IN THE SUPREME COURT
OF THE STATE OF GEORGIA

CHRYSLER GROUP LLC n/k/a "FCA US LLC", Petitioner,	)	
v.	)	Case No. S17G0832
JAMES BRYAN WALDEN and LINDSAY NEWSOME STRICKLAND, individually and on behalf of the estate of their deceased son, REMINGTON COLE WALDEN, Respondents.	)	

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE GEORGIA CHAMBER OF COMMERCE AS *AMICI CURIAE*

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INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the largest business federation in the world. Boasting over 300,000 members, the Chamber represents the interests of more than three million companies and professional organizations of every size, in every sector, and from every region of the country. The Georgia Chamber of Commerce has over 40,000 members and represents the interests of a diverse cross-section of more than 500 industry sectors. Both the U.S. Chamber and Georgia Chamber represent their members' interests before federal and state governing bodies—including legislatures, executive agencies, and federal and state courts. To that end, they regularly file *amicus curiae* briefs in cases of concern to the business community.

This is one of those cases, for two reasons. The first is the sheer size of the jury verdict: At $150 million in compensatory damages—there was no request for punitive damages—the verdict is the largest wrongful-death award in Georgia's history and one of the largest verdicts across the country in recent years. The second is what led to that outsized verdict: a runaway jury inflamed by arguments that never should have seen the inside of a courtroom.

Indeed, the trial court ensured that passion and prejudice would drive the jury's verdict by letting the plaintiffs' counsel introduce evidence of Chrysler's CEO's compensation and benefits and then to urge the jury to calibrate its damages award to that compensation. And then, adding error to error, the Court of Appeals ignored nearly 100 years of precedent to hold that evidence of a corporate witness's wealth is "always" admissible in a case against the company because it shows the employee's bias. Slip op. 3, 18-23. That is the opposite of what this Court first said nearly 100 years ago in *Smith v. Satilla Pecan Orchard & Stock Co.*, 152 Ga. 538, 541 (1922), and repeated as recently as 2006: Evidence of wealth is "never admissible, unless in those exceptional circumstances where position or wealth is necessarily involved." *Id*. The Court of Appeals turned Georgia law on its head.

That error should lead to a new trial, but if it doesn't, this Court should at least reduce the excessive damages award. The Court of Appeals refused to consider Chrysler's evidence that prior awards in similar cases were much smaller than the remitted award, reasoning that "no two cases are exactly alike." Slip. op. 33. But Chrysler didn't argue that this case and others are exactly alike. It argued only that awards from *similar* cases are relevant to whether the jury's verdict was excessive. That is an unremarkable proposition, one that other courts have accepted without blinking. *See, e.g.*, *Meader v. United States*, 881 F.2d 1056, 1060 n.10 (11th Cir. 1989) (applying Georgia law: "In showing that a damage award is excessive, it is appropriate to compare the award with awards in similar cases . . . . This method is most often used to review awards for pain and suffering."). This Court should make clear once and for all that, in deciding whether a verdict is excessive, trial and appellate courts can and should consider upheld awards from similar cases.

Viewed from any angle, the Court of Appeals' decision is bad for the State. It leaves businesses defenseless in Georgia courts against inflammatory and prejudicial arguments about their employees' wealth or compensation. By the Court of Appeals' view, that sort of evidence is always admissible against a corporate witness—no matter the relevance, no matter the corporate defendant, no matter the guarantee of prejudice. To companies that do business in the State or plan to do so in the future, the decision below reads like a bad advertisement: "Come to Georgia where you can face liability divorced from conduct."[1]

ENUMERATION OF ERRORS

Under Georgia law, "evidence of the wealth or worldly circumstances of a party is *never* admissible, except in cases where position or wealth is necessarily involved." *Smith*, 152 Ga. at 541 (emphasis added). This is a wrongful-death case arising from a car accident. Position and wealth are irrelevant. And even if they were relevant, any minimal relevance would pale in comparison to the danger (nigh, certainty) of unfair prejudice. *See* O.C.G.A. § 24-4-403. Those principles—long established in Georgia law—were lost on the trial court and the Court of Appeals.

During the trial, the judge permitted the plaintiffs' counsel to introduce evidence about Chrysler's CEO's wealth—including his $64 million compensation package, his use of a company car, and his access to a private jet. Then, in closing arguments, the plaintiffs' counsel circled back to that evidence, urging the jury to calibrate its monetary award to the CEO's compensation and benefits. In counsel's words, "what [Chrysler's counsel] said [the decedent]'s life was worth, [Chrysler's CEO] made 43 times as much in one year." T14-2170; *see also* T14-2178 (plaintiffs' counsel arguing for a $130 million wrongful-death award: "That's less than two

[1] No party or party's counsel authored this brief in whole or in part, and no one except the Chambers, their members, or their counsel funded the brief's preparation.

years of what [Chrysler's CEO] made just last year. He made $68 million last year."). The trial court allowed the argument even though the CEO's compensation had nothing to do with the issues in the case. Plaintiffs' counsel introduced the evidence purely to inflame the jury.

It worked. The jury awarded the plaintiffs $150 million. The trial court remitted the award to $40 million but refused to consider damages awards from similar cases to ensure that the remitted award wasn't excessive. The Court of Appeals affirmed.

The questions presented are

(1) Did the Court of Appeals err in holding that evidence about a CEO's compensation is admissible against the company in a case that has nothing to do with the CEO's compensation?

(2) In assessing a jury verdict for remittitur, should a trial court analyze prior damages awards in similar cases?

INTRODUCTION AND SUMMARY OF ARGUMENT

For nearly 100 years, the rule in Georgia has been "that evidence of the wealth or worldly circumstances of a party is never admissible, except in cases where position or wealth is necessarily involved." *Smith*, 152 Ga. at 541; *see also Bailey v. Edmundson*, 280 Ga. 528, 534 (2006) (quoting the "general rule" that "evidence of the wealth or worldly circumstances of a party litigant is never admissible"). The reason for the rule is straightforward: Evidence of a party's wealth or position has a unique ability to play on jurors' passions and prejudices. A jury may disregard facts to punish a wealthy defendant, to deny recovery to a wealthy plaintiff, or to give a windfall to a poor plaintiff.

The Court of Appeals ignored those long-standing precedents and the basic evidentiary rules that they reflect. It saw no problem with allowing plaintiffs' counsel to focus on the CEO's compensation instead of on Chrysler's conduct and the damages suffered in the accident. Boiling it down, counsel urged the jury to punish Chrysler because its CEO makes a lot of money. The jury obliged, returning an unprecedented $150 million verdict. According to the Court of Appeals, that outcome was not only reasonable but also consistent with O.C.G.A. § 24-6-622, which says that "the state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury."

That ruling came out of nowhere. Before the decision below, Georgia courts had consistently rejected wealth evidence as a means for proving a witness's bias. Those courts understood that there are other non-prejudicial ways to show bias—including, for instance, by showing simply that the witness worked for the defendant. *See Se. Transp. Corp. v. Hogan Livestock Co*., 133 Ga. App. 825, 828 (1975) ("[I]t is proper to allow counsel to inquire of a witness whether he is an employee…for showing a possibility of bias which he may have."). That would have been true here: The jury learned that the CEO was not neutral as soon as they learned that he was the CEO. Adding the gratuitous facts that he makes $64 million annually and receives various fringe benefits as CEO served no other purpose than to seize on the jury's passions. The Court of Appeals should have been quick to denounce the tactical maneuver as verboten.

It did the opposite. It embraced the tactic. In doing so, the Court of Appeals sent a message to the Chambers' members and other businesses that they may not get a fair trial in Georgia. If left to stand, the Court of Appeals' decision will undermine public confidence in the integrity of judicial proceedings in the State. This Court should vacate the verdict and reaffirm that Georgia prohibits using wealth evidence at trial—returning Georgia law to the judicial mainstream.

In all events, this Court should affirm that, in assessing whether a verdict is excessive, courts can and should consider prior upheld awards from similar cases. That is the practice in most courts in Georgia and across the country and should be standard practice in Georgia. That sort of comparative analysis is particularly important in cases involving non-economic damages because they are difficult to quantify, which often leads to awards greater than needed to compensate for harm.

ARGUMENT

I. THE COURT OF APPEALS' DECISION IS AN OUTLIER.

Georgia courts generally prohibit introducing wealth evidence at trial because it is highly prejudicial. *See Bailey*, 280 Ga. at 536; *Smith*, 152 Ga. at 541. And yet the Court of Appeals approved of the improper arguments that plaintiffs' counsel made about Chrysler's CEO's compensation in a case that had nothing to do with the CEO's compensation. The result below is an outlier—and not in a good way. The Trial Court and Court of Appeals ignored basic evidentiary rules and a century of precedent to approve what courts had long rejected.

Under Georgia law, evidence is admissible only if it satisfies the relevance and prejudice standards codified in O.C.G.A. § 24-4-402 ("Evidence which is not relevant shall not be admissible.") and § 24-4-403 ("Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice…"). The Court of Appeals should have started with the general prohibition against wealth evidence, which reflects those foundational rules.[2] Instead, it trained its attention on O.C.G.A. § 24-6-622, which says that the "state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury." Slip op. 3, 18-23. But O.C.G.A. § 24-6-622 does not override the general rules of evidence. Evidence that satisfies § 24-6-622 is nevertheless inadmissible if it is irrelevant or unduly prejudicial. *See Lockett v. State*, 217 Ga. App. 328, 330 (1995) ("[E]ven if the testimony sought to be admitted does relate to the feelings a witness has toward a party, if that particular feeling would have no relevance to the questions being tried by the jury, then such evidence may be excluded."). The rule against wealth evidence embodies those principles.

The Court of Appeals ignored the settled rule in its evidentiary analysis. If it hadn't, it would have excluded the evidence about Chrysler's CEO's compensation because the evidence was (1) irrelevant to the case and (2) served no purpose other than to prejudice the jury against Chrysler. It would have understood that the rule

[2] Plaintiffs falsely accuse the Chambers of earlier misrepresenting the arguments that Chrysler made before the trial court and the Court of Appeals. *See* Appellees' Br. 8 n.6 (citing the Chambers' Cert.-Stage Amicus Br. at 3, 7). The Chambers did no such thing. A quick review of the pages that Plaintiffs cite from the Chambers' brief reveals that the Chambers said nothing about what Chrysler argued to the trial court or the Court of Appeals.

against introducing wealth evidence exists comfortably alongside O.C.G.A. § 24-6-622. *See, e.g.*, *Nw. Univ. v. Crisp*, 211 Ga. 636, 641 (1955) (excluding wealth evidence because "it had no tendency to illustrate any contested question").

Georgia is not alone in its approach to wealth evidence. So far as we can tell, nearly all state and federal courts apply the same rule. *See*, *e.g.*, *Reilly v. Natwest Mkts. Grp. Inc.*, 181 F.3d 253, 266 (2d Cir. 1999) ("Evidence of wealth, which can be taken as suggesting that the defendant should respond in damages because he is rich, is generally inadmissible in trials not involving punitive damages.") (internal quotation omitted); *W. Union Tel. Co. v. Cashman*, 132 F. 805, 808 (5th Cir. 1904) ("At the trial, and over the objections of the telegraph company, the court admitted evidence showing the great corporate wealth of the defendant, evidently offered with a view of obtaining enhanced damages. As there was no evidence in the case warranting the jury to award more than compensatory damages, the evidence in question was improperly admitted."); *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) ("It has been widely held by the courts that have considered the problem that the financial standing of the defendant is inadmissible as evidence in determining the amount of compensatory damages to be awarded."); *Ray v. Ford Motor Co.*, No. 3:07-cv-175, 2011 WL 6183099, at *5 (M.D. Ala. Dec. 13, 2011) ("[E]vidence of a defendant's wealth is highly prejudicial and, therefore, inadmissible.").

This case illustrates why. The CEO's partiality would not have been lost on anyone in the courtroom, so establishing bias could not have been the reason for admitting the CEO's compensation and other benefits. No, plaintiffs' counsel used the wealth evidence to ask for outsized damages, comparing the value of the decedent's life to Chrysler's CEO's compensation. That kind of argument has no place in our judicial system because it divorces liability from the defendant's conduct.[3]

II. THE COURT OF APPEALS' DECISION IMPUGNS THE INTEGRITY OF JUDICIAL PROCEEDINGS IN THE STATE AND THREATENS A RASH OF WINDFALL RECOVERIES.

The plaintiffs sought only compensatory damages at trial—there was no request for punitive damages—but the jury returned a $150 million verdict that was punitive in nature. The most reasonable (perhaps only) explanation for the verdict is that plaintiffs' counsel's arguments about the CEO's compensation and benefits drove the jury to punish Chrysler. Plaintiffs' counsel did not offer evidence about the decedent's lost future earnings or other economic loss; they pointed only to the CEO's compensation as a proxy for the value of the decedent's life. If, in the punitive-damages context, "[t]he wealth of a defendant cannot justify an otherwise unconstitutional [ ] damages award" (*State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 427 (2003)), then a defendant's wealth also cannot justify a runaway compensatory verdict.

This Court's precedents support no other conclusion. The Court has held that a court must vacate a jury verdict when the damages awarded are so excessive as to

[3] The Court of Appeals also reasoned that the rule against wealth evidence did not apply because the CEO was not a party to the case. That was a contrived distinction. The CEO is Chrysler's agent, and what Chrysler pays its CEO is precisely the kind of irrelevant and prejudicial evidence that the rule against wealth evidence prohibits.

raise an "inference that passion, prejudice, or another improper cause invaded the trial." *Cent. Of Ga. R.R. Co. v. Swindle*, 260 Ga. 685, 686 (1990); *see also Head v. CSX Transp., Inc.*, 271 Ga. 670, 671 (1999); *Norfolk S. Ry. Co. v. Blackmon*, 262 Ga. App. 266, 268 (2003). When a jury hears about the defendant's CEO's large compensation and then turns around and awards the plaintiff one of the largest verdicts ever, the award doesn't just raise an inference of improper taint. It screams taint. By allowing the runaway verdict to stand, the Court of Appeals has primed the State for a rash of follow-on windfall verdicts.

Perhaps unwittingly, the Court of Appeals also built an anti-corporate bias into Georgia's evidentiary rules. Individual plaintiffs and defendants will not suffer under the Court of Appeals' decision; they can litigate without the specter of wealth evidence hijacking their trial. No, it is only corporate entities that must now worry about whether their opponent will shift the trial's focus away from the conduct in question and toward the company's profitability or its employees' compensation packages. Indeed, in many cases, corporate entities will be hamstrung in their ability to call their best witnesses because doing so would invite wealth evidence to show the witnesses' bias (and by proxy, the company's profits).

Imagine, for instance, a delivery-truck driver who causes an accident on his way home from work, injuring the other driver. At trial, the jury would assess damages using standard methods and evidence based on the injuries to the plaintiff and his property. But now imagine that, instead of causing the accident on his way home from work, the delivery-truck driver causes the same accident while on the job carrying out his duties for his employer. That same accident could result in a completely different trial—one that focuses on the delivery company's profitability and employees' compensation instead of on evidence about the driver's negligence and the plaintiff's injuries. If you're the company, the only way to avoid that outcome is to decide not to call any well-compensated company witnesses as part of your defense. If that sounds odd, it's because it is.[4]

And make no mistake: Enterprising plaintiffs' lawyers will rush to Georgia courts to make those and similar arguments. Tilting the balance so decidedly (and unfairly) in plaintiffs' favor will encourage litigants to trade arguments based on the evidence for arguments based on company profits or executive compensation (or both). The closing arguments in this case—asking the jury to value a lost life against Chrysler's CEO's compensation—will serve as a blueprint for plaintiffs' counsel going forward. Businesses will come to think of Georgia as a jurisdiction to avoid. The State's economy will suffer.

III. THIS COURT SHOULD REAFFIRM THAT, IN ASSESSING A DAMAGES AWARD, A COURT CAN AND SHOULD CONSIDER PRIOR AWARDS IN SIMILAR CASES.

A new trial is in order. But if this Court stops short of that remedy, it should at least reduce the excessive damages award—which remains excessive even after the trial court's remittitur. In doing so, the Court should also confirm that, in assessing whether a damages award is excessive, a court should consider prior upheld awards in similar cases. The Court of Appeals erred in holding to the contrary.

[4] The Court of Appeals ruling also incentivizes plaintiffs to subpoena corporate executives so that they may then introduce evidence of the executive's wealth.

The U.S. Supreme Court and state and federal courts across the country (including Georgia courts) have held that, in determining whether a particular damages award is excessive, courts can and should consider previous upheld damages awards in similar cases.[5] Indeed, in the punitive-damages context, the U.S. Supreme Court has instructed courts to consider—as a matter of practice—"the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 440 (2001). In other contexts, courts have instructed the same. *See, e.g.*, *Dep't Human Res. v. Johnson*, 264 Ga. App. 730, 738 (2003) (upholding a $2 million wrongful death award that was "not so much greater than other awards approved" by the same court); *Meader v. United States*, 881 F.2d 1056, 1060 n.10 (11th Cir. 1989) (applying Georgia law: "In showing that a damage award is excessive, it is appropriate to compare the award with awards in similar cases . . . . This method is most often used to review awards for pain and suffering."); *Douglass v. Delta Air Lines, Inc.*, 897 F.2d 1336, 1339 (5th Cir. 1990) ("[W]e compare damages awarded in factually similar cases, and arising within the controlling jurisdiction, in order to construct an objective framework for comparison."). Comparing upheld awards from similar cases makes good sense: It promotes consistency in the judicial process and helps ensure that an award reflects the harm suffered and not the jury's passion or prejudice or a punitive intent.

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[5] Emphasis on *upheld*. Upheld awards better indicate the range of reasonable outcomes. *See, e.g., Bravo v. United States*, 532 F.3d 1154, 1166 (11th Cir. 2008).

That process of comparing similar awards is important across the range of cases, but it is particularly important in cases involving non-economic damages because those kinds of damages are especially hard to quantify. *See, e.g.*, *Nevor v. Moneypenny Holdings, LLC*, 842 F.3d 113, 121 (1st Cir. 2016) ("Non-economic damages are notoriously difficult to quantify. There is no scientific formula or measuring device which can be applied to place a precise dollar value on pain, suffering, and other items of intangible harm.") (quotation omitted); *Munn v. Hotchkiss Sch.*, 795 F.3d 324, 336 (2d Cir. 2015) ("Although non-economic damages are always abstract—pain and suffering are difficult to quantify—this problem is particularly salient in this case because of the size of the non-economic damages."). Because of those inherent difficulties, it is easy for a jury to award "non-economic" or "compensatory" damages that are just punitive damages by another name. *See, e.g.*, The Honorable Paul V. Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of our Tort System*, 90 Va. L. Rev. 1401, 1414 (2004) (explaining that "the tort system [is] infected by a growing pocket of irrationality" whereby juries use non-economic damages to award punitive awards by another name). By looking at comparable awards, a court can better gauge whether a damages award reasonably reflects compensation for actual harm or punishment divorced from actual harm. *See* David Baldus, et al., *Improving Judicial Oversight of Jury Damage Assessments: A Proposal for the Comparative Additur/Remittitur Review of Awards for Nonpecuniary Harms and Punitive Damages*, 80 Iowa L. Rev. 1109, 1134 (1995) ("explicit use of a comparative analysis of approved awards in similar cases" serves "to inform the court's judgment concerning the appropriate quantum of damages").

This is an important issue for the Chambers' members. If the choice is between facing the threat of Monopoly-money verdicts in Georgia court or not doing business in the State, many will choose the latter. And those who continue operating in Georgia will do so knowing that deciding to call a corporate witness in a litigation could open the door to an outsized verdict.

CONCLUSION

This Court should vacate the trial verdict. Failing that, it should further remit the damages award in light of previous upheld awards in similar cases.

Respectfully submitted August 15, 2017.

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