2013 Court Watch Report

Decisions by Georgia's appellate courts can have a significant impact on consumers. Georgia consumers need to be aware of these decisions to determine if courts provide consumers fair treatment. If consumers know the legal challenges they may face in the justice system, they will be better prepared to protect their rights.

INTRODUCTION

The 2013 Court Watch Report is a publication of Georgia Watch, a statewide consumer advocacy organization. Founded in 2002, Georgia Watch is a 501(c)(3) non-profit, non-partisan organization working to ensure that consumers are educated and protected on matters that impact their wallets and quality of life. We focus on ensuring fair utility rates, renewable energy options, access to quality, affordable healthcare, safeguarding personal finances, and access to the courts. The purpose of this report is to make it easy for Georgia consumers to understand how recent court decisions have affected their rights.

The Court Watch Program helps support Georgia Watch's consumer education and advocacy efforts. Court Watch aims to publicize important consumer-related decisions by the Supreme Court of Georgia and Georgia Court of Appeals. This year's Court Watch Report serves two main goals: 1) informing the public of recent decisions affecting consumer law and 2) providing a preview of upcoming consumer law cases in the Georgia Supreme Court. Unlike previous Court Watch Reports, the 2013 Report contains cases still pending before the Supreme Court of Georgia. We have also included a select few cases that were decided in 2012 due to their significance and the fact that we did not issue a 2012 Court Watch report.

Decisions by Georgia's appellate courts can have a significant impact on consumers. Georgia consumers need to be aware of these decisions to determine if courts provide consumers fair treatment.

With the goal of consumer education in mind, the following report is designed to be accessible for all Georgians. Consumers and their attorneys will be able to use the Court Watch Report to see how Georgia's appellate courts treat consumer issues and track cases pending in the Supreme Court of Georgia. Georgia's citizens need to be aware of how the justice system decides these issues. If consumers know the legal challenges they may face in the justice system, they will be better prepared to protect their rights.

Before diving into the report, it's helpful to know that Georgia's court system is organized as a three-tiered hierarchy: the trial courts, the Court of Appeals, and the Georgia Supreme Court. The trial courts are the general courts of first impression; these are the courts that hear the issues first. If one of the parties is unhappy with the trial court's decision, she may "appeal" it to the next court in the hierarchy: the Court of Appeals. At the top of the court hierarchy is the Supreme Court of Georgia, which has full discretion to decide the cases it will hear. All courts are bound to the decisions made by other higher-level courts. In other words, all Georgia courts must adhere to the Supreme Court of Georgia's decisions, and the trial courts must adhere to the Court of Appeals' decisions. With this hierarchy in mind, this report focuses on decisions made by the Court of Appeals and the Supreme Court of Georgia.

The Court Watch Report organizes cases into four categories: 1) Access to Justice, 2) Government Transparency/Accountability, 3) Healthcare, Torts and Insurance, and 4) Consumer Finance.

By reading this report, consumers and attorneys representing the rights of consumers will gain valuable knowledge about their rights and current case law in an easily understandable way. For instance, a consumer may turn to the Access to Justice section and discover answers to practical questions such as, “How similar does my injury have to be to injuries of others in order to become part of a class action?” or “How far will the courts go to uphold an arbitration agreement?” Useful information can also be found under the Government Transparency/Accountability category, where consumers may be interested to learn that the courts have recently favored the legislature’s actions over the right of a consumer to view public records.

On the whole, this report does indicate that Georgia’s Supreme Court and Court of Appeals carefully weighed the best interests of consumers in 2013. A positive trend toward consumers is evident especially in the Health, Torts, and Insurance category. This trend is an optimistic development for consumers in light of recent discussions looming about changing the medical malpractice resolution system to one that would disfavor plaintiffs. Although it was generally a “more good than bad” year for consumers, Georgia citizens should be aware of the areas where their rights are hurting. According to recent cases, the Georgia Supreme Court and Court of Appeals have been less favorable to consumers in the Consumer Finance category. This section summarizes cases dealing with judicial foreclosures, as well as consumer protection in financial transactions. After reading the Consumer Finance section, consumers will be better acquainted with the disadvantages they now face as a result of recent judicial decisions.

After reading the Court Watch Report, Georgia Watch encourages consumers to use their newfound knowledge to spread awareness and protect their legal rights as consumers. For more information about particular cases, the court opinions for the Supreme Court of Georgia are available at http://www.gasupreme.us and Court of Appeals opinions are available at http://www.gaappeals.us/.

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ACCESS TO JUSTICE

1. ***Deal v. Miller*, 739 S.E.2d 487 (Ga. Ct. App. 2013).**

Deal v. Miller is detrimental to citizens who believe they were denied their legal right to counsel. This case addresses whether a group of indigent fathers, who were not represented by legal counsel in civil contempt proceedings that could subject them to jail time, qualified as a class of plaintiffs for a class-action suit. The men alleged that Governor Deal and other state officials denied them government-funded legal counsel at a proceeding where the State had legal counsel. The Court of Appeals, reversing the trial court decision, held that the plaintiffs did not meet class certification requirements under subsections (a) and (b) of the statute O.C.G.A. § 9-11-23. The Court of Appeals also found that the indigent fathers in these civil cases were not entitled to legal counsel even though they were subject to incarceration in the civil contempt proceedings.

The plaintiffs were indigent fathers facing incarceration for willfully violating child support orders. While the State had legal representation at the proceedings, the plaintiffs did not and were subsequently incarcerated. Plaintiffs did not ask for representation before or at the proceedings. The only request for counsel came eight months after the plaintiffs filed suit against the State and asked for class certification. While the trial court certified the class, the Court of Appeals reversed that decision and held that the plaintiffs failed to meet two of the four class certification requirements under O.C.G.A. § 9-11-23(a). The Court of Appeals also held that plaintiffs failed to meet one of the requirements under O.C.G.A. § 9-11-23(b) related to declaratory or injunctive relief.

First, the Court found that plaintiffs did not meet the commonality requirement of O.C.G.A. § 9-11-23(a). Commonality refers to "group characteristics as a whole." The trial court had identified a common question: "whether Plaintiffs are entitled to counsel in civil contempt proceedings where the state is represented by counsel." However, the question did not meet the Supreme Court requirement that class members "*have suffered the same injury, which does not mean merely that they have all suffered a violation of the same provision of law*" because the plaintiffs never asked the trial court for counsel *before* the proceedings. Therefore, the trial court never ruled on a request for counsel and did not deny counsel. In addition, the Court explained that: 1) the Sixth Amendment right to counsel is not applicable in civil cases; 2) the Due Process Clause of the Fourteenth Amendment does not automatically require counsel for people facing incarceration through a civil proceeding; and 3) the trial court does not have a duty to inquire whether a person is entitled to counsel in this type of case.

Second, the plaintiffs did not meet the typicality requirement. To meet the typicality requirement, "a class representative must possess the same interest and suffer the same injury as the class members." Here, the plaintiffs failed to prove typicality because they could not show an injury because the trial court did not deny any request for counsel.

Third, the plaintiffs did not meet a requirement under O.C.G.A. § 9-11-23(b) related to declaratory or injunctive relief. The trial court held the plaintiffs met § 9-11-23(b)(2), "which provides that certification is authorized only when the 'party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." The "act" alleged by plaintiffs was a policy of denying counsel to "indigent child support obligors prior to their incarceration." However, the Court of Appeals found no evidence of this policy, considering evidence did not show any denials of counsel, and therefore reversed the trial court.

2. ***Benchmark Builders, Inc. v. Schultz*, 726 S.E.2d 556 (Ga. Ct. App. 2012), *aff'd*, 751 S.E.2d 45 (Ga. 2013).**

In *Schultz,* a building company, Benchmark Builders, sued Stephen and Elizabeth Schultz for breach of contract. The Schultzes, who claimed they didn't breach, filed a counterclaim against Benchmark Builders for earnest money and for the attorney fees they now had to pay. A jury found that the Schultzes did not breach the contract and found in favor of their counterclaim. The jury awarded the couple $16,552 in attorney fees but did not award actual damages. The Georgia Supreme Court sent the case back to the Georgia Court of Appeals to address the following: "whether the award of attorney fees was permissible under the parties' contract rather than under [the statute] O.C.G.A. § 13-6-11."

The Court of Appeals held that the contract permitted a separate claim for attorney fees and upheld the lower court decision. The contract provided that the "prevailing party" in a dispute could recover attorney fees and such an action "may be *enforced in a separate action brought for that purpose*." The Court of Appeals explained that "the plain language of the contract does not limit the definition of 'prevailing party' to a party who recovers monetary damages." The jury "clearly found" for the Schultzes in this case and an award of attorney fees was proper.

This decision by the Court is not necessarily a win for consumers because, had Benchmark Builders prevailed, they could have collected attorney fees from the couple under the terms of the contract. In most cases, it is the corporation, rather than the individual, that writes the contract and dictates the terms, and this prevailing party language tends to work to the corporations' advantage in most cases.

3. ***Miller v. CGNSC Atlanta, LLC,* 746 S.E.2d 680 (Ga. Ct. App. 2013).**

Miller addresses the enforceability of a consumer arbitration agreement. Arbitration is a way to bypass settling a dispute before a judge. By signing a consumer arbitration agreement, a consumer agrees that any dispute will be resolved by a third party outside of court. The enforceability of an arbitration agreement is a major consumer issue, especially in a case like *Miller*, which involves a suit against a nursing home. On appeal, the Court of Appeals held the arbitration agreement unenforceable and void, protecting Miller's right to have his case heard in open court. This is a favorable decision for all plaintiffs in nursing home arbitration cases. Even though the United States Supreme Court holds a pro-arbitration stance, Georgia courts continue to decide nursing home arbitration cases fairly and provide our senior citizens with needed legal protection.

Michael Miller became a resident of Golden Living Center-Northside, a nursing home in Atlanta, in 2010. During the admission process, Miller signed a "Resident and Facility

Arbitration Agreement." The agreement stated that all claims "shall be resolved exclusively by binding arbitration." The agreement also explained arbitration would be conducted "in accordance with the National Arbitration Forum Code of Procedure." At the time of the agreement, the Code explained that only the National Arbitration Forum ("NAF") or an individual granted permission by the National Arbitration Forum could administer the Code.

However, the NAF could not administer the Code. In 2009, the Minnesota Attorney General filed a complaint against NAF alleging consumer fraud. NAF entered a consent agreement that it "would not administer, process, or '[i]n any manner participate in' any consumer arbitration."

In 2011, Miller sued Golden Living based on several claims, including negligence and violation of the Georgia Bill of Rights for residents of long term care facilities. Golden Living tried to dismiss the case based on the reasoning that Miller had agreed to settle disputes through arbitration when he signed the arbitration agreement. In response, Miller argued that "the designation of the NAF as the arbitral forum was an integral term" of the agreement. Since the NAF could no longer arbitrate and the Code could no longer govern arbitration, the agreement was then unenforceable and void. Miller also argued he was "legally incompetent" to enter the contract due to his condition at the time.

The Court of Appeals agreed with Miller and refused to "rewrite the parties' agreement." In reaching this decision, the Court adopted a new test for interpreting arbitration agreements. Golden Living had argued that the Federal Arbitration Act allowed the Court to appoint a new arbitrator. The Court agreed that it had this power but only if the contract language regarding the arbitral forum was an "ancillary logistical concern" and not an "integral term." The Court adopted this test from an Eleventh Circuit Court of Appeals case, *Brown v. ITT Consumer Financial Corp.*, 211 F.3d 1217 (11th Cir. 2000).

To decide if the language was "integral" the Court looked at whether the parties' intended to arbitrate only if the NAF was available to administer the proceeding. The Court examined the agreement language and determined the language was "integral." The Court explained that the "use of the mandatory 'shall' and the word 'exclusively,' together with its express incorporation of the NAF Code, indicates that the parties did not have a general agreement to arbitrate; rather, they contracted to arbitrate only before the NAF."

The Court found further support for its determination in the NAF Code. Under the Code, the NAF was free to decline to arbitrate if parties did not incorporate the Code "in its entirety," which shows the Code was "essential" to arbitrate. If parties could not follow the Code, they were not allowed to arbitrate in a different forum and were "free to seek legal remedies—i.e., to file a traditional lawsuit."

Golden Living presented an alternate argument that a severance clause allowed the Court to appoint an arbitrator under the Federal Arbitration Act. The Court, however, found the argument's reasoning "wholly unpersuasive." The Court explained that the argument "misapprehend[ed] Georgia Law regarding severable contracts." Courts are not allowed to sever essential contract terms and the finding that the language was integral prevented severance.

After discussing these arguments, the Court did not reach Miller's argument of incompetency. The contract's unenforceability rendered the competency argument moot.

4. ***Georgia-Pacific Consumer Prods., LP v. Ratner*, 746 S.E.2d 829 (Ga. Ct. App. 2013), *cert. granted*, (Ga., Nov. 18, 2013).**

Ratner represents a potential big win for Georgia consumers who are suffering similar injuries from a common source. This case addresses the issue of whether a group of home owners met class-action certification. The Georgia Court of Appeals, affirming the lower court decision, held that the group met the class certification requirements. Depending on how the Georgia Supreme Court ultimately decides the case, *Ratner* could be a sign that a broad range of plaintiffs, who suffer different but similar injuries caused by one defendant, are able to bring one unified suit.

In *Ratner*, four property owners from Effingham County sued Georgia-Pacific Consumer Products, LP for nuisance, trespass, and negligence. The owners claimed that Georgia-Pacific's Savannah River Mill, located in Rincon, GA, caused them injury by releasing hydrogen sulfide gas onto their properties.

The mill opened in 1986, and Georgia-Pacific started receiving complaints about noxious gas in 1992. Georgia-Pacific tried to solve the problem and, in some respect, succeeded. However, the mill again received complaints about the noxious gas in 2006. The plaintiffs cited 107 odor complaints between 2006 and 2012, including 28 from the subdivision directly across from the mill. The owners claimed interference with their ability to enjoy their properties, irritated eyes, skin and lungs, and that the gas damaged exterior parts of the house, particularly air conditioning units. According to Georgia-Pacific, the gas could cause corrosion of metal within a half-mile of the mill. Based on the damage, the owners feared that the gas affected the value and marketability of their property.

Georgia-Pacific concluded the gas emissions were a result of the mill's wastewater treatment process. Since the mill is a "major source" of pollution, it must comply with federal and state law to obtain operating permits. Georgia-Pacific considered closing three of the "sludge pits" that were thought to produce most of the gas. In addition, Georgia-Pacific paid for owners to replace or repair some of the damaged air conditioning equipment.

Plaintiffs filed their suit against Georgia-Pacific on December 10, 2010 and sought class certification. An amended complaint proposed the class "consisting of property owners neighboring the mill within a discrete area circumscribed by roads, railroad rights-of-way, and specific geographic coordinates. The area include[d] 34 residential properties and 33 parcels zoned industrial, agricultural, or other." It was undisputed that the properties in the area were exposed or were at the risk of exposure to the gas.

The trial court certified the class, and Georgia-Pacific appealed. On appeal, the Georgia Court of Appeals focused on whether the plaintiffs satisfied subsections (a) and (b) of the statute O.C.G.A. § 9-11-23.

O.C.G.A. § 9-11-23 (a) has four requirements: 1) numerosity, 2) commonality, 3) typicality, and 4) adequacy of representation. The Court held that the plaintiffs met all four.

1) Numerosity

To meet the numerosity requirement, plaintiffs must show the impracticality of joinder. In general, joinder occurs when two or more parties are joined together in a lawsuit. Impracticality of joinder is "generally presumed if a putative class amounts to more than forty individuals." The class proposed by the plaintiffs consists of 116 individual owners and sixteen corporate owners of property. Georgia-Pacific argued that joinder of theses plaintiffs in a single action was practical. The Court of Appeals disagreed. The Court, holding that the plaintiffs met the numerosity requirement, explained that "this action is far more manageable as a class action than would be a mass joinder action."

2) Commonality

To meet the commonality requirement, there must be "questions of law or fact common to the class… [T]he rule requires only that resolution of the common questions affect all or a substantial number of the class members." The Court of Appeals, based on the record, held the plaintiffs met the requirement. According to the Court, the "noxious smell, toxicity, and corrosive nature of [the] chemical present questions of fact common to the class." The Court also cited nine other common questions involved in the case.

3) Typicality

Typicality requires that, "claims asserted by the named parties and the defenses raised thereto by [the defendant] be typical of the claims asserted on behalf of the class and the defenses raised by [the defendant] to those claims." While the Court recognized there may be different types of affected property, the basic claims were the same. Therefore, the plaintiffs met the typicality requirement.

4) Adequacy of Representation

To meet the adequacy of representation requirement, there must be a finding that "representative parties will fairly and adequately protect the interests of the class." The Court determines this by looking to whether the plaintiffs' attorneys are "experienced and competent" and whether the "plaintiffs' interests are antagonistic to those of the class." In this case, the adequacy of representation was undisputed because Georgia Pacific agreed that the plaintiffs' attorney would provide "adequate representation" and the Court did not find any showing of antagonistic interests.

Subsection (b) of O.C.G.A. § 9-11-23 has two requirements: 1) predominance of common issues over individual issues and 2) superiority of class action over other methods.

1) Predominance of Common Issues Over Individual Issues

To meet the predominance requirement, the common issues of fact must "have a direct impact on every class member's effort to establish liability on every class member's entitlement to injunctive and monetary relief." Common issues "may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues."

Georgia-Pacific argued that the plaintiffs did not meet the requirement because each owner was affected in different ways, which would in turn require different ways of determining how each person was harmed. Georgia-Pacific also argued the plaintiffs would have to prove elements of nuisance, trespass, and negligence for each property. Therefore, individual questions of law and fact predominate common ones.

The Court of Appeals disagreed. The Court recognized that "each plaintiff will have unique elements or amounts of damage." However, these individual issues were not predominant. According to the Court, "there [were] more significant questions that are common to the class." The plaintiffs alleged harm, which affected members of the class in substantially the same way and resulted from the same negligent actions. Therefore, the plaintiffs met the predominance requirement.

2) Superiority of Class Action Over Other Methods

To meet the superiority requirement, a court balances factors listed in O.C.G.A. § 9-11-23(b)(3). Here, the Court determined that the plaintiffs satisfied these factors. The Court listed several reasons and claimed a class action suit "would clearly be more manageable than dozens of separate lawsuits or mass joinder of over a hundred named plaintiffs in a single action."

The Court of Appeals found that the plaintiffs met all the requirements of O.C.G.A. § 9-11-23 (a) and (b) and allowed the case to go forward as a class action.

GOVERNMENT TRANSPARENCY/ACCOUNTABILITY

1. *Deal v. Coleman*, 751 S.E.2d 337 (Ga. 2013).

Deal v. Coleman addresses the government's ability to deny open records requests. Under the Georgia Open Records Act, anyone can request and copy public record documents unless the document requested is specifically exempted by law from being disclosed. In this case, the Georgia Supreme Court focused on whether the legislature could amend the open records statute and retroactively except documents from a pending open records request. The Court held that it was constitutional for the legislature to make a law exempting a public record *even after* the request for the record had already been made. The decision to uphold the legislature's action as constitutional is a negative blow for consumers and decreases government transparency.

Kia Motors Manufacturing Georgia, Inc. opened a new manufacturing facility in West Point, Ga. When the facility opened, the Technical College System of Georgia started providing technical and vocational training to workers hired by Kia. The training was part of Georgia's Quick Start program.

Krystal Coleman, Sabrina Robinson Bolston, Tim Durden, and Darrell Strawbridge (who will all be referred to as "Coleman") submitted separate open records requests under Georgia's Open Records Act to the Technical College System. The requested records related to Kia's hiring practices. The Technical College System refused to provide the records. Coleman filed a lawsuit seeking the records.

In 2012, while the lawsuit was pending, the General Assembly amended the Open Records Act. One amendment, the addition of O.C.G.A. § 50-18-72(a)(47), excepted or exempted certain records about the Quick Start program from public access. The trial court held it would be unconstitutional to apply the amended statute to a pending lawsuit.

On appeal, the Georgia Supreme Court concluded the O.C.G.A. § 50-18-72(a)(47) applied in this case and that the application was constitutional. The Court considered three issues to reach this conclusion: 1) whether the statute applied at all in the case; 2) whether the retroactive application of the statute would be constitutional; and 3) whether the statute exempted the requested records.

First, the Court discussed whether the statute applied at all in the case. The Court concluded that the statute applied based on the language of the statute. The statute exempted records "disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity." No one disputed Quick Start was a "training program." However, Coleman argued the paragraph did not apply because a "binding commitment" was secured years prior to the open records request.

The Court rejected Coleman's argument based on its interpretation of the statute. According to the Court, the phrase "prior to a binding commitment" only applied to records "disclosing an economic development project." Records related to "job applicants," "identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity" were not exempted by a binding commitment being secured. The Court also held the exception applied retroactively. The statute explicitly stated the amendment "shall apply to any request for public records made prior to the effective date of this Act."

Second, the Court discussed whether the retroactive application of the statute would be constitutional. The Court concluded the retroactive application of the statute would be constitutional because access to public records is not a "vested right."

The Georgia Constitution forbids statutes that apply retroactively and "injuriously affect the vested rights of citizens." Coleman argued the ability to inspect records was a "vested right," while Kia argued it was only a privilege. The Court rejected the distinction between a right and a privilege when determining whether a statute applied retroactively. The Court looked to Black's Law Dictionary, which defines the term "right" as a "power, *privilege*, or immunity secured to a person by law." In other words, "right" and "privilege" are essentially interchangeable.

According to the Court, the critical question in this case was whether the right was vested in an "individual," making it a private as opposed to a public right. If inspection of public records was an individual right, retroactive application would be unconstitutional. If inspection was a public right, retroactive application would be constitutional.

Based on the language of the statute, the Court concluded inspection of public records was a public right, making retroactive application constitutional. The statute did not require a person seeking access to public records to have a special or personal interest in the records. In addition, the Court determined that the historical context suggested the right afforded by the Open Records Act provided a public right only.

Third, the Court discussed whether the statute exempted the requested records. While the Court concluded that the statute applied to "*some* of the records at issue," it sent the case to a lower court to determine which records the statute exempted. However, the Court stated that all the records at issue may be exempted.

2. *Colon v. Fulton County*, 751 S.E.2d 307 (Ga. 2013).

Colon addresses the protection provided to whistleblowers under the statute O.C.G.A. § 45-1-4. On appeal, the Georgia Supreme Court affirmed the Court of Appeals ruling that the statute in question waived the county's sovereign immunity. However, the Court reversed the lower court's holding that protection was limited to complaints related to state-funded programs or operations funded by the state. This decision is important because the Georgia Supreme Court ensured that whistleblowers receive protection when they disclose government corruption. If the Court had upheld the Court of Appeals decision, whistleblowers would have been left with less protection, potentially discouraging people from coming forward with complaints against the government.

Maria Colon and Gwendolyn Warren, the whistleblowers, filed suits against Fulton County under O.C.G.A. § 45-1-4. The two alleged that, while employed by the county, they revealed other employees "were violating laws, rules, and regulations, and were fraudulently wasting and abusing County funds and public money, and that they refused to participated in a cover-up of the fraud." They also alleged that their supervisors violated the whistleblower statute by terminating Colon's employment and demoting Warren.

In deciding the case, the Court of Appeals discussed whether the whistleblower statute waived the county's sovereign immunity. Sovereign immunity is another way of saying that the government is immune from being sued. The Appeals Court affirmed the trial court's holding that the whistleblower statute waives sovereign immunity.

However, the Court held Colon and Warren failed to state a cause of action under the statute. Interpreting the statute, the Court explained, "whistleblower protection is limited to a complaint related to a state-funded program or operation under the jurisdiction of the public employer." While Fulton County meets the definition of a "public employer," Colon and Warren could receive whistleblower protection only if their complaints related to a state-funded program under the jurisdiction of the county. Because the trial court did not address the factual issues necessary to determine if the complaints related to a state-funded program, the Court vacated the county's motion for judgment on the pleadings and remanded the case to a lower court for review. In addition, the Court held that Warren's status as an employee entitled to receive complaints did not exclude her from protection under the whistleblower status.

On appeal, the Georgia Supreme Court affirmed the Court of Appeals ruling that the whistleblower statute waived the county's sovereign immunity, but reversed its holding that protection was limited to complaints related to state-funded programs or operations. After a close reading of the statute, the Court found that, although subsection (d) of the statute mentioned retaliation and subsection (b) mentioned the ability of a public employer to receive complaints, this didn't mean that the retaliation in subsection (d) was *limited* to a public employer's ability to receive complaints as described in subsection (b). The two subsections are separate and not meant to be read together. This interpretation broadens the liability for public institutions that punish whistleblowers and is a victory for government transparency.

3. *Ga. Gov't Transparency & Campaign Fin. Comm'n v. State Mut. Ins. Co.*, 740 S.E.2d 419 (Ga. Ct. App. 2013).

Ga. Gov't Transparency addresses an issue related to a possible violation of Georgia campaign finance statute O.C.G.A. § 21-5-1. The Court of Appeals held the trial court did not have jurisdiction to issue a ruling that barred a Georgia Government Transparency and Campaign Finance Commission ethics inquiry. This decision is a win for consumers and, hopefully, the Georgia Supreme Court will affirm the decision. The investigation initiated by the Commission will be important because it may reveal ethical violations that the government needs to address.

The Commission initiated an investigation based on probable cause that State Mutual Insurance Company and Admiral Life Insurance Company made contributions to former Insurance Commissioner John Oxendine's campaign for governor in 2008. The two companies filed a complaint in Fulton County Superior Court claiming the Commission lacked authority to conduct the investigation and issue subpoenas and sought injunctive relief (an injunction is a request to have the unwanted action stopped).

The trial court denied injunctive relief and entered a "Final Order" in the Commission's favor. According to the court, the statute gave the Commission "power to find probable cause to initiate hearings and similarly to issue subpoenas with its investigation of possible violations."

Even though the court entered a Final Order, the insurance companies filed a motion for new trial and subsequently presented a statute of limitations defense. The court issued a "second final order" stating that the statute of limitations had run, and therefore barred the Commission's investigation.

On appeal, the Court of Appeals vacated the lower court's "second final order." The Court held that the first Final Order was an "appealable judgment in the action which resolved all the issues raised in the Companies' complaint and reflected that the case was disposed of and no longer pending in the court." In other words, the first Final Order that granted the Commission the authority to investigate wrongdoings was, indeed, final.

4. *Austin v. Clark*, No. S13G1590, 2014 Ga. LEXIS 195 (Ga. 2014).

In this case, Donna Austin filed a personal injury claim against the Peach County School District and several individual defendants who were employed by Peach County Schools. The claim alleged that Austin suffered injuries when she fell on a sidewalk as she left Peach County High School's graduation ceremony. The Court of Appeals, reversing the trial court, held that having liability insurance does not waive sovereign immunity. In addition, the Court of Appeals affirmed the trial court's ruling that the individual defendants were entitled to official immunity, and granted the individual defendants their motion to dismiss the case. The Supreme Court of Georgia examined whether the Court of Appeals erred in dismissing the individual defendants from the case, and reversed the lower court's decision.

a. Sovereign Immunity for the School District

There was no dispute that school districts were protected by sovereign immunity, therefore the Supreme Court did not examine this issue. As the Court of Appeals pointed out, the Georgia Tort Claims Act "expressly excludes school districts… from the waiver [of sovereign immunity for torts of its officers and employees."

However, Austin claimed Peach County School District's purchase of liability insurance served as a waiver of this immunity. The Court of Appeals disagreed. Under the Georgia Tort Claims Act, any waiver of sovereign immunity must come through a legislative act. The Georgia statute that authorizes school districts to purchase liability insurance provides no such waiver. Therefore, the trial court erred by failing to dismiss the claims against Peach County School District on the basis of sovereign immunity.

b. Official Immunity for Individual Defendants

The Supreme Court agreed with the Court of Appeals that the individual defendants' liability rested on whether their duties were ministerial or discretionary. Georgia's doctrine of official immunity provides that public officers or employees are personally liable for their negligent ministerial acts, but are not liable for their discretionary acts unless the acts are done willfully, wantonly, or outside of their scope of authority. The Court of Appeals found that the defendants' actions were clearly discretionary, but the Supreme Court disagreed.

The Court of Appeals correctly explained that a discretionary act is one that "calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed." In contrast, the Court of Appeals explained that a ministerial act is "commonly one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty."

The Supreme Court considered that in granting a motion to dismiss, it must be certain that "the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." In other words, if there is a possibility that evidence could be introduced in favor of the plaintiff's claim, the case should not be dismissed. In this case, the individual defendants conceded that discovery had been very limited, and that the record did not include the defendants' job descriptions. Based on this lack of information, the Court found that it was possible that there could be evidence of a list of tasks that the defendants were supposed to fulfill. The likelihood of the existence of such a list was irrelevant. The Court also found that the possibility of evidence against the defendants meant that it did not matter that Austin failed to point to specific procedures for dealing with the hazards of the wet curb.

After considering the limited information before it, the Supreme Court held that further evidence may indicate that the defendants were negligent in ministerial duties, rather than discretionary duties. The Court concluded that the Court of Appeals erred in granting the individual defendants dismissal.

HEALTHCARE, TORTS, AND INSURANCE

1. *Johnson v. Omondi*, No. S13C0553, 2013 Ga. Lexis 409 (Ga. 2013).

Johnson addresses the standard of care owed by emergency room physicians to their patients. The Georgia Supreme Court held that the Court of Appeals erred in applying the standards for medical malpractice claims under the statute O.C.G.A. § 51-1-29.5(c). This decision is particularly important for victims of medical malpractice. Under O.C.G.A. § 51-1-29.5, emergency room physicians generally receive broad protection from malpractice claims. Here, the Court was willing to allow the plaintiff's claim and permit her to seek just compensation.

On December 29, 2007, Thelma Johnson took her fifteen year-old son Shaquille, who was complaining of chest pain—to the emergency room at Phoebe Putney Memorial Hospital. Only a week earlier, Shaquille had arthroscopic knee surgery. After seeing a nurse, Shaquille was examined by Dr. Price Paul Omondi.

Dr. Omondi ordered an EKG and a chest x-ray and then interpreted the results. After asking about Shaquille's medical history and his family history, Dr. Omondi conducted a physical exam and ruled out several potential causes of chest pain, including a pulmonary embolism. After ruling out other causes, Dr. Omondi diagnosed Shaquille with pleurisy and prescribed an anti-inflammatory pain reliever. Dr. Omondi also instructed Shaquille to return to the emergency room if the pain returned.

Two weeks later, Shaquille returned to the emergency room suffering chest pain. Shaquille died shortly thereafter from a bilateral pulmonary embolism. Thelma Johnson and her husband sued Dr. Omondi and his employer for medical malpractice. The trial court granted summary judgment in favor of Dr. Omondi (meaning the case would not go to trial) and the Court of Appeals affirmed.

On appeal, the Georgia Supreme Court addressed whether the Court of Appeals properly applied O.C.G.A. § 51-1-29.5(c). This statute governs medical malpractice claims against emergency medical care providers. It provides, in part, that "no physician or health care provider shall be held liable unless it is proven by clear and convincing evidence that the physician or health care provider's actions showed gross negligence."

The Court's analysis focused on the provision that there be "clear and convincing evidence" of "gross negligence." On Dr. Omondi's motion for summary judgment, he was required to show there was no genuine issue of material fact and a reasonable jury could not find, by clear and convincing evidence, he was not grossly negligent. The Court held he could not do so based on his testimony and testimony submitted by the Johnsons' expert witness.

Dr. Omondi admitted that he recognized a pulmonary embolism as a potential cause of pain, but he ruled it out based on the tests administered and because the pain reliever caused the pain to go away. According to Dr. Omondi, the type of pain reliever he administered "would not have taken away [the] symptoms" if Shaquille had a pulmonary embolism.

The Johnsons' expert testimony stated Dr. Omondi's actions did not meet the standard of care "in the medical profession generally under like and similar circumstances." The testimony also stated that Omondi did not take the steps necessary to exclude pulmonary embolism as diagnosis. According to the expert, the symptoms were "classical" indications of pulmonary embolism. The appropriate steps would have been to administer a CT scan or a lung scan in order to rule out pulmonary embolism. Dr. Omondi did not take the steps. Therefore, a reasonable jury could find by clear and convincing evidence that Omondi was grossly negligent.

2. ***Carter v. Progressive Mt. Ins.*, 739 S.E.2d 750 (Ga. Ct. App. 2013).**

In *Carter*, Velicia Carter was injured in an auto accident and filed a claim for underinsured motorist benefits. The statute O.C.G.A. § 33-24-41.1 authorizes an injured plaintiff to settle with the insurance carrier of the person who caused the accident, or the tortfeasor, "by accepting payment of the carrier's limits of liability coverage." In exchange, the injured person provides a "limited release" that releases the insurance carrier from liability and releases the tortfeasor from personal liability. At the same time, the release also allows the injured person to maintain the right to pursue a claim against the tortfeasor in order to collect "against other available insurance, including underinsured motorist coverage."

Carter provided a release under the statute and accepted $30,000 in payment from the tortfeasor's insurance carrier to exhaust the liability coverage limit—but she added a condition: $29,000 of the payment would go towards punitive damages (money that goes beyond the actual cost of the injury) and only $1,000 for compensatory damages (money that covers the actual cost of the injury).

Based on the language of the O.C.G.A. § 33-24-41.1, the Court found the condition of Carter's settlement inconsistent with language and purpose of the statute. Underinsured motorist benefits are meant "to protect injured insureds only as to 'actual loss'… [, apply] only to compensatory damages, and [exclude] coverage for punitive damages." These benefits "place the insured in the same position as if the offending uninsured motorist were covered with liability insurance."

In order to receive benefits, the insured must first "exhaust available liability coverage in the tortfeasor's insurance policy." If the allocation of punitive damages was allowed to exhaust liability, then the settlement would not "advance the purpose of underinsured motorist coverage to increase available compensation for actual injuries and losses; [it would] indirectly [shift] payment of punitive damages from the liability carrier to the underinsured motorist carrier, contrary to the purpose of underinsured motorist coverage; and would ultimately increase underinsured motorist coverage premiums as a result of the tortfeasor's wrongs."

3. *Spectera, Inc. v. Wilson*, 749 S.E.2d 704 (Ga. 2013).

Spectera, Inc. v. Wilson addresses an access to healthcare issue under Georgia's Patient Access to Eye Care Act, O.C.G.A. § 33-24-59.12. The Georgia Supreme Court affirmed the decision of the Court of Appeals in part, reversed it in part and vacated it in part. Still, the decision marks a victory for Georgians. The ruling allows independent eye care professionals to provide services without extra financial burdens from insurance companies.

Spectera is an insurance provider in Georgia. As part of its eye care coverage, Spectera contracts with independent eye care providers and retail chain providers. Wilson Eye Center employed some of these independent eye care providers. Optometrists Steven M. Wilson, Cynthia McMurray, Jodie E. Summers, and David Price all worked at Wilson Eye Center. Before 2010, Wilson and McMurray entered into contracts, known as "Patriot Contracts," with Spectera and became part of its panel of eye care providers. Summers was also on the panel. Under the Patriot Contracts, independent providers could use their own eye care materials, such as lenses, frames and contacts, or materials from any other source to care for Spectera-insured patients. Spectera would then reimburse the independent provider for the materials.

In 2010, Spectera decided to replace Patriot Contracts with independent participating provider (IPP) agreements. These agreements would force independent providers to obtain covered materials (lenses, frames and contacts) from Spectera when providing service to Spectera-insured patients. The agreements also did not include a reimbursement plan like the previous contracts. While these terms applied to independent eye care providers, they did not apply to retail chains like Walmart.

Wilson and the other optometrists sued Spectera claiming a violation of the statute O.C.G.A. § 33-24-59.12. The trial court issued a temporary injunction preventing Spectera from enforcing the IPPs. Spectera then tried to remove Wilson, Summers, and McMurray from its panel of approved providers. Again, the trial court issued a temporary injunction to prevent Spectera's action. Price also argued a violation of the statute because Spectera refused his membership to the provider panel when he did not sign the IPP Agreement. The Court of Appeals found a violation of § 33-24-59.12(c)(2) and (c)(5) and (c)(6). But, the Court of Appeals found no violation of subsection (c)(3). On appeal, the Georgia Supreme Court addressed the issues in the following order: (c)(2), (c)(3) and (c)(5), and (c)(6).

The Georgia Supreme Court first addressed the possible violation of subsection (c)(2) and affirmed the trial court's finding of a violation. Under (c)(2), an insurer is not allowed to "preclude a covered person who seeks eye care from obtaining such service directly from a provider on the health benefit provider panel who is licensed to provide eye care." Spectera argued that its IPP agreements did not prevent insured patients from buying materials directly from eye care providers. The Court rejected the argument because the IPPs limited the materials independent eye care professionals could provide to patients. For certain covered materials, patients were required to buy directly from Spectera.

Next, the Supreme Court discussed subsections (c)(3) and (c)(5). While the Court found no reason to address subsection (c)(3) specifically, it found no violation of (c)(5). Subsection (c)(5) relates to discrimination between "classes of eye care providers." Here, Wilson had argued that the IPP agreements discriminated against independent providers in favor of retail chains. The Court rejected Wilson's argument based on its interpretation of the statute. The Court held the "IPP agreement does not in any way create the type of impermissible discrimination between classes of licensed eye care providers contemplated by subsection (c)(5)."

Finally, the Supreme Court discussed subsection (c)(6) and held Spectera violated the Act. Spectera argued that it was allowed to prevent Price from becoming a member of the provider panel. The Court rejected this argument because subsection (c)(6) "clearly prohibits insurers from barring new providers to its panel based on reasons unrelated to the provision of eye care." Price's refusal to sign the unlawful IPP agreement was unrelated to the provision of eye care.

4. *Georgia-Pacific, LLC v. Fields*, 748 S.E.2d 407 (Ga. 2013).

This case deals with the issue of non-party fault. The statute O.C.G.A. § 51-12-33 provides that defendants may allocate fault to a nonparty—meaning a party that is not yet part of the lawsuit—in order to avoid paying for damages that were not caused by the defendants themselves.

Rhonda Fields suffers from peritoneal mesothelioma as a result of alleged asbestos exposure that she received as a child. Mrs. Fields and her husband filed suit against several companies, including Georgia-Pacific. These companies either manufactured, processed, imported, converted, sold, or distributed products containing asbestos. The defendant companies pled non-party fault as a defense, but the Fields moved for partial summary judgment on the non-party fault issue. The trial court granted the Fields' motion. The defendants appealed, arguing that the Fields' complaint and sworn statement contained allegations of fault toward non-parties, and that this constituted sufficient evidence to preclude summary judgment. But the Court of Appeals affirmed in favor of the Fields.

The case was brought before the Supreme Court of Georgia, and the Court of Appeal's judgment was reversed in the defendants' favor. The Court reasoned that O.C.G.A. 24-8-821 states that "admissions or allegations appearing in the pleadings are treated as admissions in judicio [or in the course of trial] and, if not withdrawn, are conclusive of the facts contained therein." In other words, when the complaint and sworn statement provided that Mrs. Fields had been exposed to asbestos from non-parties, the fault of the non-parties became a fact in the course of trial.

The Fields argued that Mrs. Fields was not personally aware of the facts in the sworn statement form, but the Court found her lack of knowledge irrelevant. The Fields also argued that the amendments they made to their complaint served as a withdrawal of the admissions. However, the Court found that even after a party withdraws an admission *in judicio*, the opposing party still has the right "to use it as evidence." Furthermore, the Fields argued that there was no evidence that the non-parties exposed Mrs. Fields to asbestos. The Court was not persuaded by this because the law does not require the party who is not moving for summary judgment to produce counterevidence.

The Supreme Court also addressed whether the Court of Appeals erred in applying the "right for any reason rule." This rule states that "[a] grant of summary judgment must be affirmed if it is right for any reason," as long as the issue was raised in the trial court and the opposing party had a fair chance to respond. However, the "right for any reason rule" can only be applied when causation is addressed, and the Fields did not address causation in their motion for partial summary judgment. Therefore, the Court of Appeals should not have applied the "right for any reason rule."

This decision by the Court may make it more difficult for plaintiffs involved in tort lawsuits to receive compensation for their injuries. However, the widespread impact of the case is not yet known. The applicability of the decision may be limited to asbestos cases.

5. ***Herrington v. Deloris Gaulden*, 751 S.E.2d 813 (Ga. 2013).**

Gaulden addresses an issue related to medical malpractice and an emergency room director's duty of care. Deloris Gaulden underwent cardiac arrest and died in the emergency room of Liberty Regional Medical Center. Ms. Gaulden's daughter filed suit against the medical director of the emergency department, Dr. Bobby Herrington, claiming that Gaulden would have been lived if her doctor and nurse would have "promptly and properly implemented a chest pain protocol that the hospital had adopted." Gaulden's daughter further alleged that Dr. Herrington had a duty to "supervise the training of the physician and nursing staff with respect to this protocol, but he negligently failed to ensure that they were adequately trained in that respect."

The Court of Appeals affirmed the trial court's grant of summary judgment to Dr. Herrington on an ordinary negligence claim because the claim instead "sounded in professional negligence." With that, the Court reversed the trial court's grant of summary judgment to Dr. Herrington on the professional negligence claim, meaning the case would go to trial. The Court of Appeals based its reasoning on *Gray v. John R. Vaughn, M.D., P.C.*, 460 S.E.2d 86 (1995) as well as the RESTATEMENT (SECOND) OF TORTS § 324A (1965), which is codified in Georgia's common law. The case went before the Supreme Court of Georgia, and the Court of Appeals' denial of summary judgment on the professional negligence claim was reversed. The Supreme Court found that the Court of Appeals had incorrectly applied *Gray* and section 324A.

The Court of Appeals interpreted *Gray* broadly to mean "the failure to adequately supervise emergency room staff can result in liability for any damages resulting from such failure by one whose responsibility it is to provide such supervision." However, the defendant in *Gray* was a professional corporation that was responsible for supervising the nursing staff in addition to "directing the method and manner of care rendered by the nursing staff." In contrast, Dr. Herrington did not have the authority nor was he responsible as medical director for controlling or directing "the manner and method of care rendered to Gaulden by her treating physician." Therefore, the Supreme Court found that *Gray* did not apply to the facts in this case.

The Supreme Court also disagreed with the Court of Appeals' application of section 324A. Section 324A provides that someone who attempts to service another person out of necessity and protection is liable to that person for any physical harm that results from failure to exercise reasonable care if: "(a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to the third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking." The Court of Appeals properly explained that Section 324A only applies when the defendant's negligence "exposes the injured person to a greater risk of harm than had existed previously." However, there was no evidence that Dr. Herrington's alleged failure to supervise or instruct the staff led to a worsening of Gaulden's condition.

The Supreme Court held that the Court of Appeals failed to properly apply *Gray* and Section 324A, and thus the case against Dr. Herrington will not move forward to trial.

6. *Postell v. Hankla*, 728 S.E.2d 886 (Ga. Ct. App. 2012), *aff'd*, 749 S.E.2d 726 (Ga. 2013).

Postell addresses the requirements an expert must meet under the statute O.C.G.A. § 24-9-67.1(c) to testify in medical malpractice cases. The Court's decision is important for citizens involved in medical malpractice cases. Here, the Court made clear that testimony by experts not meeting the qualification requirements will not be allowed at trial.

In this case, Anita Jackson Postell, the mother of a child injured during birth, filed a medical malpractice action against the midwife Vickie Hankla, who helped deliver the child, and her employer Southern OB-GYN Associates, P.C. Postell alleged Hankla breached the standard of care during delivery. The alleged breach occurred when Hankla "applied lateral traction with enough force to cause [the child's] injury during her attempts to deliver him during an obstetrical complication known as shoulder dystocia." The child suffers from a "permanent brachial plexus injury."

At trial, the lower court denied Postell's motion to exclude the expert testimony of Hankla's witness, Dr. Sandra Brickman. Postell also attempted to cross-examine another witness about his financial interest in the case, which the court denied.

Based on these denials, Postell appealed to the Court of Appeals claiming the trial court erred. The Court of Appeals, in deciding the case, held: 1) that Brickman did not qualify as an expert witness under O.C.G.A. § 24-9-67.1(c)(2)(D), and 2) that the trial court did not err in prohibiting Postell's cross-examination of Hankla's other expert witness.

On the issue of expert qualifications, the Court explained that Brickman did not meet the time requirements of subparagraph (D). Subparagraph (D) applied in the case because Brickman was not in the same profession as Hankla. Under subparagraph (D), a medical doctor is allowed to testify regarding a nurse midwife's standard of care if "the doctor has knowledge of the nurse midwife's standard of care as the result of having 'supervised, taught, or instructed' nurse midwives" in three of the five years prior to the case. Brickman failed to meet the requirement because she had not supervised, taught, or instructed nurse midwives three of the five years prior to the case. While Brickman did supervise and work with nurse midwives during her residency, she did not do so from August 2000 to August 2003, the three prior years. Therefore, Brickman did not qualify as an expert witness under O.C.G.A. § 24-9-67.1(c)(2)(D). The Court deemed the trial court's error in allowing the testimony was not harmless because Brickman was the only disinterested witness who testified.

On the issue of cross-examination, the Court affirmed the lower court's order denying Postell from questioning Hankla's other witness. Postell inquired about the amount of money the witness made from Southern OB-GYN and if he would have to pay a plaintiff's verdict out of pocket, since Southern OB-GYN had "limited insurance coverage." While juries are allowed to hear about a witness's monetary interest in a case, evidence of insurance is "generally inadmissible." Therefore, the Court held that the trial court did not err in denying the cross-examination.

7. ***MacDowell v. Gallant*, 744 S.E.2d 836 (Ga. Ct. App. 2013).**

MacDowell addresses a statute of limitation tolling issue related to dental malpractice. A statute of limitation is a law that dictates how much time can pass after an injury before it's too late for a person to sue. The Plaintiff in this case challenged the trial court's holding that the statute of limitations began to run when she sought a second opinion from an oral surgeon after receiving dental implants from another doctor. The trial court held that it was too late for her to sue despite the fact that the second doctor knew that the plaintiff's implants were faulty and failed to tell her. In this case, the Court of Appeals held that the consultation was not a "second opinion," which would have ended the tolling of the statute and reversed the lower court's grant of summary judgment for the defendant. This decision is important for victims of medical malpractice. The Court of Appeals ensured that the statute of limitation does not prevent victims from bringing claims when a physician hides the injury.

Ursula MacDowell sought medical care for her dental issues. Based on a referral from a dentist, MacDowell went to Dr. Laura Braswell. Braswell identified several issues and then referred MacDowell to Dr. Steven Gallant and Dr. Mollie Winston in March 2006. Gallant was a general practitioner with a specialty in prosthetics while Winston was an oral surgeon.

After examining MacDowell, Gallant created a treatment plan, which called for several procedures. These procedures were set to happen over the span of over a year. Based on Gallant's plan, Winston "extracted certain teeth and replaced them with implants." A few weeks after the oral surgery, Gallant reexamined MacDowell and discovered that the implants were "too deep, too close together, and at an incorrect orientation." In November 2006, Gallant consulted another doctor, who confirmed that the implants would cause problems in completing the treatment plan. However, Gallant never informed MacDowell of issues with the implants and decided to work around the problems.

MacDowell remained under the treatment of Gallant and MacDowell until February 2008. After a series of additional procedures, Gallant referred MacDowell to Dr. Hal Arnold for a second opinion. Arnold recommended that MacDowell should have her reconstruction redone. When Gallant offered to provide additional treatment, MacDowell declined and obtained care from other dentists.

MacDowell eventually filed a claim for malpractice on January 26, 2010. The defendants, Dr. Gallant and Steven M. Gallant, D.D.S., P.C., moved for summary judgment and claimed the suit was barred by the two-year statute of limitation. The trial court granted the motion, and MacDowell appealed. On appeal, the Georgia Court of Appeals reversed the trial court decision.

The statute in question in the case was O.C.G.A. § 9-3-71. Under the statute, "an action for medical malpractice shall be brought within two years after the date on which an injury… arises from a negligent or wrongful act or omission occurred." This usually means that the statute starts running at the time of treatment, since this is when most injuries occur.

MacDowell argued that the statute was tolled by Gallant's "fraudulent failure" to reveal that the prosthetics were improperly placed. However, the trial court stated that even if MacDowell could prove fraud, the tolling stopped when MacDowell could learn of the cause of action using ordinary care. The trial court reasoned that this occurred when MacDowell consulted Winston in November 2007 or January 2008. The trial court reached the conclusion by applying Georgia case law. For malpractice cases, "once a plaintiff seeks the diagnosis or care of another doctor, she is no longer deterred from learning the true facts by any conduct of the defendant [,] even if the other doctor consulted does not diagnose the medical problem as arising from the defendant's improper treatment."

The Court of Appeals, however, concluded that the visit to Winston did not end the tolling of the statute. The Court explained that "Winston was one of MacDowell's original treating physicians and was the very practitioner who allegedly placed the implants incorrectly." Winston was "not in a position to provide a second opinion as to the procedures that she herself executed as a team with Gallant." Therefore, the visit to Winston could not be considered an attempt by MacDowell to seek an independent medical opinion.

8. *A Fast Sign Co., Inc. v. Am. Home Servs., Inc.*, 734 S.E.2d 31 (Ga. 2012).

American Home Services, Inc. (AHS) is a "siding, window, and gutter installation company" that contracted with Sunbelt Communications to send 318,000 unsolicited advertisements via facsimile to machines in Atlanta's metropolitan area. A Fast Sign Company, Inc. was one of the companies that received the fax. Fast Sign brought a class action against AHS, claiming that AHS violated the Telephone Consumer Protection Act of 1991 (TCPA). The trial court held that AHS willfully and knowingly violated the TCPA based on its admission in the course of trial that "it had sent 306, 000 unsolicited facsimile advertisements." The class was awarded $459 million in damages ($1500 per fax that was sent). AHS appealed, and the Court of Appeals vacated and remanded the case, holding that the trial court mistakenly based "liability and damages on the number of unsolicited advertisements *sent* rather than the number of unsolicited advertisements *received* by class members" (italics added for emphasis). The Supreme Court of Georgia reversed and remanded.

The TCPA "prohibits a person from using a device to send an unsolicited advertisement to a telephone facsimile machine." In order to bring a TCPA action, the plaintiff has to show that "1) the defendant used a fax machine, computer, or other similar device to send a fax to the plaintiff; 2) that the fax was unsolicited; and 3) that the fax contained an advertisement." The Court of Appeals erred in interpreting the statute as requiring actual receipt of the fax. Several Georgia cases have confirmed that actual receipt of the fax is not required. Rather, what is required is an attempt to send an unsolicited fax. In its reasoning, the Court of Appeals relied on a sentence in the Case *Carnett's, Inc. v. Hammond* that stated "The TCPA is violated only if a plaintiff receives an 'unsolicited' fax." The Supreme Court distinguished *Carnett* by pointing out that *Carnett* was not "construing or analyzing" the TCPA, but was instead "determining whether an established business relationship existed between the parties." Furthermore, the Court reasoned that "requiring receipt to state a cause of action under the TCPA would create a limitation not contemplated by Congress." Therefore, the Supreme Court reversed the Court of Appeals' judgment and remanded it back to the lower court to resolve the issues that were previously unaddressed.

CONSUMER FINANCE

1. *Larose v. Bank of Am., N.A.*, 740 S.E.2d 882 (Ga. Ct. App. 2013).

Larose addresses a notice issue related to non-judicial foreclosures. The Court of Appeals focused on whether a possessor of a security deed, in order to proceed with a foreclosure, also must hold the promissory note. This decision represents the first of three cases in the 2013 Court Watch Report related to the issue. In this case, the Court of Appeals affirmed the trial court's motion to dismiss for failure to state a claim.

Carlos Larose received a mortgage from America Wholesale's Lenders in 2010. Larose executed a promissory note for $120,000 and executed a deed securing the debt. The security deed stated that Mortgage Electronic Registration Systems, Inc. ("MERS") was the "nominee" of America's Wholesale Lenders and had "the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to releasing and cancelling this Security Instrument." The promissory note stated America's Wholesale Lender could transfer it to another party, but it did not mention MERS.

MERS transferred the security deed and the promissory note to Bank of New York Melon in 2011. Bank of New York Melon initiated foreclosure proceedings after Larose's alleged default on the loan. Larose filed a complaint for wrongful attempted foreclosure against Bank of America and other defendants before the actual foreclosure. Larose argued that the assignment by MERS was invalid because MERS never owned or held the promissory note. The trial court held that: 1) the possessor of a security deed, in order to proceed with a foreclosure, does not have to hold the promissory note as well and 2) MERS's assignment of the security deed was valid. Larose appealed.

The Court of Appeals affirmed the first holding by applying standard Georgia law. No Georgia Law "requires that an assignee of a security deed granting the right to foreclose must also hold the note before initiating foreclosure proceedings."

The Court of Appeals affirmed the second holding by focusing on powers granted by the security deed. The security deed, which Larose signed, "granted and conveyed [the] property to MERS, its successors and assigns, along with the power of sale." Also, the security deed stated that "MERS… [had] the right to exercise: any or all of [the interests granted to MERS by Larose], including but not limited to, the right to foreclose and sell the Property." Therefore, MERS had the full power of assignment and the power to foreclose.

In the dissent, Judge McFadden argued the Court of Appeals should not have ruled in the case. At the time, the same issue in *Larose* was pending before the Supreme Court of Georgia in *You v. JPMorgan Chase Bank, N.A.* Judge McFadden argued the Court of Appeals' decision may end up being inconsistent with the Supreme Court of Georgia's. However, the majority saw no reason to wait and affirmed the motion to dismiss.

2. *Montgomery v. Bank of Am.*, 740 S.E. 2d 434 (Ga. Ct. App. 2013).

Montgomery, decided the same day as *Larose*, addresses the same issue related to non-judicial foreclosure. Once again, the Court of Appeals affirmed the trial court's holding that a possessor of a security deed, in order to proceed with foreclosure, does not have to hold the promissory note also.

Roosevelt Montgomery received a mortgage from National Bank of Kansas City in 2008. Montgomery executed a promissory note and a security deed. The security deed named Mortgage Electronic Registration Systems, Inc. ("MERS") as its "nominee of the lender and as the grantee under the security instrument. In addition, the security deed conveyed to MERS, its successors and assigns "the right to exercise any or all of the interests granted under the security deed, *including the right to foreclose and sell the property*."

MERS assigned these rights, its title, and its interests to BAC Home Loans Servicing, Inc. in 2010. When Montgomery defaulted on the mortgage, BAC initiated foreclosure proceedings with the help of McCalla Raymer, LLC, a law firm. Montgomery filed suit alleging that BAC had no authority to initiate a non-judicial foreclosure. Montgomery claimed BAC had no authority because: 1) MERS did not have authority to assign the right of foreclosure to BAC and 2) the assignment was invalid. The trial court disagreed and granted a motion on the pleadings in favor of the defendants: BAC, MERS, and McCalla Raymer, LLC.

The Court of Appeals disagreed with Montgomery's first claim based on O.C.G.A. § 23-2-114, the statute governing security deeds. O.C.G.A. §23-2-114 states: "Unless the instrument creating the power [of sale] specifically provides to the contrary, a . . . successor of the grantee in a mortgage, . . . deed to secure debt, . . . or other like instrument, or an assignee thereof . . . may exercise any power therein contained." The statute further states that "such powers may be so exercised regardless of whether or not the transfer specifically includes the powers or conveys title to the property described." Here, the Court found that the security deed "expressly conveyed title to the interests in the security deed to MERS, gave MERS the right to invoke the power of sale, and authorized MERS to assign its rights and interests in the security deed to BAC." Therefore, under the statute, MERS had authority to assign powers to BAC.

The Court of Appeals also disagreed with Montgomery's claim that the assignment was invalid. Montgomery claimed MERS had no interest in the promissory note and could not assign it to BAC. To support this claim, Montgomery argued "acceleration of the promissory note is a condition precedent to invoking the power of sale contained in the security deed, thereby inferring that one must possess both the promissory note and the security deed in order to carry out a non-judicial foreclosure." The Court rejected this argument because it found no basis in Georgia law that the one must hold the promissory note and security deed to initiate non-judicial foreclosure.

In dissent, Judge Miller argued the Court of Appeals should not have ruled in this case, just as Judge McFadden argued in *Larose*. Judge Miller stated the Court of Appeals should remand the case and instruct the trial court to make a decision after the Supreme Court of Georgia decided *You v. JPMorgan Chase, Bank, N.A.*

3. *You v. JPMorgan Chase, Bank, N.A.*, 743 S.E.2d 428 (Ga. 2013).

You addresses the same non-judicial foreclosure issue presented in *Larose* and *Montgomery*. The *You* decision is the Supreme Court of Georgia's opinion on the matter. The decision is consistent with the Court of Appeals view on the issue and represents a blow to Georgia consumers. The Court's decision means that citizens facing foreclosure may receive less notice and may not be aware that the party initiating foreclosure held the power to do so.

Chae Yi You, along with Chur K. Bak, purchased a home in Suwanne, Georgia in 2003 and obtained a loan from Excel Home Loans. You executed a security deed and a promissory note. The security deed granted Excel, its successors, and assigns power of sale in the event of default. Excel later assigned the security deed to an "unidentified entity" and signed the security deed over to Chase Manhattan Mortgage Corporation, later succeeded by JP Morgan Chase Bank through merger. When Excel assigned the security deed, it explicitly granted its "power, options, privileges and immunities."

When You defaulted on the loan in June 2011, JP Morgan initiated non-judicial foreclosure. JP Morgan bought the property at a foreclosure auction held August 2, 2011 at the Gwinnett County Courthouse. JP Morgan, acting under power of the security deed, conveyed itself the interest in the property. Then, JP Morgan quitclaimed the property to Fannie Mae, which filed an action to dispossess You of the property. You then filed suit for declaratory relief, wrongful foreclosure, and wrongful eviction in U.S. District Court. The District Court dismissed the claim for declaratory relief but denied the motion to dismiss as to other claims. The District Court determined the claims depended on "unsettled" questions of Georgia law.

The District Court certified three questions to the Supreme Court of Georgia:

1. Can the holder of a security deed be considered a secured creditor, such that the deed holder can initiate foreclosure proceedings on residential property even if it does not also hold the note or otherwise have any beneficial interest in the debt obligation underlying the deed?
2. Does O.C.G.A. § 44-14-162(a) require that the secured creditor be identified in the notice described by that statute?
3. If the answer to the preceding question is "yes," (a) will substantial compliance with this requirement suffice, and (b) did defendant Chase substantially comply in the notice it provided in this case?

On the first question, the Court answered yes. A holder of a security deed can be considered a secured creditor and initiate non-judicial foreclosure, even when it does not hold the promissory note or have any beneficial interest in the debt obligation underlying the deed. You argued that only a party holding the promissory note could initiate foreclosure, since default on the note provided the basis for that power. You believed O.C.G.A. § 44-14-162(a)'s reference to a "secured creditor" supported this argument.

However, the Court found You's interpretation of "secured creditor" inconsistent with the statute's intent. The Court explained that the plain language of the statute did not require a foreclosing entity to hold the security deed and the promissory note. The Court further explained that amendments to the statute in 1981 and 2008 did not change the interpretation of the statute.

You also argued that Georgia's Uniform Commercial Code prevents a party from exercising the power of a security deed when it does not hold the promissory note. However, the Court found that the UCC does not govern the enforcement of security deeds, which are not negotiable instruments.

On the second question, the Court answered no. O.C.G.A. §44-14-162.2(a) does not require the name of the secured creditor to be identified in the notice to the debtor. The statute requires a notice "shall be in writing [and] shall include the name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the mortgage with the debtor."

The Court did not reach the third question because it was conditioned on an affirmative answer to the second question.

4. ***Raysoni v. Payless Auto Deals, LLC,*** **753 S.E.2d 313 (Ga. Ct. App. 2013),** ***cert. granted*****, (Ga., Mar. 3, 2014).**

Raysoni addresses an issue related to oral misrepresentation in auto sales. The Court of Appeals' affirmation of the dismissal of the plaintiff's complaint is a blow to consumers. The decision allows oral misrepresentations of a product to influence a consumer's purchase as long as the seller provides a written document disclaiming the misrepresentations. This means that consumers lack legal protection when conducting financial transactions. However, it is important to note that the Georgia Supreme Court will hear this case. Georgia Watch submitted an amicus brief in support of the Petition for a Writ of Certiorari. Atlanta Legal Aid Society, Georgia Watch, the National Association of Consumer Advocates, and the National Consumer Law Center also submitted an amicus brief in the case before the Supreme Court. It will be interesting to see their decision when it is written.

Sudoh Raysoni purchased a vehicle from Payless Auto Deals, LLC in September 2011. When Raysoni asked whether the vehicle "had anything wrong with it, such as a prior wreck or damage," the salesman represented the car as undamaged. A Carfax report also showed no history of damage. However, the vehicle Payless sold Raysoni had significant damage.

Payless knew of this damage. Before selling the vehicle to Raysoni, Payless attempted to sell the car at auction. At auction, Payless acknowledged the car had frame damage. Payless used the "lag time in reporting to Carfax" in order to represent the car as undamaged.

Raysoni did not discover this damage until November 2011 when he started noticing a "musty smell" in the vehicle and decided to trade it in. When Raysoni took the vehicle to Carmax, he learned it had frame damage and "extensive paint and body work had been performed on it." Later, Raysoni learned the vehicle sustained this damage in a wreck and "any used car business" would have realized the vehicle needed $10,000 to $12,000 worth of repairs for the damage and maybe more for mechanical repairs.

Based on this knowledge, Raysoni claims he would not have purchased the vehicle if he had known of the damage at the time of sale. When Raysoni tried to return the car to Payless, the salesman said he did not buy back cars.

Raysoni filed a complaint under several Georgia statutes, including the Fair Business Practice Act, based on claims of misrepresentation of material facts, violations of fair trade practices, deceit, and revocation of acceptance. Payless moved for judgment on the pleadings based on evidence that the Bill of Sale disclaimed the nature of the purchase and the damage. The trial court granted the motion in Payless' favor. On appeal, the Court of Appeals rejected Raysoni's arguments and affirmed the trial court decision.

The Court first looked at Raysoni's Fair Business Practice Act claim. A plaintiff bringing a claim under the Act must show: 1) a violation of the Act; 2) causation (meaning reliance on the misrepresentation); and 3) injury. A plaintiff alleging misrepresentation must also show "he exercised due diligence to ascertain the falsity of the statement." If the plaintiff did not try to determine whether the statements in question were false, he cannot prove causation.

Here, the Court found that Raysoni could not prove causation and rejected the argument. The Court relied on statements in Payless' Buyer's Order. The Order contained a disclaimer stating that all vehicles are sold "***AS-IS NO WARRANTY***" and that buyers assume responsibility for all repair costs.

The Order further stated Payless assumed no responsibility for repairs "regardless of any oral statements about the vehicle" and "that any representation by the salesman was not binding on Payless." In smaller font above the signature line, the Order acknowledged "THIS VEHICLE WAS ANNOUNCED HAVING UNIBODY DAMAGE AT THE AUCTION." The Court found these statements put Raysoni on notice of the damage, barring his claim. The Court explained, "Raysoni had notice and the opportunity to detect the issues with his vehicle before he made his purchase, and his 'blind reliance on the salesman's representations when the means of knowledge were at hand shows an unjustifiable lack of due diligence.'"

5. ***Fulton County v. Dillard Land Invs., LLC*, 744 S.E.2d 880 (Ga. Ct. App. 2013).**

Fulton County v. Dillard Land Invs., LLC addresses an issue related to condemnation actions, specifically whether the government is allowed to voluntarily dismiss a condemnation action after a superior court adopts an award but before the government pays the award. The Georgia Court of Appeals, reversing the lower court, held Fulton County could voluntarily dismiss its condemnation action. This decision is both a victory and a loss for consumers. It is a win because consumers are able to recover expenses incurred during condemnation proceedings. But, it is a loss because the government is able to force citizens into participating in condemnation proceedings, in this case through the power of eminent domain, only to later abandon the proceed of the property after the proceedings have ended.

Fulton County filed a condemnation action in February 2012 in order to acquire twelve acres of land from Dillard Land Investments, LLC. After a hearing on May 27, 2012, a special master filed an award with the trial court, "concluding that the actual market value of the property was $5,187,500. The trial court adopted the award on May 16th. Fulton County filed a voluntary dismissal of the condemnation petition. Dillard filed a motion to vacate and set aside the dismissal. Fulton County eventually filed for appeal.

On appeal, the Court of Appeals agreed with Fulton County's claim that it was authorized to voluntarily dismiss the petition. The Court reached this decision by interpreting the statute O.C.G.A. § 22-1-12, which applies to all condemnation proceedings in Georgia. Under the statute, owners of "any right or title to or interest in such real property" are entitled to reimbursement for "reasonable costs and expenses… if: (1) The final judgment is that the condemning authority cannot acquire the real property by condemnation; or (2) *The proceeding is abandoned by the condemning authority*."

Applying the statute to the case, the Court determined that the language still applied because Fulton County had yet to pay for the property. This meant that Fulton County could still voluntarily dismiss the petition. The fact that the trial court adopted the judgment was not persuasive because the entry of the judgment was premature. While Dillard did not win on appeal, it was still entitled to recover expenses from the condemnation process.

6. ***Georgia Cash Am., Inc. v. Greene*, 734 S.E.2d 67 (Ga. Ct. App. 2012), *cert. denied*, 2013 Ga. LEXIS 165 (Ga., Feb. 18, 2013).**

This case dealt with issues of invalidation of an arbitration agreement, lender camouflage for usury by using out of state banks, and holding corporate officers individually liable for the wrongful acts of the corporation. This was a case ultimately decided in 2012 by the Court of Appeals. The primary issue in this case was whether Georgia Cash America, Inc. and its president and CEO, Daniel Feehan (to be referred collectively as "Cash America") acted as the de facto payday loan lender to the Plaintiffs. According to the Georgia Code, an agent is a de facto lender "if the entire circumstances of the transaction show that the purported agent holds, acquires, or maintains a predominant economic interest in the revenues generated by the loan." A payday loan is a short term, typically two-week loan with a huge annual interest rate. Because the interest, fees, and charges are 15 to 30 percent of the principal loan, a payday loan is considered a "pretext for usury." The Georgia Code defines usury as "reserving and taking or contracting to reserve and take, either directly or indirectly, a greater sum for the use of money than the lawful interest."

A. Cash America's Motion to Compel Arbitration

The first issue the Court of Appeals decided was whether the trial court erred in denying Cash America's Motion to Compel Arbitration. Prior to Cash America's Motion to Compel Arbitration, the trial court had struck down Cash America's arbitration defenses. With that, the court reasoned that "no further discovery was necessary in this case on the issue of the enforceability of the arbitration agreements." In doing this, the trial court "essentially ruled that Cash America could not compel arbitration," which was binding on subsequent proceedings. Therefore, the Court of Appeals held that the trial court was correct in denying Cash America's Motion to Compel Arbitration as moot. The arbitration agreements in the loan contracts were therefore invalidated.

B. Issue as to Whether Cash America was the De Facto Lender Before May 14, 2004

The 2004 Georgia General Assembly tackled the dangers of payday lending in O.C.G.A. § 16-17-1, also known as "The Payday Lending Act." The Act states that "the use of agency or partnership agreements between in-state entities and out-of-state banks, whereby the in-state agent holds a predominant economic interest in the revenues generated by payday loans made to Georgia residents" is considered usury and is thereby illegal. The Plaintiffs claimed that Cash America was the payday lender before and after the Act was established. The trial court held that there was "no genuine issue of material fact that Cash America was the de facto lender prior to May 14, 2004" and granted summary judgment in favor of the plaintiffs, but held that there was an issue regarding the payday loans made after the passage of the Act.

Regarding the loans prior to May 14, 2004, Cash America argued that the banks were the de facto lenders because "the loan documents identify the Banks as the lenders[,] the Banks approved the loans[,] the Banks funded the loans[,] and the checks were made payable to the Banks." Furthermore, Cash America argued that their methods were legal prior to the passage of the Payday Lending Act. The trial court had found that Cash America was the de facto lender because it "retained virtually all the benefits, risks and revenues of the loans and was responsible for virtually all the expenses and liabilities."

While the applicant was required to sign a promissory note acknowledging an understanding that the bank was the lender, Cash America's administrative service agreements with the bank indicated otherwise. These agreements stated that Cash America's duties, among other things, were to market and promote the loans, solicit people, manage the application process, send loan applications to the bank, and assist in disbursing the loans. However, the

Court of Appeals reversed the trial court based on evidence that Cash America funded loans, assumed liability for potential losses and illegality, provided loans in other states, "serviced loans with an interest rate higher than that statutorily allowed by a Georgia lender, received a 95 percent interest in the loans, was required to purchase all unpaid loans, and received between 75 and 95 percent of revenues as compensation for its services." Considering this, the Court of Appeals found that the trial court erred in granting summary judgment on the pre-May 14 loans because a question still remained as to whether Cash America was the de facto lender.

C. Issue as to Whether Cash America was the De Facto Lender After May 14, 2004

The Court of Appeals next addressed whether the trial court erred in finding a jury issue with whether Cash America was the de facto lender after May 14, 2004. The Court affirmed. Cash America argued that the trial court erred because Cash America did not have a predominant economic interest. Furthermore, Cash America argued that they were legally acting as the bank's "agents" under the Payday Lending Act, not as the de facto lenders. After all, Cash America amended its agreements with the banks to state that its compensation would total less than a predominant interest in order to avoid being portrayed as a lender. However, there was also evidence creating a "genuine issue of material of fact regarding whether Cash America actually received a 49 percent economic interest for its services." Even if Cash America did receive 49 percent, there is a question of whether it did so in order to circumvent the restrictions of the Payday Lending Act. Therefore, the Court of Appeals affirmed the trial court's holding that there was a jury issue as to whether Cash America was the de facto lender after May 14.

D. Issue as to Whether Daniel Feehan was Personally Liable

The last issue the Court addressed was whether there was a question of fact that the president and CEO of Cash America, Daniel Feehan, was personally liable. The trial court denied Feehan's motion for summary judgment. Feehan argued that he was not "directly involved." However, the Court found that Feehan "submitted letters to the bank proposing the terms of one of the [agreements] which included compensation to Cash America in the form of an administrative fee of 75 percent of gross revenues." He also signed other agreements providing that administrative fees between 86 and 88 percent be paid to Cash America. During his deposition, Feehan even admitted that Cash America purposely used the bank to avoid Georgia's interest rate cap. The Court of Appeals therefore affirmed the trial court's denial of summary judgment. The case was remanded back to the trial court for a determination, among other things, as to whether Daniel Feehan was personally liable to the plaintiffs. In doing this, the Court essentially held that corporate officers could be individually liable for wrongful acts of the corporation when the corporate officer was directly involved in the act.

7. *Ezeoke v. FIA Card Servs., N.A.*, 739 S.E.2d 81 (Ga. Ct. App. 2013).

This case is a win for consumers because it clarifies what documentation is considered insufficient for the purpose of proving liquidated damages in a credit card debt case. In this case, Ezeoke was sued by FIA Card Services, N.A. (FIA) for $16,855.32, plus costs, for allegedly defaulting on a credit card account. Ezeoke filed an Answer to FIA's Complaint but did not deny liability. FIA moved for judgment on the pleadings, and the trial court granted a judgment in favor of FIA for the full amount claimed.

Ezeoke appealed the trial's court judgment on the pleadings, contending that FIA's documents in the record were insufficient to prove liquidated damages. The Court of Appeals agreed with Ezeoke. The Court concluded that the documents attached to FIA's Complaint, common documents in a credit card debt case, were "insufficient to establish damages with a reasonable degree of certainty." Therefore, the damages amount had to be considered unliquidated and must be established. This case will require creditors to demonstrate, with greater specificity and detail, the damages they are claiming from debtors.

CONCLUSION

Overall, 2013 was a mixed year for consumers in Georgia's Court of Appeals and Supreme Court.

In the category of Healthcare, Torts, and Insurance, the Court of Appeals and Supreme Court handed down several consumer-friendly decisions, especially in medical malpractice cases. Given current discussions of a possible new medical malpractice dispute resolution system in Georgia, these cases provide significant information about how courts resolve medical malpractice cases. In these cases, the courts worked diligently to reach a fair decision and to apply the law with appropriate balance to plaintiffs and defendants.

While the courts appear friendly towards consumers in the category of Healthcare, Torts, and Insurance, they appear rather unfriendly towards consumers in the category of Consumer Finance. This is an alarming trend for Georgia consumers, particularly in judicial foreclosure cases. In three related cases, *Larose*, *Montgomery*, and *You*, the Court of Appeals and Supreme Court, respectively, reached decisions which set negative precedent for Georgia consumers. Consumers facing judicial foreclosure now face a harder time protecting their rights. In addition, the *Raysoni* decision shows an unwillingness to provide consumers protection in financial transactions when blatant oral misrepresentations are made. *Raysoni* opens the door for unethical businesses to take advantage of consumers who will have little possibility of recourse. If Georgia's Supreme Court does not overturn this unfavorable decision, consumers may be at a severe disadvantage when trying to enforce their legal rights.

Given these trends in consumer cases, Georgia Watch hopes that consumers will use the information in the 2013 Court Watch Report to help protect their legal rights through education and advocacy. We encourage all Georgia citizens to participate in efforts to further consumers' rights.