



PROFESSIONAL COUNSEL[®]

Advice and Insight into the Practice of Law[®]

Avoiding the Settlement Trap: Handling Georgia Time-Limited Demands Under O.C.G.A. § 9-11-67.1

Introduction: A High-Stakes Risk for Defense Counsel

O.C.G.A. 9-11-67.1 is Georgia's statute governing pre-suit and early-litigation offers in tort claims for personal injury, bodily injury, or death arising from a motor vehicle collision. Because of the statute's complexity and frequent amendments made to it by the Georgia legislature, time-limited settlement demands in Georgia auto cases have the potential to create malpractice exposure for defense counsel.

Since its enactment in 2013 and subsequent amendments in 2021 and 2024, the statute has produced three distinct bodies of case law, each with its own pitfalls. For lawyers, the message is clear: handling time-limited settlement demands is no longer a routine claims task. It is a high-risk legal exercise requiring precision, documentation, and disciplined execution.

This article outlines the governing framework, highlights the most common traps identified in Georgia case law, and provides practical, risk-focused practices for both trial and appellate counsel.

The Statutory Framework: Three Versions, Three Risk Profiles

Georgia Code § 9-11-67.1 creates a "framework for presenting time limited demands to insurers." Because the statute has been amended multiple times, lawyers must first identify which version applies:

1. The 2013 Version (July 1, 2013 – June 30, 2021)

This version presents the greatest risk. Courts interpreting this statute imposed a strict mirror-image acceptance requirement, meaning that any deviation, however minor, could invalidate acceptance.

Compounding the risk, courts allowed plaintiffs to:

- Include additional "material terms" beyond statutory requirements.
- Structure offers as unilateral contracts requiring strict performance of a specific act as part of the acceptance.
- Impose rigid timing and formatting requirements on payment and releases.¹

2. The 2021 Version (July 1, 2021 – April 21, 2024)

This version softened some of the harshest results. While courts still require agreement to all terms, decisions demonstrate a more practical and context-driven approach to acceptance.² Nevertheless, technical deviations, particularly regarding payment instruments and restrictions, continue to create risk.³

3. The 2024 Version (April 22, 2024 – Present)

The 2024 amendments represent a fundamental shift. The statute:

- Defines exclusive material terms that control settlement contracts.
- Treats settlement as a bilateral contract based on mutual assent.
- Limits plaintiffs' ability to exploit ambiguities or add hidden trap terms.

¹ See *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 797 S.E.2d 814 (2017); *Duenas v. Cook*, 347 Ga. App. 436 (2018); *Pierce v. Banks*, 368 Ga. App. 496 (2023); *Bennett v. Novas*, 364 Ga. App. 364 (2022); *Jervis v. Amos*, 358 Ga. App. 589 (2021); *Ligon v. Hu*, 363 Ga. App. 251 (2022); *White v. Cheek*, 360 Ga. App. 557 (2021); *Patrick v. Kingston*, 370 Ga. App. 570 (2024); *de Paz v. Pineda*, 361 Ga. App. 293 (2021); and *Pritchard v. Mendoza*, 357 Ga. App. 283 (2020).

² See *Redfearn v. Moore*, 371 Ga. App. 655 (2024); *Bonilla v. Ventura*, 925 S.E. 2d 746 (2026); *Square v. Woods*, 375 Ga. App. 319 (2025); *Diaz v. Thweatt*, 373 Ga. App. 586 (2024); and *Gabrell v. Hancock*, 926 S. E. 2d 110 (Ga. 2026).

³ Also applicable to pre-suit offers per *Diaz v. Thweatt*, 373 Ga. App. 586 (2024).

Critically, the statute now provides that once the insurer accepts in writing and makes payment, a settlement exists, and disputes about other terms are treated as performance issues rather than grounds for bad faith claims.⁴

Lessons from the Case Law: When Acceptance Fails

The case law applying the 2013 and 2021 statutes reveals recurring patterns of failure. These cases are instructive, not only for legacy claims but also as cautionary examples of how small deviations can produce catastrophic outcomes.

Deviations from Offer Terms Can Void Acceptance

Georgia courts repeatedly emphasize that an acceptance must be “unconditional and identical with the terms of the offer,” and “unequivocal and without variance of any sort.” Examples of failed acceptances include:

- Adding additional release parties.
- Failing to include required affidavits or statements.
- Using non-conforming release language.
- Sending checks with restrictive language (e.g., “void after 90 days”).

Payment Terms Are a Frequent Trap

Courts have invalidated acceptances when:

- Payment was sent on the wrong date.
- The check included additional terms not permitted by the offer.
- Delivery deadlines were missed even due to courier error.

The lesson here is that payment mechanics are not ministerial; they are critical acceptance terms.

Improper Communications Can Constitute Rejection

In one notable case, a settlement demand specified that only written communications were permitted. The insurer’s phone calls to attempt to clarify issues were deemed a rejection demonstrating that even well-intentioned communication can trigger unintended legal consequences.

Releases Are a High-Risk Area

Non-conforming releases remain a leading cause of failed acceptance. Courts have rejected settlements where the release included:

- Extra signature lines.
- Prohibited provisions (e.g., altered statutes of limitation, choice of law clauses).
- Additional indemnification language.

Ambiguity Does Not Always Save the Defense

While the 2021 statute introduced more flexibility, ambiguity in the offer does not eliminate risk. Courts may still interpret deviations as rejection if the acceptance does not strictly comply with the totality of terms.

The Turning Point: *Torres v. Pineda* and the 2024 Statute

The Georgia Court of Appeals’ decision in *Torres v. Pineda* (2026)⁵ provides a meaningful interpretation of the 2024 statute. In that case, the plaintiff demanded an oral statement under oath before a court reporter regarding insurance coverage. The insurer instead provided a written sworn statement and accepted all statutory material terms. The plaintiff rejected the settlement, arguing non-compliance. The court disagreed, holding that only the statutorily defined material terms control; plaintiffs cannot impose additional material requirements; and deviation from an immaterial term does not invalidate acceptance. This decision confirms a key shift that the focus is now on statutory compliance with the 2024 amendments to Georgia Code § 9-11-67.1 rather than hyper-technical adherence to plaintiff-drafted traps.

Responding to Time-Limited Demands:

Recommendations for Trial Counsel

Immediately Identify the Applicable Statute Version

The date of the offer determines the governing law. Create a standardized intake checklist requiring counsel to identify the applicable statutory version on day one.

Treat Every Demand as a Potential Malpractice Exposure

Given the increasing threat of malpractice claims against defense counsel, each demand should be managed with heightened diligence. Document all decisions; confirm advice to carriers in writing; and escalate ambiguous or high-risk demands promptly.

For 2013 and 2021 Claims: Follow the “Zero Deviation” Rule

Even minor deviations can invalidate acceptance under older versions of the statute. Accept the offer exactly as written; do not add or modify release language; mirror payment terms precisely; and avoid informal communications not permitted by the offer.

Scrutinize Payment Terms and Execution Mechanics

Payment-related errors frequently derail valid acceptance. Calendar all deadlines with internal buffers; confirm method of delivery and receipt requirements; review check language carefully to ensure compliance; and use redundant delivery methods where appropriate.

⁴ Senate Bill 83 and the 3rd Generation of O.C.G.A. § 9-11-67.1 by Joseph Kaiser, May 13, 2024.

⁵ *Torres v. Pineda*, 925 S.E.2d 765 (Ga. 2026).

Manage Releases with Extreme Precision

Recommended practice:

- Use plaintiff-provided release forms when available.
- If you draft a release, confirm every provision aligns with offer terms.
- Clearly label any proposed release as a draft (where permitted).
- Avoid adding parties or provisions not explicitly allowed.

Limit Communications to What the Offer Permits

Recommended practice:

- Review of the demand for communication restrictions.
- Avoid oral communications unless expressly permitted.
- When seeking clarification, ensure the request does not condition acceptance.

Use the 2024 Statute Strategically

For offers governed by the current statute, lawyers should focus on: accepting the statutorily defined material terms; not over-complicating acceptance with immaterial conditions; and ensuring timely written acceptance and payment. The 2024 statute provides meaningful protection but only if counsel follows its framework.

Recommended Practices for Appellate Counsel

Appellate counsel face a different challenge when they are asked to defend acceptance decisions already made, often under complex factual records.

Below are recommended practices for this type of representation:

Anchor Arguments in the Correct Statutory Version

The governing statute shapes the legal standard. Appellate counsel will want to clearly identify and frame arguments around the applicable statutory scheme and emphasize differences between 2013, 2021, and 2024 interpretations.

For 2013 Cases: Focus on Strict Compliance

Where defending acceptance, appellate counsel will need to demonstrate mirror-image compliance and emphasize that no conditions or deviations were imposed. Where challenging acceptance, a recommended practice is to highlight any deviation, however minor.

For 2021 Cases: Leverage Reasonableness and Context

Where defending acceptance, appellate counsel may want to argue that acceptance satisfied the totality of the offer and highlight cases recognizing ambiguity and practical compliance.

For 2024 Cases: Emphasize Statutory Material Terms

The most powerful appellate argument under the new statute is straightforward: If the statutory material terms were accepted in writing and payment was made, a binding settlement exists. Counsel will want to separate “material” statutory terms from “immaterial” plaintiff-imposed conditions and frame disputes as performance issues rather than acceptance failures.

Risk Management Takeaways

This evolving area of law presents a clear and present risk to defense counsel. The following core principles should guide practice:

- **Precision Matters.** Even small deviations can invalidate settlement acceptance, particularly under older versions of the statute.
- **Process Drives Outcome.** Robust internal procedures, e.g., checklists, deadlines, peer review, are critical to minimizing risk.
- **Documentation is Essential.** Clear written communication with the carrier and documented decision-making provide critical protection.
- **Know the Statute and the Version.** Failure to identify the governing statutory framework is a foundational error.
- **The 2024 Statute Changes the Game but Not the Need for Discipline.** While the revised statute reduces opportunities for gamesmanship, it does not eliminate the need for careful, compliant execution.

Conclusion: From Technical Trap to Manageable Risk

Georgia’s time-limited demand framework has evolved into a more structured and predictable system, particularly under the 2024 amendments. But the risk has not disappeared. Instead, it has shifted. Defense counsel must now navigate legacy cases with extreme precision; apply a structured approach under the current statute; and recognize that settlement handling is a core competency, not an administrative task. For lawyers, mastering these practices is essential not only to protect clients but also to protect themselves.

This article was authored for the benefit of CNA by:

Mary McDermott

Mary McDermott is a Risk Control Consultant for CNA's Lawyers Professional Liability Program. In this role, she is part of the CNA team helping insureds practice better by providing risk control services. Mary helps craft risk control publications, and she provides direct assistance to insureds when insureds reach out with a concern about their practice. She also presents educational programming on risk control and best practices for addressing the latest troubling issue. Prior to joining CNA, Mary practiced law with national and state bar associations including at the American Bar Association's Center for Professional Responsibility where she staffed the ABA's Standing Committee on Ethics and Professional Responsibility helping those lawyers craft advisory ethics opinions and model rules of professional conduct. Mary is a graduate of the University of Illinois-Urbana (Go Illini!) and received her law degree from DePaul University College of Law.

Don't Miss Out on Future CNA LPL Publications

If you wish to receive the CNA Lawyers' Professional Liability Risk Control monthly publications, you may register [here](#).

About CNA Professional Counsel

This publication offers advice and insights to help lawyers identify risk exposures associated with their practice. Written exclusively by the members of CNA's Lawyers Professional Liability Risk Control team, it offers details, tips and recommendations on important topics from client misconduct to wire transfer fraud.

For more information, please call us at 866-262-0540 or email us at lawyersrisk@cna.com

The author's opinions are their own and have not necessarily been adopted by their employers. The purpose of this article is to provide information, rather than advice or opinion. The information it contains is accurate to the best of the author's knowledge as of the date it was written, but it does not constitute and cannot substitute for the advice of a retained legal professional. Only your own attorney can provide you with assurances that the information contained herein is applicable or appropriate to your particular situation. Accordingly, you should not rely upon (or act upon, or refrain from acting upon) the material herein without first seeking legal advice from a lawyer admitted to practice in the relevant jurisdiction.

These examples are not those of any actual claim tendered to the CNA companies, and any resemblance to actual persons, insureds, and/or claims is purely accidental. The examples described herein are for illustrative purposes only. They are not intended to constitute a contract, to establish any duties or standards of care, or to acknowledge or imply that any given factual situation would be covered under any CNA insurance policy. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All CNA products and services may not be available in all states and may be subject to change without notice. "CNA" is a registered trademark of CNA Financial Corporation. Certain CNA Financial Corporations subsidiaries use the "CNA" trademark in connection with insurance underwriting and claims activities. Copyright © 2026 CNA. All rights reserved. Published 9/26.

