

WASHINGTON CASE UPDATE

Insurers Uneasy About Electronic Document Delivery

From the desk of Kyle Riley: In the digital age, many businesses are transitioning to paperless document delivery, including insurers. What hazards face insurers who provide policyholders with a paperless delivery system and does paperless delivery meet the statutory requirements imposed on insurers?

Claims Pointer: Despite having an electronic record of the insured's election to receive all documents via the insurer's paperless system, opposing testimony by the insured that they only agreed to receive correspondence, and not policy or billing documents, was sufficient to survive summary judgment. Having determined that summary judgment was inappropriate in this case, the court did not address whether electronic delivery satisfies the requirements that RCW 48.18.292 imposes on insurers.

case in point...

Layman v. 21st Century North American Ins. Co., 70540-7-I, 2014 WL 3360297 (Wash. Ct. App. July 7, 2014) (Unpublished)

Seth and Molly Layman (the Laymans) sued 21st Century North American Insurance Company (21st Century) after 21st Century denied coverage for an automobile accident involving the Laymans' son. 21st Century's denial of coverage was predicated on the grounds that the Laymans' policy with 21st Century had lapsed prior to the accident. In their lawsuit, the Laymans alleged, among other things, that 21st Century had failed to inform the Laymans of renewal of their policy pursuant to RCW 48.18.292. In relevant part, RCW 48.18.292 states that insurers must renew contracts for insurance unless

"at least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof"

21st Century provides its policyholders with the option of a paperless delivery system. An election of some or all of the categories of documents available for electronic delivery would result in the selected categories of documents not being sent by US mail. A policyholder's electronically delivered documents were accessible by signing into the 21st Century website. The Laymans enrolled in 21st Century's paperless delivery system and 21st Century electronically posted a policy renewal offer the month following the enrollment. The offer required the Laymans to pay a renewal payment by a certain date to avoid expiration of their policy. Once the renewal offer was posted, a generic email was sent to the Laymans notifying them

that documents were available for their review online. The email did not reference the nature of the documents or the subject of policy renewal. When 21st Century did not receive the Laymans' policy renewal premium, 21st Century posted a second billing invoice. Again, a generic email was sent to the Laymans informing them that additional documents were available online for review. 21st Century never received the Laymans' premium. Approximately a month later, the Laymans' son was involved in an accident. 21st Century denied coverage, and the Laymans brought suit. At trial, both parties filed cross motions for summary judgment. 21st Century's motion was granted and the Laymans appealed.

On appeal, the Laymans claimed that there was a genuine issue of material fact about the types of documents the Laymans agreed to receive electronically and whether 21st Century could comply with the requirements of RCW 48.18.292 by electronic delivery. Addressing the first issue, 21st Century argued that the Laymans agreed to receive policy documents, billing documents, and correspondence documents via the paperless system. To support their contention, 21st Century included logs of their paperless delivery interface that indicated which documents the Laymans had elected to receive electronically, as well as testimony regarding how enrollment in the paperless delivery system works. Opposing 21st Century's position, the Laymans testified that they only elected to receive "correspondence" electronically, not policy or billing documents. The appellate court concluded that the Laymans' testimony, unsupported by documentary evidence, was enough to create a genuine issue of material fact precluding summary judgment. As such, the court reversed and remanded the case and did not reach the issue of whether the requirements of RCW 48.18.292 could be satisfied by electronic documents.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.



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