



Court Finds Issues of Material Fact on Reasonableness of Insurer's Handling of UIM Claim

From the Desk of Josh P. Hayward: Numerous statutes in Washington require insurers to act in good faith when dealing with the insured's UIM and PIP claims. Among other requirements, acting in good faith requires an insurer to act "reasonably." In the event that the insurer's expert determines that the insured's medical condition was not caused by the accident but the insured's expert determined that it was, does the insurer act in bad faith by relying solely on the opinion of its own expert?

Claims Pointer: In this case arising out of a car accident, the insured sought UIM benefits claiming that the car accident caused her dermatomyositis condition. The insured's medical expert determined that the dermatomyositis condition was caused by the car accident, while the insurer's medical expert determine that it was "more likely than not" that the car accident did not cause the insured's condition. The Washington Court of Appeals determined that there was an issue of material fact as to whether it was reasonable for the insurer to rely solely on the opinion of its own medical expert when there was other credible evidence related to causation.

[*Leahy v. State Farm, 76272-9-1, Washington Court of Appeals Div. I \(May 21, 2018\).*](#)

Shannon Leahy ("Leahy") suffered soft tissue injuries in a car accident. Leahy first sought PIP benefits and later sought UIM benefits from her insurer, State Farm Mutual Automobile Insurance Company ("State Farm"). After the accident, Leahy was also diagnosed with dermatomyositis ("DM"). Leahy alleged that the condition was triggered or caused by the accident. State Farm's adjuster requested Leahy's medical treatment records for three years prior to the accident, none of which mentioned Leahy's dermatomyositis condition. Leahy provided State Farm with a report from her rheumatologist, which showed that the rheumatologist examined Leahy and concluded that her DM was caused by the accident. State Farm thus retained a rheumatologist, who opined that there was no medical support for a causal relationship between the accident and DM, and concluded that "it was more probable than not" that the accident did not cause

Leahy's DM. In light of the expert's opinion, State Farm presented Leahy with an offer to waive \$11,116 of its PIP subrogation. (Leahy had already settled for the tortfeasor's policy limits.)

Leahy rejected the offer and sued State Farm for her UIM policy limits. Leahy was awarded \$884,017.31 in damages. State Farm paid Leahy the \$100,000 policy limit. Leahy then amended her complaint to allege violations of bad faith, the Consumer Protection Act ("CPA") and Insurance Fair Conduct Act ("IFCA"). The court however granted summary judgment to State Farm and dismissed Leahy's claims. Leahy appealed.

On appeal, Leahy argued that the trial court should not have granted State Farm's summary judgment motion because there was a genuine question of material fact as to the reasonableness of State Farm's handling of her claim. The Washington Court of Appeals explained that generally, an insurer acts in bad faith if the "breach of the insurance contract was unreasonable, frivolous, or unfounded." (emphasis added). Denying coverage



Josh Hayward

jhayward@smithfreed.com

Phone: 206.576.7575

Fax: 206.576.7580

www.smithfreed.com

Washington Office

1215 4th Ave, Suite 900

Seattle, WA 98161



Washington Case Update



without reasonable justification constitutes bad faith. However, a disparity between an offer and the ultimate award alone does not establish bad faith or a CPA violation. The court noted that in the context of summary judgment, an insurer is entitled to summary judgment only when “reasonable minds could not differ that its denial of coverage was based upon reasonable grounds.”

Leahy argued that State Farm did not act reasonably as it failed to pay her UIM benefits and adequately investigate her claim. Specifically, Leahy argued that State Farm failed to consider the testimony of her rheumatologist and failed to show how it incorporated her expert’s opinion when evaluating her UIM claim. State Farm responded that it acted reasonable because it made its decision after consulting with a rheumatologist. State Farm noted that its expert’s medical opinion directly contradicted the findings of Leahy’s expert and its expert’s opinion was based on “other medical experts and accepted professional standards.”

After looking to similar Washington case law, the Washington Court of Appeals explained that the question in this case was “whether there is a genuine issue of material fact whether [State Farm] acted reasonably in relying solely on its expert on causation, while ignoring Leahy’s expert on causation.” Both rheumatologists were board certified and both were on faculty at the University of Washington. Accordingly, both experts appeared to be qualified to render opinions on the causation of the DM. Nevertheless, there was a clear conflict between the two experts on the causation of the DM, as Leahy’s expert found a causal link between the car accident and DM, while State Farm’s expert found no support for the causal link. The court held that in light of the qualifications of the experts and direct conflict, whether State Farm acted reasonably

was a factual question for the jury, and not one that State Farm could successfully answer on summary judgment.

The court noted that State Farm made a series of settlement offers. According to the court, the settlement offer amounts also raised a question as to “whether they were reasonable under the circumstances.” Once again, the court determined that these were factual questions that could not be decided on summary judgment. Accordingly, the Washington Court of Appeals reversed the trial court’s decision to grant summary judgment, and remanded the case for further proceedings.

Note: Because the Washington Court of Appeals reviewed the trial court’s decision to grant summary judgment, the Washington Court of Appeals did not determine whether State Farm’s handling of the UIM claim and decision to rely solely on its own expert’s opinion was or was not reasonable. Instead, the Washington Court of Appeals held that this was a question of fact, and as such, a question that the jury should decide. Accordingly, it is possible that State Farm will prevail on trial if the jury finds that State Farm acted reasonably.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/762729.pdf>



Josh Hayward

jhayward@smithfreed.com

Phone: 206.576.7575

Fax: 206.576.7580

www.smithfreed.com

Washington Office

1215 4th Ave, Suite 900

Seattle, WA 98161

