

WASHINGTON CASE UPDATE

Insurers Have No Right to a Jury Trial in RCW 4.22.060 Reasonableness Hearings

From the Desk of Kyle Riley: This case affirms that insurers do not have a right to a jury trial in a RCW 4.22.060 hearing to determine the reasonableness of a settlement.

Claims Pointer: Insurers have no right to a jury trial in RCW 4.22.060 hearings to determine the reasonableness of a settlement, and that amount becomes the presumptive measure of damages in a future bad faith claim.

case in point ...

Bird v. Best Plumbing Group, in the Supreme Court of Washington, En Banc, No. 86109-9, --- P3d --- (October 25, 2012).

James Bird returned home from work and approached his house when a sudden burst of sewage erupted from the ground. The sewage went into his ears, eyes, nostrils, and mouth. Shocked and confused, Bird fell to the ground, cracked his elbow, and began vomiting. Shortly afterward, he developed migraines. An employee of Best Plumbing Group, LLC (Best) caused the sewage burst when he entered Bird's property without permission and cut a pressurized sewage pipe in three places. Best told Bird it would repair the line but failed to adequately fix it. Over the following eight months, sewage escaped from the pipe with every pump cycle. Bird alleged the sewage flow caused dangerous hillside instability on his property and extensive damage to his home because of toxic mold from sewage and moisture intrusion. Bird attributes a heart attack he suffered to the stress of physically removing sewage-saturated material from the property.

The city of Seattle ordered the mitigation stopped because of hillside stability concerns. The City ultimately approved a soldier-pile retaining wall with estimated costs of \$851,176.78. Bird had a homeowner's insurance policy with Allstate Insurance Company (Allstate) who paid Bird \$262,000 under his policy for home repairs and remediation. Bird filed a lawsuit

against Best alleging negligence and trespass. Farmers Insurance Exchange (Farmers) was Best's liability insurer who provided defense counsel without a reservation of rights. Allstate filed a subrogation claim against Best for the \$262,000 it previously paid to Bird for the retaining wall. The Bird and Allstate lawsuits were consolidated. The trial court eventually granted partial summary judgment to Bird on liability and proximate cause, leaving the issue of damages for trial. Best and Bird engaged in settlement negotiations and reached a settlement for a stipulated judgment of \$3.75 million that would include an assignment of claims by Best against their insurance company (Farmers).

After Farmers received notice of the settlement, Bird moved for a determination that the settlement was reasonable under RCW 4.22.060 (allowing for a hearing to determine the reasonableness of a settlement). Farmers' filed a motion to intervene, motion for a continuance, and motion for discovery which the court granted. However, the trial court denied Farmers' motion for a jury trial. After evaluating the damages claims, the trial court arrived at a total figure of \$3,989,914.83. Therefore, the trial court concluded the parties' \$3.75 million settlement was reasonable. There was no jury trial.

Farmers appealed the trial court's denial of the request for a jury trial and the reasonableness

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determination. The Washington Court of Appeals agreed with the trial court's determinations and denied its motion for reconsideration. Farmers petitioned for review by the Washington Supreme Court which was granted. The Supreme Court held that there was no right to a jury determination of reasonableness under RCW 4.22.060 because that statute created an equitable proceeding where there is no right to a jury trial. Thus the insurer did not have a constitutional right to a jury determination of reasonableness either at the reasonableness hearing or any subsequent bad faith action. However, the court appeared to suggest that the presumptive effect of the reasonableness determination could be overcome with a showing of fraud or collusion. Therefore, Farmers was not entitled to a jury trial. In addition, the court determined that the trial court did not abuse its discretion in finding the covenant judgment reasonable.

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