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Georgia

1. **What are the statute of limitations for tort and contract actions as they relate to the transportation industry.**

   Statutes of limitation in the State of Georgia applicable to possible tort and contract actions in the transportation industry are as follows:

   A. General tort actions for injuries to the person have a two-year statute of limitations.

   B. O.C.G.A. § 9-3-33.However, actions for injuries to the person involving loss of consortium have a four-year statute of limitations. Id.

   C. Actions for recovery of damages to real property or personal property have a four-year statute of limitations. See O.C.G.A. §§ 9-3-31, 9-3-32.

   D. Actions on simple written contracts have a six-year statute of limitations. O.C.G.A. § 9-3-23. However, there are exceptions for actions for breach of contract for the sale of goods and negotiable instruments which both have a four-year statute of limitations. O.C.G.A. § 11-2-725; O.C.G.A. § 11-3-605.

   E. Actions for breach of an oral contract have a four-year statute of limitations. O.C.G.A.

   F. § 9-3-25.

   G. Actions for breach of warranty have a three-year statute of limitations. O.C.G.A. § 11- 3-118(g).

2. **What effects, if any, has the COVID Pandemic had on tolling or extending the statute of limitation for filing a transportation suit and the number of jurors that are sat on a jury trial.**

   As a result of the COVID Pandemic, the Supreme Court of Georgia issued several judicial emergency orders and extensions thereof which suspended, tolled, extended and otherwise relieved statutes of limitations and deadlines on litigants, with the first judicial emergency order being issued on March 14, 2020. While these orders initially had a great impact on litigants, the impacts from these judicial emergency orders as they relate to statutes of limitations and deadlines has since been rescinded.

   Effective July 14, 2020, the Supreme Court of Georgia reimposed all deadlines affected by its Judicial Emergency Orders. (See Third Order Extending Declaration of Statewide Judicial Emergency, dated June 12, 2020). As a result, for all cases filed on or after July 14, 2020, litigants are now required to comply with the normal deadlines applicable to their case.

   As for statutes of limitation, the Georgia Supreme Court declared that "[t]he

122 days between March 14 and July 14, 2020, or any portion of that period in which a statute of limitation would have run, shall be excluded from the calculation of that statute of limitation. (See the Georgia Supreme Court excluded from the calculation. (See Fourth Order Extending Declaration of Statewide Judicial Emergency, dated July 10, 2020). The tolling provision for statutes of limitations expired on July 14, 2020. However, the Georgia Supreme Court issued additional guidance on the tolling of statutes of limitations under their statewide judicial emergency orders as follows:

> [T]he tolling of a statute of limitation suspends the running of the period of limitation, but it does not reset the period of limitation. If the period of limitation for a particular cause of action commenced prior to March 14, 2020—that is, if the "clock" had started to run before the entry of the Chief Justice's order—the running of the period of limitation was suspended on March 14, and the running of that period will resume when the tolling provision of the March 14 declaration has expired or is otherwise terminated. If the event that triggers the running of a period of limitation occurred on or after March 14—that is, if the "clock" had not started to run before a statewide judicial emergency was declared—the period of limitation will not begin to run until the tolling provision of the March 14 declaration has expired or is otherwise terminated. In either circumstance, whatever time remained in the period of limitation as of March 14 will still remain when the tolling provision of the March 14 declaration has expired or is otherwise terminated.

(See Guidance on Tolling Statutes of Limitations Under the Chief Justice's Order Declaring Statewide Judicial Emergency).

With respect to whether COVID impacted the number of jurors to be seated for trial, none of the Supreme Court judicial emergency orders altered the number of jurors that are sat on a jury trial.

3. Does your state recognize comparative negligence and if so, explain the law.

The State of Georgia is a modified comparative negligence state. Under O.C.G.A. § 51-12-33(a), "[w]here an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault." Thus, where the plaintiff contributed to his own loss, but is found to be less than 50% at fault, total liability is reduced by the plaintiff's share. Id. However, if the plaintiff is found to be 50% or more responsible for the injury or damages claimed, the plaintiff shall not be entitled to receive any damages. O.C.G.A. § 51-12-33(g).

4. Does your state recognize joint tortfeasor liability and if so, explain the law.

Liability in the State of Georgia is generally purely several. O.C.G.A. § 51-12-33(b). After allocation of fault to the plaintiff, if any, the trier of fact apportions damages among the persons who are liable according to the percentage of fault of each person. Id. Damages apportioned by the trier of fact shall be the liability of each person against whom they are awarded, shall not be joint liability among the persons liable, and shall not be subject to any right of contribution. Id.

The general rule of apportionment in the State of Georgia above as it relates to cases involving only one defendant has recently been turned on its head. In the Supreme Court of Georgia decision Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC, 312 Ga. 350 (2021), the Court issued a landmark decision holding that under the statutory text of O.C.G.A. § 51-12-33, damages could not be apportioned to nonparties in any case where there is only one named defendant. Therefore, under Hatcher, a single defendant may not reduce its financial liability for a damages award through any apportionment of fault to nonparties, regardless of what percentage of fault was attributable to the one sole defendant.

While the Hatcher decision has had significant implications on tort claims in Georgia, the General Assembly has been acting to modify the language of the apportionment statute to allow for a single defendant to reduce its financial liability based upon any percentage of fault allocated to nonparties. Presently, HB 961 entitled "act to amend Code Section 51-12-33" has passed in the Georgia House of Representatives, and is expected to pass in the Senate. It is therefore expected that the impacts of Hatcher will be counteracted by the Georgia General Assembly in short order.

5. **Are either insurers and/or insureds obligated to provide insurance limit information pre-suit and if so, what is required.**

Under Georgia law, insurers providing liability or casualty insurance who are or may be liable to pay all or a part of any claim, are required to provide the following within 60 days of receiving a written request from the claimant: (1) disclosure of each known policy of insurance issued by it, including excess or umbrella insurance; (2) the name of the insurer; (3) the name of each insured; and (4) the limits of coverage. O.C.G.A. § 33-3-28(a)(1). In lieu of providing the required information listed above, the insurer may provide a copy of the declaration page of each policy. Id. The applicable statute further requires that the claimant's request set forth under oath the

specific nature of the claim asserted and that such request be mailed to the insurer by certified mail or statutory overnight delivery. Id.

With respect to the insured, Georgia law requires the insured, within 30 days of receiving a written request from a claimant or claimant's attorney, to disclose the name of each known insurer which may be liable to the claimant for their claim. See O.C.G.A. § 33-3-28(a)(2).

6. **Does your state have any monetary caps on compensatory, exemplary or punitive damages.**

In the State of Georgia there are no caps on compensatory damages, but there is a cap on punitive damages. Under O.C.G.A. § 51-12-5.1(g), the maximum allowable punitive damages award in most personal injury and wrongful death cases is limited to $250,000. However, there are three notable exceptions to the punitive damages cap: (1) in cases of products liability; (2) where the defendant acted with specific intent to harm the plaintiff; and (3) in cases involving a defendant who was under the influence of alcohol or other intoxicants. See O.C.G.A. § 51-12-5.1(e)-(g). While there are no limits to a punitive damages award in a products liability action, seventy-five percent of any punitive damages award, less a proportionate part of the costs of litigation, including reasonable attorney's fees, must be paid into the treasury of the state. See O.C.G.A. § 51-12- 5.1(e)(2).

7. **Has your state recently implemented any tort reforms which may affect transportation lawsuits or is your state planning to, and if so explain the reforms.**

As noted above (see response to question no. 4), an important aspect of Georgia's Tort Reform Act of 2005 addressed apportionment of fault among responsible persons (parties and non-parties) and eliminated certain aspects of joint and several liability. O.C.G.A. § 51-12-33. The Georgia Supreme Court recently interpreted the language of the apportionment statute to limit apportionment of fault in cases involving a single defendant. In Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC, 312 Ga. 350, 358-359 (2021), the Georgia Supreme Court held that apportionment under O.C.G.A. § 51-12-33(b) did not apply to tort actions brought against a single defendant, and did not permit a reduction in damages against a single defendant in accordance with the jury's allocation of fault to a non-party because the General Assembly chose to exclude single-defendant cases from apportionment among non-parties. Before this decision, courts routinely allowed the apportionment of fault to non-parties in single defendant cases. See e.g. Martin v. Six Flags Over Ga. II, L.P., 301 Ga. 323 (2017); Couch v. Red Roof Inns, Inc., 291 Ga. 359 (2012).

While generally both the employer and the driver are named as defendants in transportation trucking cases, if

a plaintiff only brought claims against one party, that party would not be able to apportion fault among any non-parties under the current status of the law in Georgia. It is expected that the General Assembly will address the impact of the two decisions in the near future.

In addition, the Georgia Supreme Court has also interpreted Georgia's Apportionment Statute to allow individual claims of negligent entrustment and negligent hiring, retention, training, and supervision as discussed in greater detail at question no. 12, below.

8. How many months generally transpire between the filing of a transportation related complaint and a jury trial.

In Georgia, discovery expires six months after defendants file their answer. Ga. R. Super. Ct. 5.1. In any action in which an answer is not filed within 30 days of service, or by the date set forth in any extension or court order, the six-month period begins to run 30 days after service. Id. However, at any time, the court may open, extended, reopen or shorten the discovery period. Id. Thus, at minimum, a case is not placed on the trial calendar until seven months after the date a complaint is served.

That said, the actual time that transpire between the filing of the complaint and a jury trial varies by court. In transportation litigation, the discovery period is typically extended for cases requiring medical and expert witness testimony. Further, given the backlog of cases due to the COVID-19 Pandemic and other issues, realistically, a civil case may not be tried for 1.5 to 2 years after filing.

9. When does pre-judgment interest begin accumulating and at what percent rate of interest.

In Georgia, if a demand is made pursuant to O.C.G.A. § 51-12-14 and the judgment at trial is for an amount not less than the amount demanded, "the interest provided for by [O.C.G.A. § 51-12- 14] shall be at an annual rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the thirtieth day following the date of the mailing of the last written notice plus 3 percent, and shall begin to run from the thirtieth day following the date of the mailing or delivering of the written notice until the date of judgment." O.C.G.A. § 51-12-14(c).

10. What evidence at trial are the parties allowed to enter into evidence concerning medical expense related damages.

Under Georgia law, "a tort victim is [only] entitled to recover medical expenses arising from his injuries, including hospital charges, that [are] reasonable and necessary[.]" Showan v. Pressdee, 922 F.3d 1211, 1218 (11th Cir. 2019) (emphasis added); see e.g. Allen v. Spiker, 301 Ga. App. 893, 896 (2009)("[t]he law requires proof that the medical expenses arose from the injury sustained, and that they are reasonable and necessary before they are recoverable."); MCG Health, Inc. v. Kight, 325 Ga. App. 349, 353 (2013) (holding that an automobile accident victim is only "entitled to recover medical expenses arising from his injuries, including hospital charges, that were 'reasonable and necessary.'"). The "general proposition that hospital charges are automatically 'reasonable' whenever the patient (or someone authorized to act on her behalf) has signed a contract agreeing to pay those charges is incorrect, because the contract price for goods and services does not necessarily equal their reasonable value." Bowden v. Medical Ctr., Inc., 297 Ga. 285, 295 (2015) ("Bowden I").

Thus, in Georgia, a party may present evidence related to both the reasonableness and necessity of a plaintiff's medical treatment, including whether treatment was billed at a reasonable rate. See Showan, 922 F. 3d at 1218 ("Georgia law permits testimony regarding whether medical expenses are reasonable and necessary."). Testimony from medical billing experts for defendants has been

allowed by courts but is often met with a Daubert challenge regarding the methodology employed by the

expert.

11. **Does your state recognize a self-critical analysis or similar privilege that shields internal accident investigations from discovery?**

No. Georgia has a statutory medical peer-review privilege, which bars introducing into civil litigation any proceeding or recommendation of a medical review committee reviewing matters that are a subject of litigaiton and which is based on the same rationale supporting the self-critical analysis privilege. O.C.G.A. § 31-7-143; see also Emory Clinic v. Houston, 258 Ga. 434 (1988). However, "the fact that the peer review privilege in [that] particular context is limited to review organization within the healthcare field weighs heavily against extending such privilege to a corporate organization[.]" Lara v. Tri-State Drilling, 504 F. Supp. 2d 1323, 1328 (N.D. Ga. 2007) (applying Georgia law). "The narrow approach taken by the Georgia legislature, and the…absence of Georgia courts having recognized a self-critical analysis privilege," indicates that "Georgia does not allow for such a privilege." Id.

12. **Does your state allow independent negligence claims against a motor carrier (i.e. negligent hiring, retention, training) if the motor carrier admits that it is vicariously liable for any fault or liability assigned to the driver?**

Yes. Prior to the Georgia Supreme Court's decision in Quynn v. Hulsey, 310 Ga. 473 (2020), Georgia applied the "Respondeat Superior Rule", which was first adopted in Willis v. Hill, 116 Ga. App. 848, 853-868 (1967), reversed on other grounds, 224 Ga. 263 (1968). Under that decisional law rule, when "a defendant employer concedes that it will be vicariously liable under the doctrine of respondeat superior if its employee is found negligent, the employer is entitled to summary judgment on the plaintiff's claims for negligent entrustment, hiring, training, supervision, and retention, unless the plaintiff has also brought a valid claim for punitive damages against the employer for its own independent negligence." Hosp. Auth. of Valdosta/Lowndes County v. Fender, 342 Ga. App. 13, 21 (2017).

However, in Quynn, the Georgia Supreme Court found that the Respondeat Superior Rule had been abrogated by Georgia's Apportionment Statute. Quynn, 310 Ga. at 475. Under Georgia's Apportionment Statute, where "an action is brought against more than one person for injury to person or property," the jury must apportion its damage award among persons who are liable according to the percentage of their fault. O.C.G.A. § 51-12-33(b). For the purposes of that statute, the term "fault" refers to "a breach of a legal duty that a defendant owes with respect to a plaintiff that is a proximate cause of the injury for which the plaintiff now seeks to recover damages." Zaldivar v. Prickett, 297 Ga. 589, 595 (2015).

The Quynn Court explained that claims for negligent hiring, training, supervision, and retention are based on the alleged negligent acts of the employer. Quynn, 310 Ga. at 477. Thus, the "claims encompassed by the Respondeat Superior Rule are claims that the employer is at 'fault' within the meaning of the apportionment statute. Adherence to the Respondeat Superior Rule would preclude the jury from apportioning fault to the employer for negligent entrustment, hiring, training, supervision, and retention. Any allocation of relative fault among those persons at fault, which

may include the plaintiff, could differ if one person's fault was excluded from consideration." Id. Therefore, the Court held that "the Respondeat Superior Rule is inconsistent with the plain language of the apportionment statute."

In short, claims that a motor carrier-employer is negligent in the hiring, retention, training and supervision of its employee are divisible from claims that its employee was negligent and are capable of being assigned percentages of fault. Id. at 479. Thus, those claims may be brought independently.

13. **Does your jurisdiction have an independent claim for spoliation? If not, what are the sanctions or**

repercussions for spoliation?

There is no independent claim for spoliation in Georgia." Clark v. Irvin, 2011 U.S. Dist. LEXIS 165577, *27 (M.D. Ga. May 31, 2011) (citing Brito v. Gomez Law Group, LLC, 289 Ga. App. 625, 632 (2008)).

Instead, the "trial court has wide latitude to fashion sanctions on a case-by-case basis, considering what is appropriate and fair under the circumstances." Bouve & Mohr, LLC v. Banks, 274 Ga. App. 758, 764 (2005). A "trial court is authorized to (1) charge the jury that spoliation of evidence creates the rebuttable presumption that the evidence would have been harmful to the spoliator; (2) dismiss the case; or (3) exclude testimony about the evidence." Wal-Mart Stores, Inc. v. Lee, 290 Ga. App. 541, 545 (2008) (internal quotation omitted).

However, "[i]t also should be recognized that the most severe sanctions for spoliation are reserved for 'exceptional cases,' generally only those in which the party lost or destroyed material evidence intentionally in bad faith and thereby prejudiced the opposing party in an uncurable way." Cooper Tire & Rubber Co. v. Koch, 303 Ga. 336, 343 (2018).