IN THE SUPREME COURT
OF THE STATE OF GEORGIA

CHRYSLER GROUP LLC n/k/a "FCA US LLC", Petitioner,	)	
v.	)	Case No. S17C0832
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 *AMICUS CURIAE* SUPPORTING CHRYSLER GROUP, LLC'S PETITION FOR A WRIT OF CERTIORARI

Kyle G.A. Wallace
Georgia Bar No. 734167
Caroline M. Rawls
Georgia Bar No. 250168
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309
(404) 881-7000 (phone)
(404) 881-7777 (fax)
kyle.wallace@alston.com
caroline.rawls@alston.com

Brian D. Boone
Georgia Bar No. 182354
ALSTON & BIRD LLP
101 S. Tryon Street
Charlotte, NC 28280
(704) 444-1000 (phone)
(704) 444-1111 (fax)
brian.boone@alston.com

Counsel for Amici Curiae
The Chamber of Commerce of the United States of America and the Georgia Chamber of Commerce

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. 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 40,000 members and represents the interests of a diverse cross-section of more than 500 industry sectors operating in the State. 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 at least 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 single wrongful-death award in Georgia history (outstripping the next largest wrongful-death award by a factor of eleven) 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 the trial court never should have allowed to see the inside of a courtroom. If the Court of Appeals had followed Georgia precedent, then those errors would have doomed the jury verdict on appeal.

In its petition, Chrysler has identified many different evidentiary and legal errors that infected the trial proceedings and then later the Court of Appeals' decision (McFadden, J., writing). The Chambers agree with Chrysler that those errors warrant

certiorari review. Instead of repeating all of Chrysler's arguments, the Chambers will train their attention on one of the most egregious errors below: The trial court ensured that passion and prejudice would drive the jury's verdict by permitting the plaintiffs' counsel to put on 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 officer's wealth is "always" admissible in a case against the company because it shows the officer'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 has said as recently as 2006: Evidence of wealth is "never admissible" because it is irrelevant to liability and perhaps unsurpassed in its ability to inflame the jury. *Id.* The Court of Appeals turned Georgia law on its head.

That decision is bad for the State and for businesses in the State. For Georgia, the result below casts a shadow on the fairness and integrity of proceedings in the State. For businesses, the Court of Appeals' decision leaves them defenseless in Georgia courts against inflammatory and prejudicial evidence about wealth or compensation. According to the Court of Appeals, that sort of evidence is always admissible against a corporate witness—no matter the relevance or irrelevance, no matter the corporate defendant, no matter the guarantee of prejudice. To companies that do business in the State or have designs 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 evidence about position or wealth were relevant in a car-accident case, that minimal relevance pales in comparison to the danger 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 trial judge permitted the plaintiffs' counsel to introduce evidence about Chrysler's CEO's compensation and benefits—including his $64 million salary, his use of a company car, and his access to a private jet. Then, in closing arguments, the plaintiffs' counsel doubled 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 (the plaintiffs' counsel arguing for a $130 million wrongful-death award: "That's less than two 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

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

compensation had nothing to do with the issues in the case. Introducing the evidence was purely a play 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 analyze previous Georgia awards in similar cases to ensure that damages were in line with past precedent.

Chrysler has presented other questions that warrant certiorari review, but for purposes of the Chambers' brief, 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?

Those questions implicate the fairness and integrity of judicial proceedings in Georgia, counseling in favor of certiorari review. *See* Ga. Const. art. VI, § 6, ¶ V ("The Supreme Court may review by certiorari cases in the Court of Appeals which are of gravity or great public importance.").

INTRODUCTION AND SUMMARY OF ARGUMENT

For nearly 100 years, this Court has held "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 (emphasis added); *see also Bailey v. Edmundson*, 280 Ga. 528, 536 (2006). The reason for the rule is straightforward: Evidence of a party's wealth has a unique ability to play on juror's

passions and prejudices. A jury may disregard the facts to punish a wealthy defendant, to deny recovery to a wealthy plaintiff, or to give a windfall to a poor plaintiff—all on the basis of irrelevant information about the party's means.

Georgia is not alone in keeping wealth evidence away from the jury. So far as we can tell, most other state and federal courts apply the same rule. *See, e.g.*, *Reilly v. Natwest Markets 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) ("On 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."); *Gededes 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.").

The Court of Appeals ignored all that precedent. It saw no error in allowing plaintiffs' counsel to focus on Chrysler's 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 that the trial court remitted down to $40 million. According to the Court of Appeals, that outcome was not only reasonable but also consistent with a Georgia statute (O.C.G.A. § 24-6-622) that 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."

Before the decisions below, Georgia courts had uniformly rejected wealth evidence as a means to prove a witness's bias. Those courts had correctly reasoned that there are many 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.").

In holding that evidence of wealth is fair game under O.C.G.A. § 24-6-622, the Court of Appeals broke with that precedent. The decision sends a chilling signal to the Chambers' members and other businesses that they may not get a fair trial in Georgia. That could undermine public confidence in the integrity of judicial proceedings in the State.

The jury learned that the CEO was not neutral as soon as they learned that he was Chrysler's CEO. Introducing evidence that he makes $64 million annually and received various fringe benefits as CEO served no other purpose than to seize on the jury's passions. It was a tactical maneuver and nothing more. The Court of Appeals should have been quick to denounce the argument as such.

This Court should grant certiorari review to reaffirm that Georgia prohibits using wealth evidence at trial to inflame the jury. In so doing, the Court would return Georgia law to the judicial mainstream on this important issue.

ARGUMENT

I. THE COURT OF APPEALS' DECISION IS AN OUTLIER IN THE STATE AND THE COUNTRY.

Georgia law generally prohibits introducing wealth evidence at trial because it is highly prejudicial. *See Bailey*, 280 Ga. at 536; *Smith*, 152 Ga. at 541. That rule is consistent with the rule applied in other state and federal courts across the country. *See* Chrysler's Petition for a Writ of Certiorari at 5. The Court of Appeals broke with that uniform body of precedent and excused the improper arguments that plaintiffs' counsel made about Chrysler's CEO's compensation. That alone is enough for certiorari review.

Under Georgia law, evidence is admissible only if it satisfies the relevance and prejudice rules 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 those foundational principles. Instead, it started and ended 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." Slip op. 3, 18-23. But O.C.G.A. § 24-6-622 does not override the general rules of evidence. To be admissible, bias evidence still must be relevant and not overly 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 Court of Appeals did not undertake those critical aspects of the evidentiary analysis. If it had, it would have run directly into this Court's precedents prohibiting wealth evidence and would have reached the opposite conclusion. *See Nw. Univ. v. Crisp*, 211 Ga. 636, 641 (1955) (excluding wealth evidence because "it had no tendency to illustrate any contested question"). 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. Whatever the Court of Appeals' thinking, plaintiffs' counsel used the wealth evidence to ask for outsized damages, comparing the value of the decedent's life to Chrysler's CEO's salary and fringe benefits. That kind of argument is prejudicial in the extreme. Yet the Court of Appeals allowed it.[2]

There is no need to belabor the point: The Court of Appeals' decision represents a clear break from this Court's teaching and the teaching of courts from other jurisdictions. This Court should weigh in now to correct the error.

[2] The Court of Appeals also reasoned that the rule against wealth evidence did not apply because the CEO was a witness and not a party to the case. That is a contrived distinction. The CEO speaks for Chrysler and binds the company with his words.

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 necessarily punitive in nature. The most reasonable (perhaps only) explanation for the verdict is that their counsel's arguments about the CEO's compensation and benefits influenced the jury. 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 perforce cannot justify a runaway compensatory verdict.

Georgia courts understand as much. They recognize an obligation to vacate a judgment when the damages awarded are so excessive as to 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). Those precedents should have led the Court of Appeals to vacate the jury verdict. Instead, the Court of Appeals approved the verdict, priming the State for a rash of windfall verdicts.

And make no mistake: Enterprising plaintiffs' lawyers will rush to Georgia courts in an effort to replicate the result below. Tilting the balance so decidedly (and unfairly) in plaintiffs' favor will encourage personal-injury litigants to eschew

relevant evidence in favor of arguments focused on a company's profits or its executives' compensation. The closing arguments below—asking the jury to value a lost life against Chrysler's CEO's large compensation—will serve as a blueprint for plaintiffs' counsel in the State. Businesses will come to think of Georgia as a jurisdiction to avoid. The Court of Appeals' decision will invite big verdicts, and do so at the expense of the State's economy and its well-earned reputation as one of the Nation's best places to both live and do business.

III. THE COURT OF APPEALS' DECISION DEEPENS THE SPLIT AMONG GEORGIA COURTS ABOUT WHETHER, IN ASSESSING A DAMAGES AWARD, A COURT MAY CONSIDER PRIOR AWARDS IN SIMILAR CASES.

The Court of Appeals' decision also highlights the rift in Georgia courts about whether a court assessing a damages award may consider prior awards in similar cases. Many Georgia courts have favored that kind of comparison because it promotes consistency across verdicts. *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). Other Georgia courts, including the Court of Appeals below, have held that prior awards are irrelevant. *See, e.g.*, slip. op. 33 (finding no error in declining to compare prior awards because "no two cases are exactly alike"); *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 889 (1983) (physical precedent) (same).[3] This Court should grant

[3] The U.S. Supreme Court has held that previous awards are relevant to whether a punitive-damages award is excessive. *See Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 440, (2001).

certiorari, take up this important issue, and make clear that a court assessing a verdict may and indeed should consider previous awards in similar cases. That approach will encourage consistency in verdicts across the State.

CONCLUSION

This Court should grant Chrysler Group LLC's petition for a writ of certiorari and, having done that, should vacate the trial verdict.

Respectfully submitted February 3, 2017.

/s/ Brian D. Boone
Brian D. Boone
Georgia Bar No. 182354
ALSTON & BIRD LLP
101 S. Tryon Street
Charlotte, NC 28280
(704) 444-1000 (phone)
(704) 444-1111 (fax)
brian.boone@alston.com

Kyle G.A. Wallace
Georgia Bar No. 734167
Caroline M. Rawls
Georgia Bar No. 250168
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309
(404) 881-7000 (phone)
(404) 881-7777 (fax)
kyle.wallace@alston.com
caroline.rawls@alston.com

Counsel for Amicus Curiae
The Chamber of Commerce of the United States of America

IN THE SUPREME COURT
OF THE STATE OF GEORGIA

CHRYSLER GROUP LLC n/k/a "FCA US LLC", Petitioner,	)	
v.	)	Case No. S17C0832
JAMES BRYAN WALDEN and LINDSAY NEWSOME STRICKLAND, individually and on behalf of the estate of their deceased son, REMINGTON COLE WALDEN, Respondents.	)	

CERTIFICATE OF SERVICE

I certify that I have served a copy of this Brief on all counsel of record electronically and by U.S. Mail at the following addresses:

James E. Butler, Jr., Esq.
David T. Rohwedder, Esq.
Butler Wooten Cheeley & Peak LLP
2719 Buford Highway
Atlanta, GA 30324

James E. Butler, III, Esq.
Butler Tobin LLC
1932 N. Druid Hills Rd., NE
Suite 250
Atlanta, GA 30319

George C. Floyd, Esq.
Floyd & Kendrick, LLC
P.O. Box 1026 (39818)
415 S. West Street
Bainbridge, GA 39819

Karsten Bicknese, Esq.
Robert Betts, Esq.
Seacrest, Karesh, Tate & Bicknese LLP
56 Perimeter Center East
Suite 450
Atlanta, GA 30346

L. Catharine Cox
P.O. Box 98
Young Harris, GA 30582

Thomas H. Dupree, Jr.
Rajiv Mohan
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

Bruce W. Kirbo, Jr.
Bruce W. Kirbo, Jr. Attorney at Law LLC
P.O. Box 425
Bainbridge, GA 39818

M. Diane Owens
Bradley S. Wolff
Terry O. Brantley
Swift, Currie, McGhee & Hiers LLP
The Peachtree – Suite 300
1355 Peachtree Street, NE
Atlanta, GA 30309

This 3rd day of February, 2017.

/s/ Brian D. Boone
Brian D. Boone
Georgia Bar No. 182354