



## News & Updates

### GEORGIA SUPREME COURT: SETTLEMENT DEMAND WITHIN POLICY LIMITS IS REQUIRED TO TRIGGER INSURER'S OBLIGATION TO SETTLE

This week, the Georgia Supreme Court clarified that a liability insurer's duty to settle arises only when an injured party presents a valid settlement demand within the insurer's policy limits. This effectively makes a valid settlement demand within limits a requisite condition for a bad faith failure-to-settle claim against an insurer. [*First Acceptance Insurance Co. of Georgia, Inc. v. Hughes*, S.E. 2d., 2019 WL 1103831, at \*3 (Ga. March 11, 2019)].

In *Hughes*, the insured, Ronald Jackson, was involved in a multi-vehicle accident that resulted in Jackson's own death and serious injuries to a driver of another car, Julie An, and her minor daughter, Jina Hong. Three other individuals also were injured in the accident. Jackson's auto insurer, First Acceptance, investigated the accident and determined that Jackson's liability was clear and that the damages exceeded the \$50,000 coverage limits of Jackson's policy.

An attorney representing An and Hong sent First Acceptance letters in which these parties agreed to participate in a global settlement conference that First Acceptance had organized for all of the Jackson accident claimants, or in the alternative, offered to settle their claims against Jackson for the \$50,000 policy limits. The letters did not impose any deadline for First Acceptance to respond to the letters or to agree to pay its policy limits. Nevertheless, 41 days after the letters were sent, and before First Acceptance responded to the letters, counsel for An and Hong sent First Acceptance another letter advising that their settlement demand had been revoked. First Acceptance subsequently offered to pay the full policy limits to settle An's and Hong's claims, but these offers were rejected. Following a jury trial, An and Hong obtained a judgment in excess of \$5.3 million against Jackson's estate.

The estate then filed a lawsuit against First Acceptance, seeking to compel it to satisfy the entire liability judgment and to pay punitive damages and attorney fees on the grounds that First Acceptance had acted in bad faith by failing to accept An's and Hong's settlement offer before it was withdrawn. The trial court granted summary judgment to First Acceptance, and the Court of Appeals reversed because it concluded that issues of fact relating to whether An and Hong had set a deadline for First Acceptance to respond to their settlement demand precluded summary judgment. The Georgia Supreme Court granted First Acceptance's petition for *certiorari*, reversed the Court of Appeals, and directed that summary judgment be entered in favor of First Acceptance.

The primary issue before the Supreme Court was whether an insurer's duty to settle arises when it knows or reasonably should know settlement of a claim within its policy limits is possible, or if the duty arises only when an injured party presents a valid settlement demand within policy limits. Noting that Georgia law on this issue was somewhat unclear, the Supreme Court clarified that an insurer's duty to settle arises once it receives a valid offer to settle within the insurer's policy limits from an injured party. The court buttressed its holding by noting that if a valid settlement demand was not a condition precedent to a bad faith failure-to-settle claim against an insurer, insureds would attempt to prove that the insurer could have settled the claim within policy limits by introducing the after-the-fact testimony of the injured party that they would have settled the claim had the insurer offered its limits. The court noted that such testimony would be unreliable because it is speculative and because, in certain cases, it "might be the result of collusion between the insured and the injured party."

Applying this holding to the matter before it, the Supreme Court ruled that because An and Hong had never imposed a deadline by which First Acceptance was required to accept their settlement demand, First Acceptance was not put on notice that its failure to accept the demand by a specific date would constitute a rejection of the offer. Therefore, the Supreme Court ruled that, as a matter of law, First Acceptance had not acted in bad faith by refusing to accept the demand before it was withdrawn.

As part of its holding, the Supreme Court also affirmed that, under Georgia law, an insurer may settle some, but not all, known claims against its insured without notifying the other claimants as long as it acts in good faith, even if the single settlement will deplete or exhaust the available coverage.

This decision is important in that it imposes an objective standard on when an insurer's duty to settle arises, and it requires claimants to notify the insurer of any deadline imposed on a settlement offer. These holdings should limit the ability of claimants to set up insurers for bad faith failure-to-settle claims by resorting to vague or incomplete settlement demands that are withdrawn after a short time. The decision also confirms that an insurer may settle one of multiple claims against its insured, even if doing so will exhaust the insured's coverage, provided the insurer acts in good faith.

Relatedly, while the underlying car accident at issue in *Hughes* occurred in 2008, for claims arising from motor vehicle accidents occurring on or after July 1, 2013, Georgia Code section 9-11-67.1 requires that before filing a civil action, an offer to settle a tort claim for personal injury, bodily injury, or death arising out of a motor vehicle accident prepared by or with the assistance of an attorney on behalf of a claimant be in writing. The statute also identifies the particular information that must be contained in the written settlement, including the time period within which the offer must be accepted, which cannot be less than 30 days from receipt of the offer.

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