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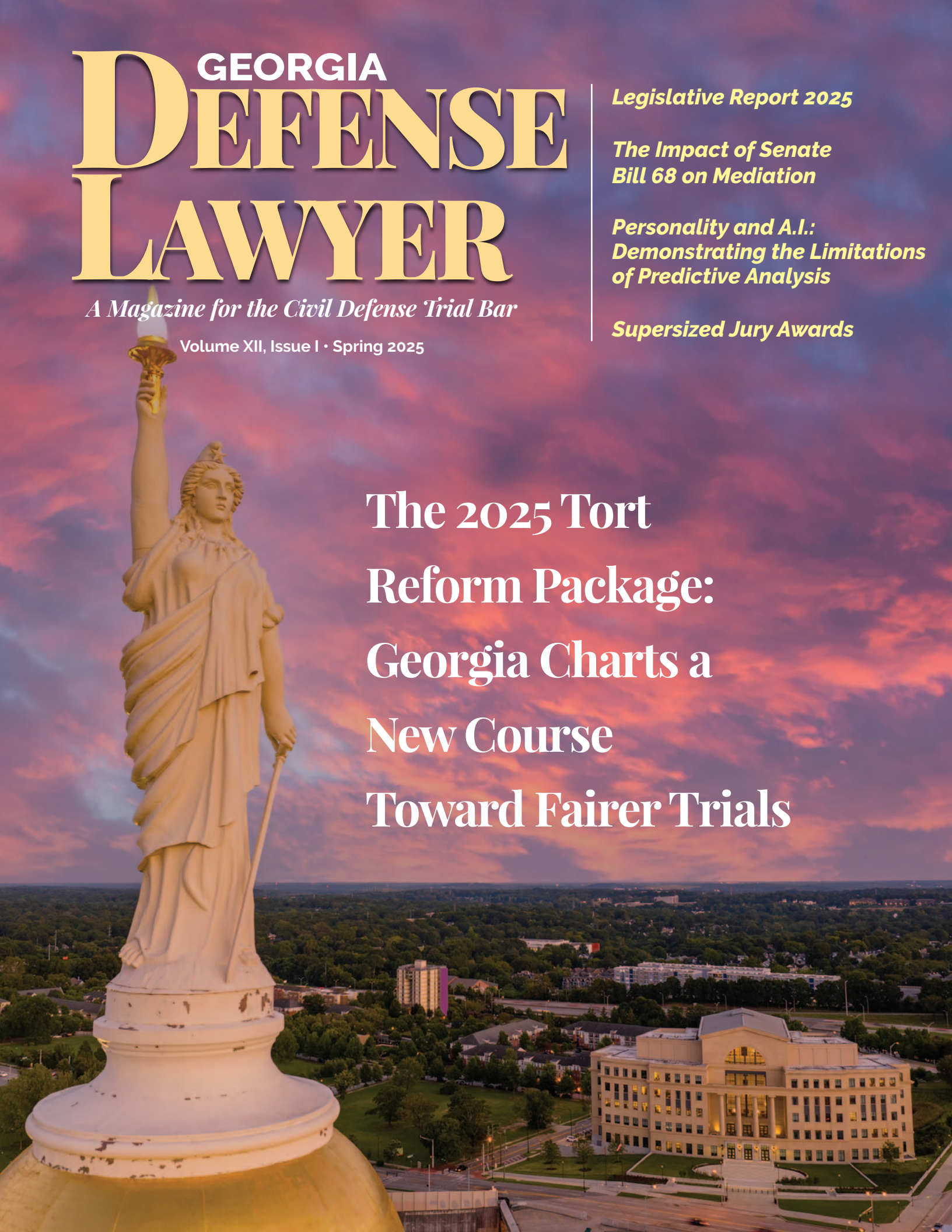
Legislative Report 2025

The Impact of Senate Bill 68 on Mediation

Personality and A.I.: Demonstrating the Limitations of Predictive Analysis

Supersized Jury Awards



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President's Message

Bill Casey

It is hard to believe my year as President of GDLA is nearly over. It has been an honor to lead such a fine group of lawyers who are so committed to our mission of, "Advancing the Civil Defense Bar."

While I regret that legislation designed to improve the lives of all civil litigators and their clients fell short, I deeply appreciate Jake Daly for drafting the proposed legislation to address onerous trial calendars and attempting to advance it through the legislature. This was just not the year. But on the positive side, the GDLA Legislative Committee, and members who testified before the legislature, including Jake, Past President Pamela Lee, Board member Zach Matthews, and Scott Masterson deserve thanks for their role in its passing. Many of our clients are already benefiting from this sweeping legislation.

A special thanks to the best Executive Director on the planet, Jennifer Davis Ward. No one could practice law and serve as GDLA President without her institutional knowledge, energy, organization, and genuine love for the association and its members. I also appreciate the time and dedication of our Board of Directors and Executive Committee, which supported me, and, when warranted, took me to task. I cannot discuss the strengths of GDLA without offering my sincere thanks to its Past Presidents, so many of whom still attend every Board meeting and work behind the scenes to make GDLA great.

The future of GDLA is bright. Membership is engaged and committed, we are financially strong, our sponsorships grow every year, and we have a strong lineup of future leaders. I am fully confident President-Elect Ashley Rice and her team will continue to move GDLA forward with vision and purpose.

Thank you again for your time, your support, but most of all, your friendship.

For the Defense,

William T. "Bill" Casey, Jr.
Swift Currie McGhee & Hiers, Atlanta

Member News & Case Wins

MEMBER NEWS

Weinberg Wheeler Hudgins Gunn & Dial announced the elevation of **Jason Vuchinich** to full equity partnership and the promotion of **Marriah Paige** and **Adam Wittenstein** to equity members in its Atlanta office. Paige focuses her practice on catastrophic injury and wrongful death cases, including products liability, premises liability, medical malpractice and personal injury matters. Vuchinich focuses his civil litigation practice on catastrophic injury cases, often involving premises liability, transportation and product liability. Wittenstein's practice focuses on construction law, premises liability, wrongful death and high-exposure tort cases. In additio, the firm announced that partner **Brannon Arnold** was elected unanimously to serve on the firm's three-member Executive Committee. Arnold is Vice-Chair of GDLA Trial & Mediation Academy.

Mozley Finlayson & Loggins in Atlanta announced the elevation of **Richard S. Bruno** to equity partner. Bruno's practice includes commercial law, construction law, premise and negligent security law and trucking and auto litigation. He has also represented both plaintiffs and defendants in complex commercial disputes. He has tried copyright and signal piracy cases in federal courts. He also has experience in a broad array of areas including real estate litigation, insurance coverage, and automobile regulations.

Constangy Brooks Smith & Prophete announced the addition of **Tiffany Harlow** as senior counsel and **Lindsey Stewart** as an associate in its Atlanta office. Harlow focuses her practice on employment litigation with extensive experience in defending management against various state and federal employment law claims. Stewart's practice focuses on representing employers, insurers, and self-insured organizations in workers' compensation defense cases.

Waldon Adelman Castilla McNamara & Prout in Atlanta announced the promotion of **Ellen Lu** to senior associate. Her practice includes insurance coverage, automobile liability, motor carrier liability, insurance fraud, and civil litigation.

CASE WINS

This spring, in Gwinnett State Court before Judge Shawn Bratton, **Matt Moffett** and **Ryan Del Campo** of **Gray Rust St. Amand Moffett & Brieske** in Atlanta teamed up with **Laurie Daniel** and **Skyler McDonald** of **Webb Daniel Friedlander** in Atlanta to successfully defend an admitted liability, commercial vehicle wrongful death case, wherein the opposing lawyers asked the jury to award $280 million. During closing argument, the defense team anchored to a seven-figure award and the jury agreed, awarding $8 million.

The case involved a 31-year-old woman, on her way to work and stopped at a traffic light when a commercial vehicle crashed into her vehicle from behind, while speeding at 68mph. The force of the impact pushed the young woman's car underneath the pickup truck in front of her, trapping the woman inside her car. Witnesses at the scene tried to rescue her and testified that she was breathing and moaning in pain inside her car; by the time EMS could extract her, she had died.

The defendant company was sued for vicarious liability, and for negligent hiring, training, supervision, retention, and entrustment as the driver of the commercial vehicle was underage and had previously been involved in a prior vehicular accident and failed a drug test. The case involved claims for the value of the plaintiff's life, conscious pre-death pain and suffering, attorney's fees, and punitive damages.

The defense trial team acknowledges and thanks fellow GDLA members **Jimmy Scarbrough** of **Freeman Mathis & Gary** in Atlanta and **Matt Barr** of **Hawkins Parnell & Young** in Atlanta who participated in pretrial strategy by recommending tactics based upon their prior trial experiences against opposing counsel. The defense trial team reports it became even more effective as a result of this strategic collaboration, which further defines the value of a great organization like GDLA!

Melissa Segel and **Kelly Chartash,** partners at **Swift Currie McGhee & Hiers** in Atlanta, prevailed at a recent trial in Gwinnett County that centered on a disputed collision involving a big loader and a concrete truck at a waste facility site. The plaintiff, who was serving as a trainer for the truck's driver, alleged a big loader negligently collided with his truck. The defense argued that the plaintiff told the driver to go the wrong direction, thereby violating the right of way of the big loader. The plaintiff claimed personal injuries, including back surgery, and sought medical bills over $200,000 and loss of future earning capacity damages over $1 million. During closing arguments, plaintiff's counsel requested $1.75 million in total damages. After a week-long trial, the jury returned a verdict awarding the plaintiff $175,000—far below the requested amount—and further assigned 25% of the fault to the plaintiff. This verdict activated a pretrial Offer of Settlement, providing a strategic win for the defense team.

Waldon Adelman Castilla McNamara & Prout in Atlanta has been very successful at trial recently. Partner **Ben Harbin** prevailed in a case involving an admitted fault head-on collision that totaled both vehicles, He defended his deceased client's

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estate. The plaintiff had suffered a Lisfranc fracture requiring three surgeries and faced the prospect of more, incurring approximately $100,000 in medical bills, largely from the accident's immediate aftermath. The defendant had the minimum liability policy limits. The carrier made multiple offers to tender. Months before trial, the defendant made an additional personal contribution offer of $20,000 and title to 6.5 acres of land. The plaintiffs refused to accept and their last demand before trial was for $700,000. At trial, Harbin strategically asked the jury to focus on the plaintiff's past medical expenses. The jury ultimately returned a verdict of $32,500.

In another case, **Harbin** and firm associate **Dontez Mars** secured a significant victory in Clayton County, Ga. Following a two-day trial, the jury returned a verdict of just $30,000, significantly less than the $2.5 million sought by the plaintiff and even below the insurer's pretrial settlement offer. The plaintiff presented past medical expenses totaling $190,000 and secured testimony from her treating physician indicating a need for future surgery estimated to cost an additional $200,000. Despite this substantial evidence and the plaintiff's counsel's multi-million-dollar request, the jury deliberated for only one hour before reaching their verdict of $30,000.

In another case, **Harbin** obtained a favorable verdict in Clayton County in an admitted liability rear-end accident. The plaintiff complained of severe low back pain for seven years and presented medical testimony that she would require an SI joint fusion. At trial, plaintiff's counsel presented past medical specials of $190,000 and a future surgery estimate totaling $210,000. Opposing counsel asked the jury to award $2.5 million. The jury returned a verdict of $30,000 which was less than the insurance carrier's last pretrial offer.

Waldon Adelman's Matthew Hurst and **Ellen Lu** represented their client at trial in the State Court of Cobb County from February 24 to February 26, 2025. The lawsuit stemmed from a September 2019 rear-end automobile accident which the plaintiff alleged resulted in injury to his neck and low back. The plaintiff complained of injury at the scene and was taken by ambulance to Piedmont Henry Hospital. The plaintiff received two years of treatment, which included chiropractic care, epidural steroid injections, and other non-surgical orthopedic treatment. At trial, the plaintiff presented approximately $55,000 in medical expenses. With fault for the accident being clear, the defense team focused on contesting the plaintiff's claims of injuries and damages. During the discovery process, Hurst was able to discover the plaintiff had a history of prior automobile accidents and similar injuries. Moreover, Hurst discovered the plaintiff had been involved in several additional automobile accidents after the September 2019 accident. Understanding the difficulty in claiming the subject accident was the sole cause of the plaintiff's issues, the plaintiff switched to an "eggshell plaintiff" theory of the case. At trial, the plaintiff's treating physician causally linked the plaintiff's complaints to the September 2019 accident. During a blistering cross-examination, Hurst successfully showed the plaintiff's treating physician was unaware of any of the plaintiff's prior or subsequent automobile accidents or injuries. Despite that, the plaintiff's physician's opinion regarding causation remained unchanged. During his cross-examination of the plaintiff, defense counsel showed the jury that despite being deposed twice and supplementing discovery nine times, the plaintiff failed to disclose his involvement in four other automobile accidents. During closing arguments, the plaintiff requested a verdict in the range of $1.2 to $1.6 million. After deliberating for one hour, the jury returned a verdict in favor of the defendant. A statutory Offer of Settlement sent by the defendant in April 2022 was rejected and fees and expenses from the date of rejection are being calculated.

Brett Ashton Mason of **Troutman Pepper Locke** in Atlanta was part of a team that secured a defense verdict after an eight-day jury trial in a contract construction dispute in the Superior Court of Fulton County. The case, *Be Our Guest Invs. v. Piedmont Park Conservancy, Inc.,* concluded on February 12, 2025, with a finding from the jury that the plaintiff, Be Our Guest, breached the lease agreement, resulting in an award of compensatory damages and attorney's fees to the Piedmont Park Conservancy, a nonprofit organization in Atlanta that manages the largest public park in the city, Piedmont Park.

Although the jury found both parties breached the lease agreement in some respect, Be Our Guest had asked the jury to award it over $6 million in damages, including a claim for future lost profits. Instead, following post-trial briefing, on March 5, 2025, the court entered the final judgment, finding that "PPC is entitled to recover $1,514,370.34" from the plaintiff, Be Our Guest, and entered an award of nominal damages to the plaintiff in the amount of $171,107.

Cara Weiner, a shareholder at **Spears Moore Rebman & Williams** in Chattanooga, Tenn., was lead counsel in a nine-day medical malpractice trial in Cleveland, Tenn., which resulted in a defense verdict. She represented Dr. Jurgens, an internal medicine physician. In this case, the plaintiff began losing vision in her eye over the weekend. She called Cleveland (Tenn.) Eye Clinic on Saturday and spoke to the on-call optometrist, Dr. Bramlett. There was a dispute about what was said, but there is no dispute she was told to come in on Monday morning to see a doctor.

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She saw Dr. Ford on Monday morning. He diagnosed her with ischemic optic neuropathy, and thought she had non-artertic anterior ischemic optic neuropathy (which has no treatment), but thought there was a small chance she had arteritic anterior Ischemic optic neuropathy (AAION) for which steroids is the treatment. He wanted her to get lab work done. She had a pre-scheduled yearly physical with Dr. Jurgens the next day and asked if she could get labs there. Dr. Ford said she could. Plaintiff's testifying expert Dr. Harbin said that was a violation of the standard of care and Dr. Ford should have ordered them himself STAT.

The following day, the plaintiff went to her primary care doctor, Dr. Jurgens, and had her yearly physical and handed Dr. Jurgens a note with the labs Dr. Ford was requesting. None of the labs were diagnostic of AAION, they were just markers of inflammation. Nothing in the note requested the labs urgently or STAT. Dr. Jurgens ordered the labs and they were returned Tuesday after she was gone. Dr. Jurgens did not work Wednesday and returned to work Thursday. Only one of the three labs was elevated and it was only moderately elevated. Dr. Jurgens asked her medical assistant (MA) to send the labs to Dr. Ford. The MA said she could not send them because she did not have a release of information on file nor did she have a referral. Dr. Jurgens then asked the MA to send them to the patient and the MA mailed them to the patient because that's how the plaintiff preferred to receive labs. Neither the patient nor Dr. Ford called to get the labs on Thursday or Friday.

The following Sunday the plaintiff lost vision in her second eye. All experts agreed Dr. Jurgens was not treating or diagnosing the eye condition, simply ordering labs. The plaintiff argued Dr. Jurgens violated the standard of care by failing to immediately call Dr. Ford's office with the lab results on Thursday morning and argued that had she called on Thursday, the plaintiff would not have lost vision in her second eye over the weekend.

The jury disagreed and found Dr. Jurgens did not violate the standard of care.

Michael St. Amand and **Megan Quisao** of **Gray Rust St. Amand Moffett & Brieske** in Atlanta obtained a defense verdict from a Cherokee County jury following a four-day trial. The case involved a 16-year-old pedestrian walking in an intersection at night. The defendant driver entered the intersection and struck the pedestrian plaintiff, who was severely injured, including a femur fracture. Plaintiff contended that the defendant driver was negligent for speeding and failing to yield to a pedestrian in a crosswalk. The defendant driver contended that he was not traveling more than 50mph in a 45mph speed zone and that he had a green light. The defendant driver was driving a company vehicle at the time of the accident and the plaintiff argued that the defendant employer negligently supervised the defendant driver after receiving numerous excessive speed notifications from a GPS tracking device on the day of the accident.

Pre-trial, the defendants won a motion for partial summary judgment which excluded the plaintiff's medical bills (in excess of $400,000) from before he turned 18 years old. In closing, plaintiff's counsel from Morgan & Morgan asked for future medical expenses and past and future pain and suffering for a total of $1,633,720 to $10,768,000. The jury returned with a defense verdict after less than an hour of deliberation. Pursuant to O.C.G.A. § 9-11-68(e), the jury subsequently awarded the defendants over $125,000 in attorney's fees and expenses.

Douglas Burrell and **Anelise Codrington** of **Chartwell Law** in Atlanta achieved victory in Columbia County, Ga., resulting in a verdict of $20,000—an amount below the joint settlement offer made by their client and a co-defendant. The case stemmed from a low-speed accident that resulted in minor damage to both vehicles but was complicated by allegations that the insured driver was under the influence of drugs and alcohol. The insured admitted liability. Plaintiff's counsel argued the accident had ruined his client's life and described the insured driver as a danger to society. The plaintiff was diagnosed with a shoulder sprain and presented just over $9,000 in special damages, yet sought $135,000 in compensatory damages.

Before trial, the defense duo tendered the policy limits, but the plaintiff declined, seeking additional recovery from her UM carrier and punitive damages—despite being aware of a policy exclusion for punitive damages. She elected to proceed to trial. The defense team successfully moved to trifurcate the trial and obtained favorable rulings on key evidentiary issues, including exclusion of prejudicial criminal history records and a prohibition on any mention of the insured's current incarceration for the alleged murder of his wife.

During phase one of the trial, handled primarily by Codrington, the plaintiff requested $135,000 in compensatory damages. However, after the jury heard compelling evidence that the plaintiff had continued to travel and work as a mail carrier following the incident, and after reviewing her medical records, they awarded just $20,000—the exact amount proposed by the defense. The jury included a nurse.

Before the phase one verdict, the defense duo again offered to settle for policy limits, which the plaintiff rejected. Phases two and three of the trial, which addressed punitive damages, were led by Burrell. Although the jury found that punitive damages were warranted in phase two, they awarded only $2,334.85

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in phase three, which was far below the $353,000 requested by the plaintiff.

Groth Makarenko Kaiser & Eidex attorneys have notched several wins recently. Associate **Nicholas Harof** won a defense verdict in a disputed liability case tried in the State Court of DeKalb County in early April. He was second-chaired by firm of counsel **Stephanie Chavies**. The case arose from a motor vehicle accident that occurred on December 2, 2020, at the intersection of N. McDonough Street and Howard Drive in Decatur, Ga. Plaintiff and Defendant presented conflicting versions of where and how the accident occurred. Plaintiff testified the collision took place at a different intersection than Defendant described.

According to Defendant, he was traveling straight through the intersection in a lane designated for through traffic. Plaintiff was stopped to his right in a right-turn-only lane. When the light turned green, rather than turning right as required, Plaintiff attempted to drive straight through the intersection and struck the rear passenger side of Defendant's vehicle. Defendant maintained that he never left his lane, and that Plaintiff caused the collision by improperly proceeding straight from a right-turn-only lane.

At trial, Plaintiff admitted under oath that she was unfamiliar with the area, did not know the road names, and was driving with a migraine at the time of the incident. She was also unable to clearly articulate to the jury how or where the accident occurred. The investigating officer testified under oath at trial that he found Defendant at fault for the incident. Plaintiff presented her own testimony, along with the responding officer and her treating physician, Dr. Oglesby. She claimed multiple injuries, including lower back pain, hip pain, and numbness in her legs. Her treatment included chiropractic care, lumbar MRIs, and multiple injections.

Additionally, she claimed lost wages but admitted during her testimony that she never missed a full day of work. On cross-examination, Harof impeached Plaintiff on multiple occasions using her deposition testimony, medical records, written discovery responses, and a social media post. One of the most significant moments came when Harof showed the jury a live video that Plaintiff had posted on social media, performing workout exercises during the same period in which she claimed she could not bend, twist, or exercise. These videos directly contradicted her sworn testimony and statements made to her physician. Defendant's account of the accident remained consistent throughout the litigation. Additionally, he produced the only known photograph of property damage—minor scrapes to his rear tire. During closing arguments, Plaintiff's counsel asked the jury to award $125,000 in medical bills and pain and suffering. Harof suggested a maximum award of $8,000 but argued that the facts warranted a full defense verdict. The jury deliberated for approximately one hour and fifteen minutes before returning a full defense verdict. The case is *Maricarmen Sepulveda Chavez v. Samuel Ronald Myers*, State Court of DeKalb County, Civil Action File No. 22A02209.

In February, **GMKE's Arjun Nair** won in a case that was tried to a jury in the State Court of Cobb County. This case arose out of a motor vehicle accident that occurred on May 9, 2022, on SR 316 in Winder, Georgia. Plaintiff was traveling westbound on SR 316 and was rear ended by the defendant. The only visible damage to Plaintiff's car was a license plate imprint in its rear. Defendant's front license plate was bent as a result of the collision. Plaintiff complained of back pain at the scene and was transported to the ER by EMS. He then underwent chiropractic treatment for soft tissue injuries before undergoing an MRI. He was then referred to a pain management clinic for multiple pain injections.

His medical bills were approximately $30,000. Liability was admitted at trial. During his closing, the plaintiff asked the jury to award all of the past medical bills and pain and suffering in a total amount of $60,000-$90,000. Mr. Nair asked the jury to award Plaintiff $5,000. The jury deliberated for about an hour and 20 minutes before returning a verdict of $4,161.60. The case is *Alfred Mayes v. Anna Reichelt*, State Court of Cobb County CAFN 23-A-2129. February 19, 2025.

In April, **GMKE** partner **Jay Eidex** won a big victory for his client in a jury trial in the State Court of Fulton County involving a plaintiff who was a former NBA player alleging that injuries from a car accident prevented him from making a comeback to the NBA. In that case plaintiff's counsel asked the jury to return a verdict in the amount of $22,017,949.94 plus an amount for pain and suffering at the jury's discretion.

Eidex asked the jury to award a defense verdict. The Jury deliberated for approximately three hours before returning a verdict in favor of the plaintiff in the amount of $100,000. That verdict was well below the defendant's pre-trial offer of $225,000. Further the defense had filed an offer of settlement under O.C.G.A. 9-11-68 in that amount as well and Eidex announced his intention to file a motion for all of the fees and costs of the defense under the Offer of Settlement.

The hearing on attorney's fees under O.C.G.A. 9-11-68 was held this month where Eidex was cross-examined about his fees. Following the hearing, the Court issued an award of fees in favor of Eidex's client and against the plaintiff in the amount of $175,054.45. The plaintiff was represented by Morgan & Morgan. Plaintiff appealed from the award of fees and the Georgia Court of Appeals affirmed the award and further found: "Here, as discussed

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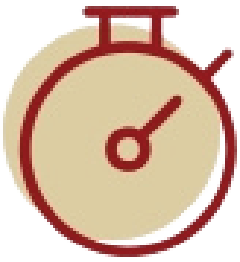

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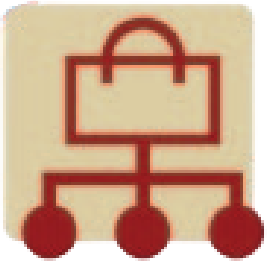

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above, Hill utterly failed to show any basis for reversing the trial court's order, and there was no reason whatsoever for Hill to anticipate a reversal of the trial court's order based on the arguments that he advanced on appeal since the arguments are either wholly devoid of support from the record or are clearly contradicted by the record. Consequently, we conclude that this appeal was brought only for purposes of delay." The Court of Appeals assessed frivolous appeal fees pursuant to O.C.G.A. 5-6-6 of "10 percent of the attorney fee award, $17,505.44," which will be added to the trial court fees award upon remittitur.

In January, **GMKE** partner **Nik Makarenko** had the dismissal of a case in Non-Resident Motorist Act Case affirmed by the Georgia Court of Appeals. The case arose out of an automobile collision that occurred on December 16, 2019. The plaintiff filed her complaint for injuries on December 21, 2021. The defendant was a resident of Ohio at the time of the accident thus service needed to be effected on him out of state. The Georgia Non-Resident Motorist Act requires service of process upon a non-resident to be made by serving a copy of the complaint on the Secretary of State, along with a copy of the affidavit of service to be submitted to the court. That service is sufficient as long as notice of the service and a copy of the complaint are sent by registered or certified mail or statutory overnight delivery by the plaintiff to the defendant and the return receipt is also filed with the court.

In this case, the plaintiff filed a Certificate of Acknowledgment with the Georgia Secretary of State on February 16, 2022. The plaintiff attached to that certificate a record of an attempt at service which indicated "Return to Sender, Attempted- Not Known. Unable to Forward." The plaintiff then sought the appointment of a Special Process Server who attempted personal service at that same address. The current resident confirmed to the process server that the defendant did not reside there. The plaintiff then filed a second certificate purporting to effect service under the Non-Resident Motorist Act based upon that attempt.

In the original case and the appeal, Makarenko argued that in order to effect service under the Non-Resident Motorist Act, the certified mail must be sent to an address known to be where the defendant resides pursuant to *Guerrero v. Tallez*, 242 Ga. App. 354 (2000) and other precedent. In his brief, he argued that the law required that the statute must be strictly complied with. On January 28, 2025, the Court of Appeals affirmed the dismissal without opinion stating that: (1) No reversible error of law appears, and an opinion would have no precedential value; and (2) The judgment of the trial court adequately explains the decision. The original case is *Esther Tella v. Troy Davis*, State Court of Fulton County, CAFN 21-EV-7202. The Court of Appeals case number is A24A132. ◆

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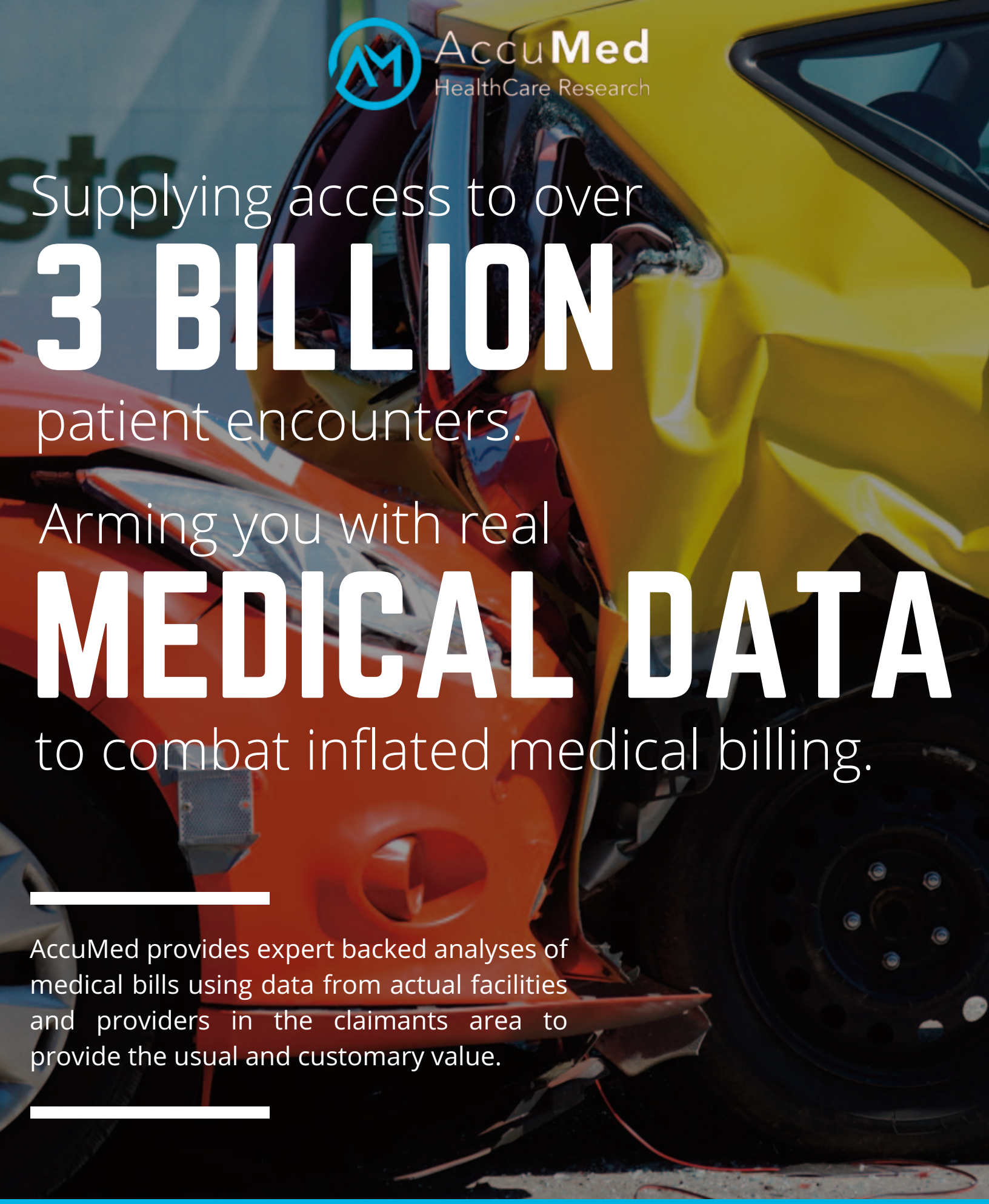

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Supreme Court Sides with GDLA Amicus: Traffic Citation Alone Does Not Show "Bad Faith"

On May 16, 2024, GDLA filed an amicus brief in *Anthony Love v. John McKnight* after the Supreme Court of Georgia granted certiorari. The case arose from a vehicular accident on November 13, 2019, in DeKalb County, Ga. John McKnight was driving his Chevrolet Silverado in stop-and-go traffic when he was rear-ended by Anthony Love's Chevrolet Tahoe. McKnight alleged that Love was distracted, possibly due to cell phone use, leading to the collision. Love was cited for following too closely and pleaded guilty to the offense.

McKnight filed a lawsuit seeking compensatory and punitive damages, as well as litigation expenses under O.C.G.A. § 13-6-11. The trial court denied Love's Motion for Summary Judgment on Plaintiff's claim for bad faith under O.C.G.A. § 13-6-11. The Court of Appeals affirmed, holding that "there is evidence to create a genuine issue of material fact on *multiple* potential violations of Georgia traffic laws. And, of course, Love pleaded guilty to the offense of following too closely and does not dispute that he did so." (Emphasis in original).

There was no evidence of Love's ill will, motive of interest, or conscious wrongdoing to violate Georgia traffic laws. Because of the danger that this opinion could create a jury question in arguably every conceivable Georgia automobile accident case as to the existence of bad faith, GDLA decided to weigh in.

In its amicus brief, authored by Sean Hynes and Russell Davis of Downey & Cleveland in Marietta, GDLA explained that "bad faith" under O.C.G.A. § 13-6-11 must require evidence showing the intentional disregard of the known rights of another. A traffic citation is not even conclusive of negligence, let alone bad faith. Further, the majority of traffic offenses are "strict liability" offenses in which no *mens rea* or guilty knowledge need be shown. *State v. Ogilvie*, 292 Ga. 6 (2012). A traffic ticket, therefore, does not authorize an award of attorney's fees for "bad faith" under O.C.G.A. § 13-6-11.

On March 4, 2025, the Georgia Supreme Court issued an order in agreement with GDLA's position. Then-Chief Justice Michael P. Boggs, writing for a unanimous court, reversed the Court of Appeals' decision, holding that traffic law violations alone are not evidence of bad faith.

The Court emphasized that "bad faith" in the context of O.C.G.A. § 13-6-11 requires more than mere negligence or violation of traffic laws. It necessitates conduct that is intentional, wanton, reckless, or indicative of a conscious indifference to consequences. The Court noted that traffic offenses are generally strict liability offenses and do not, by themselves, demonstrate the specific intent or wrongful purpose required to establish bad faith.

Applying this standard, the Court found that the evidence presented—namely, Love's traffic violation and alleged cell phone use—was insufficient to demonstrate bad faith. Therefore, the Court concluded that the issue should not have been submitted to the jury and reversed the lower court's ruling.

This decision clarifies the threshold for awarding litigation expenses under O.C.G.A. § 13-6-11, reinforcing that such awards are reserved for cases involving more egregious conduct than ordinary negligence. It underscores the necessity for plaintiffs to present evidence of intentional or reckless behavior to succeed on a bad faith claim for litigation expenses.

While GDLA's amicus brief also argued that O.C.G.A. § 13-6-11 should apply only to contract claims and not to tort or negligence claims because (1) the 2021 amendments to O.C.G.A. §§ 1-1-1 and 1-1-8 and (2) the framework of statutory construction set forth in *Alton & Bird, LLP v. Hatcher Management Holdings, LLC,* 312 Ga. 350 (2021), the Supreme Court's order did not address this issue.

The GDLA Amicus Committee is led by Co-Chairs Elissa B. Haynes of Freeman Mathis & Gary in Atlanta and Philip Thompson of Ellis Painter in Savannah, as well as Vice-Chair Patrick Silloway of Balch & Bingham in Atlanta.◆

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GDLA Legislative Report 2025

By Kade Cullefer
Troutman Pepper Strategies

Editor's Note: *In 2021, through the generosity of several GDLA member law firms, we established a Legislative Action Committee (Georgia Defense Lawyers Action Fund, Inc.) and hired a lobbyist to counter GTLA's efforts there and give our members and clients a presence at the Capitol. Most of the same firms contributed again over the past three years—and many GDLA members donated when paying their membership dues—enabling us to keep lobbyist Kade Cullefer of Troutman Pepper Strategies working on our behalf under the Gold Dome.*

In 2022, GDLA successfully worked on passage of the bill referred to as the "Hatcher fix," which remedied the drastic change in the interpretation of the apportionment statute after the Georgia Supreme Court's decision in *Alston & Bird v. Hatcher*. In 2024, we had success with the passage of 1) Senate Bill 426 that amended the direct-action statutes for accidents involving motor carriers by limiting the circumstances under which an insurer may be named as a defendant; and 2) Senate Bill 83, O.C.G.A. § 9-11-67 .1, that refined the requirements for settlement offers in cases involving motor vehicle accidents. This year, we actively supported Governor Brian Kemp's tort reform package, Senate Bills 68 and 69, which passed and were signed into law on April 21, 2025. See page 22 for an in-depth look at Senate Bill 68.

During the session, GDLA members receive via eblast my weekly report on happenings under the Gold Dome that will impact the civil defense bar. Below is my final report following the Georgia General Assembly's adjourning Sine Die for 2025 a little earlier than usual on Friday, April 4:

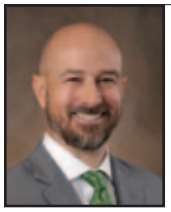
- SB 68, sponsored by Senator John Kennedy (R), is Governor Kemp's (almost) comprehensive tort reform package. It includes seat safety belt nonuse admissibility, negligent security reform, phantom damages reform, trifurcation of trials, an anti-anchoring section,

eliminates double recovery of attorney's fees, and updates the Civil Practice Act by aligning the predismissal rule with the federal rule plus 60 days and stays most discovery until a judge rules on a motion to dismiss. SB 68 passed the House 91-82 in a contentious vote (91 votes are required for passage) and ultimately went back to the Senate where it agreed to the House tweaks 34-21.
- SB 69, sponsored by Senator John Kennedy (R), is Governor Kemp's legislation to create transparency in third party litigation funding. It has passed the House and Senate; however, a clarification related to the effective date of the seat safety belt section in SB 68 was added to the bill. It makes clear that pending cases filed before the effective date of the legislation will not be impacted by its provisions.
- SB 90, sponsored by Senator Blake Tillery (R), would permit attorneys to conduct real estate closings for property in Georgia by electronic means, would provide extensive criteria with which the closing attorney must comply, and would designate the closing attorney as the notary public. Additionally, it provides for civil and criminal penalties for a violation. It was assigned to Senate Banking and Financial Institutions. It did not crossover.
- SB 144, sponsored by Senator Sam Watson (R), which would protect pesticide manufacturers from failure to warn claims as long as the standards issued by the United States Environmental Protection Agency are satisfied. It passed both the Senate and House and awaits a signature from Governor Kemp.
- SB 165, sponsored by Senator Nikki Merritt (D), would create a new cause of action against a social media platform when a minor creates an account without parental consent. It was assigned to the Senate Children and Families Committee. It did not crossover.
- HB 211, sponsored by Representative Kasey Carpenter (R), shields a receiver of certain chemicals (PFAS) from liability in connection with their use of those chemicals. It was assigned to the House Judiciary Committee. It did not crossover.
- HB 306, sponsored by Representative Tanya Miller (D), would create a new cause of action for workplace harassment and retaliation.

It was assigned to the House Industry and Labor Committee. It did not crossover.

- HB 339, sponsored by Representative Rob Leverett (R), would exempt ride share network services from the definition of motor carrier and from liability for actions of ride share drivers. It passed the House and the Senate. It now awaits a signature from Governor Kemp. Some have argued this creates liability that did not exist previously; however, the rideshare companies supported it.
- SB 215, sponsored by Senator Randy Robertson (R), would eliminate the requirement that Georgia lawyers must be members of any association, including the State Bar, and bolsters the Georgia Supreme Court's oversight function. It was assigned to the Senate Judiciary Committee. It did not crossover.
- SB 298, sponsored by Senator Randy Robertson (R), would provide a right of direct appeal when sovereign immunity has been granted or denied. It has passed both chambers and now will go to Governor Kemp's desk for signature.
- SB 173, sponsored by Senator Josh McLaurin (D), would provide a process for an uncontested motion to be automatically granted by a trial court judge when they fail to rule on the motion in a timely manner. It has passed the Senate and was amended slightly in the House, where it also passed. It currently sits in an agree/disagree posture in the Senate and will be eligible for a final vote in 2026.
- HB 531, sponsored by Representative Matt Reeves (R), would cap the liability of a municipality at $3m/$5m per claimant/occurrence. It has passed the House and was amended in the Senate Judiciary Committee by adding a sovereign immunity waiver when a local municipality or county violates immigration sanctuary policies. It did not receive a vote in the Senate.
- HR 659, sponsored by Representative Eddie Lumsden (R), would create a House study committee on insurance market reform over the offseason. It was recommitted and did not pass.

GDLA's Legislative Action Committee is led by its President Jake Daly of Freeman Mathis & Gary in Atlanta along with these members: President Bill Casey of Swift Currie in Atlanta, Immediate Past President Pamela Lee of Swift Currie in Atlanta, Treasurer Marty Levinson of Hawkins Parnell & Young in Atlanta, Secretary Tracy O'Connell of Ellis Painter in Savannah, Jonathan Adelman of Waldon Adelman Castilla McNamara & Prout in Atlanta, Barbara Marschalk of Drew Eckl & Farnham in Atlanta, and Dallas Roper of James Bates Brannan Groover in Macon. ◆



The 2025 Tort Reform Package: Georgia Charts a New Course Toward Fairer Trials

By Zach Matthews
McMickle Kurey & Branch, Alpharetta

Georgia's new tort reform package represents the most comprehensive overhaul of Georgia civil procedure since 2005. Although the package that ultimately made its way out of the Georgia Legislature did not have everything that was needed to comprehensively address the fraud and waste in Georgia's tort system, it nevertheless represents a major step forward in the quest for a fair playing field—especially at trial.

This article will analyze all nine major components of what had been dubbed Senate Bill 68, including the implications of certain new laws that were not necessarily stated with clarity by our Legislature. Meanwhile, Senate Bill 69, a companion bill principally creating a regulation system for third party litigation funders, included some minor revisions to Senate Bill 68, which will be noted below.

Senate Bill 68

Senate Bill 68 was offered and successfully advocated by Georgia Senate President Pro Tempore John F. Kennedy (R-Macon) in close cooperation with Governor Brian Kemp's office. It had nine sections, each of which addressed a different element of fraud, abuse, or plain unfairness, that amounted to some of the main reasons why Georgia found itself listed as "Number One" on the Judicial Hellholes list promulgated by the American Tort Reform Association.

Section 1 – Anchoring

Section 1 of the bill addresses the popularity of "anchoring," an argumentative tactic endorsed by the plaintiff's personal injury bar in many seminars nationwide. "Anchoring" means offering the jury a pie-in-the-sky dollar value comparison, often the multi-year salary of a major sports figure, in order plant a suggestion and to get the jury thinking about higher numbers. Anchoring is fundamentally all about driving verdicts above and beyond the fair recoveries that are supposed to bring people who are legitimately hurt back to the status they had before their injury—which is the structure our civil justice system is supposed to endorse.

Under Section 1, specifically as codified at O.C.G.A. § 9-10-184(b):

> [C]ounsel shall not argue the worth or monetary value of noneconomic damages, and counsel shall not, in the hearing of the jury or any prospective juror, elicit any testimony regarding, or make any reference to, any specific amount or range of amounts of noneconomic damages, the measure of such damages being the enlightened conscience of an impartial jury.

The caveat to that statement is in subsection (c), which reads as follows:

> (1) In the trial of any action to recover damages for bodily injury or wrongful death, 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 first opportunity to argue the issue of damages provided that 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.
> (2) If counsel is entitled to the opening and concluding arguments, then counsel shall not be allowed to argue the worth or monetary value of noneconomic damages during such counsel's concluding argument unless counsel has argued the worth or monetary value of noneconomic damages during such counsel's opening argument, and such counsel shall not argue a different worth or monetary value of noneconomic damages in concluding arguments than was argued in such counsel's opening argument.

In other words, post-tort reform, a plaintiffs' lawyer will not be allowed to elicit any testimony going

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Workers' Compensation Case Law Update

By Lindsey R. Stewart
Constangy Brooks Smith & Prophete, Macon

The Court of Appeals of Georgia began 2025 issuing two decisions that affect workers' compensation cases regarding the Rycroft defense and justification for a refusal to return to work through the WC-240 process.

The *Rycroft* Defense

The seminal workers' compensation case involving a hiring misrepresentation is *Georgia Electric Company v. Rycrof*t, which provides a defense to an employer to bar an employee's entitlement to benefits when (1) an employee knowingly and willfully makes a false representation regarding his or her physical condition; (2) the employer relies on the false representation as a substantial factor in the hiring decision; and (3) a causal connection exists between the false representation and the injury. 259 Ga. 155, 158 (Ga. 1989).

On February 27, 2025, the Court of Appeals was asked to decide whether the defense applies when the employer became aware of the prior medical condition before the work injury. In *McKay v. Inalfa Roof Systems, Inc*., the employee in question knowingly and willfully made a false representation about her physical condition. No. A24A1422, 2025 WL 634285 at *1 (Ga. App. Feb. 27, 2025). Specifically, the employee failed to disclose a prior serious four-wheeler accident with broken ribs, wrist, and back during the hiring process, which included a physical examination and post-offer questionnaire. Id. She subsequently injured her back at work, missed work for treatment, and ultimately returned to the same job with the employer. She told her supervisor that she thought her work injury aggravated her prior injuries from her four-wheeler accident. Thus, the employer discovered the false representation after an initial work injury but continued to employ the employee. She later sustained another work injury to her back and filed claims for both work injuries. *Id.* at *2.

The State Board of Workers' Compensation denied her claim for benefits for both work injuries. The employee only appealed the denial for the second work injury as the employer clearly had a *Rycroft* defense to the first injury. *Id.* at *3. The Court of Appeals held that the employer's *Rycroft* defense did not apply to bar the employee's entitlement to benefits for the second injury because the employer continued to employ the employee despite knowledge of her false representation. *Id.*

This decision from the Court of Appeals was not surprising, as the employer was clearly no longer relying on a misrepresentation in the employer's decision to continue employment when the second work accident occurred. However, this case does highlight the importance of timely employee discipline and consistent application of employment policies. Discipline is generally appropriate when employees provide false information to their employer, especially during the hiring phase. Had the employer in McKay denied the first claim using Rycroft and terminated the employment relationship based on the false answers to the medical questionnaire, the second injury would have never occurred, and the employer would have avoided what is sure to be an expensive claim.

Rule 240: Return to Work

O.C.G.A. § 34-9-240 and corresponding Rule 240 provide the formal requirements for employers to compel injured employees back to work. In this context, the State Board of Workers' Compensation has discretion to determine whether an employee's refusal of suitable employment is justified. Generally speaking, a refusal is justified when it relates to the employee's physical capacity to perform the job, the employee's skill or ability to perform the job, or factors such as relocation or life-disrupting travel conditions. *City of Adel v. Wise*, 261 Ga. 53, 56 (Ga. 1991).

On February 25, 2025, the Court of Appeals considered whether an employee was justified in refusing to return to work due to COVID-19 concerns. In *Taylor v. Argos,* the injured employee was scared to return to light duty work at the employer's facility early in the COVID-19 pandemic since his underlying physical conditions placed him at a higher risk for becoming sick. Conflicting facts were presented for why the employee failed to return to the offered light duty work at the employer's facility. The ALJ found the employee's safety concerns reasonable and awarded temporary total disability (income) benefits based on a justified refusal to return to work. The employer appealed, and the Appellate Division of the State Board of Workers' Compensation found the employee was not justified in his refusal to return to work; the Superior Court affirmed. No. A24A1246, 2025 WL 600656 at *1-2 (Ga. App. Feb. 25, 2025).

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The Impact of SB 68 on Mediation: Will the Bifurcation of Claims Make Mediation More, or Less, Prevalent?

By Nigel Wright
Henning Mediation & Arbitration

Introduction

Georgia Senate Bill 68 (SB 68) passed in March 2025 was signed into law by Governor Kemp on April 21, 2025. While much has already been discussed about its provisions—both in support and opposition—many legal professionals remain unclear about the law's practical implications for the resolution and valuation of cases, especially during mediation.

Key Provisions of SB 68

The new law permits cases to be bifurcated at the request of one of the parties (with minimal exceptions), meaning trials may be split into two separate stages—first to determine liability, then to assess damages (if necessary). Bifurcation is arguably the most significant change to the litigation industry, and this shift has substantial implications for the casualty industry.

Is Bifurcation Helpful?

As with most legal questions, the answer is: it depends. Plaintiffs may now lean into claims involving punitive exposure—traditionally a damages issue—to ensure that behavior can be evaluated, even in bifurcated trials. A well timed and effective time limited demand may lead to greater defense cost expense, and a greater number of liability trials may make insurers more willing to settle. For well-motivated plaintiffs, proceeding to one or more trials on a single case may become the norm.

Defendants may find bifurcation useful in delaying damage considerations, and maybe even eliminating 'emotional" testimony, while liability is addressed. In addition, for contested liability claims the exposure to insurers may be seen as less impactful, as a plaintiff's injuries are unlikely to factor as greatly in liability determinations. Certainly, the lobbyists believe that SB 68 will all but irradicate so called "nuclear verdicts."

The Financial Impact of SB 68 on the Claims Cycle

Understanding the claims cycle is important to understanding the financial impact of SB 68. Insurance claim costs are cyclical. The asbestos litigation crisis of the late 1980s and 1990s caused a surge in claim values, leading to the bankruptcy of some insurers and policyholders. Eventually, premiums adjusted, and the insurance industry shifted focus. Only in recent years has the industry moved from relying on investment returns to prioritizing underwriting profits.

New insurers, and MGA entrants, unshackled with high overhead (such as employee head count, or attritional losses) are looking to profit in the current 'hard market", where insufficient insurers are sought out by insureds. SB 68 is a "carrot" for these entrants.

While supporters will be excited at the prospect of increased premiums over a greater timeframe, the argument cuts both ways. If, as many suspect, we are about to see the softening of rates (more insurance capacity chasing the same, or a smaller number of, insureds) then an increase in the length of time to settle cases will likely detrimentally affect insurers.

Ultimately, how insurers address this apparent conflict will determine the long-term effect of SB 68.

Strategic Shifts in Litigation

For the plaintiff's bar, in cases of (for example) between $150,000 (the threshold for bifurcation), and say around $1 million, may decide to file early trial notices—possibly even before the defense files a response—to avoid investing significant discovery resources before knowing if liability will be contested. The predictability of the trial outcome will become harder to address for insurers. A plaintiff may well choose to dispense with formal discovery and conduct more extensive pre-suit investigation and thereafter proceed directly to trial in a much shorter timeframe. This will make resolution likely only after a trial date has been set. This, of course, assumes that the court system can accommodate any influx of litigation. It will also most likely lead to near silence from the plaintiff's bar pre-suit, and time limited demands being sent in on the earliest date.

Complaints may increasingly allege punitive claims, and plaintiffs will seek to introduce aggravating evidence at each trail stage. The question of what is, and what is not, admissible will be critical in assessing these issues.

The likely plaintiff's bar strategy will increase costs, exposure to the plaintiff lawyer's costs, and uncertainty for the defense bar. This in turn may drive settlement, and the use of mediation.

Defense counsel may have to manage at least two trials per case,

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Perception Response Time: One Size Does Not Fit All

By Amber M. Bishop
Weed Reconstruction & Expert Consulting (WREC)

Perception response time (PRT), the interval from the identification of an immediate hazard to a measurable evasive reaction, is a fundamental variable in crash reconstruction analyses. In car crash litigation, accurately explaining a driver's behavior in the seconds before a crash assists the trier of fact assign fault. While standardized PRT values such as 1.5 or 2.6 seconds were often used in the 1980s and '90s, research shows that driver PRT varies significantly based upon the crash type and existing circumstances. This article discusses PRT variability in support of the proposition that an expert's application of a general or "rule-of-thumb" PRT in crash reconstruction is inappropriate and will not satisfy the Daubert requirement that reliable principles and methods be applied to the facts of the case.

Perception-response time is the time between the onset of an emergency situation and a measurable maneuver. PRT can only occur *after* a driver recognizes an object but it's important to note that recognition is not synonymous with visibility or detection. Recognition has a higher threshold, occurring with the hazard is "conspicuous, which means that the driver could identify what the hazard was and project its intent relative to his or her path."[1] A driver must understand a hazard's true character, location, and direction. Recognition distance is often analyzed in nighttime crashes or high-speed looming scenarios (e.g., a vehicle traveling highway speeds approaching a stopped or slow-moving vehicle). Once recognition is achieved, PRT then requires that an immediate hazard exists to which an emergency response is required. A non-immediate or potential hazard, such as a child on a sidewalk on the other side of a two-lane road, may warrant a moderate response such as taking your foot off the accelerator pedal, but it does not warrant swerving or hard braking. Once it is established that a hazard exists warranting an *emergency* response, an expert seeking to assess the avoidability of a crash must establish a baseline perception response time. The expert must then determine the proper PRT onset point and calculate how much distance is available to avoid the crash.

Peer-reviewed and commonly relied upon studies provide an expert with PRT baselines against which subject drivers can be compared. To ensure that a valid baseline is used, an expert should review studies for the same crash type with similar facts and circumstances. When applying the appropriate PRT, an expert must determine when the onset of the emergency event occurs, in other words, determine where the PRT clock starts. As mentioned above, the onset is not when the object is merely visible and is instead when the object becomes an easily identified hazard (post-recognition). Onset varies by crash type. In left turn across path crashes, lateral movement which results in intrusion is the PRT onset. When drivers are responding to vehicles ahead of them, studies often use a subtended angular velocity (looming) threshold. In pedestrian path intrusion cases, the onset of PRT is typically when the pedestrian crosses the road's edge. Once a baseline PRT and its onset has been established, an avoidance analysis is possible and the subject driver's behavior can be scrutinized. The expert will consider the amount of time and distance available to avoid a collision in a particular set of circumstances (e.g., at the speed limit, with an average PRT, with a particular friction value). This classical scientific approach, comparing how a driver responded in a crash to the responses of others who have faced a comparable situation, separates proper expert testimony from improper testimony.

Early research into response times can be traced back to the 19th century. F.C. Donders developed the first known reaction time experiments as early as 1868.[2] Donders analyzed response times based upon increasingly complex stimuli, concluding that there is no universally applicable response time.[3] More than one hundred years later in a 1989 SAE paper,

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Shelly Weed is a former police officer with 18+ years of crash reconstruction experience. She worked thousands of crashes during her law enforcement career. Shelly has testified as a crash reconstruction expert in Courts across Georgia, but she has also been qualified as an expert in human factors and occupant kinematics as they relate to crash reconstruction. She is fully accredited as a Traffic Accident Reconstructionist (ACTAR #2528). Shelly's breadth of expertise translates into a more thoughtful, tailored, and thorough analysis of every crash.

Amber Bishop is an ACTAR accredited Traffic Accident Reconstructionist (ACTAR #3780) and a licensed attorney. Amber has a degree in physics, a masters from Emory, and extensive accident reconstruction training. Prior to joining WREC, Amber was a litigator at a highly respected law firm in Atlanta. She worked at the Centers for Disease Control and Prevention as a research scientist and epidemiologist before attending law school. Amber has worked hundreds of crashes in her years at WREC. Amber's scientific knowledge, legal experience, and attention to detail touch every case WREC handles.

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By Stephen Schultz
DigiStream Investigations

Artificial intelligence, or "AI," technology is becoming a staple in households and workplaces across the United States. It's becoming more common to find "smart devices" (such as speakers, appliances, and thermostats) in households. In fact, research indicates 41% of American households with Internet access have at least one smart device.[1] AI has also become a critical component to the ever-growing corporate landscape. Advertising companies and business analysts rely on AI to learn about market trends, consumer spending habits, and to sift through terabytes of data; days of research can be completed by AI in a few hours.

The workers' compensation industry has seen an increase in AI integration as well. AI can virtually guide claimants through the claims process, sift through hundreds of pages of medical records to find pertinent information, and analyze hundreds of thousands of structured and unstructured data points to estimate the total cost of a claim. The latter example is a form of "predictive analytics" and the results from these analyses are shaping how adjusters approach their claims.

AI in Claims

Litigation is a significant worry for insurers and employers as litigated claims are more expensive, take longer to resolve, and generally result in poorer claims outcomes for all stakeholders, including the claimant.[2] To predict the likelihood of a claimant becoming a litigant, claims professionals are experimenting with "sentiment analysis," or an examination of an individual's texts, emails, or transcribed phone calls to determine if the person feels negatively or positively about the claim, the adjuster, and the claims process as a whole. The hypothesis is simple: a claimant that is expressing negative sentiment is more likely to litigate.

Sentiment analysis often involves lexical analysis, or an examination of individual words, their isolated meanings, and their frequency. Lexical analysis by itself is too simplistic to unravel the complexities of sentiment. Semantic analysis, on the other hand, is an examination of full sentences and paragraphs. As such, semantic analysis can dive deeper into the context and relationships between words to gain a more comprehensive understanding of the text. It can capture nuance and is effective at recognizing and understanding expressions, which are common features of natural language.

Sentiment analysis is just one example of "Natural Language Processing," or "NLP." NLP is a branch of artificial intelligence that focuses on computers' abilities to understand text and spoken words the same way human beings can. It combines computational linguistics with statistical, machine learning, and deep learning models to enable computers to process and understand human language.[3] NLP is what allows users to converse with Siri and Alexa at home, or to quickly analyze large volumes of text at work.

DigiStream has taken an interest in AI and NLP and how they may improve our ability to provide actionable intel, especially for our clients that utilize our AOE/COE services. We became curious about the other possibilities of NLP and predictive analytics; namely, what if litigation could be predicted based on personality traits?

Research Methodology, Results, and Limitations

To answer this question, we returned to the comprehensive list of "litigated poststatement" California claimants DigiStream compiled between 2018 and 2022. Over the course of several months, we transcribed approximately 340 hours of interview audio from approximately 170 claimants and processed the transcripts with the assistance of a third-party AI company. The same process was conducted for a similar sample size of claimants during the same time span who didn't litigate after participating in a Recorded Statement.

The AI analyzed the claimants' statements and provided quantile scores for 35 personality traits, which come from the "Big 5" and "NEO" personality inventories, and include traits such as "Openness," "Friendliness," and "Self- Consciousness." The scores range from 0 to 1; a score of 0 means the subject's language displayed weak indicators of a trait, while a score of 1 means the subject's language displayed strong indicators of a trait. For each trait, the AI as-

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Force or Fire? Analysis of Occupant Injury Mechanisms in Fatal Motor Vehicle Crashes with Fire

By Sridhar Natarajan and Amy Courtney
Exponent

Introduction

In a fatal motor vehicle collision (MVC) with fire, associating the cause of death with the overall event may seem clear, leading to the possibility that the analysis of all available evidence may not be completed. Such is the case because of the complexity of identifying mechanisms of injury in fatal MVCs with fire stemming from the potential for antemortem blunt traumatic and antemortem and postmortem thermal injuries, as well as the contributions of toxicology findings. Completing a complex analysis is warranted when a more detailed understanding is needed to provide assistance for example in connection with insurance compensation decisions, litigation claims, or automotive safety research.

Fatal MVCs with fire require objective clarity, which may not be considered during the initial autopsy and investigation.

This article is focused on analysis of mechanisms of occupant injuries and the types of information and other areas of investigation that may assist the injury analysis. It is highly likely there may be more to a fatal MVC with fire than first impressions indicate, and our discussion will help identify and describe the relevance of evidence that may assist in the injury analyses.

Crash and vehicle factors that increase the risk of acutely fatal blunt traumatic injuries also increase the risk of post-crash fire. Some thermal effects on the body are well established to occur postmortem. Other findings and laboratory measurements are more indicative of whether thermal effects were present in a living (antemortem) individual. The terminal thermal effects identified may obscure blunt traumatic injuries, or, in severe cases, even be mistaken for them. A correct analysis may be informed by understanding the crash event; the involved vehicle and its restraint systems; the location, kinematic response, and biomechanical environment of the deceased occupant; the origin, pattern, and severity of the fire; and/or the totality of the medical forensic autopsy information.

Prevalence of Fatal MVCs with Fire

Various studies have found that 3% to 4% of *fatal* crashes involving passenger vehicles in the U.S. also involve a fire.[1,2] The strongest indicators of whether a fire is likely to result include the severity of the crash, characterized by the crash energy, whether multiple impacts occurred, and whether severe intrusion occurs.[3,4] Each of these crash-related factors also increases the likelihood of blunt traumatic injuries.

Crash and Vehicle Information

If the vehicle's electronic data was preserved, it should be obtained. The newer the vehicle, the more information may be available regarding pre-crash and crash-related vehicle dynamics, as well as restraint use and deployment. For example, if crash forces and/or fire have damaged the housing of the airbag control module (ACM), considering looking into whether the microchips themselves can be extracted and the data obtained with external equipment. In vehicles with more driver assist technology or electronic monitoring, data may also be stored other places on the vehicle or remotely.

To analyze possible biomechanical mechanisms of blunt traumatic injury, an understanding of the number and direction of impacts and the severity of each is helpful. For a crash involving multiple impacts, the timing between the impacts may be relevant to occupant motion after the first impact and their position and subsequent motion for each additional impact.

After a fatal crash, the vehicle often contains valuable evidence that informs an injury analysis. However, if a fire has also occurred, thermal damage may be extensive. Fire suppression efforts may further affect evidence that may have been present. Nevertheless, informative physical evidence may still be present. For example, intrusion of vehicle structures into the occupant space, physically distorted seat and seatback frames, focal deformation

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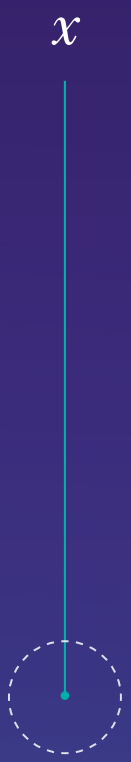

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Supersized Jury Awards

Thoughts on Factors Affecting Recent Trends in Jury Verdicts

By Maithilee Pathak
R&D Strategic Services

What in the world is happening? This is a question I often hear asked about large jury verdicts these days. Recently, a Georgia jury awarded $2.1 billion to an individual plaintiff in a case alleging that exposure to a popular weed killer caused his non-Hodgkin's lymphoma (NHL). Another jury in Pennsylvania awarded $2.25 billion in a similar lawsuit. A few years ago, the survivors of a couple killed when their truck rolled was awarded $1.7 billion in a lawsuit against an American auto manufacturer. A jury considering the claims that exposure to talcum powder caused cancer awarded 22 plaintiffs $4.69 billion in St. Louis, Mo. These have been referred to as "nuclear verdicts," but that term is defined as "any verdict in excess of $10 million." Verdicts over $100 million are referred to as "thermonuclear." Who'd have thought we'd be grateful to see a nuclear verdict? A $10 million verdict seems positively quaint, especially in the light of recent jury trends.

What causes a jury to award damages in such large amounts and how can defendants avoid it? What are the factors fueling these monstrous awards? There are four psychological factors that motivate jurors to award huge damages: lack of accountability; incriminating internal documents; other similar incidents; and regulatory action.

Jurors want to see/hear a defendant be accountable for their actions. This means they want defendants to take responsibility for "what they own." This does not necessarily mean they want defendants to say, "We are responsible for the plaintiff's injuries," but they do expect the defendant company to recognize its responsibility to operate safely and to show jurors how it was mindful in that respect.

For example, suppose the defendant is a power company accused of poor vegetation maintenance resulting in a catastrophic injury to a plaintiff who entered the easement after a storm broke a branch. Imagine that severe weather took down some branches and some power lines, as well. The company was accused of negligence, for ostensibly "allowing" brush to grow too near the lines. Jurors responded angrily when they heard the defendant saying something akin to the plaintiff's being at fault for his own injuries.

Jurors expected the company to say something like, "Absolutely, we are responsible for ensuring our lines are safe in storms. Here is what we do to maintain our easements and what here's we did here…" They respond poorly when they hear anything akin to "it's his own fault" or "that's not our job" or "members of the public should stay outside our easement." However, the defendant company was able to allay jurors' concerns that brush was wildly overgrown, as the area had not been trimmed for years, when the company demonstrated that its trimming schedule was far from lax. Jurors were then "able to hear" the defendant company's defense—that the plaintiff put himself in danger by ignoring the many warnings he had received indicating that a line was down. Jurors concluded that the smell of smoke in the field, the sound of electricity buzzing in the vicinity, and the feeling of heat in the air should have kept the plaintiff out of harm's way. Jurors were convinced that the plaintiff had the knowledge (i.e., information) and control (i.e., ability to avoid the bad outcome) that he needed and was in the best position to keep himself safely outside the easement where the line had fallen.

Additionally, jurors do not want to see internal documents suggesting that the company puts profits over safety. Imagine a large pharmaceutical company was accused of causing a plaintiff's cancer. Jurors responded poorly to internal emails between company executives, in which one claims that he "should receive an award for successfully quashing adverse test results." Jurors were concerned that this was a company "run amok" until they realized that: (1) the person using colorful language in emails was a disgruntled employee who was fired when allegations of sexual harassment emerged from multiple women at the plant; and (2) the company had met or exceeded all safety expectations of regulators.

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Dr. Fuentes is a founding partner of R&D Strategic Solutions, LLC. He has specialized in jury behavior and decision-making and the evaluation of complex evidence for more than 25 years.

Machine Room-Less Elevators: The Replacement for Traditional Traction Elevators?

By Lawrence Marley
Rimkus Consulting Group

When a problem occurs, the downtime for an MRL can be much longer than for a traditional traction elevator.

Over the years the term "mid-rise" has changed to refer to different types of buildings, but the term always has the same connotation: Buildings that are "in-between." That is, buildings with a total run height that would be in-between what a traditional hydraulic elevator and traditional traction elevator would serve. This is the "hole" between the two elevator designs that has seemingly always existed. For a practical reference, these are buildings that have more than six to eight floors, or 90 to 120 feet of total travel, and less than 12 to 13 floors, or 140 or 150 feet of travel. That incorporates a whole lot of buildings.

This is not to infer that the hydraulic elevator or the traction elevator cannot serve these mid-rise runs. They certainly can, but at a cost. In both a literal and an unintended sense. For a hydraulic elevator to service taller buildings, you must both pay more and give up something: speed. Hydraulic elevators cannot travel more than 150 to 200 feet per minute, and on taller buildings, this means it takes longer to travel up and down. It also means longer wait times for the passengers the elevators serve. Additionally, these higher run hydraulic elevators will require a two or three stage jack, which is more expensive to buy and maintain than hydraulic elevators serving shorter runs.

Traction elevators, on the other hand, can travel at much higher speeds, with the standard 350 feet per minute running speed easily handling the mid-rise buildings highest net travel. However, a traditional traction elevator is much more expensive than even the most expensive hydraulic. In a practical sense, you can expect to spend around 50% more on a traditional traction elevator compared to a hydraulic elevator. Further, there are many more moving parts on a traction elevator and the overall maintenance costs are higher.

Over the years, there have been several designs that were intended to fill the cost gap between traction and hydraulic elevators. These designs included the roped hydraulic, the twin post, and the machine room-less hydraulic. Some, like the twin-post and machine room-less hydraulic, are still in use today for various reasons unrelated to the mid-rise building. In the early 2000s, changes in material technology, along with improvements in finite element analysis software, allowed for the creation of lighter weight cabs, as well as smaller diameter drive sheaves. This allowed for new hoisting options, such as the smaller diameter hoisting ropes or a hoisting belt. By the late 2000s, a new type of traction elevator had been born: the small gearless traction or machine room-less traction, which would now simply be called the MRL.

An MRL, in many ways, is the younger brother of the traditional traction elevator. This would mostly be due to the generally smaller size of all the operational components. The driving force behind its creation was the reduced size of the hoisting motor. This involves a much smaller drive sheave, which in turn allows for a smaller overall vertical footprint. This change spawned the ability to

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GDLA Board Holds Spring Meeting in Highlands

The GDLA Board of Directors traveled to Highlands, N.C for its Fall Meeting at 200 Main from March 28-30, 2025.

Board members, Past Presidents, and their families enjoyed a beautiful Spring evening on Friday with an outdoor reception followed by a group dinner. The Board meeting was held on Saturday morning, leaving the afternoon free for everyone to enjoy all that the mountain town has to offer from hiking to shopping to fishing. Board members and their spouses and guests gathered again for drinks and appetizers on Saturday evening before dispersing to dinner on their own.

Those present were Executive Committee: President William T. Casey, Jr., Swift Currie McGhee & Hiers, Atlanta; President-Elect Ashley Rice, Waldon Adelman Castilla McNamara & Prout, Atlanta; Treasurer Martin A. "Marty" Levinson, Hawkins Parnell & Young, Atlanta; and Secretary Tracy O'Connell, Ellis Painter, Savannah. Vice Presidents: Jason C. Logan, Constangy Brooks Smith & Prophete, Macon; and Candis Jones Smith, Lewis Brisbois, Atlanta. Board Members: Jacob "Jake" Daly, Freeman Mathis & Gary, Atlanta; Anne D. Gower, Gower Wooten & Darneille, Atlanta; James D. "Jim" Hollis, Balch & Bingham, Atlanta; Karen K. Karabinos, Chartwell, Atlanta; Scott Kelly, Fulcher Hagler, Augusta; Barbara Marschalk, Drew Eckl & Farnham, Atlanta; Zach Matthews, McMickle Kurey & Branch, Alpharetta; Atlanta; Dallas Roper, James Bates Brannan Groover, Macon; and Joseph D. Stephens, Cowsert Heath, Athens. Past Presidents: N. Staten Bitting, Jr., Levy Sibley Foreman & Speir, Augusta; Hall F. McKinley III, Drew Eckl & Farnham, Atlanta; and Peter D. Muller, Goodman McGuffey, Savannah. Also present: Women Litigators Section Co-Chair Leah Fox Parker, Swift Currie McGhee & Hiers, Atlanta; Cody McCollum, Chartwell, Atlanta; and Executive Director Jennifer Davis Ward. ◆

The Board and other leaders gathered for a group photo to let two GDLA Past Presidents who attend almost every meeting, Bubba Hughes and Walter McClelland, know they were missed in Highlands. Pictured left to right are (front row, kneeling/sitting): Zach Matthews, VP Candis Jones, Past President Hall McKinley, Past President Staten Bitting, President Bill Casey,, Barbara Marschalk, Scott Kelly, and Cody McCollum; (second row standing) Jim Hollis, Past President Peter Muller, Philip Thompson, Treasurer Marty Levinson, Joe Stephenson, Libby Watkins, Jake Daly, Karen Karabinos, Dallas Roper, Secretary Tracy O'Connell, President-Elect Ashley Rice, Leah Fox Parker, Anne Gower and VP Jason Logan.

Scenes from the Board's Spring Meeting weekend: *1. Zach and Tracy Matthews hiked Whiteside Mountain with Barbara Marschalk and Hall McKinley. 2. Jason Logan and his family—wife, Wendy, and kids, Jason Jr. and Lilly—hiked around Dry Falls. 3. Cody McCollum and Marty Levinson. 5. Anne Gower, President Bill Casey, Karen and Chris Karabinos, Zach and Tracy Matthews. 5 Candis Jones Smith with her daugher, Demi, and mother, Ora. 6. President-Elect Ashley Rice and her daughter, Marielle. 7. (from top) Philip Thompson, Marty Levinson, Tracy O'Connell and Jennifer DavisWard hiked the Ranger Falls Loop. 8. President Bill Casey. 9. Past President Staten Bitting and Philip Thompson.*

Southeast Women Litigators Hold Fourth Conference

Women litigators in Alabama, Georgia, Florida, North Carolina, South Carolina, and Tennessee teamed up to support, educate and advance women civil defense litigators at the Fourth Southeastern Women Litigators (SEWL) Conference held March 20-21, 2025, in Asheville, N.C., at the Hilton Embassy Suites Downtown.

The conference kicked off on Thursday at noon with a networking luncheon followed by programming the rest of the day. Opening day ended with a group reception and dinner, allowing more time for connecting with colleagues. A half-day of programming followed on Friday.

GDLA Board of Directors member Karen Karabinos of Chartwell Law in Atlanta created the SEWL conference concept after also initiating, and chairing for the first two years, a Women Litigators Section within GDLA. Her impetus behind SEWL was to give female civil defense lawyers in the southeast the opportunity to experience what DRI offers annually at its women's conference in Arizona but with less time out of the office and expenses associated with traveling out West.

"This event provides an excellent platform for women on the defense side of the legal profession to share insights, build connections, and advance their careers" said GDLA member Amanda Coop who is partner in charge of Groth Makarenko Kaiser & Eidex's Nashville office.

The SEWL planning committee consisted of two representatives from each state's defense organization, serving as chair and vice-chair, as well as the respective state's Executive Directors. GDLA's reps were Chair Candis Jones Smith of Lewis Brisbois in Atlanta and Vice-Chair Leah Fox Parker of Swift Currie McGhee & Hiers in Atlanta.

The six states are shown below. We are grateful to this year's law firm sponsors—especially the GDLA member firms—also shown below by level, who helped offset the conference's expenses. ◆

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Scenes from the Fourth SEWL Conference: *1. The annual group photo of women litigators who attended. 2. This year, we took a "class photo" of GDLA members who were in attendance. 3. (l-r) Samantha Feinberg, Bailey Armstrong, Donna Davis, and Amanda Coop. Their firm, GMKE, was among the law firm sponsors. 4. SEWL creator and GDLA Board member Karen Karabinos.*

Pictured before the blockbuster CLE (left to right): *Women Litigators Section Co-Chair Nicole Leet; Judge Elizabeth Gobeil, Court of Appeals of Georgia; Presiding Justice Sarah Hawkins Warren, Supreme Court of Georgia; Judge Rachel Krause, Superior Court of Fulton County; Judge Britt Grant, U.S. Court of Appeals for the 11th Circuit; Judge Ana María Martinez, State Court of DeKalb County; and Section Co-Chair Leah Fox Parker.*

GDLA Women Litigators Host CLE Featuring Judges

On May 6, 2025, the GDLA Women Litigators Section presented a networking breakfast and CLE, "A View from the Bench," at State Bar Headquarters in Atlanta.

Section co-chairs Nicole Leet of Gray Rust St. Amand Moffett & Brieske in Atlanta and Leah Fox Parker of Swift Currie in Atlanta moderated the event, which section creator Karen Karabinos of Chartwell Law in Atlanta also helped plan.

We were honored to be joined by a powerhouse panel of women judges and thank each for sharing their time, wisdom, humor, and more: Judge Britt Grant, U.S. Court of Appeals for the 11th Circuit; Presiding Justice Sarah Hawkins Warren, Supreme Court of Georgia; Judge Elizabeth Gobeil, Court of Appeals of Georgia; Judge Rachel Krause, Superior Court of Fulton County; and Judge Ana María Martinez, State Court of DeKalb County.

Topics ranged from advice for litigators on the art of commanding authority and presence in the courtroom to identifying, as well as serving as mentors, to work-life integration to the evolution and future of the judiciary, including tips for those who might be interested in joining the bench themselves. ◆

Pictured at the networking breakfast: *1. Dallas Roper and Judge Britt Grant. 2. Amanda Matthews, Samantha Lipp, Karen Karabinos, and President-Elect Ashley Rice. 3. Barbara Marschalk and Michelle Guthrie Whitelaw. 4. Tracy O'Connell, Nicole Leet, and Judge Elizabeth Gobeil. 5. Elizabeth Simmons and Presiding Justice Sarah Hawkins Warren. 6. Coryne Leyendecker, Judge Rachel Krause, and Alycen Moss. 7. Sharon Hansrote, Sarah Lisle, and Desharné Carroll. 8. Jennie Rogers and Katie Henderson. 9. Jennifer Adair and Lyn Dodson. 10. Great turnout!*

2025 Tort Reform

Continued from page 22

to the dollar value of noneconomic damages at any point. But, in the closing argument phase, the Plaintiffs' counsel may "argue" non-economic damages, provided he or she specifically states the dollar amount the plaintiff is seeking in the introductory or opening phase of the closing argument, then sticks to that number in the final or rebuttal phase of closing argument. The critical role for courts will be making sure any argument offered to the jury has a "rational connection" to the evidence. This will ban references to things like major league baseball player salaries or the value of a military fighter jet, which have no rational connection to an ordinary citizen's tort claim.

Section 2 – Discovery Stay Upon Filing of Motions to Dismiss

Section 2 addressed a common annoyance expressed by defense lawyers under the existing code. O.C.G.A. § 9-11-12, which is modeled on Fed.R.Civ.P. 12, allows a defendant to move to dismiss a case where there is no dispute of fact and no proper case has been presented. Typical scenarios for such a motion would include a blown statute of limitations, a lawsuit improperly filed against an entity with a similar-sounding name to the correct Defendant, or a significant failure of process or service of process.

Under existing O.C.G.A. § 9-11-12 (f), a motion to dismiss was intended to freeze proceedings, including discovery, until the Court ruled on the motion—which was intended to take place within 60 days. The problem was that the law prescribed no guidance for the situation where a Court *failed to rule within 60 days*, which was oftentimes the case given the busy dockets in Georgia.

The new law fixes that issue. Under new subsection (a), a Defendant may elect to file a motion to dismiss in lieu of filing its Answer, and if it chooses to do so, Discovery will be automatically stayed until the Court rules on that motion (regardless of how long that takes).

There is one very important wrinkle for practitioners: a defendant who files an Answer will immediately terminate the Discovery stay. The typical procedure previously had been for Defendants to file Special Appearances by Way of Answer at the same time as filing a Motion to Dismiss. Under the new statute's subpart (j) (1), doing so would immediately open Discovery:

> [P]rovided, however, that, if a defendant files an answer before the ruling of the court on such motion, the stay imposed by this subsection shall immediately terminate with respect to such defendant[.]

The correct procedure going forward will be to move to dismiss but hold off on filing any Answer until the Court rules on that motion. Under subpart (a) of the new law, a Defendant who has moved to dismiss but sees that motion denied will then have 15 days to file his or her Answer, after the order of denial issues.

This is a needed change that should go far in ensuring that Courts actually achieve the Legislature's goals. Moreover, this change provides clarity for practitioners on both sides, so there is never any question as to whether Discovery has opened or not.

Section 3 – Permissive Dismissals

Section 3 represents a legitimate re-balancing of a procedural advantage that the plaintiff's bar had enjoyed for years. Under the existing code, Plaintiffs have "one free dismissal," pursuant to the permissive dismissal statute, O.C.G.A. § 9-11-41. This meant that a plaintiff could dismiss without prejudice at any time, for any reason, up until the first witness was sworn in at trial. Once dismissed, the case could then be re-filed with a clean slate (but only once).

Some lawyers regularly abused this right, which was unique to Georgia state law. For example, cases have been dismissed without prejudice in circumstances where a Defendant filed a motion for summary judgment that was likely to be dispositive. This sudden dismissal was often immediately followed by a refiling in a different venue (for example, Superior Court instead of State Court), in order to force a change in the judge overseeing the case. In other words, this tactic was sometimes used by plaintiffs' lawyers to forum-shop.

Under the new law, which is still codified at O.C.G.A. § 9-11-41, a plaintiff will only be allowed to pull the lever on permissive dismissal within the first 60 days after a defendant files an answer.

Section 4 – No Double Recovery of Attorneys' Fees

Section 4 addresses a recent run of Georgia appellate caselaw that had interpreted the existing "attorney fee shifting" statutes to, in limited circumstances, allow a double recovery of such fees. Under the pre-tort reform code, O.C.G.A. § 13-6-11 allowed a plaintiff to recover his or her attorney's fees (typically assessed as 40% of the total award) if the jury found that Defendants acted in "bad faith" at the time of the underlying occurrence or have been "stubbornly litigious" since then.

Meanwhile, O.C.G.A. § 9-11-68 allowed a party to make an offer of settlement to the other side. In the case of a plaintiff making such an offer, if the plaintiff ultimately succeeded in garnering an award of

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125% or greater than the offer of settlement he or she properly made under O.C.G.A. § 9-11-68, then the plaintiff also automatically recovered his or her attorney's fees and expenses—again, generally assessed as 40% of the total award.

In the 2022 case of J*unior v. Graham*, 313 Ga. 420, 870 S.E.2d 378 (2022), the Georgia Supreme Court held that a plaintiff who triggered both an O.C.G.A. § 13-6-11 award *and* also triggered the offer of settlement statute, O.C.G.A. § 9-11-68, would be entitled to a *double recovery of fees,* which was being assessed as 40% of the first jury's award, then re-compounded a second time as 40% of that already-inflated figure. In other words, if a plaintiff was awarded $1,000,000 by the jury and both statutes were triggered, he or she could see a final judgment of $1,000,000 × 1.4 (the first fee shift award) × 1.4 (the second fee shift award) = $1,960,000 (almost twice the actual number the jury gave in damages).

The tort reform bill adds a new code section, O.C.G.A. § 9-15-16, that eliminates any double recovery of attorney's fees, and effectively reverses *Junior v. Graham* by statute for cases going forward:

> [N]o party shall recover the same attorney's fees, court costs, or expenses of litigation more than once pursuant to one or more statutes authorizing awards of attorney's fees, court costs, or expenses of litigation, whether such statute or statutes authorize such awards for compensatory or punitive purposes, unless the statute or statutes specifically authorize the recovery of duplicate attorney's fees, court costs, or expenses of litigation.

The new bill also provides that no contingency fee agreement shall be admissible as evidence of the value of those bills, presumably leaving the jury (or court) to work out a fair compensation using other factors.

Section 4 of the bill was needed, but the scenario giving rise to a double recovery did not actually occur very often in Georgia practice. The greatest impact of this new bill will be on settlement negotiations, particularly after known facts have changed. One of the personal injury bar's common tactics is to send a policy limits demand to an insurer, known in Georgia as Holt demand (similar to a *Stowers* demand in Texas, or a *Tyger River* demand in South Carolina). These demands for policy limits often include less than complete information, such as out-of-date special damages figures or missing "bad facts" details on the defendant insureds, that may be known to plaintiffs' counsel but unknown to the defendants' insurers.

As cases develop and bad facts become known, insurers often realize that exposures are greater than they once seemed, potentially giving rise to "bad faith [at the time of the underlying transaction]" or "stubborn litigiousness [since then]," making for unforeseen exposure under O.C.G.A. § 13-6-11. This is particularly troublesome when the insurer has already rejected an O.C.G.A. § 9-11-68 demand because it was still operating on incomplete information by the time the bad facts come to light. In such scenarios, the current state of the law has been used to threaten a "double recovery of fees" under *Junior v. Graham* to leverage maximum settlement payouts—as shown in the math equation above, such a situation can effectively double a defendant's (and thus its insurer's exposure).

This revision to the code will at least take such a double recovery of attorney's fees risk off the board, eliminating what had been a very valuable (to personal injury lawyers), albeit quite rarely used, loophole in the law.

Section 5 – Nonuse of Seat Safety Belts Admissible

Section 5 addresses what was probably the best example of just how out-of-balance Georgia tort law had become. Until this bill passed, it was illegal to tell a jury whether a plaintiff was wearing his or her seat safety belt at the time of a car wreck. Seat belts have been basic safety equipment mandated on American automobiles by NHTSA since 1968, but somehow Georgia jurors were forbidden from knowing whether a plaintiff took that bare minimum level of precaution for his or her own safety.

Now, thanks to Governor Kemp's initiative, O.C.G.A. § 40-8-76.1 has been amended to state:

> 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 may be considered in any civil action as evidence admissible on the issues of negligence, comparative negligence, causation, assumption of risk, or apportionment of fault or for any other purpose.

The decision of whether that information is actually admissible will still be with the judge—but the use of a seat safety belt will clearly be relevant in almost any car wreck personal injury action. Notably, the seat safety belt law was amended after SB 68 passed, specifically by SB 69.

After that amendment, the new rules as to seat safety belt admissibility will become effective for new causes of action "commenced" on or after the date the law was signed (April 21, 2025) but will not affect any cases already pending on that date.

Continued on next page

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Michael Shryock founded Point to Point Forensics in 2022, drawing from his more than 20 years of forensic accounting experience and his exposure to a wide range of claim types, from sole proprietors and homeowners up to Fortune 500 companies and major industrial construction projects.

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Mr. Shryock has a wide breadth of experience in forensic accounting for insurance and construction-related matters. He has testified at arbitration, in Federal Court and in State Court. He has also been deposed on numerous occasions and has participated in multiple meditations and other claims settlement negotiations. He has been named as an expert in matters related to business interruption/lost profits, construction costs and related change order documentation, financial condition and motive in alleged arson claims, business valuation issues, and business inventory losses due to fire.

2025 Tort Reform

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Section 6 – Negligent Security Overhaul

We come now to one of the most comprehensive changes in Georgia law: negligent security reform. Section 6 of this bill was absolutely needed to address arguably the most egregious abuse of the civil justice system in the state. "Negligent security" has become a broad tort in Georgia. In many other states, including adjacent Tennessee, the common law rule prevails, which that says an intervening third-party tortfeasor who commits a criminal act and harms someone thereby breaks the chain of proximate causation between even a negligent landowner and the injuries sustained, so long as the criminal act was not "reasonably foreseeable."

This law is most applicable in shooting cases. In many states, a landowner could not be held responsible if a gang war suddenly erupted and bullets flew across owned property, resulting in injury to an innocent bystander, because such an event would not be deemed "reasonably foreseeable." In Georgia, however, such a landowner would likely face serious liability exposure based on how Courts have interpreted that concept—and in recent years that exposure has grown into the tens of millions of dollars.

This all came to a head as a result of 2023's landmark case, *Georgia CVS Pharmacy, LLC v. Carmichael*, 316 Ga. 718, 890 S.E.2d 209 (2023), in which the Georgia Supreme Court upheld a 2012 verdict awarding $43M to a man shot in a CVS pharmacy parking lot. The injured man had come to the parking lot to conduct an online marketplace transaction—not to shop at CVS. After completing the sale of goods that had nothing to do with CVS or its business, an unknown assailant jumped into plaintiff's vehicle and shot him. Even though he did no business with CVS and did not even intend to do business with CVS, the trial court nevertheless construed the plaintiff as an invitee of CVS and instructed the jury on an invitee's duty. The jury apportioned 95% of the fault for the injury to CVS, along with 5% to the plaintiff, meanwhile attributing no fault whatsoever to the shooter.

Bad facts make bad law, and this case became the classic example of overreach. By successfully arguing to uphold such an absurd result, the plaintiffs' bar simply managed to shine a spotlight on the glaring unfairness of Georgia's current tort system. In other words, if the law legitimately allowed such a result, then the law needed to be changed—pure and simple. And that is exactly what the Legislature just did.

O.C.G.A. § 51-3-50 radically changes the analysis when it comes to negligent security. First, it offers a statutory definition of the concept for the first time:

> (1) 'Negligent security' means any claim against an owner or occupier, or against a security contractor, that:
>
> (A) Sounds in tort or nuisance, including, but not limited to, any claim under Article 1 of this chapter;
>
> (B) Seeks to recover damages for bodily injury or wrongful death; and
>
> (C) Arises from an alleged failure to keep the premises and approaches safe from the wrongful conduct of third persons.

It then proceeds to set a definition for the kind of notice that must be given to a landowner in order to hold the landowner or any occupier of that land liable for "negligent security":

> (2) Particularized warning of imminent wrongful conduct by a third person' means information actually known to an owner or occupier and deemed credible by the owner or occupier, which causes the owner or occupier to consciously understand that a third person is likely to imminently engage in wrongful conduct on the premises that poses a clear danger to the safety of persons upon the premises, such information being specific as to the identity of the third person, the nature and character of the wrongful conduct, the degree of dangerousness of the wrongful conduct, and the location, time, and circumstances of the wrongful conduct.

It also offers a new definition of a "prior occurrence":

> (5) 'Prior occurrences of substantially similar wrongful conduct' means prior occurrences of wrongful conduct which are sufficiently similar in nature and character, degree of dangerousness, proximity, location, time, and circumstances to the wrongful conduct from which a claim of negligent security arises to lead a reasonable person in the position of the owner or occupier to apprehend that such wrongful conduct is reasonably likely to occur upon the premises, to understand the risk of injury to persons upon the premises presented by such wrongful conduct, and to understand that a specific and known physical condition of the premises has created a risk of such wrongful conduct on the premises that is substan-

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tially greater than the general risk of such wrongful conduct in the vicinity of the premises.

The operative element of the new statute is codified at O.C.G.A. § 51-3-51, which states in full as follows:

> Except as provided in Code Section 51-3-54, an owner or occupier shall be liable for negligent security arising from any injury sustained by any person upon the premises of the owner or occupier as an invitee if the plaintiff proves that:
> (1) The wrongful conduct by a third person that caused the injury sustained by the invitee was reasonably foreseeable because the owner or occupier:
> (A) Had particularized warning of imminent wrongful conduct by a third person; or
> (B) Reasonably should have known that a third person was reasonably likely to engage in such wrongful conduct upon the premises, based on:
> (i) Prior occurrences of substantially similar wrongful conduct upon the premises of which the owner or occupier had actual knowledge;
> (ii) Prior occurrences of substantially similar wrongful conduct upon the property adjoining the premises, or otherwise occurring within 500 yards of the premises, of which the owner or occupier had actual knowledge; or
> (iii) Prior occurrences of substantially similar wrongful conduct by the third person whose wrongful conduct caused the injury, if the owner or occupier knew or should have known, by clear and convincing evidence, that such third person was or would be upon the premises and if the owner or occupier had actual knowledge of such prior occurrences of substantially similar wrongful conduct;
> (2) The injury sustained by the invitee was a reasonably foreseeable consequence of such wrongful conduct by a third person;
> (3) Such wrongful conduct by a third person was a reasonably foreseeable consequence of such third person exploiting a specific physical condition of the premises known to the owner or occupier, which created a reasonably foreseeable risk of wrongful conduct on the premises that was substantially greater than the general risk of wrongful conduct in the vicinity of the premises;
> (4) The owner or occupier failed to exercise ordinary care to remedy or mitigate such specific and known physical condition of the premises and to otherwise keep the premises safe from such wrongful conduct by a third person; and
> (5) Such failure of the owner or occupier to exercise ordinary care was a proximate cause of the injury sustained by the invitee.

Needless to say, the number of cases in which a landowner has the level of knowledge contemplated by the new law before an injury occurs will be extremely limited.

The next section, new O.C.G.A. § 51-3-52, also sets an even higher bar for recovery against a landowner in the case of licensees (as opposed to invitees). And, new O.C.G.A. § 51-3-53 establishes that the negligent security structure established by these laws shall be an "exclusive remedy." New O.C.G.A. § 51-3-54 immunizes landowners from negligent security claims from trespassers, while new O.C.G.A. § 51-3-55 makes clear that landowners are not obligated to essentially perform the role of the police in keeping order on their property.

Critically, new O.C.G.A. § 51-3-56 directly addresses the absurdity of the CVS case holding, making it mandatory that a jury at least apportion a reasonable degree of fault to the actual person who committed the criminal act, or else see the verdict set aside. Finally, new O.C.G.A. § 51-3-57 extends the protections of the prior set of laws to security contractors hired by landowners.

Section 7 – Phantom Damages

Section 7 addresses the extreme burden put on Georgia's civil justice system by phantom damages. Phantom damages are best defined as the amounts that doctors bill, but never expect to actually get paid. Because of the arms' race between health insurers and doctors, it is now common in the medical space for a hospital facility or doctor to charge $100 in the hopes of being paid $25. Typically, payments received by doctors come from health insurers, and 89% of Georgians have some form of health insurance according to publicly-available statistics. Health insurers have contracts with each clinic or hospital that dictate the far lower percentage amount they actually pay for each service. That system is unwieldy and maybe even somewhat ridiculous, but in the healthcare space at least everyone knows how the system works. Not so in the jury trial system.

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2025 Tort Reform

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Georgia courts have historically applied the "Collateral Source Rule" to keep jurors from learning that the amounts charged by medical practitioners are, in effect, fictional. And, in the last fifteen years, new clinics have arisen that specialize in the lawsuit injury model, specifically because information on the true market value of their bills is hidden from juries.

Section 7 addresses those abuses by setting up a new damages structure, via O.C.G.A. § 51-12-1.1. New subparts (c) through (f) offer the operative language:

> (c) If the plaintiff in any such civil action has any form of public or private health insurance, including benefits under a governmental workers' compensation program, evidence relevant to the determination of the reasonable value of medically necessary care, treatment, or services pursuant to subsection (b) of this Code section shall include both the amounts charged for past, present, or future medical and healthcare expenses and the amounts actually necessary to satisfy such charges pursuant to the insurance contract or the applicable governmental workers' compensation program, regardless of whether the health insurance has been used, is used, or will be used to satisfy such charges.
>
> (d) In any claim for medical and healthcare expenses rendered under a letter of protection or any other arrangement by which a healthcare provider renders treatment in exchange for a promise of payment for the plaintiff's medical and healthcare expenses from any judgment or settlement of a civil action to recover damages resulting from injury or death to a person, regardless of how such arrangement is referred to, the following shall be relevant and discoverable:
>
> (1) A copy of the letter of protection;
>
> (2) All charges for the plaintiff's medical and healthcare expenses, which shall be itemized and, to the extent applicable, coded according to generally accepted medical billing practices;
>
> (3) If the healthcare provider sells the accounts receivable for the plaintiff's medical and healthcare expenses to a third party at less than the invoice price:
>
> (A) The name of the third party; and
>
> (B) The dollar amount for which the third party purchased such accounts receivable; and
>
> (e) It is the intent of the General Assembly that this Code section abrogates the common law collateral source rule to the extent necessary to introduce the evidence described in this Code section; provided, however, that nothing in this Code section shall be construed or applied to prevent the court from issuing appropriate jury instructions to clarify the role of collateral source payments and to prevent potential jury confusion regarding the effect of collateral source payments on the plaintiff's recovery.
>
> (f) Nothing in this Code section shall be construed or applied to limit the right of a plaintiff or defendant to present evidence or testimony, or both, challenging the reasonableness of medical and healthcare expenses, whether incurred or projected future expenses, or the medical necessity of any treatment.

Under the new law, the amount the plaintiff's health insurer would have paid for the treatment will become relevant and admissible whether the plaintiff actually used his or her insurance. The jury will also learn whether the plaintiff has health insurance.

This provision will go a long way towards cleaning up the abuse of phantom damages, especially by lien clinics. The law also makes certain referral information, which was already discoverable under case law precedent, both discoverable and relevant by statute. This will help get the jury the true facts in the very common situation where a plaintiff's lawyer has actually been the one directing and controlling the plaintiff's treatment.

And, the law is clear via subpart (f) that this way of analyzing reasonableness and necessity is *non-exclusive*, in noted contrast to the exclusivity provisions of the negligent security code sections analyzed above.

Section 8 – Bifurcation of Trials

Section 8 proved to be one of the most controversial elements of the new law, even though its logical underpinnings are some of the most elementary. Trials typically involve two stages: first, determination of liability, and second, the amount of damages to be awarded. Importantly, since the enactment of the apportionment statute in 2005, Georgia's judges also have been charged with reducing any amount awarded by the jury by the

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The trouble is that trials have not traditionally kept these two phases all that distinct. As such, it has been very common for a jury to be presented with testimony as to liability and testimony as to damages at the same time. Such a presentation can absolutely tug the heart strings, even though jurors are always instructed by the Court not to let sympathy affect their verdict.

Under the new law, these phases of trial will be much more distinct, through a process called "bifurcation." A bifurcated trial will go forward first as to only the liability factors, meaning the jury will need to be charged and will need to deliberate halfway through a trial. And, because apportionment is a component of the liability analysis, any apportioned fault will need to be determined and announced by the jury in this first phase—before it hears any damages.

If the jury finds that a particular plaintiff was 50% or more at fault for his or her own injuries, then the trial would end then and there. If the jury finds the plaintiff to be less than 50% at fault, then the trial would re-commence as to damages. In the second phase, the plaintiff would proceed to tell the jury about the harm he or she alleged suffered, and the jury would hear evidence of the dollar value of those injuries.

The idea behind this law is to get jurors to assess liability in as neutral a way as possible, based only on the facts presented, not on the facts plus sympathy factors for injured plaintiffs. Again, as the bill progressed through the Legislature, a certain amount of horse-trading occurred. As amended, mandatory bifurcation of trial will not apply in any case with an amount in controversy of less than $150,000, or in cases involving alleged sexual assault. (The latter was a humanitarian compromise to prevent assault victims from having to give their testimony twice).

O.C.G.A. § 51-12-15 contains the text of the new bifurcation statute, as follows:

(a) In any action to recover damages for bodily injury or wrongful death, any party may elect, by written demand prior to the entry of the pretrial order, to have fault and any award of damages determined at trial in the following manner:
  (1) In the first phase of the trial, the trier of fact shall determine the fault of each defendant, and if the trier of fact finds that any defendant is at fault for the plaintiff's injuries or wrongful death, the trier of fact shall further determine through an appropriate form of the verdict the percentages of fault of all persons or entities that contributed to such injuries or wrongful death as provided in Code Section 51-12-33, prior to any determination of the total amount of damages to be awarded, if any such findings are required. The evidence and arguments of counsel in the first phase of the trial shall be limited to the issues provided for in this paragraph;
  (2) If the trier of fact finds in the first phase of the trial that any defendant is at fault for the plaintiff's injuries or wrongful death, the trial shall be recommenced immediately with the same judge and the same jury. In the second phase of the trial, the trier of fact shall determine all compensatory damages to be awarded to the plaintiff, if any, and the evidence and arguments of counsel shall be limited to this issue; and
  (3) If the trier of fact finds in the second phase of the trial that any compensatory damages are to be awarded to the plaintiff, the trial may be recommenced immediately with the same judge and the same jury for such further proceedings as may be required, including, but not limited to, proceedings provided for in subsection (d) of Code Section 51-12-5.1 concerning punitive damages and proceedings to determine liability for, and the amount of, any attorney's fees, court costs, or expenses of litigation that may be awarded by the trier of fact as provided by law.

(b) The court may reject an election by any party made pursuant to subsection (a) of this Code section and order the concurrent trial of fault and damages only upon motion by any party in opposition to such election and upon the court's determination that:
  (1) The plaintiff, or if the plaintiff is the legal guardian of a minor, the minor, was injured by an alleged sexual offense and would be likely to suffer serious psychological or emotional distress as a result of testifying more than once in a bifurcated proceeding; or
  (2) The amount in controversy is less than $150,000.00.

The courts will need to make a determination as to whether the case poses a $150,000 amount in controversy or not. Judges will likely look to federal diversity removal law for that issue. In cases involving an alleged sexual offense, the Court will need to determine if the victim is at risk of "serious psychological or emotional distress," in order to decide whether to bifurcate or not. Most of those cases will likely avoid bifurcation.

Section 9 – Effectiveness

The Legislature understood that many of the elements in play in this bill will represent large changes in how things are going to be done in Georgia. Thus, it added a section specifying which parts of the new law will take effect immediately, versus which will be delayed. And, it wisely tied the effectiveness of those two parts of the new law to the day the *cause of action develops* (meaning, in insurance terms, the "date of loss"), not the day the lawsuit was filed.

Under the enabling language of Section 9, only the provisions of Sections 6 and 7 of the Act, meaning negligent security reform and phantom damages reform, will be delayed. Every other part of the bill will kick in immediately. However, as noted above Senate Bill 69 revised the seatbelt provisions, so that they apply only to new causes of action "commenced" on or after April 21, 2025.

Future Impacts of Tort Reform and Next Steps

Overall, the Legislature's tort reform efforts merit a round of applause, even if the bill ultimately did not achieve every one of the lawmakers' stated goals. The personal injury lawyers' lobby is very strong and very well-funded and passing anything over their strenuous objections was a real political coup both for Governor Kemp and his supporters in the Legislature. GDLA expects the tort reform package to significantly help rebalance our trial system. And, if it becomes clear that more work is needed, it is now obvious to everyone that the political will exists to make that effort. ◆

Zach Matthews is a partner with McMickle Kurey & Branch in Alpharetta and serves on the GDLA Board of Directors. He specializes in high-loss motor carrier defense, premises liability, and catastrophic negligent security matters. He has particular expertise in cases involving inflated medical bills or billing fraud and has handled a number of landmark cases reported in national media revealing the existence of paid litigation networks. He has also testified on these issues before the Georgia legislature, and he consults on cases involving similar practices nationwide, including in litigation hotspots like Texas, Louisiana and Florida.

Workers' Compensation

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The Court of Appeals reversed and remanded the case to the Appellate Division of the State Board of Workers' Compensation to make an express finding of fact regarding the reason the employee failed to accept a light duty job offer, which was needed to determine whether the reason for the refusal to accept suitable light duty work was justifiable. *Id*. at *4. The Court of Appeals took the factors in *City of Adel* a step farther by making a point to note that an employee's reason for refusing light duty work does not have to relate to the work injury to be justified. *Id*.

As of this publication, the State Board has not published an Award making a determination pursuant to the remand from the Court of Appeals. However, this case is a reminder to defense attorneys to nail down details such as this during discovery, which may have been done in this case but not specifically identified in the hearing Award. ◆

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Mediation Impact of SB 68

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increasing costs and complexity.

For claims, for example, under $1 million, the focus may well be on settling while managing exposure to large, drawn-out cases. It is easy to see a two-track system within carriers with different skills needed for each type of case, and the defense bar being forced to undertake costly independent research.

Cost-containment pressures from insurers will intensify, as insurers are faced with increased expense at the outset of litigation, and perhaps even an unwillingness by the plaintiff's bar to engage in settlement discussions, absent a trial date.

However, insurers may now be more willing to take a liability case to trial in a bifurcated case as the emotional element of the claim will, theoretically, be excluded. Such an approach is likely to see insurers single out defense trial attorneys with experience, especially in high exposure cases, where liability is in issue, more protracted, and more expensive.

Conversely, delaying damages trials through bifurcation may end up being a pyrrhic victory for the defense as cases tend to get more costly for insurers, as time goes on.

The belief among many insurers is that bifurcation, together with other aspects of SB 68 will reduce, or eliminate the so-called nuclear verdicts. Without the emotional and sympathetic plaintiff in front of a jury at the liability trial, insurers believe that liability outcomes will improve. However, the writer is not so sure, as the nature of claims inflation suggest that the "genie is out of the bottle" and cannot be put back in. A better question to ask is whether SB 68's anticipated increase in defense costs, and increased scrutiny of those costs, will be offset by any reduction of the larger awards. Only when that question is answered in a soft market will the question of whether the legislation is net positive or negative to the industry be properly understood.

Impact on Settlement Dynamics

Despite the hopes, from the proponents of tort reform, that the legislation will lead to quicker and cheaper resolutions, the opposite may still occur.

Anecdotally, some attorneys believe state court trials will become more frequent, with fewer settlements, and potentially higher overall payouts by insurers, not least because of prejudgment interest, costs, and the inevitable rise in damages awarded over time. In addition, the plaintiff lawyer's default of favoring state court trials over federal cases may be questioned, and significant time and effort put into certain cases on identifying federal issues.

This leads to the question of what type of case will settle readily, and which will not? Will smaller cases be settled on the eve of trial, will larger cases almost always be settled after a liability trial, and, if so, is the delta between the parties on valuation likely to be as significant as before SB 68?

These issues may lead one to assume that mediators will be used more often, (albeit delayed) for smaller cases, and less often for larger cases. But even this assumption may be wrong, if the plaintiff bar changes tactics. Liability trials may become more sought after, given the perceived downside risk is not as great as before SB 68 for insurers, and plaintiffs rejecting settlement offers as inadequate. Conversely, it may not be that straightforward, as many cases that do end up in trial happen because both sides fail to recognize the true liability exposure. If a case where liability is in issue is not settled before a liability trial, the plaintiff bar, if

successful, may have less incentive to resolve the case absent a damages verdict, especially if any punitive damages claims survive any motion for summary judgment.

Mediation and Case Resolution Trends

Contrary to what one might assume, SB 68 may not reduce the need for mediation—it may heighten it.

For smaller cases, e.g. around $1 million or so, or less, settlement decisions will increasingly be made without full information—something mediators often help navigate. Mediators often use authorized information as a commodity to trade in mediations. With potentially limited discovery, and the prospect of two trials, a mediation may therefore be the best option for both parties to avoid the costs, and uncertainty of trial. In addition, insurers will most likely push for mediation, early and often, in the hopes that the plaintiff's attorney will provide them with the data points they may otherwise be unable to get post SB 68. With an increase in cases proceeding to trial, mediation might also be ordered more frequently by the court system, which could find itself under considerable strain to accommodate the number of cases filed.

For larger claims, it is possible that mediation will be resisted for contested liability claims, especially by those plaintiffs who are willing to wait years before receiving a payout, and the defense bar may now see limited downside to push their liability arguments. As set out above, this may create new strategies, the increase in litigation fundings for plaintiffs, to take away some downside risk on stronger cases, as well as the increased hunt by the plaintiff's bar for punitive allegations to increase leverage. Ultimately, this could raise both the risk for insurers and the payout, especially if accompanied by time limited demands, sent at the outset of the litigation. Plaintiff's lawyers may also be more selective in the cases they choose to take to trial, albeit it is rarely the plaintiff's lawyers themselves who ultimately decide, but the plaintiff themselves. Many of the so called "nuclear verdicts" have arisen because, from the plaintiff's perspective, the defense offer was inadequate and often the plaintiff lawyer is as surprised as anyone at the size of the verdict handed down. This dynamic will not disappear with SB 68.

Of perhaps equal importance is the increased cost of bifurcated trials, and the savings which a mediation can achieve. Rising costs may push defense lawyers and insurers to seek to settle earlier—if they can assess risk accurately without full discovery- to avoid increased defense costs which ultimately may do little to reduce awards. Costs will likely become an important part of any mediation discussion for smaller cases.

Future Considerations

If SB 68 is meant to reduce insurer exposure, its success will depend entirely on how the plaintiff and defense bars adapt. Should both maintain historical practices, insurers outcomes may follow expectations. But if strategies evolve rapidly, the link between reform and reduced payouts may disappear. This writer believes that the plaintiff's bar will adapt, as the exchange of information provides the plaintiff's bar with an innate advantage. For defense firms, the key issue will be how, and how quickly, they address the issues which bifurcation brings and insurers appetite for increased defense costs. It is likely that the defense bar will be reaching out to their insurance clients, but to take advantage of SB 68, the defense bar will need to be agile and share information, in a way only the plaintiff's bar currently seems able to do.

Conclusion: What It Means for Mediation

Ultimately, SB 68 introduces enough uncertainty that mediation could become even more valuable, not less. The assessment of risk by both sides will focus more on the plaintiff and defense attorneys' trial capabilities, and liability uncertainty, and of course punitive exposure. The actual plaintiff, and the ability of the attorneys on both sides may have a bigger impact on whether a case is settled or tried.

The defense bar will need to adopt a new approach to resolving smaller cases efficiently, while also managing exposure to costly drawn-out double trials, where the perceived wisdom of arguing liability may backfire. In the meantime, the mediation industry, after initial some hesitancy, arising out of the uncertainty will likely be fully engaged.

Both bars will need to adopt new strategies to navigate bifurcated litigation under SB 68 and will position themselves to their clients based on their trial acumen. Speed in changing current strategies will be critical for success on both sides. ◆

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Perception Response Time

Continued from page 28

Paul Olson wrote that, "[g]iven a reasonably clear stimulus and a fairly straightforward situation, a great deal of data suggest that most drivers (i.e., about 85%) should begin to respond by about 1.5 seconds[.]"[4] This resulted in a seemingly widespread acceptance that "[w]hen an individual's actual perception/reaction time is unknown, a time of 1.5 seconds for daytime and 2.5 seconds for nighttime may be used for investigative purposes."[5] Advancements in technology over the past 20 years and the development of predictive equations have advanced the study and application of PRT in crash reconstruction, providing ample quantitative data that supports Donders 1868 initial findings: there is not one generally-applicable response time.[6]

Naturalistic studies focused on driver behavior have become exceedingly robust in the past decade. For example, the Strategic Highway Research Program (SHRP2) study observed more than 3,000 drivers in instrumented vehicles over 3 years. More than 3,000 crashes and near-crashes were documented, 86 of which were head-on events. SHRP2 data contains more than 35 million driver miles and more than 1 million hours of video. The 100-Car Naturalistic Study completed by the Virginia Tech Transportation Institute and sponsored by NHTSA captured more than 2 million driver miles and 43,000 hours of driving behavior from 100 instrumented cars over 12-13 months. More than 8,000 incidents, 761 near-crashes, and 82 crashes were captured. These comprehensive datasets spawned research into how factors such crash type, age, gender, eccentricity, time of day, and number of stimuli influence drivers' reaction times. This research has contributed to a more nuanced understanding of PRT's variability and has provided robust methodology for the proper use of PRT in crash reconstruction analyses.

Studies using datasets from SHRP2 and the 100-Car Naturalistic Study show that PRT variability is consistent with the Information Theory; higher probability or higher information events have faster reaction times.[7] In other words, reaction times are inversely proportional to the probability of an event and to the amount of information available to a driver. Consider the time necessary for a driver to respond to a same-direction cutoff or merge in moderate traffic during the day. Most drivers experience several cut-offs during their daily commute. Expectancy is high and a great deal of actionable information is available. As a result, drivers respond quickly.[8] On the other hand, response times are at least twice as long for events that rarely occur or where there is limited actionable information available, such as head-on collisions or stopped vehicles on dark unlit highways.

Predictive mathematical equations have been developed for drivers' perception response times and include only statistically significant variables. Studies show that the variables relevant to drivers' response times vary based on crash type. For example, angular path intrusion PRTs are affected by whether the intruding vehicle stopped before intrusion, eccentricity,[9] whether the subject driver was turning, lighting (day versus dawn/dusk versus night), and the number of stimuli. Drivers responding to a head-on or left turn across path hazard responded differently based upon the roadway topography, the number of lanes and time to contact, the number of immediate hazards, and whether the intruding vehicle stopped before turning. PRTs for crashes resulting from vehicles turning into the subject vehicle's lane of travel, 62 and continuing to travel in the same direction, depend most heavily on the time to contact. Interestingly, age has not been shown to influence PRT, regardless of crash type.[10] In time-distance or avoidance analyses, an expert must determine how much time and distance are available to avoid a collision. Applying an improper PRT during those analyses may result in incorrect opinions about whether a driver had sufficient time to take evasive actions, such as braking or steering. Consider a fictitious example wherein 250 feet separate the emergency onset location to the area of impact. If an expert uses a blanket PRT of 1.5 seconds at 45 mph, the driver will cover 99 feet during the PRT phase, leaving 151 feet to avoid the collision. If instead the applicable average PRT is 3.0 seconds, then the subject driver will travel 198 feet and have only 52 feet to avoid the collision.[11] These are likely to result in opposing expert opinions regarding a crash's avoidability. Properly applied PRT research offers a nuanced insight into driver performance and allows for a more accurate and objective reconstruction of crashes.

Perception response time remains a critical but complex piece of crash reconstruction analyses. Expert witnesses must rely upon accepted methodologies and apply that methodology to the facts and circumstances of a particular case. This involves employing peer-reviewed and research to account for the variables influencing reaction times and precludes the use of a generalized or rule-of-thumb PRT. Experts should formulate opinions on the avoidability of a crash after comparing a subject driver's PRT to a properly established and case-specific PRT baseline. This ensures that expert testimony will be credible, withstand judicial scrutiny, and ensures that liability and fault are determined after considering reliable and objective expert opinions.[12] ◆

Amber Bishop serves as a senior crash reconstructionist and is a co-owner of Weed Reconstruction & Expert Consult-

ing (WREC), a GDLA Platinum Sponsor. Bishop specializes in reconstructing collisions involving commercial vehicles, passenger vehicles, motorcycles, bicycles, and pedestrians. She enjoys handling cases that require complex analyses with human factors implications.

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[10] Age has been associated with a longer recognition time, with some studies showing a decline in recognition of targets at night but recall that recognition of an identifiable hazard is a prerequisite to PRT. Jeffrey Muttart and Swaroop Dinakar, *Drivers' Responses in Emergency Situations,* Driver Research Institute, 4th ed. at 188 (2023). Dinakar, S. and Muttart, J., Driver Behavior in Left Turn across Path from Opposite Direction Crash and near Crash *Events from SHRP2 Naturalistic Driving*, SAE Technical Paper 2019-01-0414 (2019); Edewaard, D.E., Muttart, J.W., Dinakar, S., Appow, S. *Driver Response Time to Pedestrians and Bicyclists During Turning Events from the SHRP-2 Naturalistic Database,* Transportation Research Board of the National Academies (2021).; J.W. Muttart, *Development and evaluation of driver perception-response equations based upon meta-analysis*, SAE 2003-01-0885 (2003).

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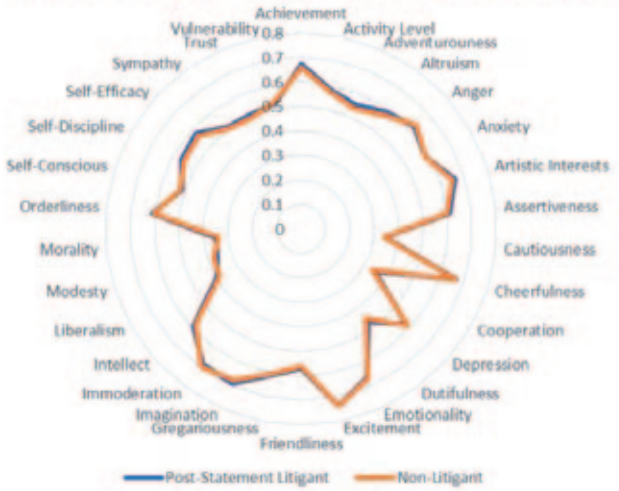
Figure 1: Personality Profiles - "Big 5" Inventories

Figure 2: Personality Profiles - NEO Inventories



Personality and A.I.

Continued from page 30

signed confidence intervals (low, normal, high) for each score based on the availability of data within the analyzed text. We obtained an average score for each personality trait from each sample population to create the "Post-Statement Litigant" and "Non-Litigant" Personality Profiles (Figures 1 and 2).

As illustrated in the Figures presented on the following page, our study did not reveal any significant evidence to suggest Post-Statement Litigants and Non-Litigants embody different personality traits. There was very little variation between the sample populations in most of the measured traits.

With this dataset, DigiStream would not be capable of making predictions regarding a claimant's intent to obtain representation.

DigiStream recognizes the limitations of our early research, namely our data quality and our sample size. The interview transcripts were AI-generated and prone to errors. During transcription, the AI may have misunderstood certain words or sentences, leading to inaccurate transcripts. As a result, during processing, there is a distinct possibility that the AI assessed personality based on something the claimant never said. To combat this, we manually audited transcripts and the associated audio files prior to processing for gross misinterpretations and to make the necessary corrections; however, a full audit of every word on every transcript was not feasible with our available resources. Predictive analytics require a lot of training data and time to fine-tune to AI's predictive models. For this study, we were working with a relatively small number of training cases, meaning our results are not as robust as they could be.

Current trends indicate AI will only become more advanced and more integrated into our professional lives. This research project was DigiStream's first foray into the world of predictive analytics and represents a good faith attempt to understand the use and limitations of AI in workers' compensation claims administration. As noted above, our research is limited and doesn't necessarily discredit the use of assessing personality when utilizing predictive analytics; however, claims administrators should be cautious when deciding when, and how, to use AI for their claims. ◆

Stephen Schultz is the Claims Development Coordinator for DigiStream Investigations, a GDLA Platinum Sponsor. Prior to this position, he served as the company's Senior Open-Source Intelligence (OSINT) Specialist, concentrating on geosocial and advanced due diligence investigations. Stephen has over five years of experience in both claims investigations and OSINT investigations, including highly specialized casework for DigiStream's top clients.

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Force or Fire?

Continued from page 32

to the steering wheel, or steering column collapse due to driver interaction may be observable even after extensive fire damage. Seat belt marks on latch plates or D-rings may be observable. Areas of sparing from the fire, such as seats or parts of the seatback, may also help inform the occupant injury analysis.

Collection of postmortem remains is challenging in these situations, and the condition of remains at the death scene versus those delivered to the coroner or medical examiner may change. In addition to reports generated by law enforcement, a major accident investigation team, and sometimes other state and federal agencies, it is helpful to obtain available scene photographs in their original digital format. It may be helpful to obtain recordings of 911 calls related to the event, which may include verbal descriptions of initial perceptions. It also may be helpful to obtain available security camera, body camera, and bystander cell phone video (including from social media) and to consider witness statements and testimony. These sources may include information about the scene, vehicle, and occupant(s) at times before all of the thermal damage has taken place or before a decedent has been moved. A scene inspection by coroner or medical examiner staff may include photographs while the remains are still within the vehicle and/or immediately after extraction. These materials can provide important information for biomechanical, fire, structural, and medical forensic analyses. The constellations of findings can help ascertain the medical forensic validity as to the mechanism of death, the cause of death, trauma analysis, pathologic disease processes, and the manner of death.

Biomechanical Evaluation

An injury analysis of a fatal MVC with fire seeks to identify potential blunt traumatic injury mechanisms (hypotheses) and then evaluates whether the available evidence supports or refutes those hypotheses. In such an analysis, it is relevant to know whether the deceased was using their lap and shoulder belt properly; whether supplemental restraints deployed; whether forceful contact likely occurred between the individual and some structure, object, or other occupant; and whether the individual was physically entrapped by intrusion into the occupant space. Timing of deployment of passive restraints (e.g., airbags, pretensioners) in the context of the crash sequence may also be relevant to injury risk and potential mechanisms.

Biomechanical evaluation of a fatal MVC with fire may take several forms. Utilizing basic information about the deceased occupant and crash events, the overall likelihood of blunt traumatic injury and/or fatality in a similar event can be evaluated. Medical findings documented in medical records, photos, imaging studies, and the medical examiner file can be used to focus the injury risk analyses. The influence of multiple impacts in an event can be evaluated in series, considering likely occupant orientation after each preceding impact as well as the effectiveness of restraints in subsequent impacts.

More specifically, the kinematics, including direction and extent of movement, and the kinetics (loading on the body) for a similar occupant may be informed by results of relevant crash and sled testing. The resulting loading to specific areas of the body can be compared to federally mandated injury assessment reference values (IARVs)[4] and published results of biomechanical testing to evaluate risk of injury.[5-7] Factors that may affect the likelihood of blunt traumatic injury may be identified, such as being unrestrained or improperly restrained; being out of position; and occupant size, age, or reduced tolerance due to medical conditions or interventions.

In addition, there may be biomechanical data available from relevant standardized testing or research-based testing of a similar make and model to the involved vehicle(s). Bespoke testing, utilizing standard test methodology, can be helpful to answer questions or evaluate specific potential biomechanical injury or vehicle damage mechanisms when needed. If there are concerns about whether specific conditions related to the involved vehicle presented an increased risk of injuries in the event, similar analyses can be conducted with alternate conditions or peer vehicles to evaluate whether the outcome would likely have been different.

Fatal MVCs with fire present medical forensic challenges with regard to identifying the extent of blunt trauma that may have occurred during the event. Especially when acutely lethal central nervous system injury is suspected, biomechanical and medical forensic evaluations may provide complementary bases to reach a conclusion to a reasonable degree of certainty.[8]

This is as convenient a place as any to point out that, if there are multiple occupants in a vehicle involved in a fatal MVC with fire, each individual must be analyzed. Results from one individual cannot reasonably be applied to other occupants in the vehicle. As in severe crashes without fire, variations in occupant characteristics, seating location, restraint use, and exposure to loading may result in different blunt traumatic injury patterns and severity.

Medical Forensic Evaluation

A coroner or medical examiner is tasked with determining the cause of death and the manner of death. The cause of death is the injury or injuries

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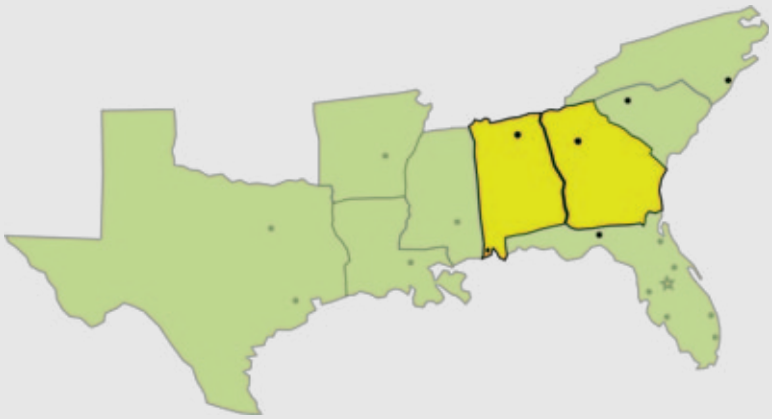

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that led to the demise; the mechanism of death is the physiologic derailments that ended the individual's life. Contributing events or medical findings should be identified and considered when deemed medically forensically applicable. The manner of death is a medical legal opinion, typically classified as natural, accident, homicide, suicide, or undetermined, and it is beyond the scope of this article.

Thermal effects of a fatal MVC with fire are often prominent, but a complete, orderly examination of the remains needs to be performed. In a rare case, the medical examiner may uncover evidence of homicide, where the crash and/or fire were intended to hide that evidence. A medical examiner or medical forensic expert may be asked to distinguish between blunt traumatic injuries from the crash event and thermal consequences of the fire. They may also be asked to help evaluate whether a driver-related factor likely contributed to the cause of the crash event, such as being under the influence of a substance or experiencing a medical emergency, for example.

Medical forensic analysis of a decedent in an MVC with fire is largely based on trained pathology observations, including visual, microscopic evaluation, examination and dissection of organ systems, and medical imaging studies (x-ray, CT, etc.). These trained observations are accompanied by toxicology to test for presence of drugs and alcohol. After a fatal MVC with fire, additional laboratory measurements that may be informative include the level of carboxyhemoglobin (COHb) in the blood, which is discussed further below.

In addition to an autopsy report, it may be helpful to obtain the coroner's/medical examiner's file, which may include investigator summaries and hand-written notes of measurements and observations. Autopsy photographs in their original format should be requested; in many jurisdictions, the file materials and autopsy photographs need to be requested separately and may require special permissions and timing. Autopsy photographs often include images of the remains "as received" as well as of the autopsy procedure and findings. Any of these photographs may provide information relevant to the analysis of injury mechanisms for the biomechanical analysis as well as the medical forensic analysis. Sometimes, documentation of findings may be in one source but not another.

Documentation of autopsy findings may be organized into pathologic diagnoses. In the case of MVC with fire involvement the subcategories may list thermal injuries, blunt traumatic injuries, toxicology, carboxyhemoglobin (COHb), and pathologic (pre-existing, chronic, or disease) findings. Formats of autopsy reports as well as summary outlines of findings are variable.

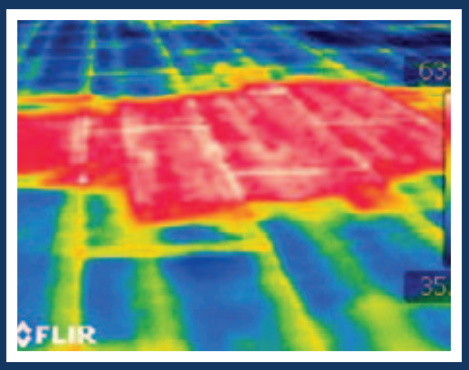
Weights of the remains, including individual organs, are a standard part of an autopsy and may be informative with regard to cause of death or a contributory cause of death. After a fatal MVC with fire, postmortem thermal effects may result in loss of overall length and weight of the remains due to combustion and dehydration, so that the reported values are not consistent with those of the individual when they were living. Thermal effects may also obscure otherwise relevant external findings, such as skin abrasions, lacerations, and seat belt marks.

Death in a fire often occurs a considerable time before the fire is brought under control.[10, 11] It is important to be aware that some reported thermal "injuries" are well-documented postmortem phenomena, including some of the most visually disturbing findings. For example, charring of the body largely occurs after death has taken place. The amount of charring and thermal artifact on a body is not a medical or scientific indicator of the time of death or cause of death. It is unrelated to whether the individual was alive or conscious after the crash event.

After exposure to fire, muscles and tendons cool, dry out, and contract. This shortening of muscles and tendons causes joint flexures, resulting in pugilistic posturing, so called because it resembles a boxer in a ready stance. Pugilistic posturing is a postmortem phenomenon. It is unrelated to perimortem posturing or movement, if any, of the individual. It is unrelated to whether the individual was alive or conscious after the crash event.

In evaluating whether an individual was alive when they were exposed to fire, certain medical forensic findings may be informative. If there are heat-related changes to the lining of the trachea, the individual may have breathed in injuriously hot air. If there is soot in the lower respiratory tract past the mouth and throat, the individual may have breathed in smoke. If there is soot in the esophagus, the individual may have swallowed it. In a body that has charring, there is a risk of postmortem transfer of soot particles to the respiratory mucosa. Techniques at autopsy can minimize or eliminate the postmortem artifact. Widely accepted medical forensic texts contain examples of true effects of heat-related damage and smoke inhalation for comparison.

Quantifying COHb through toxicological analysis of blood collected at autopsy may indicate whether an individual was breathing in smoky air prior to death.[12] There are some general principles for interpretation to be considered in the context of additional incident information. In a fire, carbon monoxide (CO) fumes are generated. Carbon monoxide binds to hemoglobin to form COHb. CO has an affinity to hemoglobin where oxygen attaches that is 200-300 times greater than oxygen. Therefore, it takes only a few breaths of smoke, depending on the



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CO concentration, to elevate COHb to lethal levels. Lethal levels of COHb are 50-60% in healthy adults, lower in susceptible individuals. COHb levels may reach 10% or more in smokers or individuals exposed to smoky or sooty work environments. The lower threshold for reporting blood levels of COHb varies by jurisdiction and laboratory and may be as high as 10%. Some research suggests that for any postmortem COHb level below 20%, a cause of death other than smoke inhalation should be sought.[13]

Sometimes a question is raised whether low measured COHb levels after a fatal MVC with fire is due to a phenomenon called flash fire or flashover, when a fire suddenly becomes so hot and spreads so fast the individual is unable to breathe. A flashover may happen in closed spaces, including closed or partially vented vehicles, under specific conditions. Experimental studies of flashovers in vehicles indicate that it can take several minutes or longer after a post-MVC fire starts before such conditions are reached, if they are reached at all.[13] If this is an issue, a fire expert may be needed to evaluate the fire temperature and chemistry, and whether conditions would likely have been consistent with a flashover at any time during the post-crash fire.

When lethal head or cervical spine blunt trauma are suspected and the head has been exposed to fire, careful evaluation may be needed to determine, if possible, whether any skull fractures are due to blunt trauma or thermal effects. Certain patterns of intracranial hemorrhage in or around the brain are associated with blunt trauma and high head accelerations, while others are known to result from postmortem artifact due to exposure to fire.

Acutely lethal central nervous system trauma can be challenging to identify after an MVC with fire. For example, lethal diffuse axonal injury (DAI) caused by a head impact may not be observable in the brain tissue, even under a microscope, as observable pathology takes time to develop and does not progress after the time of death.

Other parts of the medical forensic examination may inform the likelihood of central nervous system trauma. A posterior neck dissection is recommended when blunt force trauma to the head and/or cervical spine is suspected but evidence from the usual anterior autopsy approach is limited or absent. A posterior neck dissection may show concomitant injuries consistent with serious central nervous system blunt trauma, such as cervical spine fractures and/or dislocations, cord compression, and/or muscular hemorrhages. A biomechanical evaluation of the likelihood of serious or worse central nervous system trauma can be a complementary way to evaluate whether a mechanism was likely present in the subject incident.[9]

“Acutely lethal central nervous system trauma can be challenging to identify after an MVC with fire.”

In addition, scene information may be helpful in determining the likelihood of acutely lethal central nervous system injury or loss of consciousness due to blunt trauma before thermal effects took place. Did any witness detect a pulse, breathing, consciousness, movement, or sound from the decedent after the crash event? Is there reliable evidence that the decedent released their own seat belt buckle or attempted to exit the vehicle? If there was movement, was it consistent with purposeful movement, or was it more consistent with perimortem seizure-type activity? If there were breath sounds, were they consistent with regular respiration, or were they more consistent with agonal breathing (the final few breaths in the dying process)?

A careful examination of the thermal pattern on the body compared to evidence in the vehicle may also be informative. If there are defined areas of sparing on the surface of the body, such as on the back, buttocks, and posterior thighs, that are also consistent with areas on the seat and seatback that are not burned, these are indications that the individual may not have been attempting purposeful movement while the fire was taking place.

Similar care may need to be taken to determine, if possible, whether fractures of bones of the thorax are due to blunt trauma or to thermal effects. Blunt traumatic injuries of the internal organs of the thorax and abdominal regions are likely to be preserved after a fatal MVC with fire, as thermal effects progress from the outside in. Findings such as laceration of the heart or a major blood vessel, or significant quantities of blood in the lungs or abdominal cavity are consistent with acutely lethal blunt trauma. While similar considerations apply to fractures of bones of the extremities, these are rarely acutely fatal, unless a major blood vessel such as a femoral artery is lacerated. However, blunt traumatic fractures of the extremities are relevant to the overall severity of the event.

Less frequently after a fatal MVC with fire, the medical forensic evidence or toxicology results will be consistent with a medical event that precipitated the crash-event itself. Findings in organs such as the heart, liver, kidneys or brain may indicate a medical cause

or contribution to death. For certain medical events, such as sudden cardiac death, acute pathologic changes in the heart muscle and enzymes typically assessed to inform a diagnosis may not have time to become apparent prior to death. If so indicated, a review of related organ systems and of relevant pre-incident medical records of the individual may be helpful.

Summary

Although a small percentage of fatal motor vehicle crashes involve a fire, these types of crashes present significant challenges for analysis. Nevertheless, the worst-case scenario should not be assumed. Initial impressions can be misleading, especially in the setting of obvious thermal effects. Because of the potential for blunt trauma and thermal consequences, analysis of the biomechanical and medical mechanisms of injury are worth the effort when it is important to understand what really happened. ◆

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Supersized Jury Awards

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Jurors are discomfited by hearing of other similar incidents that went seemingly unnoticed (or ignored) by company executives. Imagine a tire manufacturer facing claims that a defect in its vulcanization process trapped air between layers of rubber, which resulted in tire blowouts, loss of vehicle control, and many rollover accidents. Jurors blamed the company for the multiple injuries until they learned that each tire at issue was almost two decades old and had traveled many millions of miles before the subject crash.

Jurors don't want to see a slew of citations issued by the regulatory agency monitoring the environmental impact of emissions from a manufacturing plant. Consider the example of a company accused of negligence for failure to maintain its equipment and allowing toxic fumes to escape into the air surrounding the plant. The citations mentioned were related to water leaks creating slip hazards for company employees. Jurors benefitted from hearing the context for the citations—that the company repaired and monitored equipment and installed the elaborate, EPA-approved negative air pressure filtration system, which protected the community from toxic fumes.

The fact that these factors fuel jury awards is not news, but the fact that jury awards have gotten higher and higher causes indigestion. Why? Several factors are at work in the supersizing of jury awards. First, we have the ubiquitous Internet machine. The Internet has served to desensitize jurors to big numbers—which is why a $10 million award sounds quaint today and awards in the billions are more common.

Football players sign 10-year contracts for $450 million, so jurors do not bat an eye at plaintiff's attorneys demanding tens of millions for catastrophic injuries in product liability suits. Furthermore, news of multimillion-dollar awards is published almost immediately, and news of large verdicts quickly gets around, given the 24/7 nature of media. This creates an upward spiral, whereby jurors in subsequent cases come to reference, perhaps unconsciously, the "reasonableness" of plaintiff's demands based on what other jurors in other cases have recently awarded.

There is some research suggesting that plaintiff win rates have increased over time, creating a feedback loop in which rising levels of tort compensation fuel expectations of financial windfalls among potential claimants and the attorneys who represent them, which in turn stimulates the filing of new claims and associated lawsuits.

Plaintiffs are often hesitant to resolve matters before trial due to third-party litigation funding that is common today. There was tension between corporate defendants who were eager to settle disputes to avoid negative publicity and injured plaintiffs who were also eager to settle disputes to get on with their lives, but third parties who fund plaintiff litigation upset the balance and make both plaintiffs and plaintiffs' attorneys more willing to draw out litigation in hopes of a supersized jury award.

Additionally, jurors' feelings of entitlement are more common today than they were decades ago. Psychologists have studied feelings of entitlement and the relationship to jury awards and have determined that a higher sense of entitlement is associated with larger jury awards.

There is some evidence suggesting that feelings of entitlement are negatively correlated with age. This would mean that younger jurors would be inclined to award larger sums than older jurors. As baby boomers "age out" of the jury pool, the jury-eligible population is getting younger. Since there is a greater proportion of younger jurors in Western states than in Eastern states, it stands to reason that defendants assessing case risk consider the trial venue in their calculations.

Finally, the "reptile theory" is a trial tactic that frames an instant case as an invitation for jurors to go beyond compensating the individual plaintiff for his/her injuries resulting from allegedly errant corporations' violating safety rules in order to protect the greater community from future harm from similar corporate conduct. So, the reptile theory methods rest on traditionally impermissible arguments resembling the "golden rule."

What are corporate defendants to do to mitigate risk? Here are three things companies can do to minimize the risk of nuclear and thermonuclear verdicts:

First, pay special attention to the tone of your defense to ensure that jurors will not interpret statements to mean, "Not my job," as that will compound feelings that the company is shirking its responsibility and avoiding accountability. Own what you own. If you are a power company, you will be seen as an expert on electricity and will be expected to operate safely.

Address the question jurors care about: Is the community made more safe or less safe by your conduct? Then, elevate the knowledge and control of the plaintiff (i.e., information about the circumstances precipitating the bad event and the ability to avert the bad event). If you own and operate the dam, you will be the expert on how hydroelectric power works and you will be expected to provide accurate information to the companies and personnel hired to maintain the dam. Only then will jurors listen to explanations about which equipment workers should have or could have

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used to safeguard their employees who are conducting the necessary repairs. If you are a cable company, you will be expected to do your due diligence in hiring and supervising your employees before jurors will be able to hear how a disgruntled worker violated company rules to gain access to a home and assault the elderly owner.

Second, work closely to prepare company witnesses to tell the defense story on regulatory compliance and neutralize the impact of inflammatory language in internal emails. Teach witnesses communication skills to deliver accurate and honest answers to the difficult questions that opposing counsel will likely ask on cross-examination. This may include guidance for witnesses on when to "let go of the rope" to win the tug of war with opposing counsel on the stand and when to "fight to the mat." Too often, witnesses get bogged down in fighting arguments that are inconsequential to jurors.

Third, ensure that trial counsel is prepared to challenge objectionable characterizations of the defendant's responsibility by opposing counsel. Right-size the case before jurors to ensure that opposing counsel doesn't make the case a referendum on the industry, putting jurors in the role of improving the overall safety of the community. Supersizing should be limited to the world of fast food and not extended to the world of litigation. ◆

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MRL Elevators

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mount all the elevator equipment in the space above the top landing, which is commonly referred to as the "overhead." No more machine room, and everything is now located in the hoistway with all the other elevator equipment. Voila!

At its conception, the MRL was strictly intended as a way to fill the gap between the two traditional styles. Mostly because the MRL had some particular challenges from both a design and a maintenance standpoint. This gets to the heart of what the MRL elevator is, and what it is not. If you look at the primary difference between an MRL and the other two basic designs, there is both a net positive and a net negative. The net positive would obviously be that the elevator takes up less room in the building, as it does not incorporate a machine room. For both architects and contractors, this seems like a huge win. However, for installers and maintenance it is a negative. This is due to where the equipment for the elevator is located and how it is installed.

So, let's focus on the positives for the MRL design. Obviously, taking up less space in a building, as previously discussed, is a positive. The lack of a machine room or equipment room means that there is more room in the building for things unrelated to vertical transportation. Next, the cost of the MRL is significantly less than a traditional traction elevator. While not quite as cheap as a hydraulic, it's within 10 percent or so depending on options. Plus, you have the last positive, which is performance. You get all the speed and ride quality of a traction elevator at a cheaper price. Combine all of that and you get a very good option.

However, there are negatives, and most of them are on the back end. First and foremost, you have maintenance. With all the elevator equipment located in the overhead, maintenance is difficult at best. When a problem occurs, the downtime for an MRL can be much longer than for a traditional traction elevator. This can depend on which generation of MRL you have, as initially the controller was placed in the overhead. This was a mistake, as it made access to the controller impossible if the car was immovable. Next, they were located in the door jamb. This worked but overheating and the inability to limit access (i.e., security issues) made it an undesirable option. The latest solution is a controller cabinet—a room in the building where you put the controllers. While not as large as a machine room, it's still a place in the building for elevator equipment. This is all in the name of limiting down time and facilitating preventative maintenance.

Other negatives are things that have manifested themselves as the products have been in use. One is rope or belt wear. This issue is predicated on the number of trips per day the elevator takes. However, the smaller diameter hoisting ropes and the rubberized belts have proven to have a shorter life span than their traditional ½-inch or 5/8-inch hoisting rope cousins. For an average use elevator, traditional larger hoisting ropes can be expected to last between eight and 10 years. The hoisting ropes and belts for MRL elevators have been

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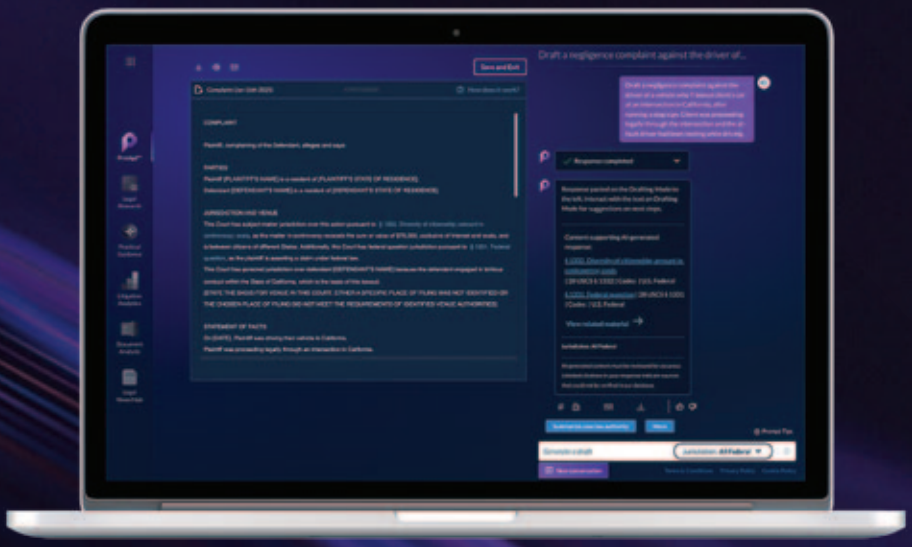

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shown to last approximately five years. Over the life span of an elevator, this will result in twice as many rope replacements, which results in much higher costs to replace them as well as much more down time.

Regarding life span, a traditional traction or hydraulic elevator would be expected to last between 20 and 30 years with many hydraulic elevators lasting longer. The old caveat of usage must be mentioned here, of course. MRL elevators, on the other hand, have proven to last more in line with a 15 to 20-year life span. This would mean that over the life of a building, you may be required to initiate multiple modernizations of your elevators, while a traditional elevator might not need one.

Let's look at an example at a hospital in Alabama. The hospital had two banks of three MRL elevators for six total elevators. Each elevator served six floors. On the surface this seems like an ideal application for MRL elevators. However, after five years, the elevators were showing significant signs of wear. The ropes of at least four of the six elevators needed to be replaced. Additionally, there had been multiple entrapment events leading to the replacement of the interlocks and hoistway switches on two of the elevators. It was ultimately decided that after 10 years, a full modernization of all the elevators was required.

The cause was simple: excessive usage. Hospitals and condominiums are known for having particularly high usage rates on vertical transportation devices. Elevators in an office building or hotel are known to have crush times in the mornings, at noon, and in the evenings with light traffic the rest of the day. However, hospital and condominium elevators are known to be in constant usage. Additionally, people that work in office buildings and hotels tend to be younger, with some taking the stairs for convenience or exercise. In a hospital or condominium this is rarely the case. Practically everyone who is traveling from one floor to the other, even if it is just one floor above or below, will utilize an elevator. The simplest and best answer for this application was not the sexy shiny new toy, but instead the tried and reliable hydraulic elevator.

Another example of an improper application was far more obvious. It involved a series of railway stations in Canada. Each station had two elevators that served two floors. A total of 23 railway stations were being constructed. As the MRL was the newest type of elevator, the sales press was applied, and the decision was made to switch from hydraulic to MRL elevators. Almost immediately after completion of the first station, issues surfaced. The elevator that served the platform performed poorly due to the extreme cold temperatures causing controller problems. The interior elevator had some issues as well, due to the amount of moisture brought in by passengers creating oxidation issues. Within five years of service, both of the elevators in the first station required a partial modernization.

A recent experience shows just how far the MRL model has advanced within the design community. While I was creating a modernized elevator for an older building in Mississippi, the electrical engineer on the project said we did not need 440 volts of power supply, but only 208 volts. I had to inform him this was not an MRL but was, in fact, a traditional traction style with a machine room and a controller in a machine room. With a quizzical look, the young salesperson from the elevator company told me she had not quoted that type of elevator and would have to get someone from the corporate office to give a quote. I explained to both the engineer and the salesperson that this was a 12,000-pound freight elevator and we would be doing things a bit different from the norm. The experience left me wondering how special elevators are now being designed and built. Further, how often are elevators that need to be special being brought back into the standard style due to elevator companies' lack of familiarity with specialized elevator designs and installations.

MRL elevators are likely here to stay, just like electric cars and Wi-Fi enabled appliances. The question is how they should be used, and how we should use them with a smart approach to both design and longevity. You would not buy an electric car if you wanted to consistently drive 300 to 400 miles a day. Similarly, you should not put an MRL in an application where usage rates are high, or you have issues with environmental factors. Certainly, you would not replace a two-stop hydraulic with an MRL. It also likely wouldn't be a good idea to replace a 15- or 20-story building with an MRL over a traditional traction; there is not enough potential front-end cost savings to cover the extra maintenance or long-term modernization costs.

While the current infatuation with the MRL may well be a phase, in the interim, making smart decisions will save time and money on your projects. Even if the young salesperson thinks it's a bit outdated. ◆

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