CLIENT ALERTS & INSIGHTS

Georgia On My Mind: Reptile Smiting Via Statute in the Peach State!

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Authors: Eric L. Zalud

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Unfortunately, the nuclear verdict phenomenon grows and prospers in 2025. A “nuclear verdict” is described as a verdict of $10 million or more. In a nuclear verdict case, plaintiffs’ counsel, propagating a sophisticated yet primordial strategy known as the Reptile Theory, seek to vilify the trucking company, as opposed to seeking recompense for actual damages. The propagation of nuclear verdict litigation is an albatross around the proverbial neck of the motor carrier industry and the transportation brokerage sector. Nuclear verdicts have jumped over 300% in the past decade. There are many effective ways to counter Reptile Theory tactics before litigation, and in the heat of litigation itself. However, defense counsel can be aided in litigation by legislatively enacted state laws, which codify more rational decision-making processes for these cases. Such legislation can serve to curb the inflammatory and non-proximate causally related aspects of that type of litigation. That helps smite Reptile tactics, at least in part. Several states have already enacted legislative reforms that will assist transportation industry defendants in litigation to achieve results that are not tainted by prejudice. The most recent of these is Florida, but efforts have also been made in states such as Texas, Missouri, Iowa, West Virginia, Louisiana, Massachusetts and Montana.

Pulling Back the Curtain on Litigation Funding in Georgia

Now, another state has been added to pantheon of states that are seeking, via focused legislation, to counter the nuclear verdict trend-Georgia. Georgia had been one of the worst states for nuclear verdicts, but the state's new comprehensive "Georgia Courts Access and Consumer Protection Act" just might change that. One of the principal facilitators of Reptile Theory tactics leading to nuclear verdicts is the relatively new phenomenon of litigation funding. By this modus, a third-party company assists plaintiffs’ counsel with funding the expenses of the litigation as it progresses. Then, if there is a favorable settlement or verdict, the litigation funding company takes a percentage cut of that settlement or verdict-*right off the top*. Obviously, this schematic fuels Reptilian litigation tactics and increases the overall *volume* of such lawsuits. These funding schematics enable plaintiffs’ counsel to proceed with litigation, but with lessened risk to them and their clients. This mechanism also serves to alter the risk/benefit calculations typically made by plaintiffs’ counsel in these cases. Often, these arrangements are opaque, and shuttered from the outside world. They are also rarely permitted to be disclosed during discovery and/or at trial-but Georgia is changing that.

Georgia’s new statute regulates such third-party litigation financing practices in the state. The new statute requires that any entity who will be engaged in litigation financing in the State of Georgia must officially register with the state as a “Litigation Financier.” O.C.G.A. § 7-10-2 et seq.

The registration statement of such a financier must provide the legal name and other identifying information for *each person* who has an ownership stake in the entity. This requisite helps pierce the rather opaque and obfuscatory netherworld of litigation financing. A company must also describe its business operations for the past five years, identify any subsidiaries, and identify all its directors. No foreign entity may be registered as a litigation financier. Similarly, no principal of a litigation financier may be a convicted felon.

The Act then goes on to regulate the *involvement* of litigation financers in the actual litigation. The Act prohibits them from making any decisions with regard to the merits of the claim, expert witnesses, litigation strategy, or settlement negotiations. Id, at § 7-10-4. This provision effectively (we hope) eliminates the sullying of the litigation decision-making process for plaintiffs' counsel, *and the plaintiffs themselves*. The Act also prohibits the litigation financier from recovering any amount greater than that actually recovered by the plaintiff in the lawsuit which, surprisingly, happens a lot. The litigation financier is also forbidden by the Act from securitizing or assigning the financing agreement-which also happens a lot-and further sullies the litigation decision-making process. The Act also makes the litigation financier jointly and severally liable for any sanctions related to actions that are deemed to have been brought frivolously and without merit. The financier must also indemnify the plaintiff against any adverse costs, attorney's fees, damages or sanctions in the lawsuit. The Act also provides that any person who violates its provisions, including failure to register, could be guilty of a felony, and be imprisoned for up to five years, or fined up to $10,000-so, it has some teeth.

Financial Funding Arrangements Discoverable-and Maybe Admissible

Importantly for counsel for defendant motor carriers, brokers and even shippers, *the Act specifically provides that litigation financing agreements are discoverable.* O.C.G.A. § 9-11-26. It does not specifically comment upon admissibility at trial, but it states that it is *not* specifically *forbidding* admissibility.

Guardrails Around Non-Economic Damages

The Act also prohibits plaintiffs' counsel from arguing the worth or monetary value of non-economic damages at trial or eliciting any testimony or making a reference to any specific amount or range of non-economic damages. Those arguments may be made only after the close of the evidence. They also must be rationally related to the evidence of non-economic damages presented at trial. This enactment should help prevent catastrophic, unsupported non-economic damage proclamations by plaintiffs' counsel, which "anchor" the jury at elevated and disproportionate damage thresholds.

Buckle Up - Or Else it's Admissible

In another all-star edict, the Act makes clear that evidence that the occupant and/or driver of the plaintiffs' vehicle failed to wear a seatbelt-previously *inadmissible*- is now *admissible* on the issues of negligence and comparative fault.

Rationally Based Medical Expenses/Controlling Hired Doctors

The Act also reigns in abuses relating to medical expenses and healthcare providers retained only for litigation. It first states that damages for medical and healthcare expenses shall be limited to the reasonable value of medically necessary care. O.C.G.A. § 51-12-1.1. It also permits evidence that medical expenses are covered by workers' compensation programs or insurance. This provision essentially abrogates the collateral source rule that no evidence of insurance payments is permitted, but the statue provides that the court can issue appropriate jury instructions as to those collateral source payments. The Act also takes aim at the cottage industry of treating physicians, who treat patients in conjunction with payment arrangements with plaintiffs' counsel. It states that in those cases in which the healthcare provided has agreed that plaintiffs' medical and healthcare expenses will be paid by a judgment or settlement, a copy of that letter is discoverable. Also, if the physician *sells* the accounts receivable for the plaintiffs' medical expenses to a third party (it happens, believe it or not!), the name of that third party and the amount of the sale is also discoverable.

Trifurcation Reigns

Finally, the Act bifurcates the trial of any bodily injury or wrongful death case into a first phase of fault only, prior to any determination of total damages. Only if the defendant is found liable can the jury hear evidence of possible compensatory changes. Only after that might the jury consider possible punitive damages. This procedural schematic prevents plaintiffs' counsel from inflaming the jury with hyperbolic damage arguments, which cloud the jury's objective determination of fault and liability.

The fact-finding process, during discovery, pretrial proceedings and trial, in state and federal courts has always been intended to be fair, measured and deliberative, with each party in a civil case, the plaintiff-and the defendant-being able to tell their side of the story without an emotional rush to judgment. That process is intended to be guided by principles of logic and equity, and by a rationally balanced assessment of the facts under applicable law. It was never intended to be dominated by inflammatory, Reptilian efforts to inspire passion and prejudice for matters completely unrelated to the underlying facts of the accident. These principles are fair to both sides and are certainly not unfair to plaintiffs. The legislatures in the states mentioned in this article, and now, Georgia too, have taken rational and measured responses to tactics that often result in bountiful bonanzas for plaintiffs' lawyers; windfalls beyond fair compensation to injured plaintiffs; and seismic, destructive reckonings for motor carrier defendants who are vilified, demonized and pilloried for matters beyond the scope of the accident at hand, often driven out of business as a result of inflated nuclear verdicts. These state legislatures are taking action in response to a problem that is evolving within their state's borders and are seeking to do so in a manner that not only protects defendants from unfair and irrelevant inflammatory evidence, but also simultaneously maintains the rational, logical and equitable judicial fact-finding process for the plaintiffs. Time will tell how this Georgia legislation affects catastrophic accident litigation in the transportation world, but at the very least-it is a start.

ERIC L. ZALUD is a partner and Co-Chair of Benesch's Transportation & Logistics Practice Group and may be reached at 216.363.4178 and ezalud@beneschlaw.com.