

# TORT REFORM (RELIEF)

August 2023



# Tort Reform

- How do we accomplish the goal ????
- Since we lost caps on damages it's the wild west.
- Legislature is not as Doctor friendly as in the past
- It is obvious we will not make headway in any one year.
- Georgia is the Judicial Hellhole
- Outrageous judgments



# Georgia #1 Judicial Hellhole

## TOP ISSUES

- Propensity for nuclear verdicts
- Trial court issues record punitive damages award
- Expansive views of product liability law
- Open-door policy for third party litigation financing
- High Court requires loser to pay... twice



# Nuclear Verdicts

1. **Georgia state courts issue some of the country's largest nuclear verdicts in state and superior courts, as personal injury lawyers cash in on plaintiff-friendly judges that benefit greatly from trial lawyer campaign contributions.**
2. **From 2010 to 2019, 53 nuclear verdicts in personal injury and wrongful death cases were reported in Georgia totaling more than \$3 billion.**
3. **DeKalb Jury's \$77M Med-Mal Verdict Appears to Set New Georgia Record in 2022**

The three-week wrongful death trial in DeKalb County State Court focused on care in recovery and mental health treatment programs.



# Record Punitive Damages Awarded

1. Georgia replaced California on the top of this year's list thanks in no small part to a massive \$1.7 billion nuclear verdict (Ford Truck Crash 2022)
2. Law firm requesting anywhere from \$549 million to \$686 million in attorneys' fees plus an additional \$500,000 in litigation costs on the basis that the automaker rejected the plaintiffs' \$50 million settlement offer and opted to defend itself at trial.



# Expansive Views of Product Liability Law

- A March 2022 Georgia Supreme Court ruling places manufacturers at risk of liability when a third party's misuse of a product during criminal activity causes harm.
- Case: plaintiffs were injured in a car accident after the driver crashed into the back of another car going 107 mph. Right before the crash, the driver said she was "just trying to get the car to 100 m.p.h. to post it on Snapchat"
- A Georgia trial court dismissed the claim against Snapchat
- The Georgia Supreme Court reversed, sending the case back for further consideration.



# Supreme Court

- GEORGIA HIGH COURT REFUSES TO EXPRESSLY ADOPT APEX DOCTRINE
- QUESTIONS SURROUND FUTURE OF STATE'S SEATBELT GAG RULE
  - Under what's known as the "seatbelt gag rule," lawyers defending a product liability claim cannot inform the jury that someone hurt in an auto accident was not wearing a seatbelt.
- GEORGIA SUPREME COURT said these issues should be legislative
- Both were legislative bills, both did not pass
- GEORGIA SUPREME COURT EXPANDS PRODUCT LIABILITY



# Third Party Litigation Financing

- Companies that provide loans to plaintiffs in personal injury suits in exchange for a percentage of their awards are permitted to charge extremely high interest rates despite Georgia's usury law.
- In addition, Georgia does not require companies that provide lawsuit loans, or who otherwise invest in litigation to disclose their involvement.
- Lack of funding transparency permits predatory financing companies or lenders who act unethically to operate without any regulatory oversight.



# Advertising

- Plaintiffs' lawyers are well aware of the court's propensity for liability-expanding decisions and spend millions of dollars on advertising.
- Between 2017 and 2021, residents in Georgia saw the fourth most local legal services ads on television and heard the fourth most ads on the radio.
- In total, plaintiffs' lawyers spent \$391 million on 4,449,755 advertisements across television, radio and outdoor mediums during this five-year period.
- More than 567,000 local television advertisements from January through August 2022.



# ECONOMIC IMPACT OF LAWSUIT ABUSE

1. Lawsuit abuse and excessive tort costs wipe out billions of dollars of economic activity annually.
2. Georgia residents pay a “tort tax” of **\$1,111.28 per person** and 117,809 jobs are lost each year, according to a recent study by The Perryman Group.
3. If Georgia enacted specific reforms targeting lawsuit abuse, the state would increase its gross product by over \$11.9 billion.



# High Court Requires Loser to Pay... Twice

- Georgia law requiring a court to award attorney's fees if a defendant rejects an offer of settlement, goes to trial, and the verdict is 125% above the offer. Both the trial court and an intermediate appellate court unanimously rejected this request, rationally finding the plaintiff had already recovered these costs (40% contingency) and could not receive double recovery for the same expense.
- In *Junior v. Graham*, the state high court viewed the statute allowing a jury to award fees as compensatory in nature, while the "offer of settlement" law allowing a court to award fees as a sanction. The Supreme Court also reasoned that since the Georgia legislature had not specifically prohibited use of both statutes together when it enacted the Georgia offer of settlement law as part of a tort reform package enacted in 2005, it would allow double recovery.



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# **Why Include Information Beyond Med-Mal**

If we want to move the needle, we need to  
include all Stakeholders



# Downstream Consequences

- Physicians Retire sooner than planned
  - 20% expected to retire in 2 years
- Physicians flee state of Georgia to a safer state
- Physicians doing Residency in Georgia will seek jobs elsewhere
- Negative impact on Hospitals we all utilize
- Increased pressure results in Physician Burnout (and suicide)
  - We can't even get Safe Haven law passed.
- Malpractice insurance rates rise
- Critical services dwindle across the state
  - 82 counties without Ob-Gyn services
- Big Business no longer attracted to the state
- Some Businesses may leave state due to inadequate Healthcare services



# How Do We Correct the Downward Spiral

- This can not / will not be accomplished in one year
- It will not be accomplished in one Legislative Bill
- It will not be accomplished by just the Doctors
- **Limits of Liability must be restored**
  
- We Need a 5-6 year strategic plan



# \$\$\$ MONEY \$\$\$

- We revive the Tort Reform Restricted Fund
- I will be sending a letter to all MAG member with my talking points.
- I will be sending a letter to all Non-MAG doctors in the State
- We can start here by asking every board member to contribute \$500
- We can not ask physicians to give if we don't set the example
- We will not get buy-in from stakeholders if the doctors don't demonstrate the resolve to get this fire started again



# \$\$\$ MONEY \$\$\$

- Money from the other stakeholders.
- Hospitals and Hospital Systems
- Friends of MAG
- Dentists
- Podiatry
- Specialty Societies
- Malpractice Insurance Carriers in the state
- Georgia Corporations
  - Home Depot, Coca-Cola, Chick fil a, etc
- Chambers of Commerce
- The Governor (Support, not Money)



# Attack from a Unified Front

- All stakeholder involvement
  - Their input
  - Coordination of effort
  - Single entity (MAG)
  - Full Time, Year long
  - Focused Data Collection
  - Support for Friendly Legislators
  - Outside State Experienced Input (Texas... Let's not reinvent the wheel)



# Money vs. Message

- The Trial Lawyers have the money
- We Have The Better Narrative.



# Organization

- Doctors, Family, and Friends on the Ground
- All Legislative Districts
- Start and Control the Narrative
- Advertising
- Social Media
- Statewide elections
  - Legislative and Judges
- Legislation
  - Candor
  - SafeHaven
  - Caps



# Advocacy Will Continue

- We will continue to fight the attacks on Medicine
  - Scope of Practice
- We will continue to address our prioritized issues
  - Medicaid Expansion
  - Prior Authorization,
  - Prompt Pay
  - Network adequacy
  - Surprise Billing



**THANK YOU FOR YOUR  
ATTENTION**

