

DAILY REPORT

Has Trial Bifurcation Made a Difference? Litigators Weigh in on Strategies at Bar Event

By Alex Anteau

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Trial attorneys on both sides of the aisle say certain provisions of Georgia's 2025 Tort Reform Act, like trial bifurcation, are raising new avenues for debate at trial and may not always be a benefit for the defense.

Proponents of the state's tort reform legislation touted the practice as a boon for defense attorneys and insurance companies, but that may not always be the case, two opposing attorneys discussed Friday at a Trial Practice Continuing Legal Education event hosted by the State Bar of Georgia.

Defense attorney Matt Moffett of GRMB and plaintiff's counsel Pete Law of Law & Moran spoke to a group of litigators about their August trial experience under the new rules in a case captioned *Morder v. Porter*. The trial was one of the first to be divided into separate portions for liability and damages since the law went into effect in April, and the attorneys said that there are pros and cons to both sides.

"There's burdens and benefits to bifurcation," Moffett told a group of attorneys at Friday's presentation at the Georgia Bar headquarters



in Atlanta. "It's like law school debt and graduation—one makes you pay, and one makes you proud. So we've got to figure out what works best depending on which side of the 'v.' you're on."

The language of the statute says the liability portion of the trial focuses on who's at fault for the plaintiff's injuries or wrongful death, not the incident that caused them.

Moffett represented the defendant, a deck builder, who was sued by a client who was paralyzed after falling from an unsecured railing. At trial in Cobb County, Moffett said that he focused on the plaintiff's assumption of risk since his client had cautioned the

plaintiff about going out on the deck. The defense attorney said he tried to keep as much information about harm, loss and damages out of the liability portion of the trial as possible; rather, he focused more on contextualizing what happened without overcomplicating things for the jury.

"What these plaintiffs' lawyers do so well is that they focus on my client's bad behavior," Moffett said. "After all that, it would be a huge mistake for me to focus on what a wonderful person my client is."

On the plaintiff's side, Law's client sustained memory loss after falling through the unsecured railing, and Law had to explain to the jury why his client couldn't answer questions about what happened. Even though Law and Moffett said they discussed the issue with Cobb County State Judge Allison Salter extensively before trial, debate over what information was and wasn't appropriate was a hot-button issue through the closing arguments of the liability portion of trial.

The parties delivered closing arguments on a Friday. Moffett told the jury that their service would conclude, and they wouldn't have to return to court the following week for the damages portion if they found that the parties had shared responsibility.

Moffett's opposing counsel Law said that he expected bifurcation to throw a wrench into the plaintiff's trial strategy, and it all culminated with this moment.

"I kept saying to [Salter], '[The defense is] trying to stretch it until we get to the end on Friday. So that on Friday, [Moffett] can just tell the jury: 'If you find for us, you can go home, and you're done with this case,'" Law said on Friday.

"It was so effective, I almost feel like I have PTSD from listening to it again," Law's co-counsel Mike Moran said during the presentation. "I was like, 'Golly, he's making it so easy for [the jury to find in his favor.]'"

The parties settled before the jury could return a verdict on liability.

Attorneys are still getting a feel for what works or what doesn't in bifurcated trials. There are still a lot of unknowns, particularly when it comes to the kind of evidence parties are allowed to submit during the liability stage of a trial. Until there are appellate decisions or additional legislative guidance on how to navigate these challenges, Law said litigators are facing these questions head-on through pretrial motions.

"It's all about discretion, I think, at this point," Moffett said.