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CIVIL (TORT) LITIGATION: THE SEARCH FOR DATA CONTINUES



J. Alton Hosch Professor Thomas A. Eaton has been a member of the UGA law faculty since 1979, and was named to his chaired position in 1993. He specializes in torts, workers' compensation, and health care law. He has coauthored a book, Constitutional Torts, with his colleague, J. Alton Hosch Professor Michael L. Wells, and a new edition of his casebook, Workers' Compensation, will be published next year. His empirical research on torts in Georgia has been widely cited by state and federal lawmakers. In this article, Eaton explains his findings and argues for a more efficient means of collecting litigation data—a method which would require cooperation by the lawyers involved.

Eaton earned his bachelor's degree from the University of Texas in 1972, and was elected to membership in Phi Kappa Phi. He graduated with high honors from the University of Texas Law School in 1975, where he was a member of the Texas Law Review.

What do we “know” about tort litigation in Georgia? How many tort suits are filed? What kinds of cases are filed? How many settle and how many go to trial? Do jurors tend to rule in favor of one party or the other? What are the typical damages awarded in cases in which the plaintiff prevails? How often are punitive damages awarded?

These questions were first put to me in 1986 by the Governor's Study Committee on Tort Reform. At that time I reported that no one knew how many tort suits are filed because that information was not maintained or recorded. A decade later Dr. Susette M. Talarico and I received a grant from the Georgia Civil Justice Foundation to collect data on civil litigation in general and tort litigation in particular from four Georgia counties over a four-year period. We collected data from court records in over 2,100 tort cases filed in Gwinnett, Bibb, Oconee, and Irwin counties between 1990 and 1993. At the same time we were going through the court records in these counties, the National Center for State Courts (NCSC) and the Bureau of Justice Statistics (BJS) were compiling similar information from Fulton and other urban counties from across the country. We combined our four-county data with the NCSC data from Fulton County to construct a “profile” of tort litigation in Georgia. A full exposition of this profile was published in the *Georgia Law Review*.¹

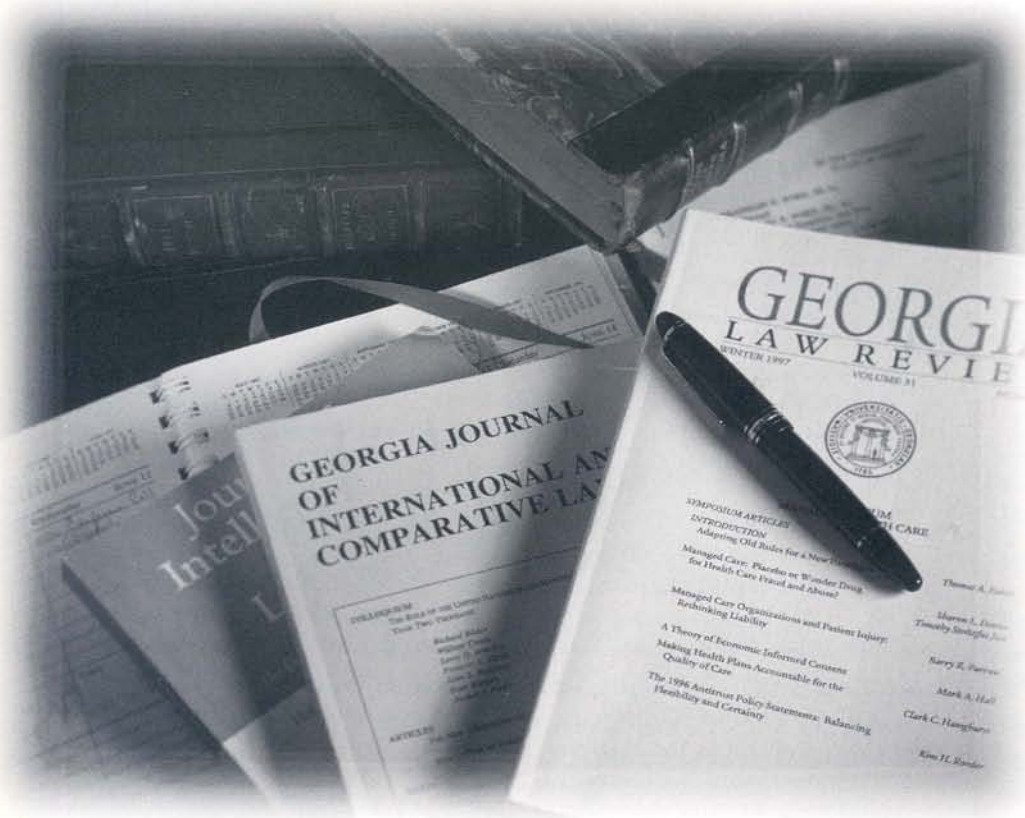
We found that tort claims accounted for a small percentage of the overall civil docket and that the number of filings had remained stable over the four-year period. Relatively simple automobile accidents dominated the tort landscape. High stakes medical malpractice and products liability suits did not appear in great numbers. Between two-thirds and three-fourths of all tort cases files were settled and less than seven percent went to trial. Juries ruled for

the plaintiffs in slightly more than half the trials. When the plaintiff prevailed, compensatory damages were modest and, outside of Fulton County, punitive damages were rare.²

We soon learned that policymakers' appetite for empirical data is voracious. Dr. Talarico and I testified before numerous state and federal legislative committees regarding the empirical foundations underlying various civil litigation reform proposals. Their appetite for “hard data” is also like the old potato chip commercial: they did not want to eat “just one.” The data published in our law review article covered a four-year period ending in 1993. Legislators want to know what has happened since then: have the trends changed?

The Georgia Civil Justice Foundation is funding a new and more ambitious project. Dr. Talarico and I are collecting data from our original four counties for the four-year period from 1994-1997. We are also adding Fulton and Cobb counties to our mix. By the end of the summer, we expect to have collected information from approximately 25,000 tort cases. We will be able to describe claim types, filing and disposition patterns, results of trials, and damage awards. When combined with the data collected in our original project, we will have information from four counties covering an eight-year period of time. This will enable us to describe both current patterns and changes over time. This is the type of data legislators call for to inform their decisions regarding tort and civil litigation reform proposals.


We will be able to do more than describe general litigation patterns, however. We will be able to look more closely at particular types of tort claims. For example, we learned in our first study that premises liability litigation was the second largest category of tort claim.³ In our current



software should be used? Will the computer system used in Dalton be compatible with that used in Valdosta? Who is actually responsible for compiling the information? Who will pay the costs of collection? Who will have access to the information? All of these questions must be answered against a complex backdrop of local and state political traditions.

The details are yet to be worked out, but there is widespread agreement on the basic structure. The attorney filing the lawsuit will be required to provide basic information about the claim. Disposition information will be provided by the attorney representing last party seeking dismissal. We anticipate that legislation will be needed to implement this system. The marginal burden placed on the

attorneys will enable policymakers to have a clearer picture of what is going on in our courts.

We hope that if such a system is implemented, statewide information regarding litigation patterns will become routinely available to legislators, judges, clerks, court administrators, lawyers and academics. More accurate data about the actual operations of the courts will enable policymakers to make more informed decisions about how to improve the administration of justice. That, after all, is our common goal. 

—Thomas A. Eaton

study, we will break down premises liability claims into slip and falls, third party criminal assaults, and other dangerous conditions. This further refinement will allow us to provide greater detail in our description of tort litigation.

This type of empirical research is labor intensive and costly. We estimate that for our current project it will take more than 10,000 man hours to review court records, extract and code information, and enter data into a computer.

Is there a more efficient way to gather reliable data about litigation? Dr. Talarico and I are part of the State Bar committee that is looking into this question. The Court Filings Committee is made up of judges, lawyers, court administrators, court clerks and others. Our charge is to determine whether it is desirable and, if so, feasible to systematically maintain basic information about litigation. Our focus includes all litigation: domestic relations,

torts, commercial, property disputes, criminal proceedings and other types of matters. The committee has met several times and is in the process of preparing a report. I expect the committee will unanimously conclude that reliable data about court filings and dispositions can and should be routinely recorded in a format that facilitates the preparation of annual reports.

While the concept of uniform, routine record keeping sounds simple, the implementation is not. The first major issue to be decided is what information should be maintained. Here, the trade-off is between detail and simplicity. Greater detail may better inform the interested policymaker, but makes implementation more difficult. The committee appears to favor simplicity over detail. Once agreement is reached on what information to record, there are daunting questions of actual implementation. What sort of computer hardware and

¹ Thomas A. Eaton and Susette M. Talarico, "A Profile of Tort Litigation in Georgia and Reflections on Tort Reform," 30 *Ga. L. Rev.* 627 (1996).

² 30 *Ga. L. Rev.* at 669.

³ 30 *Ga. L. Rev.* at 651-653.