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TORT REFORM AND BEYOND: KEY GEORGIA LEGISLATION IMPACTING CIVIL LITIGATION SINCE 2022

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SUMMARY

Since 2022, the Georgia General Assembly has passed several pieces of legislation providing significant impacts for civil litigation and litigants in the State's courts. Together, the new laws indicate a legislative trend to reform certain practices, or unintentional consequences of judicial application of prior legislation, while also strengthening Georgia's pro-businesses policies.

Examples of the legislation enacted over the past three years include: the Apportionment Statute (O.C.G.A. § 51-12-33) and the codification of the Apex Doctrine (O.C.G.A. § 9-11-26.1) in response to appellate court decisions, as well as Georgia's Bad Faith Failure to Settle Statute (O.C.G.A. § 9-11-67.1) and a brand new Tort Reform Package (Senate Bills 68 and 69), which establish additional guardrails around potential claims and liabilities in Georgia. Though the recent 2025 Tort Reform Package represents the legislature's most comprehensive effort to introduce statutory reform for civil litigation, this package stands with the preceding legislation as a notable backdrop.

Apportionment Statute

In 2022, the Georgia General Assembly amended Section 51-12-33 of the Official Code of Georgia Annotated, commonly known as the Apportionment Statute. The amendment reversed the Georgia Supreme Court's 2021 decision in *Alston & Bird LLP v. Hatcher Management Holdings, LLC*, 312 Ga. 350, 862 S.E.2d 295 (2021), which held that apportionment is not available to a litigant who is the sole defendant in a civil action. Under the *Hatcher Management* ruling, such defendants could be held fully liable for damages even in cases where fault was shared with non-parties.

The amended Section 51-12-33 explicitly allows for apportionment of damages in actions brought against "one or more persons." This seemingly modest revision has a substantial impact, particularly for sole defendants, by enabling those defendants to allocate fault to non-parties and avoid disproportionate liability for a damages award, ensuring those defendants can allocate fault to non-parties rather than risk full liability despite limited fault.

Additional analysis regarding Section 51-12-33 can be found here.

Apex Doctrine

In 2023, the Georgia General Assembly added Section 9-11-26.1 to the Official Code of Georgia Annotated, codifying the Apex Doctrine as part of Georgia law. The Apex Doctrine, followed by multiple other states and throughout other federal courts around the country, provides a non-exhaustive framework for determining whether "good cause" exists to restrict or deny the deposition of high-ranking corporate or government officials who lack unique, personal knowledge relevant to the underlying litigation. While case law varies across states, courts generally agree on four core, but non-exhaustive factors that trial courts should consider when resolving disputes over the depositions of corporate or government officials:

- whether the deponent qualifies as a senior executive given his/her role and responsibilities;
- whether the facts sought to be discovered fall within the permissible scope of discovery;
- whether the executive has personal knowledge of the relevant facts; and
- whether the facts sought to be discovered may be obtained through alternative methods, including written discovery or depositions from other witnesses.

The Georgia statute codifies substantially these four factors. By codifying the Apex Doctrine, the General Assembly provided a meaningful advancement in limiting burdensome and often unnecessary discovery targeting senior executives who lack direct, relevant knowledge—thereby streamlining litigation, preserving the integrity of the discovery process, and eliminating a needless risk to businesses operating or considering operations in Georgia.

Additional analysis regarding Section 9-11-26.1 and on the history of Georgia's Apex Doctrine can be found here.

Bad Faith Failure to Settle

In 2024, the Georgia General Assembly amended Section 9-11-67.1 of the Official Code of Georgia Annotated, colloquially known as the "Bad Faith Failure-to-Settle Statute." The amendment to Section 9-11-67.1 added substantial clarity to the requirements for: (1) settlement demands made to insurers for recovery under an insured's policy; and (2) claims that an insurer acted in bad faith when responding to those offers.

Four of the most significant amendments to Section 9-11-67.1 include.

- First, Georgia now treats settlement demands as offers to enter bilateral contracts.
- Second, the statute defines the specific actions an insurer must take to avoid liability for a future claim that they acted in bad faith when responding to time-limited settlement demands.

- Third, the statue provides a clear list of what constitutes a material term for settlement demands (all other terms of an offer are immaterial).
- Fourth, an offer cannot require the insurer to waive the application of all or part of the Section and its requirements (i.e., a claimant cannot demand that the insurer agree in writing that failure to comply with an immaterial term will expose the insurer to bad faith liability).

The 2024 amendments to Section 9-11-67.1 offer critical clarity for insurers navigating time-limited settlement demands. By defining material terms and establishing clear procedural safeguards, the statute reduces exposure to bad faith claims and promotes more predictable settlement negotiations. Insurers should avoid penalties for noncompliance with immaterial terms, provided the insurer also complies with the statute's requirements to: (1) respond to the offeror in writing accepting the material terms; (2) include a statement under oath regarding the insurance coverage provided, if a material term; and (3) provide payment of the lesser of the amount demanded or the available liability limits. *See* Section 9-11-67.1(h)(i)(1).

The changes similarly limit claimants' ability to include complex or convoluted terms in offers to settle as a means to set up a potential bad faith claim when the insurer does not comply with those terms.

Overall, Section 9-11-67.1 provides important clarity for the structure of bad faith claims and the resulting litigation when time-limited demands are served in Georgia.

Tort Reform

Lastly, in April 2025, Georgia Governor Brian Kemp signed a Tort Reform Package into law, ushering in a significant transformation to Georgia's civil litigation landscape.

When originally announced, the Tort Reform Package was presented as a response to mounting concerns over escalating insurance costs and Georgia's reputation for outsized jury verdicts. As enacted legislation, the Package introduced several key changes aimed at recalibrating liability exposure and fostering a more balanced litigation environment Georgia for businesses and consumers:

- **Negligent Security.** The General Assembly codified a "negligent security" cause of action, introducing a revised framework for premises liability when injuries result from third-party criminal acts. This cause of action is only available for invitees or licensees, not trespassers. Also, if a defendant is found liable to the plaintiff, the jury *must* reasonably apportion fault to any third party whose conduct helped cause the injury that forms the basis of the claim.
- **Bifurcation of Civil Trials.** Any party may request a bifurcated trial in actions to recover damages for bodily injury or wrongful death. On request, the proceeding will be split into at least two phases: a fault phase and a compensatory damages phase. A third phase will be

available as needed, such as when punitive damages, attorneys' fees, courts costs, or litigation expenses are sought.

- **Regulation of Third-Party Litigation Funding.** The Package imposes various requirements seeking to regulate third-party litigation funding in Georgia, including: (1) requiring "litigation financiers" to register with the Department of Banking and Finance; (2) restricting what actions litigation financiers can take; and (3) imposing requirements on "litigation financing contracts."
- **Availability of Damages.** The Package limits special damages for medical and healthcare expenses to the reasonable value of medically necessary care.
- **Recovery of Attorneys' Fees.** A party cannot recover duplicative attorneys' fees, litigation expenses, and court costs under fee-shifting statutes, unless the applicable law expressly permits double recovery.
- **Seatbelt Evidence in Motor Vehicle Disputes.** Evidence that a motor vehicle occupant was not wearing a seatbelt is now admissible evidence, subject to general standards of admissibility under Georgia's Evidence Code.

While the Tort Reform Package remains in its infancy in 2025 and its full impacts have not yet been seen, its enactment signals a pivotal shift in Georgia legislation impacting civil litigation over the past three years. This legislation viewed collectively implies a move toward a more predictable, cost-conscious litigation climate—one that could significantly benefit corporate and consumer litigants across Georgia—whether engaged in active litigation or simply as participants in Georgia's economy.

Additional analysis regarding the Tort Reform Package and on the history of the legislation initially proposed in 2025 can be found here.

RELATED CAPABILITIES

- Class Actions & Mass Torts
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