Supreme Court of Georgia
Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us

SUMMARIES OF OPINIONS

Published Monday, March 6, 2017

Please note: *Opinion summaries are prepared by the Public Information Office for the general public and news media. Summaries are not prepared for every opinion released by the Court, but only for those cases considered of great public interest. Opinion summaries are not to be considered as official opinions of the Court. The full opinions are available on the Supreme Court website at* www.gasupreme.us .

PARKER ET AL. V. LEEUWENBURG ET AL. (S16A1505)

In an ongoing feud between Lake Lanier neighbors over a variety of complaints, including one couple's claim that the other couple intentionally hung wind chimes near their property to harass them, the Georgia Supreme Court has thrown out a **Hall County** court judgment and is sending the case back to the lower court to dismiss it.

In today's 7-to-2 ruling, written by **Justice Carol Hunstein**, the majority has concluded that the couple who sued lacked "standing" – or the legal right – to bring the lawsuit, in which they claimed that Georgia's "good behavior bond statute" is unconstitutional, because they could not show that they'd suffered any harm as a result of the statute.

As a result, "we do not reach the constitutional question posed in this case because the complaining party lacks standing to pursue such a challenge," the majority opinion says. "Accordingly, we vacated the judgment of the trial court and remand this matter with direction that the court dismiss the complaint for relief."

According to briefs filed in the case, Andrew and Penny Leeuwenburg and Ken and Rochelle Parker are next-door neighbors whose properties on Woodlake Drive in Gainesville border Lake Lanier. The two married couples have been embroiled in conflict for several years, with each couple charging the other with harassment and wrongdoing. Three times, the Leewenburgs have gone to the Hall County Magistrate Court in an effort to obtain "Good Behavior Bonds" against the Parkers.

Under the state's Good Behavior Bond statute (Georgia Code § 17-6-90), a judge may "issue a notice to appear for a show cause hearing to any person whose conduct in the county is sufficient to justify the belief that the safety of any one or more persons in the county or the peace or property of the same is in danger of being injured or disturbed thereby." A hearing must be held within seven days from the time the persons requesting the bond submit an application. Under the law, if "sufficient cause" is shown, "the court may require from the person a bond with sureties for such person's good behavior with reasonable conditions to ensure the safety of persons or property in the county or the preservation of the peace of the county for a period of up to six months." Under the statute, the judge may have the person arrested if the allegations of the person's conduct are "sufficient to justify the belief that there is imminent danger of injury to any person in the county, damage to any property in the county, or disturbance of the peace of the county." The purpose of the conditional "Good Behavior Bonds" is to prevent the commission of a crime and to avoid having people arrested and charged with crimes when the conflict at issue may be temporary and can be adequately dealt with by the issuance of a court order that governs the person's conduct for up to 12 months.

In January 2015, the Leeuwenburgs filed a motion asking the court to reissue a third bond against the Parkers, "to preserve the peace and goodwill," after an apparent truce between the couples had dissolved. In their motion, the Leeuwenburgs wrote that the Parkers had installed "a large number of wind chimes" as close as possible to the Leeuweburgs' property, as well as "a decoration shaped like a cannon" aimed at their property. The Leewenburgs said they had "extreme sensitivity to noise." And, according to briefs filed in the case, they said the installation of the noise-making items "is quite odd," since the vast majority of the Parkers' complaints against them had been that the Leeuwenburgs "cause too much noise (dogs, music, etc.)" They also complained that the Parkers had installed security cameras aimed directly at their property and that their photographing and videotaping of the Leeuwenburgs' activities was the "proverbial 'final straw.'" And they complained that the Parkers had hired a tree-cutting service to trim branches but only trees whose branches fell into the Leeuwenburgs' property were trimmed. Finally, the Leeuwenburgs claimed that one night, at 1:00 a.m., Ken Parker stood outside with a strong-beam flashlight aimed directly into their bedroom, causing them to lose sleep. In response to the Leeuwenburgs' complaints, the judge issued a Good Behavior Bond that prohibited the couples from having any contact with each other, from going onto each other's property or dock, from calling 911 "unless there is a true, verifiable emergency at that time," from contacting the Army Corps of Engineers "concerning the other party's activities on Corps property," and from photographing or videotaping each other.

In June 2015, the Parkers sued the Leeuwenburgs, asking the court to declare § 17-6-90 unconstitutional and prohibit the Leeuwenburgs from ever seeking another Good Behavior Bond against them. In February 2016, the trial court ruled against the Parkers, finding that the statute was constitutional and that the Leeuwenburgs and others were "entitled to avail themselves of the relief provided by said statute." The Parkers then appealed to the highest court of the state.

In response, the Leeuwenburgs argued that the Parkers lacked standing to make a legal claim in court. "We agree," today's majority opinion says.

"As a general rule, a litigant has standing to challenge the constitutionality of a law only if the law has an adverse impact on that litigant's own rights," the majority opinion says, quoting its 2007 decision in *Feminist Women's Health Center v. Burgess.* "As a prerequisite to attacking

the constitutionality of a statute, the complaining party must show that it is hurtful to the attacker."

Here, the Parkers "have neither been arrested nor have they been threatened with arrest in relation to the bond proceedings associated with this matter," today's majority opinion says. Therefore, they lack standing to challenge the statute's subsection that refers to possible arrest. And "even if this Court were to accept that Appellees [i.e. the Leeuwenburgs] may initiate future peace bond proceedings, Appellants' [i.e. the Parkers'] complaint lacks any allegation that a judicial officer in Hall County would exercise its authority and initiate such proceedings," the majority opinion says. "In effect, Appellants currently stand in the same position as other Hall County citizens who might, at some time in the future, be subject to the judicial procedure envisioned in § 17-6-90 (a)."

Because the Parkers lacked standing to bring this constitutional challenge, the trial court erred in ruling on the matter. "Accordingly, we vacate the judgment of the trial court and remand this matter with direction that the court dismiss the complaint for relief."

(Three justices concurred with the judgment only in this opinion, and two dissented.)

In the dissent, **Justice Nels Peterson** argues that "the Parkers' case is properly before us. The statute they challenge as unconstitutional has been enforced against them three times already, and the Parkers have shown they face a credible threat that it will be enforced against them in the future. Under well-established precedent, that means they have standing to bring at least some of their claims."

"The threat of future injury in this case is substantial and strikingly different from the alleged injury" in the Georgia Supreme Court's 2009 decision in *Manlove v. Unified Government of Athens-Clarke County*, which the Leeuwenburgs argue is the controlling decision in this case. "Here, of course, the Parkers have been subjected to the statute's provisions multiple times in the past, and the Leeuwenburgs have threatened to invoke the statute again in the future if the Parkers act as they wish." Even the Eleventh Circuit acknowledged that a past injury may establish "a sufficient imminence of future harm" when the "future injury would likely occur in substantially the same manner as the previous injury."

"Given the Leeuwenburgs' past practice of seeking good behavior bonds against the Parkers (and success in having them granted), including for the Parkers' use of security cameras, combined with the Leeuwenburgs' threat to continue this practice, there is a credible threat that subsection (a) will be applied against the Parkers in the near future if they act as they wish," says the dissent, which is joined by Justice Harold Melton.

Attorney for Appellants (Parkers): Jeffrey Filipovits
Attorneys for Appellees (Leeuwenburgs): Vanessa Sykes, Jessica Lund

LORI AND GARY STEAGALD V. DAVID, CHERYL AND JOSHUA EASON (S16G0293)

In another dispute between neighbors, a couple who sued their neighbors and former friends, after their son's rescue dog attacked the woman when she went next door to borrow tea, have won the right to have a jury hear their case.

With today's decision, written by **Justice Keith Blackwell**, the high court has reversed a decision by the Georgia Court of Appeals, concluding that whether the neighbors knew their son's dog had a propensity for violence "is a question for a jury."

In this **Henry County** dog-bite case, Lori and Gary Steagald were neighbors and good friends of David and Cheryl Eason. According to briefs filed in the case, in 2011, Joshua Eason, the Easons' adult son, moved in with them because he and his wife were divorcing. Soon after, Joshua asked his parents if he could keep his pit bull dog, Rocks, at the house. He and his wife had rescued the dog six months earlier after finding him on the side of the road. Cheryl told her son he could keep Rocks at the house temporarily if he built a pen for the dog inside the fenced back yard. She wanted to ensure that the dog did not escape the yard, given that they did not know the dog's history and she did not trust the breed. Cheryl had only seen the dog two times before, when she had gone to the home of Joshua and his former wife. On both occasions, the dog acted happy to see her, and the Easons said they had never seen the dog act aggressively.

According to Gary Steagald, on the dog's first day at the Easons' house, Cheryl told him Rocks had "snapped" at her. That same day, when Gary went over to meet the dog, he said Rocks growled, barked and snapped at him when he approached the penned dog and extended his fingers. Cheryl was present at the time. Six days later, Lori Steagald went over to the Easons' house to borrow some tea bags. Joshua was in the fenced backyard, playing with Rocks, who was on a lead. Joshua walked to the gate, leading Rocks, and opened the latch so Lori could enter. When she extended her hand so that Rocks could smell her, the dog jumped up, latched onto her arm, and started biting down. Joshua screamed and started hitting the dog, but he could not get Rocks to release Lori. Joshua's father, David Eason, and a cousin came outside to help, and the men finally succeeded in getting the dog off Lori. As Lori attempted to flee the backyard, she slipped and fell, and the dog grabbed her right calf. The men got the dog off her leg, but she had to be taken by ambulance to the hospital. She required stitches, is permanently scarred and continues to suffer from neuropathy as a result.

The Steagalds sued the Easons, but the trial court ruled in favor of the Easons, granting them "summary judgment," which a judge does only after determining that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties. The Steagalds then appealed to the intermediate Court of Appeals, arguing that Rocks' snapping at Cheryl Eason and Gary Steagald had put the Easons on notice that Rocks had the propensity to bite someone without provocation. But the Court of Appeals disagreed and upheld the trial court's ruling, finding that Rocks' prior behavior of snapping at Cheryl and Gary "was merely menacing behavior that 'alone is not sufficient to place its owner on notice of a propensity to bite.'" The Steagalds then appealed to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals ruled correctly.

In today's opinion, the high court concludes that it did not rule correctly, and it has reversed the decision.

"Even when it is shown that a dog is, in fact, vicious or dangerous, proof that its owner or keeper knows of the peculiar propensities that render the dog in question vicious or dangerous is an essential element of a lawsuit under Georgia Code § 51-2-7," the opinion explains.

"In this case, the Steagalds rely on the two snapping incidents – which occurred only about a week before Lori was bitten, and of which Cheryl was aware – as proof that the Easons knew Rocks to have a propensity to bite persons without provocation, as the dog did when it attacked Lori," the opinion says,

In a case involving the appeal of an award of summary judgment, "the evidence must be viewed in the light most favorable to the Steagalds, we must give the evidence on which the

Steagalds rely as much weight as it reasonably can bear, and we must draw all inferences favorable to the Steagalds that a rational finder of fact reasonably could draw from the evidence of record."

Therefore, "we conclude that whether the Easons had knowledge that Rocks had a propensity to bite another without provocation in the sort of circumstances in which he attacked Lori is a question for a jury," the opinion says. "The judgment of the Court of Appeals is reversed."

Attorneys for Appellants (Steagalds): Andrew Gebhardt, Marc Avidano, Grant McBride
Attorney for Appellees (Easons): James Scarbrough

COON V. THE MEDICAL CENTER, INC. (S16G0695)

A woman who sued a Columbus hospital for emotional distress after it mislabeled the remains of her stillborn child, resulting in the funeral for, and burial of, the remains of the wrong baby, has lost her lawsuit under an opinion today by the Georgia Supreme Court.

In a unanimous decision by the Georgia Supreme Court, written by **Justice David Nahmias**, the high court has upheld a ruling by the Georgia Court of Appeals and a ruling by the **Muscogee County** superior court, agreeing that the law as interpreted by Georgia courts, not Alabama courts, applies in this case.

According to briefs filed in the case, in 2011, Amanda Rae Coon lived in Opelika, Alabama. On Feb. 8, 2011, Coon, who was 37-weeks pregnant, went for a routine prenatal examination at her obstetrician-gynecologist's office in Muscogee County, GA. There Coon learned that her baby did not have a heartbeat. The next day, Coon was admitted to The Medical Center in Columbus, GA where labor was induced and she delivered a stillborn baby girl. After the delivery, Coon's father informed the hospital's bereavement coordinator that the baby's remains were to be released to a funeral home in Alabama. The coordinator placed Coon's baby in a separate holding room until someone could take the remains to the hospital morgue. In addition to Coon's baby, there was a smaller stillborn baby boy, who was less than 20 weeks in gestation, already in the holding room. A nurse volunteered to transport both babies from the holding room to the morgue. Under a new hospital policy, she filled out the identification tags that were to be placed on the arm and leg of the stillborn babies, as well as on the outside of the cadaver bags. A security guard who was to escort the nurse to the morgue offered to help put the tags on the bodies and the bags. In doing so, they mixed up the identification tags so that Coon's baby was tagged with the smaller baby's identification tags and vice versa. As a result, the hospital mistakenly released the wrong baby to the Opelika funeral home. On Feb. 12, 2011, Coon, her husband and other family members held a funeral at an Opelika cemetery for the baby they believed was Coon's. Transportation costs from the hospital to the funeral home had been paid by Coon's husband through the military, and Coon's aunts paid for the funeral service and donated the burial plot.

About two weeks later, the hospital discovered it had released the wrong baby to the Opelika funeral home. Later that day, the hospital's chief executive officer contacted Coon by telephone and told her what had happened. The following day, the baby who had been mistakenly released to the funeral home was exhumed from the Opelika cemetery. The funeral home director then traveled to Columbus to deliver the exhumed baby to a different funeral home and to retrieve Coon's baby from the hospital. In another mix-up at the hospital however, the

funeral director retrieved a cadaver bag that was tagged as the Coon's baby only to discover back in Opelika that the bag contained nothing but a blanket. He returned to Columbus and eventually retrieved the decomposing remains of Coon's baby. The hospital paid the costs associated with the exhumation of the misidentified baby and the subsequent burial of the correct remains. Coon did not attend the second burial because she "could not handle having to go through that all over again."

In March 2011, Coon sued the hospital, seeking damages for emotional distress. The hospital filed a motion for "summary judgment," which a judge grants only after determining that a jury trial is unnecessary because the facts of the case are undisputed and the law clearly falls on the side of one party or the other. The hospital argued that Coon had no claim for emotional distress under Georgia's "impact rule," which requires that in a claim involving negligent conduct, recovery for emotional distress is allowed only where the person suffered a physical injury or monetary loss. Coon suffered no physical injury or pecuniary loss, and the conduct of the hospital was not "intentional, reckless, extreme, or outrageous." In response, Coon argued that Alabama law, not Georgia law, governs here because she suffered the emotional distress in Opelika, where she learned of the hospital's mistake and where the funeral service and burial had occurred. Coon further argued that under Alabama law, she was not required to prove physical injury, pecuniary loss, or intentional or reckless misconduct by the hospital to support her emotional distress claim because Alabama does not impose an "impact rule" on such cases. The trial court initially denied the hospital's motion for summary judgment after concluding that Alabama law governs in this case under the "lex loci delicti" rule, which says that the law of the state where the wrong is "committed" will apply, and that the wrong is "committed" where the injury occurs rather than where the wrongdoer acted. Later, however, the trial judge concluded that application of Alabama law would violate Georgia's "public policy," because Alabama does not impose an "impact rule" on plaintiffs seeking damages for emotional distress arising from the negligent mishandling of human remains. ("Public policy" refers to the broad principles and standards regarded by the legislature as fundamental to the State and society.) The trial court then ruled in favor of the hospital and granted its motion for summary judgment, concluding that Coon's emotional distress claims failed because she could not show physical injury, monetary loss, or outrageous misconduct by the hospital. On appeal, a split Court of Appeals upheld the Muscogee County ruling, and Coon then appealed to the Georgia Supreme Court.

"The principles governing this case trace back to the first years of this Court's existence," today' opinion says. "From the beginning, this Court has distinguished between statutory law and common law when the law of another state provides the rule of decision in a lawsuit filed in a Georgia Court." (Statutory law is the body of law based on statutes passed by legislatures; common law is the body of law inherited from England and adopted and modified separately by states and the federal government.) Generally, "a Georgia court will defer to another state's statutes, as well as its judicial decisions authoritatively interpreting those statutes, in determining the law of that state. In the absence of a statute, however…a Georgia court will apply the common law as expounded by the courts of Georgia." In its 1886 decision in *Krogg v. Atlanta & West Point Railroad,* which involved an accident that occurred in Alabama, the Georgia Supreme Court ruled that, "we are not bound by the interpretation of the common law, as made by the courts of Alabama; as to what is the common law on this subject, this court is not only competent to decide, although the accident occurred in Alabama, but it is [our] duty to

decide…." In another decision in 1929, this Court elaborated, stating that, "The common law is presumed to be the same in all the American states where it prevails. Though courts in the different states may place a different construction upon a principle of common law, that does not change the law." And as stated in a 1908 state Supreme Court decision: "While the courts of this state will follow the decisions of a sister state in construing the statutes thereof, they are not bound by the interpretation placed upon the common law by the courts of other states."

"The approach Georgia has followed from the beginning as to common-law questions provides a workable rule, and Coon has not persuaded us that a much better rule has come along," today's opinion says. "The facts of this case, while tragic, do not warrant the creation of a new exception to the physical impact rule." Here, "Coon did not suffer any physical impact that resulted in physical injury from the hospital's negligent mishandling of her stillborn child's remains, nor did the child suffer any physical impact or injury. That element is critical…in determining whether to recognize a new exception to the physical impact rule, because it goes far in addressing the concerns about unleashing a flood of claims for emotional distress and the ease with which fraudulent claims of emotional distress can be made."

"If we do not insist on a workable limiting principle as a prerequisite to recognition of new exceptions to the physical impact rule, the exceptions will soon swallow the rule," the opinion says, upholding the Court of Appeals' judgment.

Attorneys for Appellant (Coon): Archie Grubb, II, F. Houser Pugh
Attorneys for Appellee (Hospital): W. Scott Henwood, Mark Wortham, Paul Ivey, Jr., Lauren Dimitri

UNITED HEALTH SERVICES OF GEORGIA, INC. ET AL. V. NORTON ET AL. (S16G1143)

A man who sued a nursing home owner over the wrongful death of his wife will have to take his case to arbitration before he can take it to court under a decision today by the Georgia Supreme Court.

In today's unanimous ruling, written by **Justice Harold Melton**, the high court has reversed a decision by the Georgia Court of Appeals, which ruled that the wife's beneficiaries were not bound by an arbitration agreement she signed when she entered the home and therefore were not required to arbitrate their wrongful claims against the nursing home.

"We find that such an arbitration agreement does bind the decedent's beneficiaries with respect to their wrongful death claims and accordingly reverse the Court of Appeals," the opinion says.

According to briefs filed in the case, from April 2013 until her death in April 2014, Lola Norton lived at PruittHealth-Toccoa nursing home, which is owned and managed by United Health Services of Georgia, Inc. While in the facility, Lola allegedly suffered injuries and harm, including falls, fractures, weight loss, and ultimately death. Following her death, her husband, Bernard Norton through his son and power of attorney, Kim Norton, filed a lawsuit in **Stephens County** Superior Court, claiming several causes of action including wrongful death, and alleging that all of Lola's injuries and death were the result of the nursing home's inadequate care and inadequate staff. The lawsuit was against PruittHealth, United Health Services and seven other defendants who are affiliates or employees of PruittHealth. In response, the defendants filed a motion asking the court to dismiss the case, or in the alternative, to stay the proceedings and

compel arbitration. The trial court granted their motion and compelled the entire case and all its claims to arbitration. Norton and his family appealed, and the Court of Appeals partially reversed the trial court's ruling. While the Court of Appeals found that the estate claims were barred by the arbitration agreement, it reversed the trial court's order compelling arbitration of the wrongful death claim. The appellate court found there was no evidence that Lola's wrongful death beneficiaries had entered into an agreement of their own to arbitrate their separate, distinct claims. United Health Services, PruittHealth and the others then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether an arbitration agreement signed by a person during her lifetime, which binds her and her estate to arbitration in the event of a dispute, is enforceable against her beneficiaries in a wrongful death action.

Today's opinion points out that under the arbitration agreement that Lola's son, Kim, signed as her power of attorney when she first went into the home stated that "all claims or controversies arising out of or in any way relating to…the Patient/Resident's stay at, or the care or services provided by, the Healthcare center…" were subject to arbitration. "The parties also expressly agreed that the arbitration agreement would apply to wrongful death beneficiaries," the opinion says. Therefore, "This agreement binds Bernard and any other of Lola's wrongful death beneficiaries and requires them to arbitrate their claims." Furthermore, a number of court decisions have recognized that settlements made by a now-deceased person during that person's lifetime "have bound their beneficiaries, despite the fact that the beneficiaries were not parties to the agreements in question."

"[T]he trial court's grant of the defendants' motion to compel arbitration was proper, and the Court of Appeals erred by holding otherwise," the opinion concludes.

Attorneys for Appellants (United): Jason Bring, W. Jerad Rissler
Attorneys for Appellees (Nortons): James McHugh, Michael Fuller, Jr., A. Lance Reins, D. Bryant Chaffin

GRANGE MUTUAL CASUALTY COMPANY V. WOODARD ET AL. (S16Q1875)

The Supreme Court of Georgia has interpreted a Georgia statute in favor of a couple whose daughter was killed in a car wreck. An insurance company sued the couple in federal court for breach of contract after the couple refused to acknowledge that the parties had settled because, according to the couple, the company failed to pay them by the deadline outlined in the couple's settlement offer.

"We conclude that Georgia Code § 9-11-67.1 does not prohibit a claimant from conditioning acceptance of a Pre-Suit Offer upon the performance of some act, including a timely payment," says today's 7-to-2 ruling, written by **Justice Nels Peterson**. "We leave it to the Eleventh Circuit to apply this principle to the facts of this case."

According to briefs filed in the case, in March 2014, Thomas Dempsey, an Ohio resident, was driving in Georgia with his wife when he collided with a vehicle driven by Boris Woodard who had with him his adult daughter, Anna. Both Woodards were severely injured, and Anna subsequently died from her injuries. Dempsey was charged with vehicular homicide. Dempsey had liability insurance with Grange Mutual Casualty Co. that included bodily injury liability limits of $50,000 per person and $100,000 per accident. Dempsey's coverage would therefore allow for a $50,000 recovery payment to Boris Woodard and his wife, Susan, in a wrongful death claim, and a $50,000 recovery payment to Boris for his injuries. As is customary, the

Woodards' attorneys offered the insurance company the chance to settle the claims by paying the policy limits. On June 19, 2014, the Woodards sent a "time-limited demand," or settlement offer, to Grange.

At issue in this case is the interpretation of Georgia's new settlement-demand statute (Georgia Code § 9-11-67.1), which became effective July 1, 2013. It states that any pre-suit offer prepared by an attorney to settle a legal claim arising from a vehicle wreck that causes injuries or death must be made in writing and contain five "material" terms, including the time by which the offer must be accepted, which cannot be less than 30 days from receipt of the offer; the amount of payment expected; the parties that will be released from liability once the offer is accepted; and the specific claims from which they will be released. The statute says the recipients of the offer may accept it "by providing written acceptance" of the terms. The statute also says: "Nothing in this Code section shall prohibit a party making an offer to settle from requiring payment within a specified period; provided, however, that such period shall be not less than ten days after the written acceptance of the offer to settle."

In their June 19 settlement offer, entitled "Offer to Settle Tort Claims Pursuant to Georgia Code § 9-11-67.1…," the Woodards gave an 11-item list of requirements with which Grange would have to comply to accept the settlement offer. A statement preceding the list and typed in bold said: "The following items must be noted and fully and strictly complied with in order to accept this offer." Among the items: "Pursuant to Georgia Code § 9-11-67.1, you have 30 days from your receipt of this offer to accept it," and "If we do not actually receive a timely acceptance, this offer will be deemed rejected…." The fourth and fifth items involved the two $50,000 checks, and said that each "must be made payable" to the Woodards and their attorney within 10 days after their written acceptance of the offer to settle. Each of these two items ended with the sentence: "Timely payment is an essential element of acceptance." Under the offer, Grange had until July 23 to accept. On July 22, Grange's senior claims representative, Heather Conn, mailed a letter accepting the settlement offer. She then had 10 days – or until Aug. 1 – to make the payments. In a July 29 email to the Woodards' attorney, Conn said the checks were being issued that day. She then ordered the two settlement checks through Grange's automated claims payment system, which is the company's routine practice for ordering checks to pay claims. The adjusters never see the checks. However, by Aug. 12, the checks had still not arrived. Conn later determined there had been a glitch in the computer program and part of the address of the Woodards' lawyer apparently had been cut off. Conn stopped payment on the checks and reissued new ones, along with copies of screenshots confirming the July 29 issuance of the original checks. Under their settlement offer, the Woodards had agreed to a limited release of their claims against the Dempseys and Grange in exchange for payment of the $100,000 policy limit. But the Woodards refused the late reissued checks, and their attorney said they were rejecting Grange's untimely response to the settlement offer. Their attorney informed Grange they would be filing a lawsuit against Grange in the near future.

On Oct. 10, 2014, Grange sued the Woodards in the U.S. District Court for the Northern District of Georgia for breach of the settlement contract, arguing that it had a binding and enforceable settlement agreement once it sent them its written acceptance letter of July 22. Furthermore, the company argued it had performed its duties with respect to payment when it issued the checks on July 29 within the 10-day time limit. The Woodards claimed no settlement contract was formed because timely payment was a condition of acceptance of their June 19

offer and therefore Grange had never accepted the settlement offer. The district court ruled in the Woodards' favor, concluding that the parties never formed a contract. The district court agreed with the Woodards that § 9-11-67.1 does not prohibit a party from requiring payment as a condition of acceptance of a settlement offer and that the Woodards had made the timely payment a condition of acceptance of their offer. The district court also ruled that "payment" required more than writing checks. Grange then appealed to the U.S Court of Appeals for the Eleventh Circuit. Because no court had yet interpreted Georgia's new § 9-11-67.1 statute, the federal appellate court sent four questions to the state Supreme Court to answer before it makes a final ruling in Grange's appeal. Among them is whether, under Georgia law, the parties entered a binding agreement when Grange accepted the Woodards' offer in writing.

"There is no enforceable settlement between parties absent mutual agreement between them," says today's 22-page majority opinion. "To that end, an answer to an offer will not amount to an acceptance, so as to result in a contract, unless it is unconditional and identical with the terms of the offer."

"Similarly, it is also a fundamental principle of contract law that 'an offeror is the master of his or her offer, and free to set the terms thereof,'" the majority opinion states. "Reading the statute consistent with those principles, we do not equate the phrase "written acceptance" with necessarily effectuating a binding settlement, as the dissent does. Rather, written acceptance of Pre-Suit Offers is necessary to effectuate a binding settlement, but whether it is sufficient depends on the offer; if the recipient of a Pre-Suit Offer is asked to do something more to accept, the parties do not have a meeting of the minds if the recipient does not also perform that action."

The majority agrees with Grange that the language of the settlement statute means a Pre-Suit Offer must be accepted in writing, at least as to the five terms listed in subsection (a). "We do not agree that this language means that a Pre-Suit Offer cannot also require some additional act to effectuate acceptance, however."

"Yes, Georgia Code § 9-11-67.1 permits 'unilateral' contracts whereby Pre-Suit Offers may demand acceptance in the form of performance (in addition to the statutorily mandated written acceptance) before there is a binding enforceable settlement contract," the opinion says. And "we conclude that § 9-11-67.1 does not preclude a Pre-Suit Offer from demanding timely payment as a condition of acceptance. However, we respectfully decline to answer the Eleventh Circuit's questions to the extent that they call us to decide the ultimate issues in the case" – whether the parties entered into a binding settlement agreement and if they did reach an agreement, the consequences. "We do not reach the merits of the underlying case; instead, we answer the questions posed to us only in a general sense, not as applied to the specific facts and circumstances of this ongoing litigation in federal court."

Justice Harold Melton dissents, writing that the "plain language of § 9-11-67.1 (g) prohibits a claimant from conditioning acceptance of a Pre-Suit Offer upon the making of a timely payment." A "straightforward reading" of the statute "reveals that the General Assembly intended to separate the payment component of an already formed settlement agreement from the acceptance of an offer that creates an enforceable settlement agreement in the first instance. Indeed, a party making an offer to settle may only 'requir[e] payment within a specified period [of not less than 10 days] *after* the written acceptance of the offer to settle' has already taken place," says the dissent, which is joined by Justice Keith Blackwell. "In short, § 9-11-67.1 (g) creates a two-step process with respect to settlement agreements in the specific circumstances

covered by the statute: step one is to create an enforceable settlement agreement through a conforming Pre-Suit Offer and the acceptance of that offer; and step two allows a claimant to require payment on the now binding settlement agreement within a time frame of no less than ten days." As the Eleventh Circuit noted in this case, "In enacting § 9-11-67.1, the General Assembly reportedly sought to reduce bad-faith claims by giving insurance companies adequate time to investigate claims and offers before having to decide whether to settle." By allowing the plaintiffs in this decision to require payment as a condition precedent to the "acceptance" of the Pre-Suit Offer, the majority has misinterpreted the statute and "re-opened the door for 'plaintiffs to present settlement offers with impossible deadlines [that] expose the insurance company to potential bad-faith claims' even where, as here, the insurance company accepted the non-conforming Pre-Suit Offer in its written response and sought to secure prompt payment. Because the Legislature has made clear that it wished to close that door, and because re-opening it runs directly contrary to the plain language of § 9-11-67.1 and the intent of the Legislature, I must respectfully dissent from the majority."
Attorney for Appellant (Grange): Thomas Allen, III
Attorneys for Appellees (Woodards): James Sadd, Richard Dolder, Jr.

****

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

* Eric Lamont Bolling (Gwinnett)	**BOLLING V. THE STATE (S16A1674)**
* Trey Lorenz Dinkins (Houston Co.)	**DINKINS V. THE STATE (S16A1850)**
* Willie Moses Green (Cobb Co.)	**GREEN V. THE STATE (S16A1842)**
* Corrick Johnson (Terrell Co.)	**JOHNSON V. THE STATE (S16A1514)** (The Supreme Court has upheld Johnson's murder conviction but thrown out his aggravated assault conviction for sentencing purposes as state law prohibits a defendant from being convicted of more than one crime if one crime is included in another. And here, the aggravated assault is included in the malice murder count because they are proved by the same set of facts.)
* David Naji (Fulton Co.)	**NAJI V. THE STATE (S16A1489)**
* Michael Naji (Fulton Co.)	**NAJI V. THE STATE (S17A0503)** (The Supreme Court has upheld both Naji brothers' murder convictions and life prison sentences, but it is sending their cases back to the trial court to add sentences for possession of a firearm by a convicted felon. The trial court erroneously merged the brothers' convictions for that crime into their malice murder convictions. But because the firearm crime

requires proof of elements not included in malice murder, "these convictions did not merge with the murder convictions," the opinion says.)

* KeVaughn Rainwater (DeKalb Co.) **RAINWATER V. THE STATE (S16A1532)**