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# Commercial Transportation

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## I. INTRODUCTION

Commercial transportation involves all of the significant forms of passenger and freight transportation across the United States. This Article surveys significant judicial, regulatory, and legislative developments in Georgia commercial-transportation law during the period from June 1, 2019, through May 31, 2020.<sup>1</sup>

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<sup>1</sup> For an analysis of commercial transportation law during the prior Survey period, see Madeline E. McNeeley, Yvonne S. Godfrey, T. Peyton Bell, and Stephen G. Lowry, *Commercial Transportation: A Two Year Survey*, 71 MERCER L. REV. 39 (2019).

## II. TRUCKING AND OTHER COMMERCIAL MOTOR VEHICLES

The Georgia statutes governing commercial motor vehicles underwent no significant changes during the Survey period, but a divided panel of the Georgia Court of Appeals issued an opinion that, while only physical precedent, provides an interesting analysis of Georgia's direct-action statutes. Furthermore, the significant practical effects of the novel-coronavirus outbreak on the commercial trucking industry spurred notable emergency responses by Georgia's Executive Branch.

*A. Direct Actions Against Insurers of Interstate Motor Carriers*

In *Daily Underwriters of America v. Williams*,<sup>2</sup> the Georgia Court of Appeals issued an important decision concerning a plaintiff's ability to sue under Georgia's direct-action statutes.<sup>3</sup> The direct-action statutes permit a plaintiff involved in an accident with a motor carrier to sue both the motor carrier and its insurer in the same cause of action, providing an exception to the general rule that a plaintiff may not sue a liability insurer as a defendant in an action against its insured.<sup>4</sup> The question before the court of appeals in *Daily Underwriters* was whether Georgia law permitted the plaintiffs' direct actions against the motor carrier's insurer under O.C.G.A. § 40-1-112(c),<sup>5</sup> which the defendant insurer alleged only permits such suits when the insured is functioning as an "intrastate," not "interstate," motor carrier.<sup>6</sup>

In *Daily Underwriters*, the plaintiffs, Veronica and Marleaux Williams, were injured after a tractor-trailer struck their car. Each brought a separate action, naming the driver of the tractor-trailer, the trucking company that owned the tractor-trailer, and Daily Underwriters of America (Daily Underwriters), the trucking company's insurer. In the complaints, the Williamses cited O.C.G.A. § 40-1-112 as authority for their suits against Daily Underwriters. Daily Underwriters moved for summary judgment, arguing that O.C.G.A. § 40-1-112 permitted direct actions against insurers for intrastate motor carriers only, and therefore precluded suit against it in this case, as its insured was engaged in interstate transportation at the time.<sup>7</sup> The Williamses cited Georgia's other direct-action statute, O.C.G.A. § 40-2-140,<sup>8</sup> in their response as a basis for their suits against Daily Underwriters, and the trial court

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<sup>2</sup> 354 Ga. App. 551, 841 S.E.2d 135, *petition for cert. filed*, (Ga. May 28, 2020).

<sup>3</sup> *Id.*; O.C.G.A. §§ 40-1-112 (2020); 40-2-140 (2020).

<sup>4</sup> O.C.G.A. § 40-1-112(c) (2020).

<sup>5</sup> *Id.*

<sup>6</sup> *Daily Underwriters*, 354 Ga. App. at 552, 841 S.E.2d at 138.

<sup>7</sup> *Id.* at 552, 841 S.E.2d at 137–38.

<sup>8</sup> O.C.G.A. § 40-2-140 (2020).

denied summary judgment.<sup>9</sup> On interlocutory review, the court of appeals affirmed the trial court's order.<sup>10</sup>

Georgia's two direct-action statutes are distinct, but often conflated. The court of appeals began by applying the *in pari materia* principles of statutory construction to construe O.C.G.A. §§ 40-1-112(c)<sup>11</sup> and 40-1-126<sup>12</sup> together.<sup>13</sup> Section 40-1-112(c), the court determined, "expressly allows an injured party to file a direct action against a motor carrier's insurance carrier for causes of action arising 'under this part,' i.e., Title 40, Chapter 1, Article 3, Part 2."<sup>14</sup> Section 40-1-126, meanwhile, states that "[t]he provisions of this part do not apply to purely interstate commerce nor to carriers exclusively engaged in interstate commerce."<sup>15</sup> Thus, the "plain language of O.C.G.A. § 40-1-126 evinces the legislative intent that the direct action provision of O.C.G.A. § 40-1-112(c) does not apply to purely interstate commerce or to a carrier engaged exclusively in interstate commerce."<sup>16</sup>

With this established, the court of appeals went on to determine that the defendant motor carrier was engaged in interstate commerce at the time of the accident, as it was traveling from Georgia to pick up a load in North Carolina that was then to be dropped off in Georgia.<sup>17</sup> This, the court reasoned, evidenced that the trip at the time the accident occurred was one of interstate commerce, and therefore not permitted by O.C.G.A. § 40-1-112(c), the authority cited by the Williamses in their complaints for the direct action against Daily Underwriters.<sup>18</sup> The court of appeals, however, did not end its analysis there.

Rather, the court looked to the direct-action statute cited by plaintiffs in their response to the summary judgment motion, O.C.G.A. § 40-2-140(d)(4).<sup>19</sup> Daily Underwriters argued that the court should not consider this statute as it was cited in a response brief and not the Williamses' complaint.<sup>20</sup> The court disagreed with this argument, stating, "[w]hile it is often good advocacy to cite supporting statutory authority in a complaint, we are aware of no authority for the proposition that such citations are required and the appellant has cited no such

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<sup>9</sup> *Daily Underwriters*, 354 Ga. App. at 552, 841 S.E.2d at 138.

<sup>10</sup> *Id.* at 551–52, 841 S.E.2d at 137.

<sup>11</sup> O.C.G.A. § 4-1-112(c) (2020).

<sup>12</sup> O.C.G.A. § 40-1-126 (2019).

<sup>13</sup> *Daily Underwriters*, 354 Ga. App. at 553, 841 S.E.2d at 138.

<sup>14</sup> *Id.* at 554, 841 S.E.2d at 138–39.

<sup>15</sup> *Id.* at 554, 841 S.E.2d at 139 (quoting O.C.G.A. §40-1-126).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 555, 841 S.E.2d at 139.

<sup>18</sup> *Id.* at 556, 841 S.E.2d at 140.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

authority.”<sup>21</sup> The court determined that Daily Underwriters had adequate notice of the plaintiffs’ claims as alleged in their complaints, and the court would “not allow an overbroad and unduly rigid conception of waiver to lead us to create an idiosyncratic precedent that disregards controlling legal authority.”<sup>22</sup> The court then cited provisions of O.C.G.A. § 40-2-140 that explicitly authorize suit against a motor carrier and its insurer regardless of whether it arose in tort or contract if that motor carrier engaged in interstate commerce.<sup>23</sup> Thus, the court held, the Williamses’ claims against Daily Underwriters were permitted by O.C.G.A. § 40-2-140(d)(4).<sup>24</sup> Notably, Senior Judge Phipps dissented from the majority’s holding as to the § 40-2-140 issue, explaining he would have ruled in favor of Daily Underwriters because citing the statute for the first time in the summary judgment response should not be sufficient to survive summary judgment.<sup>25</sup>

Although this opinion is physical precedent only, it provides important insight into the judges’ views on two important issues of Georgia law: its pleading standards and its contrasting direct-action statutes.

#### *B. Effects of the Novel Coronavirus/COVID-19 Pandemic*

In the wake of the novel coronavirus that became the source of the COVID-19 pandemic in early 2020, many shoppers in Georgia were greeted by empty shelves in their local grocery stores.<sup>26</sup> Many Georgians feared being confined to their homes without vital paper products and food and began to stockpile essential goods.<sup>27</sup> This put a corresponding strain on the local and national supply chains.

In response to the strain on the supply chain, in March of 2020, the Federal Motor Carrier Safety Administration (FMCSA) issued a national emergency declaration to provide hours of service regulatory relief to commercial vehicle drivers transporting emergency relief in response to the pandemic.<sup>28</sup> This is the first time in history that the FMCSA has

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 557, 841 S.E.2d at 141.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 558; 841 S.E.2d at 141.

<sup>25</sup> *Daily Underwriters*, 354 Ga. App. at 559-60, 841 S.E.2d at 142 (Phipps, J., dissenting).

<sup>26</sup> Andy Peters, *Some Store Shelves Quickly Empty but Experts Say It’s Short Term*, ATLANTA JOURNAL CONSTITUTION, <https://www.ajc.com/news/breaking-news/some-store-shelves-quickly-empty-but-experts-say-short-term/2sVSZtLg5fDDPxqFSOfPzO/> (last visited July 17, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> 49 C.F.R. § 390.23 (2020) (Emergency Declaration No. 2020-002, March 13, 2020).

Although federal regulatory changes are technically outside the scope of this Article, this emergency declaration provides important context for the scope of Georgia’s own executive order and the environment in which it was issued.

issued nationwide relief. The declaration provides for regulatory relief for commercial vehicle operations intending to supply: medical supplies and equipment related to testing, diagnosis and treatment of COVID-19; supplies and equipment necessary for healthcare workers; food for emergency restocking of stores; equipment and supplies necessary to establish temporary housing and quarantine facilities related to COVID-19; and personnel to provide medical or other emergency services.<sup>29</sup>

The emergency declaration grants motor carriers and drivers relief from Parts 390 through 399 of Title 49 of the Code of Federal Regulations.<sup>30</sup> In effect, the declaration relaxes the rest requirements found in federal regulations, allowing drivers to be on the road for longer periods of time.<sup>31</sup> Drivers are still required to comply with the rest periods following the completion of the delivery of the essential goods or personnel.<sup>32</sup> The declaration further relaxes the equipment and standards necessary for operating commercial trucks with longer containers and multiple containers and extends the period of time for holders of commercial driver's licenses to renew their licenses.<sup>33</sup>

In Georgia, Governor Brian Kemp issued an executive order on March 14, 2020, that declared a statewide "public health state of emergency."<sup>34</sup> Among other actions, the Order suspended the federal regulations limiting hours of service for drivers of commercial vehicles.<sup>35</sup> Going beyond the federal declaration, Governor Kemp's Order provides that no motor carrier will require or allow an ill or fatigued driver to operate a motor vehicle and requires at least ten consecutive hours off-duty for any driver who notifies a motor carrier that they are fatigued or ill.<sup>36</sup> Governor Kemp's Order also relaxed the restrictions on the maximum weight, height, and length of commercial vehicles operating on Georgia's public highways for the purpose of providing disaster relief and preparation.<sup>37</sup> The executive order extends the maximum weight limit for trucks transporting essential materials on Georgia's roads from 80,000 pounds to 95,000 pounds.<sup>38</sup> As of the time of this writing, these provisions have been extended through August 11, 2020.<sup>39</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 49 C.F.R. § 390.23 (2020) (Emergency Declaration No. 2020-002, March 13, 2020).

<sup>34</sup> Ga. Exec. No. 03.14.20.01.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Ga. Exec. No. 06.29.20.01.

While the relaxation of the federal and state regulations will eventually expire, the COVID-19 pandemic will likely have lasting effects on the commercial motor vehicle industry and the regulation of the industry. It remains to be seen what, if any, impact the relaxation of these regulations have on wrecks involving commercial motor vehicles during the pendency of the crisis and what future impacts will be felt in the litigation of cases arising out of commercial vehicle wrecks and the future of commercial vehicle regulations.

### III. AVIATION

The general framework of aviation law is significantly shaped and determined by federal regulations<sup>40</sup> and, in some cases, international treaties.<sup>41</sup> In fact, the stated intention of Georgia's aviation statutes is "to coincide with the policies, principles, and practices established by the Federal Aviation Act of 1958 and all amendments thereto."<sup>42</sup> As a result, federal courts determine much of the caselaw regulating commercial aviation.<sup>43</sup>

With the impact of the COVID-19 pandemic during the past year, no significant developments in Georgia aviation law occurred as a result of judicial decisions or proposed or enacted legislation. However, on a more positive note, while not having the force of statutory or case law, both the Senate and the House of Representatives of Georgia passed resolutions recognizing the contributions of the Civil Air Patrol to the citizens of

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<sup>40</sup> Robin Lerner, 15 GA. JUR. § 29:25 (2019) ("Federal aviation regulations have been promulgated to regulate virtually every aspect of aviation in the United States; these regulations are duly published in accordance with law in the Code of Federal Regulations, and they have the force of law.")

<sup>41</sup> A United Nations treaty, the Montreal Convention, sets forth uniform rules for claims that arise out of incidents that occur during international air transportation. *See Marotte v. Am. Airlines, Inc.*, 296 F.3d 1255, 1259 (11th Cir. 2002) ("[T]he Warsaw Convention is the exclusive mechanism of recovery for personal injuries suffered on board an aircraft or in the course of embarking or disembarking from an airplane." (citation omitted)); *Espinoza Ugaz v. Am. Airlines, Inc.*, 576 F. Supp. 2d 1354, 1360 (S.D. Fla. 2008) ("The Montreal Convention entered into force in the United States on November 4, 2003 and superseded [*sic.*] the Warsaw Convention.")

<sup>42</sup> O.C.G.A. § 6-2-1 (2020).

<sup>43</sup> However, Georgia courts routinely analyze and consider federal aviation regulations when addressing aviation related issues under state law. *See, e.g., Eagles Jets, LLC v. Atlanta Jet, Inc.*, 321 Ga. App. 386, 398, 740 S.E.2d 439, 450 (2013) (discussing whether the Certificate of Aircraft Registration required by the Federal Aviation Administration (FAA) constitutes ownership of the aircraft for purposes of a contract dispute); *Sky King 101, LLC v. Thurmond*, 314 Ga. App. 377, 724 S.E.2d 412, 413 (2012) (addressing FAA flight procedures and regulations followed by pilots when analyzing whether defendant air transportation company had "control" over a co-pilot sufficient to be considered his employer).

Georgia. House Resolution No. 1342,<sup>44</sup> adopted February 28, 2020, and Senate Resolution No. 863,<sup>45</sup> adopted March 3, 2020, acknowledged the contribution of the Georgia Wing of the Civil Air Patrol, consisting of nearly 1,900 volunteer members in forty squadrons and six groups located throughout the state.<sup>46</sup> Among other things, Georgia Wing members contributed to disaster relief, emergency services, search and rescue, aerospace education, and homeland security, at an estimated value of \$5.8 million worth of volunteer hours in 2019 alone.<sup>47</sup> While not directly pertaining to commercial aviation, the resolutions demonstrate the significant and valuable impact Georgia volunteers have on aviation operations in this state.

#### IV. RAILROADS

##### A. Regulatory Developments

Regulations governing railroads stem mostly from federal legislation, rendering state regulation in this arena a rarity as it is often preempted by applicable federal law. Nevertheless, on May 23, 2019, the Georgia General Assembly adopted the Railroad Track Maintenance Tax Credit<sup>48</sup> as part of the Georgia Administrative Code.<sup>49</sup> The purpose of the regulation is to provide income tax incentives to those who own or lease a Class III railroad, as defined by 49 C.F.R. § 1201,<sup>50</sup> and incur expenditures for the maintenance and improvement of the track.<sup>51</sup> The regulation accompanies O.C.G.A. § 48-7-40.34,<sup>52</sup> which initially became effective on May 8, 2018, in order to “provide[] guidance concerning the implementation and administration of the income tax credit” under the statute.<sup>53</sup>

Pursuant to the regulation, “a Class III railroad shall be allowed a tax credit in the amount of fifty percent of the qualified railroad track maintenance expenditures paid or incurred by such Class III railroad during the taxable year.”<sup>54</sup> The credit is capped, however, and “shall not exceed \$3,500 multiplied by each mile of railroad track owned or leased

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<sup>44</sup> Ga. H.R. Res. 1432, Reg. Sess., 2020 Ga. House J. 1,1.

<sup>45</sup> Ga. S. Res. 863, Reg. Sess., 2020 Ga. Senate J. 1,1.

<sup>46</sup> 2019 H.R. 1342; 2019 S.R. 863.

<sup>47</sup> *Id.*

<sup>48</sup> GA COMP. R. & REGS r. 560-7-8-.64.

<sup>49</sup> *Id.*

<sup>50</sup> 49 C.F.R. § 1201 (2018).

<sup>51</sup> GA COMP. R. & REGS. r. 560-7-8-.64.

<sup>52</sup> O.C.G.A. § 48-7-40.34 (2018).

<sup>53</sup> GA COMP. R. & REGS. r. 560-7-8-.64(1).

<sup>54</sup> *Id.* at 560-7-8-.64(3).



in Georgia as of the close of the taxable year by such Class III railroad.”<sup>55</sup> In order to claim the credit, the regulation initially required an applicant to submit Form IT-RTM through the Georgia Tax Center, but the regulation was amended on November 12, 2019, to revise this provision for a more comprehensive application process.<sup>56</sup> Currently, an applicant must “submit Form IT-RTM, and any other information that the Commissioner may request, with the taxpayer's Georgia income tax return each year the tax credit is claimed.”<sup>57</sup> The credit may also be sold or transferred to one or more Georgia taxpayers, and both the transferee and transferor taxpayer may be structured as pass-through entities.<sup>58</sup> The regulation is applicable to taxable years beginning January 1, 2019, and contains a sunset provision repealing the regulation on January 1, 2024.<sup>59</sup>

While this regulation provides an incentive for Georgia taxpayers who own or lease railroads to maintain their property, it is also a benefit to Georgians as the regular upkeep and improvements of railroad tracks, roadbeds, bridges, and related structures contribute to the overall safety of railroad transportation.

#### *B. Case Law Developments*

The Georgia Supreme Court issued an important opinion during this Survey period regarding the interplay of two federal statutory schemes, the Federal Employers' Liability Act (FELA)<sup>60</sup> and the Federal Railroad Safety Act (FRSA).<sup>61</sup> In *Norfolk Southern Railway Co. v. Hartry*,<sup>62</sup> the supreme court granted certiorari to address, as a matter of first impression, whether a railroad employee's claim under FELA is barred by regulations contained in the FRSA. The case arose after the plaintiff, who was operating a train on behalf of his employer, collided with a tractor-trailer after its driver drove through a railroad crossing while the warning arms were down. The plaintiff, Winford Hartry, along with his wife, sued the owner of the tractor-trailer alleging state law negligence claims, as well as Norfolk Southern Railway Company (Norfolk) under FELA. The basis of the Hartrys' FELA claim was that Norfolk failed to provide Mr. Hartry with a reasonably safe place to work by failing to

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<sup>55</sup> *Id.* at 560-7-8-.64(4).

<sup>56</sup> *Id.* at 560-7-8-.64(7).

<sup>57</sup> *Id.* at 560-7-8-.64(8).

<sup>58</sup> GA COMP. R. & REGS. r. 560-7-8-.64(11).

<sup>59</sup> *Id.* at 560-7-8-.64(14)-(15).

<sup>60</sup> 45 U.S.C. §§ 51-60 (2019).

<sup>61</sup> 49 U.S.C. §§ 20101-311 (2019).

<sup>62</sup> 307 Ga. 566, 837 S.E.2d 303 (2019).

maintain the crossing gates, which “dangerously malfunctioned.”<sup>63</sup> Norfolk filed a motion for summary judgment on the FELA claim, which the trial court granted. The trial court agreed with Norfolk’s argument that the Hartrys’ FELA claims were precluded by regulations under the FRSA, and that there was no issue of material fact as to whether Norfolk had notice of a gate-crossing malfunction. The case proceeded to trial on the state law claims and the jury found in favor of the Hartrys. The Hartrys then appealed the summary-judgment order, and the Georgia Court of Appeals determined the trial court had erred in granting summary judgment to Norfolk.<sup>64</sup>

Norfolk argued in the supreme court that its duty was controlled by 49 CFR § 234.107,<sup>65</sup> promulgated by the Federal Railroad Authority (FRA) under FRSA. It contended that this regulation delineates the actions to be taken “after a railway receives a ‘credible report’ of a crossing malfunction, and that because there was no ‘credible report’ as defined under that regulation, the Hartrys’ FELA claim was precluded.”<sup>66</sup>

The supreme court first briefly addressed the issue of whether the Hartrys’ claims were preempted under the FRSA, concluding that because “this case concerns two federal acts, the preemption doctrine and the express preemption provision in FRSA are inapplicable.”<sup>67</sup> The court next addressed whether the Hartrys’ claims were precluded by the FRSA. Norfolk asserted that the FELA claim was precluded by the goal of the FRSA, which is to ensure the “[l]aws, regulations, and orders related to railroad safety . . . shall be nationally uniform to the extent practicable.”<sup>68</sup> The supreme court rejected this argument, stating the FRSA provision relied upon by Norfolk is contained in the section “that expressly concerns preemption of state laws,” and “does not resolve the question before us.”<sup>69</sup> The court stated that its previous decision in *Norfolk Southern R. Co. v. Zeagler*<sup>70</sup> acknowledged that “the law regarding preclusion of FELA claims by FRSA regulations is somewhat unsettled.”<sup>71</sup> But in the interim of the supreme court’s decision in *Zeagler* and the Hartrys’ case, the Supreme Court of the United States decided *POM Wonderful LLC v. Coca-Cola Co.*,<sup>72</sup> in which the Court applied

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<sup>63</sup> *Id.* at 566–67, 837 S.E.2d at 306.

<sup>64</sup> *Id.* at 567, 837 S.E.2d at 306.

<sup>65</sup> 49 C.F.R. § 234.107 (2019).

<sup>66</sup> *Norfolk Southern Railway Co.*, 307 Ga. at 568, 837 S.E.2d at 306.

<sup>67</sup> *Id.* at 569, 837 S.E. 2d at 307.

<sup>68</sup> *Id.* (quoting 49 U.S.C. § 20106(a)(1)).

<sup>69</sup> *Id.*

<sup>70</sup> 293 Ga. 582, 748 S.E.2d 846 (2013).

<sup>71</sup> *Norfolk Southern Railway Co.*, 307 Ga. at 570, 837 S.E.2d at 308 (quoting *Zeagler*, 293 Ga. at 598, 748 S.E.2d at 846).

<sup>72</sup> 573 U. S. 102, 112, 134 S. Ct. 2228, 2236 (2014).

traditional rules of statutory interpretation to determine that the express terms of the Food, Drug, and Cosmetic Act did not preclude a suit by POM Wonderful, a private party, alleging that Coca-Cola misled consumers with a label on its juice beverage in violation of the Lanham Act.<sup>73</sup> The question before the Court turned on whether a cause of action under one federal statute was precluded by the provisions of another federal statute, which was analogous to the task of the Georgia Supreme Court in the Hartrys' case against Norfolk.<sup>74</sup> Relying on the U.S. Supreme Court's decision in *POM Wonderful*, the Georgia Supreme Court held that no provision in the FRSA explicitly precluded suits involving FELA claims, and, further, that "FRSA and FELA 'complement each other in major respects, for each has its own scope and purpose.'"<sup>75</sup> Thus, the court concluded, the Hartrys' FELA claims against Norfolk were not precluded and the Court of Appeals decision overturning the grant of summary judgment was affirmed.<sup>76</sup>

#### V. TRANSPORTATION FOR HIRE: LIVERY AND RIDESHARE SERVICES

No notable legislative or judicial developments affected taxicabs, limousine services, or transportation network (rideshare) companies during the Survey period. In the administrative realm, the Department of Public Safety promulgated regulations at Subtitle 570-38-5<sup>77</sup> regarding certificate requirements for limousine carriers.<sup>78</sup> The regulations reinforce that limousine carriers, as defined in O.C.G.A. § 40-1-151,<sup>79</sup> must obtain limousine certificates from the Department and are subject to the requirements of the Federal Motor Carrier Safety Regulations, the Department's Transportation Rulebook, and Title 40, Chapter 1, Article 3, Part 3 of the Georgia Code.<sup>80</sup> The regulations also set forth requirements for safety inspections of limousines and provide that failure to comply with or to pass such inspections may result in disqualification of the vehicle, revocation of the limousine carrier's certificate, and civil or criminal penalties.<sup>81</sup> Limousine carriers may only use vehicles that are owned or leased (as defined in the regulations) by the carriers themselves or by persons or entities with ownership interest

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<sup>73</sup> *Id.* at 112–13, 134 S. Ct. at 2236–2237.

<sup>74</sup> *Norfolk Southern Railway Co.*, 307 Ga. at 572, 837 S.E.2d at 309 (quoting *POM Wonderful*, 573 U. S. at 115, 134 S. Ct. at 2228).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 573, 837 S.E.2d at 310.

<sup>77</sup> GA COMP. R. & REGS. r. 570-38-5-.01 (May 11, 2020).

<sup>78</sup> GA COMP. R. & REGS. r. 570-38-5-.01 through 570-38-5-.07

<sup>79</sup> O.C.G.A. § 40-1-151 (2019).

<sup>80</sup> GA COMP. R. & REGS. r. 570-38-5-.04.

<sup>81</sup> *Id.* at 570-38-5-.05.

in the carriers.<sup>82</sup> Finally, the Department clarified the sources of its authority to revoke, alter, or suspend limousine carriers' certificates.<sup>83</sup> As for regulations affecting rideshare companies and taxi services, the Department merely relocated the regulations at chapter 570-35 to subtitle 570-38-6 without significant changes.<sup>84</sup>

#### VI. AUTONOMOUS VEHICLE TECHNOLOGY

Georgia's first law relating to autonomous vehicles came in 2017 and allowed for the testing and operation of autonomous vehicles on public roads in Georgia.<sup>85</sup> As discussed in detail in earlier editions of this Survey, Georgia law sets forth certain minimum safety and insurance standards for these vehicles and ensures that these vehicles adhere to existing consumer-protection laws.<sup>86</sup>

While Georgia's courts and legislatures were quiet with respect to autonomous vehicles over the last year, the industry is preparing to make a move into the state. In January of 2020, The Ray, an 18-mile stretch of Interstate 85 in southern Georgia, opened.<sup>87</sup> The Georgia Department of Transportation teamed up with private-sector companies to replace the pavement markings on this stretch of highway to meet the performance requirements of autonomous vehicles.<sup>88</sup> This section of highway will be used as a test bed for autonomous personal and commercial vehicles in Georgia.<sup>89</sup>

While Georgia does have a regulatory framework that considers personal and commercial autonomous vehicles, Georgia's legislatures and courts will need to adapt to new issues that arise as these vehicles become more commonplace.

#### VII. SHAREABLE DOCKLESS MOBILITY DEVICE RENTALS

Electric bicycles and scooters appear to be here to stay in Georgia cities. In 2019, people in Atlanta took about 4,385,000 rides and spent

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<sup>82</sup> *Id.* at 570-38-5-.06.

<sup>83</sup> *Id.* at 570-38-5-.07.

<sup>84</sup> *Id.* at 570-38-6-.01 through .13; *see id.* 570-35-.01 through.12.

<sup>85</sup> Ga. S. Bill 219, Reg. Sess., 2017 Ga. Laws 214 (codified as amended in scattered sections of tit. 40)

<sup>86</sup> *Id.*; O.C.G.A. § 40-8-11 (2019).

<sup>87</sup> Skip Descant, *Georgia Makes Way for Driverless Vehicles, 18 Miles of It*, GOVERNING (last visited July 17, 2020) <https://www.governing.com/news/headlines/Georgia-Makes-Way-for-Driverless-Vehicles-18-Miles-of-It.html>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

more than \$16 million on shareable electric scooters and bicycles.<sup>90</sup> State and local legislatures have continued their attempts to update regulations to deal with this new technology.

While the Official Code of Georgia was updated last year to deal with safety issues involving electric bicycles, much needed updates related to electric scooters were conspicuously absent.<sup>91</sup> Recently, the Georgia Senate passed Senate Bill 159<sup>92</sup> in an attempt to correct this issue. Senate Bill 159 would update O.C.G.A. § 40-1-1<sup>93</sup> to include a definition of “electric scooter” as a device weighing less than 100 pounds that is equipped with handlebars and an electric motor, powered by an electric motor or human power or both, and capable of speeds of no more than twenty miles per hour when powered by the electric motor.<sup>94</sup> The Bill would further update the definition of “motor vehicle” found in O.C.G.A. § 40-1-1 to include electric scooters. Senate Bill 159 also would amend O.C.G.A. § 40-6-371<sup>95</sup> relating to powers of local authorities regarding highways under their jurisdiction. The Bill proposes to add the regulation of electric scooters to the powers of local authorities.<sup>96</sup> Although the bill passed the Georgia Senate and was reported favorably by substitute by the House Committee on Transportation, it did not pass the full house before the end of the truncated legislative session. It does, however, provide insight into measures the legislature might take up in the next legislative session.

#### VIII. CONCLUSION

As in so many other areas of American life, the coronavirus pandemic was the major story in the commercial-transportation world during the Survey period, not only because of the months-long closure of the courts and suspension of the legislative session but because of the emergency response it provoked to supply-chain issues. While the law of commercial transportation remained relatively stable overall, practitioners should be prepared for backlogged legislation and judicial opinions to emerge over the next year.

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<sup>90</sup> J.D. Capelouto, *How much is that scooter trip? Atlantans spent millions to ride in 2019*, ATLANTA JOURNAL CONSTITUTION (last visited July 17, 2020), <https://www.ajc.com/news/local/how-much-scooter-trip-atlantans-spent-millions-ride-2019/cgG1sKcSBog2rc6hdxejJ/>.

<sup>91</sup> Ga. H.R. Bill 454, Reg. Sess., 2019 Ga. Laws 56 (codified at O.C.G.A. § 12-3-114 (2019) and in scattered section of tit. 40).

<sup>92</sup> Ga. S. Bill 159, Reg. Sess., 2020.

<sup>93</sup> O.C.G.A. § 40-1-1 (2019).

<sup>94</sup> Ga. S. Bill 159, Reg. Sess., 2020.

<sup>95</sup> O.C.G.A. § 40-6-371 (2019).

<sup>96</sup> Ga. S. Bill 159, Reg. Sess., 2020.

