ILR Briefly

February 2025

Georgia's Liability Environment and the Need for Legal Reform

U.S. Chamber of Commerce
Institute for Legal Reform

It’s abundantly clear that the status quo isn’t working and a failure to act on meaningful tort reform will continue to put Georgians and their livelihoods in serious jeopardy.

Governor Brian P. Kemp,
2025 State of the State Address
January 16, 2025

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Introduction and Executive Summary

Georgia has achieved high marks as a state that is open for business, but its potential is held back by a litigation environment that is heading in the wrong direction. The Peach state has unfortunately developed a reputation for nuclear verdicts and excessive liability. The General Assembly last enacted comprehensive legal reform two decades ago, leaving problems to accumulate and worsen. After recent attempts to restore balance did not cross the finish line, there is optimism that long-awaited action could arrive in 2025.

Georgia's Reputation for Fair Civil Justice Has Plunged

Over the past decade, Georgia's courts have become increasingly known as a daunting place for civil defendants. In a survey of corporate attorneys' views of state liability systems, Georgia's rank fell from 24th in 2012 to 41st in 2019, the most recent year the U.S. Chamber's Institute for Legal Reform conducted the survey.[1] The reputation of Georgia's civil justice system has continued to decline, with Georgia first named a "Judicial Hellhole" by the American Tort Reform Foundation in 2019.[2] The state has appeared on that list ever since, and, in 2023, it named Georgia the worst jurisdiction in the country for litigation fairness.[3]

The increasingly negative view of Georgia's civil courts creates a tension with perceptions of its overall business environment,[4] which have been largely positive. A recent example of this tension is that while Georgia placed fourth overall in CNBC's 2024 annual "Top States for Business," the state received a C+ for its "business friendliness," a category that includes its lawsuit and liability climate.[5]

Held Back by Excessive Liability

As detailed in this paper, Georgia is known for nuclear verdicts (those of $10 million or more). Georgia courts hosted the fifth most nuclear verdicts in personal injury and wrongful death trials and had the fourth most nuclear verdicts per capita of the states between 2013 and 2022.[6] In 2022, Georgia set its all-time record for most nuclear verdicts, which it broke again in 2023.[7]

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Contributing to this situation are court rulings imposing liability on businesses for crimes on and around their properties, the ability of juries to award damages for the "full value of life," and a state law permitting personal injury lawyers to urge juries to award extraordinary amounts that can hardly be considered reasonable compensation. Notably, Georgia was home to a $1.7 billion punitive damages award in a product liability case in 2022, which is now before the Supreme Court of Georgia.[8] State high court decisions have expanded liability, allowed excessive awards, and permitted lawsuit abuse in Georgia.

The High Cost for Georgians

Georgia residents pay the price of excessive liability. The cost of the tort system in Georgia was an estimated $19.9 billion in 2022, equating to $5,050 per household, according to a study conducted by The Brattle Group based on insurance data.[9] This amount is 20 percent above the national average ($4,207).[10] In only six states did residents pay more because of tort litigation.[11]

When tort costs are considered as a percentage of a state's GDP, Georgia placed fifth highest in the country.[12]

Unless addressed, Georgia's tort costs will likely rise in comparison to other states. Its neighbor, Florida, was one of the few states with higher tort costs than Georgia in 2022, both per household and as a percentage of GDP.[13] Unlike Georgia, the Sunshine State enacted a comprehensive civil justice reform package in 2023 that addressed many areas of lawsuit abuse and excessive liability. These reforms are expected to have a meaningful positive impact on the liability climate in Florida in the years to come.

Georgia Tort Costs - 2022	
General/Commercial Liability	$9.5 Billion
Medical Liability	$575 Million
Automobile	$9.9 Billion
Total Tort Costs	$19.9 Billion
Total Costs as % of GDP	2.60%
Total Costs Per Household	$5,050

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Legislative Reform

Georgia last took significant steps to address excessive liability and lawsuit abuse in 2005. Since that time, the General Assembly has enacted relatively few legal reform measures, and those have been limited in scope. Progress restarted in 2019, culminating in a Study Committee report recommending areas for legal reform that would improve Georgia's business environment. Then the pandemic hit, derailing this momentum.

There were high hopes for moving forward in 2024 after Governor Brian Kemp declared legal reform a top priority. That effort has led to a multi-year approach in which the insurance commissioner, after analyzing insurance data, released a report confirming that the frequency of claims and payouts in Georgia has substantially increased.

The report identified a series of priority areas for legal reform, including the need to reduce nuclear verdicts and other inflated awards that go beyond fair compensation; allow juries to learn whether occupants of a vehicle wore seatbelts during an accident; set reasonable standards for liability stemming from criminal conduct caused by third parties on or near a business's property; and require disclosure of arrangements in which outsiders invest in litigation in exchange for a share of the recovery.

Governor Sparks New Legal Reform Momentum

At the time of publication, a major legal reform effort in Georgia is underway. In January 2025, Governor Kemp unveiled a package of legislative reforms that address the concerns raised by the insurance commissioner and more. These reforms, now embodied in S.B. 68 and S.B. 69, and detailed beginning on pg. 23 of this paper, would:

- Provide for truthful calculation of medical damages in personal injury cases.
- Allow for bifurcation of trials between liability and damages phases.
- Eliminate anchoring tactics.
- Address excessive liability in negligent security claims.
- Prevent plaintiffs' lawyers from dismissing and refiling cases without consequences.
- Allow a jury to know whether a plaintiff was wearing a seatbelt.

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- Establish a more efficient process for defendants to seek dismissal.
- Eliminate plaintiffs' lawyers' ability to recover attorneys' fees twice for the same lawsuit.
- Establish transparency and other necessary safeguards for third-party litigation funding (TPLF).

Before releasing the package of reforms described above, the governor used his annual State of the State address to emphasize his commitment to achieving meaningful civil justice reform this year.[14] As the governor observed, "It's abundantly clear that the status quo isn't working and a failure to act on meaningful tort reform will continue to put Georgians and their livelihoods in serious jeopardy."[15]

In the spirit of that message, this paper gives context and evidence of the need for meaningful legal reform in Georgia, examines the recent past of legislative efforts to achieve legal reform and examples of how the Georgia Supreme Court has responded to those efforts, and details specific reform proposals that Georgia legislators can pursue moving forward.

Mounting Liability Concerns

Georgia courts are home to astonishing verdicts with increasing frequency.[16] These outcomes are facilitated by state laws authorizing ill-defined damages, allowing lawyers to manipulate jurors, and incentivizing misuse of compensatory damages to punish defendants. Liability-expanding court rulings have led a wide range of businesses to fear that they will be held responsible for the criminal conduct of others. Businesses are concerned that due to certain laws, evidentiary rules, and imbalanced rulings, they will not get a fair trial in Georgia courts.

Nuclear Verdicts

Georgia courts produced the fifth most nuclear verdicts in personal injury and wrongful death trials in the nation between 2013 and 2022, tying Illinois, a more populous state with a long history of excessive awards.[17] When comparing the frequency of nuclear verdicts to the number of residents in the state, Georgia fared even worse. It had the fourth highest nuclear verdicts per capita of the states,[18] with a median nuclear verdict of $24 million. Combined, these awards imposed $6 billion in liability over that 10-year period.[19]

As documented in ILR's recent study, during that 2013-2022 period, Georgia's nuclear verdicts were concentrated in medical liability (28.1 percent), and premises liability (25 percent) cases, followed by auto accident, product liability, and other negligence (15.6 percent each) trials.[20] After an expected drop-off during the pandemic, Georgia set its record for nuclear verdicts in 2022. Georgia shattered that record again in 2023.[21]

Other studies support ILR's findings. For example, a Marathon Strategies study of nuclear verdicts against corporations, which was not limited to personal injury and wrongful death claims, put Georgia in the top 10 states for the total amount of damages awarded in 2023 as well as between 2009 and 2023 overall. Marathon identified the industries most impacted by these verdicts as automobile, security services, and insurers.[22]

As mentioned above, Georgia has been breaking its own records for these awards in recent years. For example, in April 2023, a DeKalb County judge threw out a record-setting $10 million verdict against a dental practice,[23] finding the award contrary to the

"The costs of [nuclear] verdicts echo across the economy. The frequency and size of these verdicts … are reflected in the cost of insurance for homeowners, drivers, and businesses, as well as the availability and affordability of healthcare."

evidence and "more punitive than appropriate."[24] A retrial of the case ended in a $50 million verdict in October 2024, quintupling the award reached just two years earlier.[25]

While these verdicts often stem from tragic cases involving serious injuries or deaths, the amounts awarded can hardly be understood as providing reasonable compensation for an injury, which is the purpose of the tort system. In some instances, they also raise questions as to whether the defendant was truly responsible for the injury or simply viewed as a deep pocket that could pay the injured party.

The costs of these verdicts echo across the economy. The frequency and size of these verdicts—in which car accidents, crimes, and unfortunate medical outcomes can turn into awards in the tens and hundreds of millions, even billions, of dollars—are reflected in the cost of insurance for homeowners, drivers, and businesses, as well as the availability and affordability of healthcare.

Several factors contribute to the growing propensity of Georgia trials to return these types of extraordinary verdicts. Lawyers take full advantage of features of the law—certain of which are described below—to manipulate jurors and secure multi-million dollar verdicts.

Ill-Defined Damages

In personal injury cases, Georgia juries return awards for "general damages" without any proof of their amount.[26] For example, in the dental malpractice case mentioned earlier, the verdict form simply stated, "We the jury find for the Plaintiff in the amount of $_____." The jury wrote "$50,000,000."[27]

Wrongful death cases in Georgia are also particularly susceptible to astronomical verdicts because state law uniquely asks jurors to award damages for the "full value of life," which incorporates both economic and noneconomic elements.[28]

Anchoring Practices

Georgia is one of a handful of states that has codified a rule allowing plaintiffs' lawyers to urge juries to return any amount of damages for pain and suffering, no matter how extraordinary.[29] Once a lawyer suggests a certain, generally very high amount of damages—the "anchor"—jurors either accept the suggested amount or "compromise" by negotiating it upward or downward. Studies show that this tactic leads juries to reach a substantially higher award—double[30] or quadruple[31] the amount they would have if left to determine a just and reasonable award on their own.[32] The legislature has not revisited this law in over

60 years, and plaintiffs' lawyers have become emboldened to seek more extraordinary amounts.

Sometimes, juries return the full or nearly the full amount requested, as occurred when a DeKalb County jury awarded $81 million to a person shot in an attempted robbery and carjacking in a supermarket parking lot[33] or when another DeKalb County jury awarded $38.6 million in a case stemming from a failed heart transplant.[34] "[T]hey awarded exactly what I asked for in damages during closing," said the plaintiffs' lawyer in the medical liability case, which included $6 million for pre-death pain and suffering and $30 million for the lost value of life, in addition to $2.6 million for medical expenses.[35]

In a crashworthiness case involving whether a Jeep's rear-mounted gas tank should have withstood being slammed from behind by a pickup truck at 50 miles per hour, the plaintiff's lawyer asked the jury to value the life of the boy who died at $120 million. After questioning the automaker's CEO about his salary, bonus, and benefits over the repeated objections of the defense counsel, the plaintiffs' lawyer specifically urged the jury to award two years of the Chrysler CEO's income as compensatory damages. The jury responded to this highly prejudicial argument by returning the exact amount asked, $120 million in wrongful death damages plus a $30 million pain and suffering award. After the trial court reduced the award to $40 million, the Georgia Supreme Court affirmed, even after acknowledging that "it is frankly quite difficult to see how [evidence of a party's wealth] would be relevant in nearly any case, at least not involving punitive damages."[36] Chrysler ultimately paid $47 million, the affirmed amount with interest.[37]

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In other cases, the extraordinary amount sought by a plaintiffs' lawyer leads jurors to "compromise" by returning a still-massive verdict, but one that is less than the amount requested. For example, in a trial involving claims that a doctor and radiologist failed to timely diagnose a plaintiff's stroke, the plaintiff's attorney's request for a $200 million award may have made the Fulton County jury feel that its $75 million verdict, including $46 million for past pain and suffering, was reasonable in comparison.[38]

In another recent medical liability case, a plaintiffs' lawyer told the jury "your verdict should be for a lot of money" then referenced the $37 million salary of Los Angeles Angels Centerfielder Mike Trout and Dustin Johnson's $125 million compensation "to go play golf."[39] He concluded, "It's nothing, you know, for

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ball players, for artists, to get paid sometimes $10—$20 million for a show."[40] The Cobb County jury returned a $10.1 million award, which, despite these remarks, was affirmed on appeal.[41]

Defense lawyers reflecting on this trend of aggressively seeking ever-higher amounts ask, "How have we gotten to the point in a single-death case where a plaintiff's lawyer feels comfortable asking for almost $400 million?," referring to the amount requested from a Muscogee County jury in a tractor-trailer accident case that ended in a $280 million verdict, including $180 million for the value of the plaintiff's life and pain and suffering.[42]

That was in 2019. In a November 2024 trial, plaintiffs' lawyers urged a Henry County jury to award $1 billion for the value of life plus $100 million for pain and suffering to the family of a person who died following a car accident (the jury awarded $25 million and $18 million, respectively).[43]

Misuse of Compensatory Damages to Punish Defendants

Georgia has a $250,000 statutory limit on punitive damages[44]—the purpose of which is to punish a defendant for misconduct. The Supreme Court of Georgia upheld that law in 2023, which applies in all tort actions except product liability cases unless a defendant intended to cause harm.[45] Georgia law does not, however, place any limit on general damages, wrongful death awards, or pain and suffering awards. Georgia once limited noneconomic damages in medical liability cases, but the state's supreme court struck down that law in 2010.[46]

As a result, plaintiffs' lawyers in Georgia use the opportunity to seek unlimited compensatory damage awards to improperly punish defendants. For example, in a Cobb County trial in which the plaintiff's lawyers asked the jury to consider how much pro-athletes and actors make when determining the award, the plaintiffs' counsel repeatedly implored the jurors to "send a message" with their verdict and use their voice and power to make the defendant, a medical practice, "take responsibility for ruining somebody's life."[47] The appellate court, however, found that lawyers have "wide latitude" in closing arguments and that these "send a message" statements did not cross the line.[48] The Chrysler case, discussed earlier, also clearly illustrates this practice.

Inflated Damages for Medical Expenses

Damages awarded in personal injury cases for medical expenses in Georgia are routinely inflated far beyond their true value. This occurs because Georgia courts allow plaintiffs' lawyers to introduce evidence of the list prices of medical care, often referred to as chargemaster

rates, even when their clients' healthcare providers accepted substantially lower amounts as full payment for the medical services provided.[49] In such instances, jurors are misled to believe that chargemaster rates reflect the actual cost paid for care when they actually stem from medical billing practices and are typically an opening bid for negotiating rates with Medicare, Medicaid, and private insurers.

The difference between the list price and the amount actually paid or expected to be paid for future care is referred to as "phantom damages." These damages do not exist beyond an amount in a medical billing system that may appear on an initial invoice. Phantom damages are not a legitimate item of recovery in a tort case because they do not reflect the true costs of the plaintiff's treatment. In fact, a recent Georgia case indicated that only about one percent of patients at a Columbus hospital paid chargemaster rates and that, on average, the hospital received about one third of the list price.[50] Phantom damages are a windfall because the plaintiff was never responsible for paying the higher amount.

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Furthermore, the collateral source rule—which is intended to prevent a tortfeasor from benefiting when a plaintiff purchased insurance—is misapplied in Georgia, effectively blindfolding juries from learning the true value of medical care. Georgia courts have ruled that the lower price actually paid by insurers and accepted by healthcare providers is a collateral source, and that plaintiffs may recover medical expenses based on chargemaster rates.[51]

When medical damages are inflated, it can exponentially increase other aspects of an award. For example, consider a situation in which a jury awards $300,000 for medical expenses for which the plaintiff's healthcare provider accepted $100,000. That jury may, as they often do, use that figure as a proxy for the seriousness of the injury and apply a multiplier to arrive at a pain and suffering award of, say, three times. This would lead to the jury adding $900,000 for noneconomic damages when it might have otherwise added $300,000 based on the actual $100,000 cost for medical care. The jury may then use the inflated total award ($1.2 million) as a baseline for a punitive damage award.

Legislators introduced bills to address phantom damages in 2019 and 2021, but those bills did not advance.[52]

Excessive Premises Liability: Negligent Security Claims

The Georgia Supreme Court has expanded the liability exposure of businesses should a customer or visitor be the victim of a crime on or near their premises. These cases often shift responsibility from the criminals who perpetrated the crime to a business on the often questionable basis that, had the business provided additional security personnel, lighting, or other safety measures, the crime might not have occurred. These "negligent security" claims are a significant source of Georgia's nuclear verdicts.[53]

This trend may have begun with a case involving Six Flags Over Georgia. In that instance, after a confrontation with the plaintiff, then 19, in the amusement park, a violent mob that included gang members waited for and attacked the plaintiff at a nearby public bus stop.[54] A 2013 trial resulted in a $35 million verdict with 92 percent of the responsibility assigned to Six Flags and just two percent assigned to each of four assailants. The Georgia Supreme Court affirmed the jury's reasoning in that trial, finding that Six Flags' duty to keep its premises safe extended to an attack on a park patron off its property, because the incident was reasonably foreseeable. The justices differed with the trial court only by finding that it should have allowed the jury to allocate fault not just to the four convicted assailants who were named as defendants in the civil suit, but also to two other individuals who participated in the attack.[55] The case then settled.[56]

In 2023, the Georgia Supreme Court again expanded liability exposure for premises owners by embracing a broad test for "foreseeability" in negligent security cases.[57] That court decision addressed two cases, both of which alleged that a criminal attack might have been avoided if the businesses had hired additional security guards.

In the first case, the plaintiff was shot in a robbery attempt in a CVS parking lot, which he thought would be a safe place to sell an iPad to an acquaintance. After an unknown assailant entered his car with a gun and demanded money, the plaintiff pulled his own gun, which jammed, and he was shot. A Fulton County jury returned a $42.75 million verdict against the pharmacy, allocating 95 percent of responsibility for the shooting to CVS, five percent to the plaintiff, and zero responsibility to the assailant.[58]

In the second case, a person was killed in a robbery attempt after having dinner at a Marietta restaurant. While the trial court permitted the case to move forward, the Court

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of Appeals found the claim should have been dismissed because no similar crimes had occurred on the property that would have put the restaurant on notice of the risk of shooting.[59]

An issue presented by these cases was whether a plaintiff who brings a negligent security case must show that businesses had prior notice of "substantially similar" criminal conduct on their properties, which would have alerted them to the need for additional security measures. This determination is typically central to determining whether the crime that occurred was reasonably foreseeable, which gives rise to a duty to protect visitors from criminal acts. The court, however, adopted a "totality of the circumstances" test that considers criminal activity that occurred on or near the premises.[60] It rejected a bright-line approach which requires a business to know of substantially similar past crimes on its property.[61] Now, any crime in the surrounding area—even minor property crimes, such as car break-ins—may impose a duty on a business to adopt additional protective measures and subject it to liability should a crime nevertheless occur.

As a practical matter, Georgia attorneys agree that the open-ended foreseeability test will mean that Georgia courts will be far less likely to dismiss weak negligent security claims on summary judgment.[62] In other words, wholly speculative cases in which a business has no reason to bolster security or take other action to address a specific safety risk will require a jury trial. As a result of the cost of litigation and risk of a nuclear verdict, businesses will face pressure to settle cases even when they could not have prevented the crime.

As a Georgia defense lawyer observed, "If someone comes to your house and commits a crime, you would not expect to be held liable for the resulting injuries of that crime. But yet, that's the position that Georgia's businesses find themselves in with the current standard that we have."[63]

These types of lawsuits impact a wide range of businesses including grocery stores, pharmacies, convenience stores, restaurants, apartment complexes and other housing providers, and entertainment venues.[64] Excessive liability stemming from the crimes of others discourages businesses from operating in higher-crime neighborhoods, which may be where they are needed most. They impose an expensive and potentially futile obligation on businesses to police the surrounding area and ensure the safety of visitors.

Justice Shawn Ellen LaGrua concurred in the CVS decision, but wrote separately to express concern "about the impact these laws have on those who reside in such 'high crime areas' and who could face the harsh and mounting reality that businesses—faced with an increased exposure to liability because of the very area in which they have chosen to do business—will cease operations or raise their prices to offset the costs of additional security measures."[65] Joined by two other justices, Justice LaGrua wondered whether residents "would lose ready access to resources they need for daily life because they are no longer available or affordable" and urged the General Assembly "to consider these issues as they institute laws imposing premises liability on businesses in this State."[66]

In 2023 and 2024, the Georgia Senate's Insurance and Labor Committee favorably reported legislation addressing these issues, but the bill did not advance further.[67]

Forum Shopping

Plaintiff Dismissal and Refiling

The $1.7 billion verdict against Ford mentioned above—the largest verdict in Georgia history—illustrates the types of imbalanced rulings that can occur when businesses go to trial in Georgia courts, and when plaintiffs' lawyers are enabled to select the courts they perceive to be most favorable.

The Ford case stemmed from a 2014 accident in which a Ford pickup truck's tire blew out, leading the vehicle to roll over, killing the couple inside. The family sued Ford, claiming the couple would have survived the accident if the vehicle had a stronger roof.

The plaintiffs' lawyer initially filed the case in Cobb County, but then voluntarily dismissed the complaint and refiled it in Gwinnett County, apparently to obtain a friendlier judge.[68] After granting nearly all of the plaintiff's motions, and denying nearly all of the defendant's requests regarding permissible evidence and arguments, the case went to trial.[69] Fifteen days into the 2018 trial, the court declared a mistrial, finding that Ford violated three pre-trial orders prohibiting it from offering certain testimony related to the cause of death, seatbelt use, or suggesting the accident resulted from driver error. As a sanction, the judge struck all of the automaker's defenses to liability.[70]

When the case was retried before a different judge, as a result of the sanctions order, the jury was instructed to consider a series of matters as "deemed established." These instructions made it all but certain that the only issues remaining were how much the jury would award for compensatory and punitive damages (as noted earlier, Georgia has a statutory limit on punitive damages, but it does not apply in product liability cases).

In the retrial, Ford was still not allowed to show that its conduct did not warrant punitive damages. It could not show the jury that, in designing the vehicle, it

relied on scientific studies and tests finding the collapse of the roof during a rollover is not the cause of death or that the pickup truck at issue had a stronger roof than comparable vehicles.[71] Meanwhile, the court allowed the plaintiffs' counsel to present the jury with highly prejudicial photographs of unrelated accidents with crushed roofs on Ford vehicles, alongside photographs of the plaintiffs' own truck.[72]

The trial ended with an award of $24 million in compensatory damages, including $16 million for the value of the couple's lives and $8 million for their pain and suffering, plus $1.7 billion in punitive damages.

In November 2024, the Georgia Court of Appeals threw out the verdict, finding Ford did not violate two of the three trial court orders and the sanctions precluding Ford from offering a defense were impermissible. The appellate court also found that the trial court should have allowed the automaker to introduce evidence that the plaintiffs, while wearing seatbelts, had worn them improperly, and instructed the court to revisit the admissibility of the scientific studies kept from the jury.[73] The plaintiffs' attorneys have filed a petition for certiorari with the Georgia Supreme Court.[74] Unless the state supreme court intervenes, a third trial is expected in 2025.

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Consent by Registration

Georgia subjects out-of-state corporations to "general personal jurisdiction" in its state courts merely if they register with the Georgia Secretary of State to do business in the state. Georgia is one of a handful of states that take this "consent by registration" approach. Elsewhere, corporations are subject to general personal jurisdiction (jurisdiction even in cases that do not arise out of events that occurred in that state) only where they are essentially "at home," meaning the state in which they are incorporated or have their principal place of business.[75]

The Georgia Supreme Court reaffirmed its expansive approach to jurisdiction in 2021 in a case involving a Florida resident who was a passenger in a vehicle that crashed after the tire blew on a Florida roadway. He sued the driver, who was a Georgia resident, the Georgia car dealership that sold the vehicle, and Cooper Tire, which had minimal connection to Georgia. Since the tire manufacturer had registered to transact business in the state, however, the court ruled that it had consented to jurisdiction in its courts. The court reached this decision even though Georgia's corporate registration statute does not indicate

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that registering constitutes consent to general personal jurisdiction in Georgia.[76]

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Seatbelt Gag Law

Georgia retains an archaic law that blindfolds a jury from learning that a person hurt or killed in an automobile accident was not wearing a seatbelt, in violation of state law.[78] The Georgia legislature enacted this law nearly four decades ago, at a time when people still questioned the effectiveness of seatbelts in preventing injuries.

Since that time, studies have proven that seatbelt use "is the most effective way to save lives and reduce injuries in crashes."[79] Today, nearly every state, including Georgia, mandates their use.[80]

"Other states are discarding this seatbelt gag rule, which is now viewed as a 'vestige of a bygone legal system and an oddity in light of modern societal norms.'"

Whether or not the occupants of a vehicle wore seatbelts is key to accurately evaluating issues in litigation such as causation, allocation of fault, and mitigation of damages. In other words, juries are unable to fairly consider if a person's injuries would have been less severe, or a person would have survived a crash, if he or she had properly worn a seatbelt. This is an important consideration in both negligence cases and product liability actions. Yet, in Georgia, defense lawyers are generally barred from mentioning seatbelt use in court.

Other states are discarding this seatbelt gag rule,[81] which is now viewed as a "vestige of a bygone legal system and an oddity in light of modern societal norms."[82] In a 2022 decision, the Georgia Supreme Court expressed concern, in dicta, that keeping such information from the jury may even violate the due process rights of automobile manufacturers when defending crashworthiness cases.[83] The General Assembly has yet to take action and update this law.[84]

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Undisclosed and Unrestrained Litigation Funding

Over the past decade, outside funding of litigation has exploded. Dedicated commercial litigation finance firms, hedge funds, institutional investors, foreign sovereign wealth funds, and wealthy individuals are investing billions of dollars each year into funding U.S. lawsuits in exchange for a portion of any recovery obtained by a law firm.[85] This money funds a wide range of lawsuits, including mass tort litigation,[86] in which the outside money sometimes supports advertising intended to generate thousands of claims in addition to financing the litigation itself.[87] By spreading litigation costs and risks, funders may work with plaintiffs' lawyers to pursue speculative lawsuits or assert more questionable claims for a chance at a financial windfall.

Experts have observed that this form of TPLF is "reshaping every aspect of the litigation process—which cases get brought, how long they are pursued, when are they settled."[88] An outside funder's presence can turn what is traditionally a negotiation between two opposing parties into a multi-party affair with a "behind the scenes" funder interested solely in maximizing a return on their investment. Indeed, major funders recognize, and even tout, that their presence "make[s] it harder and more expensive to settle cases."[89]

These arrangements can also create serious ethical problems, as often-undisclosed funders may exert control over potential case settlements or other major litigation decisions in place of the plaintiff themselves.[90] A growing list of examples shows the lengths some funders have gone to maximize their return on investment in others' lawsuits.[91] Fortress Investment Group, which funds mass tort and IP litigation, as well as other litigation funders, was recently described by insiders as intricately involved in the litigation it funds. As the funder's managing partner indicated, "We see where funds go. If you do something you're not supposed to do, we're gonna be upset."[92]

The influence of a litigation funder is often hidden. For example, the involvement and control of an outside funder in major antitrust litigation brought by a U.S. food distributor against a group of meat suppliers was unknown until the distributor and its litigation funder fell into litigation, after the funder allegedly leveraged the funding agreement to prevent the distributor from accepting settlement offers from the meat

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suppliers. The funder even went so far as to secure a temporary restraining order preventing the distributor from settling the claims.[93] Delaware federal district court Chief Judge Colm Connolly has also stressed the importance of requiring greater transparency in litigation financing so that courts do not become "casinos where people should just go to profit."[94]

The flood of TPLF investments into U.S. litigation also provides a means for foreign adversaries to "weaponize the courts for strategic goals."[95] Foreign interests may fund lawsuits in the U.S. to "weaken critical industries" or "obtain confidential materials through the discovery process."[96] According to a 2024 U.S. Government Accountability Office report, Department of Justice officials are "examining whether foreign entities are investing in U.S. patent litigation to gain proprietary information that would help their own industries."[97] Bloomberg Law has revealed instances in which intellectual property litigation has been funded by a Chinese firm,[98] and in which Russian oligarchs have funded lawsuits to obtain assets for a Russian government entity in a way that evades international sanctions.[99]

"Georgia has laws and ethics rules that should curb, if not fully prohibit, TPLF arrangements."

A second type of litigation funding raises separate concerns. Sometimes referred to as "cash advances" or "pre-settlement funding," lenders provide cash directly to plaintiffs in personal injury lawsuits. This money is typically for a plaintiff's use on personal expenses while awaiting a settlement, rather than to cover litigation expenses. These loans can come with high interest rates and fees.[100] In a 2018 decision, the Georgia Supreme Court ruled such arrangements are not "loans" subject to state usury laws because the repayment obligation only applies if there is recovery in the lawsuit.[101] Consumer lawsuit loans can pose an obstacle to reaching reasonable settlements, as plaintiffs who already must pay a substantial contingency fee to their lawyer "may want to make up the amount they will be forced to repay the funder."[102]

Georgia has laws and ethics rules that should curb, if not fully prohibit, TPLF arrangements. For example, Georgia has codified the principle that "contracts of maintenance or champerty" are against public policy and void.[103] Those doctrines bar nonparties from financially supporting a lawsuit in exchange for a share of the recovery. Georgia law also generally does not permit assignment of personal injury or other tort claims.[104] In addition, rules governing

"Thus far, five states have enacted reforms in this area, including Indiana, Louisiana, Montana, West Virginia, and Wisconsin."

attorney conduct prohibit a lawyer from allowing a person "who pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."[105] Despite these laws, a quick internet search confirms that both litigation financing[106] and consumer lawsuit lending are widely available in Georgia.[107] In fact, the Georgia Trial Lawyers Association lists several funders as "GTLA justice partners."[108]

The full measure of how TPLF is impacting the legal system—whether by distorting litigation, creating ethical problems, threatening national security, or otherwise turning the "American justice system into a financial playground"[109]—is unclear. That is because these investments typically occur in secret and are not disclosed to courts or parties. Accordingly, a critical step to assess and respond to concerns is to provide basic transparency in TPLF arrangements.

At a minimum, states should require parties to disclose to the court and other parties when a third party is funding someone else's lawsuit for a share in the profits. Such disclosure is consistent with rules, applicable in Georgia and elsewhere, requiring defendants to disclose insurance agreements that might cover a judgment in a lawsuit.[110]

Thus far, five states have enacted reforms in this area, including Indiana, Louisiana, Montana, West Virginia, and Wisconsin.[111] These laws range from simply requiring disclosure of TPLF agreements in Wisconsin to comprehensively regulating litigation funding in Montana. In addition, Indiana and Louisiana have specific disclosure requirements and ban funding by certain foreign entities. At the federal level, a judicial advisory committee recently established a subcommittee focused exclusively on TPLF that will consider the need for a new disclosure requirement.[112] Legislation is also pending before Congress.[113]

A Mixed Record on Upholding Legal Reforms

Legislation enacted by the General Assembly to address excessive liability and litigation abuse has not always survived challenges before the Georgia Supreme Court. With some exceptions, however, the court mostly has respected the legislature's policymaking authority to shape tort law and correct imbalances in the civil justice system.

As discussed earlier, the state high court invalidated the statutory limit on noneconomic damages in medical liability actions in 2010, finding it violated the constitutional right to trial by jury.[114] Between 2006 and 2007, the court also struck down a restriction on venue in medical liability cases[115] and found that an offer of settlement law

"In 2025, the Georgia Supreme Court has an opportunity to revisit its ruling striking down the noneconomic damages limit."

and a law requiring certain medical criteria to be met before asbestos lawsuits could proceed could not apply retroactively.[116]

In more recent years, the court has respected most legislatively-enacted legal reforms, including laws addressing the admissibility of expert testimony,[117] allocation of fault in premises liability cases,[118] requirements for professional malpractice actions,[119] and more.[120]

In 2025, the Georgia Supreme Court has an opportunity to revisit its ruling striking down the noneconomic damages limit. That case, *Medical Center of Central Georgia v. Turner*, involves a $9.2 million verdict, including $7.2 million in noneconomic damages, stemming from a patient's death during surgery. If it grants certiorari, the court could rule in three ways. It could find that its 2010 ruling does not apply to wrongful death claims, which did not exist at common law and were therefore not subject to a right to trial by jury. Alternatively, it could affirm the lower courts, which extended the 2010 decision to wrongful death cases.[121] A third possible outcome is that the court could find that it reached the wrong result in 2010 and reinstitute the statutory limit for all claims against healthcare providers.[122]

Legislative Action

Georgia's General Assembly has enacted relatively few laws to address concerns about excessive liability or litigation unfairness over the past two decades. Attempts to enact reform in recent years have largely ended without positive results. Now, Georgia appears on the cusp of acting as Governor Kemp has declared that, in 2025, "there will be no room for excuses, half-measures, or failure."[123]

Recent Slowdown in Reform Underlines Need for Change

Earlier Achievements

The Georgia legislature's last major effort to address civil justice issues occurred about 20 years ago, culminating with the enactment of a significant reform package in 2005. During this period, the legislature protected the ability to appeal high damage awards,[124] prevented excessive prejudgment interest,[125] adopted safeguards for class action litigation,[126] eliminated joint and several liability,[127] and provided courts with a tool to respond to blatant forum shopping.[128] The legislature also responded to excessive liability faced by healthcare providers by limiting liability for emergency medical care to instances of gross negligence and prohibiting plaintiffs' lawyers from using healthcare providers' expressions of sympathy or apologies against them. The cap, a limit on noneconomic damages in medical liability cases,[129] applied for 15 years before it was invalidated by the state supreme court.

"Georgia has made little progress in addressing concerns about excessive liability and lawsuit abuse since its 2005 achievements, even as Georgia's litigation climate declined and new issues emerged."

Progress Slows

Georgia has made little progress in addressing concerns about excessive liability and lawsuit abuse since its 2005 achievements, even as Georgia's litigation climate declined and new issues emerged.

Efforts restarted in 2019, when the Georgia Senate formed a Study Committee on Reducing Georgia's Cost of Doing Business.[130] The Senate recognized that although Georgia had received high marks for

"Understandably, the pandemic derailed legal reform efforts just as they were gaining momentum. The General Assembly shifted to focus on pandemic-related concerns."

creating a business-friendly environment, the state has among the highest auto insurance rates in the nation and rural healthcare providers face an ongoing financial crisis. The Senate established a 15-member Study Committee to examine how the state's legal climate contributes to these problems.

Led by then-Senator John Wilkinson, the Committee hosted a series of public meetings that considered information shared by representatives of the U.S. Chamber of Commerce, American Tort Reform Association, Georgia Defense Lawyers Association, and Medical Association of Georgia.[131] It also heard the concerns of individuals representing grocery stores, truckers, insurers, and others.

The Committee's Final Report included a wide range of recommendations to safeguard the integrity and balance of Georgia's civil litigation system.[132] These included reforms targeting the problem areas discussed in this paper and more.

Pandemic Derails Momentum

The 2020 legislative session began with an ambitious plan to advance the Study Committee's recommendations. Legislators introduced two comprehensive legal reform bills[133] as well as separate legislation allowing admissibility of seatbelt evidence[134] and streamlining settlement offers.[135] These bills began to move forward in March 2020, just as the COVID-19 pandemic hit.[136] The seatbelt admissibility bill, for example, passed the Senate 49-5 on March 12, 2020, two days before Governor Kemp declared a public health state of emergency.[137]

Understandably, the pandemic derailed legal reform efforts just as they were gaining momentum. The General Assembly shifted to focus on pandemic-related concerns. To its credit, Georgia enacted the COVID-19 Pandemic Business Safety Act. That law addressed a wide range of pandemic-related liability concerns, including doctors who provided care during shortages of staff and equipment, businesses afraid they would be sued by employees or customers who blamed them for exposure to COVID, and those who stepped up to make or donate personal protective equipment or sanitizers.[138]

"The General Assembly has enacted a handful of legal reforms since the pandemic, half of which responded to rulings by the Supreme Court of Georgia."

"As the session approached, Governor Kemp declared tort reform a top legislative priority. However, the governor acknowledged that achieving legal reform would require a multi-year effort."

Few Successes Since the Pandemic

The General Assembly has enacted a handful of legal reforms since the pandemic, half of which responded to rulings by the Supreme Court of Georgia.

In 2022, the legislature amended a state law that permitted juries to apportion fault among all persons who share responsibility for a plaintiff's injury. That provision, which was part of the 2005 tort reforms, was intended to ensure that defendants pay damages in proportion to their degree of fault by allowing juries to consider the responsibility of settling parties, immune parties, and others who may not be defendants at trial. In 2021, however, the Georgia Supreme Court found that the statute's wording only allowed apportionment of fault in multi-defendant cases.[139] In cases involving a single defendant, that defendant would be required to pay the entire damage award, less any percentage of fault attributed to the plaintiff. The legislature quickly responded to restore the law's intent, allowing juries to apportion fault in every case.[140]

The General Assembly also responded to a Georgia Supreme Court decision declining to adopt what is known as the "Apex Doctrine." That doctrine, which courts in other states follow, prevents litigants from harassing high-level business executives or government officials by compelling them to sit for depositions about matters in which they have no unique personal knowledge. While the court left the door open for litigants to seek a protective order, in a 2022 ruling, it declined to formally adopt the doctrine as applied in federal courts and those of other states.[141] The following year, the General Assembly responded by codifying the doctrine.[142]

In the same bill, the General Assembly prohibited attorneys from making misleading statements in advertisements for legal services, such as by falsely portraying actors as clients or making statements likely to lead a person to have an unjustified expectation of future success based on past performance.[143]

Steps Forward in 2024

Legal reform advocates were optimistic in 2024. As the session approached, Governor Kemp declared tort reform a top legislative priority.[144] However, the governor acknowledged that achieving legal reform would require a multi-year effort.[145]

The General Assembly did make some modest progress during its 2024 session. It enacted a compromise bill that reined in an outlier Georgia law that, contrary to most other states, allowed plaintiffs' lawyers to sue not only a trucking company following an accident, but also directly sue the company's insurance carrier, known as a "direct action."[146]

"As the Georgia General Assembly's 2025-2026 legislative session advances, expectations are high that it will result in long-awaited reforms."

The General Assembly also approved liability protections for mental health care providers in 2024.[147] In addition, the legislature directed the State Bar to promulgate rules prohibiting certain misleading practices in attorney advertising.[148]

Although other priorities fell by the wayside in 2024, the enactment of the Data Analysis for Tort Reform Act in April of that year set the stage for action in 2025. That bill, sponsored by Floor Leader Rep. Will Wade, charged the state insurance commissioner with gathering data from insurers, including how many tort lawsuits are filed against people holding an insurance policy, attorneys' fees from those suits, and the total value of the claims. The legislation required the insurance commissioner to submit a report to the legislature analyzing the data, considering the impact of tort risks on premiums, and the potential effect of any changes to tort law on the insurance marketplace.[149]

Governor Holds Roundtable Discussions

Governor Kemp closed 2024 with a series of roundtable discussions with stakeholders and policymakers on civil litigation and how to best approach the issue in the 2025 legislative session. The roundtables focused on the concerns of small businesses and healthcare providers and discussed the challenges that the current litigation climate has placed on Georgia's economic wellbeing.[150]

The Insurance Commissioner's Report

On November 1, 2024, Insurance Commissioner John F. King released the report that the legislature required under the Data Analysis for Tort Reform Act.[151] Based on 6.6 million records received from insurers, the report found that the frequency of insurance claims and the average payout per claim rose rapidly between 2014 and 2023. In addition, the data confirmed concerns about nuclear verdicts, finding an increase in the number and size of large claims. The report offers potential policy options that could reduce rising costs and "create a more sustainable legal landscape," which are consistent with the governor's comprehensive legislative package.

Legislative Package Lays Out Legal Reform Roadmap

As the Georgia General Assembly's 2025-2026 legislative session advances, expectations are high that it will result in long-awaited reforms. At an event with Georgia business leaders in January, Governor Kemp indicated that "[t]ort reform will be my top legislative priority for this upcoming session."[152] As noted earlier, the governor reiterated and expanded on that message during his State of the State address, calling for bipartisan support of

"comprehensive – but fair" tort reform legislation. As the governor observed, making sure neighborhoods have grocery stores, ensuring doctors are available where needed, and addressing the cost of car insurance are not partisan issues. "Whether it's this legislative session, or a second one later this year," Governor Kemp said, "we will achieve meaningful, impactful tort reform" this year.[153]

Governor Kemp has unveiled a package of legislative reforms that address many of the concerns discussed in this paper and more.

S.B. 68

The proposals in S.B. 68, sponsored by Senator John Kennedy, include:

- **Truthfully calculating medical damages in personal injury cases**: Under the bill, plaintiffs would be fairly compensated based on the amount actually paid (or that will be paid in the future) for reasonable and necessary medical care, rather than inflated amounts that are currently introduced in evidence.

- **Bifurcating trials**: In any personal injury action, the legislation permits a party to request that the court conduct a trial in two phases. A jury would focus on and decide liability in the first phase before hearing evidence detailing the extent of the plaintiff's damages in the second phase.

- **Eliminating anchoring tactics**: The bill prohibits attorneys from suggesting that jurors award arbitrary, often multi-million dollar amounts, for pain and suffering awards. Rather, it protects the jury's ability to decide an award amount on its own without being influenced by irrelevant and improper arguments from counsel.

- **Addressing excessive liability in negligent security claims**: The legislation responds to court decisions that have expanded liability in this area. The bill subjects premises owners to liability for the criminal or other wrongful conduct of others only if the owner knew a third party posed a particular threat; knew of prior substantially similar wrongful conduct on the property, adjacent property, or within 500 yards of the property; or knew a person who would be on the property had engaged in substantially similar wrongful conduct, among other requirements. The bill establishes similar standards for harms from criminal conduct of others attributed to the physical condition of the property, such as a lack of lighting, requiring the owners to have knowledge of an issue that increased the risk of wrongful conduct in the vicinity, but not addressing it. In negligent security cases, juries would allocate fault among the

"As the governor observed, making sure neighborhoods have grocery stores, ensuring doctors are available where needed, and addressing the cost of car insurance are not partisan issues."

property owner, the person who committed the crime or other wrongful conduct, and any other person who contributed to the injury. The bill provides a presumption that a jury's apportionment of fault is unreasonable if a premises owner is found more responsible for a plaintiff's injury than those who committed the crime.

- **Stopping plaintiffs' lawyers from dismissing and refiling cases without consequences**: The legislation would end the practice of plaintiffs' lawyers unilaterally dismissing a case after a defendant has already spent significant amounts on the litigation. Under current law, a plaintiff may dismiss a case without prejudice, and refile it in a court perceived as more favorable, right up until trial begins. The bill provides that after a defendant files an answer or motion for summary judgment, a plaintiff would need to seek the court's permission to dismiss a case.
- **Allowing a jury to know whether a plaintiff was wearing a seatbelt**: The bill would amend a provision of Georgia law that prevents a defendant from introducing evidence that a plaintiff was not wearing his or her seatbelt in an auto accident. If enacted, juries would be permitted to consider seatbelt use when evaluating issues such as comparative negligence, causation, and damages.
- **Establishing a more efficient process for seeking dismissal**: Under current law, even when defendants file a motion to dismiss in response to a baseless lawsuit, they must still prepare and file an answer and may also have to respond to extensive discovery requests before the court rules on dismissal. The bill would allow a defendant to file a motion to dismiss in lieu of an answer—cutting down unnecessary discovery expenses while a motion to dismiss is pending.
- **Eliminating double recovery of attorney's fees**: A court can award attorney's fees to plaintiff's counsel or defense counsel under certain circumstances in a personal injury lawsuit. A separate provision under Georgia's contract code allows attorney's fees to be awarded to an insured for a "bad faith" denial of insurance coverage in a lawsuit. These two provisions were intended to apply separately in different types of cases. Despite the law's original intent, courts have interpreted the attorney's fees provision in the contract code to apply to personal injury cases as well, allowing plaintiff's counsel to recover fees twice for the same lawsuit—an unfair windfall. The legislation prevents this double recovery.

S.B. 69

A separate bill, S.B. 69, also sponsored by Senator Kennedy, brings transparency to third-party litigation funding and adopts other needed safeguards. The bill, which applies

to both commercial and consumer litigation funding:

- Subjects the existence, terms, and conditions of litigation financing agreements to discovery.
- Requires litigation financiers to register with the Department of Banking and Finance and prohibits registration of businesses affiliated with foreign adversaries.
- Prohibits conflicts of interest and other problematic practices. For example, litigation financiers would be prohibited from making decisions regarding the litigation or settlement, including the choice of counsel or selection of expert witnesses, or offering legal advice. Litigation financiers would also not be allowed to pay or offer commissions or referral fees or refer consumers to any person providing goods or services, such as a medical clinic.
- Precludes litigation financiers from receiving a portion of a recovery that is more than the amount the plaintiff will receive after paying attorney's fees and costs.
- Requires certain disclosures to consumers in litigation financing agreements so that they have a better sense of how much of what may seem like a small loan will ultimately cost them.

These reforms, if adopted, would go a long way to addressing the concerns raised in this paper and improving Georgia's litigation environment.

"These reforms, if adopted, would go a long way to addressing the concerns raised in this paper and improving Georgia's litigation environment."

Conclusion

Georgia's litigation environment has reached a critical juncture. The state's reputation for hosting nuclear verdicts and imposing outsized liability threatens its economic competitiveness and overall business friendliness. The high cost of Georgia's tort system directly impacts residents, businesses, and healthcare providers. The comprehensive legal reform package proposed by Governor Kemp presents an opportunity to restore balance and fairness to the state's legal landscape.

By addressing issues like expanded premises liability, excessive damage awards, procedural unfairness for defendants, abusive litigation tactics, and third-party financing of disputes, Georgia has the chance to build a more sustainable and equitable civil justice system. The momentum for change is palpable, with expectations high as the 2025 legislative session advances. If lawmakers seize this moment to enact meaningful reforms, they can mitigate the negative impacts of the current system on all Georgians while solidifying Georgia's position as a top destination for businesses and a fair environment for all.

"If lawmakers seize this moment to enact meaningful reforms, they can mitigate the negative impacts of the current system on all Georgians while solidifying Georgia's position as a top destination for businesses and a fair environment for all."

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76 *Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81 (Ga. 2021) (reaffirming *Allstate Ins. Co. v. Klein*, 422 S.E.2d 863 (Ga. 1992)).

77 In 2023, the U.S. Supreme Court found in a narrow ruling that another litigious state, Pennsylvania, could constitutionally exert such jurisdiction through registration, finding that by registering to do business in the state, the business waived its due process rights. *See Mallory v. Norfolk Southern Railway Co.,* 600 U.S. 122 (2023). In that state, unlike Georgia, the registration statute specifically provided for that result.

78 Ga. Code. Ann. § 40-8-76.1(d) ("The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts shall not be considered evidence of negligence or causation, shall not otherwise be considered by the finder of fact on any question of liability of any person, corporation, or insurer, shall not be any basis for cancellation of coverage or increase in insurance rates, and shall not be evidence used to diminish any recovery for damages arising out of the ownership, maintenance, occupancy, or operation of a motor vehicle.").

79 *See generally* Centers for Disease Control & Prevention, Facts About Seat Belt Use (Apr. 24, 2024) (citing studies).

80 Ga. Code. Ann. §§ 40-8-76.1(b), (d)(3) (front seat occupants and minors eight years of age or older), 40-8-76(b)(1) (safety restraints for children under eight years of age).

81 *See, e.g.,* H.B. 1090 (Ind. 2024) (to be codified at Ind. Code § 9-19-11-8.5); H.B. 57 (La., 1st Extraordinary Sess. 2020) (repealing La. Rev. Stat. § 32:295.1(E)); S.B. 439 (W. Va. 2021) (codified at W. Va. Code Ann. § 17C-15-49a).

82 *Nabors Wells Svcs., Ltd. v. Romero*, 456 S.W.2d 553, 555 (Tex. 2015).

83 *Domingue v. Ford Motor Co*., 875 S.E.2d 720, 728 n. 8, 9 (Ga. 2022); *see also* Lee Mickus, "Georgia Supreme Court's Doubts on Seat Belt Gag Rule's Constitutionality Puts Legislature on Notice," Washington Legal Foundation Legal Opinion Letters, July 29, 2022.

84 *See, e.g*., S.B. 196 (Ga. 2023) (defeated in Senate 24-30).

85 *See* Westfleet Advisors, *The Westfleet Insider: 2023 Litigation Finance Market Report*, at 3 (2024) (indicating that major dedicated commercial litigation funders alone reported more than $15 billion invested in U.S. litigation in 2023).

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88 Leslie Stahl, "Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight," CBS's "60 Minutes," Dec. 18, 2022 (interview with Prof. Maya Steinitz).

89 Jacob Gershman, "Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight," *The Wall Street Journal*, Mar. 21, 2018 (quoting Allison Chock, chief investment officer for IMF Bentham's U.S. division (now Omni Bridgeway)).

[90] *See* John H. Beisner, Jessica D. Miller, and Jordan M. Schwartz., *Selling More Lawsuits, Buying More Trouble: Third Party Litigation Funding a Decade Later*, at 18-22 (U.S. Chamber Inst. for Legal Reform, Jan. 2020).

[91] *See, e.g., In re Pork Antitrust Litig.*, No. 18-cv-1776 (JRT/JFD), 2024 WL 511890 (D. Minn. Feb. 9, 2024), *aff'd*, 2024 WL 2819438 (D. Minn. June 3, 2024) (rejecting an assignment of a claim to a litigation funder that would "allow a financer with no interest in the litigation beyond maximizing profit on its investment to override decisions made by the party that actually brought suit" and observing that it "threatens the public policy favoring the settlement of lawsuits"); *see also* Editorial, "The Litigation Finance Snare," *The Wall Street Journal*, Mar. 21, 2023; Hannah Albarazi, "When a Litigation Funder is Accused of Taking Over the Case," Law360, Mar. 15, 2023.

[92] Emily R. Siegel, "Mass Tort Marketer Hires Ex-LexShares CEO to Lead Funding Program," Bloomberg Law, Aug. 20, 2024.

[93] *See* John H. Beisner, Jordan M. Schwartz, and Alexander J. Kasparie, *Grim Realities: Debunking Myths in Third-Party Litigation Funding*, at 6-9 (U.S. Chamber Inst. for Legal Reform, August 2024).

[94] Michael Shapiro, *Courts Not a Casino, Says Judge Seeking Third-Party Transparency*, Bloomberg Law, Mar. 28, 2024 (quoting Judge Connolly).

[95] Donald J. Kochan, Editorial, "Keep Foreign Cash Out of U.S. Courts," *The Wall Street Journal*, Nov. 24, 2022, at A13.

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[103] Ga. Code Ann. § 13-8-2(a)(5).

[104] Ga. Code. Ann. § 44-12-24; *see also Villanueva v. First Am. Title Ins. Co*., 740 S.E.2d 108, 110 (Ga. 2013).

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[115] *EHCA Cartersville, LLC v. Turner*, 626 S.E.2d 482 (Ga. 2006).

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trial, special privileges and immunities, prohibition against special laws, or separation of powers provisions of state constitution or equal protection provision of state or federal constitutions); *Mason v. Home Depot U.S.A., Inc*., 658 S.E.2d 603 (Ga. 2008) (provision of Tort Reform Act of 2005 governing qualification of expert witnesses and the admissibility of expert testimony did not violate equal protection, due process, or separation of powers provisions of state or federal constitution and did not violate prohibition against retroactive laws in state constitution).

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