

## GEORGIA LIABILITY ISSUES OVERVIEW

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### STATUTE OF LIMITATIONS

#### O.C.G.A. SECTIONS:

- 9-3-22 **RIGHTS ARISING OUT OF STATUTE:** Complaint must be filed within twenty (20) years of when right of action accrues; however, actions for wages, overtime, damages and penalties accruing under laws respecting the payment of wages and overtime must be filed within two (2) years. NOTE: This code section only applies to enforcement of statutory rights where the empowering statute in question does not set forth a more specific period of limitation. Claims for contribution fall under this statute of limitation.
- 9-3-30 & 9-3-31 **TRESPASS OR DAMAGE TO REALTY AND PERSONALTY:** Complaint must be filed within four (4) years of when cause of action accrues.
- 9-3-32 **RECOVERY OF PERSONAL PROPERTY:** Complaint for recovery of personal property and/or conversion/destruction of same must be filed within four (4) years of when cause of action accrues.
- 9-3-33 **PERSONAL INJURY CLAIMS:** Complaint based on injuries to person must be filed within two (2) years of when cause of action accrues. NOTE: This statute of limitation is applicable to most personal injury tort claims.
- 9-3-33 **DEFAMATION, LIBEL, SLANDER, INJURY TO REPUTATION:** Complaint based on slander, libel or similar injury to reputation must be filed within one (1) year of when cause of action accrues.
- 9-3-33 **LOSS OF CONSORTIUM:** Complaint based on a loss of consortium or services must be brought within four (4) years of when cause of action accrues.
- 9-3-71 **MALPRACTICE:** Complaint based on professional malpractice shall be filed within two (2) years of when cause of action accrues.
- 34-9-11.1 **WORKERS' COMPENSATION SUBROGATION LIEN:** WC Employer/Insurer can file a Complaint for recovery of a subrogation lien during the second year of the two (2) year statute of limitations provided by O.C.G.A. § 9-3-33.

### TOLLING OF STATUTE OF LIMITATIONS

#### O.C.G.A. SECTIONS:

- 9-3-90 & 9-3-91 Statute of Limitations is tolled for period that Plaintiff is a minor, during involuntary incompetency or during imprisonment.
- 9-3-96 Statute of Limitations is tolled for fraud only so long as Plaintiff was unaware of such fraud. i.e. The Statute of Limitations begins to run from the discovery of the fraud that deterred or prevented Plaintiff from filing Complaint.

### RENEWAL OF DISMISSED ACTIONS

#### O.C.G.A. SECTIONS:

- 9-2-60 Plaintiff can renew an action within six (6) months of a dismissal without prejudice. Such an action is deemed to relate back to date of filing original Complaint for Statute of Limitations purposes.

### DEFAULT

#### O.C.G.A. SECTIONS:

- 9-11-12 Defendant must file its Answer within thirty (30) days of when it was served with the Summons and Complaint of be in default.
- 9-11-55(a) Defendant can reopen default as a matter of right within forty-five (45) days of service of the Summons and Complaint by paying costs and filing an Answer. At any time after forty-five day (45) mark, Plaintiff can move for entry of default judgment.
- 9-11-55(a) Defendant can reopen default after forty five (45) from service of the Complaint and Summons by motion to the Court. Defendant must pay costs and persuade court that default should be reopened based on providential cause, excusable neglect or "proper case".
- 9-11-55(a) In personal injury/tort claims, entry of default judgment can only be on liability aspect of the case. Plaintiff must still prove damages.
- 9-11-60(d) After entry of default judgment, Defendant may move the Court to set it aside based on lack of jurisdiction; fraud, accident or mistake or the acts of the adverse party unmixed with the negligence of fault of the movant and presence of non-amendable defect on the face of record or pleadings.

### NEGLIGENCE ELEMENTS

#### O.C.G.A. SECTIONS:

- 51-1-1 & 51-1-2 1). Defendant must breach a legal duty owed to the Plaintiff.
- A). In most cases the standard of care ordinary diligence. Ordinary diligence is that degree of care exercised by ordinary prudent people in same or similar circumstances. O.C.G.A. § 51-1-3.
- B). Gross negligence is defined as a lack of the care which every man of common sense exercises, however inattentive he may be, with respect to his own property. O.C.G.A. § 51-1-4.
- 2). Plaintiff must show that his/her alleged injuries were proximately caused by the alleged negligent act.
- 3). Plaintiff must show that he/she has sustained a legally recognized form of damages.

### IMPUTED NEGLIGENCE

#### O.C.G.A. SECTIONS:

- 51-2-1 A Principal is vicariously liable for the acts of an agent while acting in the course and scope of his/her agency.
- 51-2-2 A Party is liable for the torts committed by his wife, child or servant at his/her request or in the course and scope of his/her business. This serves as the basis for Family Purpose and Permissive Use liability.
- 51-2-2 & 51-2-4 An Employer is vicariously liable for the actions of its employees who are acting in the scope and course of their employment.
- 51-2-5 & 51-1-12 An employer is liable for the negligence of a contractor only if the work is wrongful in itself or if done in the ordinary manner would result in a nuisance; the delegated work is inherently dangerous (i.e. working with explosives); the wrongful act violates a duty imposed on the employer by contract; the wrongful act violates a statutory duty; the employer ratifies the unauthorized wrong; the employer maintains control over the contractor to the extent that a master/servant relationship is created.

### TORT DEFENSES

#### O.C.G.A. SECTIONS:

- 51-11-2 Freely given consent by a sound minded Plaintiff in the absence of fraud is a defense to any tort for which such consent has been given.
- 51-11-3 Plaintiff has obligation to mitigate his damages.
- 51-11-7 Last Clear Chance: Plaintiff must exercise ordinary care to avoid the consequences to himself caused by Defendant's negligence.

## COMPARATIVE NEGLIGENCE

Georgia is a modified comparative negligence state. McMullen v. Vaughan, 138 Ga. App. 718, 227 S.E.2d 440 (1976); Smith v. American Oil Co., 77 Ga. App. 463, 49 S.E.2d 90 (1948). Application of Comparative Negligence Rule:

- 1). If the Defendant's negligence is less than the negligence of the Plaintiff, then the Plaintiff cannot recover.
- 2). If the Defendant's negligence equals the negligence of the Plaintiff, then the Plaintiff cannot recover.
- 3). If the Defendant's negligence is greater than the negligence of the Plaintiff, then the Plaintiff recovers damages equal to the verdict reduced by the percentage of the Plaintiff's negligence.
- 4). If the Plaintiff's injuries and damages resulted solely from his/her own negligence, comparative negligence does not apply and the Plaintiff is not entitled to recover.

## TORT DAMAGES

### O.C.G.A. SECTIONS:

- 51-12-2 **SPECIAL DAMAGES:** Damages that flow from tortious conduct that must be proven in order to recover. Example: Medical expenses and lost wages.
- 51-12-2 **GENERAL DAMAGES:** Damages which are presumed to flow from a tortious act and do not require specific proof. Example: Pain and suffering, emotional distress and loss of consortium.
- 1). **Emotional Distress Claims:** Plaintiff must establish that he/she sustained a physical injury as a result of the Defendant's negligence and that the injury must cause Plaintiff's mental suffering and emotional distress. Lee v. State Farm Mutual Insurance Company, 272 Ga. 583, 533 S.E.2d 82 (2000).
- 51-12-5.1 **PUNITIVE DAMAGES:** Punitive damages are awarded as "punishment" for egregious conduct. Punitive damages can only be awarded in tort actions where the clear and convincing evidence indicates that the Defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression or the entire want of care which would raise the presumption of conscious indifference to the consequences of his/her actions. Punitive damages in cases other than product liability actions, actions where the Defendant acted/failed to act with a specific intent to cause harm, or actions where the Defendant acted/failed to act while under the influence of alcohol or illicit drugs are limited to \$250,000.

## JOINT AND SEVERAL LIABILITY

**GENERALLY:** The doctrine of joint and several liability applies in tort actions where the actions of several Defendants combine to cause one indivisible harm to the Plaintiff.

### **EXAMPLES OF JOINT AND SEVERAL LIABILITY:**

- 1). An Employer is liable for the acts of its Employees done within the course and scope of their employment. O.C.G.A. § 51-2-22
- 2). Parents can be liable for acts of family members while operating a motor vehicle under the Family Purpose Doctrine. Elements:
  - A). Parent must make the vehicle available for family use with an actual or implied right to use the vehicle; and
  - B). Use of the vehicle by a family member within the scope and purpose for which it was provided to him/her.  
Hiter v. Shelp, 129 Ga. App. 401, 199 S.E.2d 832 (1973); Finley v. Berman, 190 Ga. App. 692, 379 S.E.2d 640 (1989)
- 3). A Principal is liable for the actions of an Agent (as opposed to an Employee) if the Principal directed or commanded the Agent's conduct or otherwise ratified it. O.C.G.A. § 10-6-61; Walker Hall, Inc. v. Fincher, 120 Ga. App. 193, 169 S.E.2d 745 (1969).

## ELEMENTS OF SLIP AND FALL CASES

**DUTY OF CARE:** Determined by status of Plaintiff when accident occurred. There are three categories of Plaintiff status with separate duties of care.

- 1). **Invitee:** A Landowner/ Occupier must use ordinary care to keep premises and approaches safe. An individual is an invitee if he was explicitly or implicitly invited on the premises by the Landowner/Occupier. This status is frequently held by business customers. O.C.G.A. § 51-3-1
- 2). **Licensee:** A Landowner/Occupier must not recklessly or wantonly injure a Licensee. If the Landowner/Occupier is aware or should have been aware of the presence of Licensees, he/she must utilize ordinary care to prevent harm to them. A Licensee is defined as an individual who is not a customer, servant or trespasser, does not have a contractual relationship with Landowner/Occupier and was implicitly or explicitly allowed to go on the premises merely for his own interests, convenience and/or gratification. O.C.G.A. § 51-3-2
- 3). **Trespasser:** A Landowner/Occupier has no obligation to keep private grounds in safe condition for Trespassers. This is the default classification of individuals who enter property. Rawlins v. Pickren, 45 Ga. App. 261, 164 S.E.2d 223 (1932). As a practical matter, the Court's rarely find that an individual is a Trespasser. Most opinions hold that the individual had an implicit invitation to enter the premises.

An **Invitee** must prove two elements in order to recover based on a premises liability theory of recovery:

- 1). The Landowner/Occupier must fail to exercise ordinary care for the safety of its Invitees/Customers by knowingly allowing a dangerous condition to exist on its premises; **and**
- 2). The Invitee/Customer was without equal or greater knowledge of the dangerous condition or for some reason attributable to the Landowner/Occupier was prevented from discovering it. Alterman Foods, Inc. v. Ligon, 246 Ga. 620, 623, 272 S.E.2d 327 (1980);

A **Licensee** must prove the following elements in order to recover based on a premises liability theory of recovery:

- 1). That the Landowner/Occupier acted wantonly or recklessly in causing harm to the Licensee or failed to warn the Licensee of hidden hazards.
- 2). If the Landowner/Occupier knew or should have known of the presence of Licensees on its property, that the Landowner/Occupier failed to exercise ordinary care to prevent harm to the Licensee.

**KNOWLEDGE OF HAZARD CAN BE ACTUAL OR CONSTRUCTIVE:** See Alterman Foods, Inc. v. Ligon, 246 Ga. 620, 622, 272 S.E.2d 327 (1980);

- 1). **Actual Knowledge:** Actual knowledge involves the Landowner/Occupier actually discovering the dangerous condition in question or being told about it by other customers, etc.
  - A). Landowner/Storeowner is deemed to have notice of wax or other foreign substance that it applies to its floors.
- 2). **Constructive Knowledge:** Can be proven in one of two methods:
  - A). Evidence that a Landowner/Occupier's employee was in the immediate area of the alleged dangerous condition and could see and remove it; or
  - B). Evidence that the alleged hazard in question had been present for such an unreasonable period of time by failure of the Landowner/Occupier to inspect its premises that knowledge is imputed to it.
    - i). Constructive knowledge cannot be imputed to the Landowner/Occupier if the premises have been inspected within the previous fifteen minutes and no defect was located at that time. Queen v. Kroger Co., 191 Ga. App. 249, 381 S.E.2d 413 (1989); Mazur v. Food Giant, Inc., 183 Ga. App. 453, 359 S.E.2d 178 (1987); Winn Dixie Atlanta, Inc. v. Bianco, 204 Ga. App. 292, 418 S.E.2d 819 (1992).