



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

**Please note:** *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

**Thursday, April 23, 2020**

### **10:00 A.M. Session**

#### **MIDDLETON V. THE STATE (S19G0852)**

A man is appealing his convictions in **Chatham County** for hijacking a motor vehicle and theft by receiving stolen property, arguing that the guilty verdicts are “mutually exclusive” and therefore must be set aside.

**FACTS:** According to the Georgia Court of Appeals, on Feb. 15, 2014, Constance Cooper arrived at her apartment on West Hall Street in Savannah at about 2:45 a.m. As she sat in her silver Honda Element listening to a news broadcast, she noticed a man dressed in dark clothing, later identified as **Derrick Leonard Middleton**, lurking about and “looking super shady.” Cooper flashed her headlights to alert the man that he was being watched; he looked at her and continued walking. After grabbing her belongings and getting out of her car, the man approached her and pulled out a gun. Cooper immediately dropped her belongings, and the man grabbed her purse and her keys, saying, “I know where you live now.” He then got into her car

over her protest, although he told her she would get her car back; “I only need it for a few hours.” As he drove away, he pinned Cooper against a small tree with the vehicle. He then drove forward, she freed herself, and the man drove away.

Officers later spotted the stolen Honda Element on Interstate 16 near Savannah and initiated a pursuit. The vehicle sped away but was stopped a short time later when it ran over “stop sticks” police had put in its path. The car crashed into the median wall, and the driver fled into a nearby wooded area. Officers soon captured the man and identified him as Middleton. Cooper later identified him from a photographic lineup, and two mobile phones that belonged to Cooper, as well as clothing she told officers Middleton had been wearing, were found during a search of Middleton’s residence.

In April 2014, a Chatham County grand jury indicted Middleton for one count each of armed robbery, hijacking a motor vehicle, theft by receiving stolen property, and seven additional offenses. Following a November 2015 trial, a jury found him guilty on all counts, and he was sentenced to life plus 11 years in prison. Middleton appealed to the Court of Appeals, Georgia’s intermediate appellate court. That court agreed with Middleton that two of his three convictions for possession of a firearm during the commission of a felony should have been merged into the third for sentencing purposes, and it vacated those two convictions and remanded the case for resentencing on those two counts. However it upheld Middleton’s remaining convictions and life prison sentence. Middleton now appeals to the Georgia Supreme Court.

**ARGUMENTS:** Middleton’s attorney argues that the verdicts for hijacking a motor vehicle and theft by receiving were “mutually exclusive” and should be vacated. Verdicts are mutually exclusive when a guilty verdict on one count logically excludes a finding of guilt on the other. “The Court of Appeals erred when it concluded that the verdicts for hijacking a motor vehicle and theft by receiving were not mutually exclusive,” the attorney argues in briefs. “It was legally and logically impossible for Mr. Middleton to be the person who took the vehicle and the person who subsequently received it after it had been taken by another. The verdicts then were mutually exclusive as a matter of law.” These two convictions “both related to the State’s claim that Mr. Middleton used a firearm to rob Cooper, take her vehicle, then retain it,” the attorney argues. “These verdicts were mutually exclusive because Mr. Middleton ‘could not be convicted of both taking [the vehicle] and receiving the stolen [vehicle] because one cannot receive stolen property unless it is first taken by someone else.’” As stated in the 1999 Court of Appeals’ decision in *Middlebrooks v. State*, “The offense of theft by receiving is intended to catch the person who buys or receives stolen goods, *as distinct from the principal thief.*” The Court of Appeals also erred, Middleton’s attorney contends, by determining that Middleton had waived his argument that the hijacking and theft by receiving convictions were mutually exclusive because his trial attorney had failed to lodge a specific objection to these verdicts when they were returned at the trial court level. “Mr. Middleton was not required to object to the form of the verdicts to preserve this position for appellate review,” the attorney argues. “In Georgia, a judgment entered on mutually exclusive verdicts is a void and erroneous judgment.” “Because mutually exclusive verdicts are void, they cannot stand.” “The judgment of the Court of Appeals should be reversed and Mr. Middleton should be given a new trial on these counts,” his attorney argues.

The State, represented by the District Attorney, argues that convictions for hijacking a motor vehicle and theft by receiving the same vehicle are not mutually exclusive. Georgia Code § 16-8-7 states that a person can be guilty of the offense of theft by receiving stolen property in three ways: receiving the property, disposing of the property, or retaining the property. There are “fact scenarios where a jury could find a defendant guilty of both the taking offense and the receiving offense,” the State argues in briefs. “Where a defendant takes stolen property, a finding that he also retained the property is not *logically excluded*; therefore, such a situation does not present mutually exclusive verdicts.” The State also argues that a defendant must raise any objections to the form of a verdict when it is accepted by the trial court, or at a motion for new trial hearing, or at the earliest opportunity in order to assert that convictions are mutually exclusive. However, there are two exceptions. Nevertheless, “While this Court should allow a defendant to challenge mutually exclusive verdicts, such challenges should not be limitless,” the State argues.

**Attorney for Appellant (Middleton):** Robert Persse

**Attorneys for Appellee (State):** Meg Heap, District Attorney, Matthew Breedon, Asst. D.A.

**ATLANTA WOMEN’S SPECIALISTS, LLC ET AL. V. TRABUE ET AL. (S19G1138)**

**ANGUS V. TRABUE ET AL. (S19G1140)**

**ANGUS V. TRABUE ET AL. (S19G1141)**

**ANGUS V. TRABUE ET AL. (S19G1142)**

**ATLANTA WOMEN’S SPECIALISTS, LLC ET AL. V. TRABUE ET AL. (S19G1143)**

At issue in these appeals from a medical malpractice lawsuit is whether the law requires that the \$46 million in damages awarded to the husband of a woman who suffered brain damage following childbirth be apportioned according to the degree of fault by the parties.

**FACTS:** On Aug. 21, 2009, 38-year-old Shannon Marie Trabue was admitted to Northside Hospital where she was scheduled to have a cesarean section due to her hypertension. The baby was born without complications by Dr. Juanita Wyatt-Hathaway. Shannon’s blood pressure remained persistently elevated and Wyatt-Hathaway prescribed treatment. Dr. Rebecca Simonsen took over Shannon’s care after being informed of Shannon’s elevated blood pressure, shortness of breath, decreased urinary output, and pulse oximetry of 95 percent. **Dr. Stanley R. Angus** then assumed control of Shannon’s care, evaluated her, and increased one of her prescriptions. At 5:00 p.m. on Aug. 25, 2009, Angus ordered the insertion of an intravenous line, lab tests, and a CT scan to rule out a pulmonary embolism. She was sent to radiology unaccompanied by a medical professional. At 5:40 p.m., while unmonitored in radiology, Shannon suffered respiratory arrest, which progressed to a full cardiopulmonary arrest. She coded at 5:43 p.m. and medical staff began resuscitation efforts. A subsequent chest x-ray revealed pulmonary edema. Shannon’s brain was deprived of oxygen for 10 minutes, and she suffered a catastrophic brain injury that left her totally disabled, with the mentality of a child, and requiring constant and expensive medical care.

On Aug. 18, 2011, **Keith Trabue**, Shannon’s husband and guardian, and Advocacy Trust of Tennessee, LLC, her conservator, filed a medical malpractice lawsuit in **Fulton County** State Court against Angus and his employer, **Atlanta Women’s Specialists, LLC**, alleging that Angus was negligent and his employer was vicariously liable. The complaint alleged that Drs. Angus, Wyatt-Hathaway, and Simonsen were agents of the same practice – Atlanta Women’s Specialists

– so that their wrongful acts and omissions were imputed to Atlanta Women’s Specialists, making the practice vicariously liable. The plaintiffs attached to the complaint an expert affidavit by Dr. Paul Gatewood who stated that the care and treatment rendered by Dr. Angus fell below the standard of care required. Dr. Gatewood offered no opinion as to the negligence of the other physicians involved in Shannon’s care. In a pretrial order filed July 20, 2016 – nearly seven years after Shannon’s injuries – the plaintiffs alleged for the first time that Dr. Simonsen’s negligence, along with that of Dr. Angus, caused Shannon’s injuries. Specifically, they alleged that Dr. Simonsen took over Shannon’s care at 8:00 a.m. on Aug. 25, 2009 but saw Shannon only once during the 10:30 p.m. shift, despite several call from nurses about Shannon’s problems. The plaintiffs listed the question of Dr. Simonsen’s negligence as one for jury determination, specifying 41 allegations of negligence against her in addition to those against the named defendants, Dr. Angus and Atlanta Women’s Specialists.

The trial took place in February 2017. At the close of evidence, Dr. Angus and Atlanta Women’s Specialists argued that the verdict form should ask the jury to apportion fault and damages based on the conduct of both Dr. Angus and Dr. Simonsen. The jury entered its verdict in favor of Trabue on a special verdict form, which asked: “Was the negligence of any of Defendant Atlanta Women Specialists’ physician employees a contributing proximate cause of the injury to Shannon Trabue? If so, place an X in the blank before each physician employee whose negligence was a proximate cause of her injury.” The physician employees listed were Drs. Angus and Simonsen. The jury answered “yes” and placed an X next to both physicians’ names. Despite finding that the negligence of both doctors contributed to Shannon’s injuries, the jury did not apportion fault or damages, which totaled \$45,822,777.12. The trial court’s final judgment stated that Dr. Angus was “jointly and severally” liable for the entire judgment.

In April 2017, Dr. Angus and the Atlanta Women’s Specialists filed a motion for new trial, alleging among other things that the trial court erred by failing to require the jury to apportion fault between Dr. Angus and Atlanta Women’s Specialists on behalf of Dr. Simonsen, and by permitting evidence of the alleged negligence of Dr. Simonsen because no claims against her had been raised in the complaints. The plaintiffs also filed a motion to amend the judgment by adding legal fees. After considering the various briefs filed by the parties, the trial court denied the motion for new trial on all grounds except its failure to require the jury to apportion fault, ordering a new trial as to apportionment only. The parties then appealed to the Georgia Court of Appeals, the state’s intermediate appellate court, which found that apportionment involving Atlanta Women’s Specialists was “not proper” because “AWS’s liability to the plaintiffs was purely vicarious in nature for the acts of [Dr. Simonsen].” The appellate court also found that Dr. Simonsen was a “nonparty” and that the defendants had “waived their right to apportion damages” by not giving “the mandatory notice” required under the state’s apportionment statute that they would seek to apportion fault based on Dr. Simonsen’s conduct. The Court of Appeals then ruled that “the trial court erred by granting a new trial as to apportionment” and reversed that portion of the trial court’s order. Dr. Angus and Atlanta Women’s Specialists now appeal to the Georgia Supreme Court.

**ARGUMENTS:** The parties present a number of arguments in their five different briefs, but the following is the primary argument presented by Angus: “Apportionment is mandatory under Section 51-12-33 (b) and this Court’s precedent if a plaintiff brings an action against multiple parties and fault is divisible,” Angus’s attorneys argue in briefs. Subsection (b) states

that where an action is brought against more than one person for injury to person or property, the trier of fact – i.e., the judge or jury – shall “apportion its award of damages among the persons who are liable according to the percentage of fault of each person.” Trabue and the conservator brought claims against Angus and Atlanta Women’s Specialists that purportedly alleged that two separate “tortfeasors” – i.e. wrongdoers – contributed to the harm of Shannon Trabue. “Additionally, fault is divisible based on the respective conduct of Dr. Angus and Dr. Simonsen,” the attorneys argue. “Further, under established precedent in Georgia, the method of apportionment is between Dr. Angus (for his own conduct) and AWS (for the conduct of its employee, Dr. Simonsen).” In its opinion, “the Court of Appeals eviscerated the established law of apportionment in Georgia and reinstated joint and several liability,” ignoring Section 51-12-33 (b) of the statute on the apportionment of damages and “creating a new bright-line rule that apportionment can never occur where an employer holds vicarious liability....” Through its “ill-conceived analysis, the Court of Appeals found that apportionment based on Dr. Simonsen’s conduct was inappropriate because Dr. Angus and AWS did not notify Trabue that the very same employee – Dr. Simonsen – may have been partially responsible.” This “absurd outcome is precisely what occurred in this case, as reflected in the trial court’s final judgment expressly stating that Dr. Angus is ‘jointly and severally’ liable for the *entire* verdict – even though Trabue purportedly sought to recover based on the conduct of Dr. Simonsen and the jury found that Dr. Simonsen was partially at fault,” Angus’s attorneys argue. “The Court of Appeals errant decision will fundamentally reshape the law of apportionment in this State and exponentially expand the liability of every employee.” This Court should reverse the Court of Appeals apportionment ruling, the attorneys argue.

Attorneys for Trabue and the conservator argue the Court of Appeals made the correct decision and did not err in ruling that in order to seek apportionment of damages regarding the negligence of Dr. Simonsen, the defendants were required to comply with Georgia Code § 51-12-33 (d) of the apportionment statute. It states that, “Negligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault.” “Dr. Rebecca Simonsen is a nonparty, and defendant Dr. Stanley Angus forfeited apportionment for her fault when he chose not to timely file a notice of nonparty fault as required by Georgia Code Section 51-12-33 (d),” the attorneys argue in briefs. “And there are many other independent reasons why Dr. Angus forfeited apportionment. Meanwhile, Defendant Atlanta Women’s Specialists, LLC is the vicariously-liable employer of Dr. Angus and Dr. Simonsen, and therefore it has not standing to seek apportionment at all – which both AWS and Dr. Angus admit to be true.” The Supreme Court should uphold the Court of Appeals apportionment ruling, Trabue’s attorneys argue.

**Attorneys for Appellants (Angus, Atlanta Women’s Specialists, LLC):** David Flint, Michael Flint, Jamie Kastler, Laurie Webb Daniel, Matthew Friedlander, Philip George

**Attorneys for Appellees (Trabue, Advocacy Trust of Tennessee, LLC):** Michael Terry, Naveen Ramachandrappa, William Stone, Michael Regas, II, Ryals Stone, James Stone

## 2:00 P.M. Session

### **ROUZAN V. THE STATE (S20A0414)**

A man is appealing his murder conviction and life-without-parole prison sentence he received in **Richmond County** for shooting to death a man in front of his 8-year-old son.

**FACTS:** On Aug. 21, 2012, Ronnie Pontoon, who was 16 years old, sold **Seth Rouzan** a .22 caliber pistol for \$30 after Rouzan told him he wanted the gun to “make a robbery.” Pontoon understood he would not be paid for the gun until after Rouzan committed the robbery. On the same day, Joseph Williams, Jr. walked with his 8-year-old son, J.S. after school to the Maryland Fried Chicken restaurant in Augusta. On their way back to Williams’s apartment on First Street, a man, later identified as Rouzan, approached Williams and asked to buy some pills. Williams told Rouzan to “hold up,” then took his son to get some pizza. When they returned to the apartment complex the second time, J.S. began playing outdoors just as Rouzan returned. J.S. later said he could not initially hear what Rouzan was saying to his father, but he saw Rouzan take a gun from a Ford truck, point it at Williams, and demand that his father give him the pills. The boy said Williams responded, “I guess,” but refused to turn over the pills when Rouzan demanded the whole bottle. Rouzan then pointed the gun at Williams and fired. Upon hearing the gun go off, J.S. ran around the side of the apartment complex, and while hiding, heard two or three more shots before he returned to the front of the building and found his father lying on the ground. Williams had been shot twice – once in his arm and once in his back, which killed him.

During the investigation, police identified Rouzan and Pontoon as possible suspects in the case. They interviewed J.S., who identified Rouzan as the man who had shot his father in a photo lineup. J.S. also later identified Rouzan in court as “the man who shot my dad.” In November 2012, Rouzan and Pontoon were indicted for malice murder and felony murder. Pontoon was separately charged with possession of a firearm during commission of a crime and Rouzan was separately charged for use of a firearm by a convicted felon during commission of a crime. Prior to trial, Pontoon pleaded guilty to the less serious charge of attempt to commit armed robbery, for which he received a 20-year sentence, in exchange for his testimony against Rouzan.

Prior to Rouzan’s trial, the State announced its intent to submit evidence of a prior homicide for which Rouzan pleaded guilty to voluntary manslaughter. Following a pre-trial hearing, the judge admitted the evidence for the purposes of knowledge, motive, and intent. Rouzan was tried in December 2013 and the jury found him guilty on all counts. He was sentenced to life without parole and now appeals to the Georgia Supreme Court.

**ARGUMENTS:** Attorneys for Rouzan argue the trial court abused its discretion under Rule 404 (b) in Georgia’s “new” Evidence Code by admitting evidence of a prior unrelated murder. In 2006, Rouzan was charged with murder in connection with the death of news carrier Jeffrey LaBord who had been robbed before he was shot in the face and killed. Following a mistrial in 2009, Rouzan pleaded guilty to the reduced charge of voluntary manslaughter. “As an initial matter, the court erred in applying the wrong legal standard: Both the pre-trial hearing and the trial itself occurred after Jan. 1, 2013, so the court’s application of the prior evidence code’s rules regarding ‘similar transactions’ was inappropriate,” the attorneys argue in briefs. The new Evidence Code applies in cases tried after Jan. 1, 2013. Under Rule 404 (b) of the new Evidence Code, before admitting what is now called “other acts” evidence (formerly called “similar

transaction” evidence), “courts must determine whether 1) the evidence is relevant for some purpose other than demonstrating the defendant’s character; 2) the probative value of the evidence is substantially outweighed by undue prejudice; and 3) there is sufficient proof that the defendant committed the act,” the attorneys argue. In this case, the State has failed to satisfy the three-prong test. The trial court also erred “when it instructed the jury that a single witness is sufficient to establish a fact but failed to instruct the jury that an accomplice’s testimony must be corroborated.” Finally, the trial court abused its discretion when it refused to entertain the request by Rouzan’s attorney to postpone the hearing on Rouzan’s motion requesting a new trial. The trial court refused a continuance despite the attorney’s explanation that she had been unable to work on Rouzan’s case because of her obligations to other clients.

The State, represented by the District Attorney’s and Attorney General’s offices, argues the trial court properly admitted evidence of Rouzan’s murder of Jeffrey Labord under the new Evidence Code. The State acknowledges, however, that it appears prosecutors “continued to rely on the old similar transaction law and language in the notice.” The trial court eventually entered a written order, admitting the evidence for the purposes of knowledge, motive, and intent. The State notes in a footnote that “while these are proper purposes under 404 (b), it does appear that the trial court was also proceeding under old Code law....” Prosecutors met the three-prong test under Rule 404 (b) and the court therefore properly admitted the “other acts” evidence of Rouzan’s prior homicide, the State contends. Additionally, there was no plain error in the trial court’s failure to instruct the jury on the necessity of corroborating the testimony of an accomplice when he is the only witness. Furthermore, Rouzan’s trial attorney did not object to the trial court’s failure to give the jury charge, nor did the defense attorney request such a charge. Even if the trial court did err in failing to give the unrequested charge, any such error was harmless when it is highly probable it did not contribute to the verdict. Finally, the trial court did not abuse its discretion in denying Rouzan’s motion to postpone the hearing for his motion requesting a new trial, the State argues. A ruling on a motion to grant a continuance or postponement “is within the sound discretion of the trial court and denial of a motion to continue ‘will not be disturbed absent a clear abuse of discretion,’” the State contends, quoting the Georgia Supreme Court’s 2019 decision in *Yarn v. State*.

**Attorneys for Appellant (Rouzan):** Veronica O’Grady, Brandon Bullard

**Attorneys for Appellee (State):** Natalie Paine, District Attorney, Joshua Smith, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

### **GLOBAL PAYMENTS, INC. V. INCOMM FINANCIAL SERVICES, INC. (S19G1000)**

A company is appealing a Georgia Court of Appeals decision that the company warns will expose the financial technology industry to unprecedented liability related to the mere transmission of information.

**FACTS:** Global Payments, Inc. is a provider of payment technology and software solutions that transmits electronic payment information from merchants to credit card networks. Incomm Financial Services, Inc. (IFS) issues prepaid VISA gift cards for sale. Cardholders buy the gift cards to make purchases at merchants that are part of the VISA Network. Global recruits merchants to join the VISA Network. The merchants then use Global’s products to consummate sales transactions (both returns and credits). For each transaction, Global processes data from its

merchants. In 2015, some third-party cardholders used transaction information from legitimate purchases to initiate fraudulent “reversal” transactions. A reversal transaction requires a servicer, such as IFS, to credit funds to the cardholder’s card account. Here, in the guise of merchants, the cardholders initiated electronic reversal transactions and submitted those transactions to Global. As a processor, Global transmitted the reversal transactions to the VISA Network. The VISA Network then submitted the reversal transactions to IFS, which is responsible for deciding whether to credit the amount of a transaction to a card. IFS subsequently authorized more than \$1 million in payments on the fraudulent reversal transactions.

IFS subsequently sued Global, asserting claims of negligence and negligent misrepresentation to recover the funds it had credited based on the false financial transaction information allegedly supplied by Global. Following Global’s motion asking that the case be dismissed, the trial court granted the motion, finding that IFS could not show that Global owed a duty to IFS, “either contractual or common law, and therefore cannot establish a claim for negligence or negligent misrepresentation.” On appeal, the Court of Appeals upheld the dismissal of the negligence claim, but it reversed the dismissal of the negligent misrepresentation claim, holding that IFS stated a valid cause of action for negligent misrepresentation, as IFS sufficiently alleged the three essential elements for bringing such a claim as laid out in the Georgia Supreme Court’s 1997 opinion in *Hardaway Co. v. Parsons, Brinckerhoff, Quade & Douglas*. “Negligent misrepresentation” is defined in Black’s Law Dictionary as a “careless or inadvertent false statement in circumstances where care should have been taken.” Global now appeals to the Georgia Supreme Court, which has agreed to review the case to answer this question: Did the Court of Appeals err in reversing the trial court’s dismissal of IFS’s negligent misrepresentation claim against Global for allegedly transmitting false information made by a third party?

**ARGUMENTS:** Attorneys for Global argue the answer to that question is yes, the Court of Appeals erred. As the Georgia Supreme Court has recognized, “the false information was created by third parties (criminals posing as merchants), not by Global,” Global’s attorneys argue in briefs. “Global transmitted the information without alteration and without making any representation about it. Under Georgia law, that conduct does not subject Global to tort liability. Global also is not subject to liability for negligent misrepresentation because it is not a professional entity.” The Court of Appeals has improperly expanded the scope of negligent misrepresentation claims by allowing such a claim to be brought against a party that only *transmitted* false information and was not the actual *maker* of the false information. The appellate court’s opinion departs from Georgia law and effectively allows liability to be imposed for negligent misrepresentation “any time a business, professional or not, transmits false information – event if the business does not create the information or make any representation about it,” the attorneys argue. “Virtually all companies that transmit information are paid for providing that service and want the recipient to rely on the information so the flow of business will continue. It is the requirement that a party make a representation to be liable for negligent misrepresentation that protects these companies from liability. Elimination of that requirement would spell economic ruin for a host of businesses – media companies that transmit advertisements, communications companies that transmit texts and emails, electronic payment companies that transmit financial information, and retailers that display product information.” The Georgia Supreme Court’s 1983 decision in *Robert & Co. Assocs. V. Rhodes-Haverty*

*Partnership* “permits the imposition of liability for negligent misrepresentation only if the defendant is the ‘maker’ of a representation” that is false, the attorneys argue. “The Court of Appeals’ elimination of that limitation on liability would have disastrous consequences. Absent that limitation, the many businesses that facilitate transactions in our economy by transmitting information without making any representation about the information would face almost boundless liability.” The Court of Appeals also departs from the *Robert* decision by eliminating another critical limitation and permitting the imposition of liability for negligent misrepresentation on non-professional entities. Both of Georgia’s appellate courts have repeatedly recognized that liability for negligent misrepresentation is limited to professionals.

Attorneys for Incomm Financial Services, Inc. argue that the answer to the Supreme Court’s question is no and that the Court of Appeals correctly ruled that IFS “adequately pleaded a claim for negligent misrepresentation, reversing the trial court’s order of dismissal.” Nothing in the text of the Restatement (Second) of Torts (Section 552) or the Supreme Court’s *Robert* decision “precludes liability for the negligent supply of false information ‘made by a third party,’” the attorneys argue. “In the 36 years since Georgia adopted Section 552, no Georgia court has held that a supplier of false information has no duty of care, much less may escape liability altogether, simply because the supplier did not create the information. Similarly, Georgia courts and other jurisdictions have applied the duty to defendant suppliers of false information created by a third party.” In concluding that IFS had stated a viable claim, the Court of Appeals followed this Court’s precedent in *Robert*, “which adopted Section 552 in its entirety,” the attorneys argue. Under *Robert*, “a company can be liable for supplying false information in the course of its business to an intended recipient, when the supplier acts with knowledge that the recipient will rely on the information in the recipient’s business transactions. A company supplying information in these circumstances is subject to liability if the supplier fails to exercise reasonable care or competence in obtaining or communicating the information,” attorneys for IFS argue. In seeking to reverse the Court of Appeals decision, Global “advocates a rule whereby those who supply false information are shielded from a duty of care if they did not create the data even if the supplier: 1) knew or should have known the data was false; and 2) intended that the recipient use it in the manner in which the recipient actually used it. There is no justifiable reason to impose additional restrictions on the negligent misrepresentation standards of *Robert* and Section 552, and the Court should uphold the opinion and the *status quo* concerning the elements of a negligent misrepresentation claim,” the attorneys argue.

**Attorneys for appellant (Global):** Frank Lowrey IV, Patrick Fagan, Joshua Thorpe

**Attorneys for Appellee (IFS):** A. McCampbell Gibson, Daniel Hendrix