SMITH FREED & EBERHARD P.C.

WASHINGTON CASE UPDATE

case in point...

Inaction by Insured Makes Order of Default Difficult to Set Aside

From the desk of Kyle Riley: When a defendant ignores service of process, believing that their insurer will handle the lawsuit on their behalf, will an order for default be set aside? Read on to learn when an insured's inaction is inexcusable according to Washington's Division One Court of Appeals.

Claims Pointer: The court makes it clear in this unpublished opinion that it will not set aside an order for default absent substantial evidence of excusable negligent and due diligence. Assuming your insurer will answer on your behalf, without notifying them that you have received the summons and complaint, may not suffice.

Mednikova v. Morse, 70863-5-I, 2014 WL 4067921 (Wash. Ct. App. Aug. 18, 2014) (unpublished)

Inna Mednikova (Mednikova) was injured in an automobile accident caused by Mare Morse (Morse). For two years, Morse's insurer engaged in settlement negotiations with Mednikova's attorney. The settlement negotiations were unsuccessful, and shortly before the statute of limitations ran, Mednikova filed suit against Morse. Morse was personally served with the summons and complaint, but did not inform her insurance company of the service. When Morse failed to timely respond, Mednikova moved for an order of default, which the court granted. After the insurance company learned of the suit and order of default, it retained counsel for Morse and filed a motion to set aside the order. At the hearing on Morse's motion, the trial court also considered Mednikova's motion for entry of a default judgment. The trial court denied Morse's motion to set aside the order of default and entered a default judgment against Morse. Morse appealed, arguing that, because she believed that her insurance company would respond to the summons and complaint and because the process server implied that she did not need to take action, the trial court abused its discretion when it did not set aside the order of default or vacate the default judgment.

Under Washington's civil rules, an order of default may be set aside for a showing of good cause. Good cause requires a showing of excusable neglect and due diligence by the defendant. In the instant case, Morse's declaration stated that she "did not take any personal action after receiving the paperwork." However, she claimed that her inaction was the result of the process server telling her that she "need not worry about [the documents]" because they were "only for a 'tort.'" Morse's contention, however, is counter to the declaration of the process server, which stated that the process server "never" tells defendants that they should not worry about the documents he serves. Furthermore, the plain language of the summons required an answer to the complaint within 20 days of service and Morse had provided no testimony as to why she relied on the alleged statements of the process server instead of the clear language of the summons. Morse also asserted that she did not take any action regarding the summons and complaint because the insurance company was handling the claim and she believed that they would "continue to act on [her] behalf and to protect [her] interests." Yet Morse did not offer any explanation as to why she did not notify her insurance company of the summons and complaint. The trial court, after considering Morse's excuses, was entitled to reject them as lacking good cause. Instead, Morse's inactions constituted, at the very least, inexcusable neglect.

This matter is distinguishable from other Washington cases where the court has recognized as good cause a misunderstanding between an insured and insurer as to who is responsible for answering a complaint. Counter to this matter, in the other cases the insurer was aware that the lawsuit would be filed and failed to notify the insured what to do once the summons and complaint were received. Because Morse did not provide any testimony as to her prior conversations with her insurance company, or lack thereof, the prior cases were distinguishable. Additionally, the Washington Supreme Court has recognized good cause when there has been a mistake as to who would represent the insured until insurance coverage was determined.

Morse argued that Mednikova's attorney should have informed the insurance company of the lawsuit, as they had been embroiled in settlement negotiations for two years, but Plaintiff's counsel was under no such duty. Service on Morse was enough and it was Morse who decided to ignore service of process. As such, the trial court did not abuse its discretion when it did not set aside the order for default or vacate the entry of judgment.

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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