Council of Superior Court Judges of Georgia

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To All Recipients of *Suggested Pattern Jury Instructions*:

The Council of Superior Court Judges of Georgia is pleased to present the January 2010 update to the *Suggested Pattern Jury Instructions,* Vol. I: Civil Cases, 5th ed. (2007). The section provided contains the change; please replace the original section in its entirety.

We encourage attorneys to submit pattern jury instructions to judges and to do so either by reproducing specific charges contained herein or by citing pages in these volumes.

The Council welcomes suggestions for revising or adding to the pattern instructions with regard to content, language, or format to promote the goal of providing pattern instructions that are accurate, understandable, and convenient. Please submit any suggestions to the Pattern Jury Instructions Committee of the Council at the above address.

62.000 TORTS; SPECIFIC

62.001 Malicious Prosecution

(See 62.010–62.020.)

62.010 Malicious Prosecution; Generally

A criminal prosecution, maliciously carried on and without any probable cause that which damages the person prosecuted shall give that person a cause of action.

O.C.G.A. §51-7-40

Whether there was probable cause is for you to decide. Lack of probable cause shall exist when the circumstances are such that a reasonable person would believe that the accuser had no reason for proceeding except the desire to injure the person accused.

O.C.G.A. §51-7-43

(Note: Want of probable cause is a question for the jury, but when the material facts are not in dispute, the existence of probable cause for the prosecution is a question of law for determination by the court.)

Williamson v. Alderman, 148 Ga. App. 297, 298(1) (1978)

Probable cause exists when the facts and circumstances are such as would cause a reasonable mind acting on the facts known to the prosecutor to believe that the person charged was guilty of the crime for which he/she was prosecuted.

Tanner-Brice Co. v. Barrs, 55 Ga. App. 453 (1937)

Barber v. Addis, 113 Ga. App. 806, 807 (1966)

West v. Baumgartner, 228 Ga. 671 (1972)

Smith v. Ragan, 140 Ga. App. 33 (1976)

62.020 Malicious Prosecution; Advice of Counsel

Acting upon the advice of counsel will not protect the defendant in a suit for a malicious prosecution, but you may consider it in determining the question of malice and probable

cause. If you should find that the plaintiff is entitled to recover, you may consider it in mitigation of damages.

Fox v. Davis, 55 Ga. 296, 298(3) (1875)

Campbell v. Tatum, 71 Ga. App. 58, 61 (1944)

62.100 False Imprisonment

(See 62.110–62.120.)

62.110 False Imprisonment; Generally

False imprisonment consists in the unlawful detention of another, for any length of time, whereby the person is deprived of personal liberty and freedom.

O.C.G.A. §51-7-20

The only essential elements in a suit for false imprisonment are detention of the person of the plaintiff without his/her consent and its unlawfulness. Therefore, if one should detain another without the person's consent and that detention was without the authority of law, the person detained would be entitled to recover.

Westberry v. Clanton, 136 Ga. 795(4) (1911)

Atlantic Coast Line Railroad Co. v. Wagner, 90 Ga. App. 267, 277 (1954)

62.120 False Imprisonment; Warrant, Authority of

If the imprisonment is by virtue of a warrant, neither the party in good faith issuing out the warrant nor the officer who in good faith executes it shall be guilty of false imprisonment, even though the warrant is defective in form or is void for lack of jurisdiction. In such cases, the good faith of these persons must be determined from the circumstances.

The same is true of the judicial officer issuing the warrant. However, the presumption is always against the judicial officer as to good faith when there is no jurisdiction.

O.C.G.A. §51-7-21

62.200 Malicious Arrest

(See 62.210–62.240.)

62.210 Malicious Arrest; Generally

An arrest under process of law, without probable cause, when made maliciously, shall give a right of action to the party arrested.

O.C.G.A. §51-7-1

An action for malicious arrest is based upon an arrest in a civil action under process of law but maliciously and without probable cause. To authorize a recovery, it must appear that the plaintiff was arrested under some kind of process in a civil action, that the action was brought maliciously and without probable cause, and that the prosecution terminated in favor of the plaintiff.

Waters v. Winn, 142 Ga. 138 (1914)
Mathews v. Murray, 101 Ga. App. 216, 218 (1960)
Stephens v. Big Apple Supermarket, 130 Ga. App. 841, 843(3) (1974)
Oden & Sims v. Thurman, 165 Ga. App. 500, 503 (1983)

62.220 Malicious Arrest; Malice, Defined

Malice may consist in personal spite or in a general disregard of the right consideration of people directed by chance against the individual injured.

O.C.G.A. §51-7-2

62.230 Malicious Arrest; Probable Cause, Want of

Want, or lack, of probable cause shall exist when the circumstances satisfy a reasonable person that the accuser had no ground for proceeding but a desire to injure the accused. Whether or not there is probable cause is for you, the jury, to decide.

O.C.G.A. §51-7-3

62.240 **Malicious Arrest; Exempt Persons, Arrest of**

The willful arrest, under civil process, of a person exempt by law from such arrest shall be deemed malicious until the contrary is proved.

O.C.G.A. §51-7-4

(Note: Among persons exempt from arrest under certain circumstances are members of Congress, electors, members of the General Assembly, militiamen [O.C.G.A. §17-4-2], and witnesses [O.C.G.A. §24-10-1]. As to the liability of the owner of a mercantile establishment for false arrest or imprisonment, see O.C.G.A. §51-7-60. The law as to malicious prosecution is substantially the same as that as to malicious arrest.)

(See Waters v. Winn, *142 Ga. 138 [1914]. See also 62.000* et seq., *Malicious Prosecution.)*

62.300 **Physician, Skill Required of**

A person professing to practice surgery or the administering of medicine for compensation must bring to the exercise of the profession a reasonable degree of care and skill. Any injury resulting from a want of such care and skill shall be an act for which a recovery may be had.

O.C.G.A. §51-1-27

This standard, when applied to the facts and circumstances of any particular case, must be of such degree of care and skill as, under similar conditions and like surrounding circumstances, is ordinarily employed by the profession generally.

If a physician or surgeon in the treatment and care of a patient should use that degree of care and skill ordinarily employed by the profession generally under similar conditions and like surrounding circumstances, then the physician or surgeon would not be negligent; therefore, there could be no finding of malpractice. If, on the other hand, the doctor should fail to use such degree of care and skill, the doctor would be liable for such injury as a result of malpractice.

Hinkle v. Smith, 12 Ga. App. 497 (1913)

Mills v. Emory, 114 Ga. App. 63 (1966)

Simpson v. Dickson, 167 Ga. App. 344 (1983)

The presumption in such cases is that the services were performed in an ordinarily skillful manner. The person claiming an injury may overcome this legal presumption by introducing evidence that the physician (or other medical professionals) did not treat the patient in an ordinarily skillful manner. Expert testimony is usually required to overcome the presumption, and the burden is on the one claiming injury to show a lack of due care and skill by a preponderance of the evidence.

Beach v. Lipham, 276 Ga. 302 (2003)

In order for the plaintiff to show that the defendant's alleged negligence was the proximate cause of the plaintiff's injury, the plaintiff must present expert testimony. An expert's opinion on the issue of whether the defendant's alleged negligence caused the plaintiff's injury cannot be based on speculation or possibility. It must be based on reasonable medical probability or reasonable medical certainty. If you find that the expert's testimony regarding causation is not based on reasonable medical probability or reasonable medical certainty, then the plaintiff has not proved that the plaintiff's injury was proximately caused by the defendant's alleged negligence, and you would return a verdict for the defendant.

Zwiren v. Thompson, 276 Ga. 498, 503 (2003)

62.310 **Common Knowledge; Expert Not Required**

However, expert testimony is not required when the facts show that the alleged negligence caused the injury and it would be a matter of common knowledge and observation that such an injury would not have occurred if the medical service had been performed with ordinary skill and care.

In such cases, expert medical testimony is not required.

Killingsworth v. Poon, 167 Ga. App. 653 (1983)

62.311 **Physician, Skill Required; After-Acquired Information; Hindsight**

(*Consider whether this point is adequately covered by the general charge under 62.300 in view of* Smith v. Finch, *285 Ga. 709 (2009).*)

In a medical malpractice action, a defendant cannot be found negligent on the basis of an assessment of a patient's condition that only later, in hindsight, proves to be incorrect as long as the initial assessment was made in accordance with reasonable standards of medical care.

McNabb v. Landis, 223 Ga. App. 894 (1996)

Haynes v. Hoffman, 164 Ga. App. 236, 238 (1982)

62.320 Hospital; Degree of Care

A hospital owes to its patients the duty of using ordinary care to furnish equipment and facilities reasonably suited to the uses intended and such as are in general use under the same, or similar circumstances in hospitals of approximately the same size serving similar areas or communities.

Smith v. Hospital Authority of Terrell County, 161 Ga. App. 657 (1982); cert. denied

Wade v. Archbold Hospital, 166 Ga. App. 487 (1983); cert. applied for

62.400 Attorney, Skill Required of

The initial requirement for establishing liability in a case of this type is that there be a duty. This duty arises from the attorney-client relationship.

If it has been shown that an attorney-client relationship exists, the attorney has a duty to use such ability, care, and skill as lawyers of ordinary skill and capacity commonly possess and use in the performance of the tasks that they undertake.

In the practice of the legal profession, there is a presumption that legal services are performed in an ordinarily skillful manner, and the burden is on the one receiving the services to show a lack of due care and skill by the introduction of expert legal testimony.

O.C.G.A. §15-19-17

Hughes v. Malone, 146 Ga. App. 341 (1978)

(Include the following charge if applicable to the facts of the particular case.)

A client suing his/her attorney in a case not only must prove by expert legal testimony that the claim was valid and would have resulted in a judgment in the client's favor, but also that the judgment would have been collectible in some amount, for therein lies the measure of damages.

The plaintiff in this case must establish the original defendant's ability to pay a judgment had one been rendered against him/her. In this regard, it is proper for you to consider the original tortfeasor's worldly circumstances, financial status, assets, insurance coverage, ownership, or other interest in real and personal property and the like to determine the ability of the original alleged tortfeasor to satisfy, in whole or in part, what has been determined to be the plaintiff's damages. It is this latter amount of money that determines the financial liability and responsibility of the defendant, assuming professional negligence has been determined.

Riddle v. Driebe, 153 Ga. App. 276 (1980)

62.500 Consent to Injury

(See 62.510–62.520.)

62.510 Consent to Injury; Generally

As a general rule there can be no tort or legal wrong committed against a person consenting to it, if that consent is free and not obtained by fraud and is the action of a sound mind.

(The following sentences of this charge should be given only if applicable to the facts.)

The consent of a person incapable of consenting, such as a minor, may not affect the right of any other person having a right of action for the injury.

O.C.G.A. §51-11-2

62.520 Consent to Injury; Railroads

No person shall recover damages from a railroad company for injury done to oneself or one's property when the same is done by one's consent.

O.C.G.A. §46-8-291

62.600 Strict Liability in Tort; Products Liability

(See 62.610–62.680.)

62.610 Strict Liability in Tort; General Explanation and Burden of Proof

The plaintiff, *(plaintiff's name)*, contends that he/she was injured because of a defective product manufactured by the defendant, *(defendant company's name)*.

The manufacturer of a product that is sold as new property may be liable or responsible to any person who is injured because of a defect in the product that existed at the time the manufacturer sold the product. However, a manufacturer of a product is not an insurer, and the fact that a product may cause an injury does not necessarily make the manufacturer liable. To recover damages under this rule, a person injured by an allegedly defective product must establish the following three elements by a preponderance of the evidence:

1) the product was defective,
2) the defect existed at the time the product left the manufacturer's control, and
3) the defect in the product was the proximate cause of the plaintiff's injury.

(Choose appropriate defect[s] the jury will be charged on.)

The types(s) of product defect(s) alleged by the plaintiff is/are a manufacturing defect, a design defect, and/or a defect because of inadequate warning. There is no single general way to define what constitutes a defect in a product. Whether or not a product is defective is a question of fact to be determined by you, the jury, in each case, based on the instruction that I will give you.

O.C.G.A. §51-1-11

Center Chemical Co. v. Parzini, 234 Ga. 868 (1975)

Banks v. ICI Americas Inc., 264 Ga. 732 (1994)

S K Hand Tool Corp. v. Lowman, 223 Ga. App. 712 (1996)

62.620 Strict Liability; Manufacturing Defect; Generally

A manufacturer has a duty to exercise reasonable care in manufacturing a product that is reasonably safe for its intended or foreseeable uses. A manufacturing defect is an unintended

flaw or abnormal condition that occurs during the production of the product that makes the product more dangerous than it would have been had the product been manufactured properly. Such a defect may occur because of the use of shoddy materials, poor manufacturing methods, or other such actions or omissions by the manufacturer. A manufacturing defect may be indicated by comparing the questioned product to properly manufactured items in the same product line.

To conclude that a manufacturing defect exists in a product and that the plaintiff is entitled to recover, you must find by a preponderance of the evidence that

1) the product was defective,
2) the defect existed at the time the product left the manufacturer's control, and
3) the defect in the product was the proximate cause of the plaintiff's injury.

O.C.G.A. §51-1-11

Chrysler Corp. v. Batten, 264 Ga. 723 (1994)

Banks v. ICI Americas Inc., 264 Ga. 732 (1994)

Maleski, *Georgia Products Liability, 2d ed.* (1993 and 1997 supp.)

62.630 **Strict Liability; Manufacturing Defect; Deviation from Design**

A manufacturer has a duty to exercise reasonable care in manufacturing a product that is reasonably safe for its intended or foreseeable uses. A manufacturing defect is an unintended flaw or abnormal condition that occurs during the production of the product that makes the product more dangerous than it would have been had the product been manufactured as specified. A manufacturing defect may be indicated by comparing the questioned product to properly manufactured items in the same product line.

To conclude that a manufacturing defect exists in a product and that the plaintiff is entitled to recover, you must find by a preponderance of the evidence that

1) the product deviated from the manufacturer's intended design or production specifications,
2) that deviation existed at the time the product left the manufacturer's control, and
3) the deviation was the proximate cause of the plaintiff's injury.

O.C.G.A. §51-1-11

Chrysler Corp. v. Batten, 264 Ga. 723 (1994)

Banks v. ICI Americas Inc., 264 Ga. 732 (1994)

62.640 **Strict Liability; Design Defect**

A product may be found to be defective because of its particular design. Although a manufacturer is not required to ensure that a product design is incapable of producing injury, the manufacturer has a duty to exercise reasonable care in choosing the design for a product.

O.C.G.A. §51-1-11

Hunt v. Harley-Davidson Motor Co. Inc., 147 Ga. App. 44 (1978)

Banks v. ICI Americas Inc., 264 Ga. 732 (1994)

62.650 **Strict Liability; Design Defect; Risk-Utility Test and Factors**

To determine whether a product suffers from a design defect, you must balance the inherent risk of harm in a product design against the utility or benefits of that product design. You must decide whether the manufacturer acted reasonably in choosing a particular product design by considering all relevant evidence, including the following factors:

1) the usefulness of the product;
2) the severity of the danger posed by the design;
3) the likelihood of that danger;
4) the avoidability of the danger, considering the user's knowledge of the product, publicity surrounding the danger, the effectiveness of warnings, and common knowledge or the expectation of danger;
5) the user's ability to avoid the danger;
6) the technology available when the product was manufactured;
7) the ability to eliminate the danger without impairing the product's usefulness or making it too expensive;
8) the feasibility of spreading any increased cost through the product's price or by purchasing insurance;
9) the appearance and aesthetic attractiveness of the product;

10) the product's utility for multiple uses;

11) the convenience and durability of the product;

12) alternative designs for the product available to the manufacturer; and

13) the manufacturer's compliance with industry standards or government regulations.

If you decide that the risk of harm in the product's design outweighs the utility of that particular design, then the manufacturer exposed the consumer to greater risk of danger than the manufacturer should have in using that product design, and the product is defective. If after balancing the risks and utility of the product, you find by a preponderance of the evidence that the product suffered from a design defect, then the plaintiff is entitled to recover.

Banks v. ICI Americas Inc., 264 Ga. 732 (1994)

62.660 **Strict Liability; Design Defect; Alternative Design Evidence**

In determining whether a product was defective, you may consider evidence of alternative designs that would have made the product safer and could have prevented or minimized the plaintiff's injury. In determining the reasonableness of the manufacturer's choice of product design, you should consider

1) the availability of an alternative design at the time the manufacturer designed this product;
2) the level of safety from an alternative design compared to the actual design;
3) the feasibility of an alternative design, considering the market and technology at the time the product was designed;
4) the economic feasibility of an alternative design;
5) the effect an alternative design would have on the product's appearance and utility for multiple purposes; and
6) any adverse effects on the manufacturer or the product from using an alternative design.

Banks v. ICI Americas Inc., 264 Ga. 732 (1994)

Wilson Foods Corporation v. Turner, 218 Ga. App. 74 (1995)

62.670 Strict Liability; Design Defect; Compliance with Industry Standards or Government Regulations

In determining whether a product was defective, you may consider proof of a manufacturer's compliance with federal or state safety standards or regulations and industrywide customs, practices, or design standards. Compliance with such standards or regulations is a factor to consider in deciding whether the product design selected was reasonable considering the feasible choices of which the manufacturer knew or should have known. However, a product may comply with such standards or regulations and still contain a design defect.

Banks v. ICI Americas Inc., 264 Ga. 732 (1994)

Doyle v. Volkswagenwerk Artiengesellschaft, 267 Ga. 574 (1997)

62.680 Defect Due to Inadequate Warning

A manufacturer has a duty to give an adequate warning of known or reasonably foreseeable dangers arising from the use of a product. The manufacturer owes this duty to warn to all persons whom the manufacturer should reasonably foresee may use or be affected by the product. A manufacturer's duty to warn may be breached by

a) failing to provide an adequate warning of the product's potential dangers or
b) failing to adequately communicate to the ultimate user the warning provided.

A product, however well or carefully made, that is sold without an adequate warning of such danger may be said to be in a defective condition. If you find by a preponderance of the evidence that the manufacturer did not warn or did not adequately warn when a warning should have been given, then you may find the product to be defective for that reason, and the plaintiff is entitled to recover.

O.C.G.A. §51-1-11

Center Chemical Co. v. Parzini, 234 Ga. 868 (1975)

Chrysler Corp. v. Batten, 264 Ga. 723 (1994)

Wilson Foods Corporation v. Turner, 218 Ga. App. 74 (1995)

62.681 **Duty to Warn; Foreseeable and Unforeseeable Uses**

A product that is safe if used in a normal manner is not ordinarily a defective product. If a person uses a product in an abnormal manner and is injured because of such abnormal use, the manufacturer is not liable for such injury. However, if the manufacturer had reason to anticipate or foresee that the product might be used in this abnormal manner and that such use might result in injury and, knowing these facts, failed to give adequate warning against using the product in this manner, then the manufacturer may be held liable for the resulting injury.

Center Chemical Co. v. Parzini, 234 Ga. 868 (1975)

Wilson Foods Corporation v. Turner, 218 Ga. App. 74 (1995)

Olympia Services Inc. v. Sherwin Williams Co., 224 Ga. App. 437 (1997)

62.682 **Duty to Warn; Open and Obvious Danger**

(The following charge should not be given in conjunction with the design defect risk-utility test charge. Ogletree v. Navistar Int'l Trans. Corp., *269 Ga. 443 [1998].)*

However, a manufacturer is not required to warn of danger that should be known, obvious, or apparent to the user of the product.

Hunt v. Harley-Davidson Motor Co. Inc., 147 Ga. App. 44 (1978)

62.683 **Continuing Duty to Warn**

A manufacturer's duty to warn arises when the manufacturer knows or reasonably should know of the danger presented by the use of a product. Therefore, a manufacturer has a continuing duty to adequately warn the public of defects in a product even after that product has left the control of the manufacturer to be sold or distributed to the consumer.

Chrysler Corp. v. Batten, 264 Ga. 723 (1994)

(Note: In some circumstances, the alternative design evidence charge [62.660] is appropriate in a defect due to inadequate warning case.)

62.690 **Crashworthiness**

Automobile accidents or collisions under ordinary use of an automobile are foreseeable events by an automobile manufacturer. If you find that the plaintiff has proved by a preponderance of the evidence that the automobile in question contained a *(choose appropriate defect[s] on which the jury has already been charged)* manufacturing defect, design defect, or defect due to inadequate warning that was a substantial factor in causing the plaintiff's injuries to be more severe than they otherwise would have been from the accident or collision, then the defendant manufacturer is liable, and the plaintiff is entitled to recover, regardless of who was at fault in causing the accident or collision.

If you find that the injuries suffered by the plaintiff resulted from the combined acts or omissions of two or more defendants, then all the defendants found liable are jointly and severally liable for the injuries. If a defendant manufacturer seeks to limit its liability for the plaintiff's injuries, the manufacturer must prove by a preponderance of the evidence a reasonable basis for attributing responsibility for all or part of the plaintiff's injuries to the effects of the accident or collision and not to any defect found to exist in the automobile.

Polston v. Boomershine Pontiac-GMC Truck Inc., 262 Ga. 616 (1992)

62.700 **Assumption of the Risk Defense**

Every person has the duty to exercise ordinary care for his/her own safety. If a person discovers a product's defect and is aware of the danger but nevertheless proceeds unreasonably to make use of the product, taking a risk which in and of itself amounts to a failure to exercise ordinary care for his/her safety, he/she cannot later hold another person responsible for any injury suffered due to taking such a risk. If you find by a preponderance of the evidence that

1) the plaintiff knew of the danger posed by the defective product,
2) the plaintiff understood and appreciated the risks of that defect, and
3) the plaintiff knowingly and voluntarily exposed himself/herself to such a risk, then the plaintiff would not be entitled to recover, and you would return a verdict for the defendant.

Center Chemical Co. v. Parzini, 234 Ga. 868 (1975)
Sharpnack v. Hoffinger Industries Inc., 223 Ga. App. 833 (1996)
Raymond v. Amanda Co., LTD., 925 F. Supp. 1572 (N.D. Ga. 1996)

62.710 **Assumption of the Risk Defense; Products Liability**

(revised—omits references to ordinary care)

If a person knows of a product's defect and is aware of the danger but nevertheless proceeds unreasonably to make use of the product, he/she cannot later hold another person responsible for any injury suffered due to taking such a risk. If you find by a preponderance of the evidence that

1) the plaintiff knew of the danger posed by the defective product,
2) the plaintiff understood and appreciated the risks of that defect, and
3) the plaintiff knowingly and voluntarily exposed himself/herself to such a risk, then the plaintiff would not be entitled to recover for the resulting injury or damages, and you would return a verdict for the defendant.

Center Chemical Co. v. Parzini, 234 Ga. 868 (1975)
Beringause v. Fogleman Truck Lines Inc., 200 Ga. App. 822, 824 (1991)
Sharpnack v. Hoffinger Industries Inc., 223 Ga. App. 833 (1996)
Raymond v. Amanda Co., LTD., 925 F. Supp. 1572 (N.D. Ga. 1996)

62.720 **Jury Deliberation; Product Defect**

If you find by a preponderance of the evidence that the product was defective when it left the control of the manufacturer and that the plaintiff's injury was proximately caused by that defect, then you would return a verdict for the plaintiff, unless the plaintiff is denied recovery under some other principle of law given to you in these charges.

If after considering all the evidence, you do not believe by a preponderance of the evidence that the product by which plaintiff claims to have been injured was defective when it left the manufacturer's control or that the product was the proximate cause of the plaintiff's injury, then you would end your deliberations; the plaintiff would not be entitled to recover; and you would return a verdict for the defendant.

62.730 **Abusive Litigation**

Any person who takes an active part in the initiation, continuation, or procurement of civil proceedings against another shall be liable for abusive litigation if that person acts

1) with malice and
2) without substantial justification.

O.C.G.A. §51-7-81

The term "without substantial justification" is defined as conduct that is frivolous, groundless in fact or in law, or intended to harass another.

O.C.G.A. §51-7-80

62.731 **Abusive Litigation; Voluntary Termination**

It shall be a complete defense to any claim for abusive litigation that the person against whom the claim is asserted has voluntarily withdrawn, abandoned, discontinued, or dismissed the civil proceeding, claim, defense, motion, appeal, civil process, or other position that the injured person claims constitutes abusive litigation. Termination of the claimed abusive litigation must occur within thirty days after the mailing of the notice required by O.C.G.A. §51-7-84(a) or prior to a ruling by the court relative to the civil proceeding, claim, defense, motion, appeal, civil process, or other position. This defense shall not apply when the alleged act of abusive litigation involves the seizure or interference with the use of the injured person's property by process of attachment, execution, garnishment, writ of possession, *lis pendens,* injunction, restraining order, or similar process that results in special damage to the injured person.

62.732 **Abusive Litigation; Good Faith**

It shall be a complete defense to any claim of abusive litigation that the person against whom the claim is asserted acted in good faith, provided that good faith shall be an affirmative defense, and the burden of proof shall be on the person asserting the actions were taken in good faith.

62.733 **Abusive Litigation; Successful Claim**

It shall be a complete defense to any claim for abusive litigation that the person against whom the claim is asserted was substantially successful on the issue forming the basis for the claim of abusive litigation in the underlying civil proceeding.

O.C.G.A. §51-7-82

62.734 **Abusive Litigation; Verdict for Plaintiff/Defendant**

Upon your consideration of the case, if you reach the conclusion that the plaintiff(s)/defendant(s) is (are) not entitled to recover, that would be the end of your deliberations, and you should return a verdict in favor of the plaintiff(s)/defendant(s).

62.735 **Abusive Litigation; Damages**

(See section 66.000 et seq. *on tort damages charges.)*

A plaintiff who prevails in an action for abusive litigation shall be entitled to all damages allowed by law as proved by the evidence, including costs and expenses of litigation and reasonable attorney's fees.

O.C.G.A. §51-7-83

62.740 **Negligent Construction**

The plaintiff has alleged that the defendant is liable in damages for negligent construction. I charge you that an action for negligent construction arises when one fails to perform work in accordance with industry standards. From the evidence, you must first determine what the standards of the construction industry are with respect to the improvements made by the defendant for the plaintiff. You then must decide whether the defendant's construction was done in a manner that was in conformity with those standards. If you find that the defendant failed to meet industry standards and that the failure resulted in damages to the plaintiff, you would be authorized to return a verdict for the plaintiff. If you find that the defendant met those standards, your verdict would be for the defendant.

Fussell v. Carl E. Jones Development Co., 207 Ga. App. 521 (1993)

62.750 Duties of Financial Institution Regarding Certificates of Deposit

Any financial institution that receives money from its customers in exchange for certificate(s) of deposit has a duty to issue and/or change the certificate in a manner that complies with the wishes of the customer as long as

1) the wishes of the customer are not contrary to any applicable law and
2) the financial institution is liable to the customer (or a third-party beneficiary) for mishandling the transaction (including improperly advising the customer about how the certificate should be established or changed to comply with the wishes of the customer).

Every financial institution that issues certificates of deposit should be knowledgeable about the applicable laws governing such certificates and should exercise ordinary care in handling its customers' business so that customers' wishes concerning such certificates can be fulfilled to the extent allowed by law.

Tucker Federal Savings & Loan Ass'n v. Rawlins, 209 Ga. 649, 651 (2) (1993)