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Supreme Court of Georgia Holds Failure to Settle Liability Claim Requires a Valid Settlement Offer

In a closely watched case, the Supreme Court of Georgia recently held that an insurer's duty to settle arises only when the injured party presents a valid offer to settle within the insured's policy limits. In *First Acceptance Insurance Co. of Georgia, Inc. v. Hughes*, No. S18G0517, the Court unanimously reversed the Georgia Court of Appeals and re-instated a summary judgment ruling in favor of First Acceptance, finding that the insurer did not act negligently or in bad faith as a matter of law.

The case arose out of a 2008 multi-vehicle collision, caused by First Acceptance's insured, Ronald Jackson, who was killed in the accident. At least five others were injured, including Julie An and her 2-year-old daughter, Jina Hong, who suffered a traumatic brain injury. Jackson's policy with First Acceptance had minimum liability limits of $25,000 per person/$50,000 per accident. Recognizing the potential exposure exceeded the available limits, First Acceptance retained counsel to negotiate a settlement with all parties. After First Acceptance's attorney wrote all parties in January 2009 to suggest a global settlement conference, An and Hong's attorney sent two letters on June 2, 2009. In the first, the attorney expressed an interest in attending a settlement conference, and, in the alternative, offered to settle An and Hong's claims for the available policy limits. In the second letter, the attorney requested certain information about the policy within 30 days. First Acceptance did not respond within 30 days, and An and Hong filed suit on July 10. Their attorney then wrote First Acceptance and stated that the offer to settle had been withdrawn because it was not accepted within 30 days. An and Hong later obtained a judgment against Jackson's estate for more than $5.3 million in damages.

The administrator of Jackson's estate, Robert Hughes, sued First Acceptance, asserting that the insurer was liable for the entire judgment because its failure to settle An and Hong's claims within the policy limits led to the excess judgment. The trial court granted summary judgment to First Acceptance, but a panel of the Georgia Court of Appeals reversed in November 2017. The Court of Appeals had found issues of fact existed regarding whether the June 2, 2009 letters offered to settle claims within the policy's limits and release the insured from further liability, and whether there was a 30-day deadline for a response.

The Supreme Court of Georgia granted certiorari to consider two issues: (1) whether an insurer's duty to settle arises when it knows or should know settlement within policy limits is possible or only when the injured party presents a valid offer to settle within policy limits; and (2) whether the Court of Appeals correctly held that a jury should decide whether the claimants had made a time-limited settlement offer.

In its unanimous decision, the Court rejected the plaintiff's argument that an insurer should attempt to settle a claim to protect the interests of its insured even in the absence of a demand, and held that an insurer's duty to settle arises only when the injured party "presents a valid offer to settle within the insured's policy limits."

Applying the rules of contract construction, the Court held that the June 2 letters did offer to settle within the policy limits and to release the insured from further liability, but that the offer did not include a 30-day deadline for acceptance. According to the Court, because the offer in the June 2 letters was not a time-limited settlement demand, 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. The Court also emphasized that, given that the June 2 letters also communicated an unequivocal desire to participate in the proposed settlement conference, First Acceptance could not have reasonably known that it needed to respond within 41 days or risk that its insured would be subject to an excess judgment. For that reason, the Court reversed the Court of Appeals and held that First Acceptance was entitled to summary judgment on Hughes's failure-to-settle claim.

The Supreme Court's decision brings some clarity to Georgia law regarding an insurer's extra-contractual liability for failure to settle. Georgia law is now clear, unlike some states (including Florida), an insurer cannot be held liable for failure to settle unless and until the injured party presents a valid offer to settle within the insured's policy limits.

Swift Currie attorneys David Atkinson and Jonathan Kandel authored amicus curiae briefs in the Supreme Court in support of First Acceptance.

If you wish to further discuss this case or have any questions, please contact a Swift, Currie, McGhee & Hiers attorney at 404.874.8800 or via our website, swiftcurrie.com.

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