# Another look at Time-Limited Settlement Offers

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In *Hughes v. First Acceptance Insurance Company of Georgia, Inc.*, the Georgia Court of Appeals addressed whether the insurer acted reasonably in failing to respond to a "time-limited settlement offer." After the insurer failed to respond, the parties involved in a motor vehicle accident with the insured proceeded to a jury trial, resulting in a verdict for the parties in excess of the policy limits, for which the insured's estate was liable. The insured caused a five-vehicle accident, resulting in his death and injuries to others, including a mother and child. *Hughes v. First Acceptance Ins. Co. of Ga.*, 808 S.E.2d 103, 105 (Ga. Ct. App. 2017). The liability limits of the insured's policy with First Acceptance Insurance Company of Georgia, Inc. were $25,000 per person and $50,000 per accident. *Id.* After the accident, counsel for the mother and child contacted First Acceptance to notify it that he would send a demand letter once his clients finished treatment. *Id.* First Acceptance subsequently sent two letters to all injured parties, seeking participation in a settlement conference. *Id.* Four months later, counsel for the mother and child sent two letters to counsel for First Acceptance. *Id.*

Both of these letters provide the basis for the plaintiff's claims for failure to settle, punitive damages, and attorney fees against the defendant insurer. The first letter acknowledged First Acceptance's previous communications, stated the mother and child's interests in resolving their claims within the insured's policy limits and in attending a settlement conference, referenced the second letter, which counsel described as the letter of representation and insurance information request, and included the uninsured/underinsured motorist coverage. *Id.* The first letter further stated that, once counsel for the mother and child determines the available UM benefits, then "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." *Id.* It continued,

"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." *Id.* The second letter requested the insurance information from First Acceptance within 30 days and stated, "Any settlement will be conditioned upon [the] receipt of all the requested insurance information." *Id.* Counsel for the mother and child asserted that these letters constituted an offer to settle their claims and a 30 day deadline for a response. *Id.*

Counsel for First Acceptance received the letters but did not provide the insurance information or follow up with counsel for the mother and child, so counsel for the mother and child sent a letter withdrawing its offer to settle and filed a personal injury action against the insured's estate. *Id.* at 105-06. Counsel for the mother and child rejected further offers to settle their claims within First Acceptance's policy limits, and the mother and child eventually obtained a jury verdict of over $5 million against the estate. *Id.* at 106. The administrator of the estate and plaintiff in this action filed suit against First Acceptance, alleging that First Acceptance negligently or in bad faith failed to settle the mother's insurance claim and seeking recovery of the judgment over the policy limits, punitive damages, and attorney fees. *Id.* The trial court granted summary judgment to First Acceptance on all claims, and the plaintiff appealed to the Georgia Court of Appeals. *Id.*

The ordinarily prudent insurer is the standard to determine whether the insurer is liable under a claim for negligent or bad faith refusal. *Id.* (quoting *Cotton States Mut. Ins. Co. v. Brightman*, 580 S.E.2d 519, 521 (Ga. 2000)). "An insurance company does not act in bad faith solely because it fails to accept a settlement offer within the deadline set by the injured person's attorney." *Id.* at 109 (quoting *Holt*, 416 S.E.2d at 276). Generally, the issue of bad faith depends on whether the insurer acted reasonably in responding to a settlement offer. *Id.* (quoting *Cotton States*, 580 S.E.2d at 521). The insurer must give equal consideration to the interests of the insured in avoiding liability for an excess judgment when deciding whether to settle a claim within the policy limits. *Id.* (quoting *S. Gen. Ins. Co. v. Holt*, 416 S.E.2d 274, 276 (1992)). When the plaintiff bases liability on the insurer's negligent or bad faith refusal,

the insurer may be liable "if, but only if, such ordinarily prudent insurer would consider that choosing to try the case rather than accept an offer to settle within the policy limits would be taking an unreasonable risk that the insured would be subjected to a judgment in excess of the policy limits." *Id.* (quoting *Baker v. Huff*, 747 S.E.2d 1, 7 (Ga. Ct. App. 2013)). The insurer's adherence to the ordinarily prudent insurer standard is a question for the jury. *Id.* (quoting *Baker*, 747 S.E.2d at 7). Moreover, "[t]he possibility of settling other claims within the policy limits and the insurer's knowledge of such possibility are not dispositive of the failure to settle claim in this case," but they are factors for a jury to consider in determining whether the insurer acted reasonably in response to a settlement offer. *Id.* at 107. *See Fortner v. Grange Mut. Ins. Co.*, 686 S.E.2d 93 (Ga. 2009).

The Court of Appeals held the circumstances created genuine issues of fact regarding whether the letters created a time-limited settlement offer and whether the insurer acted reasonably in responding to such an offer. *Id.* at 109. The Court affirmed the trial court's summary judgment ruling on punitive damages based upon the plaintiff's failure to support his claim with any evidence of willful or wanton conduct by the insurer; negligence, without evidence of willful or wanton conduct, is not enough to impose punitive damages. *Id.* at 108. *See* Ga. Code Ann. § 51-12-5.1(b).