

# Nuts and Bolts of Georgia Litigation

## I. Levels of State Court

- A. Supreme Court: Court has exclusive jurisdiction over certain matters as provided by the State Constitution of Georgia and the Official Code of Georgia. Otherwise, Court has discretion on which lower court decisions it will review.
- B. Court of Appeals: Court must review lower court decisions which are final. Court may review interlocutory matters if trial court issues a certificate of immediate review.
- C. Superior Court: Court has unlimited jurisdiction over criminal, equitable and legal matters.
- D. State Court: Court with unlimited jurisdiction over legal matters, but no jurisdiction over equitable matters.
- E. Magistrate Court: Court with limited jurisdiction for legal claims not exceeding \$15,000. Non-jury trials.
- F. Probate Court: Court has jurisdiction over estates of decedents, incompetent persons and certain claims of minors.

## II. Time to Answer

- A. State Courts: Must be filed within 30 days of service. No answer is required for a cross-claim or counterclaim. O.C.G.A. § 9-11-12(a). Parties may agree to extend the time period allowed to answer a complaint. The extension should be filed with the court.
- B. Federal Court: Must be filed within 21 days of service. Fed. R. Civ. P. 12.

## III. Common Discovery in State Court

Interrogatories, Request for Production and Request for Admission: Generally a response must be served within 30 days from the date of service. If served with the complaint, a defendant has 45 days to respond. A party may not serve more than 50 interrogatories unless otherwise approved by the court.

## IV. Venue Rules

### A. Individual Defendants

Types of Parties	Proper Venue
Plaintiff v. GA Resident Defendant	County where the defendant resides. Ga. Const. Art VI § II, Para. VI. Where there are multiple defendants, venue is proper in the county where any defendant resides.
Plaintiff v. Non-GA Resident Defendant	Under the Non-Resident Motorist Act, a GA resident plaintiff may choose between the county where the plaintiff resides and the county where the cause of action arose. O.C.G.A. § 40-12-3. Under the Georgia Long-Arm Statute venue is proper where the transaction or cause of action arose, or where the property is located. O.C.G.A. § 9-10-93.

### B. Corporate Defendants

A corporate defendant is subject to venue in the county where:

1. It has its current or last named registered office per the Secretary of State;
2. Contracts: It made or performed the contract, provided that the corporation has an office and transacts business in that county; and
3. Torts: Where the cause of action arose, but if the corporation has no office in that county, the corporation has 45 days after service to change venue to the county of its principal place of business. O.C.G.A. § 14-2-510.

## V. Statute of Limitations

- A. Personal Injury: Two years. O.C.G.A. § 9-3-33.
- B. Medical Malpractice: Two years, but no more than five years from the date of the alleged injury (does not apply until age 5. For foreign objects left in an individual, one year after the date of the discovery of the object).
- C. Contracts: Six years generally. O.C.G.A. § 9-3-24.
- D. Real and Personal Property Damage, Conversion, Trespass to Chattel: Four years. O.C.G.A. §§ 9-3-30, 9-3-31 and 9-3-32.

## VI. Statute of Repose

- A. Medical Malpractice: Five years from the date of the act.
- B. Product Liability: 10 years from the date of the first sale for use or consumption.
- C. Construction: Eight years from date of substantial completion unless injury occurred in seventh or eighth year.

## VII. Contributory Negligence/Comparative Negligence

A plaintiff's recovery is reduced by the amount of fault apportioned to the plaintiff by the trier of fact. Where the plaintiff is determined to be 50 percent or more at fault, no recovery is allowed. However, these rules do not apply to a strict liability claim. O.C.G.A. § 51-12-33.

### VIII. Co-Defendant Liability

A jury may apportion fault against each defendant held liable and the plaintiff, if applicable. If apportioned, co-defendants are not entitled to contribution. However, the right of contribution among joint tort-feasors is not affected by a compromise or settlement of a claim. O.C.G.A § 51-12-31.

### IX. Minor Settlements

Where the gross settlement is \$15,000 or less, a minor's guardian may settle any claim without being appointed conservator (except where the minor's personal property is worth more than \$15,000) and without court approval. If no legal action is pending, but the gross settlement is more than \$15,000\*, a minor must have a conservator appointed and receive court approval. If legal action is pending and the gross settlement is more than \$15,000, approval must be obtained from the court in which the action is pending. O.C.G.A. § 29-3-3.

\*A conservator is not required for a gross settlement over \$15,000 which is reduced to \$15,000 or less due to medical expenses, attorney's fees, expenses of litigation or reduction to present value.

### X. Offer of Settlement (State Court)

May be made, in a tort action, 30 days after the service of a summons and complaint, but not less than 30 days (or 20 days if it is a counteroffer) before trial. If the defendant makes an offer which is rejected and the final judgment is either (1) less than 75 percent of the settlement offer or (2) no liability, the defendant may be entitled to expenses and reasonable attorney's fees from the date of the rejection. If the plaintiff makes an offer that is rejected and the final judgment is more than 125 percent of the settlement offer, the plaintiff may be entitled to expenses and reasonable attorney's fees from the date of the rejection. O.C.G.A. § 9-11-68.

### XI. Offer of Judgment (Federal Court)

More than 10 days before trial, a defending party may offer judgment against it on specific claims. The opposing party may accept the offer within 10 days of service and the clerk enters judgment on the claim. If the party does not accept the offer of judgment, it is deemed withdrawn. If the final judgment is less favorable to the other party than the rejected offer, the rejecting party must pay costs accrued after the offer. Fed. R. Civ. P. 68.

### XII. Mediation

Although not required in all counties, some counties require parties to mediate a dispute before a case can proceed to trial. Some counties provide court annexed mediation at little or no cost to the parties.

### XIII. Attorney's Fees

Generally are not recoverable. Evidence that one acted in bad faith, has been stubbornly litigious or has caused the plaintiff unnecessary trouble and expenses may substantiate an award of attorney's fees. Attorney's fees may also be recovered where a case, claim or defense is found to be frivolous.

### XIV. Punitive Damages

Generally recoverable only where the plaintiff proves by "clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which would raise the presumption of conscious indifference to consequences." Punitive damage awards are generally capped at \$250,000. However, no award limit exists for the first cause of action in a product liability case. No cap is placed on acts specifically intended to cause harm or done under the influence of controlled substances. O.C.G.A. § 51-12-5.1.

### XV. Removal

Removal must be requested within 30 days from service or in some cases, 30 days from receiving notice of grounds for removal. Generally, no removal can be had after the case has been pending for one year.

Revised 06/2012

## Swift Currie Liability Partners

K. Marc Barré, Jr. . . . .	404.888.6156 . . . . .	marc.barre@swiftcurrie.com
C. Bradford Marsh . . . . .	404.888.6151 . . . . .	brad.marsh@swiftcurrie.com
M. Diane Owens . . . . .	404.888.6158 . . . . .	diane.owens@swiftcurrie.com
Bradley S. Wolff. . . . .	404.888.6123 . . . . .	brad.wolff@swiftcurrie.com
Anandhi S. Rajan. . . . .	404.888.6159 . . . . .	anandhi.rajan@swiftcurrie.com
Terry O. Brantley . . . . .	404.888.6160 . . . . .	terry.brantley@swiftcurrie.com
James D. Johnson . . . . .	404.888.6139 . . . . .	jim.johnson@swiftcurrie.com
Maren R. Cave. . . . .	404.888.6140 . . . . .	maren.cave@swiftcurrie.com
Ashley C. Webber . . . . .	404.888.6138 . . . . .	ashley.webber@swiftcurrie.com
Pamela Newsom Lee . . . . .	404.888.6162 . . . . .	pamela.lee@swiftcurrie.com
D. Lee Clayton. . . . .	404.888.6168 . . . . .	lee.clayton@swiftcurrie.com
Joseph J. Angersola . . . . .	404.888.6171 . . . . .	joseph.angersola@swiftcurrie.com
David M. Atkinson . . . . .	404.888.6166 . . . . .	david.atkinson@swiftcurrie.com
Ashley D. Alfonso. . . . .	404.888.6230 . . . . .	ashley.alfonso@swiftcurrie.com
William T. Casey, Jr. . . . .	404.888.6144 . . . . .	bill.casey@swiftcurrie.com
Erica L. Morton . . . . .	404.888.6146 . . . . .	erica.morton@swiftcurrie.com
Calvin P. Yaeger . . . . .	404.888.6195 . . . . .	calvin.yaeger@swiftcurrie.com
Beth L. Bentley. . . . .	404.888.6193 . . . . .	beth.bentley@swiftcurrie.com
Kevan G. Dorsey . . . . .	404.888.6157 . . . . .	kevan.dorsey@swiftcurrie.com
Virginia Gambacurta . . . . .	205.313.3132 . . . . .	virginia.gambacurta@swiftcurrie.com
Benjamin W. Yancey . . . . .	404.888.6261 . . . . .	ben.yancey@swiftcurrie.com