

No Offer, No Rejection, No Bad Faith: Georgia Supreme Court Limits Liability for an Insurer's Bad Faith Refusal to Settle

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On March 11, 2019, the Georgia Supreme Court handed down an important decision in *First Acceptance Insurance Company of Georgia, Inc. v. Hughes*, which further clarifies the circumstances under Georgia law for when an insurer may be liable for bad faith in refusing to settle a claim within policy limits.

In *Hughes*, the insured caused a multi-vehicle accident and resulting injury to five individuals. An attorney who represented two of those individuals – Julie An and Jina Hong – sent two letters on June 2, 2009, to First Acceptance, the insured's automobile insurance carrier. In the first letter, the attorney stated his clients would be interested in attending a global settlement conference, and, in the alternative, offered to settle their claims for the available policy limits. The letter noted that First Acceptance could settle An and Hong's claims within policy limits by providing a release and "the insurance information as requested in the attached." In the second letter, the claimants additionally requested that First Acceptance provide certain insurance information within 30 days. Neither letter explicitly referenced the other.

First Acceptance did not respond to the letters. Then, on July 13, 2009, the claimants' attorney stated that the offer to settle had been revoked and they refused to participate in a settlement conference with the other injured individuals. Although First Acceptance later offered to settle Hong and An's claims for policy limits, that offer was rejected. Hong and An proceeded with litigation against the insured, which resulted in a jury award in excess of \$5.3 million for Hong's injuries.

Following entry of the judgment, the insured filed suit against First Acceptance, alleging negligence and bad faith in failing to settle Hong's claim within policy limits. The trial court granted First

Acceptance's motion for summary judgment, but the Court of Appeals reversed, finding that issues of material fact existed as to whether the June 2, 2009, letters constituted a time-limited settlement offer and whether First Acceptance acted in bad faith in failing to accept it. After granting certiorari, the Georgia Supreme Court reversed the Court of Appeals and found that First Acceptance was entitled to summary judgment.

In so holding, the Supreme Court clarified two important points of Georgia bad faith law. First, the Court clarified that an insurer does not have a duty to settle a claim within policy limits unless and until there is a valid offer from the claimant to do so.

Second, there must be a rejection of the offer to settle within policy limits before the insurer can be held liable for bad faith in refusing to accept it. In *Hughes*, the Supreme Court acknowledged that the June 2, 2009, letters constituted an offer to settle Hong and An's claims. The letters, however, failed to specify when acceptance of the offer was required. The insured argued that the 30-day deadline for providing the insurance information set the deadline for acceptance. The Court disagreed, reasoning as follows:

The offer at issue is expressly subject to First Acceptance's provision of "all the insurance information as requested in the attached." The phrase "as requested" could simply refer to the insurance information. Under that interpretation of the offer, if First Acceptance submitted all the insurance information requested in the second letter, it would have satisfied the condition. On the other hand, "as requested" could mean in the manner requested in the second letter, which includes a request that the insurance information be submitted within 30 days of the date of the letter.

The Court held that the most reasonable interpretation was that the June 2, 2009, letters did not include a 30-day deadline for acceptance because the offer was presented in the alternative to claimants' participation in a settlement conference that had not yet been scheduled. The Court also noted that there was no stated deadline on the claimants' willingness to participate in a settlement conference.

Because the offer to settle was not time-limited, First Acceptance was not put on notice that its failure to accept the policy limit demand within a specified time period would amount to a refusal of the offer and subject it to extra-contractual liability. Moreover, because the claimants were expressing an interest in participating in a settlement conference as an alternative, First Acceptance could not have reasonably known that failure to accept the offer would result in a judgment in excess of the policy limits against its insured.

In light of the Supreme Court's decision, it is clear that an insurer cannot be liable for bad faith in Georgia for failing to tender policy limits unless there is a clear and unequivocal offer and the insurer

rejects that offer.

[Read the Court's full opinion. »](#)

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