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DAILY REPORT

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High Court Pulls Plug on Counties' Call for \$100M in 911 Charges

By Kathryn Tucker

The Georgia Supreme Court has thrown out a lawsuit against telephone companies filed by county governments alleging they've been shortchanged by more than \$100 million in 911 call charges.

The case is an appeal from BellSouth, AT&T and EarthLink seeking to overturn Gwinnett County Superior Court Judge Randy Rich's denial of the companies' motion to dismiss a lawsuit brought by the governments of two suburban counties, Cobb and Gwinnett. The counties sued the phone companies over the right to audit records in search of \$50

million in alleged unpaid fees. Cobb and Gwinnett also sought to combine their lawsuit with others around the state, raising the stakes to about \$100 million for three years of allegedly uncollected and unpaid fees.

The Georgia Court of Appeals partially reversed and partially affirmed Rich. The intermedi-



Concluding that the 911 charge is a tax as a matter of law, and the Counties' lawsuits thus are precluded, we reverse the Court of Appeals," Justice Nels Peterson wrote for a unanimous Georgia Supreme Court.

ate appellate court disagreed that the 911 Act does not sanction a lawsuit by the counties against the phone companies for their alleged failure to collect the 911 charges. But the Court of Appeals affirmed the trial court's ruling that the counties could pursue their claims against the phone com-

panies under Georgia Code § 51-1-6 and § 51-1-8. The Court of Appeals also vacated Rich's ruling that the 911 charges are fees, and remanded the issue of whether they are a tax or a fee to the trial court for further proceedings.

The phone companies appealed to the Supreme Court, which agreed to review the case to determine whether the 911 charge is a tax or fee.

That court is directed to remand the case to the trial court with instructions to grant the Telephone Companies' motions to dismiss the Counties' claims for damages," Justice Nels Peterson said in a unanimous opinion released Monday.

The high court's decision effectively scuttles more than 30 other cases that the phone companies said are pending in Georgia state and federal courts awaiting resolution of this one. Lawsuits have been filed by 20 local governments seeking more than \$110 million in 911 charges from more than 50 telephone companies.

The counties' legal team includes: former Gov. Roy

Barnes, John Bevis and Benjamin Rosichan of the Barnes Law Group; James Evangelista and David Worley of Evangelista Worley; and Jeffrey Harris and Madeline McNeeley of Harris Lowry Manton.

"The Georgia Supreme Court ignored decades of precedent to rule in favor of special interests," the lawyers for Cobb and Gwinnett said in a joint statement. "The Court is saying that a fee that no one—including the General Assembly—ever thought was a tax is now a tax, so it can't be collected because the General Assembly didn't put it in the tax code. As a result of this Court-ordained Catch-22, Georgia 911 systems are losing \$100 million a year, statewide, that is badly needed to upgrade 911."

J. Henry Walker IV and John Jett of Kilpatrick Townsend & Stockton represented AT&T and BellSouth. The firm deferred questions to AT&T.

"We're pleased with the Court's ruling," AT&T said through a spokesperson. "The 911 system is an important public safety component of

our community. The Court's ruling correctly applies Georgia law and reinforces the process for administering these taxes. We look forward to continuing to support Georgia's 911 system for our customers."

Frank Lowrey of Bondurant Mixson & Elmore represented EarthLink, Deltacom and Business Telecom.

"Our clients have always complied with Georgia law regarding the collection of 911 taxes, and so never should have been named as defendants in this lawsuit," Lowrey said Wednesday. "Further, our clients are pleased with the unanimous ruling of the Georgia Supreme Court, which should put an end to this unauthorized and meritless litigation."

The case is *BellSouth v. Cobb*, No. **S17G2011**.

Katheryn Hayes Tucker is an Atlanta-based reporter covering legal news for the Daily Report and other ALM publications.