FMG LAW FREEMAN MATHIS & GARY, LLP
Client-centered. Results-driven.SM

# LAWLINE

**July 2010**

To subscribe to our monthly on-line newsletter:
visit www.fmglaw.com and complete our Contact Form
http://www.fmglaw.com/contact_form.php

## Supreme Court Issues Three Important Decisions

**By Mary Anne Ackourey & Jonathan Kandel**

The United States Supreme Court has recently issued three much anticipated decisions. The first case, Rent-A-Center, West, Inc. v. Jackson, allows parties to limit a federal court's role in determining whether an arbitration agreement is enforceable. The second case, City of Ontario, California v. Quon, is the first time the Court has addressed employee privacy rights in electronic communications. The third case, New Process Steel, L.P. v. National Labor Relations Board, leaves uncertain the results of all cases decided by the National Labor Relations Board (NLRB) between January 1, 2008 and March 2010.

### *Jackson* and Arbitration Agreements

In Jackson, a 5-4 divided Court held that an arbitration agreement can delegate "gateway questions of arbitrability" to an arbitrator, rather than a court. Under the Federal Arbitration Act a federal court must order the parties to arbitration if there is a valid and enforceable arbitration agreement. In Jackson, the plaintiff filed an employment discrimination suit against his former employer. The employer filed a motion to dismiss based on an arbitration agreement signed by the plaintiff. The plaintiff opposed the motion, arguing that the agreement was unenforceable. The agreement contained a provision providing that the arbitrator would have exclusive authority to resolve any dispute relating to interpretation, applicability, enforceability, or formation of the agreement.

The Supreme Court concluded that the last provision was merely "an additional, antecedent agreement" delegating threshold issues of enforceability to an arbitrator, which was enforceable. Notably, the plaintiff challenged the enforceability of the entire arbitration agreement, not specifically the "delegation provision." The Court explained that a federal court will only intervene if the basis of the challenge is "directed specifically to the agreement to arbitrate."

After Jackson, all arbitration agreements should be reviewed to determine whether a "delegation provision" is appropriate. While a "delegation provision" may not be appropriate for every company, it can strengthen the role of an arbitrator in resolving disputes.

### *Quon* and Employee Electronic Communications

In Quon, the Court concluded that a City did not violate its employees' privacy rights when it reviewed text messages sent on City-issued devices. In Quon, the City of Ontario, California issued text messaging devices to members of the SWAT Team. Upon issuing the devices, the City reminded the officers that, pursuant to the

## Inside this Issue



## About FMG

Freeman Mathis & Gary, LLP is a leading specialty litigation firm, serving clients through its practice groups in Business Liability and Insurance Law, Labor and Employment Law, Construction Law, Commercial and Complex Litigation, and Government Law. FMG attorneys serve as trusted counsel to corporations and governments throughout the country, providing practical, efficient, and cost-effective solutions for legal issues. For more information about FMG, visit **www.fmglaw.com**.



**Freeman Mathis & Gary, LLP**

100 Galleria Parkway
Suite 1600
Atlanta, Georgia 30339-5948
Tel: 770.818.0000
Fax: 770.937.9960

661 Forest Parkway
Suite E
Forest Park, Georgia 30297-2257
Tel: 404.366.1000

## Supreme Court Issues Three Important Decisions (continued from page 1)

City's Computer Policy, text messages could be audited (and reviewed) just like emails. As part of the audit, the City reviewed all messages sent by officers that exceeded their message limit. Because the purpose of the audit was to determine whether the City needed additional messages, only texts sent while the officers were on duty were reviewed.

Initially, the Court refused to address whether the officers had a reasonable expectation of privacy in the text messages sent on City-issued devices. The Court explained that the "[r]apid changes" in technology and communications require caution to avoid "far-reaching," unpredictable implications. However, the Court reiterated that "employer policies concerning communications will of course shape the reasonable expectations of employees, especially to the extent such policies are clearly communicated."

The Court determined that the search was reasonable given that it was "justified at its inception" and was not "excessively intrusive." The Court found the audit was justified because it was ordered for a "work-related purpose," determining whether the City needed to increase its message limit. Additionally, the Court emphasized that the City reduced the intrusiveness of the audit by only reviewing the messages sent while the officers were on duty.

The Quon decision provides a reminder that a "clearly communicated" policy may provide employers latitude to monitor their employees' electronic communications.

### *New Process* and The National Labor Relations Board

In New Process, the Court concluded that the NLRB did not have authority to issue decisions from January 1, 2008, through March 2010, when the Board had only two of its five positions filled.

At the end of December 2007, the NLRB was left with only two members (one democrat appointed and one republican appointed). The two-member Board proceeded to issue almost 600 decisions during the next 27 months. In more than 70 of those cases the losing party appealed the decision to a Federal Court of Appeals, arguing that the two-member board did not have authority to issue decisions.

The Court's decision leaves almost 600 decisions issued by the two-member board with uncertainty. Now that the NLRB has four members, it is unclear how it will handle the previously decided cases.

For more information, contact Ms. Ackourey at mackourey@fmglaw.com or Mr. Kandel at jkandel@fmglaw.com.

## Requirements on Developers and Public Water Authorities


**By Neil Wilcove and Will Tate**

On June 2, 2010, Governor Sonny Perdue signed the Water Stewardship Act of 2010 (the "Water Act"). The Water Act contains several new requirements concerning developers and builders. The first, codified at O.C.G.A. § 12-5-180.1(c), requires all multifamily residential buildings permitted on or after July 1, 2012 be constructed so as to allow metering of the water usage of each unit. However, this requirement does not apply to renovations of multifamily residential buildings or to reconstruction subsequent to a casualty or condemnation.

The second requirement is codified at O.C.G.A. § 12-5-180.1(d). This section of the Water Act extends the requirement for individual unit metering to multiunit retail and light industrial buildings. This section applies to all multiunit retail and light industrial buildings permitted on or after July 1, 2012. Of note, the Water Act contains an exception for office space. Multiunit office buildings and office units within a mixed-use development are not required to provide for individual metering of water usage.

Another requirement concerning developers and builders is codified at O.C.G.A. § 8-2-3. This section of the Water Act requires the use of high efficiency plumbing fixtures in new construction permitted on or after July 1, 2012. The table below summarizes the fixtures affected by the Water Act and the corresponding specifications for water usage.

| Fixture | Maximum Water Usage |
|---|---|
| Dual Flush Toilet | 1.28 gal/flush (for either 2 reduced volume flushes or one full volume flush) |
| Single Flush Toilet | 1.28 gal/flush |
| Urinal | 0.5 gal/flush |
| Lavatory Faucet/Aerator Replacement | 1.5 gal/min @ 60 psi |
| Shower Head | 2.5 gal/min @ 60 psi |
| Kitchen Faucet | 2.0 gal/min |

Further, the Water Act prohibits the sale of toilets with a per flush water usage of higher than 1.28 gal/flush after July 1, 2012.

For more information, please contact Mr. Wilcove at nwilcove@fmglaw.com or Mr. Tate at wtate@fmglaw.com.

# The Evolving Duty to Settle: A Foundation Made of Shifting Sand


**By Philip W. Savrin and Jonathan J. Kandel**

Many are familiar with the delineation between the duties to defend and to indemnify that are owed by an insurer to its insured. A third duty has emerged in the case law, however, that has no explicit contractual source: the obligation to settle a claim in certain circumstances when demanded by the adverse claimant within policy limits. Because the relationship between an insurance company and its insured is somewhat of a fiduciary one, an insurer is negligent in failing to settle if proceeding to trial involves an unreasonable risk of unfavorable results. Consequently, the measure of damages to compensate the insured for the insurer's breach of the duty to settle is the full amount of damages awarded regardless of the liability limits of the policy.

The Supreme Court of Georgia considered a permutation of the duty to settle in 2003 when it decided Cotton States Mutual Insurance Co. v. Brightman. In that case, the claimant made a policy-limit settlement offer that was contingent upon two separate insurers both agreeing to tender their policy limits. Neither company responded to the offer within the time period specified. After a verdict was returned for approximately $1.8 million, the insured assigned her claims to the plaintiff who then convinced a jury that the refusal to settle was wrongful.

The Court of Appeals found that even though the demand was contingent on payment by two insurers, there is "an affirmative duty by the insurer to engage the injured party in discussions regarding an initial settlement demand in excess of policy limits." Upon certiorari review, the Supreme Court rejected the Court of Appeals' holding that an insurance company has a duty to explore settlement. The Supreme Court acknowledged that a claimant must make an unequivocal demand within policy limits so that the record may be clear as to the potential for resolution. Nevertheless, the Supreme Court affirmed, explaining that an insurer faced with a demand contingent on agreements with others (such as when there are other insurers) can still "meet[] the portion of the demand over which it has control, thus doing what it can to effectuate the settlement." The shift in the duty that was subtle in Brightman has been brought to the fore in Fortner v. Grange Mutual Insurance Co., which was decided by the Supreme Court of Georgia a few months ago. In Fortner, the claimant made a policy-limits demand contingent upon another insurer paying an additional amount. The insurer tendered its limit in exchange for a full release of its insured with indemnification, including dismissing the claim against its insured with prejudice. The claimant treated the counteroffer as a rejection and proceeded to trial, where a jury returned a verdict for the claimant for $7 million. The tortfeasor subsequently assigned his failure-to-settle claim to the claimant. Following a trial on the failure-to-settle claim, the jury returned a verdict for the insurance company.

The Court of Appeals affirmed the jury verdict based on the Brightman safe harbor rule, but the Supreme Court reversed, finding that the insurance company had not offered its limits because it required full release of its insured. The Supreme Court concluded, the jury should have been instructed to consider whether the condition was reasonable. Consequently, even though the insurer was seeking to protect its insured by negotiating for a dismissal, a jury must determine whether that effort was reasonable.

## Conclusion

An insurance company's duty to act reasonably in considering settlement demands is based on the duties owed to the insured, not the claimant. The insurance company's request for a full release in Fortner was intended to protect its policyholder from excess liability. Nonetheless, based on Fortner, an insurance company may still be found to have breached its duty to settle since the claimant *may* have been left without full recourse. This shift continues to broaden the insurance company's duty to settle from considering the interests of the insured to including the interests of the claimant as well.

For more information, contact Mr. Savrin at psavrin@fmglaw.com or Mr. Kandel at jkandel@fmglaw.com.

# Corporate Executives Offer Practical Tips For HR Strategies

**By Ben Mathis**

A recent FMG client seminar featured three panelists from AGCO, Cox Communications and Crawford & Company, along with FMG Labor and Employment partner, Fred Dawkins.

### Compensation Strategies:

Debra Kuper, Vice President, General Counsel and Secretary of Fortune 500 farm equipment manufacturer AGCO Corporation discussed how the company's compensation program changed as AGCO evolved from a smaller company to a multi-billion dollar publicly traded company that now distributes products in over 140 countries. Ms. Kuper explained how more formality was needed in compensation programs, including salary bands, as the company grew, yet they continue to focus on flexibility in compensation using tools such as incentive bonuses to align individual performance with business unit objectives.

Deborah O'Donnell, Director of Human Resources for Crawford & Company, the nation's largest risk management and third party administrator, agreed that compensation programs developed by HR had to balance legal concerns about consistency with the need to address business manager's concerns with compensation flexibility to retain key employees who are in demand by competitors.
Ms. O' Donnell described how Crawford had worked to implement a flexible compensation process for the various business units responsible for its 6,000 employees throughout the United States.

FMG partner Fred Dawkins discussed the difficult legal environment that all companies face in making compensation decisions. Not only are FLSA suits over misclassification of employees continuing to increase, but class cases over pay discrimination continue to be a significant concern.

### Workforce Planning:

Mae Douglas, Executive Vice President and Chief People Officer for Cox Communications, one of the nation's largest providers of cable television and communication services, discussed the emphasis on workforce planning by Cox's HR group. While workforce planning is an effort many companies ignore, Cox has spent substantial time and resources developing internal metrics to predict employment needs and then directing resources in order to insure the company is able to staff its business needs with top quality personnel. Cox has seen the benefit of this proactive effort to address hiring needs with increased productivity from its hires.

Ms. O'Donnell outlined the highly flexible strategy used by Crawford as it reacts to the need to dramatically increase staffing in the face of hurricanes, oil spills and the various other circumstances that cause dramatic increases in claims. Crawford therefore employs a variety of strategies including using temporary and staffing agencies in order to be able to ramp up and ramp down based on claims volume.

Ms. Kuper also described an innovative program at AGCO where the company spent almost a year analyzing its sales and distribution workforce. The company developed a highly detailed summary of job skills and job needs, together with studying sales activity of the existing workforce. The company then was able, through a careful quantitative analysis, to better align sales skills and activities with its business objectives.

### Succession Planning:

Ms. Kuper also outlined AGCO's detailed and carefully developed succession planning process that identifies possible successors for all key positions. This program has helped the company develop key "bench strength" in virtually all areas of the company and also has facilitated its desired management culture and leadership objectives throughout the company.

Likewise, Ms. Douglas described that Cox has spent considerable time and resources in developing its succession planning program. Ms. Douglas described to the audience how Cox identifies key talent and works to develop those individuals through training and development. The program is highly transparent with individuals knowing their role in the process and the path of their career development.

For more information, contact Mr. Mathis at bmathis@fmglaw.com.

# Legislative Update


**By Sun Choy, Josh Portnoy**

The Georgia General Assembly ended its 2010 legislative session on April 29, 2010. The three main areas addressed by the General Assembly this year were education, transportation, and conservation.

### Education

Senate Bill 84 allows the State to find citizens to serve on a school board when the current board is failing and the system's accreditation is threatened. The bill also sets minimum qualifications for school board candidates, delineates the roles of the superintendent and board, and standardizes board member training. Local school boards are required to take steps, by August 1, 2011, to combat the increasing problem of bullying in schools. The law requires every school board to adopt an anti-bullying policy and include the policy in the student code of conduct for each of its schools. The bill also expands the definition of "bullying" to include "[a]ny intentional written, verbal or physical act which a reasonable person would perceive as being intended to threaten, harass or intimidate."

### Transportation

Senate Bill 305 doubles to 30 percent of annual projects the amount of design-build projects the Georgia Department of Transportation (GDOT) may fund. The increase, however, is only temporary; after July 1, 2014, GDOT may only contract out 15 percent of its projects as design-build.

House Bill 277, known as the Transportation Investment Act of 2010, establishes 12 special tax regions throughout the State of Georgia and allows each region, through a "Regional Transportation Roundtable" comprised of local mayors and county officials, to create a list of transportation projects. Each region will then hold a referendum on whether to approve the list of projects and adopt a one percent sales tax.

House Bill 23 prohibits anyone under the age of 18 from texting or using a cell phone while driving. Likewise, Senate Bill 360 makes texting while a driving a one-point violation for any driver.

### Miscellaneous

Senate Bill 138 requires the General Assembly to directly state whether a bill creates an enforceable statutory right. The Bill is prospective in nature (so it only applies to new laws passed) but should hopefully reduce the number of lawsuits filed by prohibiting claims based on "implied" statutory rights. In response to the federal Healthcare Reform, Senate Bill 411 provides that no law, rule, or regulation shall require any person or employer to participate in any health insurance program.

Two laws passed and signed are aimed at the current problems in the housing market. First, the state will now regulate companies that manage real estate appraisers. House Bill 1050 requires appraisal management companies conducting business in Georgia to obtain licensing by the state board. Second, Senate Bill 346 requires every County Board of Tax Assessors to provide, by July 1, an annual written notice to taxpayers of the current assessment of taxable real property.

A complete list of all the bills signed by Governor Perdue is available at www.legis.ga.gov/legis/2009_10/leg/govsign.htm.

# Local Governments Should Consider SPLOST Tax in Difficult Economic Conditions


**By Dana Maine and William J. Linkous, III**

Many local governments are feeling the budgetary pinch of the down economy. Local governments should be aware that Georgia law provides an excellent economic vehicle to fund capital outlay projects during tough economic times called a SPLOST tax. SPLOSTs are advantageous because they spread tax liability to non-residents, allowing them to continue funding improvements without raising property taxes.

SPLOST taxes are created under the authority of O.C.G.A. § 48-8-110 et seq. A SPLOST tax is a 1% sales tax assessed at the time that a consumer purchases certain items within the special tax district. SPLOST taxes can be implemented only for capital outlay projects. Capital outlay projects are generally major, permanent, or long-lived improvements or betterments, such as land, structures, and vehicles. A SPLOST tax can be imposed for no more than six years.

SPLOST taxes can only be passed by a referendum of the voters in the jurisdiction affected. General obligation debt in the form of bonds can be issued in conjunction with the imposition of a SPLOST tax, provided that the general obligation debt is included during the process of creating of the SPLOST tax.

For more information, contact Ms. Maine at dmaine@fmglaw.com or Mr. Linkous at blinkous@fmglaw.com.

## Diversity: Connecting Business Objectives With Inclusion Efforts

**By Fred Dawkins**

Diversity efforts fall short when they are undertaken in response to, or to avoid, litigation alleging discrimination. A company that invests in diversity training (the thinking goes) can defend a claim of race discrimination by pointing to its diversity training efforts as evidence that the company does not discriminate. However, a study led by Dr. Alexandra Kalev concluded that diversity training undertaken to avoid discrimination liability is essentially useless. Diversity training undertaken to advance business goals, on the other hand, tends to be more successful. In a separate study, Dr. Kalev and two colleagues found that diversity efforts focused on personnel management mechanisms, including hiring and promotion routines, and diversity performance evaluations based on objective indicators tied to significant incentives would work. Few companies could follow such a model, though, because – until now – it has not existed.

The ***Diversity: Connecting Business Objectives With Inclusion Efforts*** approach provides a comprehensive framework that:

- directly connects diversity strategies with business goals;
- helps companies develop internal policies and practices to identify talented employees;
- helps companies develop internal practices and policies that maximize the contributions of all employees;
- ensures that these internal practices and policies are consistent with compliance obligations;
- helps companies structure external efforts in a way that maximizes business mission and charitable impact; and
- ensures that all of the company's efforts related to diversity further bottom-line goals.

The ***Diversity: Connecting Business Objectives with Inclusion Efforts*** model is grounded in the precept that **diversity efforts should be directly connected to bottom-line objectives**. Companies that employ this model will ensure their internal policies and practices identify its most talented employees as well as maximize the contributions of **all** employees. Following this model will allow company practices to fulfill compliance obligations without being constrained by them. This model is the only option for a company pursuing diversity **because it makes good business sense**.

For more information, contact Mr. Dawkins at fdawkins@fmglaw.com.

## Transportation Law Highlight

Participants attending transportation law seminar

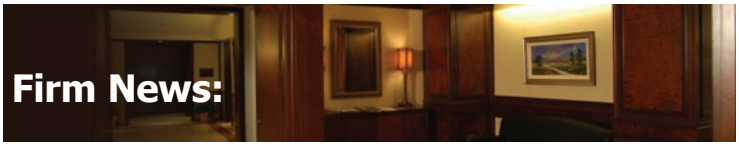
**By Matt Stone**

**Matt Stone**, Partner in charge of **FMG's Transportation Law Practice Group and 24/7 Emergency Response Team**, together with **The McCart Group** and **Impact Collision Analysis**, presented a one-day seminar for clients involved in the trucking and transportation industry, insurance carriers, and other interested parties.

Members of the Georgia State Patrol Specialized Collision Reconstruction Team and the Georgia Department of Public Safety Motor Carrier Compliance Division conducted an investigation of the mock crash scene. **Michael Nischan,** a risk consultant with The McCart Group described the importance of a Fleet Management Program, driver qualifications, fleet maintenance and hours of service. **Heath Stewart**, an accident reconstruction expert explained what is involved with investigating a CMV accident. **Mr. Stone** discussed the details of defending a CMV accident case and conducted a mock cross-examination.

Contact Matt Stone directly at **mstone@fmglaw.com** or call him at 770.818.1411 for:

- information regarding the **FMG Transportation Law Practice Group and 24/7 Emergency Response Team,**
- a copy of the seminar workbook, and/or
- to be added to mailing list for future events.



## Firm News:

Freeman Mathis & Gary was recognized by the *Atlanta Business Chronicle* as one of **Atlanta's Top 10 Fastest Growing Law Firms**.

Freeman Mathis & Gary has been named a leading law firm for Labor and Employment Law in the 2010 edition of **Chambers USA, America's Leading Lawyers for Business**, a highly regarded directory of America's top lawyers. In addition, Ben Mathis was named a leading lawyer for Labor and Employment Law and Bart Gary was recognized as a leading lawyer for Construction.

Congratulations to the following attorneys selected for inclusion in **Georgia's Legal Elite** and **Georgia Super Lawyers**® and **Rising Stars**. *Georgia Trend Magazine* selects Georgia's Legal Elite by compiling votes from thousands of lawyers who are members of the Georgia State Bar. Lawyers were asked to nominate the "most effective lawyers" in ten different practice areas. *Super Lawyers* is a listing of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement.

### Georgia's Legal Elite:

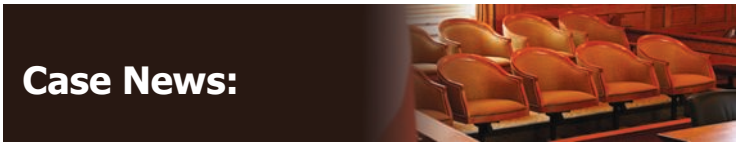
**Ben Mathis** - Labor and Employment Law

### Georgia Super Lawyers:

**Ted Freeman** - Civil Rights/First Amendment, Government/Cities/Municipalities, General Litigation
**T. Bart Gary** - Construction Litigation, Business Litigation
**Dana Maine** - Government/Cities/Municipalities, Land Use/Zoning
**Kamy Molavi** - Construction Litigation, Business Litigation, Construction/Surety

### Georgia Rising Stars:

**Brad Adler** - Employment & Labor
**Neil Wilcove** - Construction Litigation, Construction/Surety, Business Litigation
**Amy Combs Bender** - Employment & Labor
**Jake Daly** - Personal Injury Defense: General, Business Litigation
**David Cole** - Employment & Labor



## Case News:

**Mary Anne Ackourey** and **Bill Buechner** recently prevailed on behalf of a university medical school against a postdoctoral researcher who was terminated because of his involvement in a physical altercation with another professor. The court held that the plaintiff's conduct violated university policies and that acts of violence in the course of employment also constitute a breach of contract.

**Matt Stone** and **Jake Daly** won a case on behalf of an automobile dealer in a lawsuit alleging that the dealer violated the Georgia's Fair Business Practices Act and Deceptive Trade Practices Act, as well as committed common law fraud. The plaintiff sought $5,000,000 in compensatory, punitive damages, and attorney's fees.

**Ben Mathis and David Cole** recently prevailed in an appeal following oral argument before the Georgia Supreme Court on a challenge to an election contest. Broughton v. Douglas County Board of Elections, 286 Ga. 528 (2010). The Supreme Court affirmed the lower court's decision dismissing the case and in doing so, established precedential case law regarding the timeliness of an election contest.

**Neil Wilcove** and **Arthur Ebbs** recently obtained summary judgment in favor of a real estate brokerage and an individual agent alleged to have committed fraud and various breaches of Georgia Brokerage Relationships in Real Estate Transactions Act. The court held that even if the brokerage and agent had made misrepresentations, that they were not actionable due to the merger clause in the sales contract. The plaintiff sought to recover in excess of $1,000,000.

**Sun Choy** and **Paul Hotchkiss** won two recent cases in the Georgia Court of Appeals. The first involved the representation of two sheriff's deputies in a suit by a woman whose husband was killed by Brian Nichols during his infamous murderous rampage, which began at the Fulton County Courthouse. The Court of Appeals held that Nichols' conduct was the superseding proximate cause of Wilhelm's death and that no one could have reasonably foreseen that Nichols would have escaped and killed plaintiff's husband, who was working in his home approximately six miles away from the Courthouse.

In the second case, Mr. Choy and Mr. Hotchkiss represented a Georgia city and two of the city's police officers in a claim by a man whose arm was accidentally broken after resisting the officers' attempt to conduct a safety pat-down for weapons. The Court of Appeals held that, per the indisputable video evidence, a reasonable person could not find that the officers acted with "actual malice," i.e., with the intent to break plaintiff's arm.

**Neil Wilcove** and **Will Tate** successfully prevailed in an action to compel arbitration pursuant to an arbitration clause. The client, a general contractor, sought funds owed to it by the defendant, the owner of a project completed by the client. The Georgia Court of Appeals held that the filing of a lawsuit enforcing a client's lien rights did not bar it from pursuing arbitration under the contract.

**Ben Mathis** and **Bill Linkous** recently won a favorable judgment in a federal district court lawsuit challenging the alleged termination of the employer's chief administrative officer. The employee alleged that she had been forced to resign based upon her gender and had been denied benefits supposed owed under her employment contract.

**Dana Maine** and **Bill Linkous** recently prevailed on behalf of a former development director against a developer who alleged that the director had tortiously interfered with the business relationships of the developer by delaying the processing of the final plat of his residential development.

FMG LAW FREEMAN MATHIS & GARY, LLP
Client-centered. Results-driven.SM

100 Galleria Parkway
Suite 1600
Atlanta, Georgia 30339-5948



## Attorney News:

**Ted Freeman** is serving as a Vice President and Editor of the *2010 LawJournal* for the *Georgia Defense Lawyers Association.*

**Ben Mathis** was elected to the Executive Committee of *Georgia Tech Alumni Association Board of Trustees*. Mr. Mathis also is a member of the search committee for the new CEO of the *Cobb Chamber of Commerce* and was re-elected to the Board of Directors of the *Georgia Chamber of Commerce*.

**Jack Hancock** and **Bill Linkous** assisted Rockdale County with drafting their June, 2010 SPLOST tax referendum.

**Brad Adler** co-chaired the PLUS Foundation's 2010 Annual Golf Tournament at Atlanta National Golf Club. Over 80 golfers participated in this event, which raises money for organizations such as the Children's Tumor Foundation, Boys & Girls Club, Phoenix Children's Project and numerous other worthy causes.

**David Cole** was selected as a member of the 2010-2011 class of *Leadership Cobb***.**

### Firm Presentations:

**Dana Maine** spoke on *Constitutional Limitations on Zoning Actions* at the National Business Institute's *Practice Guide to Zoning and Land Use Seminar.*

**Murray Weed and David Cole** were featured speakers at the *Georgia Municipal Association's* Annual Conference and spoke about legal issues for local governments implementing workplace policies.

**Ben Mathis** was moderator of a *Federal Bar Association* panel presentation on *Civil Business Litigation* with United States Magistrate Judges Alan Baverman and Clayton Schofield. Mr. Mathis also spoke on *Cyberliability: The Perils of Social Networking* at the New York City and Hartford meetings of the Professional Lines Attorney Network.

**Jack Hancock** presented *Liability of Georgia Counties for the Acts of Their Elected Officials: An Overview* at the Institute of Continuing Legal Education's *Nuts and Bolts of Local Government Law* course.

**Mary Anne Ackourey** presented on *Top Tips for Employment Documentation* to the Georgia Medical Care Foundation.

**David Cole** served as seminar program chair for the Cobb County Bar Association on *Lean and Mean Litigation: Keys for Success from Pleadings through Appeal*.

**Fred Dawkins** presented a *Health Care Reform Legislation Business Update* to the Clayton Chamber of Commerce with fellow panelist Debbie Carrothers, Manager, U.S. Chamber of Commerce.

**Kelly Morrison** spoke on *Title VII & Title IX: Best Practices & Effective Handling of Claims* at Walton County Schools and Macon State College.

**See www.fmglaw.com/seminars for seminar materials as well as registration information for upcoming events.**

### In Print:

**Phil Savrin** and **Bill Buechner's** article, *A Perilous Prospect*, was cited by the Georgia Supreme Court in the case of World Harvest Church, Inc. v. GuideOne Mutual Ins. Co., Case No. S10Q0341 (Ga., May 3, 2010). The case concerned the dangers an insurer faces if it defends a lawsuit without first informing the insured that it is reserving its right to assert coverage defenses. The Court clarified previous case law and held that, if an insurer assumes and conducts an initial defense without reserving its rights to assert coverage defenses, the insurer is estopped from asserting coverage defenses regardless of whether the insured can show prejudice.

**Matt Stone's** article *Federal Ban on Texting for Commercial Drivers* was published in *The Indicator*, a publication of the Crane Institute of America.

**Murray Weed** and **David Cole** authored an article entitled *Is Metadata Subject to Open Records?,* which was published in *Georgia's Cities* Magazine.

**Murray Weed** was quoted as a lead source in an article in the *Macon Telegraph* on legal issues involved in the regulation of massage ordinances.

**Kamy Molavi** authored an article entitled *Avoiding Potential Green Building Liability* in the *Environmental Design & Construction and Sustainable Facility* Magazine.