

**Insights**

## **GEORGIA'S APPORTIONMENT STATUTE IN PRODUCT LIABILITY LAWSUITS**

Nov 18, 2020

The Georgia Supreme Court recently issued a decision impacting all product liability cases in Georgia by finding that Georgia's apportionment statute—O.C.G.A. § 51-12-33—applies to claims for strict product liability, and as a result, the Court upheld the apportionment of a \$12.5 million jury award in favor of the defendant.

### **Johns v. Suzuki Motor of America:**

In *Johns v. Suzuki Motor of America*, the plaintiff brought strict product liability claims against the defendant motorcycle designer and manufacturer after the front wheel of the plaintiff's vehicle supposedly failed and caused him serious bodily injury. The plaintiff presented evidence at trial showing that a defect in the design in the wheel caused a corrosive condition that culminated in total brake failure. In response, the defendant offered evidence demonstrating that the plaintiff failed to conduct regular maintenance on his motorcycle.

The jurors found in favor of the plaintiff and awarded \$12.5 million in damages. The jury, however, apportioned 49 percent of the fault for the crash to the plaintiff for his failure to properly maintain the motorcycle. The trial court found that O.C.G.A. § 51-12-33 applied and apportioned fault to reduce the \$12.5 million jury award to \$6,375,000. The plaintiff appealed and alleged that the trial court erred in reducing his damages because Section 51-12-33 did not apply to strict product liability claims.

### **Georgia's Apportionment Statute:**

OCGA § 51-12-33 (a) provides that:

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.*

The Georgia Supreme Court found that this provision of the comparative negligence act applies to product liability claims. The court adopted the reasoning of the Georgia Court of Appeals that the apportionment statute applies to all injuries to persons without distinguishing between different categories of claims for relief. The court held that “[it] was not persuaded that we should ignore the plain language of Section 51-12-33(a) and write into the statute an exception for strict products liability claims.”

### **Potential Impacts on Future Litigation:**

The *Johns v. Suzuki Motor of America* decision signals that under Georgia law, users and consumers of products will now be held responsible for a product’s safe use and consumption. As a result, courts will reduce a plaintiff’s claims for damages when they pursue litigation against the manufacturers of these products. In turn, a manufacturer defending against strict product liability claims in Georgia will likely investigate the plaintiff’s conduct in pursuit of apportionment to reduce any possible damages under Section 51-12-33.

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