

Success Stories

- **Kim Jackson** and **Bryan Grantham** prevailed on summary judgment on behalf of a national security company and their local vendor. In an action alleging fraud against the company, the trial court ruled in favor of Defendants by finding that Plaintiff had affirmed her service contract with the company and thus could not plead a fraud claim against Defendants. (August 2011)
 - **Kim Jackson** and **Bryan Grantham**, on behalf of an attorney-client, obtained a dismissal of a Plaintiff's complaint in an action alleging legal malpractice, fraud, and violations of the Georgia RICO act. The trial court agreed with Jackson and Grantham that the applicable statute of limitations had run and barred all of the Plaintiff's claims. (August 2011)
 - **Ed Slaughter** secured a dismissal for a product liability client during jury trial in Santa Barbara, California trial. Plaintiff alleged that work with various automotive products and other consumer products caused his lung cancer. After a week of jury selection, Plaintiff agreed to dismiss the claims against the firm's client rather than proceed against them at trial. Ed was assisted at trial by Kelly Hagemann and Lauren Wood. (August 2011)
 - The Georgia Court of Appeal affirmed summary judgment in favor of clients of **Lane Young, Rob Gilbreath** and **Elizabeth O'Neill** in a case alleging lawyers breached their fiduciary duties to a client. The appellate court decision confirms that Plaintiff has no basis to seek recovery from the firm's clients of the more than \$8,000,000 in damages sought by the Complaint. (June 2011)
 - The Labor and Employment Team recently obtained a defense verdict on behalf of O'Reilly Auto Parts in a sexual harassment/retaliation trial in front of Judge Jeffrey Hamilton in the Superior Court of Fresno, California. The Plaintiff, a former CSK First Assistant Manager accused the company of not properly responding to an incident involving allegations that a co-worker exposed himself, and for terminating Plaintiff based on her complaints about the incident. Plaintiff sought more than \$300,000.00 in compensatory damages plus attorneys' fees. **Ron Polly** and **Jake Zuniga** tried the case for 3 weeks and successfully convinced the jury that the investigation and response were appropriate and that the termination lawfully occurred because Plaintiff violated CSK's policies related to the confidentiality of personnel files. (June 2011)
 - **David C. Marshall** received a defense verdict on May 27 after a two week trial in Greenville, South Carolina on behalf of a national building products manufacturer sued for wrongful death as a result of asbestos exposure. Plaintiff, a siding contractor, was diagnosed with mesothelioma, and died at the age of 58, leaving a spouse and two children. Plaintiff originally sued several defendants, all of which settled or were dismissed prior to trial, leaving HPTY's client as the sole remaining defendant. Plaintiff called eleven witnesses and alleged that the decedent worked with products sold by the client; the Defendant presented evidence that it never manufactured or sold this type of product. The settlement demand prior to and during trial was over one million dollars. At closing argument, plaintiff's counsel asked the jury to award over 24 million dollars in medical bills, lost earnings, pain and suffering, and punitive damages. The jury deliberated approximately two hours before returning a defense verdict. (May, 2011)
 - **David C Marshall** and **William T. Wood, III** successfully defended an automobile manufacturer and dealer in a breach of warranty action in Cobb County, Georgia. Plaintiff alleged that the manufacturer and dealer breached an express warranty and implied warranty of merchantability in connection with the purchase and installation of a new transmission. Following the presentation of Plaintiff's case, which included the testimony on five witnesses, the court granted the defendants' motion for a directed verdict based upon several legal grounds, including Plaintiff's failure to prove the existence and terms of an express warranty covering the new transmission. (January, 2011)
 - The Kentucky Supreme Court issued a 31-page opinion preserving a favorable trial verdict accomplished by **David Marshall** and **Eric Ludwig**. The case, a wrongful death/product liability lawsuit, alleged plaintiff contracted lung cancer as a result of asbestos exposure in the small town of Benton, Kentucky. (December 2010)
 - **Ed Slaughter** won a complete defense verdict on behalf of a national supplier of automotive components in a mesothelioma case pending in Los Angeles Superior Court. (December 2010)
 - **Kim M. Jackson** and **Rob Gilbreath** won summary judgment for Liberty International Underwriters (LIU) in a garnishment action filed by a bank that had obtained a \$650,000 judgment against LIU's former insured. (September 2010)
 - **David Marshall** and **Chris Lang** successfully defended a premises liability wrongful death case in the state court of Dekalb County, Georgia. The jury deliberated 11 hours before reaching its verdict on August 20. The case arose over the murder of a 26 year-old who lived with his family at defendant's property. The decedent lived for a month after the shooting. The jury allocated fault at 95% to the criminal defendants and 5% to HPTY's client, a property management company. On the issue of damages, the jury awarded zero for pain and suffering and only awarded \$184,192.16 (the amount of medical bills and funeral expenses) representing the full value of the life for a net recovery to Plaintiff of approximately \$9,200. The jury declined to assess punitive damages. In contrast, in closing argument, Plaintiff
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has asked the jury to award over \$2 million. (August 2010)

- **Matt Barr** and **Joe Wieseman** secured summary judgment on behalf of an Arkansas-based bag manufacturer in defense of a multi-million dollar trademark infringement and civil conspiracy lawsuit. The case was pending before Judge Thomas Thrash, Jr. in the United States District Court for the Northern District of Georgia. Judge Thrash granted the motion in a 20-page order. (August 2010)
- HPTY attorneys **Jack Sibley**, **Carl Anderson**, **Rob Thompson**, and **Rob Gilbreath** obtained a favorable ruling from the United States Court of Appeals for the Eleventh Circuit on behalf of client Osmose, Inc. The court of appeals affirmed the key provisions of the district court's order granting Osmose a temporary injunction against Viance, LLC in a Lanham Act False Advertising case. Viance was represented by King & Spalding. The court ordered a minor modification in the temporary injunction and vacated one of its minor provisions. As a result of the court of appeals' ruling, Viance will continue to be prohibited from making false statements in commercial advertising and promotions about the efficacy of Osmose's wood preservative product until the parties' dispute is tried on the merits. (August 2010)
- **David Marshall** and **Assunta Fiorini** successfully represented a medical engineering firm responsible for de-commissioning an obsolete MRI machine that exploded during its moving. Plaintiff, a contractor who was moving the unit, claimed that he suffered a traumatic brain injury and a permanent inability to work in the future. Prior to trial in the state court of Rockdale County, Georgia, Plaintiff served an offer of judgment of \$800,000. Further, in closing argument, Plaintiff asked the jury to award \$4-5 million in damages. After a seven-day jury trial, the jury awarded only \$50,000. (July 2010)
- **Ron Polly** and **Alex Barfield** won a motion for summary judgment on behalf of a defendant employer immediately prior to the start of trial in Louisville, Kentucky. The case involved a truck driver who sued his former employer after he was terminated for failing a drug test. (July 2010)
- **Lane Young**, **Elizabeth O'Neill** and **Rob Gilbreath** obtained summary judgment for the defendants in a breach of fiduciary duties case pending in the Georgia Superior Court for Fulton County. The plaintiff sought recovery of over \$4,000,000, alleging that his former attorneys breached duties owed him by purportedly undermining his right to assert a bad faith claim against a liability insurer. The trial court ruled that there was no evidence that the defendants' alleged conduct caused the plaintiff any damages. (July 2010)
- The Supreme Court of Georgia affirmed the summary judgment of legal malpractice claims granted to the clients of **Kim M. Jackson**, **Rob Gilbreath** and **Matt McLaughlin**. Plaintiffs had failed to comply with OCGA 9-11-9.1 which requires a plaintiff in Georgia to file an expert affidavit in support of any professional liability negligence claim. When Jackson filed a motion to dismiss the legal malpractice claim, Plaintiffs contended that they were indigent and that OCGA 9-11-9.1 was unconstitutional because they were unable to afford the costs of an expert to provide a supporting affidavit. Plaintiffs claimed that the statute violated equal protection, due process, access to the courts, was an improper special law and violated separation of powers. The briefing in the lower court was done by Jackson and McLaughlin, and the hearing was handled by Jackson. The lower court granted the motion and dismissed the professional malpractice claims. Plaintiffs appealed that decision to the Supreme Court. The Supreme Court briefing was performed by Jackson and Gilbreath, and Jackson handled the oral argument. (June 2010)
- **Rob Gilbreath** secured an important victory for client Merrill Lynch in a Texas Supreme Court decision issued June 25, 2010. Two MetroPCS subsidiaries - MetroPCS Communications and MetroPCS Wireless - asserted claims against Merrill Lynch arising out of their purchase of auction rate securities. Wireless was party to an arbitration agreement with Merrill Lynch, but Communications was not. The trial court stayed Wireless' claims until it can be determined whether Wireless will proceed as a part of a federal court class action against Merrill Lynch. If it does not, Wireless will be required to arbitrate its claims against Merrill Lynch. The trial court denied Merrill Lynch's request to stay Communications' claims pending completion of the potential arbitration. The Texas Supreme Court held this was an abuse of discretion and that Communications' claims must be stayed until completion of the likely arbitration between Wireless and Merrill Lynch. (June 2010)
- **Peter York** and **Kristin Brock** obtained summary judgment in a catastrophic pool diving case in the Northern District of Georgia. Judge Harold Murphy issued a 72-page order finding for Defendant National Pool & Spa Institute. The quadriplegic Plaintiff was 29 years old at the time of the incident and had a \$10 million life care plan. The Court held that a trade association, which promulgated a set of voluntary minimum standards for the pool industry, cannot be held liable to an end user for the negligence of the pool contractor where there is no evidence that the contractor relied up on the standards. This was a case of first impression in Georgia and one of the few decisions in the country addressing the liability of a trade association for the promulgation of voluntary standards. (May 2010)

- **Matt Barr** and **Catherine McCormack** received a defense verdict from a Fulton State Court jury in a premises liability case filed against a defendant property group that owned a shopping plaza. The plaintiff caught her foot on a rubber expansion joint and fell onto her right knee. She eventually had total knee replacement surgery, resulting in \$100,000 in medical bills. At the close of evidence, Judge Cole granted a directed verdict to defendant on the plaintiff's claim that the surgery was related to the fall. (April 2010)
 - **Elizabeth O'Neill** received a defense verdict in a products liability case pending in federal court in Georgia. The plaintiff claimed that the defendant's air pump product was negligently and defectively manufactured which caused the pump to malfunction and injure the plaintiff's hand. After a three-day trial, the jury returned a defense verdict after only two hours of deliberation. (March 2010)
 - **David Marshall** obtained a defense verdict on behalf of a national building products manufacturer of asbestos cement pipe in a wrongful death case. The plaintiff alleged household asbestos exposure from his father, a pipe layer at an Army ammunition plant in Kansas. The plaintiff developed peritoneal mesothelioma and died at the age of 38. There were no other defendants remaining in the case at the time of trial. The defendant presented evidence that the pipe used by the plaintiff's father was that of another manufacturer and also presented evidence that the mesothelioma was idiopathic in nature and was not related to any asbestos exposure. The case was tried over a two-week period in Wilmington, Delaware before the Honorable Mary Johnston. This was only the second case to go to verdict in Delaware since the recent dramatic increase in filings there. The first verdict yielded an award of over \$2 million. (March 2010)
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