

**SUPREME COURT  
STATE OF GEORGIA**

ADRIENNE DANIELLE SMITH,

*Plaintiff/Appellant,*

v.

AVIS RENT A CAR SYSTEM, LLC,  
*et al.*

*Defendants/Appellees.*

Supreme Court No.  
S20G0696

Court of Appeals Nos.  
A19A1503, A19A1504

---

***AMICI CURIAE* BRIEF OF CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA, GEORGIA CHAMBER OF  
COMMERCE, AND GEORGIANS FOR LAWSUIT REFORM  
IN SUPPORT OF DEFENDANTS/APPELLEES**

---

Mark Behrens (*pro hac vice*)  
SHOOK, HARDY & BACON L.L.P.  
1800 K Street, NW, Ste. 1000  
Washington, DC 20006  
(202) 639-5621  
mbehrens@shb.com

Caroline Gieser (Ga. Bar No. 167916)  
SHOOK, HARDY & BACON L.L.P.  
1230 Peachtree Street, Suite 1200  
Atlanta, GA 30309  
(470) 867-6013  
cgieser@shb.com

*Attorneys for Amici Curiae*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

QUESTION PRESENTED ..... 1

STATEMENT OF INTEREST ..... 1

INTRODUCTION AND SUMMARY OF THE ARGUMENT ..... 3

ARGUMENT ..... 4

    I.    Avis Defendants Were Not a Proximate Cause of Plaintiff’s  
        Harm ..... 4

    II.   Application of Traditional Proximate Cause Doctrine In This  
        Case Serves Important Policy Interests ..... 6

CONCLUSION ..... 11

CERTIFICATE OF SERVICE

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page(s)</b>
<i>Alamo Rent-A-Car, Inc. v. Hamilton</i> , 216 Ga. App. 659 (1995).....	6
<i>Atlanta Obstetrics &amp; Gynecology Group, P.A. v. Coleman</i> , 260 Ga. 569 (1990)...	4
<i>Church’s Fried Chicken v. Lewis</i> , 150 Ga. App. 154 (1979).....	6
<i>Cope v. Enterprise Rent-A-Car</i> , 250 Ga. App. 648 (2001) .....	6
<i>CSX Transp., Inc. v. Williams</i> , 278 Ga. 888 (2005) .....	9
<i>Dowdell v. Wilhelm</i> , 305 Ga. App. 102 (2010) .....	4-5
<i>Dunham v. Wade</i> , 172 Ga. App. 391 (1984).....	4
<i>Garcia v. Vanguard Rental USA, Inc.</i> , 540 F.3d 1242 (11th Cir. 2008), <i>cert. denied</i> , 129 S. Ct. 1369 (2009).....	8
<i>Goldstein, Garber &amp; Salama, LLC v. J.B.</i> , 300 Ga. 840 (2017) .....	5-6
<i>Johnson v. American Nat’l Red Cross</i> , 276 Ga. 270 (2003).....	5
<i>Long v. Hall County Bd. of Com’rs</i> , 219 Ga. App. 853 (1996), <i>abrogated on</i> <i>other grounds</i> , <i>Georgia Forestry Com’r v. Canady</i> , 280 Ga. 825 (2006) ....	5
<i>Robinson v. Pollard</i> , 131 Ga. App. 105 (1974) .....	9
<b>Statutes</b>	
49 U.S.C. § 30106 .....	7-8

## **QUESTION PRESENTED**

Did the Court of Appeals err in determining that the employee's after-hours, off-premises intervening criminal conduct was the proximate cause of the Plaintiff's injuries, such that the Avis Defendants were entitled to judgment as a matter of law on the Plaintiff's direct negligence claims?

## **STATEMENT OF INTEREST**

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The Georgia Chamber of Commerce serves the unified interests of its nearly 50,000 members—ranging in size from small businesses to Fortune 500 corporations—covering a diverse range of industries across all of Georgia's 159 counties. The Georgia Chamber is the State's largest business advocacy organization and is dedicated to representing the interests of both businesses and

citizens in the State. Established in 1915, the Georgia Chamber's primary mission is creating, keeping and growing jobs in Georgia. The Georgia Chamber pursues this mission, in part, by aggressively advocating the businesses and industry viewpoint in the shaping of law and public policy in an effort to ensure that Georgia is economically competitive nationwide and in the global economy.

Georgians for Lawsuit Reform (GLR) is an organization formed by over thirty prominent members of the business community representing a diverse cross-section of industries across Georgia. The mission of GLR is to advocate for a fair, balanced and efficient, civil justice system and to educate the public on the impact that such a system has on the State's economy and business environment. The GLR advances its members' interests in a variety of forums, including through the courts. In this regard, the GLR files *amicus curiae* briefs in cases of concern to the legal and business communities.

This appeal is important to our members because imposition of liability against the Avis Defendants would take Georgia tort law in a new and extreme direction and would stretch the concept of proximate cause beyond reason. Businesses must be able to operate in a legal environment that is fair, stable, and predictable. Any new legal theory that would expand liability and impose

additional costs on businesses operating or considering operation in Georgia threatens that environment.

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

Robust application of the doctrine of proximate cause is critical to prevent indefinite and indeterminate liability. Proximate cause in tort operates as an anchor for justice, keeping liability sound, fair, and predictable. It also acts as an engine for economic growth: when a potential defendant can anticipate its legal responsibility, it can rationally allocate its resources among preventing possible harm, compensating actual harm, and conducting its ordinary business. Insurers can best predict and price risks in tort environments that are stable and predictable.

Plaintiff's liability theory would take Georgia tort law in an unsound new direction, untethered to the traditional application of the proximate cause concept. Plaintiff essentially wants this Court to apply "deep pocket liability" and hold the Avis Defendants liable for a harm caused by the illegal act of a third party driver to a highly remote plaintiff with no connection to the Avis Defendants.

Georgia case law on proximate cause indicates that, as a matter of law, owners of stolen cars are not liable for damages caused by thieves. Otherwise, all manner of businesses, as well as private individuals, could be held liable for a wide variety of criminal actions by third parties. Because imposition of liability on the

Avis Defendants would be fundamentally inconsistent with basic tort principles, it would open up countless others to unpredictable and unfair liability.

The Court should affirm the Court of Appeals' decision and enter judgment as a matter of law for the Avis Defendants.

## ARGUMENT

### **I. Avis Defendants Were Not a Proximate Cause of Plaintiff's Harm**

The Avis Defendants are entitled to relief because they were not the proximate cause of the Plaintiff's harm. It was the car thief's intervening criminal conduct and reckless driving that proximately caused Plaintiff's injuries.

This Court has long held that the proximate cause requirement "constitutes a limit on legal liability" and that intervening acts can make a defendant's conduct and plaintiff's injury "too remote for the law to countenance recovery." *Atlanta Obstetrics & Gynecology Group, P.A. v. Coleman*, 260 Ga. 569, 569 (1990).

Indeed, Georgia courts have repeatedly clarified that when an intervening criminal act by a third party results in injury, the intervening criminal act generally serves as the proximate cause even where a defendant may have acted negligently. *E.g., Dowdell v. Wilhelm*, 305 Ga. App. 102, 105 (2010) (sheriff's deputies not liable for post-escape fatal shooting of plaintiff's husband in his home); *Dunham v. Wade*, 172 Ga. App. 391, 393 (1984) (no liability where owner left keys in

unguarded vehicle, it was stolen, and the thief wrecked the car, killing an occupant); *Long v. Hall County Bd. of Com'rs*, 219 Ga. App. 853, 855 (1996) (recognizing a “venerable line of authority holding that the alleged negligence of the owner, in leaving the keys in the ignition, is not the legal cause of personal injuries sustained due to the negligent operation of a stolen vehicle by a thief.”), *abrogated on other grounds, Georgia Forestry Com'r v. Canady*, 280 Ga. 825 (2006).

This is, in part, because tort liability focuses on the reasonably foreseeable consequences of a defendant's actions. “[F]oreseeable consequences are those which are *probable*, according to ordinary and usual experience.... One is not bound to anticipate or foresee and provide against that which is unusual or that which is only remotely and *slightly probable*.” *Dowdell*, 305 Ga. App. at 105 (emphasis in original); *see also Goldstein, Garber & Salama, LLC v. J.B.*, 300 Ga. 840, 842 (2017) (no liability for act by third party that is “merely possible, according to occasional experience, but only for a consequence which is probable, according to ordinary and usual experience.”) (quoting *Johnson v. American Nat'l Red Cross*, 276 Ga. 270, 273 (2003)).

The Avis Defendants' conduct falls within these well-prescribed limits. The general rule applies because Plaintiff's harm resulted from the intervening criminal

conduct of the car thief. Moreover, Plaintiff's harm was not a "probable or natural" consequence (*Goldstein, Garber & Salama*, 300 Ga. 840 at 843) of the Avis Defendants' decision to hire the person who later stole the car<sup>1</sup> or of the Avis Defendants' security measures. An intervening cause is too remote to be foreseeable if it "furnished only the condition or occasion of the injury." *Church's Fried Chicken v. Lewis*, 150 Ga. App. 154, 157 (1979); *Cope v. Enterprise Rent-A-Car*, 250 Ga. App. 648, 652 (2001); *see also Alamo Rent-A-Car, Inc. v. Hamilton*, 216 Ga. App. 659, 660 (1995) (car rental agency's alleged negligence in failing to inquire into renters' driving records or intended use of vehicle was superseded by intoxicated motorist's unauthorized criminal acts). That is exactly the case here.

## **II. Application of Traditional Proximate Cause Doctrine In This Case Serves Important Policy Interests**

Potential defendants—especially businesses like rental-car agencies—respond rationally to risk. They will invest in cost effective precautions, take out insurance when they can, and avoid activities that create liability concerns. These rational activities require liability that is reasonably predictable, so that the business knows which actions to take.

---

<sup>1</sup> Indeed, requiring employers to hire workers without criminal records in order to avoid tort liability in the event of a future offense might run afoul of other state policies, such as encouraging the re-integration of felons into society.

Once a potential defendant's liability depends more on the vagaries of jury sentiment rather than established law, predictability is lost. Liability can become too uncertain to insure (or self-insure) cost-effectively. Consumers may be forced to pay higher than normal prices for goods and services to cover the potential cost of litigation and liability—a "tort tax." Socially beneficial activities that may expose the business to new risk may be abandoned. For example, if businesses are subject to liability for criminal acts by third parties, they may decide not to serve high crime areas, hurting the vast majority of the population, which is law-abiding.

In particular, car rental agencies such as the Avis Defendants provide an important service for consumers. Like other businesses, car rental firms do not have unlimited funds. Georgia would benefit far more from car rental revenues being spent on newer vehicles and frequent maintenance to promote safety, avoidance of price increases that can discourage tourism, and wages and benefits for workers than perfecting security measures to ensure that no car can ever be stolen by a determined thief.

In fact, the importance of protecting car rental agencies from unreasonable liability led the United States Congress to enact a federal law called the Graves Amendment, 49 U.S.C. § 30106. The Graves Amendment is a statutory statement of proximate cause. It provides that car rental agencies cannot be held vicariously

liable for the negligence of their customers.<sup>2</sup> As the Eleventh Circuit explained in upholding the constitutionality of the Graves Amendment:

It is plain that the rental car market has a substantial effect on interstate commerce. It is also apparent that Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on that market. The reason it could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If *any* costs are passed on to customers, rental cars — a product which substantially affects commerce and which is frequently an instrumentality of commerce — become more expensive, and interstate commerce is thereby inhibited.

*Garcia v. Vanguard Rental USA, Inc.*, 540 F.3d 1242, 1253 (11th Cir. 2008), *cert. denied*, 129 S. Ct. 1369 (2009) (emphasis in original). The Eleventh Circuit

---

<sup>2</sup> The Graves Amendment provides in relevant part:

(a) In General.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

49 U.S.C. § 30106(a).

further explained that the law's proponents "perceived vicarious liability as a burden on consumers." *Id.* at 1253 n.6. These policy considerations also support adhering to the limits of proximate causation in this case.

It is also worth noting that erosion of proximate cause to permit liability for harm to remote plaintiffs based on a third party's criminal act would "expand traditional tort concepts beyond manageable bounds," *CSX Transp., Inc. v. Williams*, 278 Ga. 888, 890 (2005), and impact any number of industries and potential defendants. Liability would exist even if the stolen item was not an inherently dangerous instrumentality. *See Robinson v. Pollard*, 131 Ga. App. 105, 105 (1974) (recognizing that a motor vehicle is not considered a dangerous instrumentality under Georgia law).

Every business in Georgia employs persons who spend considerable time off duty engaging in activities that the employer does not control. If the employer became liable in tort for every criminal act in which the employment merely supplied an instrumentality or condition that factored into a subsequent remote injury, tort liability would be boundless. A retailer would be exposed if an employee stole from the business and used the stolen item to commit another crime.

For example, a pharmacy might be liable if an employee stole prescription drugs, sold them to a stranger on the street, and that stranger accidentally overdosed. A gas station might be liable if an arsonist stole gasoline and then lit fire to a home or school. A sporting goods store might be liable if a worker stole a baseball bat and later harmed someone. A hardware store might be liable if an employee stole fertilizer and made a bomb.

In addition, a manufacturer would be at risk if any worker took a tool home and used it to commit domestic violence. Automobile dealers and businesses with fleets of vehicles or delivery trucks could be liable for harms to remote plaintiffs caused by reckless criminal drivers, similar to this case. The possibilities for abuse of the Plaintiff's theory would be endless and would impact every sector of Georgia's economy.

Changing long settled Georgia law to impose liability on the Avis Defendants for verdicts of the magnitude of the *Johnson* and *Smith* cases would be highly problematic. Rather than add to the huge burden struggling business operations are facing today, the Court should reaffirm Georgia's long standing precedents on proximate cause in tort cases.

## CONCLUSION

For these reasons, the Court should affirm the Court of Appeals' decision and enter judgment as a matter of law for the Avis Defendants.

/s/ Caroline Gieser

Caroline Gieser (Ga. Bar No. 167916)  
SHOOK, HARDY & BACON L.L.P.  
1230 Peachtree Street, Suite 1200  
Atlanta, GA 30309  
(470) 867-6013  
cgieser@shb.com

Mark Behrens (*pro hac vice*)  
SHOOK, HARDY & BACON L.L.P.  
1800 K Street, NW, Ste. 1000  
Washington, DC 20006  
Phone: (202) 639-5621  
Fax: (202) 783-4211  
mbehrens@shb.com

*Attorneys for Amici Curiae*

Dated: November 3, 2020

## CERTIFICATE OF SERVICE

I certify that, on November 3, 2020, I served a copy of the foregoing by e-mail on the following counsel of record:

Michael L. Neff  
D. Dwayne Adams  
Susan M. Cremer  
T. Shane Peagler  
Law Offices of Michael L. Neff, P.C.  
3455 Peachtree Rd. NE, Ste. 509  
Atlanta, GA 30326  
[michael@neffinjurylaw.com](mailto:michael@neffinjurylaw.com)  
[dwayne@neffinjurylaw.com](mailto:dwayne@neffinjurylaw.com)  
[susan@neffinjurylaw.com](mailto:susan@neffinjurylaw.com)  
[shane@neffinjurylaw.com](mailto:shane@neffinjurylaw.com)

Laurie Webb Daniel  
Matthew D. Friedlander  
Holland & Knight LLP  
1180 W. Peachtree St. NW, Ste. 1800  
Atlanta, GA 30309  
[Laurie.Daniel@hklaw.com](mailto:Laurie.Daniel@hklaw.com)  
[Matthew.Friedlander@hklaw.com](mailto:Matthew.Friedlander@hklaw.com)

William T. Casey, Jr.  
Swift Currie McGhee & Hiers, LLP  
1355 Peachtree St. NE, Ste. 300  
Atlanta, GA 30309  
[Bill.Casey@swiftcurrie.com](mailto:Bill.Casey@swiftcurrie.com)

G. Lee Welborn  
Downey & Cleveland, LLP  
288 Washington Avenue  
Marietta, GA 30060  
[Welborn@downeycleveland.com](mailto:Welborn@downeycleveland.com)

Michael B. Terry  
Naveen Ramachandrappa  
Amanda Seals  
Bondurant, Mixon & Elmore, LLP  
1201 W. Peachtree St. NW, Ste. 3900  
Atlanta, GA 30309  
[terry@bmelaw.com](mailto:terry@bmelaw.com)  
[ramachandrappa@bmelaw.com](mailto:ramachandrappa@bmelaw.com)  
[seals@bmelaw.com](mailto:seals@bmelaw.com)

Brantley C. Rowlen  
Jason P. Wright  
Lewis Brisbois Bisgaard & Smith LLP  
1180 Peachtree Street NE, Ste. 2900  
Atlanta, GA 30309  
[Brantley.Rowlen@lewisbrisbois.com](mailto:Brantley.Rowlen@lewisbrisbois.com)  
[Jason.Wright@lewisbrisbois.com](mailto:Jason.Wright@lewisbrisbois.com)

Michael D. St. Amand  
Gray, Rust, St. Amand,  
Moffett & Brieske, LLP  
950 E. Paces Ferry Road NE, Ste. 1700  
Atlanta, GA 30326  
[mds@grsmb.com](mailto:mds@grsmb.com)

John Hadden  
The Hadden Law Firm  
44 Broad Street, Suite 600  
Atlanta, GA 30303  
[jhadden@haddenfirm.com](mailto:jhadden@haddenfirm.com)

Nathan Gaffney  
Fried Rogers Goldberg LLC  
3550 Lenox Rd. NE, Ste. 1500  
Atlanta, GA 30326  
[nathan@frg-law.com](mailto:nathan@frg-law.com)

Darren W. Penn  
Penn Law LLC  
4200 Northside Pkwy. NW  
Building One, Ste. 100  
Atlanta, GA 30327  
[Darren@pennlawgroup.com](mailto:Darren@pennlawgroup.com)

Brian D. "Buck" Rogers  
Rogers & Fite LLC  
4355 Cobb Pkwy. Ste. J564  
Atlanta, GA 30339  
[buck@rogersfite.com](mailto:buck@rogersfite.com)

/s/ Caroline Gieser  
Caroline Gieser