American Educational Institute

CLAIMS LAW UPDATE

A SUPPLEMENT TO CLAIMS LAW COURSES IN CASUALTY, PROPERTY, WORKERS' COMPENSATION, FRAUD INVESTIGATION, AND AUTOMOBILE

Summer, 2022

AEI CLAIMS LAW QUIZ

EFFECT OF POLICY LIMIT DEMAND WITH NO TIME LIMIT

[*Ref. Good Faith Claims Handling, Para. 4.03*]

FACTS: On August 29, 2008, Ronald Jackson caused a multi-vehicle accident. Jackson died as a result of the injuries he sustained. Five others involved in the accident were also injured. Jackson was insured by First Acceptance Insurance Co. with liability limits of $25,000 per person and $50,000 per accident. First Acceptance determined that its insured was liable for the loss and that his exposure exceeded the policy limits.

In September of 2008, First Acceptance retained counsel with the goal of settling all claims. In November, an attorney for claimant Jose Rodriguez made a demand for the policy limits with a 20-day deadline within which to respond. Rodriguez eventually agreed to extend the deadline to participate in a joint settlement conference. On January 15, 2009 and February 9, 2009, First Acceptance sent letters to the parties to arrange the conference.

On June 2, 2009, the attorney for Julie An and her minor daughter, Jina Hong, faxed two letters to First Acceptance. As a result of the accident Hong suffered a fractured skull and other serious injuries and Julie An was also injured. In the attorney's first letter, he expressed an interest in participating in a joint settlement conference that First Acceptance was planning to schedule and, in the alternative, offered to settle for the insured's policy limits. The letter did not state a time limit for acceptance of the offer to settle. The attorney's second letter sought insurance information within 30 days, and noted that any settlement would be conditioned on receipt of the insurance information.

On July 10, 2009, An and Hong's attorney filed suit against Jackson's estate for the injuries they sustained in the accident. On July 13, 2009, the attorney faxed a letter to First Acceptance revoking the prior settlement demand, noting that 41 days had passed and no progress had been made. First Acceptance invited the attorney to participate in a settlement conference, but the attorney declined despite having previously expressed an interest in doing so.

On February 19, 2010, First Acceptance offered to settle Hong's claim for $25,000 and on September 24, 2010 it attempted to settle the claims for $25,000 each, but the offers were rejected. The case went to trial in July of 2012 and a $5.3 million judgment was entered against Jackson's estate. The administrator of Jackson's estate then filed a lawsuit against First Acceptance claiming that it acted negligently and in bad faith for failing to settle in response to the June 2, 2009 letter.

QUESTION: If a policy limits settlement demand doesn't include a time limit, can an insurer be found to have breached its duty to settle for not accepting it?

ANSWER: Yes, according to the Georgia Supreme Court in *First Acceptance Ins. Co. of Ga. v. Hughes*, 826 SE2d 71 (Ga. 2019). The court held that an insurer's duty to settle arises when the insurer is presented with a valid offer within the insured's policy limits. The insurer, however, breaches that duty only if it acts unreasonably in response to the settlement demand. If the demand does not include a time limit, the insurer has a reasonable time in which to respond. In this case the court concluded that while the claimants' demand letter constituted a valid offer, First Acceptance did not breach its duty to settle because it could not reasonably have known that it needed to respond to the claimants' demand within 41 days or risk exposing its insured to an excess judgment. This conclusion was supported by evidence in the record that the claimants' attorney had expressed an interest in participating in a settlement conference that the insurer was trying to schedule when the settlement demand was suddenly revoked.

The court began its analysis by discussing the legal standard for an insurer's bad faith or negligent refusal to settle:

> An insurance company may be liable for the excess judgment entered against its insured based on the insurer's bad faith or negligent refusal to settle a claim within the policy limits. An insurer is negligent in failing to settle if the ordinarily prudent insurer would consider that choosing to try the case would create an unreasonable risk. The rationale is that the interests of the insurer and insured diverge when a plaintiff offers to settle a claim for the limits of the insurance policy. An insurance company's bad faith in refusing to settle depends on whether the insurance company acted reasonably in responding to a settlement offer, bearing in mind that, in deciding whether to settle, the insurer must give the insured's interests the same consideration that it gives its own.

Next, the court applied contract law to determine the meaning of the two letters sent by the claimants' attorney to First Acceptance. The issue was whether the attorney made a valid offer to settle. Before it analyzed the two letters, the court emphasized that in order to be valid a settlement demand must be clear and unambiguous:

> The attorney begins the first letter by acknowledging the receipt of the January 15, 2009 letter to him and the other claimants' attorneys expressing First Acceptance's interest in arranging a joint settlement conference. The attorney represents that his clients "are interested in having their claims resolved within [First Acceptance's] insured's policy limits, and in attending a settlement conference if you think it would be helpful." In following paragraphs, the attorney says that he and his clients "are happy to attend" a settlement conference, requests that First Acceptance's attorney forward "some dates that would work for everyone to meet," suggests a location for the conference, and volunteers to "take the lead on reserving some meeting space" and to provide a list of suggested mediators.

The court then focused on the language used by the attorney when he referred to his clients' uninsured motorist coverage and the possibility of settling the claims:

> Of course, the exact amount of UM benefits available to my clients depends upon the amount paid to them from the available liability coverage. Once that is determined, a release of your insured from all personal liability except to the extent other insurance coverage is available will be necessary in order to preserve my clients' rights to recover under the UM coverage and any other insurance policies. In fact, if you would rather settle within your insured's policy limits now, you can do that by providing that release document with all the insurance information as requested in the attached, along with your insured's available bodily injury liability insurance proceeds.

The second letter faxed by the claimants' attorney requested Jackson's insurance information within 30 days of the date of the letter, and conditioned settlement on receipt of that insurance information.

The court concluded that while the letters expressed a desire to settle for the policy limit, they also expressed a willingness to participate in a settlement conference, and that neither one of these objectives was subject to any type of deadline or express time limit:

> For the most part, the meaning of the June 2 letters is clear. An and Hong, through their attorney, express a willingness to participate in the proposed settlement conference with other claimants. Alternatively, they express their willingness to settle their claims upon receipt of three items: (1) a release of the insured from all personal liability except to the extent other insurance coverage is available, (2) the requested insurance information, and (3) the insured's available bodily injury liability proceeds. The offer to settle is not, at least expressly, subject to a time limit for acceptance. Nor do An and Hong state an express time limit on their willingness to attend the settlement conference.

The representative of Jackson's estate argued that the 30 day deadline for providing insurance information also applied to the settlement demand and that First Acceptance wrongfully failed to settle the claim within this 30 day deadline. The court, however, rejected this argument:

> The most reasonable construction of the June 2 letters, when considered as a whole, is that they do not include a 30 day deadline for acceptance of the offer to settle. The offer to settle for available policy limits was presented as an alternative to An and Hong's participation in the proposed global settlement conference. There was then no time set for the settlement conference, nor did the June 2 Letters state any time limitation on An and Hong's willingness to attend the conference or set any express deadline to settle beforehand. The second letter's request that the insurance information be amended is not logically consistent with a requirement that acceptance of the settlement offer must occur within 30 days. Moreover, if an agreement is capable of being construed two ways, it will be construed against the preparer and in favor of the non-preparer.

The court referred to well settled Georgia case law and held that when an offer is silent as to the time given for acceptance, the offer typically remains open for a reasonable time. Although the meaning of "reasonable time" is subject to interpretation, the court concluded that because the two letters expressed an "unequivocal desire" to participate in a settlement conference, the insurer "could not have reasonably known" that "its failure to accept the offer within any specific time period would constitute a refusal of the offer." More specifically, the insurer could not have reasonably known that it needed to respond within 41 days or risk an excess judgment against its insured.

The representative of Jackson's estate made one final argument – that it was "industry custom" to settle the most severe injury cases so as to limit the insured's exposure. Once again, the court disagreed:

> A settlement of multiple claims that included Hong's claim was in the insured's best interest as it would reduce the overall risk of excess exposure, and An and Hong had expressed their interest in attending a settlement conference with the other claimants. First Acceptance's failure to promptly accept An and Hong's offer was reasonable as an ordinary prudent insurer could not be expected to anticipate that, having specified no deadline for the acceptance of their offer, An and Hong would abruptly withdraw their offer and refuse to participate in the settlement conference.

Two facts were critical to the court's ruling: the absence of a time limit in the settlement demand, and the claimants' initial willingness to participate in a joint settlement conference, only to change their minds without warning and withdraw their demand.

CONCLUSION: To determine if an insurer acted wrongfully by failing to settle a third party claim, Georgia law requires proof of a valid settlement demand within the insured's policy limit. According to the Supreme Court of Georgia the insurer in this case received a valid settlement demand despite the fact that it did not include an express time limit. In the absence of an express time limit, the insurer had a reasonable time within which to accept. The court concluded that the insurer did not breach its duty to settle because it did not act unreasonably in failing to accept the demand before it was unexpectedly withdrawn.

Note that the accident that gave rise to the claim in this case occurred in 2008. In 2013, the Georgia legislature enacted O.C.G.A. § 9-11-67.1, which applies to settlement demands for personal injury, bodily injury, and death arising from the use of motor vehicles, and provides, among other things, that such settlement demands must be in writing, and must include a time limit within which to accept of not less than 30 days from its receipt.