



A. Statute of Limitations

- **Personal Injury:** Two years from the date of accident. O.C.G.A. § 9-3-33.
- **Property Damage:** Four years from the date of loss. O.C.G.A. § 9-3-32.
- **Subrogation:** Two years statute of limitation. O.C.G.A. § 33-7-11.
- **Wrongful Death:** Two years from death. O.C.G.A. § 51-4-2.
- **Against Municipality:** Ad Litem Notice must be made within six months of the injury. O.C.G.A. § 36-33-5.
- **Action Against a County:** Claim must be presented within 1 year of the accident. O.C.G.A. § 36-11-1.

B. Comparative Negligence

Georgia is a modified comparative negligence state. A plaintiff may only recover damages if he or she is less than fifty percent at fault for the accident. O.C.G.A. § 51-12-33.

C. Joint and Several Liability

The State of Georgia does not recognize joint and several liability amongst joint tortfeasors because under Georgia law, as the liability of all defendants is to be considered by the jury. The Supreme Court of Georgia has recently restricted the appointment of fault even further by their ruling in *Alston & Bird, LLP v. Hatcher Management Holding, LLC*, 862 S.E.2d 295. The Court held that fault can no longer be apportioned to a non-party in a case with a single defendant. In other words, to apportion any fault to a non-party in a single defendant case, that party must be brought into the case by suit. There is currently a proposed bill in the state legislature to change this; however, it may be some time before it is passed.

D. Respondeat Superior

Georgia recognizes the doctrine of *respondeat superior*. An employer can be held liable for the actions of an employee if an employee was operating in the course and scope of their employment. In 2020, the Georgia Supreme Court, in *Quynn v. Hulsey*¹, held that Georgia law requires that “once liability has been established and the damages sustained by the plaintiff have been calculated, the trier of fact must then assess the relative fault of all those who contributed to the plaintiff’s injury — including the plaintiff himself — and apportion the damages based on this assessment of relative fault.” Thus, where “an action is brought against more than one person for injury to person or property,” § 51-12-33(b) states that the jury is to assign the percentages of fault for its damage award among those parties found liable. As a result, the claims encompassed by the *respondeat superior* rule are claims that the employer is at “fault” within the meaning

¹ 2020 Ga. LEXIS 761 (2020).

of the apportionment statute and sticking with the prior *respondeat superior* rule would keep the jury from assigning fault to the employer for negligent entrustment, hiring, training, supervision, and retention. Any allocation of relative fault among those at fault, which may include the plaintiff, could differ if a person/entity's fault were excluded from consideration. This recent change negates the old benefit to employers of conceding vicarious liability on claims for negligent entrustment, hiring, training, supervision, and retention as a derivative claim of the employee(s)' negligence. Now, such an admission no longer relieves the jury from apportioning fault "under the plain language of the apportionment statute." *Id.*

E. Graves Amendment

Under the Graves Amendment, the owner of a leased vehicle cannot be held vicariously liable for the negligent operation of that vehicle, provided no evidence exists indicating the owner engaged in any negligence or criminal wrongdoing. *See. Seymour v. Penske Truck Leasing Co., L.P.*, 2007 U.S. Dist. LEXIS 54843 at *8 (S.D. Ga. July 30, 2007)

Pursuant to Federal statute 49 USC § 30106, the Graves Amendment preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers.

49 USC § 30106(a) states:

(a) In general. – An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if -

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

F. Direct Action Statute against Insurers of /& to Motor Carriers

At this time, there are two Direct Action Statutes: O.C.G.A. § 40-1-112, which applies to motor carriers operating pursuant to a permit issued by the Georgia Department of Public Safety, and O.C.G.A. § 40-2-140, enacted in order to administer the UCR system after the state adopted the federal Unified Carrier Registration Agreement. Both actions provide for a cause of action against the motor carrier and its insurer. Although some insurers have argued there is ambiguity in O.C.G.A. § 40-2-140 about whether or not its Direct Action provision applies to purely interstate carriers, this argument has twice been rejected by District Courts in Georgia. *Bramlett v. Bajric*, 2012 U.S. Dist. LEXIS 148797 (2012) and *Cameron v. Teeberry Logistics*, 2013 U.S. Dist. LEXIS 186035 (2013).

Motor Carrier = person/entity who undertakes the transporting of goods or passengers for compensation.

Insurer of Motor Carrier = only those who issue primary policy(s) of insurance to the defined 'motor carrier.'

EXCLUDED from direct action (being named in) lawsuit:

- (a) Excess Insurers, *See Jackson v. Sluder*, 256 Ga. App. 812 (2002);
- (b) School Bus;
- (c) Taxicabs;
- (d) Vehicles operating within municipalities and subject to the authority of such municipality;
- (e) Limousine Carriers;
- (f) Hotel passenger vehicles;
- (g) Motor vehicles operated Not for Profit to Transport Elderly or Disabled Passengers;
- (h) Federal Government owned and operated Vehicles; and
- (g) Ambulances.

