

## Hot Topics in Litigation

### **PROGRAM OUTLINE I-3 NYC, November 2025**

#### **PRESENTERS:**

##### **Moderator:**

**Jeff Chen, RSUM**

##### **Panelists:**

**Jonathan Adelman, Waldron Adelman Castilla Hiestand & Prout**

**Kevin Willging, Travelers**

**Cori K. Cable, Brotherhood Mutual**

**Anne Oldenburg, Hepler Broom**

#### **Topics:**

##### **1. [Georgia 2025 Tort Reform Legislation](#)**

[See enclosed PPT for additional information]

In April 2025, Georgia enacted its most comprehensive tort reform legislation in two decades through Senate Bills 68 and 69. This reform addresses negligent security liability, damages, evidentiary rules, civil procedure, and third-party litigation funding. The legislation was driven by Georgia's reputation as a 'judicial hellhole' and aims to restore balance in civil litigation.

One of the most impactful changes is the redefinition of negligent security liability. The new law establishes stricter standards for holding property owners and security contractors accountable for third-party criminal acts. Liability now hinges on specific conditions, such as prior knowledge of similar incidents within 500 yards of the property, and includes a presumption that fault should primarily lie with the third party who committed the harm.

To reduce jury bias and improve trial fairness, the legislation introduces mandatory bifurcation of trials in bodily injury and wrongful death cases. This allows courts to separate the determination of fault from the assessment of damages, helping prevent sympathy for injured plaintiffs from influencing liability decisions.

The reform also targets noneconomic damages, placing restrictions on the practice of "anchoring"—where attorneys suggest arbitrary dollar amounts for pain and suffering. Such arguments are now limited to closing statements and must be directly supported by evidence, reducing the risk of inflated jury awards.

In addition, the law addresses "phantom damages" by allowing defendants to present evidence of the actual amounts paid for medical care, rather than inflated billed charges. This change ensures that damage awards reflect the true cost of treatment, not artificially high figures.

Another notable shift is the admissibility of seatbelt usage evidence. Previously barred, such evidence can now be considered in determining negligence, causation, and fault apportionment in motor vehicle cases, giving defendants a new tool to challenge liability.

Finally, the legislation introduces regulation of third-party litigation financing. Starting January 2026, litigation funders must register with the Georgia Department of Banking and Finance and are prohibited from influencing litigation strategy or settlement decisions. Funders may also be held jointly liable for awards in cases they finance, and their involvement is now subject to discovery.

Short-term impacts include immediate application to pending cases, reduced plaintiff recoveries, and procedural shifts. Long-term, the reforms are expected to reduce nuclear verdicts, improve predictability for insurers, and attract more business-friendly litigation environments.

## 2. Updates from the Front Lines of Bad Faith Litigation

The years 2024–2025 have seen a surge in significant bad faith insurance verdicts:

Notable cases include:

- Colorado: A \$145M verdict against NorGUARD for denying brain injury rehabilitation care.
- Nevada: A \$114M award against USAA for reversing liability stance and delaying settlement in a TBI case.
- Texas: A \$40M verdict against Brotherhood Mutual for failing to pay storm damage claims to a church.
- Hawaii: A \$3.1M award against Farmers Insurance for mishandling a long-standing UIM claim.

Emerging trends include increased punitive damages, scrutiny of delay-deny-defend tactics, and growing use of litigation analytics by plaintiffs.

## 3. The Challenges of Serving as a Panel Firm of Insurance Defense Work

Panel law firms serving insurance carriers operate under intense pressure to balance high case volumes with cost-efficiency, often at lower billing rates that lag behind inflation. This environment makes it difficult to maintain high-quality legal work and attract or retain top talent. Firms must also navigate strict billing guidelines, which require meticulous compliance and often result in reduced or rejected time entries.

Adding to the complexity, panel firms are subject to regular audits and performance reviews, with KPIs like cycle time and cost per claim influencing both strategy and morale. Success on the panel also hinges on strong relationship management with claims adjusters and carrier leadership—any misalignment or breakdown in communication can jeopardize the firm's standing. With limited panel spots and fierce competition, firms must continuously demonstrate value, innovation, and responsiveness to remain in favor.

#### 4. The continued rise of Advertising by Plaintiff's firms. has outspent most major businesses

In 2024, plaintiff firms and legal service providers spent an estimated \$2.5 billion on 26.9 million advertisements across the United States. Digital ad spending rose sharply despite a reduction in ad quantity, due to increased costs—spending on digital ads increased 84% from 2020 to 2024.

Radio ads peaked in 2024 with 6.8 million ads, a 261% increase compared to 2017.

Out-of-home advertising (e.g., billboards) saw a 260% increase in spending compared to 2017. The top spender was Morgan & Morgan, which invested over \$218 million in advertising in 2024 alone.

The surge in aggressive advertising by plaintiffs' firms is significantly reshaping the insurance claims landscape. These campaigns are encouraging more individuals to file injury claims—many of which are frivolous or exaggerated—leading to a marked increase in claim frequency. This uptick strains carriers' ability to accurately reserve and price policies, ultimately impacting costs for consumers.

As more claimants enter the system, often with inflated expectations fueled by promises of large payouts, the settlement process slows down. These delays not only drive up litigation costs but also complicate negotiations, as plaintiffs may resist reasonable offers in pursuit of unrealistic outcomes.

Compounding the issue, the saturation of plaintiff-focused messaging in media can influence juror perceptions before they even enter the courtroom. Jurors may arrive with skewed views on liability and damages, sometimes assuming the presence of unlimited insurance coverage behind defendants. This distortion can lead to inflated verdicts and awards, further destabilizing the legal and insurance ecosystems.

#### 5. Litigation Funding Update

In 2024, the litigation funding industry continued to play a significant role in shaping the legal landscape, despite signs of contraction. U.S. commercial litigation funders managed approximately \$16.1 billion in assets, while the global market was valued at \$15.97 billion, with projections indicating growth to over \$35 billion by 2033.

However, new capital commitments declined by 16% year-over-year, marking the second consecutive year of reduced investment activity. Despite this, deal sizes grew, with single-case investments averaging \$6.6 million and portfolio deals reaching \$16.5 million, reflecting a strategic shift toward larger, more complex litigation.

One of the most notable trends was the rise of claim monetization, which accounted for 26% of new commitments, up from just 8% three years prior. Patent litigation remained the dominant

category, comprising 32% of new capital, while contingent risk insurance emerged as a growing area, representing 19% of commitments.