Washington Case Update

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Washington Court of Appeals Allows Bad Faith and CPA Claim Against Adjuster

From the desk of Josh Hayward: When insurance adjusters allegedly act in bad faith or engage in unfair or deceptive acts, the insurance company can be exposed to bad faith claims or Consumer Protection Act ("CPA") violation claims. Can the individual insurance adjuster also be liable for bad faith or CPA claims? Read on to find out.

Claims Pointer: In this case arising out of a motorcycle vs. vehicle accident, the Washington Court of Appeals was asked to determine whether the insured could maintain a bad faith claim and CPA claim against the individual adjuster. The court determined that insurance adjusters may be liable for bad faith and CPA violations. The court's holding is a drastic departure from previous Washington court decisions, and going forward, adjusters should be aware that their conduct and actions may expose them to individual liability.

Keodalah v. Allstate Insurance Co., 75731-8-I, Washington Court of Appeals Div. I (March 26, 2018).

As a preliminary matter, appellate courts review a trial court's dismissal in this type of proceedings by assuming that the allegations contained in the plaintiff's complaint are true and accurate. This means that the facts presented by the court in this ruling and set forth below are likely to be disputed by the defendants. At this point, the following is only an allegation made by the plaintiff, and no factual determination has been made.

This cases arises out of a motor vehicle accident involving Moun Keodalah ("the insured") and an uninsured motorcyclist. The insured was crossing an intersection when he was struck by the motorcyclist. The motorcyclist was killed in the collision, and the insured suffered injuries. The Seattle Police Department's ("SDP") investigation found that "the motorcyclist was traveling between 70 and 74 m.p.h. in a 30 m.p.h. zone." SDP also determined that the insured was not on his cell phone. An accident reconstruction firm hired by the insured's insurance company, Allstate Insurance Company ("Allstate"), determined that the motorcyclist's excessive speed was the cause of the collision.

The insured requested that Allstate pay him the underinsured motorist ("UIM") policy limit of $25,000. Allstate rejected the offer, and countered with $1,600, on the grounds that it determined the insured was 70 percent at fault. After the insured questioned Allstate's evaluation, the offer was raised to $5,000. The insured filed a UIM claim against Allstate. An Allstate adjuster ("the adjuster") was designated as a 30(b)(6) representative. In Washington, a corporation's 30(b)(6) representative is an individual designated to be deposed on the corporation's behalf regarding certain issues. From the opinion, it is unclear what other aspects of the claims process that adjuster was individually involved in. According to the facts alleged by the insured, the adjuster initially maintained that the insured ran the stop sign and was on his phone, although later, the adjuster admitted that this was incorrect.

Allstate offered the insured $15,000 before trial; but the insured countered with their original $25,000 policy limit demand. At trial, the jury determined that the

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motorcyclist was 100 percent at fault, and awarded the insured $108,868. The insured then filed a second suit against Allstate and the adjuster, alleging IFCA violations, bad faith, and CPA violations. The trial court dismissed the claims against the adjuster, and certified the case for discretionary review by the Washington Court of Appeals.

The Washington Court of Appeals granted discretionary review to answer three questions: (1) whether IFCA provides for a private cause of action, (2) whether individual adjusters may be liable for bad faith conduct, and (3) whether individual adjusters may be liable for CPA violations. After the court granted discretionary review, the Washington Supreme Court issued its decision in *Perez-Crisantos v. State Farm Fire & Casualty Insurance Co.,* holding that IFCA does not create a private cause of action for IFCA violations. [See our prior Case Update on *Perez-Crisantos* here]. The court stated that *Perez-Crisantos* foreclosed the insured's IFCA claim.

The Washington Court of Appeals then considered whether an individual adjuster may be liable for bad faith. The court looked to the text of RCW 48.01.030, which provides:

> The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

(emphasis added). The court took note of the fact that the statute requires "all persons" involved in insurance to act in good faith. The court then looked to RCW 48.01.070, which defines "persons" as "any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation." The adjuster was engaged in the business of insurance and had been acting as Allstate's representative. Accordingly, the court determined that the plain language of the statute imposed a duty of good faith on the adjuster, and as a result, the adjuster could be sued for violating the duty. Interestingly, the court implied that the statutory duty of good faith is imposed on the insureds as well.

The court also considered whether the adjuster could be individually liable for violation of the CPA. The court explained that the CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." The court looked to a previous Washington Supreme Court decision, *Hangman Ridge Training Stables, Inc. v. Safeco Title Insurance Co.*, which set out five elements a plaintiff was required to establish to prevail on a CPA claim:

> (1) an unfair or deceptive act or practice, (2) that act or practice occurs in trade or commerce, (3) a public interest impact, (4) injury to the plaintiff in his or her business or property, and (5) a causal link between the unfair or deceptive act and the injury.

The adjuster argued that there was a sixth element; a contractual relationship between the parties. The adjuster relied on a Washington Court of Appeals decision from 2004, *International Ultimate, Inc. v. St. Paul Fire & Marine Insurance Co.*, which stated, "[t]o be liable under the CPA, there must be a contractual relationship between the parties." The court found that International Ultimate's statement was unsupported by authority. Moreover, the court noted that in a 2009 Washington Supreme Court decision, *Panag v. Farmers Insurance Co.* of Washington, the Court expressly declined to add a

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sixth element requiring showing "proof of a consumer transaction between the parties." The court determined that it could not reconcile *International Ultimate* with the Washington Supreme Court's decision in *Panag*, and as such, the more recent Washington Supreme Court case controlled its analysis. As a result, the court determined that the insured did not need to show the existence of a contractual relationship with the adjuster. Consequently, the court held that "individual insurance adjusters can be liable for a violation of the CPA."

View full opinion at: *https://www.courts.wa.gov/opinions/pdf/757318.pdf*

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