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Georgia

Are preventability determinations and internal accident reports discoverable or admissible in your state? What factors determine discoverability or admissibility?

The scope of discovery under the Georgia Civil Practice Act is intentionally broad to enable parties to prepare for trial and be fully informed on the facts of the case. *See Hampton Island Founders v. Liberty Capital*, 283 Ga. 297 (2008) (*citing Hanna Creative Enterprises v. Alterman Foods*, 156 Ga. App. 376 (1980)) ("discovery rules are designed to remove potential for secrecy and provide parties with knowledge of all relevant facts to reduce element of surprise at trial."). In fact, O.C.G.A. § 9-11-26(b)(1) permits discovery regarding any matter that is relevant to a party's claim, even if it would not be admissible at trial. Relevant evidence is evidence having "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." O.C.G.A. § 24-4-401, et seq. Even inadmissible documents may be discoverable so long as they appear reasonably calculated to lead to the discovery of admissible evidence. *RTA Strategy, LLC v. Silver Comet Terminal Partners, LLC*, 347 Ga. App. 266, 268 (2018); *Sechler Family Partnership v. Prime Group*, 255 Ga. App. 854, 859 (2002). Under this standard, internal accident reports and preventability determinations are normally discoverable.

As to admissibility, defendants typically argue that internal accident reports and/or preventability determinations are inadmissible as such evidence represents a "subsequent remedial measure" or the evidence is privileged pursuant to the "self-critical analysis privilege". In Georgia, evidence of a subsequent remedial measure is inadmissible. However, Georgia has not recognized the self-critical analysis privilege.

To the extent that preventability determinations and internal accident reports constitute subsequent remedial measures, such reports and determinations are generally inadmissible. *See* O.C.G.A. § 24-4-407 ("after an injury or harm, remedial measures are taken to make such injury or harm less likely to recur, evidence of the remedial measures shall not be admissible to prove negligence or culpable conduct"). The Georgia Appellate courts have held that "evidence of subsequent remedial measures generally is inadmissible in negligence actions for policy reasons because it could be considered evidence of negligence: the admission of such evidence basically conflicts with the public policy of encouraging safety through remedial action, for the instituting of remedial safety measures might be discouraged if such conduct is admissible as evidence of negligence." *Tyson v. Old Dominion Freight Line, Inc.*, 270 Ga. App. 897, 899 (2004). "Employee discipline following the event may be considered a subsequent remedial measure… [t]o the extent the report contains that information it would be inadmissible." *Id.* Further, in *Tyson*, the Georgia Court of Appeals found that it was not an abuse of discretion for the lower court to exclude the defendant's conclusion that a collision was preventable because the defendant's definition of "preventable" differed from the

standard of liability. *Id.* at 900-901.

Nevertheless, the "absence of the Georgia courts having recognized a self-critical analysis privilege, leads [to the conclusion that] Georgia law does not allow for such a privilege." *Lara v. Tri-State Drilling*, 504 F. Supp. 2d 1323, 1328 (N.D. Ga. 2007) (applying Georgia law). Thus, the "self-critical analysis privilege" would not be a ground for exclusion under the current state of Georgia law.

Does your state permit discovery of 3rd party litigation funding files and, if so, what are the rules and regulations governing 3rd party litigation funding?

In Georgia, the collateral source rule "bars the defendant from presenting any evidence as to payments of expenses of a tortious injury paid for by a third party and taking any credit toward the defendant's liability and damages for such payments." *Hoeflick v. Bradley*, 282 Ga. App. 123, 124 (2006); *see also Polito v. Holland*, 258 Ga. 54, 55 (1988) ("[t]he collateral source rule, simply stated, is that the receipt of benefits or mitigation of loss from sources other than the defendant will not operate to diminish the plaintiff's recovery of damages."). The rationale for this rule is a tortfeasor should not be allowed to benefit by its wrongful conduct or to mitigate liability by collateral funds and sources provided by others. *Olariu v. Marrero*, 248 Ga. App. 824, 825 (2001). Thus, evidence of collateral benefits are immaterial in a jury's assessment of damages because the collateral benefits may not be offset against damages. *Id*.

Nonetheless, the rule has its limits; Georgia courts have held that "such evidence may be admissible for impeachment purposes[.]"*Kelley v. Purcell*, 201 Ga. App. 88, 90 (2009); *see also Warren v. Ballard*, 266 Ga. 408, 410 (1996) ("[w]e note that impeachment by evidence of collateral sources is only allowed if the false testimony is related to a material issue in the case.").

Litigation funding companies, unlike traditional collateral sources, act as creditors by fronting a plaintiff's medical expenses, while intending to recover that money from the plaintiff after the lawsuit. *Rangel v. Anderson*, 202 F. Supp. 3d 1361, 1373 (S.D. Ga. Aug. 23, 2016). Funding companies are not traditional collateral sources because their funding does not reduce plaintiffs' financial obligations and, if the plaintiffs lose at trial, they are still on the hook with the funding company. *See Bowden v. The Med. Ctr., Inc.*, 309 Ga. 188, 191 (2020) ("where the subject matter of a lawsuit includes the validity and amount of a hospital lien for the reasonable charges for a patient's care, how much the hospital charged other patients, insured or uninsured, for the same type to care during the same time period is relevant for discovery purposes."). Moreover, where the funding company pays the plaintiff's medical provider, the medical provider's "financial interest in the outcome of the case is highly relevant to the issue of credibility and potential bias" where the provider "has become an investor of sorts in the lawsuit." *Stephens v. Castano-Castano*, 346 Ga. App. 284, 291 (2018). Thus, generally, it appears that evidence of the existence of a medical funding company, the medical funding company's correspondence with plaintiffs and plaintiffs' providers, and the medical funding company's loans and payments are all discoverable under Georgia law as that evidence will no doubt lead defendants to the discovery and existence of highly relevant facts.

However, Georgia recently considered whether a medical funding company could be subpoenaed for the production of certain documents related to a plaintiff's medical treatment. In *Joiner-Carosi v. Adekoya*, the court held that a trial court did not err in granting a plaintiff's motion to quash a defendant's subpoena for production of documents issued to a medical funding company and plaintiff's medical provider. *Joiner-Carosi v. Adekoya*, 357 Ga. App. 388 (2020). However, the court's holding in that case rested on the peculiar facts supporting the subpoena itself. *Id.* at 392.

In *Adekoya*, the defendant alleged that the records she sought through her subpoena were important to show potential bias on the part of plaintiff's treating physician, and to determine whether the medical charges were reasonable. *Id.* at 389. The plaintiff argued that the subpoena should be quashed because the defendant never sought to obtain the documents through discovery and none of plaintiff's treating physicians were testifying and, therefore, defendant would be unable to impeach the testimony of any of plaintiff's witnesses through the records. *Id.* at 392. The court upheld the trial court's decision to quash defendant's subpoena because defendant failed to explore the relationship between the medical funding company and the plaintiff's treating physicians before the eve of trial and "although potential bias is an issue to be explored with testifying physicians, these issues were waived because [plaintiff] was not calling any of his physicians to testify." *Id*. (emphasis added). Thus, the *Adekoya* court did not hold that records evidencing the relationship between a medical funding company and plaintiff's treating physician were undiscoverable in general, but rather held that in that case – where plaintiff's treating physicians did not testify – the issue of bias had been waived.

What is the procedure for the resolution of a claim for injuries to a minor in your state? Does the minor's age affect the statute of limitations for a personal injury claim?

Under Georgia law, a personal injury claim may be brought on behalf of a minor. If the minor has a conservator, the only person who can compromise the minor's claim is the conservator. O.C.G.A. § 29-3-3(b). Any person may file a petition for the appointment of a conservator of a minor. O.C.G.A. § 23-3-8. The court of the county in which a minor is found or in which the proposed conservator is domiciled shall have the power to appoint a conservator for the minor. O.C.G.A. § 29-3-6(a). The court shall appoint as conservator that person who shall best serve the interest of the minor considering the following order of preferences: (1) the individual who is the preference of a minor who is 14 years of age or older; (2) the nearest adult relative of the minor as set forth in O.C.G.A. § 53-2-1; (3) other adult relatives of the minor; (4) other adults who are related to the minor by marriage; (5) a person who was designated in writing by a minor's natural guardian in a notarized document or document witnessed by two or more persons; (6) a person who has provided care or support for the minor or with whom the minor has lived; or (7) the county guardian. O.C.G.A. § 29-3-7(a). The court may disregard an individual who has preference and appoint a person who has a lower preference or no preference. In determining what is in the best interest of the minor, the court may take into account any facts and circumstances presented to it, including the statement of a minor who is under 14 years of age. O.C.G.A. § 29-3-7(b).

If the proposed gross settlement of a minor's claim is $25,000 or less, the natural guardian of the minor, without becoming the conservator of the minor and without any court approval, may compromise the claim or may receive payment and hold and use the settlement for the benefit of the minor. O.C.G.A. § 29-3-3(c)(1)(A)-(B). If the proposed gross settlement is greater than $25,000, and the net settlement is $25,000 or less, the settlement shall be submitted for approval to the probate court if no legal action has been initiated, or the court in which the legal action is pending if legal action has been initiated. O.C.G.A. § 29-3-3(c)(2)(A). In such cases, no conservator is required but the natural guardian receiving the payment of the settlement shall thereafter hold and use the settlement for the benefit of the minor. If the proposed gross settlement of a minor's claim is more than $25,000.00, and the net settlement is more than $25,000.00, a conservator shall be required to compromise the claim; the conservator shall be required to receive payment of the settlement and shall thereafter hold and use the settlement for the benefit of the minor and shall be accountable for the same as provided in O.C.G.A. § 29-3-1; and such conservator shall submit the settlement for approval to either the probate court if no legal action has been initiated, or the court in which the legal action is pending if legal action has been initiated. O.C.G.A. § 29-3-3(c)(3).

If an order of approval is obtained from the probate court or a court in which legal action is pending, based upon the best interest of the minor, the natural guardian, next friend, or conservator shall be authorized, subject to

O.C.G.A. § 29-3-22, to compromise any contested or doubtful claim in favor of the minor without receiving consideration for such compromise as a lump sum. O.C.G.A. § 29-3-2(d).

Under Georgia law, "individuals who are less than 18 years of age when a cause of action accrues shall be entitled to the same time after he or she reaches the age of 18 years to bring an action as is prescribed for other persons." O.C.G.A. § 9-3-90. Thus, when a minor turns 18 years of age, the minor would have two years from the date of his or her 18th birthday to file a claim for injuries sustained in the earlier accident, unless the claim had previously been litigated on his or her behalf.

What are the advantages or disadvantages in your State of admitting that a motor carrier is vicariously liable for the fault of its driver in the context of direct negligence claims?

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, O.C.G.A. § 51-12-33. *Quynn*, 310 Ga. at 475. Under this 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." *Id*.

Thus, in Georgia, a defendant employer no longer gains any real advantage by admitting *respondeat superior* as it relates to the direct negligence claim against the employer.

What is the standard applied for spoliation of physical and/or documentary evidence in your state?

In Georgia, "[s]poliation refers to the destruction or failure to preserve evidence that is necessary to contemplated or pending litigation." *Cowan Systems, LLC v. Collier*, 361 Ga. App. 823, 825 (2021). The party seeking sanctions, has the burden of proof and must present actual proof of spoliation, not mere speculation or rhetoric. *Henson v. Georgia-Pacific Corp.*, 289 Ga. App. 777 (2008); *see also Cooper Tire & Rubber Co. v. Koch*, 303 Ga. 336, 339 (2018) ("before a remedy for spoliation may be imposed, the party seeking the remedy must show that the allegedly

spoliating party was under a duty to preserve the evidence at issue"). The party alleging spoliation must show the failure to preserve evidence pursuant to the standard required by Georgia law, and also establish a "causal link between the failure of his underlying claims and the evidence allegedly destroyed by [the other party]." *Wilson v. Mountain Valley Community Bank*, 328 Ga. App. 650, 652-653 (2014).

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." *Koch*, 303 Ga. at 343.

Is the amount of medical expenses actually paid by insurance or others (as opposed the amounts billed) discoverable or admissible in your State?

The collateral source rule "bars the defendant from presenting any evidence as to payments of expenses of a tortious injury paid for by a third party and taking any credit toward the defendant's liability and damages for such payments." *Hoeflick v. Bradley*, 282 Ga. App. 123, 124 (2006). Thus, the amount of medical bills paid by insurance while discoverable, would not be admissible.

However, in the context of other funding sources such as medical funding companies, the amount that a third-party pays to a plaintiff's medical providers as opposed to the amount billed by the plaintiff's medical providers for treatment is likely discoverable due to the broad nature of discovery under the Georgia Civil Practice Act. *See Ortho Sport & Spine Physicians, LLC v. City of Duluth*, 352 Ga. App. 215, 216 (2019) ("[i]n the context of discovery, courts should and ordinarily do interpret 'relevant' very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation. Even if the information sought would be inadmissible at trial, it is not a ground for objection if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."); *see also Simon v. Murphy*, 350 Ga. App. 291, 296 (2019) ("[t]he Civil Practice Act allows discovery of matters which are relevant and reasonably calculated to lead to the discovery of admissible evidence."). In fact, numerous courts have found that contractual arrangements between third-party sources, the plaintiff's medical providers, and the plaintiff are discoverable because the arrangement may provide evidence that plaintiff's treating providers are biased. *See e.g., ML Healthcare Services, LLC v. Publix Super Mkts., Inc.*, 881 F.3d 1293 (11th Cir. 2018) (explaining that a "jury might infer that Plaintiff's doctors were incentivized by ML Healthcare's referral and payment arrangement to provide testimony that was more favorable to Plaintiff than it otherwise would have been. If so, the jury would have found bias, which is clearly a relevant consideration in evaluating a witness's credibility."); *Houston v. Publix Supermarkets, Inc.*, 2015 U.S. Dist. LEXIS 102093 (N.D. Ga. July 29, 2015) (emphasis added) ("Defendant does not seek to offer evidence of the relationships between ML Healthcare and the Plaintiff and ML Healthcare and the Plaintiff's doctors in order to reduce its liability, *but rather to attack the credibility of the Plaintiff's experts and the reasonable value of medical services. Weighing the effect of this testimony, the Court finds that it is highly relevant and probative*."); *Hillhouse v. Penny*, 2016 U.S. Dist. LEXIS 195931 (N.D. Ga. July 20, 2016) (denying ML Healthcare's motion to quash discovery subpoena; collateral source concerns are "premature" at the discovery stage).

As to admissibility, in *Rangel v. Anderson*, the United States District Court for the Southern District of Georgia held

that where a defendant contests the reasonableness of a plaintiff's medical bills, evidence on an arrangement where the amount of medical expenses actually paid by a funding company as opposed to the amount that was billed is discoverable and admissible because it "is relevant to the jury's assessment of the reasonableness of Plaintiff's medical treatment and the reasonable value of the medical services provided." *Rangel v. Anderson*, 202 F. Supp. 3d 1361, 1374 (S.D. Ga. 2016). Moreover, 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. *Showan v. Pressdee*, 922 F.3d 1211, 1218 (11th Cir. 2019); *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. Knight*, 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.'"). Thus, if the defendant can show that the evidence of the difference between paid medical bills and charged medical bills go to the reasonableness of the plaintiff's damages, Georgia courts may admit such evidence. *See Showan*, 922 F. 3d at 1218 ("Georgia law permits testimony regarding whether medical expenses are reasonable and necessary.").

What is the legal standard in your state for obtaining event data recorder ("EDR") data from a vehicle not owned by your client?

The Georgia Supreme Court has recognized that the driver of a vehicle has a reasonable expectation of privacy as to the data collected on an EDR such as an airbag control module. *Mobley v. State*, 307 Ga. 59, 67 (2019). However, that standard applies to the owner's right to privacy against state actors. Thus, the same standard would likely not apply to private actors in a civil case. Instead, in civil cases, Georgia courts have compelled parties to provide discovery of information on an EDR because the information was relevant under O.C.G.A. § 9-11-26(b)(1). *See Norfolk S. Ry. v. Harty*, 316 Ga. App. 532 (2012). Where the owner of the vehicle is not a party to the case, the owner of the vehicle may be served a nonparty request for production of documents. *See* O.C.G.A. § 9-11-34(c). Further, the "nonparty or any party may file an objection as provided in subsection (b) of this Code section. If the party desiring such discovery moves for an order under subsection (a) of Code Section 9-11-37 to compel discovery, he or she shall make a showing of good cause to support his or her motion. The party making a request under this Code section shall, upon request from any other party to the action, make all reasonable efforts to cause all information produced in response to the nonparty request to be made available to all parties." *Id.*

What is your state's current standard to prove punitive or exemplary damages against a motor carrier or broker and is there any cap on same?

In Georgia, punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences. O.C.G.A. § 51-12-5.1(b). Punitive damages shall be awarded not as compensation to a plaintiff but solely to punish, penalize, or deter a defendant. O.C.G.A. § 51-12-5.1(c). An award of punitive damages must be specifically prayed for in a complaint. In any case in which punitive damages are claimed, the trier of fact shall first resolve from the evidence produced at trial whether an award of punitive damages shall be made. This finding shall be made specially through an appropriate form of verdict, along with the other required findings. O.C.G.A. § 51-12-5.1(d)(1). If it is found that punitive damages are to be awarded, the trial shall immediately be recommenced in order to receive such evidence as is relevant to a decision regarding what amount of damages will be sufficient to deter, penalize, or punish the defendant in light of the circumstances of the case. O.C.G.A. § 51-12-5.1(d)(2).

However, 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).

Has your state had any noteworthy recent punitive damages verdicts? If so, what evidence was admitted supporting issuance of a punitive damages instruction? Finally, are any such verdicts currently on appeal?

Yes, in a products liability action against Ford Motor Company ("Ford") a jury in the Gwinnett County State Court imposed $1.7 billion in punitive damages against Ford on August 24, 2022, arising out of a fatal rollover collision. The verdict was the largest verdict in the history of Georgia. In the case, an elderly couple was killed when their Ford Super Duty F250 pickup truck rolled over on a rural road after their tire blew out. Evidence was presented by the plaintiffs alleging the company knew the roof of the truck was dangerously weak yet kept it on the market. Attorneys further submitted evidence of nearly 80 similar wrecks where people had been killed or injured when the trucks' roofs crushed them during rollovers. Ford has appealed the punitive damages award.

Does your state permit an expert to testify as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Yes. In *PN Express, Inc. v. Zegel*, the court allowed an expert to testify regarding the obligations imposed by the FMCSRs on a carrier that permits an owner/operator to drive under the authority of the carrier's DOT number. The court observed: "[t]he witness here was testifying as to the content of the federal regulations, not as to the ultimate issue in the case. Moreover, testimony of an expert even as to the ultimate issue is admissible where the conclusion of the expert is one which jurors would not ordinarily be able to draw for themselves[,] i.e., the conclusion is beyond the ken of the layman." *PN Express, Inc. v. Zegel*, 304 Ga. App. 672, 679 (2010); *see also Duling v. Domino's Pizza, LLC*, 2015 U.S. Dist. LEXIS 71477 * 13-14 (N.D. Ga Jan. 14, 2015) (allowing testimony on commercial motor vehicle industry's standard of care as beyond knowledge of a layperson).

Does your state consider a broker or shipper to be in a "joint venture" or similar agency relationship with a motor carrier for purposes of personal injury or wrongful death claims?

For a broker or shipper to be jointly liable in a personal injury or wrongful death claim, a court will analyze whether the shipper/broker had direction and control over the at fault driver. In *Stubbs Oil Co. v. Price*, the court found that *Stubbs Oil*, a shipper that hired Southern Oil to deliver oil to a client retail service station, was not a statutory employer under the FMCSR where there was no lease between Stubbs and Southern Oil. *Stubbs Oil Co. v. Price*, 357 Ga. App. 606, 611 (2020) ("And so, absent evidence of either a written or oral lease between Hinson or Southern Oil and Stubbs Oil, the latter simply cannot be characterized as a statutory employer."). On the question of whether Stubbs Oil could be held vicariously liable under state common law, the court found that Stubbs Oil could not be vicariously liable where it did not exercise immediate direction and control of Southern Oil's driver. *Id*. at 614 ("Stubbs Oil merely hired Southern Oil to transport its fuel products to a retail service station, but had no input as to the driver or the vehicle Southern Oil would use to complete that task."); *see also Clarendon Nat'l Ins. Co. v. Johnson*, 293 Ga. App. 103, 104-05 (2008) ("A theory of vicarious liability based upon a joint venture between

C&C and the ATF defendants also fails to support the verdict against ATF. Vicarious liability for the conduct of another party to a joint venture cannot be established without demonstrating a right by each member of the joint venture to direct and control the conduct of the other. In this case, the crucial element of mutual control is absent.").

Provide your state's comparative/contributory/pure negligence rule.

Under Georgia law, a plaintiff is not entitled to receive any damages if the plaintiff is determined to be 50 percent or more responsible for the injury or damages claimed. *See* O.C.G.A. § 51-12-33(g). If a plaintiff is entitled to receive damages, but is found to have contributed to some degree, the recovery is reduced proportionately by the amount of the plaintiff's negligence (i.e., if a plaintiff is found to be 5% at fault, the recovery will be reduced by 5%). *See* O.C.G.A. § 51-12-33(a).

Provide your state's statute of limitations for personal injury and wrongful death claims.

The statute of limitations in Georgia for a personal injury and wrongful death claim is two (2) years from the date the right of action accrues. O.C.G.A. § 9-3-33.

In your state, who has the authority to file, negotiate, and settle a wrongful death claim and what must that person's relationship to the decedent be?

In Georgia, a wrongful death claim must generally be filed by the decedent's surviving spouse. If there is no surviving spouse, or the surviving spouse abandons his or her wrongful death claim, a child or children of the decedent may file the wrongful death claim. If the decedent has no surviving spouse or surviving children, then the surviving parent(s) may make a wrongful death claim. If the decedent has no surviving spouse, children or parent(s), then the representative of the estate may file a wrongful death claim. *See* O.C.G.A. §§ 51-4-2, 51-4-4 and 51-4-5.

Is a plaintiff's failure to wear a seatbelt admissible at trial?

No. Georgia law excludes seat belt evidence from being considered for either liability issues or for the purpose of minimizing personal injury damages. *See* O.C.G.A. § 40-8-76.1; *Stockert v. Rogers*, 361 Ga. App. 276, 278 n.1 (2021). Various bills to amend O.C.G.A. § 40-8-76.1 have been proposed in the Georgia General Assembly without success.

In your state, are there any limitations on damages recoverable for plaintiffs who do not have insurance coverage on the vehicle they were operating at the time of the accident? If so, describe the limitation.

No. While a plaintiff without insurance coverage on their vehicle may face a misdemeanor charge (O.C.G.A. § 40-5-70), they may still bring a claim against another driver to recover damages and the damages recoverable will not be limited, with the exception of recovery of punitive damages which can be capped at $250,000, unless the action is a products liability claim or one in which the defendant acted with specific intent to harm or was under the influence of alcohol, drugs or a substance which impaired his or her judgment. O.C.G.A. § 51-12-5.1(e)(f).

How does your state determine applicable law/choice of law questions in motor vehicle accident cases?

In tort cases, Georgia courts apply a choice-of-law rule known as "lex loci delicti." *See Dowis v. Mud Slingers, Inc.*, 279 Ga. 808, 809 (2005). Under this doctrine, a tort action is governed by the substantive law of the state where the tort was committed. *Id.* In other words, if a tort related to a motor vehicle accident occurred in Georgia, the law of Georgia will apply. With respect to choice-of-law issues in the context of an insurance policy or indemnity

contract, "substantive matters such as the validity and construction of the contract are governed by the substantive law of the state where the contract was made (or is to be performed, if that is a different state); but procedural and remedial matters are governed by the law of Georgia, the forum state." *See Allstate Ins. Co. v. Duncan*, 218 Ga. App. 552, 552 (1995).