

WASHINGTON CASE UPDATE

case in point ...

Personal Attorneys Struggle to Collect Fees from Insurers

From the Desk of Kyle Riley: In this case, the Washington Court of Appeals held that Washington's six-year statute of limitations for claims brought on accounts receivable will not apply to a claim brought by an insured's personal attorney for unpaid legal fees, when the insurance policy does not address personal representation.

Claims Pointer: Personal attorneys retained by insureds will face difficulties in collecting their costs and fees from their clients' insurers unless such claims are brought within three years. Washington courts will not apply the six year statute of limitations for actions on accounts receivable when the only evidence offered by the personal attorney is a bill sent to the insurer.

Woodley v. USAA Casualty Ins. Co., In the Court of Appeals of the State of Washington, Division One, No. 68342-01 (July 8, 2013).

After being injured in a 2002 car accident, Hanoch retained Woodley, an attorney, to represent her in a subsequent personal injury action. The accident occurred when Hanoch was struck by a truck owned by Western Ports Transportation, Inc. ("Western Ports"). That collision forced Hanoch's car into another lane, where it was struck by a third vehicle, a car driven by the Carvers.

At the time of the accident, Hanoch was insured by USAA. After the accident, the parties' insurance companies disputed liability and took various investigative measures. A year after the accident, the Carvers filed a lawsuit against Hanoch and Western Ports. Woodley entered an appearance on behalf of Hanoch. USAA also assigned one of its attorneys to defend Hanoch under her policy. The two attorneys signed a "Notice of Association of Counsel," and Woodley actively participated in the case. The Carver lawsuit was arbitrated, and Western Ports was found to be 100 percent at fault. All claims were dismissed against Hanoch.

Hanoch's case against Western Ports ended with a settlement agreement that paid Hanoch \$110,000. Woodley received one-third of the settlement as part of his contingent fee arrangement with Hanoch. On January 31, 2005, Woodley sent a bill for approximately \$54,000 to USAA for his defense services. On March 9, 2005, Woodley again requested payment. USAA refused to pay Woodley. On January 7, 2011, Woodley filed a lawsuit against USAA to recover his defense costs. USAA moved for summary judgment on the ground that Washington's applicable three-year statute of limitations barred Woodley's claims. Woodley cross-moved for summary

judgment on two grounds.

First, Woodley argued that his invoice to USAA triggered a six-year statute of limitations under RCW 4.16.040(2), which addresses actions for accounts receivable. Second, Woodley argued that he was an intended third-party beneficiary of the insurance agreement between Hanoch and USAA. Under Washington case law, a six-year statute of limitations applies to claims brought by a third party beneficiary to a contract.

The trial court granted USAA's motion for summary judgment while rejecting Woodley's.

On review, the Court of Appeals found that Woodley's account receivable claim was improperly pleaded. Specifically, that theory was not raised until the summary judgment stage, when it should have been in Woodley's original complaint. The court was hesitant to adopt a six-year statute of limitations when the only thing that Woodley did was send an invoice to USAA requesting payments.

The Court of Appeals also rejected Woodley's argument that he was a third party beneficiary of the insurance contract between Hanoch and USAA. Contracts are presumed to be for the benefit of the contracting parties, unless proved otherwise. Here, the Court found that Woodley had not overcome that presumption. He offered no evidence that USAA intended to reimburse Hanoch's personal attorney, Woodley, for his defense services. Additionally, the Court was not persuaded by Woodley's argument that he became a third party beneficiary to the Hanoch-USAA contract when USAA breached its duty to defend Hanoch. Washington case law states that the only parties with a right to sue for failure to defend are the insured and the insurance commissioner. There was simply no duty to defend that was owed to Woodley.

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