



Supreme Court of Georgia Rules Apportionment to Nonparties Does Not Apply in Cases With One Defendant

On Aug. 10, 2021, in *Alston & Bird v. Hatcher Management Holdings, LLC*, the Supreme Court of Georgia ruled that the portion of Georgia's apportionment statute, O.C.G.A. § 51-12-33, providing defendants the ability to reduce their damages through apportionment to nonparties does not apply in cases where there is only one defendant. The applicable statute was enacted as part of the Tort Reform Act of 2005, which abolished joint and several liability in Georgia. Among the provisions in that statute is subsection (b), which authorizes a defendant to seek apportionment of damages based on the percentages of fault of people or entities other than the plaintiffs and the defendants. Specifically, subsection (b) allows a defendant to limit its damages by only paying its percentage allocation of fault and apportioning damages to other defendants and nonparties. This is permitted whether the identity of the nonparty is known or unknown, and it is achieved through the timely filing of a Notice to Apportion Nonparty Fault.

Since the enactment of O.C.G.A. § 51-12-33, defendants in Georgia cases have regularly filed notices of apportionment and reduced their damages based on the fault of others. This has been true in both cases with one defendant and cases with many defendants. However, moving forward, only defendants in multi-defendant cases will be able to apportion damages to nonparties. This decision is based on specific statutory language in subsection (b), which states it applies in cases "brought against more than one person." This language is in contrast to language used in other subsections, which provides that they apply in cases "brought against one or more persons." Despite being 15 years old, the specific interpretation of this phrase had not previously been raised before the Supreme Court of Georgia. In the court's decision, they were clear their decision was based on the rules of statutory construction.

This decision does not impact the determination of a plaintiff's percentage of fault and all defendants are still entitled to reduce their damages by the percentage of fault a jury attributes to the plaintiff. However, unless and until the Georgia Legislature decides to revisit the wording of O.C.G.A. § 51-12-33(b), a single-defendant will not be permitted to further reduce its financial liability for damages by apportioning fault to nonparties.

If you wish to further discuss this case or have any questions, please contact a Swift, Currie, McGhee & Hiers attorney at 404.874.8800 or via our website, swiftcurrie.com.

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.

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