

Regulatory Oversight Podcast**Understanding Georgia's Civil Justice Climate With Commissioner John King****Host: Stephen Piepgrass****Guests: David Dove and John King****Aired: January 8, 2025****Stephen Piepgrass:**

Welcome to another episode of *Regulatory Oversight*, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity. I'm Stephen Piepgrass, one of the hosts of the podcast, and the leader of our firm's Regulatory Investigations, Strategy + Enforcement Practice Group. This podcast features insights from members of our practice group, including its nationally-ranked state attorney's general practice, as well as guest commentary from business leaders, regulatory experts, and current and former government officials. We cover a wide range of topics affecting businesses operating in highly-regulated areas.

Before we get started today, I want to remind all our listeners to visit and subscribe to our blog at [RegulatoryOversight.com](https://www.regulatoryoversight.com) so you can stay up to date on developments and changes in the regulatory landscape. Today, my colleague, David Dove, is joined by Georgia Insurance and Safety Fire Commissioner, John King, to discuss his office's role and the recent report released on the data analysis for the Tort Reform Act, which requires insurance companies, rating organizations, and state agencies to collect data on Tort claims to identify how Tort-related risks impact insurance premiums.

David is the leader of our firm's Regulatory and Economic Investment Practice in Georgia, and counsels clients on a range of legal and public policy matters. David's experience is Executive Counsel to Georgia Governor, Brian Kemp, Interim Director of the Georgia Environmental Protection Division, and Lead Attorney in Georgia's Tri-State Water Wars, has enabled him to gain deep insights into the legal, political, and governmental systems that affect the business community in Georgia.

Commissioner King was appointed by Governor Brian Kemp in 2019, becoming the first Hispanic statewide official in Georgia history, and was then elected to a full four-year term in November of 2022. Commissioner King's office is responsible for licensing and regulating insurance companies, investigating insurance fraud, and conducting building inspections to prevent fires. John brings a wealth of experience from his distinguished career in law enforcement, including his tenure as chief of police for the city of Doraville and his service with the Atlanta Police Department.

John and David, I know we are all looking forward to your conversation.

Regulatory Oversight Podcast**Understanding Georgia's Civil Justice Climate With Commissioner John King**

David Dove:

Well, Stephen, thank you so much for that intro. Commissioner John King, insurance commissioner for the state of Georgia, thank you for joining us today.

John King:

Thank you, David. I appreciate the opportunity to be here with you and to communicate with your audience.

David Dove:

Yes, sir. Now, we are glad to have you on. We have listeners all across the country, and this might be one of the first times that our listeners are getting introduced to you. If you don't mind, why don't you tell us a little bit about your background? How you became insurance commissioner in Georgia?

John King:

Well, thank you so much. It's quite a funny story. I don't come from – troubled agency, and get it back to serving the people of the state of Georgia. In the meanwhile, I had to run for statewide office, which was quite a fascinating adventure. And I'm honored to receive majority of the votes in Georgia for being an insurance commissioner.

In the meanwhile, we tackled on some big challenges. Redoing our state, getting out of the Affordable Care Act out Washington and bring in a marketplace to Georgia that we run to make sure that every Georgian has access to affordable health care coverage. And, also, started tackling these abuses in our civil justice forums. And so, this is one of the areas that I've become very passionate because so many of my soldiers trying to start small businesses couldn't afford coverage, and a lot of it is because the state play in Georgia in our civil courts.

David Dove:

Well, that's really fascinating. I mean, thinking about your responsibilities as insurance commissioner, obviously, you're overseeing the insurance market. You're regulating that market for consumers in Georgia. But it's not necessarily common that you see an insurance commissioner that all of a sudden is put to the forefront of a policy conversational Tort reform.

And so, how to tell us a little bit about how you wound up with that responsibility? The legislature passed, House Bill 1114 last year. And then, all of a sudden, your office is charged with what? I mean, it sounds like you kind of got thrust into the middle of this conversation.

John King:

Unfortunately, Governor Brian Kemp is getting the habit of giving me a very tough assignment. It started with COVID, fixing a troubled agency, and now getting involved in the discussion on Tort

reform. As I traveled around the state, not only campaigning, but also doing my job and listening to consumers, I was made aware very quickly that we were in trouble.

This conversation started with commercial auto coverage. Our trucking insurance was in a deep crisis. We raised this issue. I discussed it with the governor. And talked to many legislators. And the legislature had no appetite to really touch this. They didn't think it was a problem.

I embarked then on a strategy of describing to legislators and to anybody that would listen to me that we were in a crisis. That coverage was being – the market as inflation has kicked in into our nation, started becoming tighter and tighter and tighter. And many carriers were just deciding not to market products in our state.

And so, when I started talking to the fellow insurance commissioners in our region in the Southeast, I realized that the experience in those states was unlike Georgia. People were choosing to go to Tennessee, choosing to go to Alabama, choosing to go to South Carolina, and even Florida. I was given the data that said, "Look, it's too risky to do business in Georgia."

And so, every policy that we're selling we automatically have to park a bunch of money because we know that, if we have a claim, it's going to exceed the limits of that policy. And so, companies are voting with their feet. They're deciding that they're just not going to do business in Georgia. Here we have major carriers started not leaving the state but just not renewing their policies. And that was an indicator.

And so, then I went and talked to the legislature, talked to the governor and told them, "Look, guys, I am not an insurance guy. I'm not trying to protect insurers. My job is to make sure that we have a stable market and a market that will continue providing services to an industry that needs somebody to manage risk for them." And so, the viability of the market and the stability of the market is my key concern. And we have companies like they're doing in, for example, California, leaving that marketplace. That is a dangerous signal for all of us to pay attention.

And so, the governor and the legislature passed a bill tasking me to go and gather data, empiric data under my authority that I could request this data. And insurance companies have to provide that data. And to start doing this analysis of where the market was. What is the cost of litigation? And how is that affecting our market? And ultimately, the price the consumers are having to pay for the products that they're purchasing.

And so, we published that. And I was very deliberate about how we published that. I wanted to have a solid, scientifically, actuarially sound methodology, but also not back the governor or the legislature into this is what you have to do. I wanted to create a manual of options that they could choose from to affect because I knew this task is too big to try to do in one year.

And so, the strategy is to take small bites at this and to go for the most value where the governor and legislature want to put priorities, there's a number of menu items available to tweak and to reduce that risk to encourage companies to continue providing coverage at an affordable rate.

David Dove:

That's a really good point from your perspective as being the regulator for the insurance market. That's one of the challenges where you see states address civil justice reform in this type of context. There's very limited data that comes from the marketplace. But you as the insurance commissioner, you sit in the position of being the regulator and having to review that information and then also being able to see how that's affecting Georgia consumers. That's a really interesting point.

When you prepared the report in response to House Bill 1114 to kind of look at where the Tort conditions are in Georgia, where the insurance market is in Georgia, how did your office take that information and translate that into results that can be used by policymakers?

John King:

Well, great question, David. One of the issues that I wanted to make sure that whatever conclusions we found and we published that they were defensible. First of all, we went and engaged a number of companies that bring – get data from insurance companies under our authority. They do the analysis. And then we went and engaged a couple of agencies outside of that initial company to verify that the work was actuarially sound.

And so, because we knew that a number of people were going to be looking at this. Some of them friendly. Some of them not so friendly. But they had to resist close examination and they had to make sure. Because, obviously, the reputation of our agency, it's pretty important. And I want to make sure that whatever conclusions or whatever results of this analysis drives good policy. It's not just I'm giving the legislature and the governor or one bad option. That was not acceptable from my perspective.

David Dove:

We all certainly found some very interesting results through this report. I mean, just looking into the findings, for one, the top line of insurance claims found that there has been an increase of nearly 25% in claims from 2014 to 2023. That seems shocking. Was that shocking for your office?

John King:

I expected it to be high. I did not expect it to be that high. And the challenge here, David, and to your audience is that the problem is, is that we have a narrative challenge. And then this is what I've always described. Insurance was always designed to give people's lives back, to give people back on their feet, to make them whole, to repair damages, to deal with medical conditions. It was never designed to be the lottery. And that's what right now the narrative – you see the outdoor advertisements, you see is it projects this idea that if you get injured in an accident and you initiate a claim, you won the lottery. It's not just that attitude. That narrative is not sustainable for any democracy, for any state. And what happens is, insurance companies start retracting out of the market because of that risk.

David Dove:

To that point about that, your report also found some really interesting things as it relates to the severity of claims. I guess for our listeners that aren't familiar with that, how many claims are reaching policy limits? And there was a big disparity in the number of legal claims versus non-legal claims. So that being claims where lawyers are involved versus where lawyers are not involved, I believe the number was 66.2% or likely to be a policy limit claim if a lawyer was involved.

John King:

Well, and insurance companies set aside that money to the policy limits. But when these claims exceed the policy limits because of the technicality in the filing on the courts. Or an injury – the amount of the claim, for example, for injuries gets called to a very excessive amount that is not founded on actual – we understand as insurance regulator of our state, we know what a broken arm costs to repair in Metro Atlanta, in the south part of our state. We have an old payer's database that helps us determine that. Well, that is not used, and that's one of the recommendations that we have is that's not used right now in our civil process when we have court hearings. An attorney can pull a finger out of the top of his head not founded with actual real cost of what a medical procedure that they're claiming. Those are one of the recommendations.

Especially when we talk about phantom damages, they need to be founded on some form of reality, a neutral database. And that's where the old payer's database is a recommendation as a potential place to go to at least start the negotiations with a real number, not a number that's just pulled out of thin air.

David Dove:

What do you think is driving those claims? I mean, in addition obviously to the medical bills that are digitally at stake and say a personal injury type claim, is it contingency fees? Is it anchoring? Are there other things that are kind of driving that in Georgia more so than in other states?

John King:

All of those. And then some. For example, we have a challenge right now with litigation financing where groups, not only outside of Georgia but international conglomerates, are coming in and investing and looking for those because they know the juries are very – we've found, for example, Metro Atlanta juries will hear about an outrageous award in a county in another metro area.

Well, artificially, what we've seen is that these juries want to match another jury on another jurisdiction. And so, that's where we have a jury shopping. Basically, moving from jurisdiction to jurisdiction. So it could be most advantageous. I'm concerned about the non-disclosure of litigation financing entities because the concern there is that the person filing the claim is the last one that gets paid. Everybody else gets paid. And, of course, the returns are averaging around 27% or higher.

David Dove:

That's a really good point. And for all listeners that may not know about what third-party litigation financing is, I mean, it's essentially commercial lending in a litigation context, right? I mean, you have lawyers that are lending money to other lawyers to help finance these claims when otherwise there may not be an incentive to go to trial. Is that essentially what you're seeing?

John King:

That's exactly what we're seeing. And so, when the first thing you hear is not an investigative report of the incident is, "I want to know what your policy limits are first." And with that being used to shop around a case in the contingencies and, of course, the referrals. The lack of disclosure. In the federal rules, you have disclosure requirements. But in the state court system, there's no disclosure requirements. And so, that's concerning. That is adding an unfair situation.

And, of course, we have, again, the narrative of most people think that you're so in an insurance company or there's an insurance company involved, they have deep pockets. Not realizing that once an award is made, those costs get passed on to the consumers in the form of higher rates. And so, we are the deep pockets of insurance companies. There's no magical place where somebody can go and then get a bunch of money.

David Dove:

That's a really good point. I mean, in looking at all of these kind of things that you've seen through your analysis, I mean, one of the broad takeaways about where we are in terms of the problems in the Georgia insurance market? From a global perspective, is the regulator, the top state official looking at this? Where are our pitfalls? Where are our problems?

John King:

Well, that's a great question. That's really the bottom-line question, is the effects on the market are severe. It is not sustained. Well, Georgia will not continue being the number one state to do business unless we take some prudent corrective action. Now, as an elected official, I'm very sensitive to the fact that everyone deserves their fair day in court. Absolutely, that is sacred. But the conditions that we find today are making that not a reality.

And so, what happens is we have folks, a small group of law firms are taking a lot of advantage of this. It was happening as the market is retracting. A good example, premise liability. The folks that are getting the hurt the most is small convenience stores and the poor parts of our state where we desperately need those activities to be taking place. Because we're creating food deserts because people can't afford to assault them battery coverage for a small convenience store in a poor power town. Well, people can't just go into the car or public transportation to go buy their groceries.

And so, that's my pitch to the legislators is to pay attention to this because the effects are small trucking companies. The average cost of trucking insurance for logging company is \$17,000.

That's on top of a lease for a tractor. If you're a young veteran trying to start a trucking company, that's impossible. There's no way you can meet that.

We're seeing the effects of this also on our medical professions. OB/GYN practitioners, they're literally choosing not to come and practice that type of medicine in Georgia because the coverage, the malpractice insurance for OB/GYN doctor starts at \$100,000 out of their pocket. And so, they're choosing to go to Tennessee. They're choosing to go to South Carolina or Florida. And, of course, we have a crisis in our state on having providers, especially providing services across the state, not just in the metro area.

We're having a crisis right now in church insurance. Insurance companies are saying we're not going to cover because of the premise liability challenges. And so, we have churches now are struggling to find coverage. And we had a small hospital in North Georgia that did away with their neonatal practice. And that reduced their coverage dramatically so they can keep the hospital open. But what happens is that that's pushing that demand for those services to the regional hospitals and to the Metro Atlanta hospitals.

A governor and I had a series of conversations across the state. And what we're seeing is the doctors are practicing defensive medicine. They're ordering two and three tests of the same thing because they're terrified of being brought into litigation. Well, that's driving the cost of medical coverage across our state, and it's not sustainable. And it's all because of the current state and civil litigation.

David Dove:

Well, that's really fascinating, because think about all these different areas of the market you just talked about. And from a consumer's perspective, from someone that's not paying attention to what's going on with the civil justice system, you don't necessarily think of those things being related. Your hospital's limiting coverages. You've got fewer businesses starting in your community. There's all types of different ways in which this is impacting Georgia business owners, Georgia consumers, Georgia citizens.

I mean, just listening to you lay all that out, I think most people would not appreciate how all of that integrates together to affect the economy. I don't want to paint the picture that the sky is falling from your report. Because not only did you kind of highlight some of these areas of concern, you also provided a lot of solutions that the legislature can look at.

John King:

And that's what we wanted to provide. We want to provide options. First of all, the legislature and obviously the governor will have to focus on what area they want to focus on. And there's a list of possible – unfortunately, David, these solutions are not going to translate into immediate rate decreases overnight. This is going to take – the market, we didn't get like this overnight. And this is not going to get fixed overnight.

What we're doing is also going around Georgia and talking to rotaries, to chambers of commerce, because there's a hidden tax that every Georgia consumer is paying as a result of

the current status of our civil process right now. There's a hidden tax on every package that you are receiving on Amazon. There's a hidden tax added on because of the cost of transportation, the motor carrier, the commercial trucking company that brought that product to your home. And so, we're all paying as a result of this.

And so, it's important to have a thoughtful and respectful conversation about what are the levers that we could pull. Because I'm concerned also over-corrected. And that's one of the things that I've offered to my friends in the bar. We need to have a thoughtful conversation. We know that not everything is going to be acceptable, but we need to have a realistic conversation instead of kicking the can down the road for another year and not do anything about it.

David Dove:

Well, I don't want to put you on the spot. But, I mean, given that a lot of these are in the report that your office put together, I mean, if you had to pick the top two or three or four issues that really need to get addressed in terms of stemming the tide of the impact of this on Georgia's economy, where would you start?

John King:

I think the easiest one is probably offending damages because we have a database that covers many of those data points. That is a neutral data point. And the impact to our underservice communities is probably tremendous liability. I think we need to take a hard look at those two. And then adjust as we go. But we're not going to see overnight results in that. I need to make sure that if we have an expectation management that this is not going to be solved overnight.

David Dove:

Well, that's a really good point. I think most people, you think about laws when they get passed, right? You change the traffic law. All of a sudden, that traffic law is going to have an impact on how you drive to work the next day after its passage, right? With these things that are regulating market conditions, it takes time to bake in. It takes time for the positive financial impact to be felt by consumers.

And so, today, I think that's a really good point. Because I do think most people, when they think about this type of civil justice issue, they think about really the nuclear verdicts, right? To the extent that people are paying attention to this, it's, "Oh, my gosh, we just saw where hundreds of millions of dollars were rewarded by a jury on a product's liability claim or something like that." Any thought on how to limit nuclear verdicts moving forward? Was that a part of your report?

John King:

As a non-lawyer, the easy part would be saying put some caps. But I know that the courts have eroded those over the years. And David, I also want to make sure that people don't realize this is just a lawman and a soldier beating up on the bar. Insurance companies sometimes misbehave. And so far, I've sanctioned insurance companies now. I think we're up to \$23 million

in fines across the state for companies when they break the rules. There's a rule from this office to hold companies accountable when they break the rules. And there's consequences to that as well.

And so, we try to be the neutral party that my job is to direct traffic, to keep commerce flowing. And when somebody breaks the rules, sanction them, correct it, and get them back into providing that coverage that all Georgians desperately need.

I think the biggest challenges do small adjustments, but meaningful adjustments to our civil process in our courts without overcorrected. Because I'm concerned obviously about overcorrecting and making it too advantageous for insurance companies. And then, ultimately, the consumer gets harmed.

David Dove:

Well, you and your office are doing tremendous work on behalf of Georgia consumers. And I know your schedule is incredibly busy. I appreciate you taking the time to talk with us today and to educate our listeners on this report and what's going to be coming down the pike in Georgia over the next couple of months hopefully to create an even better business environment here. Commissioner, I want to thank you for being on with us today and thank you for taking the time.

John King:

Thank you, David. I really appreciate the opportunity to share our thoughts. I really invite your audience to look over the report, look at the findings, look at the recommendations. And if there's any feedback, please share it with us because it's important. We understand that this is a very – we're going to be conducting. We looked at passenger and commercial model really hard. In the next couple of sessions, we were going to continue doing this data call so we could continue doing the analysis and then offer recommendations to the legislature or where else to move to or to adjust the current process in the legislation.

David Dove:

Well, that's great. And just so our listeners know, where can they find a copy of the report?

John King:

On our website. It's readily available on our website. And if there's any questions, reach out. You know how to track me down, David.

David Dove:

We do. Yes, sir. Yes, sir. Well, commissioner, thank you for being on today. Thank you for taking the time to talk with our listeners about this. And appreciate all the work you and your office do for Georgia.

John King:

Thank you so much. I appreciate you and your audience.

Stephen Piepgrass:

Thank you, John and David, for this insightful discussion. I'm sure our listeners also enjoyed your conversation. And thank you to our audience for tuning in. Remember to subscribe to this podcast through Apple Podcasts, Google Play, Stitcher, or whatever platform you use. And we look forward to having you join us next time.

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