IN THE SUPREME COURT
STATE OF GEORGIA

CASE NO. S24C1255

WILLIAM COLE REDFEARN,

Petitioner,

v.

JAADE MOORE, et al.,

Respondents.

AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

On Behalf of:
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I. STATEMENT OF INTEREST

The Georgia Defense Lawyers Association ("GDLA") is an association of more than 1,000 Georgia lawyers, including solo practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. The GDLA offers its members a forum to discuss defense strategies, points of law, and emerging issues. Through this forum, the GDLA aims to elevate the standards of trial practice; to develop, establish, and secure court adoption or approval of a high-standard code of trial conduct and courtroom manners; to support and work for the improvement of the adversary system of jurisprudence in our courts; to work for elimination of court congestion and delays in civil litigation; to promote the administration of justice; and to increase the quantity and quality of the service and contribution which the legal profession renders to the community, state, and nation.

The GDLA's attorneys practice in nearly every area of civil defense litigation and represent businesses in nearly every industry. In order to carry out its mission and represent the interests of its members' clients, the GDLA is committed to assisting the court by offering information and context which bear on significant cases.

The GDLA and its members are interested in ensuring that basic principles of insurance law, contract law, and tort law are clearly defined and

uniformly applied. It is axiomatic that legal systems are intended to provide a level of certainty and predictability so that individuals and businesses can shape their conduct appropriately.

The GDLA submits this amicus brief out of concern that the opinion below fails to properly interpret the 2021 version of O.C.G.A. § 9-11-67.1, which applied to the settlement demand at issue. The Georgia General Assembly enacted the 2021 version of O.C.G.A. § 9-11-67.1 against the backdrop of a large body of law applying the "mirror image" rule in the context of settlement of tort claims. This rule holds that "an offeror is the master of his or her offer, and free to set the terms thereof" and may only be "accepted unequivocally and without variance of any sort." Recognizing that Georgia courts had repeatedly found the previous version of § 9-11-67.1 ineffective at abrogating this rule, the General Assembly amended the statute to more clearly restrict the terms which may be included in an offer to settle a tort claim prior to an answer being filed and detail how such an offer could be accepted.

Despite the General Assembly's clear intention to displace the common law principles with the 2021 version of § 9-11-67.1, the Court of Appeals—without any meaningful discussion of the 2021 statute—held that the common law principles still applied. Plaintiffs' attorneys have routinely added additional terms to offers, in direct contradiction to the clear language

of the 2021 statute, in order to "set up" a bad faith failure to settle claim. Members of the GDLA have consistently faced this issue, and the GDLA has a significant interest in seeing O.C.G.A. § 9-11-67.1 enforced as intended by the Georgia General Assembly.

II. STATEMENT OF PERTINENT FACTS

This is a wrongful death case arising out of a motor vehicle accident involving the decedent, Theodore Moore, Jr. and Petitioner William Cole Redfearn ("Petitioner"). The question before the Court is whether an enforceable settlement agreement was reached between the parties when State Farm Mutual Automobile Insurance Company ("State Farm"), the insurer for Petitioner, accepted the material terms of a settlement offer made by appellees Jaade Moore, individually and as the administrator of the Estate of Theodore Moore, Jr., and Sierra Moore (collectively "Respondents").

The facts in this case are undisputed. Respondents sent an offer of settlement to State Farm on April 13, 2022, disclaiming O.C.G.A. § 9-11-67.1 and offering to release Petitioner in exchange for payment from State Farm of the $50,000.00 bodily injury policy limits (the "Offer"). (V.2/R. 145-51.) The Offer included the material terms of § 9-11-67.1(a), but it also included a number of additional terms not included in the statute. (Id.) It also required State Farm to include in its acceptance a statement disclaiming the applicability of O.C.G.A. § 9-11-67.1. (V.2/R.146.)

In an effort to accept the Offer, on April 26, 2022, State Farm sent a letter to Respondents' attorney, that purported "serve as written acceptance" of the Offer and included the language disclaiming the applicability of § 9-11-67.1. (V.2/R.153.) State Farm also included with its acceptance a sworn statement that all policies providing coverage for the accident were disclosed, Petitioner's affidavit of no other insurance, and a check for $50,000.00. (V.2/R.154-57, 252.)

Despite State Farm's acceptance of the Offer, Respondents filed suit in the State Court of Thomas County against Petitioner. (V.2/R.20-24.) Petitioner answered the complaint and asserted as a defense that the parties had reached a binding settlement agreement. (V.2/R.40.) Petitioner subsequently filed a motion to enforce the settlement agreement in the trial court. (V.2/R.124.)

On January 3, 2024, the trial court entered an order denying Petitioner's motion to enforce, finding State Farm failed to accept the Offer by applying common law principles and this Court's previous decision in Grange Mutual Casualty Co. v. Woodard, 300 Ga 848, 797 S.E.2d 814 (2017), which interpreted the previous version of O.C.G.A. § 9-11-67.1. (V.2/R.7-17.)

On appeal, the Court of Appeals—without analysis—found the common law principles still applied because the new version of § 9-11-67.1 still allowed for additional terms to be included in an offer of settlement governed

by that statute. Redfearn v. Moore, 902 S.E.2d 233, 236 (Ga. Ct. App. 2024). Based on the finding that additional terms could be included in an offer for settlement under § 9-11-67.1—despite clear language in the statute to the contrary—the court went on to find that no settlement agreement was formed by State Farm's attempted acceptance of the Offer. Id. at 236-38.

III. SUMMARY OF ARGUMENT

In enacting O.C.G.A. § 9-11-67.1 (2021), the General Assembly displaced the common law principles relied upon by the Court of Appeals and the trial court, replacing them with a clear statutory scheme through which an offer governed by the statute can be made and accepted. This case presents an important question of state law which this Court must settle because it will impact future cases.

Certiorari is necessary for the Court to correct the Court of Appeals' flawed interpretation of O.C.G.A. § 9-11-67.1 (2021). The Court of Appeals erroneously held that the 2021 revisions to the statute did not displace the common law principles found to apply to the previous version of the statute. This interpretation ignores the breadth of the 2021 revisions of § 9-11-67.1, the clear and unambiguous language in the statute, and the fact that the revisions were in direct response to this Court's finding that the common law principles applied despite the previous version of the statute.

The GDLA supports Petitioner's request that the Court issue a writ of certiorari in order to provide a correct interpretation of O.C.G.A. § 9-11-67.1 (2021). The clear language and history of the statute demonstrate that the 2021 amendments do more that "require certain material terms" in an offer as the Court of Appeals held. Because the General Assembly intended for the 2021 revisions of the statute to displace the common law principles relied on by this Court in Woodard, the Court should grant certiorari to enforce the General Assembly's intent.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. Standard for Granting Petitions for Certiorari

Under Rule 40 of the Georgia Supreme Court, a petition for writ of certiorari will only be granted in cases of "great concern, gravity, or importance to the public." Ga. R. S. Ct. Rule 40(1). This includes those cases where the Court of Appeals opinion "on an important matter is in conflict with other decision of the Court of Appeals or decisions of this Court"; "faithfully applies a decision of this Court, but this Court's precedent warrants reconsideration"; or "has decided an important question of state law that is likely to recur and has not been, but should be, settled by this Court." Id. Though "this list is neither controlling nor exclusive," it is instructive on the type of cases this Court typically deems "of great concern, gravity, or importance to the public." Id.

This case presents circumstances that satisfy this standard. The interpretation of O.C.G.A. § 9-11-67.1 (2021) is an important question of state law that is likely to recur and that has not been settled by this Court. The fact that § 9-11-67.1 has recently been revised does not change this fact. The revision to the statute has an application date of April 22, 2024. See O.C.G.A. § 9-11-67.1 (2024). There exists a large number of motor vehicle accidents occurring prior to this effective date to which the 2021 version of § 9-11-67.1 remains applicable.

B. The Court of Appeals erroneously held that common law principles applied to allow for additional terms in an offer of settlement despite O.C.G.A. § 9-11-67.1 (2021) displacing common law.

The Court of Appeals clearly failed in its interpretation of O.C.G.A. § 9-11-67.1 (2021) and in applying common law principles in evaluating Petitioner's motion to enforce settlement. Without any analysis, the Court of Appeals held, "OCGA § 9-11-67.1, which was amended in 2021 to require certain material terms, still allows parties to agree to other terms not outlined in subsection (a)." Redfearn, 902 S.E.2d at 236 (citing O.C.G.A. § 9-11-67.1(b)(1), (c)). This holding by the appellate court downplays the breadth of the 2021 revision to § 9-11-67.1. The 2013 statute reads in relevant part:

> (a) Prior to the filing of a civil action, any offer to settle a tort claim for personal injury, bodily injury, death arising from the use of a motor vehicle and prepared by or with the assistance of an attorney on behalf of a claimant or

> claimants shall be in writing and contain the following material terms:
>
> (1) The time period within which such offer must be accepted, which shall be not be less than 30 days from receipt of the offer;
> (2) Amount of monetary payment;
> (3) The party or parties the claimant or claimants will release if such offer is accepted;
> (4) The type of release, if any, the claimant or claimants will provide to each releasee; and
> (5) The claims to be released.
>
> (b) The recipients of an offer to settle made under this Code section may accept the same by providing written acceptance of the material terms outlined in subsection (a) of this Code section in their entirety.
>
> (c) Nothing in this Code section is intended to prohibit parties from reaching a settlement agreement in a manner and under terms otherwise agreeable to the parties.

O.C.G.A. § 9-11-67.1(a)–(c) (2013).

This Court interpreted the 2013 version of the statute in Grange Mutual Casualty Company v. Woodard. 300 Ga. 848, 797 S.E.2d 814 (2017). In Woodard, the Court held § 9-11-67.1(a) "does not expressly limit Pre-Suit Offers to allow only the five terms listed therein" and instead "reasonably can be read to require merely that every Pre-Suit Offer to include, at a minimum, those five terms." Id. at 855. The decision in Woodard held that the statute does not displace the common law rule that "an offeror is free to set the terms of his . . . offer" and, therefore, while "every Pre-Suit Offer must contain the five enumerated terms, . . . additional terms are not prohibited." Id.

Following this Court's decision in Woodard, the Georgia General Assembly amended § 9-11-67.1, and these amendments went into effect on July 1, 2021. See O.C.G.A. § 9-11-67.1(h) (2021); 2021 Georgia House Bill No. 714, Georgia One Hundred Fifty-Sixth General Assembly – 2021-2022 Regular Session. Rather than the limited revision suggested by the Court of Appeals, the above-cited subsections were amended as follows:

> (a) Prior to the filing of ~~a civil action~~ **an answer**, any offer to settle a tort claim for personal injury, bodily injury, death arising from the use of a motor vehicle and prepared by or with the assistance of an attorney on behalf of a claimant or claimants shall be in writing ~~and contain the following material terms~~:
>
> **(1) Shall contain the following material terms:**
>
> ~~(1)~~**(A)** The time period within which such offer must be accepted, which shall be not be less than 30 days from receipt of the offer;
> ~~(2)~~**(B)** Amount of monetary payment;
> ~~(3)~~**(C)** The party or parties the claimant or claimants will release if such offer is accepted;
> ~~(4)~~**(D)** The type of release, if any, the claimant or claimants will provide to each releasee; and
> ~~(5)~~**(E)** The claims to be released~~.~~**;**
>
> **(2) Shall 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; and**
>
> **(3) May include a term requiring that in order to settle the claim the recipient shall provide the offeror a statement, under oath, regarding whether all liability and casualty insurance issued by the recipient that provides coverage**

or that may provide coverage for the claim at issue has been disclosed to the offeror.

(b) ***(1) Unless otherwise agreed by both offeror and the recipients in writing, the terms outlined in subsection (a) of this Code section shall be the only terms which can be included in an offer to settle made under this Code section.***

(2) The recipients of an offer to settle made under this Code section may accept the same by providing written acceptance of the material terms outlined in subsection (a) of this Code section in their entirety.

(c) Nothing in this Code section is intended to prohibit the parties from reaching a settlement agreement in a manner and under terms otherwise agreeable to ~~the parties~~ **both the offeror and recipient of the offer**.

Compare O.C.G.A. § 9-11-67.1(a)–(b) (2021) with O.C.G.A. § 9-11-67.1(a)–(c) (2013) (additional language in bold and repealed language struck through) (emphasis added). The Court of Appeals' assertion that these amendments did no more than "require certain material terms"—despite the terms required by the statute not being altered by the 2021 amendments—is patently wrong. Redfearn, 902 S.E.2d at 236.

When interpreting a statute, the Court "must presume that the General Assembly had full knowledge of the existing state of the law and enacted the statute with reference to it." In Interest of M.D.H., 300 Ga. 46, 53, 793 S.E.2d 49 (2016) (quoting Chase v. State, 285 Ga. 693, 695-96, 681 S.E.2d 116 (2009)). The 2021 version of § 9-11-67.1 was enacted against the

backdrop of the Supreme Court's holding in Woodard, as well as the large body of "litigation over, among other things, what constitutes an offer to which an insurer must respond, when an insurer's inquiry about medical liens amounts to a counteroffer, and how much time an offeror must provide for a response in order to trigger an insurer's duty to respond." 300 Ga. at 856-57 (internal citations omitted).

As noted by Judge McFadden, the construction of the 2013 version of § 9-11-67.1 still permitted plaintiffs' attorneys to "set up insurers for bad faith claims" by "structur[ing] offers not to reach settlements, but rather to elicit rejections." Wright v. Nelson, 358 Ga. App. 871, 877-79, 856 S.E.2d 421 (2021) (McFadden, C.J., concurring) (citations omitted). The Court of Appeals' incorrect interpretation of the 2021 version of § 9-11-67.1 allows Respondents and other plaintiffs to engage in the type of gamesmanship the General Assembly intended to prevent when it revised § 9-11-67.1.[1]

The Court further must "presume that the General Assembly meant what it said and said what it meant." McBrayer v. Scarbrough, 317 Ga. 387, 393, 893 S.E.2d 660 (2023) (quoting Patton v. Vanterpool, 302 Ga. 253, 254, 806 S.E.2d 493 (2017)). The statutory text must therefore be afforded "its

[1] It cannot be seriously disputed that the goal of the settlement offer sent by Respondents was not to reach a binding settlement, but rather, to ensure that the demand would be rejected. If Respondents' intent was to accept the policy limits to settle their claims against Appellant, they could have simply done so.

plain and ordinary meaning, . . . view[ed] in the context in which it appears, and . . . read . . . in its most natural and reasonable way, as an ordinary speaker of the English language would." Id.

The Court of Appeals' perfunctory conclusion that the 2021 revisions to the statute do not alter the common law principles allowing for additional terms to be included in an offer of settlement governed by § 9-11-67.1—despite the clear language of the statute limiting offers to only the material terms in subsection (a) and despite the statute being enacted in response to this Court's decision in Woodard—is a clear misinterpretation of the law which only this Court can remedy.

The Court of Appeals' incorrect interpretation of the 2021 version of § 9-11-67.1 will negatively impact future cases going forward. Though the statute has since been amended, the lower court's incorrect interpretation of the 2021 statute will be applicable to all future cases involving motor vehicle accidents occurring between July 1, 2021, and April 22, 2024. Because the Court of Appeals' opinion ignores the language of the 2021 version of O.C.G.A. § 9-11-67.1 and the background upon which it was enacted, this Court must grant certiorari in order to correct it.

V. CONCLUSION

For the foregoing reasons, the GDLA, as *amicus curiae*, respectfully submits that this Court should grant certiorari.

This submission does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted this 8th day of August, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing ***AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI*** upon all counsel of record by depositing a copy of the same in the United States Mail, postage pre-paid, addressed to the following counsel of record:

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