will be business as usual at Columbus' oldest law firm, which traces its roots back to 1872," it said.

The firm said the dissolution is the result of a "strategic planning process to discern the best way for the firm and its attorneys to expand their resources and their footprint to better serve valued clients and continue to provide top quality services in a broader market."

Hatcher Stubbs' managing partner, George Mize Jr., told the Ledger-Enquirer that no financial problems prompted the amicable dissolution. "Sure, technically it's a breakup," he said. "Normally that involves acrimony and hard feelings, but there was none of that. This was a unique situation. We all sat down as reasonable people and figured out, 'This situation fits me better, and that situation fits you better.'"

Seven Hatcher Stubbs partners and the majority of its other lawyers and staff will join the Columbus office of Atlanta-based Hall Booth Smith. Those partners are: William Hardegree, Charles Staples, Robert Martin Jr., John Sheftall, Gregory Ellington, Bradley Coppedge and Melanie Slaton. Hall Booth will relocate its Columbus office to the current Hatcher Stubbs office in the Corporate Center in downtown Columbus.

Four Hatcher Stubbs partners, Mize, Alan Rothschild Jr., William Pound and LaRae Moore, will join Page, Scrantom, Sprouse, Tucker & Ford, a full-service, 31-lawyer firm based in Columbus.

Hatcher Stubbs partners Edward Hudson and D. Nicholas Stutzman, who have residential real estate practices, are evaluating their options in both Columbus and Atlanta, according to the firm.

—Meredith Hobbs

6 SCOTUS POLICY CHANGES

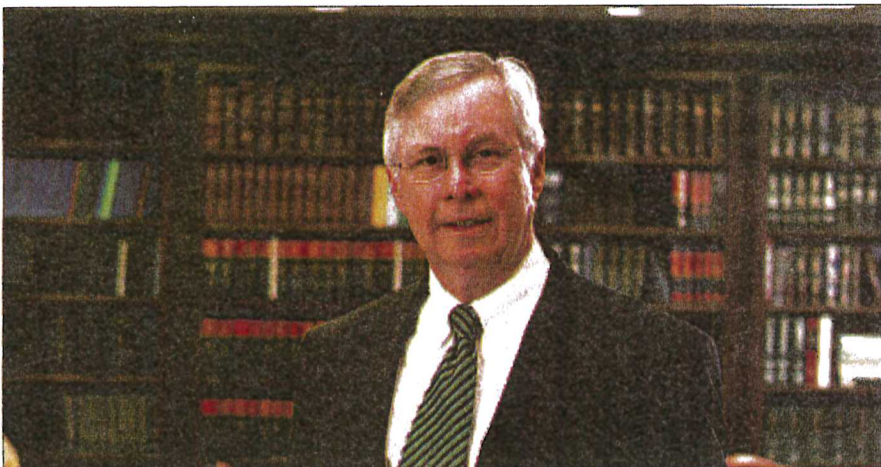
U.S. Supreme Court changes policies for online opinion edits, line-standing and link rot.

AWARDS ANNOUNCED

The Daily Report reveals awards for in-house departments and top verdicts. DailyReportOnline.com.

1B OPINIONS

Read summaries of recent opinions from Georgia's high court and Court of Appeals.



JOHN DISNEY/DAILY REPORT

Jim Butler: "Nobody has ever come up with a methodology for valuing human life that does not devalue human life."



JOHN DISNEY/DAILY REPORT

Steven Kyle said he's seen juries arrive at a wide range of determinations for the value of a life, from several million dollars down to only medical and funeral expenses.

Lawyers Reflect on How Georgia Law Values a Life

KATHERYN HAYES TUCKER
ktucker@alm.com

A JURY SAYS THE LIFE of a 4-year-old boy was worth \$120 million. An

insurance company agrees to pay \$2 million for the life of a 91-year-old man.

Lawyers whose recent cases produced those figures, in response to
See VALUE, page 2



FILE PHOTO

Mike Bothwell represented the two whistleblowers who filed the case.

Hospice Chain Settles Fraud Claims for \$3 Million

R. ROBIN MCDONALD | rmcdonald@alm.com

GUARDIAN HOSPICE of Georgia and affiliated firms Guardian Home Care Holdings and AccentCare have agreed to pay \$3 million to settle whistleblower claims that they submitted false claims to Medicare and Medicaid for

hospice patients that were not terminally ill, the acting U.S. attorney in Atlanta announced on Oct. 2.

In disclosing the settlement, federal prosecutors also unsealed a whistleblower case filed in 2012 by the Bothwell Law Group on behalf of

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JOHN DISNEY/DAILY REPORT

Cynthia Counts says her business is booming because of new outlets such as social media.

Duane Morris Lands Veteran First Amendment Lawyer

MEREDITH HOBBS | mhobbs@alm.com

AFTER RUNNING HER OWN media law firm for 15 years, Cynthia Counts has joined 700-lawyer Duane Morris as a partner.

Counts has litigated a string of high-profile First Amendment cases at Counts Law Group, for both big media outlets and individuals—including a local activist jailed for yelling "F--- the police!" to officers.

Until now, she has relied on associates and a long-distance team of lawyers for help on big cases, including Emily Caron in Kansas City, Eric Robinson in Louisiana and Chris Crain, who's assisted from Brazil.

But things are moving fast in media law, and Counts said she wants the deeper bench and resources of a big firm. Duane Morris, based in Philadelphia, ranks No. 70 on the AmLaw 100, reporting 2014 revenue of \$428 million. Counts' addition this week gives the Atlanta office 23 lawyers.

"My firm has grown exponentially in the last four years," Counts said. She estimated that she's

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VALUE, from page 1

claims over the boy's and the man's deaths, reflected on how Georgia law drove each result.

“ [Georgia's law is] the best idea anybody has come up with: entrust it to the enlightened conscious of a fair and impartial jury working under the supervision of a trial judge who can increase it or decrease it.

—Jim Butler

Georgia's wrongful death statute, 51-4-1, says “the full value of the life of the decedent, as shown by the evidence” should be viewed through the eyes of the deceased and determined by the “enlightened conscience of a jury.” That value consists of two parts: economic, which includes lost future earnings, and intangible.

It was the intangible part that worried defense attorney Steven Kyle of Bovis, Kyle, Burch & Medlin as he considered the prospect of a trial over the death of J.D. Gibbs, 91, the farmer whose pickup was hit by a tractor-trailer driver insured by Kyle's client.

In his 47-year litigation career, Kyle said he has seen juries arrive at a wide range of determinations for the value of a life—from several million dollars down to only medical and funeral expenses. It depends upon the deceased person's experiences, activities and relationships, he said.

Gibbs, he feared, would have been on the high side. Though Gibbs had no future earnings prospects and was on in-home hospice

care for his congestive heart failure, he was a father and grandfather who was still active in his community. The wreck happened as he was visiting neighbors, who placed the fault squarely on the speeding of the driver insured by Kyle's client.

“It wasn't a case where we were giving away money, I can promise you that,” Kyle said of the \$2 million policy limit settlement. But, he added, “We concluded this was a case that needed to be settled.”

The \$2 million settlement “reaffirms what I have always believed,” said Brandon Peak of Butler Wooten Cheeley & Peak, who represented Gibbs' four daughters. “Life is about much more than simply what a person would have earned.”

“The real value of life is the relationships we have with others and the opportunity to serve our fellow man.” He added that he, like Kyle, expected that a Worth County jury would have placed a premium value on the life of J.D. Gibbs.

The intangible value of life was part of the case Peak's partner, Jim Butler, made in the trial over an exploding Jeep gas tank that led to a \$150 million verdict in Bainbridge. Butler talked in his closing argument about the kinds of experiences 4-year-old Remi Walden would never have, such as falling in love, marrying and spending time with family. He added the boy wouldn't have time to spend with his father, a point underscored by Butler's trying the case with his son, Jeb Butler of Butler Tobin.

The elder Butler described Georgia's wrongful death law as noble, and took a Fiat Chrysler Automobile's lawyer to task for calling it a “crazy little concept.”

The defense lawyer suggested the jury award something in the \$1 million range for



JOHN DISNEY/DAILY REPORT

Brandon Peak: “Life is about much more than simply what a person would have earned.”

the value of Remi's life, based on what most people earn in South Georgia. Butler suggested no less than \$120 million for the value of Remi's life. The jury came back with exactly that, plus \$30 million for pain and suffering in the minute between the gas tank explosion and the child's death.

Butler co-authored a 2012 article called “What's a Life Worth,” published in a Georgia Trial Lawyers Association quarterly, that traced the value of a life to an 1878 action by the Georgia Legislature. “By awarding damages for the loss of the ability to live and enjoy life's activities, Georgia law permits recovery for the true full value of human life,” said Butler and his co-authors, Frederick Overby and Mary Weeks.

They said the law fulfills the Judeo-Christian philosophy that each life is valuable, “if only to the person living it.” The article also

said the concept has been challenged repeatedly, but has survived.

Kyle noted that some other states, including Florida, permit awards that Georgia does not, such as damages for the grief of the survivors. Kyle cited a 1927 Georgia Supreme Court opinion, *Engle v. Finch*, 165 Ga. 131. It noted an 1850 Georgia act following the lead of England's 1846 Lord Campbell's Act, both of which overturned the common law prohibition on allowing spouses and children to recover damages for the wrongful death of a loved one.

Lawyers have been fighting ever since over how to value human life, Butler said in a conversation after the Walden verdict. “Nobody has ever come up with a methodology for valuing human life that does not devalue human life.”

Still, he said, Georgia's law in this regard is “the best idea anybody has come up with: entrust it to the enlightened conscious of a fair and impartial jury working under the supervision of a trial judge who can increase it or decrease it.”

Which is what happened in the case of the \$150 million Walden verdict. South Georgia Circuit Superior Court Judge J. Kevin Chason reduced it to \$40 million: \$30 million for wrongful death and \$10 million for pain and suffering. And Fiat Chrysler is still fighting it. ☞

CORRECTION

The Georgia Supreme Court has issued a correction for a discipline case, *In the Matter of Hugh O. Nowell*, published Tuesday (“Supreme Court Acts in 11 Discipline Cases,” Oct. 6, 2015). Nowell's state bar number is 547375.

Georgia State University COLLEGE OF LAW



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There is still time to join AVLF at the Georgia State University College of Law to celebrate the 24th Annual AVLF Winetasting.

Thursday, November 5, 2015

6 - 9 PM

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