

Appeals Court Affirms City's \$5M Insurance Coverage Overrides Sovereign Immunity Claims

Sued after three innocent people died during a police chase, College Park's insurer argued that its \$5 million policy coverage was limited to \$700,000 by sovereign immunity.

By [Greg Land](#) November 03, 2020 at 06:32 PM



Christian Coomer (Photo: John Disney/ALM)

In a [ruling](#) likely to resonate well beyond the College Park, Georgia, city limits, the state Court of Appeals agreed that sovereign immunity does not

insulate the city's insurer from claims by the families of three people killed when a suspect fleeing police hit the car they were riding in.

The city's insurer had argued that Georgia law limiting a municipality's liability exposure to \$700,000 for the incident shielded it from having to pay more if the plaintiffs' claims succeed, but an appellate panel said the city's purchase of \$5 million in primary and excess coverage—and the terms of its policies—waived applicable statutory limits.

Plaintiffs attorneys Alwyn Fredericks of [Cash Krugler & Fredericks](#) and [Summerville Firm](#) principal Darren Summerville said the decision will have a big impact on municipal liability and insurance cases going forward.

Under Georgia law, municipalities' liability for bodily injury claims is limited to \$500,000 per person or a collective \$700,000 for the death or injury of two or more people under sovereign immunity. But state law also decrees that those limits are waived to the extent that a "local government entity purchases commercial liability insurance in an amount in excess" of that waiver.

"We knew the policy coverage existed," said Summerville, who handled the appeal with firm partner Anna Green Cross. "The opinion made it abundantly clear that, once you purchase the insurance, sovereign immunity doesn't apply."

"This [decision] came down to the language of the statute," said Fredericks. "If you read it any other way, it allows the insurance carriers to write themselves out of their coverage."

Atlantic Specialty Insurance is represented by [Lewis Brisbois Bisgaard & Smith](#) partner Seth Friedman, who was unavailable on Tuesday.

The ruling comes amid litigation surrounding a 2016 incident when a young man stole an SUV near Hartsfield-Jackson Atlanta International Airport on a Sunday morning.

College Park police gave chase and followed the vehicle into the city of Atlanta where it entered a residential area and slammed into a Buick carrying Dorothy Wright and her grandchildren, Cameron Costner and Layla Partridge, all of whom were killed. The still-unidentified car thief fled on foot.

Joi Partridge, Wright's daughter and the children's mother, and other family members filed a wrongful death action against College Park in Fulton County State Court.

College Park, which had purchased \$1 million in primary coverage and \$4 million in excess coverage, argued that it was shielded from any amount greater than \$700,000 in liability by the municipal sovereign immunity law, OCGA § 36-92-2.

The plaintiffs moved for summary judgment that the city's entire policy limits were available, at which point American Specialty filed a declaratory judgment action in U.S District Court for Georgia's Northern District stating it was obliged to cover no more than \$700,000.

In 2018, Judge Steve Jones kicked the case back to Fulton State Court Susan Edlein, ruling among other things that the dispute "turn[ed] on state law, not federal law.

"Finding that a local government and its insurer can contract around the legislative waiver in O.C.G.A. § 36-92-2 would have far-reaching implications for all future insurance contracts between local government entities and insurers in Georgia."

Jones also said "strong evidence exists that the purpose of filing this federal action was an attempt to shop for a more favorable forum."

Last year, Edlein denied American Specialty's motion for summary judgment, writing that "College Park's purchase of an insurance policy did not waive sovereign immunity; that happened as a matter of law regardless of the existence of insurance.

"College Park paid for \$1 million automobile liability insurance and \$4 million excess coverage policy. Purchase of the policy did not subject College Park to any greater potential liability," Edlein wrote.

On appeal, American Specialty argued that its policy language stipulated that it "does not constitute, nor reflect an intent" to "waive or forego any defenses of sovereign and governmental immunity available" to any insured.

In upholding Edlein's ruling, Appeals Court Judge Christian Coomer wrote that contractual endorsements in insurance policies such as College Park's fit within the legislative carveouts to municipal sovereign immunity.

"Thus, we agree with the trial court that to read the endorsements as suggested by Atlantic would essentially grant insurers and local governmental entities carte blanche to contract around the legislature's clear intent to increase compensation for those who sustain injuries arising out of the use of a government motor vehicle," wrote Coomer, with the concurrence of Presiding Judge Yvette Miller and Judges Amanda Mercier.

The "statutory scheme at issue in this case was intended by the legislature to protect members of the public by waiving the sovereign immunity of local government entities with respect to claims for the negligent use of a motor vehicle and establishing the limits of the amount of the waiver in the event the government entity purchases liability insurance," wrote Coomer, himself

a former member of the state House of Representatives.

Even as he hailed the ruling, Fredericks said the statutory limits for municipality liability are still unreasonably low.

"At the end of the day we've got a statutory scheme that limits coverage to 500,000 individually or \$700,000 collectively," said Fredericks. "We would have been limited to asking for \$700,000 for the deaths of three innocent people. The Georgia Legislature may need to reassess whether those limits are still appropriate. It's simply unjust."