SURVEY ARTICLES

Business Associations

by Thomas B. Hyman, Jr.*

This survey article discusses the more significant Georgia Supreme Court and Court of Appeals decisions from mid-1980 through mid-1981 concerning partnerships and corporations. It also considers legislation enacted by the 1981 Georgia General Assembly affecting partnerships and corporations.

I. PARTNERSHIPS

A. *Definition of Partnership*

Although there were no judicial developments with respect to the determination of what is or is not a partnership, there were several cases of interest. As a general background observation, the basic principles governing partnerships are codified in Georgia Code Ann. section 75-101 through section 75-112.[1]

The court of appeals' decision in *Gibson v. Talley*[2] contained an interesting analysis of the liability of an attorney for the alleged legal malpractice of his former partner in a personal injury lawsuit. While a partnership existed at the time the lawyers were retained to bring the personal injury action, the partnership was dissolved prior to the filing of the suit.

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1. GA. CODE ANN. §§ 75-101 to -112 (1981).
2. 156 Ga. App. 593, 275 S.E.2d 154 (1980).

As a result, one former partner was not involved in the preparation or trial of the case. The other former partner assumed sole responsibility for the handling of the personal injury action. Apparently, the only allegation of a joint undertaking after the dissolution of the partnership was a statement made by the lawyer handling the case that he was to share in the fee earned if the case was settled. Citing Georgia Code Ann. section 75-102 and established judicial precedent,[3] the court of appeals held that a common interest in profits alone does not establish a partnership as to third persons.[4] Georgia Code Ann. section 75-102 provides that "[a] joint interest in the partnership property, or joint interest in the profits and losses of the business, shall constitute a partnership as to third persons. A common interest in profits alone shall not."[5] As stated above, the only allegation of any joint undertaking, in this instance, was a sharing of a fee for legal services.

The court of appeals' decision in *Pope v. Triangle Chemical Co.*[6] examined the concept of an "ostensible partner." In contrast to *Gibson*, which considered the question of whether a partnership existed, the concept of "ostensible partner" involves a determination of whether a person will be treated as a partner with respect to third persons, even though he has no interest in the firm. The suit arose following a dispute over supplies advanced to Mr. Mathis on open account. Mr. Pope explained to the supplier's president that Mr. Mathis was correct when he stated that he had some new partners. Mr. Pope further added that "he was backing Mr. Mathis." There was also evidence that similar statements had been made to other personnel of the supplier. The court of appeals found Mr. Pope liable to the extent of supplies advanced as a result of his statements made to the supplier's president. Citing Georgia Code Ann. section 75-104 and established judicial precedent,[7] the court concluded that one who holds himself out as a partner will be bound by those who rely on this representation, even though the "ostensible partner" has no actual partnership interest.

The court of appeals handed down two other interesting decisions during the survey period that relate to the definiton of partnership. In *Third World, Ltd. No. II v. Brewmasters of Augusta, Inc.*,[8] the court reached the relatively straightforward conclusion that the execution of an agreement by only one general partner was valid and binding if ratified and

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3. GA. CODE ANN. § 75-102 (1981); Moore v. Harrison, 202 Ga. 814, 44 S.E.2d 551 (1947).
4. 156 Ga. App. at 594, 275 S.E.2d at 156.
5. GA. CODE ANN. § 75-102 (1981).
6. 157 Ga. App. 386, ___ S.E.2d ___ (1981).
7. GA. CODE ANN. § 75-104 (1981); Sankey & Shorter v. Columbus Iron Works, 44 Ga. 228 (1871).
8. 155 Ga. App. 352, 270 S.E.2d 891 (1980).

affirmed by the partnership that sought to enforce it. This case is mentioned not because it reflects any particular development in the law, but because it contains good citations of authorities. Although it also does not reflect any new law, a good discussion of the status of a joint venture as a partnership under Georgia law is set forth in the court of appeals' decision in *Boatman v. George Hyman Construction Co.*[9]

B. Amendment of Limited Partnership Agreements

The supreme court's decision in *Consortium Management Co. v. Mutual America Corp.*[10] focused on the procedures in Georgia Code Ann. section 75-426(3)[11] for effecting an amendment to a limited partnership certificate approved by the requisite partnership interests but not executed by all the partners. The necessity of personal service on all the partners in these circumstances was given particular attention. The court stated that the personal service issue was one of first impression.

Under the facts of the case, the holder of eighty percent of the partnership interests exercised his rights under the terms of the partnership agreement to remove the general partners by a vote of seventy-five percent of the partnership interests. As a result of the failure or refusal of the remaining partners to execute the amendment effecting the change in the general partners, an action was brought pursuant to Georgia Code Ann. section 75-426(3).[12] This section provides that in the event a person whose signature is required refuses to sign the amending certificate, the party desiring the amendment may petition the superior court of the county in which the partnership's principal place of business is located to direct the amendment. In addition, subsection (4) provides that if the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, the court shall order the clerk to record the amendment of the certificate and a certified copy of its decree.[13] The supreme court affirmed the trial court's order that the amendment to the partnership's certificate be recorded.

In *Consortium Management,* service was never effected on the general partner who was being removed, despite considerable efforts to do so. The supreme court held that because the trial court was carrying out a purely ministerial function, however, no personal service on the general partner was required.[14] Interestingly, the court based its decision, in part, on a

9. 157 Ga. App. 120, 276 S.E.2d 272 (1981).
10. 246 Ga. 346, 271 S.E.2d 488 (1980).
11. GA. CODE ANN. § 75-426(3) (1981).
12. *Id.*
13. GA. CODE ANN. § 75-426(4) (1981).
14. 246 Ga. at 348, 271 S.E.2d at 490.

now repealed provision of the Georgia Business Corporation Code.[15]

C. *Partner Liability*

There were two cases of interest during the survey period that consi ered partner liability in the context of an acknowledged partnership. A though the cases discussed above under the subheading "Definition of Partnership" also involved partner liability, they dealt primarily with tl existence and operation of a partnership.

The court of appeals, in *Stephens v. Clark*,[16] applied Georgia Coc Ann. section 75-206[17] in holding that if a partnership agreement does n specify the treatment of losses, they shall be shared equally. The partic lar partnership agreement in question provided for an equal sharing profits, but did not deal with losses. It is unclear from the *Stephens* opi ion how the court would have decided the case had the partnership agre ment not provided for an equal sharing of profits.

Of particular interest is the supreme court's decision in *Leventhal Green*,[18] which was followed and implemented by the court of appeals i *Westwood Place, Ltd. v. Green*.[19] These decisions reversed the finding liability by the court of appeals in *Westwood Place, Ltd. v. Green*, which was reported in last year's survey article.[21]

Under the facts of *Leventhal*, the trustees of an employee benefit tru sued to collect on two promissory notes made by a limited partnership i favor of the trust. The dispute centered around the liability of M Leventhal, who became a limited partner after the two notes at issue ha been executed. While the facts were not entirely clear, the Georgia Su preme Court noted that all parties agreed that the two notes had bee executed prior to the date on which Mr. Leventhal became a limited par ner.[22] After the suit was initiated, Mr. Leventhal became the gener partner.

The court of appeals originally held that Mr. Leventhal was not liabl as a general partner.[23] Georgia Code Ann. section 75-205 provides that a incoming partner is not bound for the existing debts of the partnership i the absence of an express agreement supported by sufficient consideratio

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15. GA. CODE ANN. § 22-1818 (Supp. 1965) (repealed 1968); *See* 1968 Ga. Laws 565.
16. 154 Ga. App. 306, 268 S.E.2d 361 (1980).
17. GA. CODE ANN. § 75-206 (1981).
18. 246 Ga. 287, 271 S.E.2d 194 (1980).
19. 156 Ga. App. 512, 274 S.E.2d 849 (1980).
20. 153 Ga. App. 595, 266 S.E.2d 242 (1980).
21. Bryant, *Business Associations, Annual Survey of Georgia Law, 1979-1980*, 32 MER CER L. REV. 1, 2 (1980).
22. 246 Ga. at 289, 271 S.E.2d at 196.
23. 153 Ga. App. at 597, 266 S.E.2d at 244.

to assume such debts.[24] The court of appeals found that no such obligation arose from the agreement that made Mr. Leventhal the general partner. The court did hold, however, that in connection with his becoming a limited partner, Mr. Leventhal had agreed to assume that portion of the preexisting debt that corresponded to his percentage interest in the partnership. Thus, the court reached the anomalous conclusion of finding liability as a result of a limited partnership interest and not as a result of a general partnership interest.

The supreme court reversed the court of appeals' decision on two grounds.[25] First, the supreme court reexamined the provision of the partnership agreement on which the court of appeals had based its decision. This provision stated:

> *Capital Contributions:* Each Partner shall contribute to the capital of the Partnership the cash amount set opposite his name on Schedule "B", attached hereto and incorporated herein by reference. In addition to the above stated capital contributions, each current and future Limited Partner agrees that he shall assume the liability for his proportionate share (being his respective Profit and Loss Percentage provided in Paragraph 9) of any mortgage or other like financing on the partnership Property assumed by the partnership or similar indebtedness *that may at any time or times in the future* be placed on the partnership Property. . . .[26]

The court held that this language resulted only in the assumption by Mr. Leventhal of a proportionate share of *future* indebtedness.[27] Since the debt in question existed prior to the time Mr. Leventhal became a limited partner, the court concluded that he was not liable for the debt under the partnership agreement.

Second, the supreme court held that it would have reached the same result even if paragraph eight had been ambiguous. Specifically, the court noted that, assuming a limited partnership might be bound by the partnership agreement to creditors of the firm, Georgia Code Ann. section 75-205 applies equally to limited partners in order to prevent an incoming limited partner from being bound for the old debts of a partnership in the absence of an express agreement to assume the indebtedness.[28] The supreme court found it unnecessary to consider whether a limited partner is directly liable to a creditor of a partnership by reason of his liability to the partnership for any unpaid capital contributions.

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24. GA. CODE ANN. § 75-205 (1981).
25. 246 Ga. 287, 271 S.E.2d 194 (1980).
26. 246 Ga. at 288, 271 S.E.2d at 195 (emphasis supplied by the court).
27. *Id.*, 271 S.E.2d at 196.
28. *Id.*

II. CORPORATIONS

A. *Informal Conduct of Corporate Affairs*

The supreme court's decision in *Elwell v. Nesmith*[29] focused on the va lidity of actions taken by corporate directors pursuant to a long-standin course of informal and oral business transactions. Although the cou acknowledged that such a manner of conducting corporate affairs migh constitute valid corporate authorization,[30] it held that a factual disput existed and therefore the trial court, as the trier of facts, was justified i finding that the salary payments in question were unauthorized.[31]

B. *Appropriation of Business Opportunities*

The supreme court's decision in *Southeast Consultants, Inc. v. Mc Crary Engineering Corp.*[32] was perhaps the most significant business as sociation case decided during the survey period. It represents the firs time the Georgia Supreme Court has considered a corporate officer's dut under Georgia Code Ann. section 22-714[33] not to appropriate a "busines opportunity" of a corporation.

Georgia Code Ann. section 22-714, added in the 1968 comprehensiv restatement of the Georgia Corporation Code, is described in the unoffi cial comments to section 22-714 as a guideline to determine when action may be brought against directors and officers for wrongs suffered by corporation. The statutory language considered by the court is as follows

> (a) An action may be brought . . . against one or more directors or officers of a corporation to procure for the benefit of the corporation a judgment for the following relief:
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> (1) to compel the defendant to account for his official conduct, or to decree any other relief called for by his official conduct, in the following cases:
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> . . . .(C) The appropriation, in violation of his duties, of any business opportunity of the corporation.[34]

As the supreme court noted, this section is based upon New York law and

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29. 246 Ga. 430, 271 S.E.2d 827 (1980).

30. For this proposition, the court cited: Bloodworth v. Bloodworth, 225 Ga. 379, 16 S.E.2d 150 (1969); GA. CODE ANN. § 22-710 (1977); and J. KAPLAN, KAPLAN'S NADLER GEORGIA CORPORATION LAW § 10-10, at 352 (1979 ed.).

31. 246 Ga. at 432, 271 S.E.2d at 828.

32. 246 Ga. 503, 273 S.E.2d 112 (1980).

33. GA. CODE ANN. § 22-714 (1977).

34. GA. CODE ANN. § 22-714(a)(1)(C) (1977).

has no counterpart in the Model Corporation Act.[35]

In *Southeast Consultants,* the president of McCrary Engineering Corporation formed Southeast Consultants, Inc. during his employment with McCrary Engineering and without the knowledge of McCrary Engineering's directors. The president of McCrary Engineering was the principal stockholder and president of Southeast Consultants. Without the knowledge of McCrary Engineering's directors, Southeast Consultants used McCrary Engineering's Atlanta office as its own and used McCrary Engineering's equipment, supplies, and personnel in its operations. Approximately three years after the formation of Southeast Consultants, and after the president had unsuccessfully attempted to purchase McCrary Engineering, the president and several other employees terminated their relationship with McCrary Engineering and began to work fulltime with Southeast Consultants. It was alleged that Southeast Consultants had been competing with McCrary Engineering, soliciting its clients, and usurping its business opportunities. McCrary Engineering had no written contract with its president or any other employee, and consequently there were no covenants not to compete.

The supreme court dealt initially with the nonofficer employees and held that Georgia Code Ann. section 22-714 was inapplicable to them.[36] Citing established Georgia precedent,[37] the court held that in the absence of a valid covenant not to compete, a mere employee is generally free to engage in competition with his former employer and to solicit the employer's customers. It reasoned that whereas trade secrets are the property of the employer and cannot be taken or used by the employee for his own benefit, customers are not trade secrets subject to such prohibition.

The court held, on the other hand, that the conduct of the former president was clearly subject to the provisions of Georgia Code Ann. section 22-714. Analyzing a 1974 Minnesota case,[38] and noting that Georgia Code Ann. section 22-714(a)(1)(C) refers to an appropriation of "business opportunities," the court adopted a two-prong standard for determining whether an officer has violated section 22-714. First, a court must determine whether the appropriated business opportunity was one that rightfully belonged to the corporation. If the business opportunity was appropriated by a *former* officer of the complaining corporation, the initial determination is made by inquiring into whether the corporation had an "interest or expectancy" in acquiring the business opportunity.[39] Second,

35. 246 Ga. at 503, 273 S.E.2d at 114.

36. *Id.* at 506, 273 S.E.2d at 116.

37. Taylor Freezer Sales Co. v. Sweden Freezer E. Corp., 224 Ga. 160, 160 S.E.2d 356 (1968).

38. Miller v. Miller, 301 Minn. 207, 222 N.W.2d 71 (1974).

39. 246 Ga. at 509, 273 S.E.2d at 117. To the contrary, if the business opportunity were

a court must determine whether the appropriation of the business oppo tunity was in violation of a fiduciary duty of loyalty, good faith, and fa dealing toward the corporation.[40]

Applying this test to the facts at hand, the supreme court held tha both prongs had been satisfied in the instant case.[41] First, McCrary Eng neering had an "interest or expectancy" in the engineering contract i question since it had completed a preliminary study and had submitted bid for the project. According to the court, the fact that the contract wa ultimately awarded to a third party was immaterial. Second, the forme president was found to have violated his fiduciary duties of loyalty, goo faith, and fair dealing by creating and operating a competing corporatio while still employed by McCrary Engineering. The court also found th following facts: (1) that Southeast Consultants had been operated at th expense of McCrary Engineering; (2) that McCrary Engineering had n actual knowledge that Southeast Consultants was developed within Mc Crary; and (3) that the former president had hired several McCrary Eng neering employees to work for Southeast Consultants.

From the opinion in *Southeast Consultants*, it is unclear whether a the above-mentioned factors were necessary to the finding of a breach c fiduciary duties. Presumably, the question of when fiduciary duties ar breached will be resolved on the facts presented in each case.

C. Liquidation of Corporation—Illegal or Fraudulent Acts and Waste or Misapplied Corporate Assets

Georgia Code Ann. section 22-1317[42] authorizes a superior court to liq uidate the assets and business of a corporation in certain specified cir cumstances. The supreme court's decision in *L. L. Minor Co. v. Perkins*[43] stemmed from an action brought for liquidation of L. L. Minor Co., Inc pursuant to Georgia Code Ann. subsections 22-1317(a)(1)(B) and (D) The first of those subsections provides that liquidation is appropriat when it is established that "the acts of the directors or those in control c

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appropriated by a *current* officer of the complaining corporation, the initial determinatio in the two-prong test would be made under an expanded "line of business" test. This tes inquires into whether the appropriated business opportunity was an opportunity within th "line of business" of the complaining corporation *and* whether the complaining corporatio had an "interest or expectancy" in obtaining the business opportunity. 246 Ga. at 508, 27 S.E.2d at 117.

40. *Id.* at 508, 273 S.E.2d at 117.

41. *Id.* at 509, 273 S.E.2d at 118.

42. GA. CODE ANN. § 22-1317 (1977).

43. 246 Ga. 6, 268 S.E.2d 637 (1980).

the corporation are illegal or fraudulent,"[44] while the second subsection provides that liquidation is appropriate when "the corporate assets are being misapplied or wasted."[45]

A dispute arose following the death of the former president, founder, and majority shareholder of the Minor corporation. The individual elected thereafter as the president, who was also the executor of the deceased president's estate, had allegedly committed fraudulent acts and misapplied corporate assets on several occasions. The alleged improprieties were in connection with the payment to him of an annual salary of twenty-five thousand dollars and the corporation's payment of one-half of the salary of an individual who worked for both the corporation and the decedent's estate.[46] The supreme court described the proposed liquidation as "drastic equitable relief" and indicated a reluctance to resolve disputes by liquidation of the corporation when relief could be obtained through the probate court.[47]

With respect to the president's salary, which was the same amount that had been paid to the former president, the court considered the applicability of Georgia Code Ann. section 113-2012,[48] which authorizes an executor to receive compensation from a business in which the estate has an interest. The court concluded that any issues raised by the application of this section were technical questions that could only be resolved in probate court. The same conclusion was reached by the court on the conflict-of-interest issues raised concerning the president's dual role as executor of the estate and executive officer of the corporation.

The supreme court also held that the salary of an individual who provided certain services to the corporation as well as services to the estate should not be judged on the basis of the relative size of the corporation and the estate. Rather, the appropriate criterion for determining whether the payment of a certain salary is a waste of corporate assets is whether the employee performed services for the corporation commensurate with the salary paid. Since there was no indication that the salary paid by the corporation was not commensurate with the services rendered, the court held that no basis existed for the liquidation of the corporation.

This case also presented an interesting question pertaining to the validity of an option to purchase stock granted by the corporation to an individual, when the option is inconsistent with the corporation's articles of incorporation. The supreme court did not resolve this question, but deferred to the probate court as the appropriate forum. The court did sug-

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44. GA. CODE ANN. § 22-1317(a)(1)(B) (1977).
45. GA. CODE ANN. § 22-1317(a)(1)(D) (1977).
46. 246 Ga. at 6, 268 S.E.2d at 639.
47. *Id.* at 9, 268 S.E.2d at 641.
48. GA. CODE ANN. § 113-2012 (1975).

gest in a footnote, however, that voting for the resolution that authorize the option might constitute a waiver of rights under the articles c incorporation.[49]

D. Shareholders Derivative Suits

The court of appeals decision in *Grizzard v. Petkas*[50] resulted in rather straightforward interpretation of the fees provisions of Georgi Code Ann. section 22-615(e) with respect to awarding defendant's ex penses and attorneys' fees in derivative suits. That section provides a follows:

> (e) In any such [derivative] action hereafter instituted, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.[51]

The court of appeals held that since the trial court made a finding tha the suit was brought upon reasonable cause, it was not improper to den defendant's request for expenses and attorneys' fees.[52]

E. Service of Process on Corporations

In *American Consolidated Service Corp. v. Nationwide Mutual Insur ance Co.*,[53] the court of appeals considered the relationship of Georgi Code Ann. section 22-403(b),[54] which provides that service of process ma be made on the Secretary of State if a corporation fails to appoint a regis tered agent or the registered agent cannot be found with reasonable dili gence at the registered office, to the provisions of the Georgia Civil Prac tice Act (Georgia Code Ann. Title 81A), specifically Georgia Code Ann section 81A-112(a).[55] Georgia Code Ann. section 22-403(b) provides, i part, that "[a]ny service so had on the Secretary of State shall be answer eable in not less than 30 days."[56] The court of appeals interpreted thi language to require answering within thirty days of service on the Secre tary of State. Although the statute could be read to permit answerin after the thirty day period, the court held that this construction would b

49. 246 Ga. at 13 n.15, 268 S.E.2d at 643 n.15.
50. 155 Ga. App. 741, 272 S.E.2d 583 (1980).
51. GA. CODE ANN. § 22-615(e) (1977).
52. 155 Ga. App. at 741, 272 S.E.2d at 584.
53. 156 Ga. App. 193, 273 S.E.2d 898 (1980).
54. GA. CODE ANN. § 22-403(b) (1977).
55. GA. CODE ANN. § 81A-112(a) (1977).
56. GA. CODE ANN. § 22-403(b) (1977).

illogical. This is so because a corporate defendant that had failed to appoint a registered agent would have more time to answer after service than a corporate defendant that had appointed a registered agent.[57] Of particular interest are the two concurring opinions, which underscore the ambiguities of Georgia Code Ann. section 22-403(b).[58] A legislative resolution would help clarify this section.

F. Qualification to Do Business

The decision of the court of appeals in *Briarcliff Communications Group, Inc. v. Associated Press*[59] represents a comprehensive analysis of principles to be applied in determining whether or not a business is of an interstate nature and, thus, exempt from the foreign corporation registration requirements of Georgia Code Ann. section 22-1401[60] by virtue of the supremacy clause of the United States Constitution. The court stated that a foreign corporation is not required to qualify in Georgia if its local activities are merely ancillary to its interstate activities. Because of a substantial intrastate news gathering service operated in Georgia by Associated Press, the court of appeals held that Associated Press was not entitled to a partial summary judgment on this issue.

Perhaps of more interest, at least to attorneys, is the court of appeals' decision in *Reisman v. Martori, Meyer, Hendricks & Victor*.[61] This case concerned a dispute over fees for legal services provided by an Arizona professional association to a Georgia resident. The Arizona professional corporation associated Georgia counsel. Although the case contained a number of issues, the one relevant to this article was whether the Arizona professional association should have been prohibited from bringing its suit in a Georgia court because of its failure to register as a foreign corporation in accordance with Georgia Code Ann. section 22-1421(b).[62] The court stated that the decision in *Winston Corp. v. Park Electric Co.*[63] made it clear that the purpose of Georgia Code Ann. section 22-1401 is to require registration of foreign corporations that intend to conduct busi-

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57. 156 Ga. App. at 196, 273 S.E.2d at 901. *See* GA. CODE ANN. § 81A-112(a) (1977) (defendant allowed only thirty days in which to answer complaint).

58. 156 Ga. App. at 196-99, 273 S.E.2d at 901-03 (Shulman, J. and Carley, J., concurring, in separate opinions).

59. 154 Ga. App. 369, 268 S.E.2d 356 (1980).

60. GA. CODE ANN. § 22-1401 (1977).

61. 155 Ga. App. 551, 271 S.E.2d 685 (1980).

62. GA. CODE ANN. § 22-1421(b) (1977) states: "No foreign corporation that under this Code is required to obtain a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this State unless before commencement of the action it shall have obtained such a certificate."

63. 126 Ga. App. 489, 191 S.E.2d 340 (1971).

ness in Georgia on a continuous rather than temporary basis. The court analyzed the activities of the Arizona professional association in Georgia and concluded that the Arizona professional corporation's representation of the Georgia resident in the case in question amounted to an isolated transaction.[64] Interestingly, the court noted that the Arizona professional corporation had handled litigation or transacted business out of Arizona before and that the particular lawyer with that firm involved in the instant case had represented clients in Georgia on two prior occasions. The court of appeals did not appear to attach any significance to the retaining of local counsel.

III. LEGISLATION

While there was substantial legislative activity concerning corporations during the 1981 Georgia Legislature, only a few bills affecting corporations were enacted and signed into law. The Georgia Professional Corporation Act[65] was amended, effective April 9, 1981, to add registered professional nursing and harbor piloting to the professions covered.[66] The Professional Corporation Act remained unchanged otherwise.

Georgia Code Ann. section 22-3120,[67] by incorporation of Georgia Code Ann. section 22-1326,[68] provides a procedure for revival of a nonprofit corporation's corporate existence. The revival procedure may be used only if specified actions are taken during the ten year period following the expiration of the period of duration fixed in the corporation's articles of incorporation. Georgia Code chapter 22-31 concerning dissolution of nonprofit corporations was amended, effective April 13, 1981, to permit revival of corporate existence more than ten years after its corporate existence expired pursuant to a provision in its articles of incorporation.[69] New Georgia Code Ann. section 22-3121(a) provides that revival is contingent upon satisfying the Secretary of State:

> (1) that the corporation has continued in operation, in ignorance of the expiration of its period of duration, at all times since the expiration date fixed by its articles of incorporation;
> (2) that the corporation has not been insolvent, as defined in section 22-2102(h), since such expiration date, and;
> (3) that the reviver will not injure the corporation's creditors, the public,

64. 155 Ga. App. at 553, 271 S.E.2d at 688.
65. GA. CODE ANN. ch. 84-54 (1979).
66. GA. CODE ANN. § 84-5402(a) (Supp. 1981).
67. GA. CODE ANN. § 22-3120 (1977).
68. GA. CODE ANN. § 22-1326 (1977).
69. GA. CODE ANN. § 22-3121 (Supp. 1981).

or the corporation's members.[70]

This new section also sets forth the procedure for such revival. A similar amendment was made with respect to business corporations during the 1980 legislative session.[71]

Georgia Code Ann. section 22-9901[72] was amended to change the penalties for violations of Georgia Code Ann. section 22-5105,[73] which prohibits corporations from making contributions in order to influence official actions.[74] The amended section makes it clear that a violation shall be a felony, punishable by either a fine equal to the greater of ten times the amount of the contribution or one thousand dollars, or by imprisonment for one to four years, or both.

70. GA. CODE ANN. § 22-3121(a) (Supp. 1981).
71. 1980 Ga. Laws 1188.
72. GA. CODE ANN. § 22-9901 (1977).
73. GA. CODE ANN. § 22-5105 (1977).
74. GA. CODE ANN. § 22-9901 (Supp. 1981).