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TORTS Tort Reform and Insurance Regulation

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TORT REFORM AND INSURANCE REGULATION

Among the most debated and controversial issues introduced during the 1985 and 1986 sessions of the Georgia General Assembly were those bills broadly categorized as civil tort reform. Included in those bills were proposals for sweeping changes in the civil justice system and reform of insurance regulation by the State Insurance Commissioner. Additionally, specific legislation addressed the regulation of the practice of medicine in Georgia, the potential civil liability of the medical services industry, and the liability of state and local governments. These issues have been the subject of extensive lobbying by the medical community, business groups, state and local governments, consumer organizations, and trial lawyers in the state for the past two years. Tort reform will again be a major topic of debate in the 1987 session.[1]

The recent tort reform movement in Georgia began in earnest on August 30, 1983, when Governor Joe Frank Harris appointed the Governor's Medical Malpractice Advisory Council in recognition of the "frequency and severity of medical liability insurance claims . . . [which have] significantly increased the cost of medical care for the people of Georgia . . . ."[2] However, this was not the first such committee in Georgia. The 1983 Advisory Council relied on the report of a similar council appointed by Governor George Busbee in 1975 "to consider what was then described as a 'crisis' in the medical liability field."[3]

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1. The Medical Association of Georgia, the Georgia Business Council, and the Georgia Trial Lawyers Association, among others, have established political action funds. The contributions to these funds will be allocated to intensive legislative lobbying, media campaigns, and public relations. For example, the Georgia Trial Lawyers Association has requested its members to pledge $150.00 to $300.00 per month to its political action fund and at least one percent of their gross income for emergency use. This request was a response to an assessment of $250.00 per member by the Medical Association of Georgia. 1 GEORGIA TRIAL LAWYERS ASSOCIATION MESSENGER (June 20, 1986); *see also* Thompson, *New Laws May Not Reduce Insurance Rates*, Atlanta J. & Const., Feb. 23, 1986, at 4B, col. 1 (citing examples of funding efforts of various lobbying groups).

2. REPORT OF GOVERNOR'S ADVISORY COUNCIL ON MEDICAL MALPRACTICE, at 1 (Jan. 25, 1984) [hereinafter cited as 1983 GACMM REPORT].

3. *Id.* at 2; *see generally* Malone, *GTLA Responds to Governor's Advisory Council*

The 1983 Advisory Council reviewed and updated the findings of the 1975 Council's report. The 1975 Council made two specific recommendations to the Legislature: eliminate the *ad damnum* clause in medical malpractice complaints and repeal the collateral source rule.[4] Only the former recommendation resulted in enacted legislation.[5] The 1983 Council favored several other alternatives, but did not recommend them for legislative action. These included encouraging structured settlements and awards,[6] placing maximum limits on contingency fees, and enacting legislation for professional and institutional insurance trusts.[7]

The 1983 Council recommended further study for 1) arbitrating medical malpractice cases, 2) creating screening panels to eliminate non-meritorious medical malpractice cases, 3) limiting non-economic damages, and 4) establishing a no-fault insurance program for victims of medical negligence.[8] It also recommended compiling data on insurance costs.[9]

The 1983 Council's report discussed both anticipated and unexpected changes in the medical malpractice liability situation since 1977.[10] One change was that the frequency of malpractice claims had doubled, and actuarial estimates continued a marked increase in the severity of those claims between 1977 and 1983.[11] The Council further noted the rising premiums for medical liability insurance, as well as the increasing loss ratios and defense costs for the

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On Medical Malpractice, The Verdict, Dec. 1984, at 4 (composition of the 1983 advisory committee was criticized as biased toward the interests of the medical community). The fifteen-member commission included seven physicians, a hospital admininstrator, a nurse, and corporate counsel for MAG-Mutual Insurance Company. Unlike Governor Busbee's 1975 Commission, no medical malpractice plaintiff's lawyer was included on Governor Harris' 1983 Advisory Committee. *Id.*

4. 1983 GACMM REPORT, *supra* note 2, at 3.

5. 1976 Ga. Laws 1047. In addition, in 1976 the Legislature enacted a restrictive statute of limitations for medical malpractice claims. 1976 Ga. Laws 1363. The statute required that a claim be filed within two years of the negligent act rather than the discovery of injury. *Id.* at 1365. In 1984, the Georgia Supreme Court held the statute violative of equal protection guarantees. Shessel v. Stroup, 253 Ga. 56, 316 S.E.2d 155 (1984); *see also GACMM Makes Several Proposals*, The Verdict, Dec. 1984, at 6 (discussing the perceived propriety of *Shessel v. Stroup*, and related Georgia court rules).

6. Structured settlements and awards are periodic payments, that is, an arrangement to compensate a claimant over time, rather than with a single lump sum. D. Hindert, J. Dehner & P. Hindert, STRUCTURED SETTLEMENTS AND PERIODIC PAYMENT JUDGMENTS 1-2, 1-3 (1986).

7. 1983 GACMM REPORT, *supra* note 2, at 3.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 4.

major underwriter of medical malpractice insurance in Georgia.[12] As a result, the Council made seven specific recommendations for immediate changes in Georgia law:[13] 1) amend the dismissal and refiling statute so that a plaintiff would not be allowed a voluntary dismissal without prejudice after the close of plaintiff's evidence,[14] 2) make mandatory the consolidation of multiple causes of action involving common questions of law or fact,[15] 3) eliminate all automatic exemptions from jury duty,[16] 4) revise the definition of "Medical Review Committee" to include committees or panels formed by medical malpractice insurers who review the quality of health care for underwriting purposes,[17] 5) make structured settlements and awards mandatory where the amount of the settlement or judgment exceeds $100,000, 6) establish a maximum limit on re-

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12. The data compiled in the report were largely provided by St. Paul Insurance Companies, Inc., the major medical malpractice underwriter and the then recently chartered MAG Mutual Insurance Company. The Council concluded that medical malpractice in Georgia "constitutes an expense of about $3 billion a year to the people of Georgia," an amount comparable to the total state budget. *Id.* at 4-5. *But cf.* Shrager, *Where is the Crisis?*, The Verdict, Dec. 1984, at 7.

13. 1983 GACMM REPORT, *supra* note 2, at 6-10.

14. O.C.G.A. § 9-11-41(a) (1982) provided that a plaintiff could voluntarily dismiss without prejudice any time prior to the verdict in the case. Such dismissal operated as an adjudication upon the merits only if the plaintiff had twice before filed for dismissal of the same claim.

15. O.C.G.A. § 9-11-42(a) (1982) required that a court must obtain the consent of the parties before consolidating multiple causes of action involving common questions of law or fact.

16. The Advisory Council supported the adoption of Section 1 of SB 67, 1984 Ga. Gen. Assem., or similar legislation which would allow the trial judge to excuse persons from jury duty if the individuals could show hardship. 1983 GACMM REPORT, *supra* note 2, at 8.

17. [T]he term "medical review committee" mean[s] a committee of a state or local professional society or of a medical staff or a licensed hospital, nursing home, medical foundation or peer review committee, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital or nursing home, which is formed to evaluate and improve the quality of health care rendered by providers of health service or to determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable by the providers of professional health services in the area.

1975 Ga. Laws 739 (formerly codified at O.C.G.A. § 31-7-140 (1985)). Committee members are immune from any cause of action *by* health care providers for any act or proceeding undertaken within the scope of such a committee. O.C.G.A. § 31-7-141 (1985). The proceedings and records of the committee are immune from discovery and cannot be used as evidence in any civil action *against* a health care provider. O.C.G.A. § 31-7-143 (1985).

covery for non-economic damages,[18] and 7) grant sovereign immunity for certain teaching hospitals which receive substantial support from state funds.

The 1983 Council's recommendations resulted in the passage of two bills in the 1984 General Assembly.[19] HB 1230 (Act No. 1337) eliminated all automatic exemptions from jury duty,[20] and HB 1276 (Act No. 985) amended the scope of current law relating to medical review committees as stated above.[21] The Council continued its study of medical malpractice into 1984 at the Governor's request.[22]

The 1984 Advisory Council report was updated with statistics supplied by the St. Paul Insurance Company. The information supplied by St. Paul indicated an increase in the frequency of medical malpractice claims in Georgia of 136% from 1979 to 1983.[23] It also cited an article in the *National Law Journal* dated August 22, 1984, which reported that both the number of plaintiffs' verdicts in medical malpractice cases and the number of those verdicts in the $1,000,000 range nearly doubled between 1978 and 1982.[24]

Again, the Advisory Council made seven recommendations to the

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18. The Advisory Council did not set a specific amount for the limitation on recovery. *See* 1983 GACMM REPORT, *supra* note 2, at 9.

19. REPORT OF GOVERNOR'S ADVISORY COUNCIL ON MEDICAL MALPRACTICE, Nov. 15, 1984, at 2 [hereinafter cited as 1984 GACMM REPORT].

20. Codified at O.C.G.A. § 15-12-1 (1982). However, persons who are able to show good cause for exemption may be excused by the judge.

21. In actuality, O.C.G.A. § 31-7-140 was not amended in 1984. Rather, O.C.G.A. § 31-7-131(3), defining "review organizations", was rewritten to achieve the same end. As a result, review organizations may now include liability insurers. Review organizations engage in peer review. 1980 Ga. Laws 1282. A peer review committee can function as a medical review committee (formerly, O.C.G.A. § 31-7-140 (1985)).

22. 1984 GACCM REPORT, *supra* note 18, at 3.

23. *Id.* at 3.

24. *Id.* at 3-4. The article the report is referring to is *The Medical Malpractice War*, Nat'l L.J., Aug. 27, 1984, at 1. There is no August 22, 1984, issue of the National Law Journal.

The source of the verdict statistics is Jury Verdict Research, Inc., of Solon, Ohio. *Id.* at 9. However, one commentator suggests that to conclude from the above study that the mean malpractice settlement in 1982 was $962,258 would be a misstatement of the report's findings. The author identified some of the possible weaknesses of the study, *e.g.*, the inadvertant exclusion of more modest awards from the calculation, the exclusion of typically lower settlement amounts, and the failure to incorporate defendants' verdicts. Localio, *Variations on $962,258: The Misuse of Data on Medical Malpractice*, LAW, MEDICINE & HEALTH CARE, June 1985, at 126; *see also Jury Verdict Statistics Misused*, 12 ATLA ADVOCATE 1 (Mar. 1986). (Trial lawyers maintain that these statistics are regularly misused to show that juries "have gone 'crazy' and are making absurd awards.")

Governor and the 1985 General Assembly. The Council reaffirmed its recommendations with respect to dismissal and refiling, consolidation of related causes of action, structured settlements and awards, and limitations on recovery for non-economic damages.[25] Three new recommendations were made:[26] 1) require juries to delineate between economic and non-economic losses in jury awards, 2) authorize judicial discretion in remittitur and additur, and 3) revise the statute of limitations for medical malpractice in light of *Shessel v. Stroup*.[27]

The 1985 Legislature enacted two of the bills introduced as a result of the 1984 Advisory Council's Report on Medical Malpractice. The statute of limitations for medical malpractice actions was revised by SB 170 (Act No. 424). The act provided a limitation of actions of two years from the date of injury or death arising from the negligent or wrongful act or omission, and a five-year statute of repose for all actions arising from the date on which the wrongful act or omission occurred.[28] Additionally, the dismissal and refiling statute was amended again by HB 630 (Act No. 418). The act provided that a plaintiff could dismiss a suit twice without prejudice any time prior to submitting the case to the jury. The third dismissal operated as an adjudication on the merits of the case.[29] HB 631, regarding mandatory consolidation of related causes of action, remained in the House Judiciary Committee and did not pass.[30]

Toward the end of 1985, the concern for the liability crisis expanded from the narrow focus on medical malpractice to include the liability of state and local governments and small businesses. Neither the Governor nor the 1985 General Assembly established an investigative committee to analyze the "liability crisis" for the

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25. 1984 GACMM REPORT, *supra* note 19, at 5-9. The Council also recommended that the Governor advise trial judges of the advantages of sealed settlements. *Id.* at 6.

26. *Id.* at 6, 8-9.

27. 253 Ga. 56, 316 S.E.2d 155 (1984). *See supra* note 5 and accompanying text.

28. 1985 Ga. Laws 556. The Advisory Council's original recommendation was twofold: 1) a two-year statute of limitations from when the injury occurs, irrespective of the date of death, and a four-year statute of repose; 2) a provision establishing a statute of limitations of two years from the date of their sixth birthday for all persons bringing a medical malpractice action for negligent acts which occurred *prior* to their sixth birthday. 1984 GACMM REPORT, *supra* note 19, at 7-8.

29. 1985 Ga. Laws 546. Prior law allowed the plaintiff to dismiss a suit any time prior to the verdict being rendered. O.C.G.A. § 9-11-41 (1982) (amended 1986).

30. 1986 Ga. Gen. Assem. Composite Status, Final Session, House Bills, at 8 (Mar. 7, 1986) (copy on file at Georgia State University Law Review Office) [hereinafter cited as Composite Status].

1986 session. The 1986 General Assembly witnessed massive lobbying efforts by the medical community, trial lawyers, insurance companies, consumer groups, and the business sector.[31]

The 1986 General Assembly introduced several bills aimed at curbing litigation and regulating insurance. Rather than concentrating on the medical malpractice dilemma as was done in earlier years, the bills addressed broader concerns. There were, however, several medical malpractice bills introduced. The omnibus tort reform bill of the session was HB 1186,[32] which was was aimed at curbing large jury awards to injury victims. HB 1186 was amended by three committee substitutes, one floor substitute, and one floor amendment.[33] The bill then went into conference committee on March 3, 1986, but died when the General Assembly adjourned on March 7.[34]

As approved by the Senate Judiciary Committee, the legislation would have: 1) provided for remittitur and additur; 2) given judges the authority to require structured settlements for damage awards greater than $500,000; and 3) abrogated the collateral source rule by requiring that a judge subtract any payments received from other sources such as worker's compensation, exclusive of private insurance.[35] As introduced, the bill also provided for a $250,000 limitation on general damages and eliminated joint and several liability for non-economic damages arising out of personal injury actions.[36] The proposed revisions were not satisfactory to either side in the civil justice reform debate.[37]

Two companion bills to the "tort reform" bill were HB 1184, which provided a sliding scale for attorney contingent fees, and HB 1185, which again revised the dismissal and refiling statute. The contingent fee bill never emerged from the House Judiciary Committee during the session.[38] HB 1185[39] was a compromise to a

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31. *See, e.g.*, Straus, *Doctors and Lawyers Invade State Capitol*, Atlanta Const., Feb. 5, 1986, at 1A, col. 2. "Tuesday was a day of old-fashioned arm-twisting at the Capitol, featuring about 1,500 doctors, 200 lawyers, injury victims in wheelchairs, and a sea of placards and campaign buttons." *Id.*

32. 1986 Ga. Gen. Assem.

33. Composite Status, *supra* note 30, at 14.

34. *Id.*

35. HB 1186 (SCS), 1986 Ga. Gen. Assem.

36. HB 1186, 1986 Ga. Gen. Assem.

37. Straus, *Senate Panel's Version of Civil Justice Reform Criticized by Lobbyists*, Atlanta Const., Feb. 21, 1986, at 12A, col. 5 (medical community believed the provisions were not comprehensive enough while legal community felt they were too far-reaching).

38. The bill provided maximum amounts for attorney contingent fees: 33 ⅓ % of the

House bill that originally provided for dismissal of an action at any time before commencement of the trial without leave of the court. As passed, the act provides that the plaintiff may voluntarily dismiss an action prior to resting his or her case. If the plaintiff wishes to dismiss the case at the close of his or her case-in-chief, he or she can do so only with leave of the court. As in the 1985 version of the bill,[40] the third notice of voluntary dismissal acts as an adjudication on the merits.

Another controversial issue was addressed in SB 434 which would have required unsuccessful litigants in a civil action to pay all attorney fees and related expenses. The bill, endorsed by Lieutenant Governor Zell Miller, was designed to reduce the number of frivolous lawsuits.[41] After passing the Senate, the bill was sent to the House where it was assigned to the House Judiciary Committee from which it never emerged.[42]

The House introduced other less sweeping bills addressing frivolous claims: HB 1146 and HB 1224. These two bills were identical as introduced. HB 1146 passed, HB 1224 was abandoned.[43] As originally passed by the House, HB 1146 provided that a court may find a suit frivolous and assess reasonable attorney fees and expenses to any party against whom another party asserts a claim where there exists such a complete absence of a justiciable issue of law or fact that the court could not reasonably believe the claim.[44] After the bill passed in the House, the Senate Judiciary and Constitutional Law Committee revised it by substituting the original mandatory language of SB 434 requiring the court to award attorney fees and expenses in the absence of a justiciable issue. Thus amended, the bill passed the Senate and returned to the House,

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first $50,000, 25% of the next $100,000 and 15% of any excess over $150,000. The fee was to be computed on the net sum recovered after deducting disbursements in connection with the claims, *i.e.*, investigation expenses, expenses for expert testimony, and cost of briefs and transcripts on appeal. HB 1184, 1986 Ga. Gen. Assem. The original version of HB 1185 was less restrictive than its equivalent in the Federal Courts. Fed. R. Civ. P. 41(a). The federal rule provides for voluntary dismissal by the plaintiff prior to service of the adverse party's answer or a motion for summary judgment. *Id.*

39. O.C.G.A. § 9-11-41(a) (Supp. 1986).

40. HB 630, 1985 Ga. Gen. Assem. § 1.

41. *Miller Wants Losers of Civil Suits to Pay All Costs*, Atlanta J., Jan. 24, 1986, at 9A, col. 1; *Senate Votes 54-2 for Bill to Make Losers of Lawsuits Pay Court Costs*, Atlanta J., Feb. 6, 1986, at 9D, col. 1.

42. 1986 Ga. Gen. Assem. Composite Status, Final Session, Senate Bills, at 8 (Mar. 7, 1986) (copy on file at Georgia State University Law Review Office).

43. O.C.G.A. § 9-15-14 (Supp. 1986).

44. HB 1146, 1986 Ga. Gen. Assem.

which referred it to a Conference Committee. The Conference Committee persuaded both the House and the Senate to adopt its substitute, which added an award of attorney fees and expenses of litigation when a party has asserted a frivolous *defense*.[45] The penalty, in the form of a monetary award, may be awarded against a party, the party's attorney, or both.[46]

The 1986 General Assembly enacted two bills focusing on regulation of the insurance industry. HB 384 requires companies writing certain property and casualty insurance to submit annually specified data to aid the Commissioner of Insurance in monitoring insurers.[47] Two of three sections of HB 1503 are directed at protecting consumers and businesses from the negative effects of rising insurance rates.[48] O.C.G.A. § 33-24-47 requires that advance notice of insurance termination, increase of premiums, or restrictive changes in policy provisions must be given to holders of insurance policies, exclusive of holders of personal automobile, property, and casualty insurance policies. Failure to comply with the notice provisions entitles policyholders to an additional thirty days of coverage, provided the pro-rata premium rate is tendered. O.C.G.A. § 33-6-5, relating to unfair methods of competition and other unfair acts, was also amended. The revised statute prohibits an insurer from cancelling an entire class of business unless it demonstrates to the satisfaction of the Commissioner of Insurance that continuation of such coverage would violate other provisions of Title 33. Alternatively, the insurer would be allowed to cancel if it proved to the Commissioner that continuation of such coverage would be hazardous to the policyholders or the public.[49] Both acts are also

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45. *Compare* HB 1146 (CA), 1986 Ga. Gen. Assem. § 1 *with* HB 1146 (CS), 1986 Ga. Gen. Assem. § 1 *and* SB 434, 1986 Ga. Gen. Assem. § 1.

46. O.C.G.A. § 9-15-14 (Supp. 1986). See also *Selected 1986 Georgia Legislation, Civil Litigation: Cost of Frivolous Actions*, 2 GA. ST. U.L. REV. 144 (1986), for detailed discussion of O.C.G.A. § 9-15-14. The Georgia Supreme Court recently adopted the language of the new statute to define the elements of the common law claim of "abusive litigation" which merges the common law claims of malicious use of process and malicious abuse of process. Yost v. Torok, 256 Ga. 92, 95, 344 S.E.2d 414, 417 (1986).

47. O.C.G.A. § 33-3-21.1 (Supp. 1986). See *Selected 1986 Georgia Legislation, Insurance: Liability Insurers: Reporting of Certain Information*, 2 GA. ST. U.L. REV. 204 (1986), for detailed discussion of O.C.G.A. § 33-3-21.1.

48. *See States Track Rates, Solvency of Carriers—But Task is Big*, Atlanta J. & Const., July 27, 1986, at 9A, col. 1.

49. O.C.G.A. § 33-6-5(12) (Supp. 1986). The third section of HB 1503 required that no accident and sickness insurance policy providing specific benefits for alcoholism and drug addiction treatment may exclude payments for or to a licensed hospital solely because the hospital specializes in the treatment of alcoholism and drug addiction. O.C.G.A. § 33-24-28.3 (Supp. 1986).

designed to protect consumers and businesses from threatened withdrawal from the market of specialty insurance policies.[50]

The 1987 session of the General Assembly will have better access to information concerning the liablility crisis, due in part to investigations to be made by the Legislature and the new Governor's Advisory Committee on tort reform.[51] The House Judiciary Committee has begun investigations into possible reforms of the insurance industry and the civil justice system.[52] The Governor's Advisory Committee on tort reform is an informal committee composed of lawyers, doctors, businessmen, members of the Legislature, the Insurance Commissioner, and others invited to participate by the Governor.[53] HR 577 provides for the creation of a twelve-member Joint Liability Insurance and Motor Vehicle Insurance and Availability Study Committee.[54] The Committee, which is composed of six members each from the House and Senate will review the issues and problems relating to liability and motor vehicle insurance and recommend appropriate legislation by December 31, 1986, after which the Committee is to be abolished.[55]

Two other states, Florida and West Virginia, passed tort reform measures which also required concessions from the insurance industry.[56] Both states have experienced refusals by many major insurance companies to write policies.[57] However, tort reform is not

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50. *See supra* note 47.

51. *See Doctors, Lawyers on Panel Criticized for Unbending Stances on Tort Reform*, Atlanta Const., Oct. 17, 1986, at 21A, col. 1.

52. *Current Insurance Crisis Is Just Part of Cyclical Nature of Industry*, The Brunswick News, Aug. 16, 1986, at 12A, col. 1 (J. Robert Hunter, former federal insurance administrator under Presidents Ford and Carter, addressed the House Judiciary Committee on August 15, 1986, at the Jekyll Island Convention Center).

53. Press release from Gov. Joe Frank Harris (July 9, 1986) [hereinafter cited as Governor's Press Release (July 9, 1986)].

54. HR 577, 1986 Ga. Gen. Assem.

55. The Speaker of the House has named six representatives to the Committee. Letters from Thomas B. Murphy, Speaker of the House (Sept. 4, 1986, and Sept. 30, 1986) (naming appointees). As of October 22, 1986, the Lieutenant Governor had not yet named the senate appointees. Other commissions and review committees have been considered by the Commissioner of Insurance and the Georgia Bar. *Brinson Presents Plans for 1986-87*, Ga. St. B. News, July/Aug. 1986, at 1, col. 3.

56. *See* 1986 Fla. Sess. Law Serv. 86-160 (West) (Tort Reform & Insurance Act of 1986); W. Va. Code § 55-7B-8 (Supp. 1986) (Limit on liability for noneconomic loss; $1,000,000 liability limit in Medical Malpractice Insurance Policies), W. Va. Code §§ 33-200-1 to 20C-5 (Cancellation and Non-Renewal of Malpractice Insurance Policies) (Supp. 1986).

57. *See West Virginia Politicians Panic*, Atlanta J. & Const., May 17, 1986, at 1A, col. 5; *Florida Tort Reforms Irk Insurers, Lawyers*, Atlanta J. & Const., July 29, 1986, at 1A, col. 1.

an issue limited to state legislatures. Congress is also reviewing the insurance crisis, which may lead to the possibility of national tort reform and insurance regulation statutes.[58] The issues raised by tort reform at the state and national level are controversial and emotional due to the competing interests of insurance availability and preservation of the civil justice system. Prominent newspapers and magazines have reported conflicting views on the causes of the liability crisis and the appropriate steps necessary to resolve the problem.[59] The tort reform issue is no longer a private battle between the medical establishment and the trial lawyers.

The Governor's Tort Reform Study Commission was founded in an effort to form a consensus recommendation for proposed legislation which the members believe will pass the 1987 Georgia Gen-

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58. *See* Memorandum for the President of the United States from Edwin Meese (Mar. 14, 1986). (The report recommends changes in tort policy at the federal and state levels on non-economic damages, providing for periodic rather than lump sum payment of future economic damages, elimination of the collateral source doctrine, a schedule for attorneys' contingency fees and the encouragement of alternative dispute resolution mechanisms.) *But cf. Testimony on the Liability Crisis Focusing on the Facts of the Insurance Crisis: Report to the Subcommittee on Economic Stabilization of the House Comm. on Banking, Finance and Urban Affairs*, 99th Cong. 2d Sess.____ (1986) (testimony of Philip J. Herman, Chairman of the Board of Jury Verdict Research, Inc., of Solon, Ohio). Mr. Herman refuted the conclusions drawn by several newspapers and magazines that JVR's statistics showed that "the average size of jury verdicts has recently skyrocketed." *Id.* at 2.

Congress, like the Georgia Legislature, is not immune to the lobbying efforts of consumer organizations. *See 35 Groups Oppose Liability Caps*, N.Y. Times, Mar. 6, 1986, at 14D, col. 1. (Thirty-five consumer organizations form a coalition to oppose the efforts of manufacturers and insurers to place limits on damages from professional and product liability lawsuits.)

59. *See, e.g.*, Church, *Sorry, Your Policy is Cancelled*, Time Magazine, Mar. 24, 1986, at 16; Glaberson & Farrell, *The Explosion in Liability Lawsuits Is Nothing But a Myth*, Bus. Wk., Apr. 24, 1986, at 24; King, Cahan, Brott & Cuneo, *Stopping the Bloodbath in Medical Malpractice*, Bus. Wk., Apr. 22, 1985, at 93; Work, Thornton & Maynard, *As Liability Insurance Squeeze Hits Everyone*, U.S. News & World Report, Oct. 7, 1985, at 56; *Report Says Litigation Explosion Is a 'Myth'*, Nat'l L.J., Apr. 28, 1986, at 46; *Litigation Explosion in U.S. Just Another Myth, Study Says*, Atlanta Const., Apr. 21, 1986, at 1A, col. 3; *Insurers: Courts are a Pushover, and We All Pay*, Atlanta Const., July 28, 1986, at 1A, col. 1; *Despite Setbacks, Tort Reform Alive and Kicking*, Atlanta Const., July 27, 1986, at 1A, col. 1; *Some Exaggeration, Liability Reform is Necessary*, Atlanta Const., June 8, 1986, at 3D, col. 1; *Evans Snared in Catch-22 as Insurance Premiums Soar*, Atlanta Const., Nov. 18, 1985, at 9A, col. 5.

Realistically, the crisis may have resulted from deficiencies in both the civil justice system and past underwriting practices of the liability casualty industry. *See Risk Managers: Tort Reform Won't Solve Insurance Crisis*, Atlanta Const., Oct. 1, 1986, at 2B, col. 1. "[S]olving the problem will require a combination of tort reform, insurance reform and insurance alternatives." *Id.* (Richard C. Hedinger, head insurance buyer for Hallmark Cards, Inc., speaking at the annual convention of the Chartered Property and Casualty Underwriters in Atlanta).

eral Assembly.[60] The ten-member commission, chaired by Atlanta attorney Pitts Carr, includes the State Insurance Commissioner and leaders of the legal, medical insurance, and business communities.[61] The Governor has requested that this diverse group "put aside their special interests and recommend [tort reform legislation] which will be in the best interests of all Georgians."[62] The committee will likely make some meaningful recommendations, but it is unlikely that a consensus will emerge to recommend a cap on jury awards or abolition of the doctrine of joint and several liability.[63] However, such legislation is almost certain to be introduced.

Lieutenant Governor Zell Miller has pledged to have another comprehensive tort reform bill introduced on the first day of the 1987 General Assembly.[64] SB 1, when introduced, will include provisions for a $250,000 cap on non-economic damages, abolition of the collateral source doctrine, abolition of the doctrine of joint and several liability, remittitur and additur, and mandatory structured settlements for awards greater than $100,000.[65]

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60. Governor's Press Release (July 9, 1986), *supra* note 53.

61. "Additionally, the Governor's Senate floor leader, the House Majority Leader and the chairman of the House and Senate Judiciary Committees will serve in ex-officio capacities." *Id.*

62. *Id.* Senator Roy Barnes, the Governor's floor leader, has strongly critized the members for their inability to arrive at a meaningful compromise position. He stated that if the committee fails to reach a consensus position, they face the possibility that the Governor will make his own recommendations to the 1987 General Assembly and ignore the committee. *Tort Panel Told Must Compromise*, Fulton County Daily Reporter, Oct. 17, 1986, at 1, col. 4.

63. *Id.* at 3, col. 1. However, the members have agreed to support less controversial legislation, such as increasing funding for the State Board of Medical Examiners, eliminating the requirement to state specific damages in a tort claim, and requiring a claimant merely ask for "fair compensation." *Id.*

64. Statement issued by Lt. Gov. Zell Miller, Sept. 26, 1986 (copy on file at Georgia State University Law Review Office).

65. *Id.*