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Georgia's Bad Faith Funhouse: Recent Developments in Time-Limited Settlement Demand Law in Georgia

Blog Avoiding Insurance Bad Faith

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USA | August 24 2026

"Void if not presented within 90 days."

These seven unassuming words were printed on the face of a settlement check that an insurance company issued in response to a plaintiff's demand. Unfortunately for the insurer, the bank's imposition of the 90-day requirement did not precisely conform to the terms of the offer, so under Georgia law, the offer was deemed rejected, thus implicating the insurer's good faith duty to settle a claim within policy limits. *Patrick v. Kingston, 898 S.E.2d 560, 565 (Ga. App. 2024)*.

To be clear, the insurer did not tell the plaintiff the offer was rejected, nor did it allow the time-limited offer to expire without response. To the contrary, the insurer purported to accept the offer by issuing a check in the full amount demanded by the plaintiff. However, Georgia's common law and statutory framework governing time-limited policy limits demands in place at the time allowed claimants wide latitude to impose specific terms in their offers and to require extremely strict compliance with those terms to constitute acceptance. In the *Patrick* decision, therefore, the plaintiff's offer did not provide for payment by check that must be deposited within 90 days, so the payment by check that was subject to such a condition amounted to a rejection of the offer altogether. Never mind that the condition was imposed by the bank, not the insurer - the *Patrick* court considered and rejected that very argument.

Indeed, the Patrick court had precedent on which to rely for that proposition: one year prior, in *Pierce v. Banks*, the Georgia Court of Appeals held that an insurer rejected a time-limited settlement offer when the insurer's settlement check included a provision that it would be void after 180 days. (*Pierce v. Banks* 890 S.E.2d 402, 405 (Ga. App. 2023). The check-cashing condition was not the only discrepancy between offer and acceptance in Pierce, though - the insurer also allegedly failed to properly name the payee on the settlement check by failing to include a necessary comma in the name of the plaintiff's law firm, and failed to comply with the requirement that it supply the settlement check 15 days after written acceptance because the insurer in fact issued the check earlier than the imposed 15-day deadline. *Id.*

In both of these decisions, the Georgia Court of Appeals at least nominally recognized the absurdity of the results. In *Pierce*, Judge Stephen Dillard concurred in the opinion to "caution parties to avoid crossing the line from vigorous advocacy to gamesmanship," and in *Patrick*, the court recognized the public policy concerns about a framework that allows claimants to "attempt to 'catch' insurers acting in good faith and attempting to resolve disputes," but noted that such public policy concerns are more properly addressed by the legislature than by the court.

The Georgia General Assembly has not been deaf to these concerns. It has established a statutory framework governing certain time-limited demands and it continues to fine-tune that framework in response to ongoing developments in the case law.

For background, the law regarding time-limited demands in Georgia has its common law origins in *Southern General Ins. Co. v. Holt,* 262 Ga. 267, 416 S.E.2d 274 (1992), in which the Georgia Supreme Court held that an insurance company may be liable in tort to its insured for failing to settle the claim of an injured person where the insurer is guilty of negligence, fraud, or bad faith in failing to settle the claim within policy limits when it had a reasonable opportunity to do so. The decision spawned a considerable body of case law interpreting just what this standard required of insurers when facing what became known as *Holt* demand letters, and how such offers could or could not be accepted.

In 2013, the General Assembly enacted O.C.G.A. § 9-11-67.1 to clarify the increasingly complex body of law governing offer and acceptance of time-limited settlement demands, specifically in the context of pre-suit demands in motor vehicle injury cases. The statute set forth a number of material terms that must be included to constitute a valid offer under the statute. In 2017, the Georgia Supreme Court interpreted O.C.G.A. § 9-11-67.1 and held that the statute allowed a claimant to condition acceptance upon the performance of some act, in what is known as a "unilateral contract." *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 797 S.E.2d 814 (2017). This meant that a settlement demand could require an insurer to perform an act, such as timely payment, to create a binding settlement agreement. As it turns out, this interpretation did little to curb the use of time-limited demands as bad faith traps or to stem the flow of litigation arising out of such demands. Hence, the 2023 *Pierce* and the 2024 *Patrick* decisions discussed above, which applied the 2013 version of the statute.

In 2021, the General Assembly significantly overhauled the statute in an attempt to address these concerns. Among the key changes, the 2021 amendment shifted the framework away from one of unilateral contracts as contemplated by *Grange*, to one of bilateral contracts, under which both parties incur mutual promises and obligations. The intent was to prevent claimants from creating offers which could be accepted only by performing a requested action or complying with a number of arcane conditions without mutual agreement. The amendment increased the number of material terms and clarified that those enumerated terms were the only material terms, and that any other term would be construed as an immaterial term that may be mutually agreed to in writing. The amendment also added certain safe harbor provisions and clarification rights to protect insurers from bad faith set-ups.

The gamesmanship and the litigation didn't stop, though. Among the most common issue that courts wrestled with in interpreting the 2021 amendment was: under the new bilateral contract framework, if a claimant's settlement demand includes both the statutory material terms and additional immaterial terms, and the insurer accepts only the statutory material terms while rejecting the non-statutory ones, is a binding settlement agreement formed?

In *Gomez v. USAA Cas. Ins. Co.*, the Georgia Court of Appeals held that under the 2021 amendment, an insurer's acceptance of the statutory material terms created a binding settlement agreement, and the non-statutory terms were immaterial to the formation of a binding contract because the parties did not mutually agree to operate under those additional terms. 378 Ga. App. 702 (2026) (interpreting the 2021 amendment even though the decision post-dates the 2024 amendment because the 2021 amendment was the operative version of the law governing the subject claim and demand letter). Judge Dillard, writing for the majority of the Court of Appeals, recognized the progression of the cat-and-mouse game of time-limited demands that he first recognized in the *Pierce* concurrence:

This is yet another case in the ongoing saga of settlement agreements in the motor-vehicle, personal-injury context here in Georgia. The story is a familiar one by now. There is a car accident. Someone is tragically injured. The party who caused the injury has minimal insurance policy limits. The attorney representing the injured party makes a settlement offer to the defendant's insurer. In making that offer, the plaintiff's attorney includes onerous, byzantine terms in the hope of causing a botched acceptance. And this then opens the door for the injured party to bring a bad-faith claim against the insurer, which allows for the possibility of a far larger verdict for the plaintiff. Enter the General Assembly. In 2013, it passed OCGA § 9-11-67.1—which was revised in 2021 and 2024—to address this very issue.

Id. at 702. As Judge Dillard noted, the General Assembly took another bite at the apple in reforming the framework, again amending the statute in 2024 to further clarify the bilateral contract nature of offers under the statute and the exclusive list of material terms. Claims that are subject to the 2024 amendment have begun to work their way through the adjustment, settlement negotiation, and litigation phases. So, cases addressing the interpretation of the 2024 amendment are now starting to come before the Court of Appeals. This year, the court issued its first decision interpreting the latest amendment. In *Torres v. Pineda*, the Court of Appeals held that a binding settlement agreement was formed when the insurer provided written acceptance of all material terms and delivered the settlement proceeds along with a sworn statement regarding insurance coverage. 378 Ga. App. 321 (2026). The court specifically held that the claimant's imposition of terms regarding the format of the sworn statement that were more restrictive than the statute's enumerated material terms would not invalidate the acceptance.

Although the General Assembly and the appellate courts are generally progressing away from some of the more egregious examples of gamesmanship and "bad faith trap-setting," insurers faced with time-limited policy demands should still exercise great caution to avoid falling into any such traps by quickly and thoroughly evaluating the substance of the demand, paying close attention to the terms of the offer and the substance and format of their response, and continuing to monitor ongoing legislative and appellate developments as this critical issue continues to evolve.

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