

CLIENT ALERT

Georgia Supreme Court: No Liability for Failure to Settle in Absence of Within-Limits Demand

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The Supreme Court of Georgia ruled unanimously on Monday that insurers do not have an affirmative duty to settle in Georgia unless there is first a valid offer to settle within policy limits. The Court held that the insurance company was entitled to summary judgment on a failure-to-settle claim and was not responsible for a \$5.3 million verdict entered against its policyholder's estate.

First Acceptance Insurance Company v. Hughes, No. A17A0735 (Ga. March 11, 2019), squarely establishes that, unless there has been a demand within limits, an insurer has no affirmative duty to make a settlement offer and cannot be held liable for failing to do so. The Georgia Supreme Court's ruling rebuts the Comments and Reporters' Note to Section 24 of the ALI Restatement of the Law, Liability Insurance, which address insurers' duty to make reasonable settlement decisions and suggest the possibility of an affirmative duty to make a settlement offer.

The case arose from a multi-vehicle collision caused by Ronald Jackson, who held an automobile liability insurance policy with First Acceptance Insurance Company of Georgia, Inc. The accident resulted in serious injuries to multiple parties, including Julie An and Jina Hong ("the underlying plaintiffs"). Mr. Jackson died from his injuries. First Acceptance determined that Mr. Jackson's estate (the "insured") was liable "and that his exposure for claims exceeded the policy limits." Accordingly, First Acceptance hired counsel who began attempting to enter into a global settlement with the various injured parties. On June 2, 2009, the underlying plaintiffs offered to settle for available policy limits, but did not include a time limitation for the offer. Approximately a month-and-a-half later, the underlying plaintiffs filed a claim against Mr. Jackson's estate and sent the insurer another letter revoking the offer to settle for available policy limits. The underlying plaintiffs refused to participate in any further settlement discussions, and rejected First Acceptance's subsequent offers to settle their claims for policy limits. The underlying plaintiffs' claims went to trial, and a jury returned a verdict of \$5.3 million.

The administrator of Mr. Jackson's estate then filed suit against First Acceptance "alleging negligence and bad faith in . . . fail[ing] to settle [the underlying plaintiff's] claim within the policy limits," and seeking to recover the full unpaid amount of the judgment, punitive damages, and attorney fees. The trial court granted First Acceptance's motion for summary judgment on the failure-to-settle claim, but the Court of Appeals reversed. The Supreme Court of Georgia granted First Acceptance's petition for certiorari on the following issues: (1) "whether an insurer's duty to settle arises when it knows or reasonably should know settlement with an injured party within the insured's policy limits is possible, or only when the injured party presents a valid offer to settle within the insured's policy limits," and (2) whether there was a genuine issue of material fact on the issue of whether the insurer's failure to accept the settlement offer was unreasonable or in bad faith.

First, the Court held that an insurer does not have an affirmative duty to settle merely because "the insurer knows or reasonably should know that settlement within the insured's policy limits is possible." To the contrary, the Court clarified that, under Georgia law, "an insurer's duty to settle arises *when the injured party presents a valid offer to settle* within the insured's policy limits." (emphasis added). In a footnote, the Court noted the strong policy considerations on which its decision was premised,

including that evaluating whether an injured party might have accepted a settlement offer would be wholly speculative, and that adopting the insured's position would encourage collusion between an insured and injured parties.

Second, the Court held that, even though the underlying plaintiffs had previously made a valid settlement offer, First Acceptance's decision not to accept that offer before it was revoked was neither unreasonable nor in bad faith. The insured "did not include any deadline for accepting the offer" and First Acceptance therefore had no reason to believe that the offer would not remain available. Specifically, the Court found that the plaintiffs' "offer to settle [was] not ... subject to a time limit for acceptance" such that it "did not constitute a time-limited offer" that required a "30-day deadline for acceptance." Rather, "[t]he offer to settle for available policy limits was ... an alternative to [the plaintiffs'] participation in the proposed global settlement conference," and without a deadline for acceptance it remained open only for a reasonable time or until revoked. The Court thus concluded that First Acceptance "was not put on notice that its failure to accept the offer within any specific period would constitute a refusal of the offer," and it "could not have reasonably known that it needed to respond ... or risk that its insured would be subject to a judgment in excess of the policy limits."

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Laura Foggan

Partner – Washington, D.C.
Phone: +1.202.624.2774
Email: lfoggan@crowell.com

Rachael Padgett

Associate – Washington, D.C.
Phone: +1.202.688.3441
Email: rpadgett@crowell.com