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**Supreme Court of GA hands down game-changing ruling
on Apportionment of Damages**

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On August 10, 2021, the Supreme Court of Georgia handed down a very important decision in Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC, No. S20G1419, 862 S.E.2d 295, 2021 WL 3501075. This opinion is a huge game-changer for all tort cases, especially those involving premises liability and negligent security claims. The Court essentially held that: (1) the apportionment statute does not allow reduction of damages in a single-defendant tort case based on the jury's allocation of fault to a nonparty; but (2) award of litigation expenses, due to a tort defendant's bad faith, stubborn litigiousness, or causing unnecessary trouble, IS subject to apportionment unless the nature of such damages is such that apportionment is legally or factually impossible.

The Court further reasoned that, when apportionment is not possible, joint and several liability (with the possibility of indemnity and contribution applies, citing to Fed. Deposit Ins. Corp. v. Loudermilk, 305 Ga. 558, 575, 826 S.E.2d 116, 128–29 (2019), which held:

The divisible-fault requirement reconciles these two statutes, which sit side-by-side in the Georgia Code: the apportionment statute applies when an action is brought against more than one person and fault is divisible. See OCGA § 51-12-33(b). When fault is indivisible—including in instances of concerted action—damages are awarded under joint and several liability. And where joint and several liability applies, contribution may also. See McReynolds, 290 Ga. at 852, 725 S.E.2d 584 (“[C]ontribution will not lie in the absence of joint or joint and several liability.” (quoting Weller v. Brown, 266 Ga. 130, 130, 464 S.E.2d 805 (1996)); Phillips v. Tellis, 181 Ga. App. 449, 449, (352 S.E.2d 630) (1987) (“[T]he right to contribution relates only to joint tortfeasors. ... It has always been true that where concert of action appears, a joint tortfeasor relation is presented and all joint tortfeasors are jointly and severally liable for the full amount of plaintiff's damage.” (Citations and punctuation omitted)). In sum, joint and several liability still exists alongside apportionment and plays an important role in the space reserved for it in those cases where fault is indivisible.

The Georgia Defense Lawyers Association (“GDLA”) has come to a similar conclusion/interpretation. This ruling is highly problematic in scenarios where either the primary, at-fault party has not been identified (e.g. negligent security/shootings) or lacks sufficient funds that a Plaintiff would want to pursue. Additionally, the risk of excess verdicts and adverse consequences against single-party defendants has now greatly increased. While this opinion defies all logic, it is the law in Georgia rendered by its highest court unless and until: (1) the General Assembly revises O.C.G.A. § 51-12-33; and/or (2) someone can articulate some sort of constitutional/due process objection that would merit a federal appeal.



William (Bill) Merchant was born in Albany, Georgia and raised in Columbus, Georgia. Bill obtained his Bachelor of Arts degree in Political Science from the University of Georgia in 2010. He earned his Juris Doctorate in 2014 from Mercer University School of Law. Bill is a member of the State Bar of Georgia and State Bar of Alabama. Additionally, he is admitted to the Supreme Court of Georgia, Georgia Court of Appeals, and the U.S. District Courts for the Southern and Middle District of Georgia. His past experience includes clerking for the Honorable Frank J. Jordan, Jr. and the Honorable William C. Rumer of the Chattahoochee Judicial Circuit.

Bill joined Levy, Sibley, Foreman & Speir, LLC as an Associate Attorney in October 2016 and currently practices in the areas of workers’ compensation defense and insurance defense including premises liability, motor vehicle accidents, and negligent construction. He is currently the President of the Young Lawyers Division of the Columbus Bar Association for 2020-2021.