

WASHINGTON CASE UPDATE

When Will Courts Set Aside a Default Judgment?

From the desk of Kyle Riley: If a defendant notifies their insurance company of a lawsuit, but the insurance company fails to arrange a defense for the defendant, will the court set aside the default judgment? Read on to find out.

Claims Pointer: In this case arising out of a car accident, the Washington Court of Appeals held that when considering whether to set aside a default judgment, two important factors are whether the defendant has a prima facie defense to the judgment and whether the defendant's failure to appear was due to mistake, inadvertence, surprise, or excusable conduct. This case serves as a reminder on the importance of due diligence in arranging for a defense when insureds report a served lawsuit.

case in point...

VanderStoep v. Guthrie, No. 49597-0-II, Washington Court of Appeals Div. II (September 19, 2017)

Howie Guthrie ("Howie"), the son of Gary and Kathleen Guthrie (collectively "the Guthries"), was involved in a collision with Terry VanderStoep ("Terry"). Howie turned across oncoming traffic without yielding and crashed into Terry's car. Terry suffered a herniated disc in his lower back and injuries to his right knee and left shoulder. Following surgery, Terry was relieved of almost all symptoms, aside from minor aches and pains.

The Guthries reported the accident and claim to their insurer, American Family Insurance ("American Family"). American Family's adjuster reached out to the Terry's attorney to discuss settlement possibilities. Because the settlement negotiations were unsuccessful, Terry and his wife, Celeste (collectively "the VanderStoeps"), filed a complaint. After the Guthries received the complaint, they called American Family and informed the staff at the general claims department of the lawsuit. The Guthries followed up with two more phone calls and voicemails.

American Family failed to obtain representation, and the Guthries did not appear to defend the lawsuit. As a result, the VanderStoeps filed a motion for a default judgment. The court entered a default judgment, awarding over \$60,000 in medical expenses, \$12,000 in lost income and \$300,000 in noneconomic damages.

Two months later, American Family's adjuster contacted the VanderStoeps' attorney to continue settlement negotiations. Instead, she learned of the default judgment. The claims adjuster then obtained an attorney to represent the Guthries. The attorney filed a motion to set aside and vacate the default judgment, specifically the grant of noneconomic damages. When the trial court denied the motion, the Guthries appealed to the Washington Court of Appeals.

The Washington Court of Appeals reversed the trial court's decision. The court explained that when deciding whether to set aside a default judgment, *White v. Holm* provides a four-factor test which considers: (1) whether defendant provided substantial evidence to support a prima facie defense case, (2) whether the failure to appear was due to mistake, inadvertence, surprise, or excusable conduct, (3) whether defendant acted with due diligence after notice of the default judgment, and (4) whether plaintiff will not suffer a substantial hardship if the default judgment is vacated. The first two factors are primary, and the court focused on those two.

The court found that the Guthries submitted substantial evidence to support a prima facie defense to noneconomic damages. The court explained that the defendant must "provide affidavits that identify specific facts to support a prima facie defense." Allegations, speculations, and conclusory statements are insufficient. Instead, defendants must provide concrete facts to support their defense. To



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support their prima facie defense, the Guthries provided two progress notes from Terry's doctor. The progress notes provided that Terry was returning to his usual daily activities, his leg pain was resolved, and lower back discomfort was much better than prior to his surgery. The court found those notes to be concrete evidence of a potential prima facie defense to noneconomic damages.

The court next considered whether the Guthries' failure to appear in the lawsuit was due to mistake, inadvertence, surprise, or excusable conduct. The court explained that when the insurer is notified of the complaint being filed but fails to appear, the court is to focus on whether the defendant acted with excusable neglect. The court explained that the Guthries took appropriate steps to ensure that American Family would arrange to defend them in the lawsuit, such as calling three times and leaving two voicemails. The court found that Kathleen Guthrie reasonably understood that American Family would handle the case. Accordingly, the court held that the Guthries satisfied the second factor.

The court explained that because the Guthries' satisfied the first two factors and because there was no dispute over the third and fourth factor, the trial court had abused its discretion by denying the motion to set aside the default judgment. The appellate court set aside the noneconomic damages portion of the judgment and remanded to the trial court for further proceedings.

View full opinion at: <http://www.courts.wa.gov/opinions/pdf/D2%2049597-0-II%20Published%20Opinion.pdf>

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