



BROOKS LAW FIRM

Personal Injury • Job Injuries • Product Liability

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Tort reform hits home buyers

Within the last two years, the Georgia legislature has passed procedural hurdles that will frustrate new home owners and cause them additional expense in the event that their homes have construction defects. In the past, a home owner could sue for damages for cost of repair. However, the new law only allows the filing of a lawsuit after a series of notices and hearings. (OCGA 8-2-35, et seq.)

The new law states that Georgia needs an alternative method to resolve construction disputes. Since home buyers do not have a lobbying voice at the Capitol, it is apparent that the contractors' and developers' well-funded lobbyists suggested and pushed for this legislation. As you might expect, the new law favors the contractors and developers by placing many procedural hurdles on home buyers. Any home buyer with a construction problem who gets in a dispute with a contractor should now contact a lawyer to make sure that he follows the new procedures with their many time limits. (OCGA 8-2-40)

If a claim does proceed to litigation after the expense and time involved in the notice procedures, then a contractor can offer a home owner 80 percent of their costs of repair. If the home owner goes to court and a jury awards 100 percent of the cost of repair, then the home owner will have to pay the contractor's attorney fees and expenses of litigation. (OCGA 9-11-68) This is because the recent tort reform law passed allows a defendant to make an offer of settlement and if the recovery is not more than 25 percent of the offer, then the person who brought the lawsuit has to pay the attorney fees and expenses of the party that made the offer.

Want to get involved in protecting consumer rights? Contact Georgia Watch at www.Georgiawatch.org.

U.S. Dept. of Justice report of August 17, 2005

The U.S. Department of Justice has issued a report this month that debunks the litigation-explosion story. The report states that "there is no litigation explosion" and that the number of federal tort trials has decreased 80 percent since 1985. Also, over 11,000 fewer tort claims were filed in federal courts in 2003 than in 1999. See report at www.ojp.usdoj.gov.

Also, the National Center for State Courts reports that tort filings have decreased by five percent since 1993. Total medical malpractice payments via settlement or judgment have decreased by five percent since 2001, when adjusted for inflation.



We know your rights.



Medical bills and bankruptcy

A study appearing in Harvard University's *Health Affairs* has linked bankruptcy and medical bills.

Researchers who conducted in-depth surveys of nearly 2,000 individuals who filed for personal bankruptcy in 2001 found that roughly one in two filed for bankruptcy because of medical bills resulting from illness or injury.

Nearly half of respondents reported that their medical expenses forced them to file for bankruptcy, even though 75 percent had health-care coverage. Filers averaged nearly \$12,000 in out-of-pocket medical costs for co-payments and deductibles after they became ill. Many also lost their jobs due to their illnesses.

Bankruptcy legislation

In 2001, nearly 1.5 million Americans filed for bankruptcy. In 2005, Congress passed legislation that makes it more difficult for individuals to declare bankruptcy. At the same time, however, our nation is facing escalating medical costs, increasing numbers of Americans who are paying more for health coverages at work, and more who are also losing health coverages.

DOG BITES

According to dogbitelaw.com, America is experiencing an epidemic. In a ten-year period, dog ownership grew by two percent, but bites increased by 33 percent. Insurers paid \$345 million in claims in 2003. Financial losses due to dog bites exceed \$1 billion annually.

Americans love their pets, and most dogs are safe. However, dogs still bite five million people annually, with 800,000 bites requiring medical attention. Far too many bite victims who need medical care are children, who are frequently bitten on the face.

On average, 15–20 people die from dog bites every year.



Class actions

The "Class Action Fairness Act of 2005," signed into law in early 2005, is unfair to consumers and workers. It will take most class actions out of state courts and force them into the already overcrowded and overburdened federal court system.

This class-action bill, weighed down with special-interest benefits, will make it much more difficult for those who have been harmed by corporate and other wrongdoers to obtain compensation.

Personal trust class action

The following personal trust class-action case settled in 2004 illustrates the potential value of class-action lawsuits litigated in state courts.

When several banks merged, the purchasing bank notified beneficiaries that there had been personal trust overcharges and that fees would be reduced. Nearly 6,500 plaintiffs brought a class action alleging that for nearly 20 years the banks had overcharged fees for managing personal trusts and were now failing to properly compensate trust beneficiaries.

Beneficiaries' attorneys argued that the defendants...

- should have paid compound, not simple, interest to beneficiaries.
- owed beneficiaries compensation for lost use of trust funds.
- owed plaintiffs profits from overcharged fees.
- were liable for punitive damages.

The banking defendants settled for damages of \$35 million. On appeal, the defendants also settled for profits banks made on overcharged fees for \$33 million.

Dogs that bite

Some insurers are refusing to cover homes with certain pet breeds. Insurance data show that dogs most likely to bite are Akitas, Alaskan malamutes, chows, Doberman pinschers, German shepherds, Great Danes, huskies, pit bulls, St. Bernards, and rottweilers.

A \$20,000 dog bite

A woman who was visiting a friend's apartment was bitten on her calf by the landlord's dog, which broke its chain to attack her. The wound became infected and required skin-graft surgery, which left permanent scars. Medical expenses exceeded \$20,000. The woman sued and the parties settled after jury selection.

AUTO ACCIDENT

Q After being in an auto accident, a driver is sometimes contacted by the other driver's insurer. Here is what most auto insurance agents recommend:

Q: Should a driver give a statement to the other person's insurance company?

A: No. Unless their agent or attorney agrees, a driver should say nothing.

Q: How could making a statement hurt?

A: Most people are friendly and want to answer questions honestly and fully. That could hurt a driver's case if he or she makes

remarks that somehow increase their own liability or reduce the other driver's responsibility. Insurance company representatives are trained to elicit these kinds of statements.

Q: So how should drivers respond if agents pressure them?

A: Drivers should tell representatives that they have attorneys and that all further contact should be directed to insurance agents or attorneys.

Q: Is there anything else drivers should do?

A: Yes. As soon as they're done with this kind of call, drivers should write a short record covering the conversation, noting date, time, topics, and whatever else seems important. Stay in touch with insurance agents and attorneys.

Secret settlements

Secret justice conceals risk and can even kill. Back in 2000, consumers began hearing about a number of dreadful vehicle crashes linked to Firestone tires. They learned that although Firestone had recalled six million-plus tires, more than 200 drivers and passengers had died and been injured by Firestone's products.

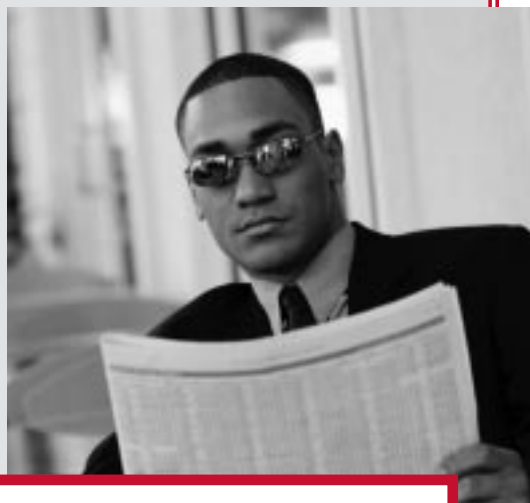
A shocking revelation was that although those harmed had sued, reports and information about this hazardous product had been sealed in secret court agreements. Wrongdoers can avoid public exposure by asking judges to approve secret agreements in which victims agree to silence in exchange for compensation.

Americans later read newspaper articles about a similar pattern of secret settlements involving...

- sexually abusive priests in the Catholic Church.
- systemic autoimmune disease related to leaking silicone breast implants.
- medical societies protecting incompetent physicians who have repeatedly committed medical malpractice.

Nearly 30 states have passed laws or promulgated court rules to keep such records open to public scrutiny to prevent additional harm or injury. But corporations, defense lawyers, and other backers of court secrecy keep finding new ways to hide serious problems from the clear light of day.

Secret justice for the few is no real justice for all.



FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **American Suzuki Motor Corporation** has recalled 30,000 Suzuki 2004-2005 model year Vinson and 2005 KingQuad ATVs with faulty throttles that can injure riders.
- ✓ **Elegant Kids 2000, Inc.**, asks parents to return 34,500 Soother Baby Pacifiers, banned under federal law after failing federal safety tests. Nipples separate from bases and can choke infants or small children.
- ✓ **Whirlpool Corporation** has recalled 40,000 KitchenAid® ProLine® toasters with heating elements that can start fires.
- ✓ **MGA Entertainment, Inc.**, has called back 300,000 Bratz™ Stylin' Scooters™ with wheels that can break and harm young riders.
- ✓ **Elec-Tech International Co., Ltd.**, of China and Applia Consumer Products, Inc., of Miramar, Florida, recalled 500,000 Black & Decker®-brand ProBlend® blenders with blades that can break and injure users.
- ✓ **Nature's Finest** voluntarily recalled about 727,000 Nature's Finest Gel Candles, which can create a high flame and start fires.



RETURN SERVICE REQUESTED

Our Martindale-Hubbell rating

Brooks Law Firm has earned an AV rating in the *Martindale-Hubbell® Law Directory* for our legal capabilities and devotion to professional ethics. Since Martindale-Hubbell bases assessments on surveys of members of the bar and of judges, we take pride in our colleagues' recognizing and respecting the quality of our legal work.

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The Congressional Budget Office report

CBO reported that caps on damage awards in medical malpractice claims will not significantly reduce overall health-care costs.

- The report concluded that limiting or capping damage awards to victims would "only lower health-care costs by about 0.4 percent to 0.5 percent, and the likely effect on health insurance premiums would be comparably small." (Congressional Budget Office, "Limiting Tort Liability for Medical Malpractice," 1/08/04)

- Malpractice costs amounted to "less than 2 percent of overall health-care spending. Thus, even a reduction of 25 percent to 30 percent in malpractice costs would lower health-care costs by only about 0.4 percent to 0.5 percent, and the likely effect on health insurance premiums would be comparably small." (Congressional Budget Office,

"Limiting Tort Liability for Medical Malpractice," 1/08/04)

The nation's largest medical malpractice insurer, GE Medical Protective, has admitted that medical malpractice caps on damage awards and other limitations on recoveries for injured patients will not lower physicians' premiums.

Largest insurance company reports...

The nation's largest medical malpractice insurer, GE Medical Protective, has admitted that medical malpractice caps on damage awards and other limitations on recoveries for injured patients will not lower physicians' premiums.

The insurer's revelation was made to the Texas Department of Insurance (TDI) in a regulatory filing obtained by FTICR. The revelation was contained in a document submitted by GE Medical Protective to explain why the insurer planned to raise physicians' premiums 19 percent a mere six months after Texas enacted caps on medical malpractice awards. In 2003, Texas lawmakers passed a \$250,000 cap on noneconomic damage compensation to victims of medical malpractice after Medical Protective and other insurers lobbied for the change.

According to the Medical Protective filing: "Noneconomic damages are a small percentage of total losses paid. Capping noneconomic damages will show loss savings of 1.0 percent." The company also notes that a provision in the Texas law allowing for periodic payments of awards would provide a savings of only 1.1 percent. The insurer did not even provide its doctors that relief and eventually imposed a rate hike on its physician policyholders.

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