



The Global Legal Network
Celebrating 40 Years

HAVE YOU NOTICED THE INCREASE IN MILD
TRAUMATIC BRAIN INJURY?

June 24, 2020

PRESENTERS



Douglas Gibson,
Psy.D., M.P.H., ABPP
MedPsych Consulting, LLC
Plantation, FL

E: DouglasGibson@MedPsychConsulting.com
T: 954.727.8210



Warner Fox
Hawkins Parnell & Young
Atlanta, GA

E: wfox@hpylaw.com
T: 404.614.7486



Lance Eberhart
Hall & Evan, LLC
Denver, CO

E: eberhartl@hallevans.com
T: 303.628.3470

DAILY REPORT

A SMART READ FOR SMART READERS

THURSDAY, FEBRUARY 19, 2015
THREE SECTIONS | \$2.00

Newsreel

Cobb State Court Sets the Stage for Its 50th Anniversary

Lawyers and judges will gather Friday at a theater on the Marietta Square to mark the 50th anniversary of the creation of the Cobb County State Court.

Headline speakers include State Supreme Court Chief Justice Hugh Thompson and Hall County State Court Judge Charles Wynne, president of the Council of State Court Judges. The event is scheduled for 1 p.m. at the Earl Smith Strand Theatre.

"Our court has grown alongside Cobb County," said Cobb State Court Chief Judge David Darden, who will serve as master of ceremonies.

Lockheed Martin's contracts to build military airplanes drove the county's growth in the 1960s, when the Georgia General Assembly created the court to relieve the burden on Cobb County Superior Court. The state court has grown from one judge to 12 and from 10 employees to 186.

"Cobb has grown well beyond being a one-employer town," Darden added.

The event will feature video interviews that Darden conducted with Marietta lawyers reflecting on the past 50 years.

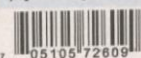
While Darden remained behind the camera, the video will feature former Gov. Roy Barnes of the Barnes Law Group, Lance Cooper of the Cooper Firm, former State Court Judge Tom Cauthorn of Cauthorn, Nohr & Owen, Russell Davis of Downey & Cleveland, former State Court Clerk Martha Watson, State Court Judge Bridgette Campbell and Mazzi Mazloom of the Mazloom Law Firm.

After the hourlong program, the court will hold a reception on the second floor of the Strand, while the current and former judges gather in the theater for photos.

—Kathryn Hayes Tucker

Correction

A photo caption in a Feb. 17 article, "Court Denies Ex-Judge's Bid to Rescind His Resignation Deal With JOC," misidentified the first name of the former judge. He is Douglas Pullen.



OBSCENITY LAWYER DIES
Herald Price Fahlberg, who represented Hustler publisher Larry Flynt in a Ga. trial, dies at 87.

CALENDAR OF EVENTS
Seminars, satellite broadcasts and professional get-togethers for legal professionals.



Shane Bartlett and Alwyn Fredericks, from left, represented a woman injured in a crash with a truck. Fredericks said the effects of her mild traumatic brain injury were difficult to explain to a jury.

Brain Injury Yields \$3.5M Verdict

KATHLEEN BAYDALA JOYNER | kjoyner@alm.com

A WOMAN WHOSE car was crushed by a produce truck in 2012 won \$3.5 million in DeKalb County State Court despite not having any visible injuries.

The verdict was 10 times what the defense suggested the case was worth at trial, and

55 times more than her medical bills.

Lawyers for plaintiff Jewel Wicker said they anticipated explaining the nature of her mild traumatic brain injury to a jury would be difficult. "It's one of the things we said to the jury in open-

ing statements dire—she does not be somebody with an injury," said Alwyn Fredericks, a partner at Cash, Krugler & Fredericks. "It has a broken leg was split open. Her injury was

Whistleblowers' Lawyer Blasts US Prosecutors for Antagonism to His Clients

R. ROBIN McDONALD | rmcdonald@alm.com

AN ATTORNEY FOR whistleblowers who was fined \$1.6 million for talking to the news media while their claims were sealed has lashed out against federal prosecutors for "animus" against his clients.

"The only time the government does or says anything in this case is when it has

the opportunity to hurt the very people who have secured over \$161 million in recovery for the government," wrote Jim Butler, head of the legal team representing former mortgage brokers Victor Bibby and Brian Donnelly, in court papers filed this month.

In 2008, the two whistleblowers sued the nation's largest banks, claiming they had defrauded the government in

See **BUTLER**, page 4

DAILY REPORT

THURSDAY, FEBRUARY 19, 2015
THREE SECTIONS | \$2.00

Interview
24 Lawyers

Brain Injury Yields \$3.5M Verdict

KATHLEEN BAYDALA JOYNER | kjoyner@alm.com

A WOMAN WHOSE car was crushed by a produce truck in 2012 won \$3.5 million in DeKalb County State Court despite not having any visible injuries.

The verdict was 10 times what the defense suggested the case was worth at trial, and

55 times more than her medical bills.

Lawyers for plaintiff Jewel Wicker said they anticipated explaining the nature of her mild traumatic brain injury to a jury would be difficult.

"It's one of the things we said to the jury in open-

ing statements and in voir dire—she doesn't appear to be somebody with an injury," said Alwyn Fredericks, a partner at Cash, Krugler & Fredericks. "It's not like she has a broken leg or her head was split open. Her injury was

See **BRAIN INJURY**, page 3

Jim Butler said the government acts only when it can "hurt the very people" who recovered \$161 million for it. See **BUTLER**, page 4



News

Atlanta Lawyer Injured in Firm Parking Garage Awarded \$8M Verdict

John Mabrey and Matthew Stoddard tried the case together for a former Hunton & Williams lawyer who hit her head on a fire sprinkler pipe hanging five feet over the sidewalk next to a parking space.

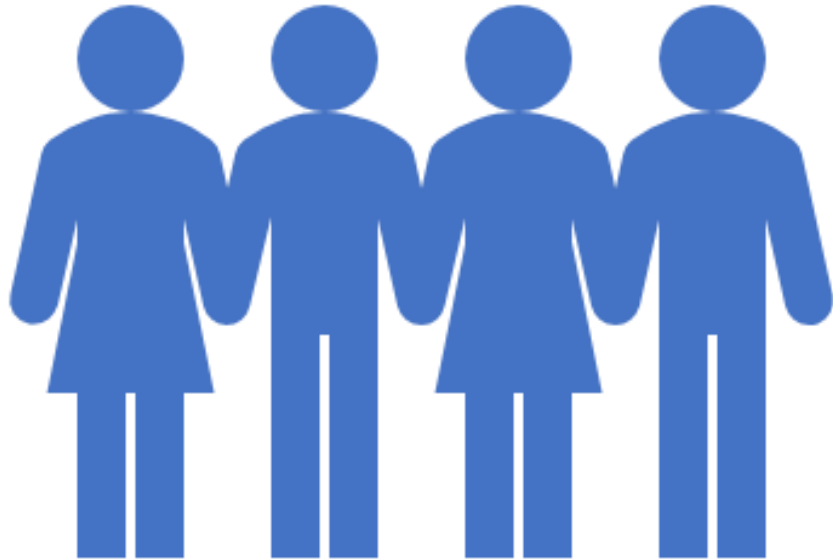
By **Katheryn Tucker** | March 26, 2019 at 03:39 PM



Trending Stories

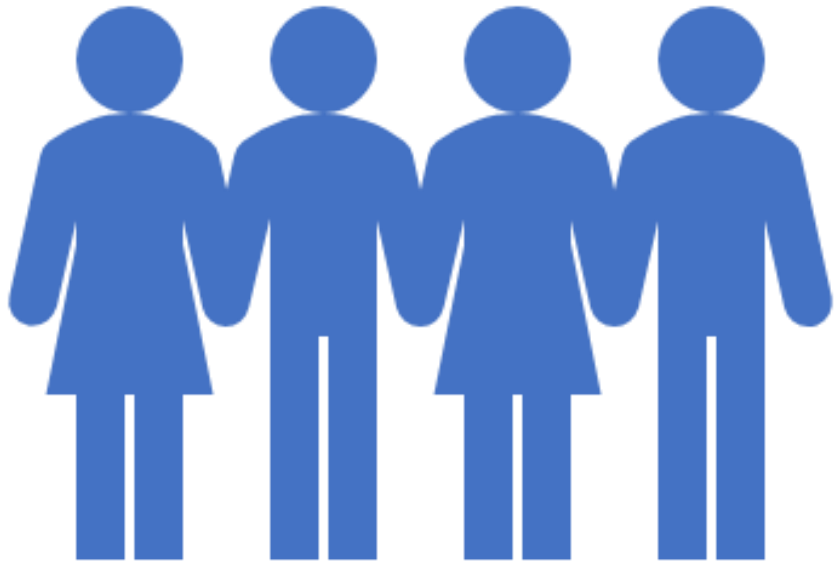
- 1 **Baker McKenzie Global Chairman Paul Rawlinson Dies**
[THE AMERICAN LAWYER](#)
- 2 **Baker McKenzie Partners Mourn Paul Rawlinson's Death**
[THE AMERICAN LAWYER](#)
- 3 **Baker McKenzie Chairman Helped Erode Taboos About Attorney Health**
[THE AMERICAN LAWYER](#)
- 4 **The Big Fail: Why Bar Pass Rates Have Sunk to Record Lows**
[LAW.COM](#)

EPIDEMIOLOGY



- TBI accounts for 40% of all acute injury deaths in the U.S.
- Approximately 1.74 million people sustain mTBI requiring assessment
- Incidence of mTBI – 100 – 600 per 100,000 (majority of TBI cases)
- Moderate TBI – 15 per 100,000
- Severe TBI – 14 per 100,000
- High-Risk populations

EPIDEMIOLOGY CONTINUED



- Younger in age – Peaks 15 - 24
- Low-income
- Unmarried
- Ethnic Minorities
- Inner City dwellers
- Men
- H/O substance abuse
- H/O previous TBI

MECHANISM OF INJURY

MVA is the leading cause (50%)

Falls (20-30%)

Firearms (12%)

Work-related TBIs – 40-50% of which
57% related to transportation

Alcohol is a major contributing
factor

DEFINING TRAUMATIC BRAIN INJURY – DEFINITIONS VARY



- American Congress of Rehabilitation Medicine - “a traumatically induced physiologic disruption of brain function, as manifested by one of the following:
- Any period of LOC
- Any PTA
- Any Alteration in Mental State at the Time of the Accident
- Focal Neurologic deficits, which may or may not be transient:”

MILD TBI (MTBI)

GCS > 13-15

LOC < 30 min

PTA < 1 hours

MODERATE TBI

GCS 9-12

LOC > 30 min - <24 hours

PTA 1 - 7 days

SEVERE TBI

GCS < 9

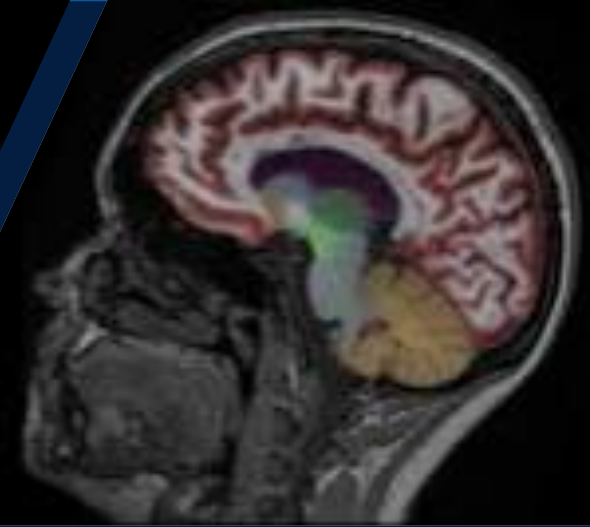
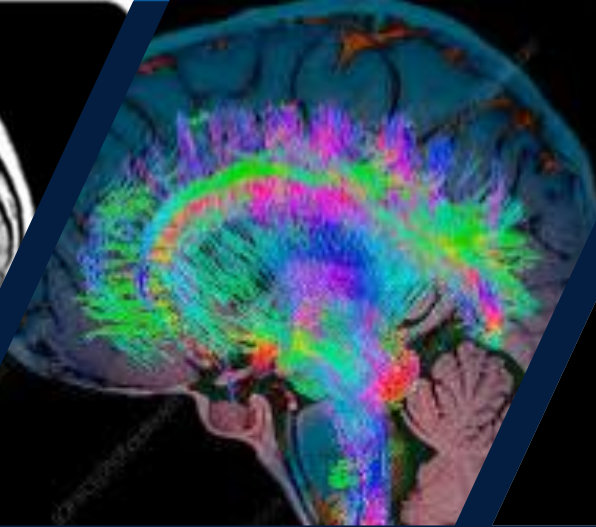
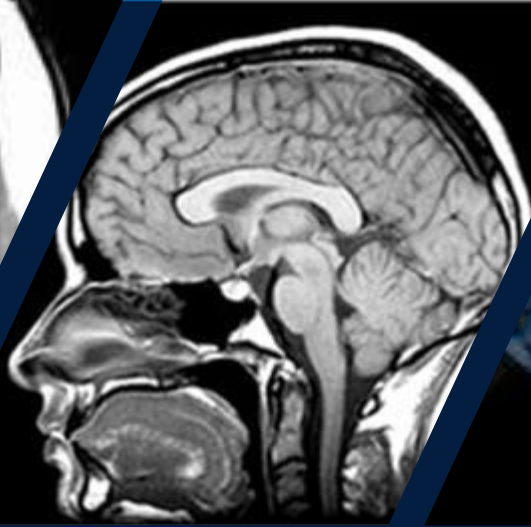
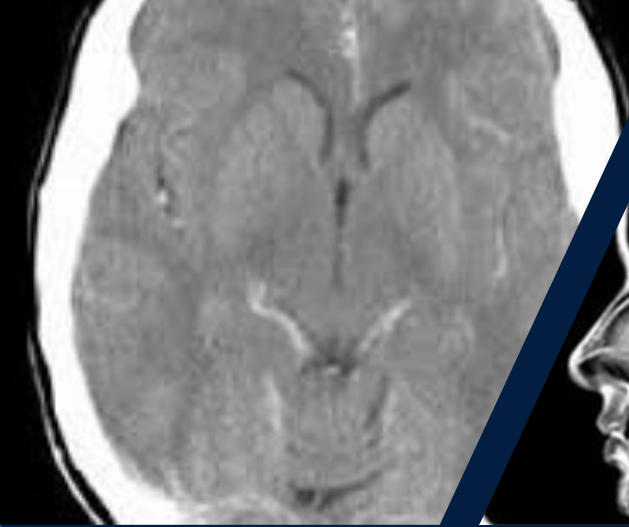
LOC > 24 hours

PTA > 7 days

mTBI AKA “Concussion” – “clinical syndrome characterized by immediate and transient alteration in brain function, including alteration of mental status and level of consciousness, resulting from mechanical force or trauma.”

- Diffuse Axonal Injury
- Primary v. Secondary Injury





- CT
- MRI
- DTI
- NeuroQuant

Imaging

EXPECTED OUTCOMES (MTBI)

What Have You Heard? Read? Been Told?

Fact: Overwhelming Majority Recover Rapidly – Days to Weeks

Fact: The Research Clearly Demonstrates Symptom Resolution at 90 Days

“But I Hear 5-10% Have Symptoms Long-Term?”

This is The Group of Concern

Many Healthcare Professionals Also Fall Into This Trap

“THE MISERABLE MINORITY”

The Research is Clear That This Group Exists

Providers Often Fail To Look At Underlying Causes

“Clinical” Evaluation Accepts Self-Report & Effort

The Research *Does Not* Support Long-term Cognitive Deficits Derived of mTBI***

This is What The Experts Will Debate

Does Your Expert Understand the Professional Literature?

“THE
MISERABLE
MINORITY...
WHAT ELSE
MAY BE
AILING
THEM?”

Litigation v. Non-Litigation

Recall 40% Base-Rate for Malingering Across Research

Secondary Gain Outside of Litigation

Co-morbid Conditions

Pre-existing Conditions

Somatization

Substance Use/Abuse

TO IME OR NOT TO IME?



Target-rich



Argue percentiles v. science



The science of mTBI does not support the claim of long-term deficits



If the other side has one it likely supports defense argument



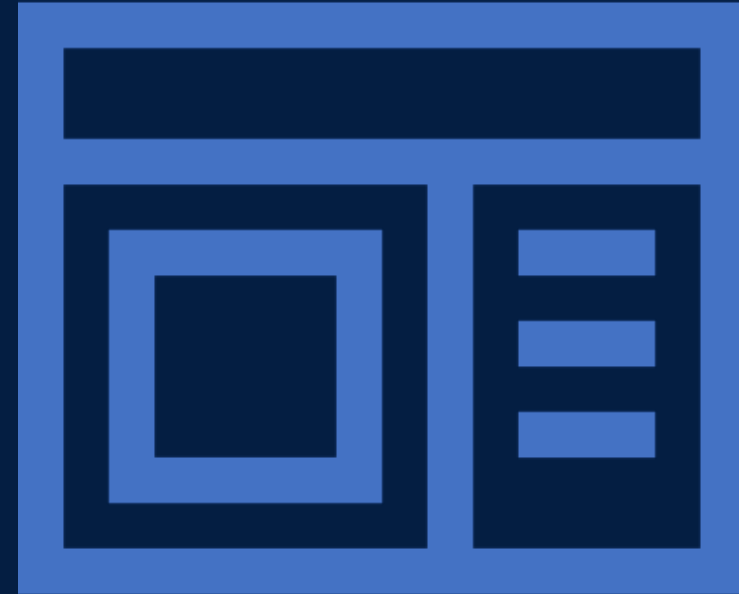
Cases are not won on IIMEs

Consultation
Assistance with cross of opposing experts
Ability to point out the weaknesses of testing
Ability to educate jurors re TBI and the outcomes

DIAGNOSTIC INTERVIEW (FORENSIC)

Diagnostic Interview (Forensic)

- Real Life Sample (Speech, Recall, Gait, Attention, Ability to Give History)
- Symptom Magnification is Often Obvious
- I Know What I Saw and Heard
- How Does it Compare to Records, Testing, Other Experts'



VALIDITY TESTING

Both Self-Report and Effort Controlled by Claimant

PVT & SVT Critical in Any Assessment

- AACN, NAN

Science of PVT/SVT > 70 years;

- Explosion of Data in the Past 20 years

Major Difference Between Groups Once Those Who Failed PVT/SVT Were Excluded

THE FORENSIC NEUROPSYCHOLOGICAL REPORT

Thorough Summary of the Available Records

Examination of Pre-existing and/or Co-morbid Conditions

Pre-injury Level of Functioning (they are claiming a delta...is there one?)

Examination of the Treatments Rendered, the Response and Timeline

Detailed Presentation of their Current Neurocognitive Abilities with Scores

THE FORENSIC NEUROPSYCHOLOGICAL REPORT

Explanation of Scores falling out of
“Expected” Range

Diagnosis (if there is one)

Bringing Together All of the Data

Final Opinion (should answer the
referral questions) ***

Descriptive Reports Serve Purpose

TESTIMONY –
WHERE THE
EXPERT
WITNESSES ARE
SEPARATED FROM
THE EXPERTS

Knowledge of Testimony
and Process

Training in Forensic
Practice

Stress of Drawn-out Cases
and Personal Attacks

Experience Giving
Testimony

PLAINTIFFS EXPECTATIONS AND SYMPTOMATOLOGY



- Placebo effect – positive response derived of an expectation
- Nocebo effect – negative response derived of an expectation
- Both responses are “true responses”
- Both result in actual physical and/or psychological change
- Demonstrated in numerous studies
- Female math study
- Caucasian and Asian test performance study

A WORD OR TWO ON PTSD

- I've seen major uptick in consultation requests
- Appears to be new mTBI
- 100% subjective (patient owns the sx)
- Difficult to “disprove”
- 90% of us will be exposed to a traumatic event
- Yet 8% lifetime prevalence (so 92% of exposed won't have it)
 - It is a very rare “exception” to the rule
- Many cases resolve with time
- Most resolve with treatment (average 16 sessions)



POP UP QUESTION

- The majority of patients suffering from a mild traumatic brain injury (concussion) see resolution of symptoms in:
 - A. 4-6 months
 - B. 1-2 years
 - C. Days to weeks
 - D. Most never fully recover

THANK YOU! IF YOU HAVE ANY QUESTIONS,
PLEASE CONTACT ONE OF THE PRESENTERS



Douglas Gibson,
Psy.D., M.P.H., ABPP
MedPsych Consulting, PLLC
Plantation, FL

E: DouglasGibson@MedPsychofVirginia.com
T: 954.727.8210

Warner Fox
Hawkins Parnell & Young
Atlanta, GA

E: wfox@hpylaw.com
T: 404.614.7486

Lance Eberhart
Hall & Evan, LLC
Denver, CO

E: eberhartl@hallevans.com
T: 303.628.3470

CLE & POST-WEBINAR SURVEY

- CLE:
 - ALFA INTERNATIONAL IS AN APPROVED PROVIDER OF CLE IN CALIFORNIA AND ILLINOIS. If you need credit in another state, you should consult with that state's CLE board for details on how to apply for approval. ALFAI provides a CLE package that answers questions you will likely be asked when applying and also gives direction as to what we believe is needed to apply in each state.
 - NEW SERVICE: Some state CLE boards require verification of participation in webinars. To satisfy that requirement, ALFAI will now prompt participants to answer questions and/or provide a verification code, as we did in this webinar. If this is required in your state:
 - Please note these items on the Certificate of Completion you will receive after the webinar.
 - Keep a copy of the certificate for auditing purposes.
 - If you encounter any difficulties in obtaining CLE credit in your state, please contact:
 - Makayla Digan
mdigan@alfainternational.com
- POST-WEBINAR SURVEY
 - You will be prompted to complete a Post-Webinar Survey after exiting this webinar. Your feedback will help ALFA International continue to provide quality programming to our members and clients.