

INSURANCE LAW BULLETIN

Re: Life Insurance Policy Beneficiary Cannot Assert Bad Faith Claim Under Virginia Code Annotated § 38.2-209

In a case of first impression involving a long-standing Virginia statute, the United States District Court for the Eastern District of Virginia found a beneficiary of a life insurance policy failed to state a claim for statutory bad faith and, therefore, could not recover attorney's fees under Va. Code Ann. § 38.2-209A.

Plaintiff filed an action seeking to recover as a beneficiary under a life insurance policy. Plaintiff also attempted to state a claim under Va. Code Ann. § 38.2-209A, which permits recovery of attorney's fees and costs if the insurer is "not acting in good faith." The Virginia statute authorized an "insured individual to sue his insurer" and permitted recovery by the "individual insured."

The insurer moved for partial judgment on the pleadings because both the complaint and policy identified plaintiff as "beneficiary," not the "insured individual." Plaintiff opposed the motion arguing the statute should be broadly interpreted as remedial legislation to include beneficiaries. The United States District Court for the Eastern District of Virginia ruled in favor of the insurer and granted the motion for partial judgment on the pleadings.

If you have any questions concerning this law bulletin or need legal assistance in Virginia, Maryland, Pennsylvania, or the District of Columbia, please contact either Michael E. McCabe, Jr. (mmccabe@fblaw.com) or Bryan D. Bolton (bbolton@fblaw.com), who represented the insurer in this matter.

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