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July 27, 2021

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LEGISLATIVE UPDATE: CHANGES TO O.C.G.A. §§ 9-11-67.1 AND 33-7-11

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The Georgia State Legislature recently passed House Bill 714 ("the Bill") which has now been enacted and applies to claims arising after July 1, 2021. The changes to O.C.G.A. § 9-11-67.1 regarding demands/offers in auto cases are mostly positive from an insurance defense point of view.

Important Changes:

The Bill extends the time in which claimants may send such a demand/offer. Claimants now have until an Answer is filed (as opposed to until the filing of a civil action) to send a demand pursuant to O.C.G.A. § 9-11-67.1. In theory, this means claimants can now make an offer/demand and file suit the same day or even send the offer/demand after filing suit.

In an expansion of what must be included with a demand/offer under O.C.G.A. § 9-11-67.1, claimants must include not only the type of release they will provide but also specify whether the release is full or limited, ***including an itemization of what the claimant or claimants will provide to each release***, and state the claims to be released.

Claimants also must now include medical or other records in the offeror's possession incurred as a result of the subject claim ***that are sufficient to allow the recipient to evaluate the claim***. The Bill, however, balances this new requirement by allowing claimants to condition settlement upon requiring an affidavit or other statement under oath that all liability and casualty insurance issued by the recipient of the offer that may provide coverage has been disclosed. In laymen's terms, ***a claimant shall include medical expenses with their demand but can force the insurance company to provide an affidavit that they have no other policies that may provide coverage.***

The Bill states that unless agreed upon by the parties in writing, the terms outlined in subsection (a) ***shall*** be the only terms which can be included in an offer pursuant to O.C.G.A. § 9-11-67.1. However, the Bill still allows and provides that nothing in the code section prevents the parties from settling outside of the code section on terms agreeable amongst the parties.

Similar to the previous version of O.C.G.A. § 9-11-67.1, the recipient of such a demand/offer ***has the right to seek clarification.*** This right has been expanded to included clarification of the terms of the release (and any other fact) provided that the attempt to seek clarification is made in writing. ***An attempt for clarification under this provision shall not be deemed a counter-offer.*** The Bill goes further to provide, "[i]n addition, if a release is not provided with an offer to settle, a recipient's providing of a proposed release shall not be deemed a counteroffer." Arguably, this means carriers and/or defense counsel may now send a proposed release that contains additional, material terms and it will not be considered a denial and/or counter-offer under the code section.

The Bill also now requires that a claimant must provide an address, fax number, or email address to which written acceptance can be made. Further, the bill changed the time frame in which a claimant can demand payment from such an offer. ***Instead of allowing a demand for payment not less than ten days of acceptance, claimants now can only demand payment not less than 40 days from receipt of the offer***.

In addition to the foregoing, the Bill also amended provisions of O.C.G.A. § 33-7-11 regarding un/underinsured motorist coverage. The previous cap on liability of UIM carriers to their insureds in a bad-faith action of recovery under the code section in addition to up to 25% of that recovery has been expanded to ***25% or 25,000.00 whichever is greater***.

Conclusion:

Overall, the Bill is a win for insurance carriers. The new provisions of O.C.G.A. § 9-11-67.1 require much more of claimants for what is included with their demands/offers and has given recipients of such demands/offers greater leeway in negotiating after receipt. It has also given carriers some much-needed additional breathing room in payment of accepted offers.

These new provisions could also greatly impact bad-faith claims as insurance carriers must be provided with enough medical documentation to evaluate a claim and seeking clarification will still not constitute a counter-offer. Carriers may also now propose their own release should the claimant not include one with the offer. This, in theory, will force claimants to bolster and provide more support for their demands/offers under O.C.G.A. § 9-11-67.1 and will hopefully prevent claimants from sending "bare-bones" offers/demands and then refusing to negotiate within the limits once a lawsuit has been filed, in the hopes of being assigned an easy bad-faith claim at the end of litigation.

Austin Hammock was born and raised in Columbus, Georgia. Austin obtained his Bachelor of Arts degree in Political Science in 2013 from Auburn University. He earned his Juris Doctorate in 2016 from The University of Alabama School of Law. Austin is a member of the State Bar of Georgia. He joined Levy, Sibley, Foreman & Speir, LLC's Columbus office as an Associate Attorney in January 2018. Austin's areas of practice focus primarily on civil litigation and insurance defense.