

How Language in a Release Can Cost a Claimant Access to Other Insurance, Including Uninsured Motorist Coverage

Picture this: a claimant has been rear-ended by an underinsured driver. The at-fault driver's insurance offers policy limits of \$25,000, a fraction of the insured's damages. The insured signs a release, deposits the check and files suit to pursue underinsured motorist (UM) benefits from their own carrier. It seems straightforward enough until the Georgia Court of Appeals tells the insured they have just forfeited their right to any additional recovery. This is precisely what happened in *Barker v. Muschett*, A25A0583 (Ga. App. June 2, 2025), the latest cautionary tale in Georgia's evolving jurisprudence on preserving UM claims and limited releases under O.C.G.A. § 33-24-41.1.

Katherine Barker thought she had done everything right. After settling with Marlon Muschett's insurer for the \$25,000 policy limits, she signed a release that appeared to preserve her rights, stating she released Muschett "from all claims for bodily injuries . . . except to the extent that other insurance coverage is available." The release seemed clear enough, but there was one fatal flaw. Specifically, the release failed to include language releasing the settling insurance carrier as required by O.C.G.A. § 33-24-41.1(b)(1). This seemingly minor omission proved problematic. The court of appeals affirmed summary judgment for Mr. Muschett holding that Ms. Barker's failure to comply with the statute's requirements completely barred her UM claim.

Ms. Barker argued she could rely on pre-1992 "common law" procedures for preserving UM claims. The court flatly rejected this argument, emphasizing that O.C.G.A. § 33-24-41.1 provides "a singular procedure" that supersedes any common law alternatives. As the Supreme Court stated in *Carter v. Progressive Mountain Ins.*, 295 Ga. 487 (2014), O.C.G.A. § 33-24-41.1 was "enacted to provide a statutory framework" for exactly what Ms. Barker was trying to accomplish. The court distinguished *Claxton v. Adams*, 357 Ga. App. 762 (2020), which noted that use of the statute is "optional." The *Barker* Court clarified that while parties may choose not to use O.C.G.A. § 33-24-41.1, if they settle and wish to preserve UM claims, strict compliance becomes mandatory. There is no middle ground.

Ms. Barker is hardly alone in falling into this trap. The Georgia appellate courts have repeatedly addressed similar situations. In *Cook v. State Farm*, 237 Ga. App. 400 (1999), the insured executed a "General Release" that failed to comply with O.C.G.A. § 33-24-41.1, despite the insured's attempt to preserve rights by striking certain language. The court held the release was not a limited release under the statute and precluded UM recovery. *Kent v. State Farm*, 233 Ga. App. 564 (1998), presents an even more dramatic cautionary tale. In *Kent*, the insureds properly executed a limited release under O.C.G.A. § 33-24-41.1 but then voluntarily dismissed their suit against the tortfeasor with prejudice. This procedural misstep completely barred their UM claim as they could no longer establish the tortfeasor's legal liability, which is a prerequisite for UM recovery. In contrast, *Ramos-Silva v. State Farm*, 300 Ga. App. 699 (2009), shows what happens when the statute is followed correctly. There, a properly executed limited release that complied with O.C.G.A. § 33-24-41.1 preserved not only the injured party's UM rights but also the UM carrier's subrogation rights against the tortfeasor.

For attorneys and insurers handling motor vehicle accident settlements, *Barker* reinforces two critical practice points. First, do not vary from the provisions of O.C.G.A. § 33-24-41.1. The statute provides specific requirements – incorporate them all. The statute also requires releases that explicitly release the settling carrier and the tortfeasor. Second, beware of procedural pitfalls. Even a perfect limited release will not save a claim if the tortfeasor is dismissed with prejudice as in *Kent*. The ability to establish the tortfeasor's legal liability must be preserved.

Barker delivers a harsh but clear message. In Georgia, the only way to settle with a tortfeasor while preserving claims for other available insurance is to maintain strict compliance with O.C.G.A. § 33-24-41.1. The statute's requirements are not suggestions but mandatory predicates to preserving potentially substantial access to other insurance, including UM benefits.

If you wish to discuss this case or have any questions, please contact a Swift Currie attorney.

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.

s/c