

**Georgia’s Direct Action Statute —  
A Statutory Exception to the General Rule**

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**I. The General Rule Prohibits Direct Actions Against Insurance Companies.**

Georgia recognizes the general rule that “because there is no privity of contract, a party may not bring a direct action against the liability insurer of the party who allegedly caused the damage unless there is an unsatisfied judgment against the insured or it is specifically permitted either by statute or a provision in the policy.”<sup>1</sup> According to the Georgia Court of Appeals, the rationale for this rule “is that the injured party is not in privity of contract with the insurer and may not maintain a direct action on the contract for payment of a claim unless a judgment obtained against the insured under the liability policy remains unsatisfied.”<sup>2</sup>

Georgia has a statutory exception to the general rule, however, where the insurance carrier insures a motor carrier. This statutory exception is called the “Direct Action Statute” and is currently codified in two statutes: O.C.G.A. § 40-2-140 and O.C.G.A. § 40-1-112. Under these statutes, the insurer of a motor carrier may, under certain circumstances, be named as a defendant in a lawsuit by an injured party.<sup>3</sup>

Georgia courts have held that because Direct Action Statutes are in derogation of the common law rule prohibiting direct actions by injured parties against insurers, the statutes must be strictly construed.<sup>4</sup> Despite this general principle of strict construction,

Georgia courts have generally permitted direct actions against the insurers of motor carriers under varying circumstances.

The Georgia Direct Action Statutes have taken various forms since the first Direct Action Statute was enacted in 1937. Understanding the history of the Direct Action Statutes helps explain the current status of these statutes.

## **II. The History of the Direct Action Statute in Georgia.**

### **A. Georgia Motor Carrier Act of 1931**

The first Direct Action Statute was enacted in 1937 as an amendment to the Georgia Motor Carrier Act of 1931.<sup>5</sup> Under the Georgia Motor Carrier Act of 1931, the Georgia Public Service Commission (“PSC”) was responsible for regulating “the business of any person engaged in transportation as a common carrier or contract carrier of persons or property on Georgia public highways.”<sup>6</sup> Any motor carrier operating in Georgia was required, under the Motor Carrier Act of 1931, to obtain a certificate of public convenience from the PSC.<sup>7</sup>

In 1937, Georgia enacted the first Direct Action Statute.<sup>8</sup> Under this statute, motor carriers registered in Georgia with the PSC were required to file a certificate of financial responsibility with the PSC. The certificate of financial responsibility was required to show that the motor carrier had a policy of insurance in place to cover injury to the public caused by the motor carrier’s negligence. Where a motor carrier was required to have a certificate of financial responsibility on file with the PSC, an injured party was permitted to bring a direct action against the insurer of the motor carrier.<sup>9</sup>

Originally, a direct action under the Direct Action Statute was conditioned upon filing the insurance certificate with the state.<sup>10</sup> This loophole was eliminated in 2000 by the Georgia General Assembly when it amended O.C.G.A. § 46-7-12 to state that “the failure to file any form ... shall not diminish the rights of any person to pursue an action against a motor carrier’s insurer.”<sup>11</sup>

While Georgia’s authority to regulate *intrastate* motor carriers is not questioned, its authority to regulate *interstate* motor carriers is another matter. Pursuant to the Commerce Clause in the United States Constitution, states may only impose significant regulatory burdens on interstate motor carriers when authorized to do so by Congress. Federal regulatory schemes have impacted the state’s ability to regulate motor carriers that operate in interstate commerce only.

### **B. Impact of the federal single state registration system of 1993 on Georgia’s regulation of motor carriers.**

In 1993, the former Interstate Commerce Commission created the federal “single state” registration system (“SSRS”) for *interstate* motor carriers.<sup>12</sup> Under the single state

registration system, *interstate* motor carriers were required to register annually in one state.<sup>13</sup> Registration in a single base state by an interstate motor carrier was “deemed to satisfy the requirements of all other States.”<sup>14</sup>

Where a motor carrier operated on an *intrastate* only basis in Georgia, however, the carrier was subject to state regulation. The intrastate-only carrier was required to obtain a permit to operate from the Georgia PSC.<sup>15</sup> In addition, if an *interstate* motor carrier selected Georgia as its base registration state under the SSRS system, it was required to obtain a permit to operate from the Georgia PSC.<sup>16</sup>

Thus, if a motor carrier operated on an *intrastate* basis in Georgia or if an *interstate* motor carrier selected Georgia as its base registration state under the SSRS, then the motor carrier was required to file a certificate of insurance with the Georgia Department of Revenue.<sup>17</sup> Where a motor carrier was required to file a certificate of insurance with the Georgia PSC, then its insurer was subject to a direct action under former O.C.G.A. § 46-7-12 (which permitted a direct action against intrastate motor carriers of household goods and passengers) or former § 46-7-12.1 (which permitted a direct action against motor carriers of property).

Where a motor carrier was only engaged in *interstate* commerce over the public highways of Georgia *and* did not select Georgia as its base state under the SSRS system, there were varying rulings by the Georgia appellate courts as to whether an injured party could pursue a direct action against the motor carrier’s insurer. A Supreme Court decision held that an *interstate* only motor carrier was subject to a direct action in Georgia.<sup>18</sup> Later Georgia Court of Appeals decisions, however, held that the Direct Action Statute did not apply in the case of an *interstate* motor carrier passing through Georgia.<sup>19</sup>

Similarly, federal district courts in Georgia held that the Georgia Direct Action Statute did not allow a direct action against the insurer of a strictly *interstate* motor carrier who was not engaged in an intrastate shipment in Georgia and was not registered in Georgia as its base state.<sup>20</sup>

For example, in *Cain v. Shoreline Transp., Inc.*, the Northern District of Georgia held that:

[t]he Direct Action Statute permits suits only against those insurers of motor carriers subject to filing requirements specified in the same article in which the language permitting suit appears. ... *The Georgia code explicitly provides that interstate motor carriers are not required to obtain permits from the State of Georgia.* ... Therefore, this Court holds that the Georgia Direct Action Statute does not provide a vehicle through which Plaintiff ... may sue the insurer of a non-Georgia motor carrier that does not engage in intrastate commerce in Georgia.<sup>21</sup> (emphasis supplied)

Similarly, in *Erving v. Vanliner Ins. Co.*, the Southern District of Georgia held that “claims against the insurer of an interstate motor carrier who ... has registered pursuant to the Federal Single State Registration System in a state other than Georgia, cannot be understood to ‘arise under’ the Georgia Direct Action Statute.”<sup>22</sup> Therefore, the Court held that “the registration obligations of Georgia’s Direct Action Statute do not apply to insurers of motor carriers engaged solely in interstate commerce and based in a state other than Georgia.” As a result, there was no direct action against the insurer of the interstate only motor carrier.

The Middle District of Georgia reached the same conclusion in *Clark v. Irvin, et. al.* In *Clark*, the Middle District held that as a prerequisite to a direct action against an insurance carrier under Georgia’s Direct Action Statute:

the insurer’s motor carrier must or should have been authorized to do business in Georgia, thereby statutorily requiring the motor carrier to have obtained ... liability insurance and the insurer to have filed the certificate of insurance. ... Accordingly, if the carrier solely engages in interstate commerce over the public highways of Georgia, the certificate of insurance ... is not required.<sup>23</sup>

Because a certificate of insurance was not required for the interstate motor carrier, the Court held that a direct action against its insurer was not permitted.

### **C. Impact of the federal Unified Carrier Registration (UCR) System of 2005 on Georgia’s Regulation of Motor Carriers.**

The federal SSRS was abandoned in 2008 with the enactment of the federal “Unified Carrier Registration Agreement.”<sup>24</sup> Under the Unified Carrier Registration Agreement (“UCR”), states can opt into the agreement but if they choose to do so, they must comply with the federal law creating the UCR Agreement.

Georgia opted to join the UCR Agreement and enacted O.C.G.A. 40-2-140 in 2009 to administer the UCR system in Georgia.<sup>25</sup> O.C.G.A. § 40-2-140<sup>26</sup> provides that:

(a) The Department of Revenue shall be the state agency responsible for the administration of the federal Unified Carrier Registration Act of 2005, which includes participating in the development, implementation, and administration of the Unified Carrier Registration Agreement.

(b) *Every foreign or domestic motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in interstate commerce in this state shall register with the commissioner or a base state and pay all fees as required by the federal Unified Carrier Registration Act of 2005.*

(c)(1) *Any motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in intrastate commerce and operates a motor vehicle on or over any public highway of this state shall register with the commissioner and pay a fee determined by the commissioner.*

(2) No motor carrier shall be issued a registration unless there is filed with the commissioner or the Federal Motor Carrier Safety Administration or any successor agency a certificate of insurance for such applicant or holder, on forms prescribed by the commissioner, evidencing a policy of indemnity insurance by an insurance company licensed to do business in this state. Such policy shall provide for the protection of passengers in passenger vehicles and the protection of the public against the negligence of such motor carrier, and its servants or agents, when it is determined to be the proximate cause of any injury. The commissioner shall determine and fix the amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof. <sup>27</sup> The insurer shall file such certificate. Failure to file any form required by the commissioner shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer. The insurer may file its certificate of insurance electronically with the commissioner.

(3) The commissioner shall have the power to permit self-insurance in lieu of a policy of indemnity insurance whenever in his or her opinion the financial ability of the motor carrier so warrants.

(4) *Any person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action the motor carrier and its insurance carrier.* (emphasis added)

Notably, under this statute, the direct action component is found in sub-section (c) of the statute. Sub-section (c) pertains to *intrastate* carriers only. Sub-section (b), which pertains to *interstate* carriers, does not have a provision permitting a direct action against an interstate carrier that is registered in Georgia as its base state under the UCR Agreement.

Based upon rules of statutory construction,<sup>28</sup> an argument can be made that this direct action provision only applies to carriers specifically identified in sub-section (c) of the statute—*intrastate* carriers.

In addition, an argument can be made that O.C.G.A. § 40-1-126 prohibits state regulation of the interstate aspects of a motor carrier's operations. O.C.G.A. § 40-1-126 provides that:

In circumstances where a motor carrier is engaged in both interstate and intrastate commerce, it shall nevertheless be subject to all the provisions of this part so far as it separately relates to commerce carried on exclusively in

this state. *It is not intended that the department shall have the power of regulating the interstate commerce of such motor carrier, except to the extent expressly authorized by this part as to such commerce. The provisions of this part do not apply to purely interstate commerce nor to carriers exclusively engaged in interstate commerce.* When a motor carrier is engaged in both intrastate and interstate commerce, it shall be subject to all the provisions of this part so far as they separately relate to commerce carried on in this state.<sup>29</sup> (emphasis supplied)

A former version of O.C.G.A. § 40-1-126 was analyzed by the United States District Court, Middle District of Georgia in determining whether a direct action was permitted against the insurer of an interstate motor carrier under former O.C.G.A. § 46-7-12. In finding that a direct action was not permitted against the insurer of an interstate only motor carrier, the Court held that:

A plain reading of O.C.G.A. § 46-7-36 [now codified at O.C.G.A. § 40-1-126] therefore indicates that *the commerce in which the interstate motor carrier was engaged must have been intrastate in nature to subject the interstate motor carrier, and thus its insurer to a direct action.*<sup>30</sup> (emphasis supplied)

In addition to these arguments under state law, the federal statute establishing the UCR Agreement contains a preemption provision that provides:

(c) Unreasonable burden.--For purposes of this section, *it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of two or more States--*

(1) *to enact, impose, or enforce any requirement or standards with respect to, or levy any fee or charge on, any motor carrier or motor private carrier providing transportation or service subject to jurisdiction under subchapter I of chapter 135 (in this section referred to as an “interstate motor carrier” and an “interstate motor private carrier”, respectively) in connection with--*

(A) *the registration with the State of the interstate operations of the motor carrier or motor private carrier;*

(B) *the filing with the State of information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31138 or 31139; ....*<sup>31</sup> (emphasis added)

There are no Georgia appellate decisions construing O.C.G.A. § 40-2-140 yet. In a federal district court opinion, however, the Northern District of Georgia rejected an argument that the insurer of an *interstate* only motor carrier was not subject to a direct action.<sup>32</sup> In *Bramlett v. Bajric*, the insurance carrier argued that it was not subject to a

direct action under O.C.G.A. § 40-2-140 because the carrier insured an interstate only motor carrier.

The Court, rejecting an argument that sub-section (c) (4) of § 40-2-140 only applies to intrastate carriers, held that:

insurers of interstate carriers can be joined as parties under the statute. First, the statutory language itself indicates that the joinder provisions apply to both intrastate and interstate carriers. O.C.G.A. § 40-2-140(c) (4) states that “[a]ny person having a cause of action, whether arising in tort or contract, under this *Code section* may join in the same cause of action the motor carrier and its insurance carrier.” (Emphasis in original). The phrase “Code section,” as used throughout the Georgia Code, refers to the entire *section* 40-2-140. The proper title for the section is Title 40, Chapter 2, Article 6A, *Section* 40-2-140. ... In the absence of any constraining language, there is no reason to think that the § 40-2-140 (c) (4)'s reference to “this Code section” refers to anything but the entire code section, 40-2-140. Therefore, the plain language of the statute indicates that injured parties are able to join the insurers of interstate motor carriers.<sup>33</sup>

The Court in *Bramlet* further held that:

the broad language within section (c) (2) strongly supports the conclusion that the statute is intended to ensure that motorists injured in Georgia can sue a motor carrier and its insurer without regard to the carrier's scope of business. ...

Finally, there is no indication that the 2009 amendments removed the ability to join insurers of interstate motor carriers. In *Westport Trucking Co. v. Griffin*, 254 Ga. 361 (1985), the Georgia Supreme Court faced the question of “whether a motorist injured in a collision with a truck operated by a motor contract carrier engaged solely in interstate commerce may join the motor carrier's liability insurer in the motorist's suit for personal injuries.” *Id.* at 361. ... The high court pointed to O.C.G.A. § 47-7-58(e), the former direct action statute, ... [and] concluded that the statute was applicable to interstate as well as intrastate carriers. *Id.* at 363. <sup>34</sup>

Of course, until a Georgia Court addresses this issue, it remains unknown whether the federal court's interpretation of O.C.G.A. § 40-2-140 is correct.

#### **D. Georgia Motor Common Carrier Act of 2012**

In 2012, the Georgia General Assembly enacted the Motor Carrier Act of 2012.<sup>35</sup> This Act created a Motor Carrier Compliance Division in the Georgia Department of Public Safety to regulate motor carriers and limousine carriers.<sup>36</sup> Within the Motor Carrier

Compliance Division, two sections were created: the Motor Carrier Compliance Enforcement Section and the Motor Carrier Regulation Compliance Section.<sup>37</sup> The Motor Carrier Regulation Compliance Section is charged with regulating the operation of motor carriers and limousine carriers while the Motor Carrier Compliance Enforcement Section is a law enforcement section. Any regulation previously handled by the Georgia PSC was transferred to the Department of Public Safety.<sup>38</sup>

Pursuant to O.C.G.A. § 40-1-101, any motor carrier operating in Georgia is subject to the requirements of the Motor Carrier Act and the Department of Public Safety is vested with power to regulate the motor carrier unless prohibited by federal law. Motor carriers are required to obtain a certificate to operate and to maintain liability insurance as provided by Department of Public Safety regulations.<sup>39</sup>

The Motor Carrier Act provides that a motor carrier cannot be issued a certificate to operate in Georgia unless the motor carrier filed a certificate of insurance with the Department of Public Safety.<sup>40</sup> O.C.G.A. § 40-1-103 provides that a motor carrier certificate can only be issued to a motor carrier business domiciled in Georgia. The Motor Carrier Act of 2012 also provides for a direct action against insurers of motor carriers in O.C.G.A. § 40-1-112.

Thus, at this time, there are two Direct Action Statutes: O.C.G.A. § 40-1-112, which applies to motor carriers operating pursuant to a permit issued by the Georgia Department of Public Safety, and O.C.G.A. § 40-2-140, discussed at length above and enacted in order to administer the UCR system in Georgia. The administrative functions previously handled by the Georgia PSC and the Georgia Department of Revenue are now handled by the Georgia Department of Public Safety.<sup>41</sup>

As discussed above, O.C.G.A. § 40-1-126 limits the authority of the Motor Carrier Act of 2012 to a motor carrier's *intrastate* operations. Based upon this statute along with O.C.G.A. § 40-1-103 (b), an argument can be made that the Direct Action Statute now found at O.C.G.A. § 40-1-112 only applies to the *intrastate* operations of a motor carrier that is domiciled in Georgia. There have been no appellate decisions interpreting these statutory provisions to date.

### **III. Proving the Direct Action Against the Insurance Carrier.**

#### **A. Venue as to the Insurance Carrier.**

The Direct Action Statute does not have the effect of making the motor carrier company or the driver of the tractor-trailer a joint tortfeasor with the insurance company.<sup>42</sup> In *Thomas v. Bobby Stevens Hauling Contractors, Inc.*, the Georgia Court of Appeals held that former Direct Action Statute, O.C.G.A. § 46-7-12, “established an independent cause of action against the carrier’s insurer on behalf of a member of the public injured by the carrier’s negligence.”<sup>43</sup> This cause of action, however, “is not on the tort; but on the contract



by alleging the occurrence of the condition precedent required by the statute, which statute is an integral part of the contract of insurance.”<sup>44</sup>

Therefore, any action against the insurance carrier must independently satisfy constitutional venue requirements.<sup>45</sup> Generally, venue as to an insurance carrier is appropriate in the county where it has a registered agent for service of process or in any county where it has an agent or maintains a place of doing business.<sup>46</sup>

## **B. Proving the Direct Action Claim at Trial.**

The Direct Action is an action against the insurer of the motor carrier tortfeasor. Proof of the direct action against the insurance carrier requires different elements of proof than the injured party’s tort claim against the tortfeasors. The plaintiff in a direct action claim has the burden of proving that the direct action statute applies.<sup>47</sup>

In order to recover on a direct action claim, the plaintiff must prove the policy as well as the policy limit. In *Carolina Casualty Insurance Company v. Davalos*, the plaintiff filed a direct action against the insurer of a motor carrier under a former version of the Georgia Direct Action Statute.<sup>48</sup> The Supreme Court of Georgia held that in order to recover under the Georgia Direct Action Statute, the plaintiff must prove the policy limits in order to sustain a judgment against the insurance company.<sup>49</sup> However, the Court recognized that the plaintiff can prove the policy limit without submitting the policy limit to the jury, “since submission of the policy limits to the jury tends to prejudice the defendants.”<sup>50</sup>

The Supreme Court revisited this issue in *Ashley v. Goss Bros. Trucking*.<sup>51</sup> In *Ashley*, the Court held that “the existence of liability coverage must be proven to sustain an action against the insurer” under a former version of the Direct Action Statute.<sup>52</sup> However, “evidence of the limit of insurance liability coverage should be kept from a jury since it might prejudice the jurors against a defendant and improperly motivate them to recklessly award damages” to plaintiffs.<sup>53</sup>

A trial judge can handle this issue in two ways: either by allowing the insurance policy to be made part of the record but not presenting it to the jury or by presenting the policy to the jury with the limits of coverage redacted from the policy.<sup>54</sup> Of the two approaches, it would seem that making the insurance policy part of the record but not presenting it to the jury would be preferable so that the jury is not presented with the policy even in redacted form.

## **IV. Issues regarding direct action claims.**

### **A. Was the insured a “motor carrier for hire” at the time of the accident?**

In order to pursue a direct action against the insurer of a motor carrier, it is a prerequisite that the motor carrier must be a motor carrier for hire at the time of the accident. A “carrier” is defined by O.C.G.A. § 40-1-100 (1) to mean “a person who undertakes the transporting of goods or passengers for compensation.” O.C.G.A. § 40-1-100

(10) defines a “motor carrier” to mean a person owning, controlling, operating or managing any motor vehicle used in the business of transporting for hire persons, household goods or property for hire over the public highways in Georgia. If a carrier is not transporting goods or passengers for compensation, then it is not a carrier under the Motor Carrier Act and its insurance carrier is not subject to direct action.<sup>55</sup>

In addition, under certain exemptions, a motor carrier for hire is not subject to a direct action. O.C.G.A. § 40-1-100 (10) (B) provides that certain carriers are not included within the statutory scope of “motor carrier for hire.” These exempt carriers include vehicles engaged solely in transporting school children to and from school, taxicabs operating within municipalities and subject to the authority of such municipality, limousine carriers, hotel passenger vehicles, motor vehicles operated not for profit to transport elderly or disabled passengers, vehicles owned and operated by the federal government, and ambulances.<sup>56</sup>

Where such an exemption applies, Georgia courts have held that there is no direct action against the insurer of an exempt motor carrier.<sup>57</sup> These exemptions only apply, however, where a vehicle is engaged exclusively in the exempt activity. Where the vehicle is used for activities other than the exempt activity, then it will be considered a motor carrier and its insurer may be subject to direct action.<sup>58</sup>

#### **B. Direct action against excess insurance carriers not permitted.**

While Georgia statutory law permits a direct action against a motor carrier’s liability insurer, the statute does not permit a direct action against the motor carrier’s excess insurer.<sup>59</sup> The Georgia Court of Appeals held, in *Jackson v. Sluder*, that the Motor Carrier Act does not expressly authorize a direct action against an excess insurer and further, excess insurance is not regarded as collectible insurance until the underlying primary limits are exhausted.<sup>60</sup>

#### **C. Accidents occurring outside of the state of Georgia.**

Georgia appellate courts have held that a direct action is permitted even when the accident occurred outside of the state of Georgia. In *Johnson v. Woodard*, the Court permitted a direct action against the insurer of a Georgia motor carrier even though the accident occurred outside of Georgia.<sup>61</sup>

### **V. Conclusion**

At present, Georgia continues to be in the minority of states allowing direct actions by injured parties against the insurance carriers for the tortfeasors. In Georgia, these direct actions are permitted against insurers of motor carriers only. Because of the inflammatory nature of suits against insurers, it would benefit the insured as well as the insurer for the Georgia General Assembly to reject such direct actions but given the recent

enactment of the Motor Carrier Act of 2012, with the direct action provision alive and well, this seems unlikely in the near future.

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<sup>1</sup> *Hartford Ins. Co. v. Henderson & Son, Inc.*, 258 Ga. 493, 494, 371 S.E.2d 401, 402 (1988).

<sup>2</sup> *Caudill v. Strickland*, 230 Ga. App. 644, 644, 498 S.E.2d 81, 83 (1998).

<sup>3</sup> Georgia is one of a handful of states that permit direct actions by an injured party against the insurer of the responsible party. Louisiana and Wisconsin permit direct actions against the insurer of the responsible party. LA. REV. STAT. ANN. § 22:1269; WIS. STAT. ANN. § 632.24. The Louisiana and Wisconsin direct actions are not limited to cases involving commercial motor carriers.

Several other states limit direct actions against insurers under certain circumstances. For example, in Kansas, a direct action can be brought against the insurer of a public motor carrier. KAN. STAT. ANN. § 66-1,128. In Nebraska, a direct action can be brought against an automobile insurance carrier where the insured is insolvent or bankrupt. NEB. REV. STAT. § 44-508. In Rhode Island, a direct action may be brought against a liability insurer where process cannot be served on the insured. R.I. GEN. LAWS § 27-7-2.

In addition, the New Mexico Supreme Court has held that the compulsory requirements of the state's financial responsibility statute, as well as an absence of a prohibition against joinder, permits an injured party to bring an action directly against the automobile liability insurer of a responsible party. *Raskob v. Sanchez*, 126 N.M. 394, 970 P.2d 580 (1998).

<sup>4</sup> *Glenn McClendon Trucking Co. v. Williams*, 183 Ga. App. 508, 509, 359 S.E.2d 351, 353 (1987).

<sup>5</sup> Former O.C.G.A. § 46-7-1, *et. seq.*

<sup>6</sup> Former O.C.G.A. § 46-7-2.

<sup>7</sup> Former O.C.G.A. § 46-7-12.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Lockhart v. S. Gen. Ins. Co.*, 231 Ga. App. 311, 312, 498 S.E.2d 161, 163 (1998).

<sup>11</sup> Former O.C.G.A. § 46-7-12.

<sup>12</sup> Former 49 C.F.R. § 367.

<sup>13</sup> 49 U.S.C. § 14504 (repealed as of January 1, 2008).

<sup>14</sup> *Id.*

<sup>15</sup> Former O.C.G.A. § 46-7-12.

<sup>16</sup> Former O.C.G.A. § 46-7-16.

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<sup>17</sup> Former O.C.G.A. § 46-7-12 (applicable to motor carriers of household goods and passengers that obtained a permit to operate in Georgia) and former O.C.G.A § 46-7-12.1 (applicable to motor carriers of property operating in Georgia).

<sup>18</sup> *Westport Trucking Co. v. Griffin*, 254 Ga. 361, 329 S.E.2d 487 (1985).

<sup>19</sup> *Dundee Mills, Inc. v. John Deere Ins.*, 248 Ga. App. 39, 545 S.E.2d 604 (2001); *Caudill v. Strickland*, 230 Ga. App. 644, 498 S.E.2d 81 (1998).

<sup>20</sup> See *Cain v. Shoreline Transp., Inc.*, Civil Action No. 1:07-cv-2635-GET (N.D. Ga. Sept. 22, 2008); *Erving v. Vanliner Ins. Co.*, 2008 WL 8851587 (S.D. Ga. 2008); and *Clark v. Irvin, et. al.*, Civil Action No. 1:09-CV-101 (M.D. Ga. May 26, 2011) (unpublished opinions).

<sup>21</sup> *Cain v. Shoreline Transp., Inc.*, Civil Action No. 1:07-cv-2635-GET (N.D. Ga. Sept. 22, 2008).

<sup>22</sup> *Erving v. Vanliner Ins. Co.*, 2008 WL 8851587 (S.D. Ga. 2008).

<sup>23</sup> *Clark v. Irvin, et. al.*, Civil Action No. 1:09-CV-101 (M.D. Ga. May 26, 2011).

<sup>24</sup> 49 U.S.C.A. § 14504 (repealed as of January 1, 2008).

<sup>25</sup> The General Assembly also amended former O.C.G.A. § 46-7-12.1 in its entirety so that it no longer addressed direct actions against insurers. Former O.C.G.A. § 46-7-12 remained intact insofar as it applied to insurers of *intrastate* motor carriers of household goods and passengers.

<sup>26</sup> O.C.G.A. § 40-2-140 was amended in the 2013 legislative session. Effective July 1, 2014, the Department of Public Safety will be responsible for the administration of the federal UCR in Georgia.

<sup>27</sup> Under current regulations of the Department of Revenue, the burden is on the insurer to provide proof of insurance regarding the motor carrier. Under GA. COMP. R. & REGS. 560-10-31-.04 the insurer's obligations are:

- With respect to an *interstate* carrier, an insurer's obligations are fulfilled if the insurer filed proof of insurance with the Federal Motor Carrier Safety Administration.
- With respect to an *intrastate* carrier, an insurer's obligations may be filled by filing electronically with the Department of Public Safety, by filing a certificate of insurance (Form E) with the Department, *or* by filing proof of insurance with the Federal Motor Carrier Safety Administration.

<sup>28</sup> Under Georgia rules of statutory construction, "a statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject-matter, briefly called statutes '*in pari materia*,' are construed together, and harmonized wherever possible so as to ascertain the legislative intent and give effect thereto. [cit.]" *Monticello, Ltd. v. City of Atlanta*, 231 Ga. App. 382, 383, 499 S.E. 2d 157, 159 (1998).

Georgia rules of statutory construction further dictate that statutes must be read as a whole and that the express mention of one thing in a statute implies the exclusion of other things. *Rodgers v. Gen. Motors Corp.*, 277 Ga. App. 547, 550, 627 S.E.2d 151, 154 (2006) (applying the rule of "*inclusion unius, exclusion alterius*"). See also *Walker Cnty. v. Tri-State Crematory*, 292 Ga. App. 411, 415, 664 S.E.2d 788, 791 (2008) (holding that "in construing language in any one part of a statute, a court

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should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as whole.”).

<sup>29</sup> O.C.G.A. § 40-1-126 (former O.C.G.A. § 46-7-36).

<sup>30</sup> *Clark v. Irvin, et. al.*, Civil Action No. 1:09-CV-101 (M.D. Ga. May 26, 2011).

<sup>31</sup> 49 U.S.C.A. § 14504 (repealed as of January 1, 2008).

<sup>32</sup> *Bramlett v. Bajric*, 2012 WL 4951213 (N.D. Ga. 2012).

<sup>33</sup> *Id.* at \*2.

<sup>34</sup> *Id.* at \*3.

<sup>35</sup> O.C.G.A. § 40-1-50, *et. seq.*

<sup>36</sup> O.C.G.A. § 40-1-52.

<sup>37</sup> *Id.*

<sup>38</sup> O.C.G.A. § 40-1-57.

<sup>39</sup> O.C.G.A. § 40-1-101(d); § 40-1-112.

<sup>40</sup> O.C.G.A. § 40-1-112.

<sup>41</sup> O.C.G.A. § 40-1-52 and § 40-2-140.

<sup>42</sup> *Thomas v. Bobby Stevens Hauling Contractors, Inc.*, 165 Ga. App. 710, 713-14, 302 S.E.2d 585, 588 (1983).

<sup>43</sup> *Id.* at 711, 302 S.E.2d at 587.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 714, 302 S.E.2d at 589.

<sup>46</sup> O.C.G.A. § 33-4-1.

<sup>47</sup> *Glenn McClendon Trucking Co. v. Williams*, 183 Ga.App. 508, 510, 359 S.E.2d 351, 354 (1987).

<sup>48</sup> *Caroline Cas. Ins. Co. v. Davalos*, 246 Ga. 746, 272 S.E. 702 (1980).

<sup>49</sup> *Id.* at 747, 272 S.E.2d at 703.

<sup>50</sup> *Id.*

<sup>51</sup> *Ashley v. Goss Bros. Trucking*, 269 Ga. 449, 499 S.E.2d 638 (1998).

<sup>52</sup> *Id.* at 450, 499 S.E. at 639.

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<sup>53</sup> *Id.*

<sup>54</sup> *Caroline Cas. Ins. Co. v. Davalos*, 246 Ga. 746, 272 S.E. 702 (1980).

<sup>55</sup> *Nat'l Union Fire Ins. Co. v. Sorrow*, 202 Ga. App. 517, 414 S.E. 2d 731 (1992) (holding that a vehicle that was not held out for hire to the public and was not used or hired by the public for the transportation of goods or people was not a motor common carrier or motor contract carrier as defined by the Motor Carrier Act in effect at the time of the accident and, therefore, there could be no direct action against the insurer of the vehicle).

<sup>56</sup> Under prior versions of the Motor Carrier Act, motor vehicles engaged exclusively in the transportation of agricultural or dairy products, or both, between farm, market, gin, warehouse or mill were also exempt carriers. *See* former O.C.G.A. § 46-1-1 (9)(C)(x). This exemption, however, is no longer included in the Georgia Motor Carrier Act of 2012. *See* O.C.G.A. § 40-1-100(12)(B).

<sup>57</sup> *Bailey v. Occidental Fire & Cas. Co.*, 193 Ga. App. 710, 388 S.E.2d 899 (1989); *Lewis v. Hays Trucking, Inc.*, 701 F. Supp. 2d 1300 (N.D. Ga. 2010).

<sup>58</sup> *Smith v. Commercial Transp., Inc.*, 220 Ga. App. 866, 470 S.E.2d 446 (1996).

<sup>59</sup> *Jackson v. Sluder*, 256 Ga. App. 812, 569 S.E.2d 893 (2002).

<sup>60</sup> *Id.* at 818, 569 S.E.2d at 898.

<sup>61</sup> *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993).