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DAILY REPORT

Will Georgia's Tort Reform Drive Plaintiffs to Federal Court?

By J. Clay Fuller

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Georgia's tort reform package of 2025 marks a seismic shift in the balance of power between plaintiffs and defendants. As litigants and state court judges start to wrestle with these new provisions, an aftershock may rattle Georgia's federal courts.

Will plaintiffs file in federal court to avoid certain aspects of Georgia's tort reform? Plaintiffs control their complaint, and that can mean choosing where to fight their battles. In some cases, electing not to add claims against a nondiverse potential defendant can secure federal diversity jurisdiction. For example, in an automotive products liability suit, a plaintiff may preserve diversity jurisdiction by not bringing claims against a striking driver who is a citizen of the plaintiff's home state when advancing claims against a manufacturer from a different state.

Why Plaintiffs Traditionally Prefer State Court

As a new lawyer entering practice after a federal clerkship roughly 25 years ago, learning that most plaintiff's lawyers strongly preferred state court over federal court came as a bit of a shock. While our firm was equally comfortable in either state or federal court, many referring lawyers avoided federal court whenever possible. Three factors drove this preference.

Courtesy photo

J. Clay Fuller of JAMS and a retired magistrate judge for the U.S. District Court for the Northern District of Georgia in Atlanta.

First, the faster pace and greater case management that come with pursuing a case in federal court intimidated some lawyers. Second, some practitioners openly preferred state court trial and appellate judges over their federal counterparts because some were perceived as being skeptical of plaintiff's cases in general. Others found state court juries pulled from a single county to be easier to size up than their federal counterparts, which are assembled from multiple counties, creating a more diverse and arguably less predictable jury pool.

Can Tort Reform Be Avoided in Federal Court?

The key to understanding whether Georgia's recent tort reform will push tort cases to federal court is to look at which, if any, of its provisions may be avoided by filing in federal court. To be sure, as tort cases move forward in Georgia's federal courts in the coming months, these issues will be litigated. However, existing authority provides clues to help untangle whether parts of the new law may not apply in federal court.

What Rules Will Likely Apply in Federal Court?

In diversity cases, federal courts use their own federal procedural rules while applying state substantive laws. Many notable provisions in Georgia's recent tort reform package appear plainly substantive and therefore would likely be applied by federal courts. Specifically, these include the new comprehensive rules redefining legal standards for negligent security cases. In addition, Georgia's rule regarding seat belt evidence has long been considered substantive, so the new law changing that rule is likely to be considered substantive as well.

The same goes for the abrogation of the collateral source rule, as mandated by O.C.G.A. § 51-12-1.1. In 2018, the Eleventh Circuit addressed the collateral source rule in *ML Healthcare Services LLC v. Publix Super Markets* and noted that "[t]he substantive component of the rule, which prohibits the reliance on collateral source payments to reduce a plaintiff's damages award, is binding on a federal court sitting in diversity." Again, if a rule is already considered substantive, it is likely that a provision doing away with it also qualifies as substantive. So, plaintiffs appear to be stuck with these new rules when filing in state or federal court. Can plaintiffs avoid any of Georgia's Tort Reform in Federal Court?

Procedural Provisions Plaintiffs May Avoid in Federal Court

Two important parts of Georgia's 2025 tort reform look likely to be considered procedural rules, which would not apply in federal court. First, O.C.G.A. § 51-12-15 calls for bifurcation of liability and damages upon demand by a party in practically all tort cases where more than $150,000 is at stake. To be precise, the rule lays out the groundwork for "trifurcation," given that punitive damages or liability for attorneys' fees is to be tried separately following the conclusion of the second phase of the trial, addressing damages.

Notably, Rule 42 of the Federal Rules of Civil Procedure speaks to this issue and gives federal judges broad discretion to order separate trials of one or more separate issues. With this rule directly on point, it seems unlikely that defendants will be able to convince federal judges to embrace these state directives. To do so would require reaching a conclusion that Rule 42 either exceeded statutory authorization or Congress' rulemaking power. The U.S. Supreme Court emphasized in *Shady Grove Orthopedic Associates PA v. Allstate Insurance Co.* that every prior challenge to a federal rule of civil procedure has been rejected.

Limitations on Closing Arguments and Federal Discretion

The provision requiring trifurcation is not the only one unlikely to apply in federal court. Georgia's recently passed tort reform also dramatically upended the rules regarding making closing arguments related to noneconomic

damages. O.C.G.A. § 9-10-184(b) prohibits counsel from arguing the "worth or monetary value of noneconomic damages" and likewise prohibits eliciting any testimony about "any specific range of amounts of noneconomic damages." Further, the statute mandates that counsel may argue worth or monetary value of noneconomic damages only after the close of evidence and at the time of such party's first opportunity to argue the issue of damages. O.C.G.A. § 9-10-84(c)(1). Finally, this provision requires that if counsel is entitled to "opening and concluding arguments," counsel may not argue a different worth of noneconomic damages in the concluding argument. O.C.G.A. 9-10-84(d).

Controlling the flow of closing arguments is fundamentally a procedural question, and the Eleventh Circuit has recently reaffirmed this principle. In the 2019 case of *Showan v. Pressdee*, the court considered an appeal where a district judge had prohibited counsel from making a unit-of-time argument, based on an erroneous assumption that this type of argument was strictly prohibited. Instead, the decision fell within the judge's discretion. The court stated that "the propriety of the [unit-of-time] argument is a federal question. It is a matter of federal trial procedure." With this recent authority giving guidance, defendants will face an uphill battle convincing federal district judges to surrender their discretion over how to manage closing arguments.

Will Plaintiffs Flock to Federal Court?

Will the opportunity to avoid trifurcation and to have more freedom in closing arguments be enough to prompt more plaintiffs to file in federal court? Yes, but one can anticipate that these cases will be marked by quality, not quantity. Lawyers who file with an expectation of going to trial are likely to give serious consideration to filing in federal court whenever possible to preserve a more familiar flow of trial and closing arguments.

To begin with, lawyers who regularly try cases are generally more comfortable with the faster pace and more constrained structure of federal court. With Georgia's tort reform having only recently been enacted, busy state courts implementing these new procedures may produce a range of approaches and results that may take years to sort out. It seems logical to anticipate that skilled lawyers with strong cases are the ones most likely to choose federal court over state court in the wake of the adoption of Georgia's tort reform if a federal forum will use more traditional and familiar trial procedures. The idea that plaintiff's lawyers may seek refuge in federal court speaks to the tremendous impact the recent tort reform package will have on Georgia's civil justice system.

J. Clay Fuller *is a full-time mediator, arbitrator and court-appointed neutral with JAMS in Atlanta. He is a retired U.S. magistrate judge in the Northern District of Georgia.*