Apportionment Verdicts: Is This Real Life?

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It is a frequent refrain of defense lawyers, and likely all trial lawyers, to warn their clients regarding the unpredictability of a jury, made up of twelve strangers of diverse races, genders, educational levels, socioeconomic backgrounds, and general human experiences. In Georgia, that has likely never been more true than under the current law requiring apportionment to all defendants and properly designated non-parties. Passed in 2005, Senate Bill 3, what has become known as the "Georgia Tort Reform Act," altered many aspects of the Georgia Code, including amendments to O.C.G.A. § 51-12-33, which now allows apportionment of fault, rather than the former scheme of joint and several liability.[1] Lauded by defense counsel, decried by the plaintiffs' bar, the expectation was that this new statutory scheme would, or could, substantially reduce the amount each defendant, particularly less culpable defendants, would be saddled with paying after a jury trial. However, particularly in cases involving apportionment to third parties criminal assailants, few likely had any idea how the use of this statute would play out in the hands of varying juries. The results have been, to put it mildly, mixed and following no apparent set pattern.

Juries are doing some interesting, and varied, things with apportionment to third party criminal

assailants that likely few in the defense bar saw coming. If there was a thought that apportionment in these types of cases would be a "slam dunk," that is not proving true. As will be discussed in more detail below, there have been instances where little to no liability or fault has been placed on a criminal assailant, a case where a plaintiff has been assigned more fault than her rapist, and other strange and, for the defenders of property owners, managers, and security companies, dismaying assignments of percentages of fault.

Perhaps juries are well aware that apportioning high percentages of fault to criminal assailants, particularly unknown criminal assailants, will yield little to the victim and are drafting "results-based" numbers on their jury verdict forms to ensure a victim plaintiff recovers for the tort inflicted upon him or her. Perhaps they understand, even if there is a known criminal assailant, that the criminal assailant is more than likely uninsured and has no assets to speak of. Whatever their reasons, there have been several apportionments of fault which have left defense counsel explaining with renewed emphasis that one really does not know what a jury is going to do.

Apportionment and Criminal Assailants

Prior to 2005, joint and several liability was the law of the land in Georgia. In cases involving criminal assailants, it really did not matter how much of the fault a jury thought lied with the actual criminal perpetrating the crime. If the co-defendant property owner, operator, or security company was found liable at all, that entity, if they had deep enough pockets, could and likely would be saddled with ponying up the entire amount of the verdict. Along came tort reform, a new scheme by which a defendant would only be expected to pay for its own percentage of fault.[2] Of course, almost immediately, the onslaught from the plaintiff's bar began attempting to limit and chip away at the statute's positive effects for the defense bar in any way possible.

Whether apportionment to a criminal assailant would be permissible was not always set in stone. After initial efforts to overturn the entire statute, attention was turned to specific provisions of O.C.G.A. § 51-12-33. Whether fault could be apportioned to a criminal assailant became a hot topic, which was ultimately decided by the Georgia Supreme Court in 2012.[3]

In 2009, Nairobi Couch was abducted, assaulted, and robbed at a Red Roof Inn location by unknown criminal assailants.[4] The defendant property owner, Red Roof Inns, filed a *Notice of Defendant's Intention to Argue Fault of Non-Party pursuant to O.C.G.A. §51-12-33*, in order to have the jury assign a percentage of fault to the unknown criminal assailants, thereby reducing the amount of exposure to the defendant.[5] Prior to trial, plaintiff filed a motion in limine in which she "challeng[ed] the applicability of apportionment . . . ."[6] The case was being heard by the United States District Court for the Northern District of Georgia, which

certified several questions to the Supreme Court of Georgia, one of which was, "In a premises liability case in which the jury determines a defendant property owner negligently failed to prevent a foreseeable criminal attack, is the jury allowed to consider the 'fault' of the criminal assailant and apportion its award of damages among the property owner and the criminal assailant, pursuant to O.C.G.A. § 51-12-33?"[7] The Georgia Supreme Court responded in the affirmative, authorizing such apportionment to the criminal assailant.[8]

The plaintiff put forth several policy reasons why apportionment should not have been permitted against the criminal tortfeasors.[9] First, the plaintiff argued that apportioning to the criminal assailant at all would nullify a defendant property owner's personal, non-delegable duty to keep their premises safe.[10] It was argued that because the landowner's duty was non-delegable, apportionment should not be had. The Georgia Supreme Court dismissed this notion out of hand, stating simply that the "duty remains even where damages are apportioned."[11] The juries hearing such cases since the *Couch* decision, have reinforced this as large percentages of fault have repeatedly been apportioned to the property owners.

The Georgia Supreme Court's focus was whether "intentional" conduct, such as that by the criminal assailant, was encompassed by the statute's mandate of apportioning of "fault."[12] The Georgia Supreme Court found that intentional conduct was encompassed, as it still made the defendant "answerable in law" to the plaintiff, even if the conduct was not negligent.[13]

The plaintiff argued additional policy reasons why apportionment against a criminal assailant should not be permitted, none of which persuaded the majority of the justices of the Supreme Court.

The issue was deemed to be so important that both the Georgia Defense Lawyers Association ("GDLA") and two law professors, Thomas Eaton and Michael Wells, filed amicus curiae briefs, taking separate sides of the issue.[14]

Citing the "gross inequity" in the joint and several liability system, the brief filed by GDLA correctly asserted that "[a]pportionment of fault . . . reflects the General Assembly's public policy determination that a defendant should pay only for the consequences of its own tortious act or omission and not for the tortious act or omission of others."[15] While this is true in theory and persuaded the Georgia Supreme Court, in reality juries have apparently become aware the criminal assailants have no likely recoverable funds and that a *de facto* joint and several liability, by apportioning much to the property owner and little to the criminal assailant, is the only way to insure recovery by the (usually) sympathetic plaintiff.

After the move from joint and several liability to the equitable apportionment allowed for by the adoption of the apportion statute, it was unclear if juries would place more

of the fault or blame for third-party criminal attacks on the actual attacker or continue to hold the property owner primarily liable. Now, almost nine years after the implementation of the apportionment statute, the answer to that question remains unclear.

In this article, we will examine three cases involving third-party criminal attacks that have gone to verdict in Georgia since the implementation of the apportionment statute. Ironically, all of the analyzed cases were tried in the same court: the State Court of DeKalb County (albeit in front of different judges). The results are remarkably divergent and confirm that there is no hard and fast rule under the apportionment statute.

***Herrera v. Miles Properties, Inc.*, State Court of DeKalb County, Civil Action File No. 08A83964-6.**

Herrera arose from the June 7, 2005 shooting of Wesley Hagan by Jarvis Floyd on the premises of the Stanford Oaks Apartments.[16] Mr. Hagan was shot in the head and subsequently died on July 3, 2005 of injuries related to the shooting.[17]

At trial, the plaintiff contended that the Stanford Oaks Apartments, which were located in Tucker, Georgia, was a "problem complex" with a serious history of crime, with management that did not take appropriate steps to remedy or thwart the criminal element, and with crimes that were occurring on the property.[18] In the years before the shooting, plaintiff contended "there were incidents of drug possession, drug dealing, criminal trespassing, firing weapons, break-ins and burglaries of apartments, and youths loitering on the property."[19]

In 2002 and 2003, plaintiff contended that the defendant knew of "illegal drug activity, a lot of loitering ('hanging out') by teenagers, vandalism of vacant apartments and complaints of shots being fired."[20]

According to plaintiff, between 2003 and 2005, the DeKalb County Police Department "received calls and had concerns from residents about people selling drugs at Stanford Oaks, including youths cutting school, drinking and smoking marijuana in the breezeways, break-ins, burglaries by people who did not stay on the property and a lot of people from the complex behind Stanford Oaks wooded areas coming there to loiter and hang out."[21]

In March, 2005, the property manager made a request that both police and a security company be stationed there full time because there was so much crime and sent the residents at Stanford Oaks a letter which stated, "I have requested for a security company to monitor our community."[22] According to plaintiff, defendant's district manager would not approve the property manager's request for security because it was not in the budget. But, at the same time, defendant was in the process of doing renovation work on the property, and, according to plaintiff, "there was no problem getting money for other things at Stanford Oaks [and] [d]efendant sent several of its

employees to the Bahamas as a reward for renting apartments."[23]

In May 2005, an incident involving the courtesy officer occurred while she walking the property. The courtesy officer found a group of teens loitering in the laundry room smoking marijuana. When she confronted them, they made threats and "trapped" her in the laundry room. She called 911 and two of the teens were detained. The following night, the door to the laundry room was torn off the hinges.[24]

During the second or third week of May 2005, the property manager informed the courtesy officer the manager felt that the officer was not doing her security work properly, and she was dissatisfied with her performance.[25] plaintiff contended that at that time, defendant "had sufficient funds to place additional security personnel at Stanford Oaks in addition to its courtesy officer."[26] At the end of May, 2005, the courtesy officer quit because she did not get along with the property manager. Her last day of work was during the day of June 7, 2005, the same day that Wesley Hagan was attacked, shot and robbed.[27]

By contrast, the property management company contended that Wesley Hagan knew the two individuals involved in his shooting and that the attack was a targeted robbery.[28] According to defendant, Wesley Hagan lived with his mother at the apartments prior to the shooting, and during that time, he came to know Jarvis Floyd and Derrick Porter, the two persons believed to be involved in the incident.[29]

Defendant contended that on the day of the incident, several of Wesley Hagan's friends overheard Jarvis Floyd telling Derrick Porter that he wanted to know who might have some money, so he could rob them and Porter told Floyd that Wesley Hagan had money. After overhearing that Wesley Hagan was the target of a robbery, one of Hagan's friends "told Wesley Hagan to be careful that evening."[30]

On the night of June 7, 2005, Derrick Porter saw Wesley Hagan walking from his friend's apartment towards his mother's apartment. Suddenly, Derrick Porter heard gun shots and saw Jarvis Floyd running away with a gun in his hand, wearing a long-sleeve black T-shirt over his face.

The matter was tried before a DeKalb County State Court jury, who ultimately rendered a verdict in favor of the plaintiff in the amount of $184,192.16.[31] In rendering that verdict, the jury awarded no punitive damages and no damages for pain and suffering and also apportioned the fault for plaintiff's damages as 5% to the defendant and 95% to the criminal assailants.[32]

***Polite v. Double View Ventures, LLC,* State Court of DeKalb County, Civil Action File No. 09A05619-4.**

Polite arose from the May 30, 2007 shooting of plaintiff Nathaniel Polite, a resident, at the Stonebridge Apartments.[33] According to plaintiff,

the *Polite* case was "a story about an apartment complex that didn't care enough to keep its residents safe."[34] On May 30, 2007, Nathaniel Polite, whose apartment was located in the rear of the complex, utilized a path near his apartment, which led to a neighboring Chevron convenience store.[35] Around 8:30 p.m., the plaintiff told his roommate that he was going to walk to the Chevron to get snacks, and he did.[36] After purchasing Cheetos, Doritos and Newport cigarettes, he left the Chevron and walked toward the path leading back to the complex.[37] He stepped through the fence between the two properties (although it was contended that the fence was not on the property boundary and the attack started on the Chevron property).[38] After taking a few steps, two men, who were hiding behind the fence—one on each side—stepped towards him. According to plaintiff, he did not recognize them.[39] One of the men threw bleach into plaintiff's face and eyes.[40] According to plaintiff, he feared that he was being robbed and tried to run.[41] Plaintiff took a few steps towards the apartments when he shot in the back, which rendered him an ASIA-C paraplegic.[42]

Plaintiff contended that the defendant had actual and constructive notice of attacks against residents on the property and on the path in the three weeks before plaintiff was attacked but failed to warn him or guard him against attacks.[43] At trial, the plaintiff presented the testimony of a security guard who allegedly identified the path, and the ragged and ineffective gate there, as an immediate security violation, which he allegedly made known to management.[44]

At trial, other crime victims testified that during the two weeks prior to the incident involving the plaintiff, they were attacked on the property.[45] According to plaintiff, these incidents were reported to management, but were not reported to the tenants.[46]

The defendants, who chose not to present affirmative evidence at trial, contended that the evidence at trial showed that the path at issue traversed the border of the two businesses.[47] Chevron owned, but never maintained, the wood fence at issue in the case.[48] The path used by plaintiff, and many others, began at a hole in Chevron's fence and ran down a hill to the parking lot in front of plaintiff's apartment.[49] The plaintiff was familiar with the path because he used it at least once or twice a day during his residency at Stonebridge.[50]

The attack began on Chevron's property and continued onto the appellants' property.[51] Plaintiff's expert testified that all commercial property owners owe a duty to invitees to keep the premises safe and opined that Chevron owed the same duties as were owed by Stonebridge.[52] A former property manager at Stonebridge reached out to Chevron to address the issue with the fence and gate. While Stonebridge was stone-walled, Chevron did not even respond much less offer any assistance to maintain its own fence.[53] However, the trial court refused to allow the jury to consider apportionment to Chevron.[54]

Defendants contended that the residents, including plaintiff, did not want the hole in the fence secured.[55] The plaintiff actually chose an apartment closest to the path to make use of the Chevron more convenient.[56] The plaintiff was not unaware of what went on at the Chevron, as he had people drinking behind the Chevron and day laborers sleeping behind the Chevron.[57] Traversing the path more than daily in conjunction with his general awareness of his surroundings, according to the defendants, educated the plaintiff as to the environment in which he chose to reside.[58]

The jury returned a verdict in favor of plaintiff in the amount of $5,250,000, but assessed fault as follows: 13% plaintiff, 87% defendants and 0% criminal assailants.[59] The court entered judgment against Double View Ventures, LLC and Westdale Asset Management, Ltd., jointly and severally, in the amount of $4,567,500.00.[60]

***Board v. HMI Properties Solutions, Inc.*, State Court of DeKalb County, Civil Action File No. 09A04531-3,**

Board arose from the March 5, 2009 burglary, assault, battery, and rape of the plaintiff, a tenant, at the Kensington Manor Apartments, which were owned and managed by the defendants.[61] Plaintiff contended that the apartments are "lower income, affordable housing and are located in a high crime area."[62] Plaintiff contended that when purchased, Kensington Manor was projected to be profitable, but shortly after it was purchased it started losing money, and it never turned around.[63] In February 2009, the defendants reduced their security budget to save money.[64]

Plaintiff contended that in the five years preceding the underlying incident, defendants "had knowledge of numerous crimes on their premises, including: murders, aggravated assaults, burglaries, rapes, armed robberies with home invasions, gang activity, drug dealing, trespassing, gunfire, loitering, homeless & vagrants, etc."[65]

On March 5, 2009 at 5:30 a.m., ten days after plaintiff moved into apartment F-104 at Kensington Manor Apartments, her apartment was burglarized, and she was assaulted, battered, and raped.[66] Plaintiff alleged that her attacker entered her apartment through the front door, which she claimed to have locked the night before when she arrived.[67] The only locking device on plaintiff's door was a single deadbolt—there was no secondary lock.[68] There were no signs of entry through the bedroom windows or the sliding glass door.[69] After plaintiff was assaulted and had moved out of her apartment, it was determined that the assailant entered her apartment through the front door.[70]

The defendants contended that they met and exceeded their obligation to exercise ordinary care to keep their premises reasonably safe.[71] Specifically, defendants had implemented numerous security measures with respect to the apartment complex and the individual units located on the complex.[72]

The defendants contended that plaintiff did not lock the front door to her apartment—a fact which directly enabled the alleged rapist, Donovon Cross, to enter her apartment.[73] Defendants contended that the evidence suggested that once Donovon Cross was inside, the plaintiff's apartment, he and the plaintiff may have engaged in a consensual sexual affair.[74]

The jury returned a verdict in favor of the plaintiff in the amount of $900,000, but, remarkably, assessed fault for the damages as follows: 51% to defendants, 39% to the plaintiff, and 10% to Donovon Cross.[75]

Analysis (For What It Is Worth).

While the sample size is admittedly small, perhaps a few things can be pulled from these DeKalb County verdicts. First, in the cases where significant portions of the damages were attributed to the nonparty assailant, that assailant was identified and known. Perhaps juries are more willing to assess blame to a nonparty when they know exactly the person who did it and there is a coherent story of how and/or why the underlying incidents occurred. Perhaps the juries believe when the criminal assailant is known, there will actually be some culpability if some percentage of fault is assigned to that party.

Second, the *Polite* case focused not only on the prior crimes on the property but also on the management's alleged failure to warn of the prior crimes. We have noticed that "failure to warn" claims are becoming more of the norm in these third-party cases and the focus, if not primarily, is substantially on what notice was specifically provided by apartment complexes, even those in historically high-crime areas.

Third, and most importantly, there does not seem to be any way to predict what a jury will do in these apportionment cases. It seems they are highly personal and fact driven. One thing appears to be certain—where there is an entity that appears to have the money to satisfy the verdict, a high percentage of fault is likely to be assigned to that party. It is amazing to many that a property owner can, under any set of circumstances, be assigned a higher, sometimes *much* higher, percentage of fault *than the criminal assailants perpetrating the crimes*.

When informing or consulting with clients, the apportionment statute seems to have created a scenario that mirrors the old adage that no man should see how laws—or in these cases jury verdicts—or sausages are made.

End Notes

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

ANN J. HERRERA, as Personal Representative of WESLEY N. HAGAN, Deceased and as Administratrix of the Estate of WESLEY N. HAGAN, Deceased,	*	**Case No. 08A83964-6**
Plaintiff,	*	
v.	*	
MILES PROPERTIES, INC.	*	
Defendant.	*	

VERDICT

A. ✓ We, the jury, find in favor of the Plaintiff.
We award general damages of pain and suffering of $ 0.
We award damages for the full value of life for the wrongful death claim of $ 184,192.16

B. ____ We, the jury, find in favor of the Defendant.

C. ✓ We, the jury, assign the percentage of fault as follows:
5 % - Defendant
5 % - Criminal Derrick Porter
90 % - Criminal Jarvis Floyd.
(Must add up to 100 %.)

D. ____ We, the jury, wish to award punitive damages.
✓ We, the jury, do not wish to award punitive damages.

This 20th day of August, 2010.

Nancy L. Reynard
FOREPERSON

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NATHANIEL POLITE,	)	
	)	
Plaintiff,	)	CIVIL ACTION FILE
	)	NO.09A05619-4
vs.	)	
	)	
DOUBLE VIEW VENTURES, LLC AND WESTDALE ASSET MANAGEMENT, LTD.	)	
	)	
Defendants.	)	

JURY VERDICT

1. ✓ We, the jury, find for the Plaintiff, NATHANIEL POLITE.

(Proceed to A and B below.)

A. We award Plaintiff, NATHANIEL POLITE, the sum of $ 5,250,000.00 in damages.
(Do NOT reduce this number for the fault of any party or non party. The Judge will do that based on the percentages below.)

B. The percentages of fault are as follows:

13 % - Nathaniel Polite

87 % - Double View Ventures, LLC and Westdale Asset Management, Ltd. (defendants)

0 % - the criminals who attacked Mr. Polite

(% total must equal 100%)

If you find for Plaintiff, stop here.

OR

2. _____ We, the jury, find for the Defendants, DOUBLE VIEW VENTURES, LLC and WESTDALE ASSET MANAGEMENT, LTD.
If you find for the Defendants, stop here.

September 14, 2012
Date

Linda Y. Lanier
Foreperson Signature

Linda Y. Lanier
Foreperson write name

[1] *See* 2005 Georgia Laws, Act 1, § 12 (S.B. 3) (enacted).

[2] *See* O.C.G.A. § 51-12-33 (2013).

[3] *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 729 S.E. 2d 378 (2012).

[4] *See* Plaintiff's/Appellant's Brief Regarding Certified Questions, *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 729 S.E. 2d 378 (2012) (No. S12Q0625), 2012 WL 377254, at *2.

[5] *Id.*

[6] *Id.*

[7] *Couch*, 291 Ga. at 359, 729 S.E. 2d at 379.

[8] *Id.*

[9] *Id.* at 365-66, 729 S.E. 2d at 383-84.

[10] *Id.* at 365-66, 729 S.E. 2d at 383.

[11] *Id.* at 366, 729 S.E. 2d at 383.

[12] *Id.* at 365, 729 S.E. 2d at 383.

[13] *Id.*

[14] *See* Amicus Curiae Brief of the Georgia Defense Lawyers Association, *Couch v. Red Roof Inns, Inc.,* 291 Ga. 359, 729 S.E. 2d 378 (2012) (No. S12Q0625), 2012 WL 864503; Brief of Amici Curiae Thomas A. Eaton and Michael L. Wells, *Couch v. Red Roof Inns, Inc.,* 291 Ga. 359, 729 S.E. 2d 378 (2012) (No. S12Q0625), 2012 WL 1620946 (2012).

[15] *See* Amicus Curiae Brief of the Georgia Defense Lawyers Association, *Couch v. Red Roof Inns, Inc.,* 291 Ga. 359, 729 S.E. 2d 378 (2012) (No. S12Q0625), 2012 WL 864503, at *2.

[16] Pretrial Order at 3, *Herrera v. Miles Properties, Inc.*, No. 08A83964-6 (State Ct. of DeKalb Cnty., GA).

[17] *Id.*

[18] *Id.* at 1.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.* at 2.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 3.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 4.

[29] *Id.*

[30] *Id.* at 5.

[31] Verdict, *Herrera v. Miles Properties, Inc.*, No. 08A83964-6 (State Ct. of DeKalb Cnty., GA, Aug., 10, 2010). *See* Attachment 1.

[32] *Id.*

[33] Consolidated Pretrial Order at 3-4, *Polite v. Double View Ventures, LLC***,** No. 09A05619-4 (State Ct. of DeKalb Cnty., GA).

[34] *Id*. at 3.

[35] *Id.* at 3-4.

[36] *Id.*

[37] *Id.* at 4.

[38] *Id.*; Brief of Appellants, *Double View Ventures, LLC v. Polite*, 2014 WL 1227777 (2014) (No. A13A2134), 2013 WL 6068035 *2-3.

[39] Consolidated Pretrial Order at 4, *Polite v. Double View Ventures, LLC***,** No. 09A05619-4 (State Ct. of DeKalb Cnty., GA).

[40] *Id.*

[41] *Id.*

[42] *Id.* at 4-5.

[43] *Id.*

[44] *Double View Ventures, LLC v. Polite*, No. A13A2134, 2014 WL 1227777, at *2 (2014).

[45] *Id.* at *1.

[46] Brief of Appellee, *Double View Ventures, LLC v. Polite*, 2014 WL 1227777 (2014) (No. A13A2134), 2013 WL 6068036, at *3.

[47] Brief of Appellants, *Double View Ventures, LLC v. Polite*, 2014 WL 1227777 (2014) (No. A13A2134), 2013 WL 6068035, *2.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id*. *at* *4.

[53] *Id.*

[54] *Id.*

[55] *Id.* at *5.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] Verdict, *Polite v. Double View Ventures, LLC.***,** No. 09A05619-4 (State Ct. of DeKalb Cnty., GA, Sept. 14, 2012). *See* Attachment 2.

[60] *Id.* On March 26, 2014, the Georgia Court of Appeals reversed the verdict in the *Polite* case and remanded it for a new trial. The Georgia Court of Appeals held that the trial court erred in failing to

allow the jury to consider the non-party fault of Chevron. The Georgia Court of Appeals, in a whole court decision, decided that the evidence adduced during the plaintiff's case-in-chief was sufficient to require that the jury be allowed to consider the fault of the adjoining property owner where there was evidence adduced "showing numerous armed robberies and assaults on the Chevron property, including inside the convenience store, as well as evidence that the area surrounding the Chevron station and the apartment complex was known as a high-crime area, there is a factual question as to whether the Chevron station knew or should have known about the dangerous conditions on its premises which might subject it to a determination of fault." *Double View Ventures, LLC v. Polite*, No. A13A2134, 2014 WL 1227777, at *5 (2014). The Georgia Court of Appeals also noted that while "it is not clear whether the Chevron station had any security protection, it is undisputed that it did not maintain its own fence, that the portion of the fence at issue was located on Chevron property about 12 feet away from the property line, and that this failure resulted in clear danger to those, such as [plaintiff], who traversed openings in the fence." *Id.* This was sufficient, according to the Georgia Court of Appeals, to meet the defendant's burden and allow the jury to consider Chevron's fault for the plaintiff's damages. Although raised on appeal, the Georgia Court of Appeals did not address the apparent inconsistency of the jury's finding that the plaintiff was 13% at fault for his damages, while the person(s) who shot him bore no fault.

[61] Consolidated Pretrial Order at 22, *Board v. HMI Properties Solutions, Inc.*, No. 09A04531-3 (State Ct. of DeKalb Cnty., GA).

[62] *Id.*

[63] *Id.* at 22-23.

[64] *Id.* at 23.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.* at 23-24.

[71] *Id.* at 6.

[72] *Id.*

[73] *Id.*

[74] *Id.* at 6-7.

[75] Verdict, *Board v. HMI Properties Solutions, Inc.*, No. 09A04531-3 (State Ct. of DeKalb Cnty., GA, Sept. 25, 2013). *See* Attachment 3.