

## *Bibbs v. Toyota Motor Corp.*

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In *Bibbs v. Toyota Motor Corp.*, No. S18Q0075, 2018 Ga. LEXIS 443 (Ga. June 18, 2018), the United States District Court for the Northern District of Georgia certified two questions to the Georgia Supreme Court:

Under Georgia law, are the damages that may be recovered in a wrongful death action brought by survivors of a decedent limited by a settlement entered into by the decedent's guardian in a previous personal injury suit settling all claims that were or could have been asserted in that suit?

If the answer is yes, what components of wrongful death damages are barred?

The 2018 opinion arises from a 1992 car accident that resulted in Delia Bibbs sustaining a head injury that left her in a coma. Bibbs' husband filed a lawsuit within months after the 1992 accident, seeking to recover damages for her personal injuries. The case went to trial and ultimately settled through a "high-low" agreement. In the settlement agreement Toyota denied wrongdoing and was released from all claims and damages arising from the accident. Specifically excluded from the release was "any claim for Delia Bibbs' wrongful death, inasmuch as [she] has not died and no such claim was made or could have been made in the [personal injury lawsuit]." Two decades later, Delia Bibbs died and her family filed a second lawsuit, this time seeking wrongful death damages for the full value of her life.

The Georgia Supreme Court answered the first certified question in the affirmative, stating damages in a wrongful death action are limited by Bibbs' settlement in the earlier filed personal injury lawsuit. The Supreme Court went on to explain the damages that may be recovered in the later filed wrongful death lawsuit. In a lengthy opinion, the Supreme Court stated:

Having fully settled her personal injury lawsuit, Bibbs is presumed to have recovered the damages she was entitled to receive at that time as a result of her catastrophic physical injury. She was fully compensated under the law for the fact that she was, and would remain for the rest of her life, totally and permanently disabled — just not for the additional fact of her death. Having thus recovered, she was made whole (in the legal sense) and could no longer recover for the economic and non-economic damages stemming from her disability. To hold otherwise would be to allow impermissible double recovery.

The Court concluded that given the catastrophic nature of Delia Bibbs' injuries, the settlement in the first lawsuit addressed the full measure of her economic damages, leaving no economic damages for the wrongful death lawsuit. However, the Court went on to state non-economic damages may be recoverable, as the Court cannot say as a matter of law there is no difference in value between living in a permanent coma and not living at all.

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](http://swiftcurrie.com).

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