# Supreme Court Weighs In on Apportioning Damages to Non-Parties

The Supreme Court recently issued a decision regarding the apportionment of damages among parties and non-parties. In short, the Supreme Court held that a non-party could be at fault for purposes of apportionment even though it would have no legal liability to plaintiff due to a valid defense.

As a brief background, the 2005 apportionment statute requires juries to apportion fault among all parties responsible for the plaintiff's claimed injury, regardless of whether the parties at fault were, or could have been, added as a party to the lawsuit. (O.C.G.A. Sec. 51-12-33.) The jury then apportions its award of damages among the parties and non-parties who are liable according to the percentage of fault of each. While the non-party is not actually liable for any damages assessed by the jury, the apportionment statute is nevertheless a useful tool for a defendant as it allows the jury to apportion damages among various defendants and non-parties.

In *Zaldivar v. Prickett* (No. S14G1778), the Supreme Court addressed the issue of whether a party or non-party had to commit a tort in order to be at "fault" for purposes of the apportionment statute. The Supreme Court answered in the affirmative, but further distinguished between "fault" and "liability." In other words, a non-party may be at fault for purposes of apportionment even though it would not be legally liable to the plaintiff because it had a valid defense.

The plaintiff in *Zaldivar* was suing defendant for injuries the plainitff had suffered in a car accident. In turn, the defendant sought to assert fault against plaintiff's employer (who was not a party to the lawsuit) on the grounds that the employer had negligently allowed plaintiff to drive the company vehicle in the first place. Plaintiff moved for summary judgment on the basis that any negligence by his employer was not the proximate cause of his injuries. This was true despite the fact that the non-party may not have any liability to the injured plaintiff. In *Zaldivar,* the non-party employer would have had a valid defense to any claim brought by plaintiff, such as the plaintiff's own comparative negligence in driving the car. Nevertheless, the non-party employer was at "fault" for purposes of the apportionment statute, and the jury was required to consider its degree of fault in the accident.

See the full text of *Zaldivar v. Prickett,* 2015 WL 4067788, available at http://law.justia.com/cases/georgia/supreme-court/2015/s14g1778.html.

For more information, please contact Jason Alloy or Jeremy Littlefield.