Don’t Forget Office Gifts for the Holiday Season

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Tort reform far from dead in Georgia

Roughly five years ago, the General Assembly passed Senate Bill 3 and ushered in a new era of comprehensive tort reform in Georgia.

Senate Bill 3 was the product of public sentiment at the time, which was spotlighted over whether caps should apply to non-economic damages in medical malpractice lawsuits. Much to the chagrin of plaintiff-oriented attorneys, the General Assembly sided with doctors and passed O.C.G.A. § 51-13-13 as part of Senate Bill 3. The statute capped non-economic damages in medical malpractice cases at $350,000 and became effective Feb. 17, 2005.

In March, the Georgia Supreme Court struck down the caps on non-economic damages as invading the constitutional right to trial by jury. Those who are not in the legal community may believe the status quo ante has returned to Georgia's courtrooms. However, a major and often overlooked statutory change in Senate Bill 3 is still very much alive.

O.C.G.A. § 51-12-33 (known as the apportionment statute) was also passed via Senate Bill 3. The apportionment statute profoundly changed the way damages are divided among joint tortfeasors in this state. In legal jargon, the apportionment statute abolished joint and several liability in Georgia.

The statute remains a viable quiver in the bow of defense attorneys. This concept is best explained through example. Imagine that Ryan frequents “Scherosis on the River,” a bar owned by Jenna in downtown Savannah. David has the reputation of starting fights and acting rambunctious. David is also notably short on money because he spends what little money he has at the bar. The bouncers and even Jenna, herself, have frequently had to escort David out of the bar and even had to call the cops on him a few times due to altercations with other customers.

Jenna, however, allows David to continue coming to the bar because Jenna and David are long-time friends. On the night in question, Ryan enters the bar with David’s former girlfriend. David goes after Ryan, but Jenna and bouncers stop the altercation and ask both Ryan and David to leave. Jenna and the bouncers, however, fail to escort the parties off the premises.

In the parking lot, David breaks Ryan’s jaw. Ryan sues David and the bar for his injuries — including more than $50,000 in medical bills for reconstructive surgeries. Prior to the enactment of the apportionment statute, David and the bar could likely be found to be joint tortfeasors.

The statute’s purpose is to assign liability to each person who contributed to the injury and to apportion damages accordingly. Whether the bar and Jenna are joint tortfeasors was also passed via Senate Bill 3.

The statute was also passed via Senate Bill 3 is still very much alive for his intentional tort of hitting Ryan in the face. Since the two tortious acts combine and the resulting injury to Ryan cannot be easily apportioned between the defendants, Georgia’s old law viewed the bar and David as joint tortfeasors.

As a result, Ryan did not bear the burden at trial of allocating the percentage of fault between the two and could recover 100 percent of his damages from the bar or David. Assuming a jury found both defendants liable, Ryan would likely seek 100 percent of his damages from the deeper pocket of Jenna’s bar. Jenna and the bar could later seek contribution from David, but such action is unlikely given David’s limited resources.

Applying the same facts under the apportionment statute, Ryan can no longer seek 100 percent of his damages from the “Scherosis on the River.” Ryan must now carry the burden to show fault between the bar and David.

The jury must now “apportion its award of damages among the persons who are liable [i.e the bar and David] according to the percentage of fault of each person.”

Suppose the jury finds the bar only 20 percent at fault and David 80 percent at fault. Ryan’s recovery would likely be limited to 20 percent of his total damages because David has no money to contribute. In fact and under the apportionment statute, the jury could apportion fault to David even if Ryan was not a party to the lawsuit because Ryan only sued the bar.

The effects of the apportionment statute become even more apparent if you assume the jury finds David 99 percent at fault for the fight. The general public (especially business owners) should be aware that Georgia tort reform still reverberates across the state due to the continued viability of the important, but often overshadowed, apportionment statute.

For better or worse, the apportionment statute has made it harder on injured plaintiffs to recover damages at trial by limiting the potential liability of defendants.

It is important to understand this aspect of the law prior to evaluating any insurance policy if you own a small business and are negotiating for premise liability coverage.

You may also want to be more careful when visiting the local bar for a drink.

What is acceptable? Probably the safest gift to give is food. A myriad of companies locally specialize in creating beautiful gift sets of all sizes and prices involving food. Cheeses, jams, meat, calendar of wine, gift baskets and many other foodstuffs are available and represent a nice, tasteful way to say “thank you.”

What is not alcoholic are a bit more risky but may work in certain situations. Clearly, you need to know how your employees would react to such a gift.

Useful office items, again perhaps with the company logo, are universally well-received. Clocks, business card holders, paperweights, and nameplates are examples of refined gifts for professionals.

Many local companies operate in this sector and offer a wide range of interesting office gifts ranging from basic to decorative.

Finally, a gift card to a local store is also appreciated. This is an especially good idea given the current economic conditions. Supporting local businesses is a win-win outcome.

Your employees will appreciate (almost) anything you give, as long as you say “Thank You!”

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