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Practice Update

April Fools? Nope. Hard-to-Believe Reasons Used to Defeat Acceptance of Settlement Offers

April 1, 2024

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No one likes a copycat, but insurers in Georgia have no other choice when trying to accept a settlement demand. If an insurer's attempted acceptance of a settlement demand does not mirror the terms of the demand exactly — "unequivocally and without variance of any sort" — a wry plaintiff's lawyer will call foul, allege the insurer made an unacceptable counteroffer, and declare no deal in an attempt to expose the insurer to extra-contractual liability. The reasons used by plaintiff's lawyers for claiming no enforceable settlement feel like bad April Fool's jokes and border, or even cross over into, the realm of absurdity. Unfortunately for insurers, Georgia courts, bound by the mirror image rule, have refused to enforce insurers' attempted acceptances of settlement offers even where the alleged "variance" has no bearing whatsoever on the material terms of the settlement offer. It does not matter what ridiculous terms may be set out in a settlement offer because the person making the offer is the "master of the offer" and free to set the terms of the offer. Following are some of the tricks that plaintiff's lawyers have used to try to make fools out of insurers who have paid their policy limits in response to settlement demands:

- No settlement because the insurer sent the settlement funds **too early** when funds were sent

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with the written acceptance, but the settlement offer required payment 15 days *after Pierce v. Banks*, 368 Ga.App. 496 (2023).

- The plaintiff in *Pierce* even argued that a missing comma from the payee line on the settlement check was an unacceptable variance that could defeat the acceptance of the offer, but the Court of Appeals did not decide that issue in reaching its decision.
- The settlement check violated the terms of the offer by including standard language that the check would be void after a certain number of days. *Patrick v. Kingston*, No. A23A1527, 2024 WL 566609 (Ga. Ct. App. Feb. 13, 2024) (the check indicated it was void if not presented within 90 days); *Pierce v. Banks*, 368 Ga.App. 496 (2023) (the check indicated it was void after 180 days).
- Claim that the representative *calling* plaintiff's counsel seeking additional information defeated settlement where the settlement offer required any communication to be in *writing*. *White v. Cheek*, 360 Ga.App. 557 (2021).
- The settlement check mailed within deadline, but was not received until after the deadline. *de Paz v. Pineda*, 361 Ga.App. 293 (2021) (the check was sent by overnight delivery to be received within deadline, but delivery service lost the check); *Grange Mut. Cas. Co. v. Woodard*, 861 F.3d 1224, 1231 (11th Cir. 2017) (the check was mailed within deadline, but an address error prevented timely delivery).

These decisions may leave insurers scratching their heads and wondering how to avoid the traps laid in settlement offers that are set to prevent insurers from being able to accept the offer. A defeated attempt to accept a settlement offer can strike fear in the hearts of insurers, and rightfully so, because the possible repercussions can result in prolonged litigation even after the underlying personal injury action has concluded, which could end in blown limits and an open checkbook if the insurer is found

to have failed to accept the settlement offer negligently or in bad faith.

This could have significant outcomes because verdicts that have been issued by Georgia juries in recent history make it seem as though juries are playing with Monopoly money. This trend has resulted in Georgia having the uncoveted #1 ranking as the top judicial hellhole in the country, largely in part because it is "one of the most prolific producers of nuclear verdicts (awards of $10 million or more) nationwide." (https://www.judicialhellholes.org/hellhole/2023-2024/georgia/) In fact, "from January 1, 2018 through April 10, 2023, 39 nuclear verdicts in personal injury and wrongful death cases were reported, with 12 awarded in 2022 alone," including a punitive damages award for an astounding $1.7 billion (no, that's not a typo, that's billion with a "B").

All of this leads to the logical question: are these small missteps on the part of an insurer in attempting to accept a settlement offer enough to put an insurer at risk for extra contractual liability for a blown settlement? Common sense dictates the severe penalty of having to pay whatever nuclear verdict a Georgia jury issues should not be the result of an insurer attempting to accept a settlement offer but falling short of closing the deal by stepping into a trap hiding in a lengthy settlement letter. However, this question is currently unanswered because a case involving these types of facts has not been presented to a Georgia appellate court for decision. Even so, in a concurring opinion, the chief judge of the Georgia Court of Appeals has hinted as to how such a case may be received by the Court by explaining that a settlement offer made in bad faith cannot be denied in bad faith. *White v. Cheek*, 360 Ga.App. 557, 567 (2021).

Today may be April Fool's Day, but time-limited settlement demands are anything but a joke for insurers. Fear not though, our goal is to try to assist insurers by providing information that can hopefully

be used as armor against weaponized settlement demands. This is only the first in a series of posts that will offer guidance on how to avoid common traps in these demands, how to take advantage of safe harbors available for insurers to protect from bad faith liability, and much, much more.
