

Ga. Justices Allow Double Recovery Of Atty Fees

By **Clark Mindock**

Law360 (March 8, 2022, 6:23 PM EST) -- The Georgia Supreme Court on Tuesday affirmed that a car wreck plaintiff can recover attorney fees and litigation costs under each of two Georgia statutes, rejecting an argument that doing so would constitute an impermissible double recovery.

In coming to that conclusion, the state's high court reversed a lower appellate court's decision to side with driver Joao Junior's claims that he should have been allowed to seek recovery of attorney fees and costs under Georgia's offer of settlement statute as well as the fees and costs he won at trial.

Junior was awarded about \$1.2 million in attorney fees along with \$3 million in damages by a jury in his case against at-fault driver Sharon Graham. He argued he was entitled to additional fees under the statute because Graham had rejected a settlement offer that would have spared everyone from that trial.

The justices said that since Graham rejected what was a reasonable settlement, the state's offer of settlement law and statute for damages and litigation expenses allow Junior to seek a penalty and attorney fees on top of that earlier award.

"Because we conclude that the provisions provide for different recoveries despite using somewhat similar measures for calculating the respective amount of damages or sanction, a prevailing plaintiff may recover under each statutory provision without regard to any recovery under the other," the Georgia Supreme Court justices said.

Ben Brodhead, an attorney at Brodhead Law LLC who represents Junior, told Law360 Tuesday that the supreme court "followed the legislative direction to control bad behavior both before a suit is filed and after a suit is filed."

"We are pleased that the Supreme Court ruled in a way that will promote settlement and reduce litigation," he said.

Laurie Webb Daniel of Holland & Knight LLP, an attorney for Graham, said the ruling has "surprised" a lot of people, but that its practical implication "is rather narrow." Once the case returns to the trial court, Junior will have the burden of proof to show the value of the legal services that were actually rendered after the settlement offer expired, she said.

The **dispute stems from** a car accident in 2010 between Graham and Junior. Before the case was set to go to trial, Junior had offered to settle all of his claims against Graham for \$600,000, but Graham rejected that offer after she failed to accept it within 30 days of its issuance.

At trial, Junior was awarded \$3 million in compensatory damages plus \$1.2 million in attorney fees, and \$51,554.95 in litigation expenses. Because that award of compensatory damages was more than 125% of the original settlement offer, Junior then filed a post-trial motion for attorney fees and litigation expenses under the state's settlement law.

While Georgia's statute for damages and litigation expenses generally bars litigation costs as part of the damages in a case, an exception can be made where the defendant has acted in bad faith, been stubbornly litigious or caused the plaintiff unnecessary trouble and expense. In those instances, a jury can award attorney fees and costs as part of the damages, according to court documents.

After Junior filed those claims, a trial court rejected the motion for attorney fees and costs under the

settlement statute, and the Georgia Court of Appeals affirmed that conclusion in October 2020. The state high court agreed to take the case in July.

Junior is represented by Ben C. Brodhead, Ashley B. Fournet and John W. Nichols of Brodhead Law LLC and Michael B. Terry and Michael B. Jones of Bondurant Mixson & Elmore LLP.

Graham is represented by Laurie Webb Daniel and Matthew D. Friedlander of Holland & Knight LLP.

The case is Junior v. Graham, case number S21G0578, in the Supreme Court of Georgia.

--Additional reporting by Rosie Manins. Editing by Ellen Johnson.