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Insurance

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I. INTRODUCTION

During this Survey period, the courts in Georgia were somewhat quiet in the area of insurance following fairly active survey periods during the pandemic.[1] In the three areas of insurance that typically dominate this annual update—automobile, liability, and property insurance—there were only a few cases in each area that seemed to break new ground or offer useful insights to practitioners of insurance law. This Survey period saw very few cases in the area of Georgia uninsured/underinsured (UM) law, which is typically the most active area of insurance decisions year after year. In fact, in this Survey period, legislative changes seemed to take center stage. There were significant legislative changes governing time-limited demands as well as changes to the Department of Insurance statutes governing the practices of public adjusters in Georgia. These statutory changes appear to be the most significant insurance law development during the Survey period.

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1. For an analysis of insurance law during the prior survey period, *see* Thomas D. Martin et al., *Insurance*, *Annual Survey of Georgia Law*, 73 MERCER L. REV. 119 (2021), https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=2700&context=jour_mlr [https://perma.cc/5JKW-75DV].

II. AUTOMOBILE INSURANCE

A. Motor Vehicle Liability Insurance

1. Sovereign Immunity

Under Georgia law, the sovereign immunity afforded to local governments for claims arising out of the negligent use of a motor vehicle is waived up to certain statutory limits, including an aggregate amount of $700,000 "because of bodily injury or death of two or more persons in any one occurrence."[2] The waiver can be expanded to a greater amount in several ways, including through the purchase of "commercial liability insurance in an amount in excess of the waiver."[3] In *Atlantic Specialty Insurance Co. v. City of College Park*,[4] the Supreme Court of Georgia considered how this statutory scheme interacted with an "immunity endorsement" in a commercial liability policy providing $5 million in coverage, which stated that the insurer had no duty to pay damages "unless the defenses of sovereign and governmental immunity are inapplicable to you."[5] Ultimately, the supreme court reversed the decision of the Georgia Court of Appeals and determined that the language of the immunity endorsement limited the available coverage to the statutory amount of $700,000.[6]

In this case, the city's police officers were involved in a high-speed chase with a third party when that third party struck a vehicle carrying several individuals.[7] Three people were killed, and their representatives sued the city. The city held an insurance policy with Atlantic Insurance Company which provided a $1 million business auto limit and a $4 million excess liability limit.[8] Each coverage section included a policy endorsement stating that "[w]e have no duty to pay 'damages' on your behalf under this policy unless the defenses of sovereign and governmental immunity are inapplicable to you."[9] When the plaintiffs brought suit to recover the full $5 million policy limit for the city's alleged negligence pursuant to Official Code of Georgia Annotated

2. O.C.G.A. § 36-92-2(a)(3) (2022).
3. O.C.G.A. § 36-92-2(d)(3) (2022).
4. 313 Ga. 294, 869 S.E.2d 492 (2022).
5. *Id.* at 295–96, 869 S.E.2d at 494.
6. *Id.* at 305, 869 S.E.2d at 500.
7. *Id.* at 295, 869 S.E.2d at 494.
8. *Id.* at 294, 869 S.E.2d at 494.
9. *Id.* at 295–96, 869 S.E.2d at 494.

sections 36-92-2(a)(3)[10] and 36-92-2(d)(3),[11] Atlantic intervened to limit the coverage provided to the city to the $700,000 in accordance with the statutory waiver provision and applicable policy endorsements.[12] The State Court of Fulton County held the immunity endorsement was unenforceable because it "improperly attempted to 'contract around' the sovereign immunity waiver 'requirements' of O.C.G.A. §§ 36-92-2 and 33-24-51."[13] The court of appeals affirmed.[14]

The supreme court reversed the court of appeals and held that immunity was waived up to $700,000 in accordance with O.C.G.A. § 36-92-2(a)(3) but was not waived up to the full $5 million policy limit.[15] The court noted that an insurance policy does not have to cover all claims, but only those claims agreed to by the parties and paid for through premiums.[16] According to the court's plain reading of the immunity endorsements, the policy "does *not* cover claims for damages to which the defenses of sovereign and governmental immunity *do* apply."[17] The court also read the immunity endorsements in conjunction with O.C.G.A. § 33-24-51(c),[18] which specifies that a municipality is "'liable for damages in excess of the amount of immunity waived as provided in Code Section 36-92-2 . . . only to the extent of the limits or the coverage of the insurance policy.'"[19] The insurance policy at issue expressly did not cover claims which were barred by sovereign immunity and therefore did not provide coverage in excess of the $700,000 statutory minimum.[20] The court's interpretation was bolstered by additional language in the immunity endorsements which made clear the policy did not "constitute, nor reflect an intent by [the City], to waive or forego any defenses of sovereign and governmental immunity."[21]

The court rejected the policy arguments, which the court of appeals found persuasive, pointing out Atlantic agreed that the policy provided coverage up to the waiver limit of $700,000 and had never argued

10. O.C.G.A. § 36-92-2(a)(3).

11. O.C.G.A. § 36-92-2(d)(3).

12. *Atl. Specialty Ins. Co.*, 313 Ga. at 294–95, 869 S.E.2d at 494.

13. *Id.* at 297, 869 S.E.2d at 495.

14. *Id.* at 304, 869 S.E.2d at 499.

15. *Id.* at 300, 869 S.E.2d at 497.

16. *Id.* at 301, 869 S.E.2d at 497.

17. *Id.* at 303, 869 S.E.2d at 498.

18. O.C.G.A. § 33-24-51(c) (2022).

19. *Atl. Specialty Ins. Co.,* 313 Ga. at 301, 869 S.E.2d at 497 (quoting O.C.G.A. § 33-24-51(c)).

20. *Atl. Specialty Ins. Co.*, 313 Ga. at 302–03, 869 S.E.2d at 498.

21. *Id.* at 303, 869 S.E.2d at 498.

otherwise.[22] While the legislature intended for some protection to those injured by a government automobile, the legislature "did not guarantee full compensation or require local government entities to purchase liability insurance . . . above the automatic waiver limits."[23] The immunity endorsements allow for coverage in the amount determined by the legislature and nothing more, and did not contravene public policy.[24]

B. Uninsured/Underinsured Motorist Cases

1. Recovery and Attorney's Fees

In *Curry v. Allstate Property & Casualty Insurance Co.*,[25] the court of appeals rejected an insurer's attempt to limit the recovery of attorney's fees to only those incurred in the bad-faith action brought pursuant to O.C.G.A. § 33-7-11(j)[26] and allowed for a possible award of such fees incurred in the underlying tort action and the bad faith action.[27] The court also reaffirmed its earlier decision in which it determined the penalty for bad faith is limited to 25% of the policy limit and not 25% of the verdict against the tortfeasor.[28]

The UM dispute arose out of a motor vehicle accident wherein the negligent driver was insured for $25,000, and the plaintiff-insured held a $30,000 UM policy with Allstate Property & Casualty Insurance Co. (Allstate).[29] The insured demanded the full policy limit, which was denied, and the plaintiff obtained a $85,579.02 verdict against the negligent driver. The insured then filed suit against Allstate for rejecting his claim in bad faith under O.C.G.A. § 33-7-11(j), seeking 25% of the entire tort verdict and attorney's fees associated both with the O.C.G.A. § 33-7-11(j) and underlying tort suit in damages.[30]

On appeal, the court reversed the trial court's finding that attorney's fees are recoverable by an insured only in the bad-faith matter brought pursuant to O.C.G.A. § 33-7-11(j).[31] The court considered the statutory language which allows for recovery of "all reasonable attorney's fees for

22. *Id.*

23. *Id.* at 302, 869 S.E.2d at 498.

24. *Id.*

25. 363 Ga. App. 409, 870 S.E.2d 808 (2022).

26. O.C.G.A. § 33-7-11 (2022).

27. *Curry*, 363 Ga. App. at 416, 870 S.E.2d at 814.

28. *Id.* at 412, 870 S.E.2d at 811 (citing Jones v. Cotton States Mut. Ins. Co., 185 Ga. App. 66, 70, 363 S.E.2d 303, 307 (1987)).

29. *Curry*, 363 Ga. App. at 409, 870 S.E.2d at 809.

30. *Id.* at 409–10, 870 S.E.2d at 808–10.

31. *Id.* at 416, 870 S.E.2d at 814.

the prosecution of the case under this Code section."[32] The court found that the phrase "this Code section" could only be interpreted to reference all of O.C.G.A. § 33-7-11 and not just subsection (j), in part because subsection (j) also used the term "subsection" to limit recovery in other situations, which suggests the legislature intended the two phrases to have different meanings.[33] Because the legislature failed to use the more specific phrase in subsection (j) in the portion authorizing an award of attorney's fees, the court determined the legislature "did not foreclose the possibility of recovering attorney fees incurred in the underlying tort action."[34] However, the court limited this holding and noted that the insured must be able to put forward "sufficient evidence that such expenses were attributable to the insurer's bad faith" in order to be recoverable.[35] The court also highlighted the difficulty a UM claimant may have in proving attorney's fees if the underlying suit were related to the bad faith of the insurer due to the "requirement that a UM claimant first obtain an underlying tort judgment before pursuing the bad faith claim."[36]

2. Traditional UM Coverage and Allocation of the Underlying Settlement

In *Allstate Property & Casualty Insurance Co. v. Nay*,[37] the court of appeals rejected the insured's attempt to "avoid reduction of her UM coverage to zero" by allocating the majority of the $100,000 liability settlement to punitive damages and determined that the insurer did not owe any part of the $100,000 in UM coverage.[38] The insured settled with the negligent party for the full amount of coverage ($100,000) under the negligent party's liability insurance policy, and in the limited release, the insured allocated $99,000 of the settlement to punitive damages. The insured then sought the full $100,000 in available UM coverage from the insured's own UM carrier, notwithstanding her election of traditional, reduced-by UM coverage.[39] The court determined that while the insured could allocate the liability settlement as she had in this case, such an allocation did not "prevent the reduction of traditional UM coverage by

32. *Id.* at 413, 870 S.E.2d at 812 (citing O.C.G.A. § 33-7-11(j)).
33. *Curry*, 363 Ga. App. at 414–15, 870 S.E.2d at 812–13.
34. *Id.* at 415, 870 S.E.2d at 813.
35. *Id.*
36. *Id.* at 416, 870 S.E.2d at 814.
37. 361 Ga. App. 563, 864 S.E.2d 724 (2021).
38. *Id.* at 563, 864 S.E.2d at 726.
39. *Id.*

the amount paid out under a tortfeasor's liability coverage."[40] The court reiterated that while such an allocation did not result in a forfeiture of UM coverage, it also did not allow the insured to avoid the set-off of liability coverage to the difference-in-limits of UM coverage; because a set-off in this case left no available UM coverage, the insurer was entitled to summary judgment.[41]

III. LIABILITY INSURANCE

A. Late Notice

The United States Court of Appeals for the Eleventh Circuit reiterated the critical importance of the insured itself providing notice as required under a policy's conditions in *Jenkins v. CLJ Healthcare, LLC*.[42] CLJ Healthcare performed liposuction on Jenkins's daughter, who passed away following complications from the procedure.[43] Owners Insurance insured CLJ Healthcare through a policy acquired through an independent insurance agency, D. Ward Insurance Services, Inc.[44] The policy required CLJ Healthcare to "see to it that [Owners Insurance is] notified promptly of an 'occurrence' that may result in a claim."[45] The policy also required CLJ Healthcare to provide Owners Insurance with "prompt written notice of the claim or 'suit.'"[46]

CLJ Healthcare called Dr. Ward "several weeks" after the incident and was told that the Owners Insurance policy did not provide insurance for medical claims.[47] Several months later, in August 2013, Jenkins filed suit against CLJ Healthcare and the physician who performed the surgery. Thirteen months thereafter, in September 2014, Owners Insurance sent a letter to CLJ Healthcare stating that the policy did not provide coverage because CLJ Healthcare had failed to provide timely notice of the death or the lawsuit and because the policy did not cover claims for bodily injury due to the rendering or failure to render any professional service.[48]

Jenkins ultimately obtained a $60 million default judgment against CLJ Healthcare, and Jenkins filed a garnishment action against Owners

40. *Id.* at 566, 864 S.E.2d at 727.
41. *Id.* at 566–67, 864 S.E.2d at 728.
42. No. 20-13745, 2021 U.S. App. LEXIS 24596 (11th Cir. Aug. 18, 2021).
43. *Id.* at *1–2.
44. *Id.* at *2.
45. *Id.*
46. *Id.* at *3.
47. *Id.*
48. *Id.* at *4.

Insurance which it removed to federal court.[49] The United States District Court for the Southern District of Georgia granted summary judgment to Owners Insurance on the basis that the delay in notice by CLJ Healthcare to Owners Insurance was "unreasonable and unexcused."[50] The Eleventh Circuit affirmed summary judgment and held that CLJ Healthcare failed to adequately notify Owners Insurance of the claim and the lawsuit.[51]

First, the Eleventh Circuit rejected Jenkins's claim that CLJ Healthcare's phone call to the independent insurance agent about the death of Jenkins's daughter was notice to Owners Insurance of an occurrence or claim, as "'[n]either the language of the policy nor anything stamped upon the face of the policy gave apparent authority to [D. Ward Insurance Services] to receive the notice required to be given to [Owners Insurance].'"[52] The court noted the "policy expressly required CLJ Healthcare to give notice directly to Owners Insurance."[53] Second, the court refused to infer notice from CLJ Healthcare when it contacted Owners Insurance requesting a copy of the policy, as "receiving a copy of the insurance policy . . . says nothing about whether Owners Insurance received prompt notice of the lawsuit as required by the policy."[54] Finally, the court rejected arguments that the notice requirement was satisfied when Jenkins's attorney mailed a copy of an amended complaint to Owners Insurance because the "policy's notice provision required the insured—CLJ Healthcare—to provide Owners Insurance with written notice of suit."[55] The court concluded the notice provision was not "satisfied by correspondence from Jenkins, the party suing the insured."[56]

B. Coverage for Theft Claims under a Commercial General Liability Policy

In *Barrs v. Auto-Owners Insurance Co.*,[57] the United States District Court for the Middle District of Georgia was presented with the question of whether a commercial general liability (CGL) policy provided coverage

49. *Id.*

50. *Id.* at *5–6.

51. *Id.* at *14.

52. *Id.* at *8 (quoting Kay-Lex v. Essex Ins. Co., 286 Ga. App. 484, 489, 649 S.E.2d 602, 607 (2007)).

53. *Jenkins*, 2021 U.S. App. LEXIS 24596, at *8.

54. *Id.* at *10.

55. *Id.* at 11.

56. *Id.*

57. 564 F. Supp. 3d 1362 (M.D. Ga. 2021).

to an insured whose alleged negligence allowed a contractor to steal from one of its customers.[58] Auto-Owners Insurance Company (Auto-Owners) insured AAA General Contractors (AAA General), which was hired by Barrs to deconstruct a mill and to salvage the materials. AAA General hired Hood to oversee the deconstruction, and Hood later stole lumber and other materials from the deconstructed mill owned by Barrs. Barrs filed suit against AAA General alleging, among other claims, that AAA General negligently supervised and managed its contractors. Auto-Owners issued a letter to AAA General stating no coverage existed under the policy and refused to defend the company. Barrs and AAA General later negotiated a settlement of $557,500 and entered into a consent judgment by which Barrs accepted an assignment from AAA General against Auto-Owners to collect on the consent judgment. Barrs also initiated a declaratory judgment action against Auto-Owners, seeking a declaration that the Auto-Owners policy covered the claims in the underlying lawsuit and the consent judgment.[59]

The district court evaluated the various definitions, insuring agreements, and exclusions in the policy, and ultimately concluded there was coverage for the negligent hiring and supervision claims made against AAA General for the contractor's theft, because the claims constituted "property damage" caused by an "occurrence."[60] Specifically, the court concluded that AAA General could not have foreseen its contractor would steal building materials from the job site; from AAA General's perspective, "the theft, albeit an intentional act, was an accident" and therefore an occurrence as defined under the policy.[61] As a result, the court held that Barrs's negligent hiring and retention and negligent supervision claims—to the extent they were premised on allowing the contractor to steal Barrs's lumber and other building materials—were covered under the policy.[62]

C. Amendments to Automobile Time-Limited Demand Statute: O.C.G.A. § 9-11-67.1

Multiple cases discussed in last year's article addressed the time-limited demand for automobile claims under O.C.G.A. § 9-11-67.1.[63]

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58. *Id.* at 1366.

59. *Id.* at 1366–67.

60. *Id.* at 1374.

61. *Id.* at 1378 (citing Allstate Prop. & Cas. Ins. Co. v. Roberts, 696 F. App'x 453, 456 (11th Cir. 2017)) (explaining an intentional act can be an "accident" for purposes of insurance coverage because the act was not foreseeable from the standpoint of the insured).

62. *Barrs,* 564 F. Supp. 3d at 1379.

63. *See* Martin et al., *Insurance*, 73 MERCER L. REV. at 133.

During this Survey period, the Georgia Legislature passed H.R. 714,[64] effective July 1, 2021, which amends O.C.G.A. § 9-11-67.1[65] in several significant ways.[66] Subsection (a) altered the timing for submitting time-limited demands from "prior to the filing of a civil action" to "prior to the filing of an answer."[67] New subsection (a)(2) to the statute added the requirement that the demand include medical or other records that can be reasonably obtained and sufficient for the recipient of the offer to evaluate the claim.[68] New subsection (a)(3) allows offerors to include a term requiring the recipient to provide a statement under oath confirming the recipient has identified all liability and casualty insurance that may provide coverage for the claim.[69] Additionally, under new subsection (b)(1), unless otherwise agreed to in writing by the offeror and recipient, the material terms in O.C.G.A. § 9-11-67.1(a) are the only material terms that can be included in such demands made under the statute.[70] Finally, subsection (g) increases the time frame to respond to such demands from thirty days to forty days from the receipt of the offer.[71]

IV. PROPERTY INSURANCE

A. COVID-19

As a result of the COVID-19 pandemic, many businesses that closed permanently or temporarily sought relief for lost wages through insurance claims.[72] As reflected in last year's survey, many of those claims were litigated in the federal district courts of Georgia and were rejected on summary judgment.[73] On August 31, 2021, consistent with this trend, the United States Court of Appeals for the Eleventh Circuit denied coverage to a dental office in *Gilreath Family & Cosmetic Dentistry, Inc. v. Cincinnati Insurance Co.*[74] and held that COVID-19 did not cause property damage and therefore was not subject to insurance

64. Ga. H.R. Bill 714, Reg. Sess., 2021 Ga. Laws 431 (codified at O.C.G.A. § 9-11-67.1 (2022)).

65. O.C.G.A. § 9-11-67.1.

66. *Compare* O.C.G.A. § 9-11-67.1 (2022) *with* O.C.G.A. § 9-11-67.1 (2013).

67. Ga. H.R. Bill 714, 2021 Ga. Laws 431 § 1.

68. O.C.G.A. § 9-11-67.1(a)(2).

69. O.C.G.A. § 9-11-67.1(a)(3).

70. O.C.G.A. § 9-11-67.1(b)(1).

71. *Compare* O.C.G.A. § 9-11-67.1(g) (2022*) with* O.C.G.A. § 9-11-67.1(a)(1) (2013).

72. Martin et al., *Insurance*, 73 MERCER L. REV. at 123–24.

73. Martin et al., *Insurance*, 73 MERCER L. REV. at 123–24.

74. No. 21-11046, 2021 U.S. App. LEXIS 26196 (11th Cir. 2021).

coverage.[75] This decision may not have been surprising given the previous district court decisions rejecting such claims.[76] However, *Gilreath* appeared to be the Eleventh Circuit's first decision on the issue.

In *Gilreath*, a dental office followed the guidance of the Centers for Disease Control and Prevention during the COVID-19 pandemic and canceled all routine and elective dental procedures.[77] Consequently, the office lost a bulk of its usual income.[78] To recover the loss, Gilreath Family & Cosmetic Dentistry filed a claim with its insurer under the "business income, extra expense, and civil authority" provisions in its policy.[79] The first two claims required the insurance company to pay for income that the dentist office lost due to "necessary 'suspension'" so long as it was the result of a "'direct "loss" to property'" at the insured's premises.[80] The third claim covered loss of property if a civil authority prohibited access. The insurer denied all three claims, and the plaintiff sued.[81]

In a previous Georgia Court of Appeals case, the court held that "'direct physical loss or damage" meant there must be "an actual change in insured property" that either makes the property "unsatisfactory for future use" or requires "that repairs be made."[82] The plaintiff in *Gilreath* argued that because the office was an enclosed space, the virus prohibited any use of the office and met the "unsatisfactory for future use" element.[83] The court did not accept this argument.[84] Instead the court found that because there was not damage to the physical property from the virus, and the office was used for emergency visits during the pandemic, there was no physical loss.[85] Thus, all three claims were rejected.[86]

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75. *Id.* at *2.

76. *See* Johnson v. Hartford Fin. Servs. Grp., Inc., 510 F. Supp. 3d 1326 (N.D. Ga. 2021).

77. *Gilreath*, 2021 U.S. App. LEXIS 26196, at *1–2.

78. *Id.*

79. *Id.* at *2–3.

80. *Id.* at *3.

81. *Id.* at *4.

82. AFLAC Inc. v. Chubb & Sons, Inc., 260 Ga. App. 306, 308, 581 S.E.2d 317, 319 (2003).

83. *Gilreath*, 2021 U.S. App. LEXIS 26196, at *2 (quoting *AFLAC*, 260 Ga. App. at 308, 581 S.E.2d at 319).

84. *Gilreath*, 2021 U.S. App. LEXIS 26196, at *6.

85. *Id.* at *7.

86. *Id.*

B. Good Faith as a Matter of Law

In *Montgomery v. Travelers Home & Marine Insurance Co.*,[87] the insurance company denied the plaintiff's claim for coverage after a flood because the water originated from groundwater, and the policy excluded damage caused by "surface water" or "ground water."[88] The plaintiff sued for bad faith. The insurance company argued that denial was not in bad faith because it was based on the inspection and opinion of a structural engineer—an expert in the field.[89]

The plaintiff argued that subsection (a) of O.C.G.A. § 33-4-6[90] should have been construed to contradict the holding in a previous Georgia appellate court decision.[91] In *Haezebrouck v. State Farm Mutual Automobile Insurance Co.*,[92] the court held that "[a]s a matter of law" it is reasonable for an insurer to deny a claim based on an individual consultant's advice unless the advice is patently wrong, and the error was "timely brought to the insurer's attention."[93] The statute states that "the testimony or opinion of an expert witness [shall not] be the sole basis for a summary judgment . . . on the issue of bad faith."[94] The plaintiff in *Montgomery* claimed that the statute should be interpreted to mean that an insurance company cannot ever deny a claim based solely on expert witness testimony, thus overruling the holding in *Haezebrouck*.[95] The court disagreed.[96] Instead, the court explained that while a trial court's grant of summary judgment in favor of the defendant based solely on an expert's opinion was not proper, a court cannot find bad faith where an insurer denied a claim based solely on an expert.[97] Therefore, the court held that if a judge allows credible expert testimony supporting the insurer's claim, then the insurer acted in good faith as a matter of law when it denied the claim.[98]

87. 360 Ga. App. 587, 859 S.E.2d 130 (2021).
88. *Id.* at 588–90, 859 S.E.2d at 133.
89. *Id.* at 591, 859 S.E.2d at 134.
90. O.C.G.A. § 33-4-6(a) (2022).
91. *Montgomery*, 360 Ga. App. at 592, 859 S.E.2d at 135.
92. 216 Ga. App. 809, 455 S.E.2d 842 (1995).
93. *Id.* at 811, 455 S.E.2d at 844–45.
94. O.C.G.A. § 33-4-6(a).
95. *Montgomery*, 360 Ga. App. at 592–93, 859 S.E.2d at 135.
96. *Id.* at 593, 859 S.E.2d at 135.
97. *Id.*
98. *Id.* at 594, 859 S.E.2d at 136.

C. Late Notice

In *Currie v. Auto-Owners Insurance Co.*,[99] a fire occurred on the plaintiff's property in November 2018.[100] The fire occurred one month after the mortgage company, Wells Fargo, foreclosed on the property. The plaintiff remained on the property as a squatter and tapped into a neighbor's electrical supply. He discarded all mail addressed to the current resident. The Henry County Fire Department classified the fire as undetermined, and they were unable to rule out human action or malfunction of electrical appliances.[101]

The plaintiff contacted the mortgage company, Wells Fargo, to find out if there was coverage on the property, but the plaintiff claimed that a Wells Fargo representative told him that he did not have insurance coverage.[102] However, at the time of the fire, the property was insured by Auto-Owners Insurance Company (Auto-Owners). Ten months after the fire, in October 2019, Auto-Owners issued a cancellation notice on the policy. The plaintiff claimed he only became aware of the Auto-Owners policy at that time. On October 15, 2019, eleven months after the fire, the plaintiff filed an insurance claim.[103]

The insurer sent a request for proof of loss, a reservation of rights letter, and hired a fire investigator to determine the origin and cause of the fire.[104] The investigator could not make any findings because too much time had passed since the fire; the home was left unsecured; and there was too much damage. The insurer denied the plaintiff's claim on November 25, 2019. The plaintiff then filed his complaint, and the insurer filed a motion for summary judgment claiming the plaintiff did not file timely notice. Summary judgment was granted in the insurer's favor, and the plaintiff appealed to the United States Court of Appeals for the Eleventh Circuit.[105]

The plaintiff argued that because he was unaware that he had insurance coverage, the delay was justified, but the United States District Court for the Northern District of Georgia disagreed.[106] The Eleventh Circuit relied on older precedent which stated, "'[t]he law requires more than . . . misplaced confidence, to avoid the terms of a valid

99. No. 21-13174, 2022 U.S. App. LEXIS 3756 (11th Cir. Feb. 10, 2022).
100. *Id.* at *2.
101. *Id.*
102. *Id.* at *3.
103. *Id.*
104. *Id.* at *3–4.
105. *Id.* at *5.
106. *Id.* at *6.

contract.'"[107] The court also cited more recent precedent denying coverage where "'a reasonable person in the same circumstances as those in which [the plaintiff] found himself' would have thought a policy existed."[108] Here, the plaintiff's conversation was not with a representative of his insurance company but with an unknown Wells Fargo representative and therefore he "could not reasonably rely on Wells Fargo to know the status of an insurance policy that he purchased."[109] Thus, the court affirmed the district court's grant of summary judgment in favor of the insurer and held that the plaintiff had a duty to ascertain the insurance and terms of the policy.[110]

Additionally, the plaintiff contended he had sufficient justification for delayed notice because the delay was due to his mental state from the fire, his recent divorce, and because of the misrepresentation from a Wells Fargo representative.[111] Yet, the court held that because there was no precedent for the plaintiff's justification, the district court did not err when it concluded that the plaintiff's totality of circumstances did not excuse the delayed notice.[112]

D. Statutory Changes for Public Adjusters

House Bill 254,[113] effective July 1, 2022, amends O.C.G.A. § 33-23-43,[114] concerning public adjusters. The changes appear to require more oversight by the Department of Insurance in regulating payment, advertising, contracting, and licensing by public adjusters. While practitioners are encouraged to read the statute in detail in its entirety, a summary of the changes are included below:

- A subsection was added to O.C.G.A. § 33-23-43, which grants the commissioner the authority to implement additional reasonable and necessary rules regarding the qualifications, conduct, fees, and advertisements of public adjusters in addition to what is already included in the statute.[115]

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107. *Id.* at *8 (citing Protective Ins. Co. v. Johnson, 256 Ga. 713, 714, 352 S.E.2d 760, 761 (1987)).

108. *Currie*, 2022 U.S. App. LEXIS 3756, at *7 (citing Forshee v. Emplrs. Mut. Cas. Co., 309 Ga. App. 621, 624, 711 S.E.2d 28, 32 (2011)).

109. *Currie*, 2022 U.S. App. LEXIS 3756, at *8.

110. *Id.*

111. *Id.* at *6.

112. *Id.* at *7.

113. Ga. H.R. Bill 254, Reg. Sess., 2021 Ga. Laws 365.

114. O.C.G.A. § 33-23-43 (2022).

115. O.C.G.A. § 33-23-43(f).

- Section 2 requires that every person claiming to be a public adjuster must have a license issued by the commissioner.[116]
- Section 3 adds new requirements that all public adjuster contracts must be in writing, authorized by the commissioner, and executed by the public adjuster and the insured.[117] Within the contract, the public adjuster cannot claim to act in multiple capacities or be identified as anything other than a public adjuster.[118]
- Section 4 is the largest new portion of the statute detailing how public adjusters are paid and must distribute funds.[119] It provides procedures for financial responsibility and contracts between the public adjuster and insurer.[120]
- Section 4 also includes parameters and regulations for advertising that require public adjusters to display contact information, get the advertisement approved by the commissioner, and provide a clear disclaimer that advertisements are solicitation for business.[121] Further, the public adjuster cannot solicit clients to be employees during the progress of a loss-producing natural disaster and cannot engage in the reconstruction or repair of damaged property that is the subject of a claim adjusted by the adjuster.[122]
- Section 6 grants the commissioner authority to deny applications as well as suspend or revoke a license for one of ten reasons listed in the section.[123]

The changes made to O.C.G.A. § 33-23-43 appear to reflect an intent by the Georgia General Assembly for the Department of Insurance to take an active role in the activities and business practices of public adjusters for the protection of Georgia insurance consumers.

V. CONCLUSION

Few of the insurance decisions during this Survey period were groundbreaking or reflected significant changes in Georgia law. In contrast with previous years, there were only a few decisions in the

116. O.C.G.A. § 33-23-43.1 (2022).
117. O.C.G.A. § 33-23-43.2(a)–(b) (2022).
118. O.C.G.A. § 33-23-43.2(c)(6)–(7) (2022).
119. O.C.G.A. § 33-23-43.3.
120. O.C.G.A. § 33-23-43.3(b).
121. O.C.G.A. § 33-23-43.7 (2022).
122. O.C.G.A. § 33-23-43.8 (2022).
123. O.C.G.A. § 33-23-43.10 (2022).

automobile context and very few UM decisions that significantly affected the law. In the liability and property arenas, the more significant developments this year were statutory given the changes to the time-limited demand statute, O.C.G.A. § 9-11-67.1, and the public adjusting statute, O.C.G.A. § 33-23-43.