No. A26A1118

In the

Court of Appeals of Georgia

BECTON, DICKINSON AND COMPANY; and C. R. BARD, INC.,

Appellants,

v.

GARY WALKER,

Appellee,

On Certificate of Immediate Review from the State Court of Gwinnett County, No. 21-C-08201-S1

AMICUS CURIAE BRIEF OF GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPELLANTS BECTON, DICKINSON AND COMPANY, INC. AND C. R. BARD, INC.

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Georgia Chamber, Press Release, "Governor Kemp Signs Tort Reform into Law, Capping 20 Years of Legislative Advocacy from Georgia Chamber," (April 21, 2025), available at https://www.gachamber.com/news/governor-kemp-signs-tort-reform-into-law-capping-20-years-of-legislative-advocacy-from-georgia-chamber/ 5

Hunter King, *Georgia Senate Passes Sweeping Civil Suit Bill, Sparking Debate Over Fairness* (Feb. 21, 2025), available at https://www.13wmaz.com/article/news/local/georgia-senate-passes-sweeping-civil-suit-bill-sparking-debate/93-9ca11a97-893c-4f9d-8dfb-c1686d083864 13

INTEREST OF AMICUS

The Georgia Defense Lawyers Association ("GDLA"), founded in 1967, is an association of over 1,000 lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. GDLA is dedicated to, among other purposes, elevating the standards of trial practice, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise promoting improvements in the administration of justice. Though its membership is diverse, GDLA members frequently represent their respective clients in various tort actions including toxic tort cases and cases involving punitive damages.

As part of its mission, GDLA and its members strive to share a common interest in ensuring trials are carried out in a fair and just manner, and this extends to ensuring the fair application of Georgia's punitive damages statutes and its recent tort reform legislation, signed into law and effective April 21, 2025.

INTRODUCTION

Two issues that Appellants Becton, Dickinson and Company and C. R. Bard, Inc. ("Appellants") present on appeal are of special interest to the GDLA given their potential impact on jury trials all over the state of Georgia: first, that the trial court erred in ordering a limited re-trial as to only the question of specific intent to cause harm; and second that the trial court erred in not declaring a mistrial or, in the alternative, rebuking Gary Walker's ("Appellee") counsel after they made arguments connecting Appellee's noneconomic damages to an unrelated, speculative projection of revenue by C. R. Bard, Inc. ("Bard") from 1992—nearly 25 years before Appellee was diagnosed with and treated for his cancer. Georgia's punitive damages statutes and its recent tort reform legislation call for this Court to reverse the trial court on both grounds, with specific direction on remand. The trial court's rulings contradict Georgia law and risk undermining Georgia's recent tort reform legislation.

O.C.G.A. § 51-12-5.1(d)(2)'s language is clear: after a jury finds liability and entitlement to punitive damages, that jury must **immediately** reconvene to decide the amount of damages to be awarded as well as whether the punitive damages cap will apply in non-product

liability cases. *See* O.C.G.A. § 51-12-5.1(f), (g). There are important policy reasons for this language, including the long-standing principle that the same jury which decides liability should weigh the evidence carefully in determining what punitive damages are warranted. *See, e.g.*, *Cooper Indus v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 432 (2001) (noting the same factfinder decides compensatory and punitive damages at the same time, but for different reasons); *Kane v. Cohen*, 182 Ga. App. 485, 486 (1987) (holding under O.C.G.A. § 9-12-1 a verdict must be set aside if it does not resolve "all of the issues submitted to the jury"). In this case, the jury did **not** decide all the issues submitted to them when a juror recanted her assent to the Phase II verdict. *See* R159:3949:11-3950:06, 3956:01-3958:07. Such a situation requires a new trial so a new jury may effectuate O.C.G.A. § 51-12-5.1's clear language that the same jury decide liability and punitive damages.

Second, O.C.G.A. § 9-10-184[1] clearly prohibited Appellee's counsel from making arguments comparing the value of his noneconomic

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[1] This statute was amended as part of Senate Bill 68, which was signed into law and became effective on April 21, 2025, nearly two weeks before closing arguments in this case.

damages to issues or things having no rational connection to his damages. This statute provides that in arguing the value of these damages, "such argument shall be rationally related to the evidence of noneconomic damages and shall not make reference to objects or values having no rational connection to the facts proved by the evidence." O.C.G.A. § 9-10-184(c)(1). Appellee's counsel acknowledged awareness of this new statute prior to beginning their closing arguments, R154:3360:06-3361:04, and stated they would comply with this law despite other objections to the law. *Id.* Yet, during their closing arguments, they violated this statute by anchoring their ask for Appellee's noneconomic damages to a revenue projection from Bard in 1992—a comparison that was neither rationally related to Appellee's evidence of his pain and suffering nor a clear reference to values having a rational connection to the facts supporting Appellee's damages.

As discussed in Appellants' Opening Brief ("Appellants' Br."), the trial court denied Appellants' motion for mistrial or in the alternative, to rebuke Appellee's counsel as directed by O.C.G.A. § 9-10-185. Appellants' Br. at 37-41. The trial court's error is clear and undermines the entire purpose for Georgia's recent passage of these amendments to O.C.G.A.

§ 9-10-184. Sanctioning Appellee's counsel's arguments in this case will effectively allow plaintiffs' attorneys across this state to anchor their damages requests to exorbitant values that have nothing to do with a plaintiff's actual damages. In future cases, a plaintiff's counsel could, like here, compare their client's noneconomic damages to a defendant's wealth to anchor their request, thereby allowing plaintiffs to make arguments in the liability phase of trials which are typically reserved for the punitive phase of trials. This result would go against the letter and spirit of Georgia's recent tort-reform legislation, which seeks "to reduce excessive litigation and stabilize liability costs while also easing the burden on courts and promoting legal transparency for all parties involved in civil litigation." Sydney H. Jackson, Tiera K. Lloyd & C.G. Shaw, *SB 68 – Civil Practice*, 42 GA. ST. U. L. REV. 259, 261 (2025); *see also* Georgia Chamber, Press Release, "Governor Kemp Signs Tort Reform into Law, Capping 20 Years of Legislative Advocacy from Georgia Chamber," (April 21, 2025), available at https://www.gachamber.com/news/governor-kemp-signs-tort-reform-into-law-capping-20-years-of-legislative-advocacy-from-georgia-chamber/ (Governor Kemp stating SB 68's passage was "a victory for the

people of our state who for too long were suffering the impacts of an **out-of-balance legal environment.**” (emphasis added)). GDLA seeks to maintain a balanced consideration of damages at trial and enforce O.C.G.A. § 9-10-184’s prohibition on unrelated anchoring arguments. This Court should reverse with direction on how to apply this new language.

ARGUMENT

I. THE TRIAL COURT ERRED IN DECLARING ONLY A LIMITED MISTRIAL

a. Georgia statutory authority requires holding a new trial if the same jury that decided liability cannot decide punitive damages.

O.C.G.A. § 51-12-5.1’s language is applied nearly every day in Georgia, due to the availability of punitive damages in all manner of actions. The statute has been cited in over 1,500 cases on Westlaw[2], and is the vehicle for some of Georgia’s most notable trial verdicts since its passage in 1987.[3] Given its notable role in tort cases, it is of paramount

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[2] *See* O.C.G.A. § 51-12-5.1, “Citing References: Cases,” available at https://1.next.westlaw.com/RelatedInformation/N1A7D7A107FA011DF8586F92FF0204E53/kcCitingReferences.html? (last visited February 5, 2026).

[3] *See, e.g*, *Ford Motor Co. v. Hill*, 373 Ga. App. 480 (2024) (appeal following a $1.724 billion verdict against Ford, including $1.7 billion in

importance that this statute is applied consistently throughout the state—both in the standard for seeking punitive damages as well as the process by which a party can seek them. And in this case, O.C.G.A § 51-12-5.1 is clear: a jury, upon finding liability and that punitive damages are warranted by clear and convincing evidence, must **immediately** reconvene to decide the amount of punitive damages to be awarded and whether or not the defendant acted with specific intent to cause harm. *See* O.C.G.A. § 51-12-5.1(d)(2). The subsection's references to the jury's obligations under subsections (e), (f), and (g) make clear that the same jury must decide all these issues, as opposed to only part. As discussed in Appellants' Opening Brief, the authority cited below by Appellee and the trial court do not support a different reading of O.C.G.A. § 51-12-5.1.[4] *See* Appellants' Br. at 25-27.

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punitive damages alone); Mason Lawlor, *Largest-Ever Verdict in Bibb County Reached in Negligence case Involving Abuse of Developmentally Disabled Man*, LAW.COM (Jan. 6, 2023), available at https://www.law.com/dailyreportonline/2023/01/06/largest-ever-verdict-in-bibb-county-reached-in-negligence-case-involving-abuse-of-developmentally-disabled-man/ ($118 million verdict, including $90 million in punitive damages).

[4] *See, e.g.*, *Martin v. Six Flags Over Georgia II, L.P.*, 301 Ga. 323 (2017) (analyzing whether a limited retrial was warranted under the apportionment statute and which did not involve an incomplete verdict);

Moreover, O.C.G.A. § 51-12-15, which was adopted and became effective as part of S.B. 68, confirms O.C.G.A. § 51-12-5.1's procedure by stating that after finding liability and compensatory damages the trial be "recommenced immediately with the **same judge and the same jury**" to decide the punitive phase of trial. As discussed further in Section I.b, it is no surprise that O.C.G.A. § 51-12-15 has the same requirement as O.C.G.A. § 51-12-5.1. The Georgia Legislature has consistently shown over the past forty years a desire to prevent Georgia from becoming a state of runaway verdicts by limiting the jury's discretion on punitive damages and making clear procedures that support considering all the

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Swindell v. Swindell, 231 Ga. 167 (1973) (merely stating general principles of severability but refusing to sever a divorce from the division of property in the underlying case); *Anthony v. Anthony*, 143 Ga. App. 691 (1977) (applying *Swindell* and remanding for a case solely on apportionment of damages); *Marks v. Flowers Crossing Community Ass'n, Inc.*, 333 Ga. App. 476, 482-84 (2015) (remanding for a decision on alleged covenant violations and a decision on damages); *Lyman v. Cellchem Int'l, LLC*, 342 Ga. App. 446 (2017), (remanding a case back for the jury to decide compensatory and punitive damages simultaneously); *Whitaker Farms LLC v. Fitzgerald Fruit Farms LLC*, 347 Ga. App. 381 (2018) (trial jury reached decision on all issues submitted and after making the compensatory award law of the case, remanding to decide entitlement to and amount of punitive damages); *Amis v. State*, 277 Ga. App. 223, 225 (2006) (allowing a limited retrial as to some, but not all of the criminal counts, which are inherently severable and not derivative claims like punitive damages claims).

evidence when deciding punitive damages. This includes a procedure whereby the same factfinder that weighed the evidence during the liability phase of trial can consider this evidence and the evidence presented during the punitive phase in deciding the punitive phase.

O.C.G.A. § 9-12-1 further supports this point. This statute expressly requires "[t]he verdict shall cover the issues made by the pleadings and shall be for the plaintiff or for the defendant." Thus, unless the parties agree that certain issues may be decided by the trial court,[5] the jury must decide everything submitted to them. In cases where a jury has not decided all the issues made by the pleadings, this Court has held the trial court must set aside the judgment and declare a mistrial as to the entire trial. *See Kane*, 182 Ga. App. at 485; *cf. Chapman v. Clark*, 313 Ga. App. 820 (2012) (distinguishing *Kane* as inapplicable and holding a limited mistrial as to just one defendant was proper where all the issues submitted to the jury had been decided for two of the defendants, but not the third). As *Kane* explained, "[t]his statute appears to be the

[5] For example, the parties may agree to have the trial court, instead of the jury determine the reasonableness of attorney's fees under O.C.G.A. § 13-6-11.

codification of a well settled common-law rule under which a verdict which fails to resolve all of the issues submitted to the jury **must be set aside**." 182 Ga. App. at 486 (emphasis added) (citations omitted). O.C.G.A. § 9-12-1, as interpreted by this Court, thus requires the jury to decide all of the issues submitted to them with respect to a defendant following the close of evidence. No more, no less.[6]

Here, the parties submitted for the jury's consideration (1) whether Appellants were liable under Appellee's substantive claims, (2) whether Appellee was entitled to punitive damages, (3) the amount of punitive damages, if any, to be awarded, and (4) whether Appellants acted with specific intent to cause harm. *See* R121:63358-63359 (Phase One Verdict Form); R122:64233 (Phase Two Verdict Form). After deciding liability and entitlement to punitive damages, the same jury reconvened immediately to decide the amount of punitive damages to be awarded and whether Appellants acted with specific intent to cause harm. After

[6] To the extent Appellee argues, as he did below, that O.C.G.A. § 9-12-1 does not apply to cases with multiple phases, that argument is misguided. The Georgia Supreme Court holds a trial may have different phases, but it is still but one trial. *Cf. Peek v. State*, 239 Ga. 422, 430 (holding with respect to bifurcated trials in death penalty cases that "although such a trial is divided into two stages, it is but one trial.").

hearing all of the evidence in this case, the jury entered more than a day of deliberations. On the second day of deliberations, the jury clearly struggled to find unanimity in deciding the issue of specific intent, telling the trial court they could not find agreement on this issue. R174:13952. Even after an *Allen* charge was given, and the jury returned a verdict, unanimity amongst the jury did not exist. One juror recanted her assent to the verdict during polling, R159:3949:11-3950:06, and while explaining her position to the trial court, explained she could not agree with her fellow jurors on this issue. R159:3956:08-3958:05. Under these circumstances, the jury clearly did not decide all the issues submitted to them, and Georgia statutory authority requires an entire new trial.

b. Georgia code section 51-12-5.1's "immediately reconvene" language is in line with Georgia's tort-reform policies over the last forty years.

Georgia's tort reform legislation over the past forty years supports this uncontroversial reading of O.C.G.A. § 51-12-5.1. Georgia has long sought to avoid becoming a state of nuclear jury verdicts, and its intent behind tort reform legislation relating to punitive damages is just the same in 2025 as it was when this statute was first enacted. The Tort Reform Act of 1987, enacted in response to concerns over out-of-control

jury verdicts in Georgia, "limit[ed] discretion with regard to punitive damages and the amounts of verdicts in general." D. Gresham, *TORTS Tort Reform*, 3 GA. ST. U. L. REV. 519, 526 (1987). And while many facets of tort reform were hotly contested, the process by which punitive damages were to be awarded did not appear amongst them. A Georgia State University Law Review annual legislative review, known as the "Peach Sheets," which provides an in-depth view of the Georgia General Assembly's activities and the legislative intent behind significant bills, analyzed the Tort Reform Act of 1987 and detailed the differing views on each section of the new law, chief amongst those punitive damages reforms. Notably, this act specifically amended the procedure by which a jury could award damages. *See TORTS Tort Reform* at 527 ("Also, the jury procedure has been bifurcated. First, the jury returns its verdict and decides whether punitive damages will be awarded; **then, the jury is reconvened to hear evidence to determine the amount of the punitive damages.**" (emphasis added)). Yet in legislation that spurred vigorous debate, there is no evidence of a dispute about the language in O.C.G.A. § 51-12-5.1(d)(2) relevant here.

The same concerns laid behind Georgia's push for tort reform legislation in 2025. The Georgia Senate introduced Georgia Senate Bill 68 in the 2025 legislative session as Georgia once again sought to remedy, in the words of Georgia State Senate President Pro Tempore John F. Kennedy, a "legal environment that was grossly unbalanced, rewarding frivolous lawsuits and causing skyrocketing [insurance] premiums[.]" *See* Georgia Chamber, Governor Kemp Signs Tort Reform into Law.

This legislation sparked vigorous debate on many facets of this legislation, from premises liability reforms to procedural changes in bringing new lawsuits. *See, e.g.*, Hunter King, *Georgia Senate Passes Sweeping Civil Suit Bill, Sparking Debate Over Fairness*, 13WMAZ (Feb. 21, 2025), available at https://www.13wmaz.com/article/news/local/georgia-senate-passes-sweeping-civil-suit-bill-sparking-debate/93-9ca11a97-893c-4f9d-8dfb-c1686d083864 (describing arguments for and against Senate Bill 68 while the legislation was under consideration). Yet despite the debate on this bill, there was little (if any) dispute about the language in newly-added O.C.G.A. § 51-12-15 that the **same** judge and jury must **immediately** reconvene to decide the second and (if needed) third stages

of trial. In this new legislation, Georgia clarified the process that was already in place for deciding cases involving punitive damages, and again there was no notable debate on either side.

c. Having the same jury decide punitive damages and specific intent as decided liability and entitlement to punitive damages is good policy.

The reason these provisions were (and are) uncontroversial is partially grounded in constitutional principles of due process, discussed in Appellants' Opening Brief, but also common sense. Having the same jury that decided liability also decide the punitive phase of trial (1) supports judicial economy, as the same jury does not need to be presented with all the evidence from the entire trial again, and (2) supports the policy of having reasoned punitive verdicts connected to the jury's consideration of all the evidence, as the jury that decided liability can weigh its own discussion during liability phase deliberations, as well as its verdict during the liability phase, in deciding the amount of damages sufficient to punish, penalize, or deter the defendant. Indeed, Georgia pattern civil jury instructions §§ 66.711 and 66.740 contemplate the same jury considering these issues. Georgia Pattern Jury Charge § 66.711 provides as follows:

> **If you decide to impose punitive damages, you should further specify whether you find that the defendant acted with specific intent to cause harm.** A party possesses specific intent to cause harm when that party desires to cause the consequences of its act or believes that the consequences are substantially certain to result from it. Intent is always a question for the jury. It may be shown by direct or circumstantial evidence.

(emphasis added, proposed charge alternatives removed). Georgia Pattern Jury Charge § 66.740 further provides as follows:

> You have decided to impose punitive damages. Next you must determine the appropriate amount of punitive damages. In doing so, **you should consider all the evidence in the first phase of the trial**, plus any evidence admitted in the most recent phase of the trial. You should also bear in mind that the plaintiff's injury has been made whole by your award of compensatory damages. The sole purpose of punitive damages is to punish, penalize, or deter the defendant, and the amount you impose should reflect that purpose only.

(emphasis added, proposed charge alternatives removed). A second jury only impaneled for a punitive phase of trial will not have the benefit of these considerations, leading to a punitive damages verdict grossly out of line with the first jury's view of the evidence. Maintaining the same jury for the entire trial tracks with Georgia's long-standing views on tort reform legislation and closely aligns with common sense priorities for jury trials.

II. THE TRIAL COURT ERRED IN ALLOWING APPELLEE'S COUNSEL TO COMPARE APPELLEE'S NONECONOMIC DAMAGES TO UNRELATED REVENUE PROJECTIONS

O.C.G.A. § 9-10-184 was amended as part of Senate Bill 68, and its amendments became effective on April 21, 2025. Georgia implemented tort reform legislation in 2025 to remedy a legal environment that was "out of balance" and gave plaintiffs a leg up during closing arguments under the old code.[7] The original version of O.C.G.A. § 9-10-184 provided that "counsel shall be allowed to argue the worth or monetary value of pain and suffering to the jury; provided, however, that any such **argument shall conform to the evidence or reasonable deductions from the evidence in the case**." This statute's broad interpretation allowed for all sorts of irrelevant anchoring values.[8] Just

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[7] The "cardinal rule in construing a legislative act, is to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose[.]" *Carringer v. Rogers*, 276 Ga. 359, 363 (2003) (quotation omitted). "In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy." O.C.G.A. § 1-3-1.

[8] In one extreme example, this Court upheld a plaintiff's counsel's closing argument in a car accident case in which he argued the hourly worth of his client's pain and suffering was "the price of a measly bottle of Coca-Cola," holding such a comparison was "not, under the facts of this

a few years ago, a plaintiff obtained a $10 million verdict against a surgeon in a medical malpractice trial, after the plaintiff's counsel cited to baseball player Mike Trout's $37 million salary, Dustin Johnson signing a $125 million contract to play golf, and stating:

> It's nothing for some doctor — excuse me. It's nothing for some lawyers, for some accountants, to make $1 million a year or more. It's nothing, you know, for ball players, for artists, to get paid sometimes $10 — $20 million for a show.
>
> Here, we think it's bigger than that. Amy's been through a lot more than just that. And she — you want to talk about jobs? She's earned it. And she earns it every day, and is gonna have to earn it for the rest of her life, some 40-some years according to an annuity mortality table.

White v. McGouirk, 370 Ga. App. 318, 320-21 (2024). Defense counsel moved for mistrial, but the trial court denied this motion, concluding "the jury should consider the evidence that they have heard during this week-long trial and render a verdict they believe is consistent with the evidence to be in this particular matter." *Id.* at 321. On appeal, this Court did not reach the merits of that issue due to a lack of preservation, but the notable manner of the plaintiff's counsel's remarks, and the fact that the

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case, an unreasonable deduction from the evidence[.]" *Hardwick v. Price*, 114 Ga. App. 817, 821 (1966).

trial court *did* reach the merits of the issue and denied the defendant's motion for mistrial, made clear that O.C.G.A. § 9-10-184 as previously enacted permitted unbalanced and improper anchoring arguments.

In relevant part, this code section was amended to provide that at trial:

> counsel for any party shall be allowed to argue the worth or monetary value of noneconomic damages only after the close of evidence and at the time of such party's first opportunity to argue the issue of damages, **provided that such argument shall be rationally related to the evidence of noneconomic damages <u>and</u> shall not make reference to objects or values having no rational connection to the facts proved by the evidence.**

O.C.G.A. § 9-10-184(c)(1) (emphasis added). "Noneconomic damages," under Georgia law, includes damages for "physical or emotional pain, discomfort, anxiety, hardship, distress, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, [or] injury to reputation[.]" O.C.G.A. § 9-10-184(a)(2). This provision "prevents 'anchoring,' a method where counsel 'anchors' a juror's mind to irrelevant information or amounts for damages, resulting in excessive verdicts." *SB 68 – Civil Practice*, 42 GA. ST. U. L. REV. at 271; *see also id.* at 287 (noting the provision "limit[s]" counsel's ability to make arguments connected to

the value of noneconomic damages and that "[m]aking arguments and references throughout trial to figures for non-economic damages, or anchoring, is precisely what the Code section restricts.").

If counsel "elicits any testimony, or makes any argument or reference, prohibited by this Code section in the hearing of the jury . . . , the court **shall** take remedial measures as provided in Code Section 9-10-185[.]"[9] O.C.G.A. § 9-10-184's language thus prohibits improper "anchoring" evidence that has no rational connection to a plaintiff's noneconomic damages and thereby requires a plaintiff to provide legitimate evidence of his pain and suffering in order to recover for the same.

At trial, Appellee's counsel made the following remarks during closing:

> And so we thought about what should the value of that year, of all those items of damages, and we also thought what is fair and just to a company like Bard? . . . You may remember when they were planning to build their facility, completed in approximately [ ] 1992, they discussed what the expected extra revenue would be from one customer. And for one year alone, it was $25 to $30 million. We submit that an

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[9] This section **requires** the trial court to take remedial measures given its use of the language "shall." *See, e.g.*, *Giles*, 362 Ga. App. 237 ("the word 'shall' is 'a word of command'").

> appropriate verdict in this case -- . . . . We would submit that combining those medical expenses with $25 to $30 million would give you a reasonable range.

R154:3429:16-3430:18. The problematic nature of this argument is clear: Appellee's counsel anchored their request for noneconomic damages, $25-30 **million**, to "expected extra revenue" Bard estimated for expanding its medical device sterilization facility in Covington in 1992, **nearly twenty-five years before Appellee was diagnosed with cancer.** This revenue projection had no connection to Appellee's pain and suffering. The entire basis for Appellee's counsel's request for damages was on something having no rational relationship to Appellee's noneconomic damages – Bard's projected revenue for a project that took place 25 years earlier.

Such anchoring arguments directly violated O.C.G.A. § 9-10-184 and warranted immediate remedial measures under O.C.G.A. § 9-10-185. Appellants' counsel asked for a mistrial or, in the alternative, for the trial court to rebuke counsel. R154:3430:09-12; R154:3432:08-3440:25. The trial court's refusal to do so without giving due consideration to the law was clear error. Upholding this verdict following such a clear violation of O.C.G.A. § 9-10-184 is likely to lead down a dangerous path for jury trials

in Georgia, in direct contradiction of the Georgia Legislature's goals in implementing tort reform legislation this past year.

Appellee's counsel argued below that the relationship may further be shown through temporal connection, arguing Bard's revenue projection was "rational[ly related] to the plaintiff's one year of noneconomic damages." R155:3602:11-3604:03. This relationship, however, is plainly insufficient. Appellee's counsel's argument had **<u>no</u>** connection to anything specific to Appellee himself or his alleged pain and suffering. Allowing such a comparison would inevitably lead to plaintiffs using a corporate defendant's wealth as an anchor for their noneconomic damages and simply arguing they are temporally connected. This result would fly in the face of the Georgia Legislature's intent to keep arguments focused on compensating a plaintiff for the actual harm he or she suffered. The trial court erred in allowing these plainly prejudicial remarks during closing, and this Court should reverse with specific direction on applying this statute to trials moving forward.

CONCLUSION

Georgia's recent tort reform legislation has enforced the state's long-standing policy of favoring fair, evidence-based verdicts and

encouraging a jury to make its decisions based on the evidence before it. The trial court's decisions in this case fly in the face of these policies and risk undermining the application of Senate Bill 68, enacted just last year. GDLA requests this Court reverse the trial court on both these grounds and provide specific guidance on (1) the scope of retrial where a juror has recanted her assent to part of the verdict, and (2) the application of Georgia's new tort reform statute provision on "anchoring" closing arguments.

CERTIFICATION

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 12th day of February, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing AMICUS CURIAE BRIEF OF GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPELLANTS BECTON, DICKINSON AND COMPANY, INC. AND C. R. BARD, INC. to be served on all parties by United States Postal Service:

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