

## **Summary Judgment Affirmed on Claims Against Lawyer**

By January 8, 2015

**Kim M. Jackson** of Bovis Kyle Burch & Medlin, LLC, successful summary judgment victor of the claims against their lawyer and law firm clients, was affirmed by the Georgia Court of Appeals. The plaintiff had sought damages for fraud and breach of fiduciary duty against his former attorney.

The client asked the attorney to take his misclassification case on a contingency fee basis. When the attorney refused, they then agreed to an hourly fee agreement to evaluate the claim and try to settle it.

They also agreed that the attorney would consider handling the case on contingency or hybrid-contingency fee if it turned out to be strong case. The case turned out to be weak, and the employer refused to negotiate. The client owed the attorney money and could not get another attorney to take the case on contingency. The client then sued the attorney for fraud and breach of fiduciary duty.

The client claimed that the fraud was based primarily on the allegation that the attorney fraudulently induced the client into the attorney-client relationship by exaggerating the value of the case and by promising to reconsider a contingency fee agreement. The law firm counterclaimed for its unpaid attorney fees.

The trial and the Court of Appeals disagreed with Plaintiff's claims as a matter of law. The Court held that a written claim evaluation was properly couched in conditional language and was not a "statement of fact" that could be the subject of a fraud claim. The Court also held that the fee agreement clearly called for an hourly fee agreement and placed no obligations on the attorney to take the case in the future under a different arrangement.

The Court of Appeals also affirmed the trial court's order granting the law firm summary judgment on its attorney fee claim.