

## Supreme Court of Georgia

- *General Motors Acceptance Corporation v. State*, 613 S.E.2d 641 (Ga. 2005). Represented General Motors Acceptance Corporation against the State of Georgia for unlawfully subjecting property (in which GMAC held an interest) to government forfeiture. The Supreme Court of Georgia's decision reversed an earlier decision by the state Court of Appeals. The Court of Appeals erroneously applied a legal standard which, until the Supreme Court's decision, allowed the knowledge requirement to be fulfilled by the most minimal notification practices, essentially equating "suspicion" and knowledge.
- *Sims v. State*, 614 S.E.2d 73 (Ga. 2005). In a pro bono engagement, represented a mentally impaired defendant in a successful challenge to the standard of review applicable to a jury's determination of competence to stand trial. Although all experts at trial had agreed that the defendant (who has an I.Q. of 45) was mentally incapable of giving reliable testimony, the State's expert nevertheless testified that he was "minimally" capable of assisting in his own defense. The jury found him competent, and the Court of Appeals affirmed under the highly deferential "any evidence" standard. The Supreme Court of Georgia granted certiorari, changed the applicable standard of review, and reversed the jury's finding of competence.
- *Shorter College v. Baptist Convention of Georgia*, 614 S.E.2d 37 (Ga. 2005). Represented six Shorter College trustees who voted against dissolution and who successfully challenged the dissolution in court. The Supreme Court of Georgia ruled that the board of a religiously sponsored college may not reorganize itself through dissolution to avoid a charter provision that grants a sponsoring religious organization the power to choose the college's trustees. This case involved issues of first impression under Georgia non-profit corporation law and has received national attention.
- *Security Life Insurance Co. v. St. Paul Fire & Marine Insurance Co.*, 606 S.E.2d 855 (Ga. 2004). Represented Security Life in a RICO and fraud action with five appeals of right to the Georgia Court of Appeals and three grants of certiorari by the Supreme Court of Georgia. All cases involving Security Life resulted from one trial with ten appellate opinions, among them that violations of the Georgia Insurance Code are not predicate offenses under the Georgia RICO statute. The original judgment was reduced on appeal by more than \$10 million.
- *BDO Seidman, LLP v. Mindis Acquisition Corp.*, 578 S.E.2d 400 (Ga. 2003). Represented BDO Seidman in this significant decision, where the Supreme Court of Georgia adopted the out-of-pocket damage standard for negligent misrepresentation claims, rather than a benefit of the bargain standard, and thus vacated a sizeable judgment against our client.
- *Printis v. Bankers Life Insurance Co.*, 583 S.E.2d 22 (Ga. 2003). Represented Bankers Life in the Supreme Court of Georgia decision upholding the dismissal of a class action. The action alleged that the company committed a Georgia RICO violation by conspiring with its agents and auto dealers to sell the plaintiff unnecessary credit life and disability insurance. At issue was whether the Georgia Insurance Code authorizes an insurer to issue a credit life insurance policy which covers the total amount payable over the term of the loan or limits the policy's coverage to the principal amount financed by the insured.
- *Campbell v. State Road & Tollway Authority*, 583 S.E.2d 32 (Ga. 2003). Represented the Georgia State Road and Tollway Authority against a challenge to the proposed issuance of

grant anticipation revenue bonds ("Garvees"). The Supreme Court of Georgia held that the Authority had the power to issue grant revenue bonds payable from federal-aid highway payments and that neither the issuance of Garvee bonds, nor the receipt by the Authority of the State's federal-aid highway payments, violates the public debt or appropriation provisions of the Georgia Constitution.

### **Georgia Court of Appeals**

- *Walker v. State Farm Mutual Automobile Insurance Co.*, 2005 WL 1661988, S.E.2d \_\_\_\_ (Ga. App. July 15, 2005). Represented State Farm in a putative class action in which the plaintiff alleged that the insurer had violated the Georgia Insurance Commissioner's total loss regulation by undervaluing the plaintiff's vehicle when the insurer settled the total loss claim. The trial court granted the insurer's motion to compel appraisal. After the appraisal process was completed, the trial court held that all of the plaintiff's claims were rendered moot by the appraisal process because there was no longer a dispute over the value of the vehicle. The trial court also held that there was no private right of action to pursue a claim arising from a violation of an insurance regulation. The Court of Appeals affirmed the trial court's decision in favor of the insurer on both grounds.
- *Price v. Ernst & Young, LLP*, 617 S.E.2d 156 (Ga. App. 2005). Represented Ernst & Young, LLP, which successfully sought an order compelling arbitration based on the theory of equitable estoppel. The signatory of a contract with an arbitration clause sued several non-signatories, including Ernst & Young, seeking damages for allegedly being fraudulently induced to enter into the contract. The Georgia Court of Appeals ruled that the equitable estoppel doctrine applied to compel arbitration and limited language from a prior case critical of the doctrine to cases involving consumers.
- *Broadcast Concepts, Inc. v. Optimus Financial Services, LLC*, 2005 WL 1563089, S.E.2d \_\_\_\_ (Ga. App. 2005). Represented a computer reseller in a breach of contract case. The Court of Appeals affirmed a verdict in our client's favor in excess of \$1 million.
- *Equifax, Inc. v. 1600 Peachtree, L.L.C.*, 601 S.E.2d 519 (Ga. App. 2004). Represented the corporate landlord of a large office complex in an action against Equifax under a rent guaranty. The case involved issues of first impression under Georgia guaranty law, and the Court of Appeals ruled in our client's favor. Approximately \$30 million was at issue.
- *Greensboro Ford, Inc. v. Ford Motor Co.*, 600 S.E.2d 631 (Ga. App. 2004). Represented Ford Motor Company against a former dealer bringing breach of contract claims for failure to approve prospective purchasers, improper termination, improper award of another dealership within the dealer's locality, and failure to repurchase signage, parts, tools, and equipment. The Court of Appeals affirmed the trial court's grant of summary judgment based on Code of Guidance to support the claim.
- *Bogard v. Inter-State Assurance Co.*, 589 S.E.2d 317 (Ga. App. 2003). Represented Inter-State Assurance Company, an affiliate of Protective Life, in a putative nationwide class action asserting so-called "gap coverage" claims about a life insurance policy. The plaintiff's theory was that the client improperly charged premiums during an alleged "risk-free" period after the policy was issued but before coverage became effective, which the plaintiff alleged was a breach of contract, a deceptive trade practice and a ground for restitution. The Court of Appeals rejected these claims, finding that Inter-State's policy was not ambiguous as to the coverage terms. This was a significant precedent, because many similar claims were then pending against other insurance companies in other jurisdictions.

- *Butgereit v. Enviro-Tech Environmental Services, Inc.*, 586 S.E.2d 430 (Ga. App. 2003). Represented Frances Butgereit, who suffered serious injuries in a motor vehicle accident, and her husband, in an action against the negligent driver and his employer. Following a jury verdict for the defense, the Butgereits appealed. We were successful in overturning the defense verdict and obtaining a new trial on the grounds that the trial court erred in not directing a verdict in plaintiffs' favor on the defendants' negligence per se and in improperly instructing the jury on the sudden emergency doctrine, thus giving the defendants a defense to which they were not entitled. Following the Court of Appeals decision, we convinced the Supreme Court of Georgia to deny certiorari.