Evidence

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I. INTRODUCTION

In the fifth year following the 2013 amendments to Georgia's Evidence Code, Georgia courts continue to make strides in shaping and employing changes from the old Code.[1] That said, this year, the Honorable Justice Britt Grant took special care to remind litigators that, though the new Code is "not so very new in its application, cases can take some time to make their way to this Court on appeal."[2] Thus, she wrote, the courts "still have work to do in interpreting [it]."[3]

This Article addresses those changes and the courts' continued implementation of the new Georgia Evidence Code codified within the Official Code of Georgia Annotated (O.C.G.A.) Title 24.[4] This year's Survey entails cases spanning from June 1, 2017 to May 31, 2018.[5] Specifically, this Survey addresses the following: (1) admissibility of

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1. *See* Ga. H.R. Bill 24, Reg. Sess., 2011 Ga. Laws 99 (codified at O.C.G.A. tit. 24).
2. Chrysler Group, LLC v. Walden, 303 Ga. 358, 358, 812 S.E.2d 244, 247 (2018).
3. *Id.*
4. O.C.G.A. tit. 24 (2018).
5. For an analysis of evidence during the prior survey period, see John E. Hall, Jr., W. Scott Henwood & L. Whit Carmon II, *Evidence*, *Annual Survey of Georgia Law*, 69 MERCER L. REV. 101 (2017).

financial relationships, including evidence of financial agreements between plaintiffs and treating physicians offered as expert witnesses; (2) subtle distinctions in the use of expert testimony to speak to issues of credibility versus speaking to general patterns of witness inconsistency; and (3) reinforcement of the courts' long-standing refusal to admit evidence of insurance information, even where it offers to clarify a false impression created by other testimony.

II. SHIFTS IN THE ADMISSIBILITY OF FINANCIAL RELATIONSHIPS IN THE CIVIL CONTEXT

It is well established that the admission of financial relationships between parties is a sensitive and oft-prohibited subject given the general potential for a prejudicial effect on litigation. During this survey period, Georgia courts weighed in on this nuanced area of evidence law and provided guidance regarding two narrow exceptions to the introduction of such evidence: (1) to impeach a witness's credibility and (2) to show bias. This period, the Georgia Court of Appeals issued an opinion approving the admission of evidence of financial relationships where treating physicians have an interest in the litigation at issue.[6] Simultaneously, the Georgia Supreme Court issued a separate opinion approving the admission of employee finances to show bias.[7] This section will begin by discussing the developments with regard to agreements between plaintiffs and their treating physicians.

A. Admissibility of a Treating Physician's Financial Interest in the Case

Today, perhaps more than ever, litigation financing has become a central concern to counsel around the nation.[8] As such, there is a continued struggle for the introduction and discovery of litigation financing or related funding models between both bars. On May 29, 2018, just prior to the close of this year's period, the Georgia Court of Appeals issued a decision in *Stephens v. Castano-Castano*,[9] holding that (1) the jury should be allowed to consider evidence of the financial interests of an expert witness in the outcome of a case,[10] and (2) the fact that the plaintiff's counsel referred the expert witness in question to the plaintiff

6. *See* Stephens v. Castano-Castano, 346 Ga. App. 284, 814 S.E.2d 434 (2018).
7. *See Walden,* 303 Ga. at 358, 812 S.E.2d at 244.
8. *See* Litigation Funding Transparency Act of 2018, S. 2815, 115th Cong. (2018).
9. 346 Ga. App. 284, 814 S.E.2d 434 (2018).
10. *Id.* at 290, 814 S.E.2d at 439.

was not sufficient to show bias and was not admissible due to the danger of unfair prejudice.[11]

In *Stephens*, Yolanda Castano sued Michael Stephens arguing that Stephens negligently collided with her vehicle, causing her injuries. On appeal, Stephens argued that the trial court erred on multiple grounds, including "prohibiting questioning and evidence regarding a treating physician's financial interest in the case"[12] and refusing to allow "inquir[y] into [the plaintiff's] referral to [the expert] by her attorney because that information was relevant to the witness's credibility and bias."[13] The court of appeals affirmed in part and reversed in part, holding that the "[defendant] should have been permitted to introduce evidence of the [plaintiff's] treating physician's financial interest in the case,"[14] but affirmed that the trial court correctly withheld testimony as to the plaintiff's counsel's referral.[15]

1. Treating Physician's Interest in Litigation Admissible

Principally, the court of appeals took issue with the Cobb County State Court's holding that the collateral source rule prohibited admission of the financial agreement that gave the plaintiff's expert physician an interest in the litigation.[16] The court acknowledged that "[t]he collateral source rule, stated simply, is that the receipt of benefits or mitigation of loss from sources other than the defendant will not operate to diminish the plaintiff's recovery of damages . . . . [Thus], evidence of collateral benefits is not generally material."[17] However, the court held that this particular litigation-funding model was not a "receipt of benefit or mitigation of loss."[18] Thus, discovery and admission of a plaintiff's physician's financial interest in the litigation is permissible where it is otherwise relevant. Specifically, the court distinguished between inadmissible collateral sources and the type of agreement held by the plaintiff and his physician in this case:

> The evidence sought to be introduced by [the defendant] is not payment of [the plaintiff's] medical bill by some third party, nor does

11. *Id.* at 293, 814 S.E.2d at 441.

12. *Id.* at 284, 814 S.E.2d at 436.

13. *Id.* at 291, 814 S.E.2d at 440.

14. *Id.* at 284–85, 814 S.E.2d at 436.

15. *Id.* at 292, 814 S.E.2d at 441.

16. *Id.* at 290, 814 S.E.2d at 439.

17. *Id.* at 290, 814 S.E.2d 439–40 (quoting Polito v. Holland, 258 Ga. 54, 55–56, 365 S.E.2d 273, 274 (1988)).

18. *Id.* at 290, 814 S.E.2d at 440.

> it show a write-off, waiver, or reduction of the bill, as may lead a jury to reduce improperly a plaintiff's award of damages. Rather, [the defendant] simply sought to introduce evidence that [the plaintiff's physician] entered into an arrangement whereby the physician would be paid from the proceeds of [the plaintiff's] recovery. Thus, excluding this evidence did not serve the underlying rationale of the collateral source rule.[19]

The court stated that it is well settled that opposing counsel is allowed to inquire into the potential for a witness's bias due to his or her financial interest in the litigation.[20]

Further, the court held that not only was such evidence admissible despite the collateral source rule, but also that evidence of the plaintiff–physician agreement was admissible despite any potential prejudicial effect.[21] As the physician in this case served as an expert witness for the plaintiff, the court found the impact of the doctor's financial arrangement with the plaintiff particularly relevant, holding that

> [plaintiff's physician's] financial interest in the outcome of the case is highly relevant to the issue of his credibility and potential bias, as [he] has become an investor of sorts in the lawsuit. If [the plaintiff] receives a large verdict amount, then [the plaintiff's physician] has a near certain chance of fully and quickly recovering the costs of the treatment provided to [the plaintiff] at no initial cost. On the other hand, if [the plaintiff] does not recover at trial, [the plaintiff's physician's] chances of being fully reimbursed are more doubtful. Thus, the expert witness has a financial motivation to testify favorably for [the plaintiff], and the probative value of this testimony outweighs its prejudicial effect.[22]

Thus, the court agreed that this type of financing agreement should have been admitted as it was highly relevant and was not blocked by the collateral source rule.[23]

19. *Id.* at 290–91, 814 S.E.2d at 440.

20. *Id.* at 291, 814 S.E.2d at 440. "The intent or motive of a witness is a legitimate subject of inquiry, and the fact that a witness, in his connection with any pending litigation, is influenced by financial considerations may affect his credit and diminish the weight of his testimony." Lloyd v. State, 40 Ga. App. 230, 231, 149 S.E. 174, 174 (1929).

21. *Id.* (citing O.C.G.A. § 24-4-403 (2018)).

22. *Id.*

23. *Id.*

2. Plaintiff's Counsel's Referral to Treating Physician Serving as Expert Witness Not Admissible

While concurring that the agreement itself was admissible, the court held that the plaintiff's attorney's referral to the treating physician, who thereafter testified as an expert in the plaintiff's case, without more, was insufficient to affect that expert's credibility or to show bias.[24] Importantly, the court noted that, though the Georgia Supreme Court has held in the past that the source of a referral to a treating physician serving as an expert is immaterial, the court in this case refused to hold that an "attorney referral to a physician will always be irrelevant in every circumstance and is therefore [always] inadmissible evidence."[25] Thus, the court did not foreclose the possibility that an attorney's referral to a treating physician could be admissible as evidence of bias given the proper facts.[26]

Though physical precedent, and not binding authority,[27] the court has signaled, at least in part, that evidence of financial interests, where it rises to the level of showing bias, should be deemed admissible. Interestingly, in composing its ruling, the court in *Stephens* cited to *Chrysler Group, LLC v. Walden*,[28] the case at the center of the next portion of this section.[29]

B. Employee's Finances are Admissible to Show Bias

Justice Grant began her opinion in *Walden* by offering an important preface to the Georgia Supreme Court's decision:

> We suspect that bench and bar have become accustomed to hearing the familiar recitation from this Court that Georgia's "new" Evidence Code has changed the rules. Although the new Evidence Code became law in January of 2013, meaning that it is not so very new in its application, cases can take some time to make their way to this Court on appeal. Accordingly, we still have work to do in interpreting the new Code, and this case gives us that opportunity.[30]

In *Walden*, Chrysler Group, LLC (Chrysler) was sued for the wrongful death of four-year-old Remington Walden on the theory that the

24. *Id.* at 293, 814 S.E.2d at 441.
25. *Id.* at 292 n.7, 814 S.E.2d at 441 n.7.
26. *See id.* at 293, 814 S.E.2d at 441.
27. Ga. Ct. App. R. 33.2(a).
28. 303 Ga. 358, 812 S.E.2d 244 (2018).
29. *Stephens*, 346 Ga. App. at 291, 814 S.E.2d at 440.
30. *Walden*, 303 Ga. at 358, 812 S.E.2d at 247.

company's use of an allegedly faulty design contributed to Walden's death. At trial, the "court overruled Chrysler's repeated relevance and wealth-of-a-party objections" regarding the admission of evidence as to its CEO's salary, stock options, and cash awards.[31] The Georgia Court of Appeals affirmed the Decatur County Superior Court's ruling, holding that admission of a non-party employee's compensation is "always admissible" where it constitutes "evidence of a witness's relationship to a party" and where it "ma[kes] the existence of [the employee's] bias in favor of [the defendant–employer] more probable."[32] Upon granting Chrysler's petition for certiorari, the Georgia Supreme Court affirmed the Georgia Court of Appeals decision but specifically objected to construing employee compensation as "always admissible."[33] Instead the court held that "witnesses' compensation *may* be relevant and admissible . . . depending on the facts of the case."[34]

The court held that, as a threshold matter, the new Evidence Code is modeled, in large part, after the Federal Rules and "when [the court] consider[s] the meaning of such provisions, [the court] look[s] to decisions of the federal appellate courts construing and applying the Federal Rules, especially the decisions of the United States Supreme Court and the Eleventh Circuit."[35] Specifically, in terms of admissibility, the court held that "Rules 401,[36] 402,[37] and 403[38] overlay the entire Evidence Code, and are generally applicable to all evidence that a party seeks to present."[39] O.C.G.A. § 24-4-401 defines the parameters of what constitutes "relevant evidence,"[40] and O.C.G.A. § 24-4-402 provides that only relevant evidence shall be admissible.[41] However, the court made a stark distinction between what is admissible and what can ultimately be admitted.[42]

In addition to O.C.G.A. §§ 24-4-401 and 402, all otherwise admissible evidence must also have probative value that is not "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or

31. *Id.* at 360, 812 S.E.2d at 248.

32. *Id.* (quoting Chrysler Group, LLC v. Walden, 339 Ga. App. 733, 734, 743, 792 S.E.2d 754, 759, 764 (2016)).

33. *Id.* at 364, 812 S.E.2d at 250.

34. *Id.* at 371, 812 S.E.2d at 255.

35. *Id.* at 361, 812 S.E.2d at 249 (quoting Glenn v. State, 302 Ga. 276, 280, 806 S.E.2d 564, 569 (2017)).

36. O.C.G.A. § 24-4-401 (2018).

37. O.C.G.A. § 24-4-402 (2018).

38. O.C.G.A. § 24-4-403 (2018).

39. *Walden*, 303 Ga. at 362, 812 S.E.2d at 249.

40. O.C.G.A. § 24-4-401.

41. O.C.G.A. § 24-4-402.

42. *Walden*, 303 Ga. at 363, 812 S.E.2d at 250.

misleading [of] the jury."[43] Thus, all evidence a party seeks to admit must meet the requirements of O.C.G.A. §§ 24-4-401, -402, and -403. From there, evidence may be excluded by constitutional requirements or other (statutory or common law) limitations. Complicating this are statutes such as O.C.G.A. § 24-6-622,[44] which states that "[t]he state of a witness's feelings towards the parties and [the witness's] relationship to the parties *may always be proved* for the consideration of the jury."[45] Fortunately, *Walden* clarifies that, while O.C.G.A § 24-6-622 "establishes that a witness's bias is always a legitimate issue to be proved,"[46] it does not go so far as to act as a rule of super admissibility, superseding the need to comply with O.C.G.A. §§ 24-4-401, -402, and -403.[47]

Thus, in *Walden*, the court noted that, just as the defendant was incorrect in relying on common law as an absolute ban on financial information, the plaintiff was likewise not always entitled to such information as a matter of right.[48] As previously stated in this case, Chrysler argued that the trial court should not have permitted questioning into the financial status of its CEO due to the common law rule for prohibiting party-wealth evidence.[49] The Georgia Supreme Court summarily dismissed this argument as the CEO was not, himself, a party.[50] Further, the court held that "the party-wealth rule is not applicable for a number of reasons, and under the particular facts of this case [the employee's] salary meets the (low) standard for relevance because his bias and credibility were central to [Chrysler's] theory of the case."[51] Finally, the court held that

> Chrysler did not specify . . . or mention unfair prejudice as grounds for its objections to evidence of [the CEO's] compensation. Instead, it referenced relevance and referred back to its pretrial motion on party wealth. That motion did invoke Rule 403, but the 403 analysis of party wealth is entirely different than that of witness bias.[52]

Because of Chrysler's failure to properly object, the court held it was only able to analyze the question as to "whether the admission of this

43. *Id.* at 362, 812 S.E.2d at 249 (quoting O.C.G.A. § 24-4-403).
44. O.C.G.A. § 24-6-622 (2018).
45. *Walden*, 303 Ga. at 363, 812 S.E.2d at 250 (quoting O.C.G.A. § 24-6-622).
46. *Id.* at 364, 812 S.E.2d at 250.
47. *Id.* at 363, 812 S.E.2d at 250.
48. *Id.* at 364, 812 S.E.2d at 251.
49. *Id.* at 365–66, 812 S.E.2d at 251–52.
50. *Id.* at 366, 812 S.E.2d at 252.
51. *Id.* at 368, 812 S.E.2d at 253.
52. *Id.* at 368–69, 812 S.E.2d at 253.

evidence constituted plain error, not whether it [constituted] an 'ordinary' abuse of discretion."[53]

Importantly, *Walden* emphasizes that the court's ability to review the admissibility of evidence despite a proper objection is also a unique development because previously, under the old Code, "the issue would have been waived entirely."[54] Until *Walden*, the Georgia Supreme Court had only applied the plain error standard in criminal cases.[55] Despite this available other standard, the court held that the admission of statements related to the employee's financial status did not rise to meet the standard of plain error; thus, it upheld the court of appeals' ruling.[56]

III. USING EXPERT TESTIMONY TO SPEAK TO ISSUES OF CREDIBILITY

Generally, Georgia law prohibits the use of experts to speak to the credibility of another witness and reserves the issue of credibility as one for determination by the jury.[57] Specifically, O.C.G.A. § 24-6-620[58] (formerly O.C.G.A. § 24-9-80)[59] admonishes litigators that "[t]he credibility of a witness shall be a matter to be determined by the trier of fact, and if the case is being heard by a jury, the court shall give the jury proper instructions as to the credibility of a witness."[60] Further, even where there are limited exceptions to this general rule, Georgia courts are careful to preserve the ultimate issue of credibility as one solely within the province of the jury. For example, the Georgia Court of Appeals held in *Birkbeck v. State*[61] that while an expert could opine on whether a child's behaviors were "consistent with a history of sexual abuse," this expert could not go so far as to testify as to the ultimate issue of a case, such as whether a child had been, in fact, molested.[62]

53. *Id.* at 369, 812 S.E.2d at 254.

54. *Id.* (citing Hall v. State, 292 Ga. 701, 702, 743 S.E.2d 6, 9 (2013)); Cotton v. State, 279 Ga. 358, 359, 613 S.E.2d 628, 630 (2005).

55. *Id.*

56. *Id.* at 370, 812 S.E.2d at 254–55.

57. Bly v. State, 283 Ga. 453, 459, 660 S.E.2d 713, 718 (2008) ("It is well established that a witness, even an expert, can never bolster the credibility of another witness as to whether the witness is telling the truth. Credibility of a witness is not beyond the ken of the jurors but, to the contrary, is a matter solely within the province of the jury.").

58. O.C.G.A. § 24-6-620 (2018).

59. O.C.G.A. § 24-9-80 (2010).

60. O.C.G.A. § 24-6-620.

61. 292 Ga. App. 424, 665 S.E.2d 354 (2008), *disapproved of on other grounds by* State v. Gardner, 286 Ga. 633, 690 S.E.2d 164 (2010).

62. *Id.* at 429, 665 S.E.2d at 359–60.

This type of subtle distinction is explored in *Smith v. State*.[63] In *Smith*, at trial the jury found Dajon Smith guilty of armed robbery, false imprisonment, kidnapping, and aggravated assault. The Gwinnett County Superior Court allowed the State's expert, an investigating police officer, to testify as an expert regarding the practice of interviewing witnesses to a crime.[64] On appeal, the court of appeals affirmed the trial court's decision to allow the State's expert to testify as to his experience encountering "inconsistencies" where there are multiple witnesses to a crime, holding that this does not constitute an opinion as to "comment on an ultimate issue of fact."[65]

The court of appeals began its opinion in *Smith* by addressing the issue of whether it was proper to admit the State's expert testimony by stating that O.C.G.A § 24-7-707[66] of the new Evidence Code provides the proper authority for questions as to the admission of expert opinions.[67] The court held that

> [b]ecause this case was tried in June 2015, Georgia's new Evidence Code is applicable. Regardless, the evidentiary requirements relating to the admissibility of expert opinion testimony in a criminal case under [O.C.G.A.] § 24-7-707 are nearly identical to those that applied under the former Evidence Code ([O.C.G.A.] § 24-9-67). Thus, it is not inappropriate to consider decisions under the old Code in this particular instance.[68]

After clarifying the statutory framework under which this question of admissibility would be addressed, the court went on to address the text of the rule and the necessary distinction that allows the admission of expert testimony like that addressed in this case.[69]

First, the court stated the rule: "[I]n criminal proceedings, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses."[70] Second, the court held that, in the criminal context, expert testimony extends broadly regarding issues to be decided by the jury, noting that testimony on "even the ultimate issue[] is admissible 'where the conclusion of the expert is one which jurors would

63. 342 Ga. App. 656, 805 S.E.2d 251 (2017).
64. *Id.* at 656, 805 S.E.2d at 252.
65. *Id.* at 663, 805 S.E.2d at 256.
66. O.C.G.A. § 24-7-707 (2018).
67. *Smith,* 342 Ga. App. at 660, 805 S.E.2d at 254.
68. *Id.* at 660 n.8, 805 S.E.2d at 255 n.8 (citation omitted).
69. *Id.* at 660, 805 S.E.2d at 254–55.
70. *Id.* (quoting O.C.G.A. § 24-7-707).

not ordinarily be able to draw for themselves; i.e., the conclusion is beyond the ken of the average layman.'"[71] The court of appeals held that the trial court did not abuse its discretion in allowing the investigator in question to testify as an expert given his knowledge and experience were greater than that of the lay juror.[72] The court then went on to explain how the testimony given by the State's expert at issue in this case was not a comment on the ultimate issue of truthfulness.[73]

The testimony of the State's expert witness was as follows:

> Q: Will you just talk to us a little bit about eyewitness accounts, the kind of things that you expect, talk to us a little about that.
> A: Particularly in cases like this where you have multiple victims, generally speaking, they're considered unreliable. It's hard to say one individual to another how they react to stress, lighting conditions, and things of that nature, so when we arrive on a scene like this or any other scene where you've got multiple victims or witnesses, you tend to get a whole jumble of different things. An example would be some person, you know, says he was wearing this color shirt or he was wearing that color shirt. You know, he was a black male, he was a white male, things of that nature. So we generally consider them to be unreliable due to the fact that you wind up, you know, with 40 different—
>
> Q: Okay. And you expect some level of inconsistencies among different witnesses?
> A: Yes.
>
> Q: When you say unreliable, I guess when you have a lot of witnesses you get—find that you typically get some sort of common ground when you generally get a good idea of what happened?
> A: You generally—we say the truth is somewhere in the middle.
>
> Q: Okay.
> A: You know, it's not that anyone is lying, but, again, people react differently to stressors. And it's just a matter of talking to them and finding the common middle ground that they have.[74]

71. *Id.* at 660, 805 S.E.2d at 255 (quoting Maldonado v. State, 325 Ga. App. 41, 49, 752 S.E.2d 112, 119 (2013)).

72. *Id.* at 663, 805 S.E.2d at 257.

73. *Id.* at 663, 805 S.E.2d at 256.

74. *Id.* at 661–62, 805 S.E.2d at 255–56.

The court held that this testimony was offered not as a "comment on an ultimate issue of fact," but was a general comment on the propensity for multiple witnesses to a crime to provide inconsistent accounts.[75]

Here, the expert commented on a pattern recognized in his experience as an expert, not as to the veracity of a specific witness.[76] Further, the court noted that it would have been impossible for this expert to have provided an opinion as to the credibility of the victims on the "ultimate issue of whether Smith was one of the males who committed the robbery" given that neither of the victims "at any point, identif[ied] either of their assailants."[77] Thus, in this case, there was no opinion for the expert to improperly bolster.[78]

IV. REINFORCEMENT OF THE COURTS' REFUSAL TO ADMIT EVIDENCE OF INSURANCE INFORMATION

As a general rule, Georgia law excludes evidence of whether a person or entity was insured against liability.[79] The case law issued during this survey period continues to support this general rule.

In *Auto-Owners Insurance Co. v. Dolan*,[80] Auto-Owners Insurance Company (Auto-Owners) challenged, among other things, the trial court's denial of its motion *in limine* to prohibit evidence that mold exposure caused the Dolans' bodily injuries. Air Mechanix argued that the weight of the evidence did not support the verdict. Finally, the Dolans argued that the trial court erroneously excluded reference to Air Mechanix's liability insurance carrier. This litigation ensued after the Dolans claimed Air Mechanix negligently installed air conditioning ductwork. Auto-Owners had issued a commercial general liability insurance policy to Air Mechanix, and was allowed to intervene.[81] The court addressed both Auto-Owners' and Air Mechanix's arguments before addressing the issue of excluding references to the insurance carrier.[82]

First, the court addressed Auto-Owners' arguments. Auto-Owners argued that the trial court erroneously denied its motion *in limine* to exclude evidence of bodily injury by anything other than mold on the grounds that res judicata and collateral estoppel barred this evidence.[83]

75. *Id.* at 663, 805 S.E.2d at 256–57.
76. *Id.*
77. *Id.* at 663, 805 S.E.2d at 257.
78. *Id.*
79. *See* O.C.G.A. § 24-4-411 (2018).
80. 342 Ga. App. 179, 803 S.E.2d 104 (2017).
81. *Id.* at 179–80, 803 S.E.2d at 107–08.
82. *See generally id.* at 180–87, 803 S.E.2d at 108–13.
83. *Id.* at 180, 803 S.E.2d at 108.

Before addressing the validity of the argument, the Georgia Court of Appeals noted that res judicata is inapplicable because the Dolans did not bring the same claim as was litigated in the prior declaratory judgment action.[84] The court emphasized that the previous litigation was not over what caused the injuries, but was focused on insurance coverage.[85] As the cause of the Dolans' injuries was not actually litigated in the prior declaratory action, the trial court did not err in denying the Dolans' motion *in limine*.[86]

Second, the court addressed Air Mechanix's argument that the evidence was insufficient to prove its negligence.[87] Concisely, the court refused to reweigh the evidence since the record showed some evidence to support the verdict.[88]

Finally, the court addressed the Dolans' argument that the trial court erroneously granted a motion *in limine* excluding evidence of Air Mechanix's insurer.[89] According to the Dolans, the evidence of such interactions with the insurer would have explained why they did not "allow Air Mechanix to replace its defective work"[90] and why they moved from their home.[91] The court affirmed the trial court's decision to grant the motion *in limine* stating that, "[i]n an ordinary negligence case, not only is a liability insurance policy of a litigant not admissible in evidence, but disclosure to the jury of the mere existence of such contract is ground for a mistrial."[92] The court emphasized that "evidence of insurance will rarely be admissible in a personal injury tort action . . . even to counter a false impression created by other testimony."[93] The rationale for exclusion, even in light of the benefit of clarification, is that "evidence of collateral benefits is readily subject to misuse by a jury."[94]

84. *Id.* at 180–81, 803 S.E.2d at 108–09.

85. *Id.* at 181, 803 S.E.2d at 109.

86. *Id.*

87. *Id.* at 180, 803 S.E.2d at 108.

88. *Id.* at 183, 803 S.E.2d at 110.

89. *Id.* at 187, 803 S.E.2d at 112.

90. *Id.*

91. *Id.* at 187, 803 S.E.2d at 112–13.

92. *Id.* at 187, 803 S.E.2d at 112 (quoting Kelley v. Purcell, 301 Ga. App. 88, 89, 686 S.E.2d 879, 881 (2009); Cent. of Ga. R.R. Co. v. Wooten, 163 Ga. App. 622, 624, 295 S.E.2d 369, 372 (1982)).

93. *Id.* at 187, 803 S.E.2d at 112–13.

94. *Id.* (quoting *Kelley*, 301 Ga. App. at 90, 686 S.E.2d at 881).

V. CONCLUSION

At the close of this year's Survey we are reminded and encouraged by Justice Grant's words that, despite five years of progress in implementing and interpreting the new Code, the courts continue to recognize that there is still "work to do"[95] in providing guidance and instruction as to these rules. Certainly, as the courts continue to engage in interpreting these rules, this Survey will continue to provide access to, and interpretation of, these important decisions.

95. *Walden*, 303 Ga. at 358, 812 S.E.2d at 247.