

Biggest Georgia Decisions Of 2021

By **Rosie Manins**

Law360 (December 17, 2021, 1:49 PM EST) -- Georgia's top judges this year saddled Alston & Bird LLP with most of a seven-figure legal malpractice judgment even though it was only found partly responsible for the issue and, in another case, scrapped four decades of precedent to restore an \$18 million verdict for a seriously injured tractor driver.

The Georgia Supreme Court also upheld the state's nearly 30-year-old jurisdiction rule that companies registered in Georgia can be sued there, sending a message to the business community that the Peach State's courts have a broad reach.

Here, Law360 delves into a few of the biggest Georgia decisions of 2021.

Justices Tighten Apportionment Law

In the Alston & Bird ruling in August, the court **tightened** the scope of Georgia's 16-year-old apportionment statute, holding that damages cannot be divvied up based on percentages of fault in single-defendant cases.

It meant Alston & Bird had to pay the bulk of damages from a \$1.7 million judgment despite being found liable for a third of the harm, because it was the only defendant in the case.

Many Georgia litigation attorneys say the decision will have wide-ranging implications in tort and other civil cases, encouraging plaintiffs to only target the defendant with the deepest pockets, and making it difficult for such entities to avoid being lumped with the penalties associated with the fault of others.

"Plaintiffs now have more power over solvent defendants who share liability," Donald P. Boyle Jr. of Continuum Legal Group LLP, an Atlanta litigation partner, told Law360. "Other things being equal, a plaintiff may decide to sue a single defendant, who will not be able to reduce its liability under the apportionment statute."

Alston & Bird had **tried** to reduce its share of the \$1.7 million judgment, unwilling to pay more than 32%, which is the degree to which the jury found it liable for the injury caused to a family asset company while it represented the company's former manager as he embezzled significant funds. The former manager was not a party in the case, but was assigned 60% of the blame.

The court held that Alston & Bird had to cover 92% of the judgment, because it was the only defendant in the case, in which the plaintiff company was assigned 8% of the fault. It affirmed a May 2020 **holding** by the Georgia Court of Appeals, that the apportionment law only applies in multi-defendant cases.

Christopher B. Freeman, a litigation shareholder at Carlton Fields in Atlanta, told Law360 the decision is a game-changer. Freeman said in the years since Georgia's apportionment statute was enacted in 2005, defendants have regularly filed notices of non-party fault in an effort to reduce their damages, in both single and multi-defendant cases.

"This was a common practice in civil litigation, particularly in cases with high exposure," he said. "[The decision] certainly increases the likelihood that a defendant, particularly a large corporate defendant, could be subject to a high-dollar verdict for which it bears sole responsibility."

Freeman said the decision could also determine whether cases are brought in state or federal courts. Often, plaintiffs name individuals or smaller companies as defendants alongside large corporate targets, in order to keep their case in a state court, he said.

"If these types of defendants are no longer being named in an effort to avoid the potential of some portion of a verdict being against a non-party and, thus, uncollectible, it will likely lead to an increase in cases being heard in federal court, which is typically viewed as being more defense-friendly," Freeman said.

Rocco E. Testani, co-head of global litigation at Eversheds Sutherland in Atlanta, said the justices' opinion greatly dilutes, if not eliminates, the practical ability to apportion damages. He said deep-pocket defendants are commonly sued over harm predominantly caused by "essentially judgment-proof" individuals or entities with limited assets or insurance.

"It's not much comfort if you're the deep pocket who doesn't bear a lot of responsibility," Testani told Law360. "You're in a tough position. Instead of being held liable for the damages that you're responsible for, you're going to be held responsible for whatever damages that a jury concluded the plaintiff is entitled."

For plaintiffs, there is some risk associated with naming a single defendant and putting all their eggs into one basket, which is something defense attorneys acknowledge. But Testani said in most cases, plaintiffs are able to identify at the front end which defendant they are mostly looking to recover a judgment from.

Testani said the decision ultimately goes against the basic principle of the apportionment statute, that a defendant only pays for the degree of fault they have, and not for the harm caused by another.

"This decision creates a significant exception to that by saying that rule doesn't apply in single-defendant cases," he said. "So in essence, that single defendant is essentially jointly and severally liable for the damages that the plaintiff suffered."

Frederick "Rick" N. Sager Jr., a civil litigation partner at Weinberg Wheeler Hudgins Gunn & Dial in Atlanta, told Law360 the ruling also undermines the fairness and equity that Georgia courts have seen since the apportionment statute was implemented.

"I think we're going to have a lot of single defendants having to pay far more than their fair share going forward," Sager said. "Obviously, this is going to be the subject of a lot of debate, a lot of lobbying at the legislative level early next year."

The case is Alston & Bird LLP v. Hatcher Management Holdings LLC, case number S20G1419, in the Supreme Court of Georgia.

Georgia Retains Broad Jurisdiction

In September, the Georgia justices **declined** to overrule a nearly 30-year-old precedent granting state courts jurisdiction over companies registered to do business in the Peach State, despite acknowledging that might be in tension with current trends at the U.S. Supreme Court.

They allowed a Florida resident to sue an Ohio-based tire manufacturer in a Georgia state court over a crash that occurred in Florida, involving a vehicle purchased six weeks prior at a Georgia dealership by a Georgia resident.

Cooper Tire & Rubber Co. **sought** dismissal of the case on the basis it lacked jurisdiction in Georgia, but the Georgia Supreme Court affirmed its holding in a 1992 case, Allstate Insurance Co. v. Klein, that a foreign corporation's registration to do business in Georgia makes it a resident there for jurisdiction purposes.

Boyle said it's possible the tire company will petition the U.S. Supreme Court for review, having obtained a stay of remittitur in the case to halt the Georgia Supreme Court in sending it back to the trial court.

"This case may discourage foreign corporations from registering to do business in Georgia if they are not actually operating here," Boyle said. "If they do not register, they can still contest general personal jurisdiction. Arguably, this is not what Georgia public policy would want."

Douglas A. Henderson, a trial and global disputes partner at King & Spalding LLP in Atlanta, said while jurisdiction may not be the most exciting topic, it is a fundamental aspect of litigants' day-to-day practice, and that is why this case is important.

Though the ruling may not mirror how other states or federal courts view jurisdiction, it holds true to Georgia precedent, Henderson told Law360.

"The court said, 'We've had this [rule] for 30 years in Georgia, and we're gonna stick with it,'" he said. "It's very specific to Georgia, but it could have fundamental effects."

Sager said a concurring opinion in the case from Justice Charles J. Bethel suggested that Georgia's jurisdiction rule is likely to at some point be found inconsistent with federal due process requirements. Sager said Georgia is among the states deemed to be difficult on defendants in civil lawsuits, and the ruling means some companies will be reluctant to register in Georgia.

"It's something they should think about," he said. "Certainly for corporations really not doing any business in Georgia."

The case is Cooper Tire & Rubber Co. v. McCall, case number S20G1368, in the Supreme Court of Georgia.

No Appeal Without Trial Objection

In May, Georgia justices **overruled** four decades of rulings that had allowed parties to appeal alleged violations of orders limiting what evidence can be presented at trial even if litigants didn't object to those violations during the trial.

The practice had essentially allowed attorneys to stay quiet through trial and then raise fresh objections on appeal if a verdict didn't go their way.

In Williams v. Harvey et al., the Georgia Supreme Court restored an \$18 million verdict for a man seriously injured in a tractor crash, reversing an intermediate appellate **ruling** that his attorney violated an in limine order by unfairly inflaming the emotion of jurors during closing arguments.

The justices called for a shift away from a line of precedent starting in 1979 that allowed appeals based on in limine violations even without a contemporaneous objection at trial.

Many Georgia attorneys agreed litigants should not be allowed to sit quietly through closing arguments and then object for the first time on appeal.

Elissa Haynes, chair of the appellate group at Drew Eckl & Farnham LLP in Atlanta, told Law360 the ruling provides clarity and will force litigants to be more careful when writing motions in limine. It might also encourage trial attorneys to engage help from appellate lawyers in dealing with such motions, she said.

The objection issue had repeatedly been before Georgia appellate courts, and it was helpful to get guidance from the state Supreme Court on how to handle it, said Frank M. Lowrey IV, a partner at Bondurant Mixson & Elmore LLP in Atlanta who helped represent the plaintiff in the case.

Lowrey told Law360 the old practice had created unnecessary retrials and that Georgia trial judges will generally be pleased it is over.

"To me, it makes all the sense in the world," he said. "Defense lawyers may feel that they have been put in a slightly more difficult position, but in my view, it is a position they should have been in all along."

The case is Williams v. Harvey et al., case number S20G1121, in the Supreme Court of Georgia.

--Editing by Michael Watanabe.