

DAILY REPORT

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DAILY REPORT IN RECESS

Readers who ran in the Peachtree Road Race sent in their photos for the Daily Report's health column. Story, page 10.

An incisivemedia publication

Newsreel

Teilhet leads in AG campaign funds

• In the first stage of fundraising for the 2010 state attorney general campaign, state Rep. Robert B. Teilhet raised the most money of the three announced candidates.

Teilhet, a Democrat from Smyrna, reported raising \$203,069 in the first six months of this year, according to a filing provided by the candidate. Cobb County Commission Chairman Samuel S. Olens, a Republican, raised \$185,959 in the same period. Former Dougherty County District Attorney Kenneth B. Hodges III, a Democrat in private practice in Atlanta, raised \$128,280.

Olens made a personal loan of \$16,000 to his campaign. Hodges loaned his campaign \$5,795. Teilhet did not loan to his campaign funds.

Hodges received a \$150 contribution from incumbent Attorney General Thurbert E. Baker, a Democrat running for governor.

Teilhet said that Hodges and Baker have known each other for a long time, and that Teilhet did not ask Baker for a contribution.

Teilhet received a total of \$3,500 in contributions from individual attorneys at the law firm of former Gov. Roy E. Barnes, the Barnes Law Group of Marietta, and an additional \$3,000 from the firm itself. The Barnes Law Group also gave Hodges \$3,000.

Other gifts to Teilhet's campaign included \$5,000 from Atlanta securities litigator Martin D. Chitwood and \$2,000 from Summerville attorney Bobby Lee Cook.

Hodges' contributions included \$1,000 from Joel Wernick, CEO of the Albany hospital Phoebe Putney Health System; \$1,000 from Jeffrey O. Bramlett, the past president of the State Bar of Georgia; and \$500 from former Gov. Carl Sanders.

Olens' gifts included \$6,100 from Seyfarth Shaw economic development partner Daniel M. McRae, \$1,000 from Morris, Manning & Martin real estate partner Gerald L. Pouncey Jr. and \$250 from State Transportation Board chairman Bill Kuhlke.

—Andy Peters

4 ECONOMIC BOOST
Lee Ann Bellon talks to Burr & Forman chief, who says smaller firms see small gains during tough times.

5 IT DOESN'T 'PAY TO DELAY'
The Department of Justice switches sides in practice that delays putting a generic drug on the market.

CAMPAIGN FUNDRAISING
Find the latest information on candidates' finances at DailyReportOnline.com.

1B OPINIONS
Read summaries of recent opinions from Georgia's high court and Court of Appeals.



ZACHARY D. PORTER/DAILY REPORT

Christina Craddock, right, and David Harris of Bovis, Kyle & Burch represented Arch Insurance in a breach of contract suit brought against Douglas Asphalt.

Paver ordered to pay back \$129M

DISTRICT JUDGE says \$89M goes to Arch Insurance for paying Douglas' bills, \$40M as collateral for future losses

BY ANDY PETERS

A FEDERAL JUDGE has ordered a defunct South Georgia road-paving company and its two owners to pay an insurance carrier at least \$128.9 million for breaching contracts.

U.S. District Court Judge Lisa G. Wood for the Southern District of Georgia on June 29 divided her order involving Douglas Asphalt Co. into two sections. She told the paver to pay nearly \$89 million to Arch Insurance Co. of New York to cover expenses that Arch

has incurred since 2006, when it began paying Douglas' bills to subcontractors and suppliers. Douglas couldn't meet its expenses after the state of Georgia placed Douglas in default on more than 20 road contracts.

Wood also ordered Douglas to pay Arch \$40 million as collateral for future losses that Arch might incur from covering Douglas' expenses.

Douglas' attorneys, Kenneth E. See *Paver*, page 9

Find the judgment for this case at DailyReportOnline.com.

DEAL WATCH

Lawyers help create venture fund, with a twist

BY JANET L. CONLEY

THIS IS NOT YOUR FATHER'S venture capital fund.

Thanks to an atypical legal structure, the **GRA Venture Fund**—which recently raised \$18.75 million in its first round of fundraising—can operate with a lower cost structure, offer investors state tax credits and offer more hands-on management by board members.

The GRA Venture Fund is part of the Georgia Research Alliance and its program designed to let the state partner with private investors to provide early-stage financing to startup companies that grow out of the research and inventions created

See *Deal Watch*, page 9

MORE INSIDE

- There's an opening for a judge on the U.S. Bankruptcy Court for the Middle District of Georgia in Macon.
- Morris, Manning & Martin attorneys helped software provider O4 Corp. in its deal to land Series A financing.
- Granite & Marble Concepts Inc. has filed for Chapter 11 reorganization.



ZACHARY D. PORTER/DAILY REPORT

David Phillips, a partner at Jones Day, advised the Georgia Research Alliance and the GRA Venture Fund.

Lawyers abound at hearing on Jackson estate

ATLANTAN JOEL KATZ advises estate administrators

BY AMANDA BRONSTAD



Joel Katz, a shareholder in Greenberg Traurig's Atlanta office, is one of the top music attorneys in the country.

AN ARMY OF LAWYERS appeared during the first major probate hearing involving Michael Jackson's estate on Monday, as everyone with a potential stake in Jackson's assets now is being represented by an attorney.

During the hearing, Los Angeles County, Calif., Superior Court Judge Mitchell Beckloff ruled that Jackson's longtime attorney, John Branca, a name partner at Ziffren,

Brittenham, Branca, Fischer, Gilbert-Lurie, Stiffelman, Cook, Johnson, Lande & Wolf in Los Angeles, and record executive John McClain had been designated as temporary administrators of the estate, which is estimated to be worth hundreds of millions of dollars. Jackson's mother, Katherine Jackson, who has temporary custody of her son's children, had wanted to oversee the estate before the will was discovered.

In court, Howard Weitzman, a partner at See *Jackson*, page 8



Douglas Asphalt ordered to pay back \$129M

Paver, from page 1

Futch Jr. of Waycross and C. Dorian Britt of Savannah's Savage, Turner, Pinson & Karsman, did not return two calls placed to each lawyer seeking comment.

The litigation between Douglas and Arch stems from a long-running dispute between Douglas and the Georgia Department of Transportation. Douglas, once the largest road paver in South Georgia, and DOT have been at loggerheads since 2003 over the status of repaving projects on Interstates 75 and 95 in South Georgia. Douglas and the DOT have sued each other in multiple state and federal courts, with several cases unresolved.

In one case headed for trial next month, Douglas claims that the DOT violated federal anti-racketeering laws by using mail and telephone to coordinate the faulty testing that was used improperly to place Douglas in default of a contract. Jury selection in that case, *Douglas Asphalt v. Qore*, No. 2:06-CV-00229, is scheduled for Aug. 17 in Brunswick.

In all the cases, the DOT contends that Douglas did not use enough hydrated lime in its asphalt mixture, causing cracks and potholes in the roads. Douglas counters that its mixtures were based on DOT-provided specifications, that DOT officials were on

site when Douglas produced the mixtures and verified they were done correctly, and that the DOT was trying to put Douglas out of business by accusing the company of faulty work.

Arch Insurance, a subsidiary of Bermuda-based Arch Capital Group Ltd., was one of several surety companies that had provided performance bonds to cover Douglas in the event the company defaulted on a contract with the DOT. Other surety companies that had bonded Douglas also have sued the company, and their cases also are pending in federal courts.

Arch was forced to pony up millions of dollars when the Georgia DOT and some other local governments in August 2006 placed Douglas in default of some of its largest contracts. In May 2007, Arch sued Douglas and its two owners, Joel Spivey and his son Kyle Spivey, to be compensated per the terms of the indemnification agreement attached to the performance bonds. A surety bond is not the same thing as an insurance policy, said Bovis, Kyle & Burch partner Christina A. Craddock, Arch's counsel on the case. A surety bond is a "tripartite" arrangement among the surety (in this case Arch), the principal (Douglas), and the owner of the project, either a local government or a private entity. The purpose of the surety bond is to protect the owner if the principal defaults on its contract, Craddock said.

In response, Douglas argued that it shouldn't be required to compensate Arch because the surety company executed the

performance bonds in bad faith and failed to satisfy other conditions of the surety bonds.

Wood in September denied Arch's motion for summary judgment. But after a four-day bench trial in Waycross in February, Wood ruled that Arch followed the correct procedures in issuing the performance bonds and that Douglas and the Spiveys were jointly and severally liable for meeting the terms of the indemnification agreement.

"Significant, credible evidence was submitted proving that in some actions, Arch did more than what was required, essentially exhibiting 'great faith,'" Wood wrote in her findings of fact and conclusions of law.

Craddock acknowledged to the *Daily Report* that Douglas is out of business and doesn't have the funds to pay the \$128.9 million award. However, she said that Arch will pursue claims against the Spiveys individually.

Arch could recover some of its award through claims Douglas is pursuing against DOT in other courts. If Douglas prevails in those cases, Arch will "pursue a recovery" against Douglas, Craddock said.

"We may be standing in line to recover whatever portion of those judgments may be available," Craddock said.

Bovis Kyle partner John V. Burch was co-counsel with Craddock on the Arch litigation. The case, in the Southern District of Georgia, is *Arch Insurance v. Douglas Asphalt*, No. 5:07-CV-00038.


Craddock also represents another surety company, Lumbermens Mutual Casualty Co.,

that sued Douglas in the Southern District of Georgia to recover expenses from defaulted contracts. The parties on June 3 submitted to Wood a proposed pre-trial order in that case, *Lumbermens Mutual Casualty v. Douglas Asphalt*, No. 5:07-CV-00099.

In December, Wood awarded \$15.4 million to two surety companies, Zurich American Insurance Co. and Fidelity and Deposit Co. of Maryland, that had provided surety bonds for Douglas. Douglas has appealed that ruling to the 11th U.S. Circuit Court of Appeals. That case is *Fidelity & Deposit Co. v. Douglas Asphalt*, No. 09-1091.

In March, Fulton County Superior Court Judge T. Jackson Bedford Jr. vacated a Jan. 13 jury verdict that had favored Douglas. The DOT had sued Douglas in 2004, saying the road paver should pay \$3.3 million to compensate for shoddy work that led to potholes in a stretch of I-95 near Darien. In addition to vacating the jury verdict in favor of Douglas, Bedford also ordered Douglas to pay \$2.8 million to the DOT.

Douglas' lawyers said they would appeal Bedford's ruling in that case, *Georgia Department of Transportation v. Douglas Asphalt*, No. 2004-CV-83139.

Douglas and the DOT also have sued each other in Turner County Superior Court over problems related to a project to repave I-75 in South Georgia. Those cases are unresolved. 

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