PUBLICATION

Georgia Supreme Court Rejects Challenge to Apportionment Statute

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On March 23, 2012, the Supreme Court of Georgia rejected one of several challenges to the Tort Reform Act of 2005 (the Act). Specifically, in *McReynolds v. Krebs*, the Court rejected the argument that the Act does not permit apportionment of damages when the plaintiff is not at fault. The Court also made clear that apportioned damages are not subject to any right of contribution, and that for apportionment to apply against a non-party there must be evidence that the non-party is at fault.

Lisa Krebs was riding as a passenger in a General Motors (GM) Chevrolet Trailblazer when the vehicle was struck by a car driven by Carmen McReynolds. Krebs sustained serious injuries in the accident and filed suit against McReynolds and GM, alleging the vehicle's lack of crashworthiness contributed to her injuries. McReynolds filed a cross-claim against GM for setoff and contribution.

While the suit was pending, Krebs settled with GM. GM then moved to dismiss McReynolds' cross-claim. The trial court granted the motion, reasoning that the Tort Reform Act had abolished joint and several liability and replaced contribution and setoff with a process of apportionment of damages among multiple tortfeasors. At trial, the jury found McReynolds liable for Krebs' injuries and awarded $1,246,000 in damages. After the Court of Appeals affirmed the decision, the Supreme Court of Georgia granted certiorari to consider whether the Tort Reform Act requires the trier of fact to apportion an award of damages when the plaintiff is not at fault.

The dispute centered on the wording of subsections (a) and (b) of O.C.G.A. § 51-12-33, which requires apportionment of damages in certain cases. Subsection (a) states that it applies when "the plaintiff is to some degree responsible," but subsection (b) does not. The statute provides:

(a) Where an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault.

(b) Where an action is brought against more than one person for injury to person or property, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the persons who are liable according to the percentage of fault of each person. Damages apportioned by the trier of fact as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.

In a position usually taken by plaintiffs, McReynolds argued that subsection (a)'s limiting language applies to the remaining subsections of the statute and that the entire Code section is inapplicable unless subsection (a) is satisfied. The Court dismissed this argument. In so doing, the Court provided that nothing in the statute suggests that the remaining subsections are dependent on satisfying the limitation in subsection (a). "Damages are apportioned among tortfeasors according to their percentages of fault, regardless of whether the total amount of damages was first reduced under subsection (a) to account for the plaintiff's share of liability." Accordingly, "the trier of fact must apportion its award of damages among the persons who are

liable according to the percentage of fault of each person, even if the plaintiff is not at fault for the injury or damages claimed."

The Court also held that O.C.G.A. § 51-12-33(b) expressly eliminates the right of contribution in cases where damages are apportioned; thus, McReynolds had no claim of contribution against GM. McReynolds was also unable to get a setoff for the amounts paid by GM because she had presented no evidence of GM's liability.

The *McReynolds* decision is an excellent one for the defense bar. It is now settled that apportionment is appropriate even when a plaintiff is not negligent. Defendants pay their fair share of damage awards and no more. Joint and several liability is eliminated, and defendants are free to settle without worrying about subsequent claims for contribution. It is just as clear that the burden rests with the defendant to prove fault on the part of any non-party tortfeasor onto whom it seeks to shift some of the blame.

If you have any questions about this case or Georgia's apportionment statute, please contact the author of this alert or any of our Product Liability/Mass Tort attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Houston, Texas, Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee and Washington, D.C.