**Last Clear Chance Doctrine**

The last clear chance doctrine is an affirmative defense usually asserted by a defendant to attempt to defeat a negligence claim. This defense essentially provides that the plaintiff had the last opportunity to prevent the harm that occurred and therefore recovery should be barred or reduced. For instance, suppose a plaintiff was driving his car and the defendant ran a red light into his path. Suppose that the plaintiff avoided defendant’s vehicle but veered off the roadway into a tree. Further assume that there was a driveway that the plaintiff could have veered onto and avoided the tree altogether but did not. In this factual scenario, the defendant might claim that the plaintiff had the “last clear chance” to avoid the accident by veering onto the driveway, and because he did not, then he should not recover against defendant.

The state of Georgia has incorporated the last clear chance doctrine in the Official Code of Georgia Annotated in Title 51, Chapter 11, Section 7, which provides: "If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendants' negligence, he is not himself entitled to recover. In other cases, the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained." O.C.G.A. § 51-11-7. There are two required elements of the last clear chance doctrine in Georgia: “(1) party 1, by his own negligence, must have put himself in a position of peril from which he could not extricate himself… and (2) party 2, must have knowledge and appreciation of the injured person’s peril in time to avoid the injury.” Stallings v. Cuttino, 422 S.E.2d 921 (Ga. App. 1992). In Stallings, the Georgia Court of Appeals clarified that under this second element, it must be established that the party with the last chance to avoid the injury had the knowledge and appreciation; not that the party with the last clear chance “should know” or “should have known”. Stallings, 422 S.E.2d 54.

When a plaintiff raises “last clear chance” as an affirmative defense, the plaintiff is claiming the defendant had the last opportunity to avoid the harm or injuries plaintiff suffered. This is usually raised by the plaintiff when a defendant has already raised a contributory negligence defense, claiming the plaintiff failed to use the relevant degree of care for his or her own safety and therefore the plaintiff should be completely barred from recovery. If the plaintiff’s last clear chance claim is successful, the plaintiff’s own negligence may not be included for consideration. For example, in Stallings, a vehicle accident occurred in an intersection when the driver of a tractor trailer applied the brakes, but did not stop, for the red light in his direction and the driver of a van coming from the opposite side began to drive when the light in her direction turned green. The Georgia Court of Appeals held a jury could conclude the tractor trailer driver had the last opportunity to avoid the collision by braking and stopping at the red light and therefore the last clear chance doctrine could be raised by the plaintiff, the driver of the van.

A defendant can also use the last clear chance doctrine in a tort claim for negligence against the plaintiff. Here the defendant is not claiming the plaintiff was contributory negligent,
but that the plaintiff had the last opportunity to avoid the harm sustained. If the defendant can successfully establish the plaintiff had the last clear chance to avoid injury to himself, the plaintiff, the defendant will not be held liable and the plaintiff will be barred from recovering.