

March Madness Again ...

By Eric A. Ludwig and Timothy R. Bennett March 8, 2024

It's late Friday afternoon. You are counting the minutes until 5:01 pm to head into the weekend to watch March Madness after a long week as an adjuster for ABC Insurance Co. You receive certified letter regarding a Plaintiff who was involved in a motor vehicle accident. You open the manila envelope and read "Plaintiff's Offer of Settlement under O.C.G.A. § 9-11-68" to resolve Plaintiff's claim against the Underinsured Motorist Carrier ("UM Carrier"). It says you must accept in 30 days or be responsible for attorney fees. Now, your concerns shift from contemplating whether UConn's basketball team should be considered a "blue blood" program to whether the Plaintiff's Offer of Settlement is effective as a matter of law.

You know from previous cases you successfully resolved that Georgia's Uninsured/Underinsured Motorist Coverage statute (O.C.G.A. § 33-7-11) allows plaintiffs to bring an action against UM carriers as if they were a named party-defendant. In those situations, ABC Insurance Co. could file pleadings and conduct discovery in its name or in the name of the alleged tortfeasor. In your previous experience, plaintiffs sent offers to settle claims regarding ABC Insurance Co.'s contractual obligations under the UM section of their policy. However, you do not know whether O.C.G.A. § 33-7-11(j) is the exclusive method with which to bring claims of attorney's fees against UM Carriers or whether O.C.G.A. § 9-11-68 applies as well. You tell your boss you will not drop the ball on this assignment and will answer this issue before the clock hits 5:00 pm.

In this age of nuclear verdicts for minor injuries and attorney's fees being assessed against insureds and insurance carriers in courts across the state, you are unsure whether Plaintiff is merely pump-faking here. Georgia's Offer of Settlement statute (O.C.G.A. § 9-11-68) indicates after the commencement of litigation a party may "serve upon the other party... a written offer, denominated as an offer under this Code section, to settle a *tort claim*." (Emphasis added). Further, If Plaintiff's offer is rejected and the jury verdict is twenty-five percent greater than the offer, then Plaintiff can collect reasonable attorney's fees. O.C.G.A. § 9-11-68(b)(2). Your stomach drops because you fear having attorney's fees assessed against ABC Insurance Co. if you mistakenly reject the offer.

The Offer of Settlement statute was enacted in 2005 by the Georgia Legislature to encourage tort litigants to make and accept good-faith settlement proposals to avoid unnecessary litigation. The Legislature's decision to limit O.C.G.A. § 9-11-68 to tort claims shows an explicit intent to *exclude* other types of civil actions, including contract claims based on torts. *Eichenblatt v. Piedmont/Maple, LLC*, 358 Ga. App. 234, 240 (2021) ("OCGA § 9-11-68 is in derogation of common law and it must be strictly construed against the award of [attorney fees and costs]. OCGA § 9-11-68 therefore must be limited strictly to the meaning of the language employed, and not extended beyond the plain and explicit terms of the statute.) *CaseMetrix, LLC v. Sherpa Web Studios, Inc.*, 353 Ga. App. 768, 772 (2020), ("As indicated by its plain language, the law applies to resolution of *tort claims only*.")) *State Farm Fire & Cas. Ins. Co. v. Terry*,

230 Ga. App. 12, 17 (1997), (“Procedurally, it should be remembered that an uninsured motorist claim is a contract action between the insured and his insurance carrier, even though it proceeds and is tried on tort issues.”)

After completing your review, you confidently call your anxious boss before quitting time and say, “Plaintiff’s Offer of Settlement under O.C.G.A. § 9-11-68 is ineffective as a matter of law. Plaintiff’s Offer of Settlement mistakenly cites O.C.G.A. § 9-11-68, which is not applicable against ABC Insurance Co. because the alleged UM claim is based on the contractual relationship between ABC and the Plaintiff, rather than any tortious conduct by ABC Insurance Co. I recommend sending a rejection letter outlining the difference. ” Feeling confident in your response to your boss, you close your laptop, race through the parking deck, and look forward to the only stressor this weekend being whether your bracket busts.