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Trial Practice and Procedure

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I. INTRODUCTION

This Article addresses selected opinions and legislation of interest to the Georgia civil trial practitioner issued during the Survey period of this publication.[1]

II. LEGISLATION

The Georgia General Assembly passed two significant pieces of legislation relevant to this topic during the Survey period.

The first piece of legislation, House Bill 961,[2] was passed in direct response to the Supreme Court of Georgia's holding in *Alston & Bird, LLP v. Hatcher Management Holdings, LLC*,[3] which is summarized below. House Bill 961 amends the language of subsection (b) of the apportionment statute, Official Annotated Code of Georgia section 51-12-33,[4] to replace "more than one person" with "one or more persons."[5] The bill also adds "person or" to the latter portion of this subsection to harmonize the language with the first sentence.[6]

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1. For an analysis of Georgia trial practice and procedure during the prior survey period, *see* Brandon L. Peak et al., *Trial Practice and Procedure*, *Annual Survey of Georgia Law*, 73 MERCER L. REV. 265 (2021), https://digitalcommons.law.mercer.edu/jour_mlr/vol73/iss1/18/ [https://perma.cc/YG8U-VEQA].

2. Ga. H.R. Bill 961, Reg. Sess., 2022 Ga. Laws 802 (codified at O.C.G.A. § 51-12-33).

3. 312 Ga. 350, 862 S.E.2d 295 (2021) (hereinafter *Alston & Bird II*).

4. O.C.G.A. § 51-12-33 (2022).

5. Ga. H.R. Bill 961, 2022 Ga. Laws 802.

6. O.C.G.A § 5-12-33(b).

The effect of these changes is to eliminate the possibility of the result from *Alston & Bird*, where the Fulton County Superior Court was prohibited from reducing the award of damages against the named defendant, despite the jury's apportionment of fault to a nonparty, because the case was only "brought" against a single defendant.[7] Under this new version of the apportionment statute, even if a case is brought against a single defendant, the jury must still apportion fault to all persons who contributed to the injury or damages. The trial court must reduce the award of damages against the named defendant accordingly, so long as the other requirements of the apportionment statute are satisfied.[8]

House Bill 961 was signed into law by Governor Brian Kemp on May 13, 2022, with an effective date for new cases filed on May 13, 2022.[9]

The second piece of legislation, House Bill 620,[10] amends the Georgia code provisions related to settling a minor's claim to increase the threshold amount requiring court approval before resolving such claims.[11] The bill increases the threshold amount from $15,000 under the old version of the code sections to $25,000.[12] This increase is meant to enable parties to more efficiently resolve the claims of minors without court approval, whether through a probate court or the court before which the lawsuit is pending. This change is significant for trial practitioners who frequently handle injury claims by minors arising out of motor vehicle wrecks, as this change brings the approval threshold in line with the minimum liability insurance requirements for auto policies issued in Georgia.[13]

III. CASE LAW

A. Apportionment

Several important decisions were issued during this Survey period by the appellate courts dealing with Georgia's pre-2022 apportionment statute, O.C.G.A. § 51-12-33.[14]

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7. *See* Section III-A, *infra* for further discussion of *Alston & Bird*.
8. *Alston & Bird II,* 312 Ga. at 360, 862 S.E.2d at 302.
9. O.C.G.A. § 51-12-33.
10. Ga. H.R. Bill 620, Reg. Sess., 2022 Ga. Laws 207 (codified at O.C.G.A. §§ 29-3-1 to 29-3-3, 29-3-22; 29-5-23; 51-4-2).
11. Ga. H.R. Bill 620, 2022 Ga. Laws 207.
12. *See* O.C.G.A. § 51-12-33 note on 2022 amendment.
13. O.C.G.A. § 29-3-1(b).
14. O.C.G.A. § 51-12-33 (2021).

In the first important apportionment opinion, the Supreme Court of Georgia held in *Alston & Bird* that a final judgment against a defendant in a tort action will not be reduced under the apportionment statute when the case is "brought" against a single defendant.[15] In *Alston & Bird*, the court held that subsection (b) of the apportionment statute "applies only in cases 'brought against more than one person,' not in single-defendant lawsuits."[16]

Alston & Bird was a legal malpractice and breach of fiduciary duty case against the Alston & Bird law firm arising out of management of a holding company for a family's assets and the holding company's manager's alleged embezzlement of company funds.[17] The holding company sued Alston & Bird in a single-defendant lawsuit separate from the underlying action against the manager.[18] During the course of the lawsuit, Alston & Bird "filed a notice of nonparty fault pursuant to O.C.G.A. § 51-12-33(d), seeking to apportion any damages among [the holding company] and nonparty [manager], but the trial court granted [the holding company's] motion to strike the notice."[19] On interlocutory appeal, the court of appeals reversed the trial court's holding, stating that "the trier of fact could assign 'fault' to a nonparty under O.C.G.A. § 51-12-33(c) to the extent that [Alston & Bird] could prove that the nonparty committed a breach of legal duty that was a proximate cause of [the holding company's] injuries."[20]

At the subsequent jury trial, the jury found Alston & Bird liable for legal malpractice and breach of fiduciary duty, and it awarded the holding company damages.[21] The jury also apportioned fault among Alston & Bird, the holding company, and the manager. Based on this apportionment of fault, the trial court reduced the total damages awarded to the holding company and entered judgment against Alston & Bird for only 32% of the total damages awarded.[22]

Alston & Bird appealed, and on cross-appeal, the holding company argued that the trial court erred in reducing the damages award against Alston & Bird under the apportionment statute.[23] The court of appeals agreed with the holding company and held that apportionment to a

15. *Alston & Bird II*, 312 Ga. at 353, 862 S.E.2d at 298.
16. *Id.* at 351, 862 S.E.2d at 297 (quoting O.C.G.A. § 51-12-33(b)).
17. *Alston & Bird II*, 312 Ga. at 351–52, 862 S.E.2d at 297.
18. *Id.*
19. *Id.* at 352, 862 S.E.2d at 297.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 352, 862 S.E.2d at 297–98.

nonparty was not appropriate under the facts of this case because it was not brought against "more than one person," and that apportionment and a reduction of damages should have been limited to a reduction according to the plaintiff's fault only under subsection (a).[24]

Affirming the court of appeals opinion, the supreme court held:

> [T]he plain language of the [apportionment statute] provides that damages assessed against a defendant may be reduced according to the percentages of fault allocated to all who contributed to the alleged injury or damages, including nonparties—but damages may be reduced according to nonparty fault only in cases brought against multiple defendants.[25]

By the plain language of the apportionment statute, "[t]here is no grant of authority . . . to reduce damages according to the percentage of fault allocated to a nonparty in a case with only one named defendant."[26]

In response to Alston & Bird's argument that this interpretation was inconsistent with the legislature's intent, the supreme court responded that "[t]he best indicator of the General Assembly's intent is the statutory text it actually adopted,"[27] and "[i]f the General Assembly intended subsection (b) to apply to cases brought against a single defendant, it could have and should have said so, especially when it specified that subsection (a) applied to single-defendant cases."[28] It was beyond the judicial power of the court to alter the meaning of the plain language of the apportionment statute.[29]

In the second important apportionment opinion, and building off of the supreme court's holding in *Alston & Bird*, the court of appeals held in *Georgia CVS Pharmacy, LLC v. Carmichael*,[30] as part of an alternative holding, that a case is "brought" against one defendant as that term is used in the apportionment statute when there is only one defendant remaining at the time of trial, even if more than one defendant was named in the original complaint when filed.[31]

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24. *Id*. at 352, 862 S.E.2d at 298 (quoting Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC, 355 Ga. App. 525, 532, 843 S.E.2d 613, 620 (2020) (hereinafter *Alston & Bird I*).

25. *Alston & Bird II*, 312 Ga. at 354, 862 S.E.2d at 299.

26. *Id*. at 356, 862 S.E.2d at 300.

27. *Id*. at 358, 862 S.E.2d at 301 (quoting Chase v. State, 285 Ga. 693, 699, 681 S.E.2d 116, 120 (2009)).

28. *Alston & Bird II*, 312 Ga. at 358, 862 S.E.2d at 301.

29. *Id*. at 358–59, 862 S.E.2d at 301–02.

30. 362 Ga. App. 59, 865 S.E.2d 559 (2021).

31. *Id*. at 71, 865 S.E.2d at 570.

In *Carmichael*, the plaintiff asserted premises liability claims after he was shot on property owned by Georgia CVS Pharmacy, LLC (CVS).[32] By the time of trial, all defendants other than CVS, which included the landowner and two fictitious CVS employees, had been dismissed from the lawsuit which left CVS as the only named defendant at trial. After hearing the evidence, the jury found in favor of the plaintiff against CVS and, pursuant to the apportionment statute, apportioned 0% fault to the nonparty criminal assailant that perpetrated the assault—and attributed 5% fault to the plaintiff.[33]

On appeal, CVS argued, among other things, that the jury's verdict was "void because the jury improperly apportioned fault by determining that the unidentified shooter was zero percent at fault for [plaintiff's] injuries."[34] The court of appeals rejected this argument, holding that despite finding the nonparty assailant 0% at fault, such a finding did not render the verdict void because the jury was only required to consider the fault of every person who contributed to the injury or damages, not necessarily "assign" fault to all such persons.[35] "The jury, after hearing the evidence in this case, simply found that the shooter was zero percent at fault," which could have been based on reasonable inferences deduced from the evidence presented.[36]

As an alternative holding, the court of appeals held that the jury's apportionment of fault was harmless because the case was not actually "brought" against more than one person for purposes of the apportionment statute; there was only one named defendant remaining at the time of trial, so the apportionment statute was not actually triggered.[37] Like *Alston & Bird*, the court of appeals held that "CVS was the only named defendant in the case by the time the case proceeded to trial."[38]

> Thus, regardless of how much fault the jury assigned to the non-party shooter, the amount of damages awarded against CVS would not change because O.C.G.A. § 51-12-33(b) does not allow the amount of damages to be reduced based on non-party fault in these circumstances. Thus, any alleged failure by the jury in declining to

32. *Id.* at 59, 865 S.E.2d at 562.

33. *Id.* at 70, 865 S.E.2d at 569.

34. *Id.* at 69, 865 S.E.2d at 569.

35. *Id.* at 70, 865 S.E.2d at 570.

36. *Id.* at 70–71, 865 S.E.2d at 569–70.

37. *Id.* at 71–72, 865 S.E.2d at 570–71.

38. *Id.* at 72, 865 S.E.2d at 570 (comparing facts to *Alston & Bird II*, 312 Ga. 350, 862 S.E.2d 295).

> assign fault to the non-party shooter based on this evidence was ultimately harmless.[39]

Upon completion of this Article, the *Carmichael* case has been docketed by the Supreme Court of Georgia.[40]

B. Attorney's Fees and Litigation Expenses

In *Junior v. Graham*,[41] the supreme court addressed the interaction between O.C.G.A. §§ 13-6-11[42] and 9-11-68,[43] both of which provide for awards of attorney's fees and litigation expenses to be paid by the non-prevailing party under certain circumstances.[44] O.C.G.A. § 13-6-11 provides for such award "when the jury finds that the opposing party 'has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense' prior to the initiation of litigation."[45] On the other hand, O.C.G.A. § 9-11-68 "provides a sanction in the form of attorney fees and litigation expenses incurred after the failure to accept what the statute defines as a reasonable settlement offer."[46] In the lower court, the court of appeals held that O.C.G.A. § 9-11-68 requires a set-off to the extent damages are awarded under § 13-6-11.[47]

The supreme court disagreed and reversed the appellate court's holding.[48] The supreme court held "that the provisions provide for different recoveries despite using somewhat similar measures for calculating the respective amount of damages or sanction," and "a prevailing plaintiff may recover under each statutory provision without regard to any recovery under the other."[49]

In *Junior*, the plaintiff sued the defendant for negligently causing the plaintiff's injuries in a car wreck.[50] In the complaint, the plaintiff included a claim pursuant to O.C.G.A. § 13-6-11. After the suit was filed and before trial, the plaintiff also sent the defendant an offer of

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39. *Carmichael*, 362 Ga. App. at 72, 865 S.E.2d at 570–71.

40. Ga. CVS Pharmacy, LLC v. Carmichael, *appeal docketed*, No. S22T0391 (Ga. Sup. Ct. Nov. 22, 2021).

41. 313 Ga. 420, 870 S.E.2d 378 (2022).

42. O.C.G.A. § 13-6-11 (2022).

43. O.C.G.A. § 9-11-68 (2022).

44. *Junior*, 313 Ga. at 420, 870 S.E. 2d at 379.

45. *Id.* at 420, 870 S.E.2d at 379 (citing O.C.G.A. § 13-6-11).

46. *Junior*, 313 Ga. at 420, 870 S.E.2d at 379 (citing O.C.G.A. § 9-11-68(b)(2)).

47. *Junior*, 313 Ga. at 420, 870 S.E.2d at 379.

48. *Id.*

49. *Id.*

50. *Id.* at 420–21, 870 S.E.2d at 379–80.

settlement pursuant to O.C.G.A. § 9-11-68. The defendant failed to accept this offer within thirty days, so it was deemed rejected by operation of law. At trial, the jury found in the plaintiff's favor and awarded damages, including damages under O.C.G.A. § 13-6-11. The amount of damages the jury awarded pursuant to O.C.G.A. § 13-6-11 was consistent with the amount contemplated under the contingency fee agreement between the plaintiff and his counsel.[51]

Because the total amount of the verdict, including the damages awarded under O.C.G.A. § 13-6-11, exceeded the plaintiff's offer of settlement under O.C.G.A. § 9-11-68 by more than 125%, the plaintiff sought a post-trial award of attorney's fees and litigation expenses under O.C.G.A. § 9-11-68.[52] The defendant opposed the motion, in part, because it would result in a "double recovery" for the plaintiff, whom the jury also awarded damages under § 13-6-11.[53] The Fulton County State Court agreed with this double recovery argument and denied the plaintiff's motion. Although the court of appeals disagreed with the double recovery argument, it affirmed for a different reason, namely, because the plaintiff could not prove he had any unrecovered attorney's fees and litigation expenses, having been awarded the full amount of both under O.C.G.A. § 13-6-11.[54]

The supreme court disagreed and reversed, holding that these statutes address different conduct and provide for different awards which are not offset by the other.[55] Relying on cardinal principles of statutory interpretation, the court noted that the only prerequisites to recovery under O.C.G.A. § 9-11-68 are:

> [T]he making of a good faith offer of settlement that complied with the requirements of O.C.G.A. § 9-11-68(a) (which sets forth the procedural requirements for invoking the statute), the rejection of the offer by the defendant, and the plaintiff's recovery of a final judgment in an amount greater than 125 percent of that offer.[56]

Allowing a recovery under these circumstances in addition to damages awarded under O.C.G.A. § 13-6-11 would not result in an impermissible double recovery because although "Georgia public policy generally prohibits a plaintiff from a double recovery of compensatory

51. *Id.* at 421, 870 S.E.2d at 380.
52. *Id.*
53. *Id.*
54. *Id.* at 422, 870 S.E.2d at 380–81.
55. *Id.* at 422, 870 S.E.2d at 381.
56. *Id.* at 424, 870 S.E.2d at 382.

damages . . . . [a]n exception to this decisional rule, of course, is where a greater recovery is authorized by statute."[57]

The important distinction between these two statutes is that "O.C.G.A. § 13-6-11 provides for an award of attorney fees and litigation expenses as part of damages,"[58] whereas "an award of attorney fees and litigation expenses under O.C.G.A. § 9-11-68(b) is properly understood as a sanction that requires 'the misbehaving party to pay the opposing party's resulting attorney fees and litigation expenses.'"[59] Other important distinctions, and the absence of any clear provision requiring an offset under either statute, led the supreme court to conclude that:

> [N]othing in O.C.G.A. § 9-11-68(b) allows or requires the trial court to consider whether an award was made under O.C.G.A. § 13-6-11 when deciding the availability of attorney fees and litigation expenses under O.C.G.A. § 9-11-68(b)(2). Accordingly, the Court of Appeals wrongly concluded that Junior had not incurred any attorney fees and litigation expenses within the meaning of O.C.G.A. § 9-11-68(b)(2) because he had received an award under O.C.G.A. § 13-6-11.[60]

C. Discovery

In *General Motors, LLC v. Buchanan*,[61] the supreme court addressed the broad scope of discovery under the Civil Practice Act[62] and confirmed "[h]igh-ranking corporate executives are not immune from discovery and are not automatically given special treatment excusing them from being deposed simply by virtue of the positions they hold or the size of the organizations they lead."[63]

In this case, the plaintiff sued General Motors, LLC (GM), alleging that a defect in the GM-manufactured vehicle his wife was driving caused a fatal collision and her wrongful death.[64] As part of the discovery process, the plaintiff sought to obtain the deposition testimony of GM's CEO, Mary Barra. GM moved for a protective order in an effort to preclude the plaintiff from taking the deposition of Barra pursuant to O.C.G.A. § 9-11-26(c).[65] The motion was denied by the Cobb County State

57. *Id.* at 424–25, 870 S.E.2d at 382.

58. *Id.* at 425, 870 S.E.2d at 382.

59. *Id.* at 426, 870 S.E.2d at 383 (quoting *Ga. Dep't of Corr. v. Couch*, 295 Ga. 469, 481, 759 S.E.2d 804, 814 (2014)).

60. *Junior*, 313 Ga. at 429, 870 S.E.2d at 385.

61. 313 Ga. 811, 874 S.E.2d 52 (2022).

62. O.C.G.A. tit. 9, ch. 11 (2022).

63. *Buchanan*, 313 Ga. at 823, 874 S.E.2d at 65.

64. *Id.* at 812, 874 S.E.2d at 57.

65. *See* O.C.G.A. § 9-11-26(c) (2022).

Court.[66] After granting interlocutory review, the Georgia Court of Appeals affirmed the trial court's order denying GM's motion and held GM did not meet its burden of showing good cause for a protective order. The supreme court then granted GM's petition for a writ of certiorari.[67]

GM urged the supreme court to adopt the "apex doctrine" framework to determine whether good cause exists for the issuance of a protective order when a party seeks to depose a high-ranking corporate official.[68] The court "decline[d] to adopt any version of the apex doctrine that shifts the burden to the party seeking discovery" and noted that "[a]dopting the apex doctrine would necessarily restrict the trial court's discretion . . . and would contravene the principle of broadly available discovery under Georgia law."[69] However, the supreme court held that the trial court should consider factors commonly associated with the "apex doctrine" to determine whether the party seeking a protective order meets its burden of showing the existence of good cause.[70] Because the trial court failed to indicate in its order whether the court actually considered the "apex doctrine" factors relied upon by GM, the supreme court remanded the case back to the trial court with instructions to consider GM's arguments, the "apex doctrine" factors, to determine whether good cause exists for a protective order.[71]

D. Sovereign Immunity

In *Atlantic Specialty Insurance Co. v. City of College Park*,[72] the supreme court addressed the extent to which a sovereign entity waives its sovereign immunity through the purchase of liability insurance.[73] The supreme court held that even though the defendant municipality in that case had purchased a liability insurance policy in excess of the minimum statutory waiver of sovereign immunity, endorsements in the policy effectively negated any waiver of immunity above the statutory minimum.[74]

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66. *Buchanan*, 313 Ga. at 813, 874 S.E.2d at 58–59. GM argued in the trial court that good cause existed for a protective order because, among other things, Barra was not personally involved in the design, development, or manufacture of the subject vehicle that was allegedly defective. *Id.* at 813, 874 S.E.2d at 58.

67. *Id.* at 813, 874 S.E.2d at 58.

68. *Id.* at 816, 874 S.E.2d at 60.

69. *Id.* at 821–22, 874 S.E.2d at 64.

70. *Id.* at 812, 874 S.E.2d at 67. The court also discussed the four apex doctrine factors at length. *See id.* at 816–19, 874 S.E.2d at 60–62.

71. *Id.* at 826–27, 874 S.E.2d at 67.

72. 313 Ga. 294, 869 S.E.2d 492 (2022).

73. *Id.* at 295, 869 S.E.2d at 494.

74. *Id.*

In this case, the plaintiffs sued the City of College Park after a police chase resulted in the deaths of three family members whose vehicle was hit by the fleeing suspect.[75] The plaintiffs alleged that the city's police officers were negligent, reckless, or both, by continuing the pursuit of the fleeing suspect.[76]

Under the Georgia Constitution,[77] municipalities are generally immune from tort liability.[78] However, the General Assembly is empowered to waive this immunity by statute.[79] With respect to claims arising out of the negligent use of a motor vehicle, the General Assembly passed O.C.G.A. § 36-92-2,[80] which "established an automatic waiver of sovereign immunity for losses arising out of claims for the negligent use of covered motor vehicles up to certain prescribed limits, including $700,000 for the bodily injury or death of two or more persons in a single occurrence."[81] The statute also provides that the municipality may increase the waiver through its own actions, including, among other things, by "purchas[ing] commercial liability insurance in an amount in excess of the waiver set forth in this Code section."[82]

The City of College Park purchased a liability policy with $5 million total coverage, which was more than the $700,000 minimum statutory waiver of sovereign immunity.[83] The policy had certain endorsements which essentially provided that the city's purchase of this insurance was not evidence of an intent to waive sovereign immunity by purchasing the policy, and that the policy afforded no coverage where the defense of sovereign immunity applied to the city.[84]

Rejecting the argument that the city and its insurer had attempted to contract around the clear requirements of O.C.G.A. § 36-92-2, the supreme court held that neither the Georgia Code nor public policy prohibited an insurance company issuing a policy to a municipality from including policy endorsements of the type in this case to limit or prevent the waiver of sovereign immunity above the statutory minimum.[85] With

75. *Id.* at 294, 869 S.E.2d at 493.

76. *Id.*

77. GA. CONST. art. I.

78. GA. CONST. art. I, § 2, para. 9.

79. *Atl. Specialty Ins. Co.*, 313 Ga. at 299, 869 S.E.2d at 496.

80. O.C.G.A. § 36-92-2 (2022).

81. *Atl. Specialty Ins. Co.*, 313 Ga. at 300, 869 S.E.2d at 497 (citing O.C.G.A. § 36-92-2(a)(3)).

82. *Atl. Specialty Ins. Co.*, 313 Ga. at 300, 869 S.E.2d at 497 (quoting O.C.G.A. § 36-92-2(d)(3)).

83. *Atl. Specialty Ins. Co.*, 313 Ga. at 294–95, 869 S.E.2d at 493–94.

84. *Id.* at 296, 869 S.E.2d at 494.

85. *Id.* at 301–02, 869 S.E.2d at 497–98.

the court's ruling, the plaintiffs in this case were limited to the minimum $700,000 statutory waiver of sovereign immunity.[86]

E. Venue

The supreme court issued an important opinion on venue in *Cooper Tire & Rubber Co. v. McCall*.[87] In *Cooper Tire & Rubber Co.*, the issue was whether an out-of-state corporation like the defendant Cooper Tire & Rubber Co. (Cooper Tire) was subject to general personal jurisdiction in Georgia based on its act of registering to do business in this state.[88] Holding that was the case, the court reaffirmed its prior ruling in *Allstate Insurance Co. v. Klein*,[89] where the court held that Georgia courts may exercise general personal jurisdiction over out-of-state corporations "authorized to do or transact business in this state at the time a claim . . . arises."[90] The court reaffirmed *Klein* despite its "tension with a recent line of United States Supreme Court cases addressing when state courts may exercise general personal jurisdiction over out-of-state corporations in a manner that accords with the due process requirements of the United States Constitution."[91]

The plaintiff in *Cooper Tire* brought product liability claims against Cooper Tire, an out-of-state corporation, arising from injuries the plaintiff sustained in a car wreck that occurred in Florida.[92] Cooper Tire, which was incorporated in Delaware and had a principal place of business in Ohio, moved to dismiss the claims against it, arguing that it was not subject to general personal jurisdiction in Georgia based on its contacts within the state. The plaintiff argued that Cooper Tire was considered a Georgia resident and subject to general personal jurisdiction because it was authorized to transact business in Georgia.[93] The Gwinnett County State Court granted Cooper Tire's motion to dismiss, but the court of appeals reversed, relying on *Klein*, and determined that Cooper Tire was a "resident corporation subject to personal jurisdiction in this state."[94]

86. *Id.* at 305, 869 S.E.2d at 500.

87. 312 Ga. 422, 863 S.E.2d 81 (2021).

88. *Id.* at 422, 863 S.E.2d at 83.

89. 262 Ga. 599, 601, 422 S.E.2d 863 (1992).

90. *Id.* at 601, 422 S.E.2d at 865.

91. *Cooper Tire & Rubber Co.*, 312 Ga. at 422, 863 S.E.2d at 83.

92. *Id.* at 423, 863 S.E.2d at 83 (citing McCall v. Cooper Tire & Rubber Co., 355 Ga. App. 273, 273–74, 843 S.E.2d 925, 925–26 (2020)).

93. *Cooper Tire & Rubber Co.*, 312 Ga. at 423, 863 S.E.2d at 84.

94. *Id.*

The supreme court affirmed the court of appeals, reaffirming *Klein* and holding that "considerations of stare decisis counsel against overruling *Klein*'s holding as a matter of statutory construction."[95] In *Klein*, the supreme court interpreted Georgia's long-arm statute, O.C.G.A. § 9-10-91,[96] to mean that an out-of-state corporation authorized to do business in Georgia was not considered a "nonresident" and, therefore, was considered a "resident" corporation that had, in effect, consented to general personal jurisdiction in Georgia by registering to do business in this state.[97] Given this definition of a nonresident in the long-arm statute, the court held in *Klein* that:

> It is apparent from the language of [the long-arm statute] that a corporation which is authorized to do or transact business in this state at the time a claim arises is a "resident" for purposes of personal jurisdiction over that corporation in an action filed in the courts of this state.[98]

The Supreme Court of Georgia further held in *Cooper Tire* that its earlier holding in *Klein* did not violate federal due process—a point addressed in a footnote in *Klein*—because (1) a 1917 United States Supreme Court decision, *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*,[99] had not been overruled by any subsequent Supreme Court decision and (2) provided support for *Klein*'s general-jurisdiction-by-consent rationale.[100]

The court noted, however, that should the Supreme Court ever overrule *Pennsylvania Fire*, it could result in a jurisdictional gap, where foreign corporations authorized to transact business in Georgia could not be subject to general or specific personal jurisdiction under the language of the long-arm statute.[101] The court noted that the Georgia General Assembly could address this potential gap and

> preemptively obviate that risk by modifying the governing statutes to enable Georgia courts to exercise specific personal jurisdiction over out-of-state corporations whether they are authorized to do business in this State or not, provide for general jurisdiction where appropriate,

95. *Id.*
96. O.C.G.A. § 9-10-91 (2022).
97. *Cooper Tire & Rubber, Co.*, 312 Ga. at 430, 863 S.E.2d at 88.
98. *Id.* (quoting *Klein*, 262 Ga. at 601, 422 S.E.2d at 865).
99. 243 U.S. 93 (1917).
100. *Cooper Tire & Rubber Co.* 312 Ga. at 432, 863 S.E.2d at 89.
101. *Id.* at 436, 863 S.E.2d at 91–92.

> or otherwise tailor this State's jurisdictional scheme within constitutional limits.[102]

Justice Bethel, writing for the concurrence, wrote "for the sole purpose of calling the General Assembly's attention to the peculiar and precarious position of the current law of Georgia."[103] Justice Bethel noted his belief that Georgia law, as written, might discourage foreign corporations from registering to do business in Georgia because registration exposes them to being sued in "Georgia courts for all matters regardless of the underlying suit's connection to Georgia."[104] He then expressed his hope that "the General Assembly will at least consider this matter thoroughly and carefully."[105]

IV. CONCLUSION

The above cases and legislation have, in the Authors' estimation, most significantly affected trial practice and procedure in Georgia during the Survey period. This Article, however, is not intended to be exhaustive of all legal developments for this topic.

102. *Id.* at 437, 863 S.E.2d at 92.

103. *Id.* at 437, 863 S.E.2d at 92 (Bethel, J., concurring).

104. *Id.* (Bethel, J., concurring).

105. *Id.* at 438, 863 S.E.2d at 93 (Bethel, J., concurring).