

BAD FAITH BLOG

# Virginia Insurers Owe No Pre-Judgment Duty To Evaluate, Adjust And Settle UM Claims

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Manu, a GEICO insured, filed suit against his uninsured motorist (UM) insurance carrier to recover for statutory bad faith failure to pay the UM policy limit until after the insured obtained a judgment against the uninsured tort-feasor. The insured's bad faith claim was dismissed. The Supreme Court of Virginia affirmed the dismissal finding the insurance company owed no duty to settle the insured's demand until the insured obtained a Judgment against the uninsured tort-feasor. Therefore, the insured had no claim subject to the covenant of good faith until the insurance carrier had a contractual liability to pay the UM claim.

*Manu v. GEICO Casualty Company*

The insured was a passenger in a vehicle that was involved in a multi-vehicle accident. The driver of the vehicle had a personal auto insurance policy with a \$25,000 limit. The insured passenger had a personal auto insurance policy with GEICO which provided UM coverage with a \$25,000 limit.

The insured passenger incurred approximately \$27,000 in medical bills and \$6,000 in lost wages as a result of the accident. The insured passenger sued the driver and "John Doe" for the accident. Discovery showed that the John Doe driver was the cause of the accident. Therefore, the insured passenger submitted this information to GEICO and made a \$25,000 UM claim.

Rather than settling, GEICO elected to defend the John Doe driver. Prior to trial, the insured passenger offered to settle the case for \$12,500, but GEICO offered \$5,000. One week before trial, the insured passenger settled his lawsuit against the driver for the driver's liability policy limit of \$25,000 and proceeded to trial solely against John Doe. The jury returned a verdict of \$68,528.24 in favor of the insured passenger and against John Doe.

Following the jury verdict, the insured passenger filed a Complaint against GEICO alleging it had a duty to evaluate, adjust and settle his uninsured motorist claim in good faith, a duty GEICO breached when it failed to settle within the \$25,000 policy limit when given the opportunity before trial. The insured passenger alleged GEICO breached its statutory duty to act in good faith. Therefore he sought \$18,528, the amount of the unpaid damages awarded by the jury, plus statutory interest and attorneys' fees.

The trial court eventually granted GEICO's motion to dismiss finding Manu had no right to bring an action for statutory bad faith because he had not obtained a judgment against John Doe when GEICO refused to settle. Manu appealed arguing the Virginia statutes imposed a duty of good faith upon the UM carrier to evaluate, adjust, and settle his demand for UM coverage, before Manu obtained judgment against the UM tort-feasor.

The Virginia Supreme Court analyzed the relevant statutes and the dictionary definition of the phrase "legally entitled to recover" used in the statute which obligates the UM carrier to pay. Based upon the statute's plain meaning, the Virginia Supreme Court held that a UM carrier's duty to pay its insured damages arises only after a court has entered judgment against the UM. Because entry of a judgment against the UM was a predicate to the UM carrier's duty to act in good faith in evaluating, adjusting, and settling an insured's UM claim, GEICO could not be found to have breached its statutory duty until judgment was entered against the UM. It was undisputed GEICO paid the entire amount of its policy limits once the judgment was entered. However, the Virginia Supreme Court noted that in all other first party automobile claims (e.g. non-UM claims), there is a pre-judgment duty of good faith.