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CLIENT ALERT: Georgia Court of Appeals Clarifies That Pre-Suit Automobile Demands Are, in Fact, Offers to Enter into a Bilateral Contract

The 2024 amendment to O.C.G.A. § 9-11-67.1 created a new O.C.G.A. § 9-11-67.1(a), which states "Any offer to settle a tort claim for personal injury, bodily injury, or death arising from a motor vehicle collision shall be an offer to enter into a bilateral contract." That change may reshape the mechanics behind bad faith claims in motor vehicle accident claims.

Previously, if a claimant believed an acceptance was noncompliant with the terms of the demand, the claimant would tell the insurer that its response was a "rejection" and a "counteroffer." This response only makes sense if no binding contract had been formed.

On October 2, 2026, the court of appeals issued its opinion in *Sanders v. Ray*, No. A26A1382, 2026 LX 547049 (Ga. Ct. App. Oct. 2, 2026). In *Sanders*, an insurer failed to timely deliver payment to the claimant's attorney after accepting the material terms of the demand pursuant to O.C.G.A. § 9-11-67.1. After the claimant filed suit, the insurance carrier moved to enforce the settlement agreement, arguing a binding settlement contract was formed upon written acceptance of the material terms of the demand. The court of appeals agreed.

A bilateral contract is different from the typical structure of pre-suit time-limited demands. Bilateral contracts can best be described as a "promise for a promise" where each party makes a promise to do something in the future. In the context of O.C.G.A. § 9-11-67.1, a claimant promises to release the tortfeasor. In exchange, the insurer promises to provide timely payment and a statement under oath. The key change is performance is no longer a condition of acceptance.

The court left open and did not discuss whether the insurer breached the contract or if the plaintiff successfully rescinded the legally binding contract, although the court of appeals began to address this issue three days later on October 5, 2026, in *Garza v. Landers*, No. A26A1458, 2026 LX 562122 (Ga. Ct. App. Oct. 5, 2026). While not a pre-suit case subject to O.C.G.A. § 9-11-67.1, the demand in *Garza* was modeled after the statute and the court considered the instant demand to be an offer to enter into a bilateral contract.

In order to unilaterally rescind a contract, two conditions must be present: (1) the parties must be able to return to the pre-contract condition; and (2) there must exist a material breach or nonperformance by a party to the contract. Critically, whether a breach is material enough to permit rescission may present a question of fact for a jury to resolve.

Going forward, enforceable settlement contracts are formed the moment the insurer accepts the material terms of the demand. The question now will be whether a failure on the part of the insurer to fulfill its promises constitutes a material breach sufficient to allow a claimant to rescind the binding contract.

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.

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