IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

CRYSTAL CRAWFORD, **Plaintiff,** **vs.** **TERENCE GRAVES AND JOHN DOES (1-5),** **Defendants.**	**CIVIL ACTION FILE NO.** **22A04781**

ORDER GRANTING ALLSTATE MOTION TO STRIKE

The matter before the Court is Unnamed Defendant Allstate Insurance Company's Motion to Strike Plaintiff's Offer of Settlements filed on February 13, 2023, and June 21, 2023. In the motion, Allstate Company ("Allstate" or "UM Defendant") petitions the Court to strike Plaintiff Crystal Crawford ("Plaintiff")'s offers of settlement allegedly pursuant to O.C.G.A. §9-11-68.[1] Plaintiff responded on August 9, 2023. For the reasons below, Allstate's motion is GRANTED.

I. Case History

This suit stems from a June 3, 2021 traffic collision on North Druid Hills in Dekalb County, Georgia. Plaintiff alleges that, on that date, Defendant Terrence Graves("Defendant") was following too closely and rearended Plaintiff. As a result, Plaintiff states that she suffered injuries, and she brought this suit for negligence on December 12, 2022. Pursuant to O.C.G.A. § 33-7-11, Plaintiff served his uninsured/underinsured motorist insurance carrier Allstate on December 16, 2022. The company timely answered on January 11, 2023, and discovery commenced. On February 13, 2023, Plaintiff served Allstate with an Offer of Settlement pursuant to O.C.G.A. § 9-11-68. The February 13, 2023, Offer of Settlement was rejected. On June 21, 2023, Plaintiff served

[1] On February 13, 2023, Plaintiff served Allstate with an Offer of Settlement pursuant to O.C.G.A. § 9-11-68. On June 21, 2023, Plaintiff served Allstate with a second Offer of Settlement pursuant to O.C.G.A. § 9-11-68.

Allstate with a second Offer of Settlement pursuant to O.C.G.A. § 9-11-68. Allstate rejected this offer as well and filed the instant amended motion on July 10, 2023.

In the motion, Allstate argues that because § 33-7-11 provides the exclusive remedy for actions against UM carriers, § 9-11-68 does not apply. Additionally, the latter code section applies only to tort claims, and suits against UM carriers lie in contract. As such, the offer should be stricken.

Plaintiff counters that this action is a tort claim, and § 9-11-68 is applicable. Plaintiff notes that the Georgia Supreme Court has found UM suits to be tort actions in some contexts, and several trial courts have agreed under similar circumstances to this case. Finally, Plaintiff states that—given the findings of other trial courts—his Offer of Settlements were made in good faith.

II. Ruling of the Court

This motion involves two statutes. Under § 9-11-68(a), 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). If Plaintiff's offer is rejected and the jury verdict is 25% greater than the offer, then Plaintiff can collect reasonable attorney's fees. O.C.G.A. § 9-11-68(b)(2). On the other hand, § 33-7-11(d) allows plaintiffs to bring actions against the UM carriers as if they were named party-defendants. The carrier may then file pleadings and conduct discovery in its own name or in the name of the defendant. Id. Generally, actions against UM carriers lie in contract, even though they are based on an underlying tort. State Farm Fire & Cas. Ins. Co. v. Terry, 230 Ga. App. 12, 17 (1997), aff'd, 269 Ga. 277 (1998).

At issue is whether actions against UM carriers under § 33-7-11(d) are "tort claims" within the ambit of § 9-11-68. The Court finds that they are not. While the factual issues triggering UM claims pertain to tortious conduct, Plaintiff's claim against the UM arises from a contract between

herself and the UM. See Terry, 230 Ga. App. at 17 ("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."). In other words, UM contracts are "if/then" contracts: IF an uninsured or underinsured motorist is liable for the insured's tortious harm, THEN the UM carrier promises to pay. The disputed facts at trial in this case focus on the "if" provision (whether Defendant is liable for tortious harm). Nevertheless, Plaintiff's actual prayer for relief *against the UM carrier* is for the latter to pay on the "then" provision of their contact. As such, any offers of settlement from Plaintiff to the UM Defendant are not offers to settle a claim for tortious conduct by the UM Defendant. Instead, they are offers to settle claims concerning the UM Defendant's contractual obligations. Therefore, § 9-11-68 (which by its plain language only covers offers to settle tort claims) does not apply against the UM carrier in the initial case.[2]

Plaintiff argues that claims under O.C.G.A. § 33-7-11 can be treated as torts, pointing to Vaughn v. Collum, 236 Ga. 582 (1976). In that case, the Supreme Court found that the provision "the action and all pleadings thereto shall be served as prescribed by law upon the insurance company issuing the policy as though the insurance company were actually named as a party defendant" from an older version of § 33-7-11(d)(2) meant that that the two-year statute of limitations for tort actions was applicable to claims against the insurer rather than the six-year period for contract claims. Id. In doing so, the Court did not proclaim that UM actions are tort claims. Instead, it noted that the UM carrier's *contractual* obligation only arises if there is tort liability. Thus, the carrier should be able to assert the tort statute of limitation to prove there is no tort liability and thus no liability under the contract. See Id. at 582.

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[2]Arguably, if the UM defendant (in bad faith) refuses to settle the claim, it has then committed a tort. At that point, Plaintiff may pursue the statutorily-set "damages" outlined in O.C.G.A. §33-7-11(j) through the mechanics outlined in that specific statute for that specific "tort".

However, even if the Supreme Court's construction of § 33-7-11(d) included one tort element, that conclusion still does not mean that § 9-11-68 applies. The latter statute, enacted in 2005, was intended to encourage tort litigants to make and accept good-faith settlement proposals. Smith v. Baptiste, 287 Ga. 23, 28 (2010). While that goal could apply to all civil litigation, the Legislature expressly limited its terms to tort claims. Id. Accordingly, the Legislature's decision to limit § 9-11-68 to tort claims shows an intent to exclude other types of civil actions, including contract claims based on torts. See Eichenblatt v. Piedmont/Maple, LLC, 358 Ga. App. 234, 240 (2021). Further, because attorney's fees awards are in derogation of common law, statutes authorizing them must be strictly construed. Harris v. Mahone, 340 Ga. App. 415, 422 (2017).

Therefore, for the above-stated reasons,

IT IS HEREBY ORDERED that Allstate's Motion to Strike Plaintiff's Offer of Judgment, insofar as it seeks a finding that § 9-11-68 does not apply to actions against an UM insurance carrier under § 33-7-11, is **GRANTED.**

IT IS FURTHER ORDERED that Plaintiff's Offer of Settlements dated February 10, 2023 and June 20, 2023 be stricken from the record and denied as a matter of law.[3]

SO ORDERED this 1st day of November, 2023

Kimberly A. Alexander

Hon. Judge Kimberly A. Alexander
Judge, State Court of Dekalb County

[3] To be clear, the Court is only striking these documents for the purposes of O.C.G.A. §9-11-68. That ruling does not address whether these documents may be subsequently admissible as evidence of bad faith in a separate action under O.C.G.A. §33-7-11(j).