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Washington Court of Appeals Holds That an Insurance Adjuster May Be Individually Liable to an Insured for Bad Faith and Consumer Protection Act Violations

Transportation Legal Update

In late March, Division One of the Washington Court of Appeals resolved an interlocutory appeal addressing the question of whether a policyholder is entitled to assert claims for bad faith and violation of the Washington Consumer Protection Act (“CPA”) against an individual insurance adjuster. In *Keodalah v. Allstate Insurance Company*, ___ Wn. App. ___, 413 P.3d 1059 (2018), the Court of Appeals issued a groundbreaking opinion, holding that an individual insurance adjuster employed by an insurer may be potentially liable to a policyholder for bad faith and violation of the CPA. The court remanded the matter to the trial court for further proceedings consistent with the opinion.

The Policyholder Is Involved in a Serious Automobile Accident

In April 2007, plaintiff Moun Keodalah (“Keodalah”) was involved in a serious automobile accident in Seattle when his truck collided with a

motorcyclist who was traveling at an excessive speed through an intersection. Keodalah suffered personal injuries in the collision. The motorcyclist, who was uninsured, was killed by the impact.

The Seattle Police Department (“SPD”) conducted an investigation determining that the motorcycle was traveling at a speed in excess of 70 miles per hour in a 30-mile-per-hour zone. SPD further recovered Keodalah’s cell phone records and confirmed that Keodalah was not using a cell phone at the time of the accident.

Keodalah asserted a claim for uninsured motorist coverage (“UIM”) with his insurer, Allstate Insurance Company (“Allstate”). The Allstate policy provided UIM coverage with limits of \$25,000. In response to this claim, Allstate performed an investigation of the collision. Allstate interviewed witnesses who confirmed that (1) the motorcyclist had been traveling at an excessive speed, and (2) that Keodalah had properly stopped at the stop sign before proceeding into the intersection. Allstate further retained a professional accident reconstruction firm to analyze the accident. The accident reconstructionist concluded that the motorcyclist was traveling more than 60 miles an hour in a 30-mile speed limit, and that the motorcyclist’s “excessive speed” caused the collision.

Allstate Refuses to Pay Keodalah UIM Policy Limits and Keodalah Files Suit

Keodalah sought to recover the Allstate UIM policy limits because the motorcyclist was uninsured. Allstate’s representative refused to pay UIM policy limits and offered only \$1,600 to Keodalah. Allstate claimed that Keodalah was 70 percent at fault for the accident. Later, Allstate increased its offer only to \$5,000, claiming that Keodalah caused the accident. Keodalah filed suit in King County Superior Court against Allstate seeking to recover UIM policy limits under the Allstate Policy.

Keodalah’s counsel noted a Civil Rule 30(b)(6) deposition of Allstate, who designated Tracey Smith as its corporate representative. Notwithstanding the conclusions of the SPD and the analysis of Allstate’s accident reconstruction expert, Smith justified Allstate’s refusal to pay policy limits on the basis that (1) Keodalah had not stopped at the stop sign and (2) that Keodalah had been speaking on his cell phone at the time of the accident. There was no factual basis for Tracey Smith to make those assertions. At some later point, Smith conceded that her testimony had

been incorrect. Smith admitted that Keodalah had not failed to stop at a stop sign and that Keodalah had not been on his cell phone at the time of the accident. Nonetheless, Allstate's pretrial settlement offer was only \$15,000, and Keodalah rejected this offer.

The lawsuit was tried before a jury. Notably, Allstate claimed at trial that the policyholder Keodalah was 70 percent at fault for the accident, again ignoring the findings of the SPD investigation and the conclusions of Allstate's own reconstruction expert and factual investigation. The jury found that the deceased motorcyclist was 100 percent at fault for the accident and awarded Keodalah \$108,868.20 for medical expenses, lost wages and personal injuries that he suffered as a result of the collision.

A Second Bite at the Apple — Keodalah Files a Second Lawsuit Against Allstate and Tracey Smith Individually

After the jury verdict in the first trial, Keodalah filed a new lawsuit against Allstate and the insurance adjuster Tracey Smith individually. Keodalah asserted claims under the Washington Insurance Fair Conduct Act ("IFCA"), RCW 48.30.010-015, the CPA, RCW 19.86.020, and for bad faith claims handling pursuant to RCW 48.01.030. The trial court granted a dismissal of Keodalah's claims against Smith, and then certified the case for discretionary review (interlocutory appeal) to the Court of Appeals.

The Court of Appeals Grants Discretionary Review

The Court of Appeals granted discretionary review to consider whether an individual insurance adjuster may be liable for bad faith or for a violation of the CPA. Although the court also granted discretionary review on Keodalah's IFCA claim, the court did not decide this issue. After the court accepted discretionary review, the Washington Supreme Court issued an intervening decision in *Perez-Crisantos v. State Farm Fire & Casualty Insurance Co.*, 187 Wn.2d 669, 672, 389 P.3d 476 (2017). In that decision, the Washington Supreme Court held that IFCA did not create an independent private cause of action for a violation of a regulation. Accordingly, the Washington Court of Appeals found that the *Perez-Crisantos* decision mooted Keodalah's IFCA claim against Tracey Smith.

The Keodalah Court Holds Tracey Smith Had a Duty of Good Faith to the Policyholder Under RCW 48.01.030

In *Keodalah*, the Court of Appeals first examined whether a policyholder may assert a bad faith claim against an insurance adjuster individually who worked for an insurance company. To analyze this question, the court looked to RCW 48.01.030, which imposes a general good faith obligation:

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.

The court noted RCW 48.01.030 mandates that “*all persons*” — including Allstate and its representatives — must exercise good faith in the transaction of insurance business. Further, the court noted the statutory definition of “*person*” included “*any individual company, and insurer.*” The court reasoned that consistent with the language of the statute, Smith had an obligation at all times to act in good faith. Accordingly, the court held Smith could be sued individually for breaching the duty of good faith to the policyholder Keodalah.

In reaching this result, the court relied upon the analysis of Division Three of the Washington Court of Appeals in *Merriman v. American Guaranty & Liability Insurance Co.*, 198 Wn. App. 594, 396 P.3d 351 (2017). In *Merriman*, the court found that RCW 48.01.030 authorized policyholder bad faith claims against corporate insurance adjusters. The *Keodalah* court declined to accept Smith’s argument that the *Merriman* decision and a federal district court decision in *Lease Cruchter Lewis WA, LLC v. National Union Fire Insurance Co.*, 2009 WL 3444762 (W.D. Wash. Oct. 20, 2009), applied only to third-party companies adjusting claims. Instead, the court found that both individual insurance adjusters and corporate adjusters alike could be potentially liable for bad faith handling of claims.

An Insurance Adjuster May Be Individually Liable for a CPA Violation

The *Keodalah* court also considered the statutory elements of CPA claims in its analysis of whether Smith could be individually liable for a violation of the CPA. The court noted that the CPA was to be “liberally construed” and that the statutory purpose is to protect the public, foster honest competition, and deter unfair or deceptive acts in trade or commerce. The

court also relied upon the *Merriman* decision in concluding that it was not necessary for Keodalah to prove he had a contractual relationship with Smith in order to assert a claim against her individually for a violation of the CPA. The court concluded that individual insurance adjusters may be found liable to a policyholder for a violation of the CPA.

Conclusion

The *Keodalah* decision is a significant and important decision under Washington insurance law with potentially broad ramifications for claims handling in all spheres of insurance coverage. It is unknown at this time whether the decision will be appealed to the Washington Supreme Court or whether other Washington courts will reject *Keodalah* or narrow its reasoning. We will report all new developments arising out of this case in future legal updates.

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