Product Liability Update

April 2025

Georgia Tort Reform: Major Litigation Shifts with the Implementation of SB68

Key Notes:

- Prohibition on Damages "Anchoring"
- No Need to File Answer with Motion to Dismiss
- Out-Of-Pocket Medical Costs Admissible
- Bifurcation as a Right in Personal Injury Cases
- Voluntary Dismissal Period Shortened
- Negligent Security Claim Codified—Common Law Claims Abolished

Introduction

After months of debate and heavy lobbying, Georgia's Tort Reform Bill, SB68, passed both chambers of the Georgia Legislature on March 21, 2025. Governor Kemp signed the bill into law on April 22, 2025.

The new law significantly changes practices and procedures, impacting damages "anchoring," motions to dismiss, voluntary dismissals, the tort of negligent security and more. Most changes apply immediately to pending cases.

Below is a breakdown of the key provisions and their impact on litigation in Georgia.

Prohibition on Anchoring the Value of Pain and Suffering

Previously, O.C.G.A. § 9-10-84 allowed plaintiffs "to argue the worth or monetary value of pain and suffering to the jury" at any time during a trial, if it "conform[s] to the evidence or reasonable deductions from the evidence in the case."

The new law limits plaintiffs' ability to "anchor" noneconomic damages (such as physical pain, emotional distress, discomfort, anxiety, and loss of companionship). Plaintiffs may now only argue the value of noneconomic damages **after the close of evidence**, and arguments must be "rationally related to the evidence of noneconomic damages." However, the statute does not provide any guidance on what is considered "rationally related" to the evidence.

Additionally, in closing arguments where the plaintiff's counsel reserves time for rebuttal, counsel may not make their non-economic damage argument for the first time in their rebuttal. The new law only permits counsel to argue noneconomic damages and their value in rebuttal if the same value was first raised in counsel's initial closing statement. This prevents the plaintiff's counsel from lying in wait and introducing noneconomic damage values when the defense counsel would have no opportunity to respond. Counsel may still ask prospective jurors during voir dire whether they could return a verdict awarding either zero damages or an unspecified amount, if supported by the evidence.

Should the plaintiff's counsel elicit testimony or make arguments about the value of non-economic damages that violate these requirements, it could trigger a curative instruction and possible mistrial under O.C.G.A. § 9-10-185.

Answer Deadline Delayed While a Rule 12 Motion is Pending

The new law makes changes that bring Georgia's pleading procedures more in line with the Federal Rules of Civil Procedure. The law changes O.C.G.A. § 9-11-12(a) so that an answer is no longer due while a motion to dismiss or motion for a more definitive statement is pending. Under prior law, a defendant was required to file an answer irrespective of whether they filed a motion under O.C.G.A. § 9-11-12(b). An answer is now due 15 days after the court denies a motion to dismiss or postpones its ruling until trial, reducing the initial pleading burden on defendants.

The start of discovery is also expressly stayed until an answer is filed following disposition of the Rule 12 motion, although a party may move to commence discovery if the court has not ruled on the motion within 90 days. There are also limited exceptions already codified in O.C.G.A. § 9-11-12(j)(4) where parties may engage in early discovery during the pendency of a Rule 12 motion; the new law adds jurisdictional discovery to that list of exceptions. But for all other topics of discovery not expressly listed in O.C.G.A. § 9-11-12(j)(4), defendants can avoid having to undergo discovery while the court considers a pending motion to dismiss.

Voluntary Dismissals Period Shortened

The time to file a voluntary dismissal under O.C.G.A. § 9-11-41 is shortened from the prior rule of "any time before the first witness is sworn" to the new standard of 60 days after the defendant files an answer. This change prevents plaintiffs from strategically dismissing a lawsuit deep into the litigation and taking advantage of the renewal statute. Note that this change does not affect the parties' ability to voluntarily dismiss a case by stipulation at any time, meaning dismissals due to settlement and agreement can happen at any time.

Prior versions of the statute have long established that a plaintiff's first voluntary dismissal is without prejudice, but a second voluntary dismissal would be with prejudice. In other words, the rule in Georgia has long been that a plaintiff can only refile a voluntarily dismissed case once. Courts had previously wrestled with whether this rule applied to cases voluntarily dismissed in federal court and later refiled in state court. The new law removes that ambiguity, confirming that the rule applies regardless of whether the initial voluntary dismissal occurred in state or federal court.

Bar on Double Recovery of Attorneys' Fees

The new law adds a new code section, O.C.G.A. § 9-15-16, which bars double recovery of attorneys' fees and other costs and expenses of litigation. In other words, the prevailing party cannot seek fees under multiple fee-shifting statutes to recover more than the actual fees or costs. It is unclear if that was a viable strategy before the Tort Reform Act, but it is now expressly prohibited.

An exception exists if the statutes giving rise to the fee award explicitly permit double recovery. We are not aware of any Georgia fee-shifting statutes that permit double recovery. *See, e.g.,* O.C.G.A. § 9-15-14 (allowing fees for frivolous claims but limiting awards to "amounts which are reasonable and necessary" for the litigation); O.C.G.A. § 9-11-68 (allowing for recovery of fees following the rejection of the offer of settlement, but only for costs actually "incurred"); *see also* O.C.G.A. §§ 13-6-11, 13-11-8 (making no mention of allowing double recovery).

The new code section also prohibits using a contingent fee arrangement as evidence of the reasonableness of any fees.

Evidence of Seatbelt Use Admissible

O.C.G.A. § 40-8-76.1 had previously barred consideration of seatbelt use in cases involving a motor vehicle collision. The new law reverses that rule, stating that seat belt use can be considered "on the issues of negligence, comparative negligence, causation, assumption of risk, or apportionment of fault or for any other purpose and may be evidence used to diminish any recovery for damages arising out of the ownership, maintenance, occupancy, or operation of a motor vehicle." This change benefits defendants in car crash cases, who can now use the plaintiff's lack of seat belt use to deflect or defeat claims for personal injury.

The statute retains the protection that bars any insurer from canceling insurance or increasing rates based on an occupant's lack of seat belt use.

Claim for Negligent Security Codified

A series of new code sections, O.C.G.A. § 51-3-50 through § 51-3-57, codify the claim of negligent security against a landowner or security contractor when the plaintiff is harmed by third parties. Previously, plaintiffs had brought such claims under ordinary negligence or premises liability theories. These new code sections expressly supersede any similar existing common law claims.

Under the new statutes, a claim of negligent security requires proof that the landowner or security contractor either 1) had a particularized warning of imminent harm, or 2) reasonably should have known third parties were likely to cause harm based on prior occurrences of similar harmful conduct. The plaintiff must also prove that the sustained injury was reasonably foreseeable, and that the defendant failed to exercise ordinary care to remedy or mitigate the risk. These new requirements are seen as limiting the types of claims that were previously allowed in common law, as showing actual knowledge of imminent harm or that similar harm had previously occurred are difficult evidentiary hurdles.

Statutory defenses to the claim include that the plaintiff was trespassing, that the injury occurred off the premises, that the defendant could not exclude the third-party wrongdoer, that the defendant had already commenced eviction proceedings against the third-party wrongdoer, that the plaintiff came upon the premises to commit a felony, or that the defendant called 9-1-1 or otherwise tried to prevent the harm. Additionally, the claim is not available for injuries sustained at a single-family home.

Damages will be apportioned among the defendant, the third-party wrongdoer, and any other potentially at-fault parties.

Medical Damages Limitation

A new code section, O.C.G.A. § 51-12-1.1 lays out the exclusive rules for recovery of medical special damages in injury cases.

Medical damages are limited to the reasonable value of medically necessary care as determined by the jury. The new law, however, permits the introduction of the amount paid into evidence for a jury to consider. In other words, if the care provided by a medical professional is charged at one amount but is later reduced for payment by an insurer or in compromise, the trier of fact can consider both the full value of the care and the actual cost in determining special damages. Previously, the introduction of compromised costs, whether by the requirement of an insurer or otherwise, was prohibited by the collateral source rule. The new statute lets the jury decide and expressly abrogates the collateral source rule to the extent necessary for all evidence to be considered by the jury.

Bifurcation of Bodily Injury Damages

A new code section, O.C.G.A. § 51-12-15, allows a party to request bifurcation in bodily injury or wrongful death cases, with liability and damages tried in separate phases. If any liability is found, the damages stage will commence immediately with the same judge and jury. Any party can elect for bifurcation, simply by making a written request before the entry of the pretrial order.

If the demand for bifurcation is unopposed, the court must grant it—it cannot deny the request *sua sponte*. To oppose bifurcation, an opposing party must make a motion and show either 1) the amount of damages is less than $150,000, or 2) the claim involves a sexual offense such that testifying in two proceedings would be psychologically damaging for the plaintiff.

This means that in any bodily injury or wrongful death case involving damages over $150,000, any party has a right to elect bifurcation—likely resulting in a significant increase in bifurcated trials.

Retroactive Effect

The new law states that all the provisions except for two will apply immediately to all actions pending as of April 22. The exceptions are the provisions dealing with claims for negligent security and the rules limiting recovery of medical damages under O.C.G.A. § 51-12-1.1, which will only apply to claims brought after April 22, 2025.

Conclusion

With such disparate portions of litigation practice impacted by the new Tort Reform Act, there's no single takeaway or easy-to-remember guideline on its impacts. Careful attention will have to be paid in future *and* currently pending cases, and our Thompson Hine team remains ready to advise on all changes made by this law.

FOR MORE INFORMATION

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