



Georgia Court of Appeals Does Not Extend Exceptions to Georgia's Impact Rule

In a pending wrongful death lawsuit arising out of a recreational boat incident on Lake Burton (located in North Georgia), the Georgia Court of Appeals accepted an interlocutory appeal on the issue of the emotional distress claims of three children who witnessed the death of another child in their family. The appeal is captioned *Malibu Boats, LLC v. Batchelder*.

Four children were riding in the bow of a boat driven by their uncle. While the children argued about whether to keep boating or return to the dock, the boat made a circular turn causing it to strike its own wake. Water came into the bow of the boat and up to the children's shins. One child jumped out, two crawled over the windshield towards the back of the boat, and one child was missing.

The boat was put in reverse in an attempt to keep it from foundering. The engine was then stopped and people were yelling about the missing child. Both the boat operator and father of the missing child jumped into the water and found the missing child entangled in the propeller. The other three children had injuries of their own, including a scraped stomach from attempting to get back in the boat, a bruised shin, hyperventilating and vomiting.

The lawsuit involved a variety of product liability claims along with the emotional distress claims of the children. The boat manufacturer moved for summary judgment. On the issue of the emotional distress claims, the trial court denied the motion, finding it was for a jury to decide whether: (1) the children suffered a physical impact; (2) the physical impact caused physical injuries; and (3) the physical injuries resulted in any emotional distress to the children.

In a review of Georgia's impact rule, the Court of Appeals affirmed the trial court's ruling on the emotional distress claims (and agreed it was for the jury to decide whether water in the form of a wake hitting the children constituted a physical impact).

However, the Court of Appeals concluded the trial court was incorrect in suggesting the children may recover emotional damages solely based on the "traumatic scene." In so doing, the Court of Appeals reaffirmed Georgia's adherence to the impact rule, which has three elements: (1) a physical impact to the plaintiff; (2) the physical impact causes physical injury to the plaintiff; and (3) the physical injury to the plaintiff causes the plaintiff's mental suffering or emotional distress.

While acknowledging the harshness of the impact rule, the Court of Appeals restated the only recognized exception to the rule is for certain instances when a parent witnesses the suffering and death of his or her child. For the exception to apply, the parent and child must both suffer a physical impact that causes them both physical injury. The parent will then be authorized to seek emotional damages arising out of his or her own physical injuries along with the mental suffering of watching his or her child suffer and die.

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.

