Auto Liability Case Law Update

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MOTION FOR SUMMARY JUDGMENT AS TO UNINSURED MOTORIST (UM) BENEFITS: Court affirmed the trial court's grant of summary judgment to uninsured motorist carrier holding that a settlement with the liability carrier for $29,000 for punitive damages and $1,000 for compensatory damages pursuant to a limited liability release precluded a claim for uninsured motorist coverage because such a settlement/release is inconsistent with the intent of O.C.G.A. § 33-24-41.1 to allow uninsured motorist coverage for actual injuries or losses.

***Carter v. Progressive Mountain Insurance*, 320 Ga. App. 271 (2013).**

In *Carter v. Progressive Mountain Insurance*, 320 Ga. App. 271 (2013), the Court of Appeals affirmed the trial court's grant of summary judgment to the uninsured motorist carrier. Prior to suit being filed, claimant Velicia Carter settled with the tortfeasor's liability carrier for the policy limits of $30,000 in exchange for a limited liability release. Id. at 271. Carter executed a limited liability pursuant to the provisions of O.C.G.A. §33-24-41.1, but added a condition to the release "that $29,000 of the coverage limit be allocated toward payment of punitive damages and $1,000 toward payment of compensatory damages." *Id.*

As stated by the Court of Appeals, "the limited release provisions of O.C.G.A. § 33-24-41.1 were enacted to provided a statutory framework for a claimant injured in an automobile accident to settle with the tortfeasor's liability insurance carrier for the liability coverage limit while preserving the claimant's pending claim for underinsured motorist benefits against the claimant's own carrier. Id. at 273 (citing *Daniels v. Johnson*, 270 Ga. 289 (1998) and *Mullinax v. State Farm Mut. Automobile Ins. Co.*, 202 Ga. App. 76 (2010). Moreover, the Court of Appeals emphasized that the statute allows a claimant to settle for the liability limits in exchange for the claimant executing "a limited release applicable to the settling carrier and its insured *based on injuries* to such claimants... ." *Id.* (quoting O.C.G.A. O.C.G.A. § 33-24-41.1 (a), (b) [emphasis added]. Accordingly, the Court of Appeals held that the issue was whether Carter was "entitled to condition the limited release on the requirement that punitive damages be allocated to liability coverage for the purpose of substantially exhausting the coverage limits before recovery of underinsured motorist benefits ... and still preserve the right to preserve underinsured motorist benefits." *Id.* at 271-272.

The Court of Appeals held that "[w]ith the above-stated condition added to the limited release [i.e., $29,000 for punitive damages and $1,000 for compensatory damages], Carter failed to accept the limits of [the tortfeasor's] liability coverage and provide the limited release in a manner consistent with the provisions of O.C.G.A. § 33-24-41.1." *Id.* at 275. Therefore, she was not entitled to receive underinsured motorist benefits. *Id.* The Court of Appeals reasoned that "[t]he Georgia uninsured (and underinsured) motorist statute (O.C.G.A. § 33-7-11) is designed to protect injured insureds only as to 'actual loss' within the policy limits." *Id.* at 272 (citing *State Farm Mut. Auto. Ins. Co. v. Adams, 288 Ga. 315 (2010).* In affirming the ruling of summary judgment in favor of the uninsured motorist carrier, the Court of Appeals stated

> the allocation of punitive damages to force exhaustion of liability coverage does not advance the purpose of underinsured motorist coverage to increase available compensation for actual injuries and losses; indirectly shifts payment of punitive damages from the liability carrier to the underinsured motorist carrier, contrary to the purpose of underinsured motorist coverage; and would ultimately increase underinsured motorist coverage premiums ... .

Id. at 274-275. Accordingly, "uninsured motorist coverage under the statute applies only to compensatory damages and excludes coverage for punitive damages." Id. (citing *Roman v. Terrell,* 195 Ga. App. 219 (1990)

and *State Farm Mut. Auto. Ins. Co. v. Weathers, 260 Ga. 123 (1990).*

MOTION TO ENFORCE SETTLEMENT: Court of Appeals reversed the trial court's denial of a motion to enforcement settlement, holding that a settlement demand was accepted when a policy limits check was sent to plaintiff and although the liability carrier included a lien affidavit in the proposed limited liability release, no communication from the liability carrier included language requiring a particular limited liability release to be signed.

***Turner v. Williamson*, 321 Ga. App. 209 (2013).**

In *Turner v. Williamson*, 321 Ga. App. 209 (2013), the tortfeasor's insurance carrier, USAA, received a demand from the claimant offering to settle the claims for the policy limits of $25,000 in exchange for a limited liability release. A claims representative for USAA timely responded to the demand by stating that "the same offer had been extended by USAA," and that "this was acceptable to USAA and that [she] would issue the check ... and send a Limited Liability Release for the clients' signature." *Id.* at 211.

The claims representative, on the same day, sent two letters to the claimants' attorney and included a copy of the release previously sent in December, 2010. *Id.* at 211. The release sent was a limited liability release which also included lien affidavit language pursuant to O.C.G.A. §44-14-470 *et seq.* and O.C.G.A. §49-4-148 and O.C.G.A. §49-4-179. *Id.* at 211.

Two weeks later, the claimants' attorney wrote USAA and advised that his clients had instructed him to reject USAA's counteroffer and suit would be filed against the tortfeasor. *Id.* at 211.

Once suit was filed, the defendant tortfeasor filed a motion to enforce settlement, contending that a settlement agreement was reached as the terms of the settlement were payment of the $25,000 and execution of a limited liability release, both of which his carrier accepted. *Id.* at 211. The plaintiffs replied that there was no settlement because they did not agree to sign a release which contained an indemnification provision as well as language that the tortfeasor denied liability. *Id.* at 211.

The Court of Appeals held that because USAA's response (in both oral and written communications) "demonstrate[d] an unequivocal acceptance of both terms and contained no language conditioning acceptance upon execution of the particular release form," a settlement was reached. Id. at 213.

COMPLAINT FOR BREACH OF CONTRACT SEEKING SPECIFIC PERFORMANCE OF AN ALLEGED SETTLEMENT AGREEMENT: the Court of Appeals affirmed the trial court's grant of summary judgment on the tortfeasor's complaint for breach of contract holding that a settlement agreement had been reached and the inclusion of a lien affidavit in the tortfeasor's proposed release did not constitute a counteroffer given that the tortfeasor's attorney invited changes on numerous occasions and nothing indicated that the tortfeasor intended to make a counteroffer with the proposed release nor that the plaintiffs were required to sign the release as a condition of settlement.

***Sherman, et al. v. Dickey, et. al.*, 322 Ga. App. 228 (2013).**

In *Sherman, et al. v. Dickey, et al.*, 322 Ga. App. 228 (2013), the Court of Appeals affirmed the trial court's grant of summary judgment on the tortfeasor's complaint for breach of contract. Prior to the initiation of the tortfeasor's suit, claimants' counsel send a demand to the tortfeasor's liability carrier (First Acceptance Insurance Company) "to settle their claims in exchange for the $25,000 policy limits." *Id.* at 229. The demand "requested receipt of a settlement check, a limited liability release, and affidavits to establish the limits of the available liability-insurance coverage ... ." *Id.*

Notably, the demand specified that the limited liability release "could not include language requiring indemnification or the release of any property-damage claims, but the demand did not include any other restrictions as to what could or could not be included in the release." *Id.*

In response to the demand, the tortfeasor's attorney sent correspondence to the claimants' attorney "seeking clarification on a few points" and included a "sample limited liability release." *Id.* In response, claimants' attorney sent "a draft of a limited liability release" to the tortfeasor's attorney. *Id.* The tortfeasor's attorney replied with "proposed revisions" to the release including an affidavit concerning statutory liens of healthcare providers. *Id.*

Importantly, the reply by the tortfeasor's attorney also specified that "if you do not want your client to sign a release with my proposed changes, please let me know and let's discuss." *Id.* at 230. Claimants' attorney responded by stating that he would "get back to" the torteasor's attorney. *Id.* After receiving no response, the tortfeasor's attorney sent a letter "unconditionally accepting the demand and included a check for the $25,000 policy limit, the requested affidavits, and a limited liability release containing the language [previously] e-mailed to the [claimants'] attorney." *Id.*

Significantly, in the letter unequivocally accepting the demand, the tortfeasor's attorney stated again that the limited liability release was "proposed" and "again invited feedback if the [claimants] disagreed with the proffered changes." *Id.* The tortfeasor's attorney subsequently invited claimants' attorney on two other occasions to "to discuss or make changes to the proposed release." Id. Claimants' attorney eventually responded by returning the check for $25,000 "along with a 'rejection' of what they deemed the [tortfeasor's] counteroffer." *Id.*

In affirming the trial court's grant of summary judgment on the tortfeasor's complaint for breach of contract, the Court of Appeals noted that "if a purported accept-

ance of the [claimants'] settlement offer imposes any new conditions, it constitutes a counteroffer rather than an acceptance." *Id.* at 232. However, the Court of Appeals emphasized that "when determining whether a purported acceptance imposes conditions rendering it a counteroffer, 'our courts have drawn a distinction for precatory words which are words whose ordinary significance imports entreaty, recommendation, or expectation rather than mandatory direction.'" *Id.* at 232 (quoting *Anderson v. Benton*, 295 Ga. App. 851 (2009)).

The Court of Appeals noted that although claimants contended that the inclusion of "lien affidavit language into the proposed limited liability release rendered the purported acceptance a counteroffer," the tortfeasor's attorney "repeatedly invited changes to the proposed release and feedback regarding any concerns the [claimants] might have." *Id.* Moreover, the Court of Appeals stated that "we discern nothing to suggest that the [tortfeasor] intended for the release to constitute a counteroffer or that the [claimants] were required to sign *that particular release* to effectuate the settlement." *Id.* (emphasis included by the Court).

The Court of Appeals further noted that "it is well settled that the mere inclusion of a release form that is unacceptable to the plaintiff 'does not alter the fact that a meeting of the minds has occurred with regard to the terms of a settlement.'" *Id.* at 233 (quoting *Hanson v. Doan*, 320 Ga. App. 609 (2013)). ✣