

Navigating Default Judgments: The Role of a Claims Representative When Seeking to Open Default

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Common Reasons for Default

- Insured does not recognize the significance of the documents and fails to notify insurer
- Insured notifies insurer, but insurer fails to assign counsel
- Notification of service goes to wrong department and insured does not realize it has been served
- Counsel fails to timely answer



Is the Case Really in Default?



- O.C.G.A. § 9-11-12 (a): A defendant shall serve his answer within **30 days** after the service of the summons and complaint upon him, unless otherwise provided by statute.
- O.C.G.A. § 9-11-4(h): The person serving the process shall make proof of such service with the court in the county in which the action is pending within five business days of the service date. **If the proof of service is not filed within five business days, the time for the party served to answer the process shall not begin to run until such proof of service is filed.**
- Impact of COVID-19 statewide judicial emergency orders
 - If defendant was served between March 13, 2020 and July 13, 2020, the answer deadline = Aug. 13, 2020
 - 15 days to open default as matter of right pursuant to O.C.G.A. § 9-11-55(a) = Aug. 28, 2020
 - If defendant was served after July 13, 2020, the normal 30-day response deadline applies

Opening Default as a Matter of Right

- O.C.G.A. 9-11-55(a): If in any case an answer has not been filed within the time required by this chapter, the case **shall automatically become in default** unless the time for filing the answer has been extended as provided by law. The default may be **opened as a matter of right by the filing** of such defenses within 15 days of the day of default, upon the payment of costs.
 - Costs = Court costs paid by plaintiff to date (i.e., filing fee)
- Claim representative actions
 - Review/forward courtesy copy of complaint provided by plaintiff's counsel (if applicable)
 - Quickly assign counsel
 - Time is of the essence!!



Default is Automatic, but Default Judgment Must Be Granted

- Default ≠ Default judgment
 - While a case automatically goes into a default once an answer is not timely filed, the court must enter a default judgment
 - O.C.G.A. 9-11-55(a): Default judgment can be entered by court anytime after the 15-day “grace period” expires
- Liquidated damages (fixed formula or monetary amount, i.e. breach of contract) → No hearing need
- Unliquidated damages (pain/suffering, loss of enjoyment) → Hearing required
- Why does this matter?
 - Default only = Motion to open default
 - Default judgment = Motion to set aside judgment AND motion to open default
- Time is of the essence!

Motions to Open Default

- O.C.G.A. § 9-11-55(b): At any time before final judgment, the court, in its discretion, upon payment of costs, may allow the default to be opened for providential cause preventing the filing of required pleadings or for excusable neglect or where the judge, from all the facts, shall determine that a proper case has been made for the default to be opened, on terms to be fixed by the court. In order to allow the default to be thus opened, the showing shall be made under oath, shall set up a meritorious defense, shall offer to plead instanter, and shall announce ready to proceed with the trial.

- Procedural prerequisites

- Payment of costs
- Showing made under oath
- Meritorious defense
- Offer to plead instanter
- Ready to proceed with trial

- Grounds

- Providential cause
- Excusable neglect
- Proper case

Motion to Open Default – Procedural Prerequisites

- Payment of costs
- Showing made under oath
 - Verified answer
 - Affidavits based upon personal knowledge
- Meritorious defense
 - The defenses presented are not required to completely defeat the plaintiff's claim, but must demonstrate that the outcome of the suit may be different if relief from default is granted
 - General denials and statement that meritorious defenses exist aren't enough
 - Need to tell the court what specific facts and details exist to contest liability or damages!
- Offer to plead instanter
 - “We’re ready to go!”
 - File the answer with the motion to open default
- Announce ready to proceed with trial

Motion to Open Default – Providential Cause Ground

- Events over which a party/attorney had no control: Illness, death, acts of God
- Courthouse closure – Less common now due to civil e-filing
- Atlanta “Snowmageddon” 2014



Motion to Open Default – Excusable Neglect Ground

- “Excusable neglect” refers to cases where there is a “reasonable excuse” for failing to answer
 - It is not determined by any fixed rule, but rather by the circumstances of each individual case within the discretion of the judge



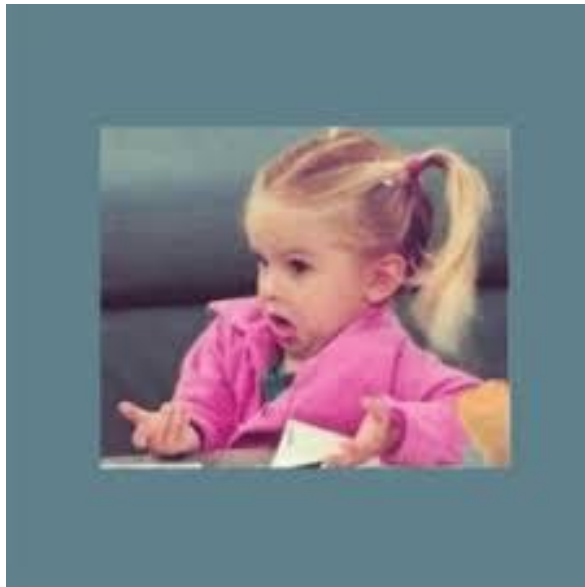
- What is **not** excusable neglect?
 - Failing to read the lawsuit
 - Ignorance of the law and response deadline
 - Sending the complaint to your insurance company, but never following up to make sure counsel was retained or an answer was filed
 - Busy schedule in busy office

Motion to Open Default – Proper Case Ground

- Broadest ground: “As if reaching out to take in every conceivable case where injustice might result if the default were not opened”
- Factors to consider:
 - Whether the defaulting party acted promptly once it learned of the default
 - Whether the plaintiff would be prejudiced if default is opened
 - Whether the interests of justice would be served by opening default
- The fact that plaintiff will have to prosecute his claim on the merits is not sufficient prejudice

Role of Claims Representative in Common Default Scenarios

Scenario 1: Insured does not recognize the significance of the documents and fails to notify insurer



“No one told me I was supposed to DO SOMETHING with these papers!”

- Quickly assign counsel
 - Case may still be within 15-day grace period to open default as a matter of right
 - Plaintiff’s counsel may consent to opening default if there are potential coverage issues
 - Case may be in default, but judgment may not have been entered yet

Role of Claims Representative in Common Default Scenarios

Scenario 2: Notification of service goes to wrong department and insured does not realize it has been served



- Quickly assign counsel
- Help untangle the web of what happened by instructing insured to cooperate in counsel's investigation

Role of Claims Representative in Common Default Scenarios

Scenario 3: Insured notifies insurer, but insurer fails to assign counsel

- Quickly assign counsel
- Don't wait to complete internal investigation
- Be forthcoming in conversations with counsel about reason for default/failure to assign counsel
- Own responsibility for the default with the court by submitting affidavit in support of motion to open default
 - Even if the court doesn't apply to "excusable neglect" standard (because the insured did not follow up), it will be more likely to find it to be a "proper case" if the actual defendant is not at fault



Role of Claims Representative in Common Default Scenarios

The overarching theme is to act quickly and accept responsibility if responsibility lies with the insurer!

Once a case goes into default, each passing day makes a difference. Quickly assign counsel, quickly transfer the claims file and quickly respond to any requests counsel may have with regard to filing the motion to open default. Help us tell the story!



THANK YOU!



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