# Observations on Rising Jury Verdicts in Georgia

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Jury verdicts are on the rise in Georgia.[1] We have seen rising verdicts in all types of cases, especially in trucking and premises liability cases. For example, in 2018, a Clayton County jury rendered a $1 billion verdict against a security company for the alleged sexual assault of a young woman by one of its armed security guards at an apartment complex. The plaintiff argued the security company was negligent in training, performance, and failing to keep the plaintiff safe. The verdict followed the plaintiff's impact statement.

In 2019, a Muscogee County jury issued another nuclear verdict of $280 million in a wrongful death action against a trucking company after an accident involving the death of a 58-year-old school cafeteria worker. The truck crossed the center line, hitting the SUV head on. The verdict in the admitted-liability case included $150 million for value of the decedent's life, $30 million for pain and suffering, and $100 million in punitive damages. The jury expressed frustration over what it perceived as an unapologetic and irresponsible trucking company.

Another outlier verdict occurred in 2019 when a Fulton County jury entered a verdict of $43 million in a negligent security case after a man was shot in a CVS parking lot where he arranged to buy an iPad from another person he met online. Neither the plaintiff nor the assailant was a customers of the CVS—they simply used the parking lot to conduct their transaction. No fault was apportioned to the shooter following arguments the CVS was known to be in a "high-crime area" and evidence of at least two prior armed robberies and a mugging on the premises after security guards were removed. The plaintiff in that case contended the CVS should have foreseen that security should be provided to protect those on its premises.

Over the years, I have been watching this rising verdict trend because it directly impacts the work I do for my clients, who routinely ask me to predict verdict ranges. Here are three things I have observed. First, the rise in verdicts increased sharply following the implementation of the Jury Composition Reform Act of 2011[2] (the "Act"). Second, Georgia's apportionment statute, O.C.G.A. § 51-12-33, has not substantially reduced verdicts. Finally, when a jury becomes angry with a corporate defendant, the results can become nuclear.

## 1. The Jury Composition Reform Act of 2011

By way of background, the Jury Reform Composition Act of 2011 ("Act")brought about two principal changes to jury pool compositions in Georgia. First, it greatly expanded the jury pool list from which county courts draw individuals for the venire. Prior to the Act, county jury lists were updated every two years primarily using county voter registration list and a small sample from the state driver's license database. After the Act took effect, the jury pool master list—now maintained by the Council of Superior Court Clerks of Georgia, not individual counties—includes the entire state driver's license database and is updated on a yearly basis. A county's court clerk compiles the jury venire by randomly selecting individuals from the master list for a given county.[3] This change also assists counties in obtaining and using more accurate contact and demographic information regarding the individuals in the jury pool.

Second, the Act ended the practice of "forced balancing." Prior to the Act, if a jury list was not considered a "fairly representative cross section" of the county's residents,[4] a county would remove from the jury list individuals of an overrepresented class to achieve a distribution approximating that found in the most recent Census. Though Georgia courts have found forced balancing constitutional,[5] some federal courts have found the opposite, concluding the practice is not the most narrowly-tailored means to achieving a representative jury list.[6] Moreover, basing forced balancing decisions on dated Census data, which rarely reflected the actual demographics of a particular county, failed to obtain the representative samples the practice purportedly sought. The result of the

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Act is a more diverse and larger jury pool that better represents the actual composition of Georgia counties. At the same time, however, the larger, more diverse jury pool has favored the plaintiffs, and jury verdicts have increased rather dramatically since the Act went into effect.

In analyzing the impact of the Act, we looked at jury verdicts rendered in wrongful death actions involving corporate defendants by comparing the mean and median of jury verdicts rendered before the Act took effect with the mean and median of those verdicts rendered after. Recognizing that correlation does not necessarily mean causation, there is no dispute jury verdicts have increased significantly since the Act took effect. Based upon our analysis, the Act has made jury pools in Georgia friendlier to plaintiffs.

Using CaseMetrix, the *Daily Report*, and Westlaw, we analyzed jury verdicts rendered in Georgia wrongful death actions involving corporate defendants: (1) ***after*** July 1, 2012, the date the jury pool provisions in the Act took effect; and (2) from September 1, 2008 through July 1, 2012, the period immediately ***before*** the jury pool provisions of the Act took effect.

### A. Post-Act Jury Verdicts

Excluding settlements from my analysis, I looked at more than 60 wrongful death jury verdicts involving corporate defendants between July 1, 2012 and July 1, 2019 falling into four general subject matters: 1) vehicle accidents; 2) products liability; 3) premises liability; and 4) medical malpractice.

In terms of exposure, the mean and median of the Post-Act plaintiff verdicts are as follows:

- Mean: $17,270,000.00
- Median: $7,560,000.00

### B. Pre-Act Jury Verdicts

I looked at more than 40 jury verdicts in the years prior to the Act, falling into that same four general subject matters. Two observations are immediately apparent. First, despite our review of the same sources for jury verdicts, prior to the Act, approximately forty percent (40 percent) of wrongful death verdicts were in favor of the corporate defendants. After the Act, one can nearly count wrongful death verdicts in favor of corporate defendants on one hand (fewer than five).

Second, the mean and median of verdicts are substantially lower than those post-Act wrongful death verdicts. In terms of exposure, the mean and median of the pre-Act plaintiff verdicts are as follows:

- Mean: $4,158,427.17
- Median: $1,600,000.00

### II. The Apportionment Statute

Interestingly, my verdict research shows the apportionment statute has not substantially reduced verdicts. In fact, in many cases, little, if any, fault is apportioned to non-parties or verdicts are higher, leaving significant sums to be awarded against the remaining corporate defendant(s). The most obvious area where apportionment seems to fail defendants is in negligent security cases where no fault is apportioned to the criminal actor, like in the CVS case discussed above. The reason for this result is it is difficult to objectively quantify. Some jurors interviewed indicated that they assumed the non-parties had reached settlements outside of court and had already paid their share of the damages. Others thought that if the non-party was actually at fault that it would have been involved in the trial—taking the absence of the non-party as an indicator of a lack of fault.

In wrongful death cases with corporate defendants with apportioned verdicts:

- Mean: $16,210,000.00 with a $3,500,000.00 post-apportionment judgment reduction
- Median: $7,500,000.00 with a $2,700,000.00 post-apportionment judgment reduction

### III. An Angry Jury

Finally, our research indicates juries are increasingly less tolerant of corporate defendants with: (1) other prior, similar incidents; (2) bad corporate representatives; and (3) bad documents. Simply and obviously, the best way to avoid a nuclear verdict is not to make the jury angry. In fact, the divisiveness of a big corporation-versus-the-individual is driven by anger. Many juries have a perception that a corporation has only one goal in mind—money. In fact in interviews, jurors tend to believe corporations are unethical and will do anything to maximize their profit. There is a mistrust of our corporate clients.

In cases, where a corporate defendant had a prior, similar incident and took no corrective action or fails to accept any responsibility, juries tend to return significantly higher awards citing that the incident could have been prevented. For example, we have seen prior reports of criminal activity with little or no response create astronomical verdicts in recent years.

Similarly, where corporate representatives are not likeable or where they lack credibility or empathy, corporate defendants can expect to be penalized. Choose your corporate representatives wisely. They should not be defensive or angry. Representatives should place a priority on safety, not simply increasing profits. If the corporation made a mistake, and the issue is simply one of damages admit the mistake and narrow your case to the dispute of damages. If corporate representatives are quibbling or appear to be hiding the truth, then expect the jury to penalize the corporation for its representative's behavior.

Finally, be wary of bad corporate documents. Juries often become angry with corporations who violate their own internal policies. Here, the results are often worse than a failure to follow the law. Having taken the time to recognize a need and draft an internal policy to address the need, only to have the corporation ignore or violate its own policy is another way to anger a jury. If a corporation is going to have a policy, then the corporation should train on the policy and enforce it—or risk having the policy used against itself. Regular review of corporate policies is necessary to remove policies that are no longer applicable in practice or that should be updated.

## IV. CONCLUSION

Jury verdicts are on the rise. The Act has made Georgia jury pool sfriendlier to plaintiffs. The apportionment statute is not providing the defense bar with the relief it expected. And, finally, angry juries are dangerous. ◆

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## ENDNOTES

[1] In fact for 2020/2021, the American Tort Reform Foundation ranks our Peach State as sixth on its Judicial Hellhole list. https://www.judicialhellholes.org/hellhole/2020-2021/georgia/
[2] O.C.G.A. § 15-12-120 (*2011).*
[3] O.C.G.A. § 15-12-40.1(e).
[4] O.C.G.A. § 15-12-40(a).
[5] See, e.g., *Al-Amin v. State*, 278 Ga. 74, 77 (2004).
[6] See, e.g., *United States v. Ovalle*, 136 F.3d 1092, 1107 (6th Cir. 1998).

# Constructing a Defense

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The Georgia Court of Appeals first emphasized that to succeed on his negligence claim, the plaintiff had to introduce evidence "which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact" of the plaintiff's injury.[14]

The Court then rejected the plaintiff's argument that the shooting would have been prevented by employing a competent security guard, since there was no evidence that the guard's duties would have included patrolling the parking lot at the specific time and place of the shooting. Additionally, there was no evidence that the absence of a security guard's patrol car made the shooting more likely than not to occur.

The Court further noted there was no evidence that a security guard would have been likely to observe or prevent the altercation. Lastly, there was no evidence that the assailant entered the complex through the broken gate. As such, the plaintiff had failed to show any allegedly inadequate security measures were the proximate cause of his injuries.

### A Fighting Chance for Defendants in Premises Liability

At times, it certainly seems the deck is stacked against premises owners, occupiers, and managers in premises liability cases. But by focusing on the key defenses available, and armed with some recent favorable decisions from Georgia's appellate courts, defendants in these cases do have a fighting chance.

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## ENDNOTES

[1] The exception, of course, would be if the prior police reports show your client's actual knowledge (i.e., a report reveals that the investigating police officer spoke with the convenience store manager about the reported crime). In that scenario, it will be hard to argue that your client had no knowledge of prior crime.
[2] 348 Ga. App. 761 (2019) (finding Plaintiff could not rely on crime grids, evidence of "rampant crime in the area" and convenience store operator/co-defendant's knowledge of prior crime to show property owner's knowledge when there was no evidence of such actual knowledge).
[3] *Days Inns of America, Inc. v. Matt*, 265 Ga. 235 (1995) ("Simply put, without foreseeability that a criminal act will occur, no duty on the part of the proprietor to prevent that act arises.")
[4] A good example is *Piggly Wiggly v. Snowden*, 219 Ga. App. 148 (1996) where knowledge of a propensity for crime was shown by testimony from Piggly Wiggly store managers that male employees routinely walked female employees to their cars at night because they considered the parking lot unsafe. There was also evidence the managers had repeatedly suggested hiring a security guard for the parking lot.
[5] 267 Ga. at 787 (emphasis added).
[6] 264 Ga. App. at 462 (emphasis added).
[7] 303 Ga. App. at 723 (emphasis added).
[8] *Bolton*, 348 Ga. App. at 762.
[9] Id.; *See also Fair v. CV Underground, LLC*, 340 Ga. App. 790, 792 (2017) ("but even if an intervening criminal act may have been reasonably foreseeable, the true ground of liability is the superior knowledge of the proprietor of the existence of a condition that may subject the invitee to an unreasonable risk of harm.")
[10] 356 Ga. App. 703 (2020).
[11] 311 Ga. 588 (2021).
[12] Id. at n. 15.
[13] 2021 WL 4979135, *1 (Ga. Ct. App. Oct. 26, 2021).
[14] *Id.* (citing *George v. Hercules Real Est. Servs. Inc.*, 339 Ga. App. 843, 845 (2016)) (punctuation omitted).