

# North Carolina Litigation Update: No Bad Faith in Litigating UIM Claim

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## [\*Elliott v. American States Insurance Company\*](#)

The Fourth Circuit has ruled that UIM carriers are not obligated to make settlement offers or settle claims with their insureds before a judgment is entered against the at-fault party. Furthermore, a UIM insurer who decides to not make a settlement offer before the judgment is entered does not commit a per se violation of North Carolina's Unfair and Deceptive Trade Practices Statute.

## Case Summary

On January 16, 2013, the Plaintiff, Loretta Elliott, was in an automobile accident with Michael Jones and she alleged that she suffered permanent bodily injuries as a result. Elliott had an insurance policy with American States Insurance Company ("ASIC") with UIM coverage of \$100,000. Jones had a policy with State Farm with liability coverage up to \$30,000.

Elliott submitted a demand package to State Farm seeking just under \$235,000 in damages, and State Farm paid its policy limits of \$30,000. Elliott then demanded ASIC pay her \$70,000, which was the remaining amount of coverage under her UIM policy. ASIC declined to make an offer to settle the claim.

In turn, Elliott filed suit against Jones (*Elliott v. Jones*), and ASIC exercised its right to defend the case as an unnamed Defendant. Per the policy, the case proceeded to arbitration, and the arbitration panel awarded Elliott \$90,000 plus prejudgment interest and costs. Plaintiff's award was entered as a \$68,010.17 judgment, which deducted the sums that State Farm had previously paid. ASIC promptly paid the full amount of the judgment.

Elliott then filed a new action directly against ASIC for bad faith. Elliott alleged ASIC's handling of her claim violated the unfair claims settlement practice (N.C. Gen Stat. § 58-63-15(11)), which allows for treble damages and attorney fees under N.C. Gen Stat. § 75-1.1. Elliott alleged that ASIC made "token offers" to settle after she had filed suit, but prior to the arbitration hearing, which Elliott rejected "forcing her to initiate arbitration in order to have any of her claim paid."

ASIC removed the case to Federal Court and moved to dismiss pursuant to Rule 12(b)(6). The Federal District Court granted ASIC's motion.

Elliott appealed to the 4<sup>th</sup> Circuit, and the Court affirmed the dismissal in favor of ASIC.

The Appellate Court explained that under North Carolina law, UIM liability is still 'derivative and conditional' in that Plaintiff must be 'legally entitled to recover damages' from the motorist to recover UIM funds. To be 'legally entitled to recover damages,' a Plaintiff must not only have a cause of action but a remedy by which he can reduce his right to damages to judgment. Additionally, the amount due under the UIM policy is conclusively determined in litigation against the motorist.

Elliott alleged ASIC violated subsection (f) of 58-63-15(11) by not attempting in good faith to effectuate prompt, fair and equitable settlements of claims *in which liability has become reasonably clear...*" However, the court held that, "Elliott did not plausibly state a claim ...because liability did not become *reasonably clear* until after a judgment was entered in *Elliott v. Jones*, and, consequently, ASIC had no obligation to settle Elliott's claim before this time."

The court also held that ASIC had not violated 58-63-15(11)(g) because no amount was due to Elliott until liability had been determined.

Finally, the Court denied Elliott's claim under 58-63-15(11)(h) stating "a reasonable person would have believed she was entitled to either the maximum coverage provided under the policy, or the amount ultimately recovered, before the fact or amount of liability had been determined . . . . Additionally, it cannot be that an insurance company per se engages in an unfair or deceptive trade practice simply because the settlement offers made are less than the final judgment rendered—especially when, as here, the amount to which Elliott was entitled was first determined in arbitration, after all settlement offers had been made."

Bad faith case dismissed!

**For questions regarding this case, please contact one of MGC's North Carolina litigation [attorneys](#).**

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