

Georgia: Court Ruling Poses No Delay To Rivian Project



Georgia Gov. Brian Kemp on a test drive with Rivian CEO RJ Scaringe Courtesy of Georgia Department of Economic Development

GLOBAL AUTOMOTIVE

From Site Selection magazine, November 2022 - by Gary Daughters

In an October 14 interview with Site Selection, top officials of Georgia's statewide development agency fired back at a county judge who struck down a key component of the \$1.5 billion incentives package offered to EV startup Rivian to build a \$5 billion manufacturing plant an hour east of Atlanta.

Pat Wilson, commissioner of the Georgia Department of Economic Development (GDEcD), said the judge’s denial of bonds to support Rivian’s \$700 million property tax savings does not put the project on delay. Wilson and Andrew Capezzuto, the agency’s chief administrative officer and general counsel, signaled the state’s clear intent to challenge the September 29 ruling in Morgan County Superior Court in favor of a local citizens’ coalition whose opposition to the historic project has proved to be resilient.

Top 10 Global Automotive Investments
(January 1 - Oct 31, 2022)

Company	City	Country	Category	Investing Country	Investment (Million USD)
1 Tesla Motors, Inc.	Berlin	Germany	New	United States	\$5,500.0
2 Hyundai Motor Group	Bryan County, GA	United States	New	South Korea	\$5,400.0
3 General Motors Company	Orion Township, MI	United States	Expansion	United States	\$4,000.0
4 Bentley Motors Ltd.	Crewe	United Kingdom	Expansion	United Kingdom	\$2,826.2
5 Volkswagen Aktiengesellschaft	Wolfsburg	Germany	New	Germany	\$2,200.0
6 Ford Motor Company	Avon Lake, OH	United States	Expansion	United States	\$1,500.0
7 AB Volvo	Kosice	Slovakia	New	Sweden	\$1,255.6
8 Volkswagen Aktiengesellschaft	Baunatal	Germany	Expansion	Germany	\$1,223.9
9 Bayerische Motoren Werke Aktiengesellschaft	Steyr	Austria	Expansion	Germany	\$1,050.0
10 Honda Canada Inc.	Alliston, ON	Canada	Expansion	Canada	\$1,020.3

Source: Conway Projects Database

“I think the judge got it wrong,” Capezzuto said. “An appellate court will take a serious look, and we have very persuasive arguments as to why the opinion was incorrect.”

Capezzuto also sought to shoot down suggestions that the ruling by Chief Judge Brenda Holbert Trammell, should it stand, might exert impacts beyond the Rivian project. “No other court in Georgia as it currently stands is required to follow the precedent created in Morgan County.” (*In late October, the Georgia Department of Economic Development and the Joint Development Authority of Jasper, Morgan, Newton, and Walton counties submitted a notice of appeal to the Georgia Court of Appeals challenging the ruling. — Ed.*)

At the time of announcement last December, the Rivian deal represented the largest public subsidy ever offered to a U.S. manufacturer, according to Good Jobs First, a group that tracks and consistently opposes corporate subsidies. The Rivian package was later eclipsed by the \$1.8 billion Georgia awarded to Hyundai to build an EV battery plant near Savannah. That project, referred to by some as a “metaplant,” was full speed ahead at press time, with an official groundbreaking scheduled for October 25.

Overdue Diligence

Arcane legal questions visited by Judge Trammel, and now likely again on appeal, are grounded in Georgia’s constitutional prohibition against government “gifts and gratuities” to private entities and the complex workaround formula that allows authorities to nonetheless sweeten business attraction packages with coveted tax abatements. Legal constructs aside, the judge’s opinion made for compelling reading, dinging as it did the due diligence performed both by the

State and the four-county Joint Development Authority (JDA) that is to lease some 2,000 acres to Rivian for \$1 a year, forgoing most property tax revenues.

Ruling that bonds to back the arrangement are not “sound, feasible and reasonable,” Judge Trammel wrote that “significant, troubling information” about Rivian’s financial health “was not considered by the JDA, or presumably the state of Georgia.” The judge also raised questions about Rivian’s promised average annual salary of \$56,000 and tax burdens that might be imposed by the sprawling facility near the small towns of Rutledge and Social Circle. She wrote that proponents had failed to “put forward sufficient evidence that the Project would promote general welfare.”



Jiading Hydrogen, Shanghai

Wilson, in his comments to Site Selection, directly challenged the notion that authorities fell short in assessing Rivian’s financial health and the plant’s potential effects on surrounding communities.

“I take umbrage at the judge’s thoughts,” Wilson said. “The State spends a huge amount of time and effort on these projects to not only get to know the company, the people and the mission, but to look at the financials and the impact that this company is going to have on the community.” Georgia, Wilson maintained, is rigorous in enforcing clawback provisions. Capezzuto suggested that the judge’s expressed concerns about Rivian’s health were based on a static reading of the startup’s prospects and limited information. He said Trammel ignored evidence that was presented in support of Rivian’s long-term viability.

With the case far from being settled and its potential wider impacts impossible to gauge, national site consultant John Boyd, Jr. of The Boyd Company nonetheless sees the challenge as emblematic of an era of multi-pronged attacks against corporate incentive awards.

“It’s at a whole new level of intensity and sophistication,” writes Boyd from Boca Raton, Florida. “The level of scrutiny has brought on an army of eagle-eyed lawyers and judges, as we now see with Rivian.”