Washington Supreme Court: Adjusters Can't Be Sued for Bad Faith

Decision Is Red Delicious for Insurers and Sour for Policyholders
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On October 3, 2019 the Washington Supreme Court issued its highly-anticipated decision in *Keodalah v. Allstate Insurance Company*. The coverage community was anxiously waiting to learn if an employee claims adjuster could be sued for bad faith or violations under Washington's Consumer Protection Act. The high court, reversing the Court of Appeals, said no. But it was a squeaker – 5-4.

This issue has arisen in a few states. But the Washington appeals court's decision, opening the door to bad faith claims against adjusters employed by insurers, raised its profile and brought it to the forefront. If the Washington Supreme Court had let the appeals court decision stand, it would have armed policyholder counsel with a tool to seek to expand it to other states. Even if a bad faith claim against the adjuster is entirely baseless, might an adjuster, facing the threat of it, and all that would flow from it, have a change of heart in its handing of a claim? Policyholder counsel would be able to use that as leverage in pursuing coverage.

Background

In *Keodalah*, an insured sued his insurer and the insurer's employee – an adjuster assigned to handle the insured's claim – for bad faith and violations of the Consumer Protection Act (CPA) and Insurance Fair Conduct Act (IFCA), RCW 48.01.030, arising out of a claim the insured made for underinsured motorist (UIM) coverage. The insured, who was operating his truck, and a motorcyclist collided after the insured stopped at a stop sign to cross the street. The collision killed the motorcyclist, who was uninsured, and injured the insured who, as a result, submitted a claim for the $25,000 limit of his UIM coverage.

The Seattle Police Department determined that the motorcyclist was traveling at least 70 mph in a 30 mph zone. Also, the insurer's investigation revealed that "the motorcyclist had been traveling faster than the speed limit, had proceeded between cars in both lanes, and had 'cheated' at the intersection." Further, the insurer's accident reconstructionist concluded that the insured stopped at the stop sign, the motorcyclist was traveling at least 60 mph, and "the motorcyclist's 'excessive speed' caused the collision." After this investigation, Allstate offered $1,600 to settle the insured's policy-limits claim. The insured rejected the offer and sued the insurer, asserting a UIM claim.

At trial on the UIM claim, the jury determined that the motorcyclist was 100% at fault and awarded the insured over $100,000 in damages. Following the award, the insured filed a second lawsuit against the insurer and, this time, its adjuster, seeking damages for bad faith and CPA/IFCA violations. The trial court dismissed the insured's claims against the adjuster, leading to the appeal about whether an adjuster may be liable for bad faith and CPA/IFCA violations under Washington law. The Washington Court of Appeals reversed the trial court's dismissal, and held that the statutory duty of good faith imposed under the IFCA (RCW 48.01.030) applied to individual insurance claims adjusters. The Court of Appeals also held that violation of that statutory duty may serve as a basis for bad faith and CPA claims against adjusters. The adjuster in *Keodalah* appealed, and the Washington Supreme Court reversed the Court of Appeals, holding that RCW 48.01.030 does not serve as a basis for bad faith and CPA claims against individual adjusters.

Washington Supreme Court Decision

First, the Supreme Court applied several factors to determine that the duty of good faith imposed under RCW 48.01.030 did not create a private cause of action against an adjuster. The "plain language" of RCW 48.01.030, the Supreme Court observed, indicates that "the statute is intended to benefit the general public" and not insureds seeking to recover from adjusters. "If we were to read the statute to imply a cause of action," the Supreme Court added, "such implied cause of action would apply against insureds as well," which would allow insurers to sue their insureds for bad faith. Such a result would "not be consistent with the legislature's purpose in enacting [RCW 48.01.030]," the Court concluded.

Next, the Supreme Court examined the insured's CPA claims against the adjuster—but rejected them. The insured based his CPA claims against the adjuster on "unfair settlement practices," as defined in the Washington Administrative Code (WAC), and on "bad faith conduct" in violation of IFCA (RCW 48.01.030). The Supreme Court concluded that only "*the insurer*"—not an adjuster—can be held liable for "unfair settlement practices" under the WAC [original emphasis]. "Smith did not owe Keodalah a duty under that regulation because that regulation defines only unfair acts or practices of *the insurer*," and "[b]ecause Smith is not *the insurer*, Keodalah cannot seek to enforce the regulation against Smith," the Supreme Court explained [original emphasis]. The Supreme Court also rejected the insured's CPA claim predicated on a violation of the duty of good faith under RCW 48.01.030. The Court reiterated that RCW 48.01.030 "does not itself provide an actionable duty," and that a "breach of duty of good faith under the CPA" may only be brought against the insurer—not an adjuster employed by an insurer. Thus, the Court concluded, "[b]ecause Keodalah claims a breach of the duty of good faith by someone outside the quasi-fiduciary relationship," *i.e.*, an adjuster, "his CPA claim based on RCW 48.01.030 was properly dismissed" by the trial court.

The Dissent

The Washington Supreme Court's opinion was authored by Justice Barbara Madsen, and joined by four other justices. The dissent, authored by Justice Mary Yu, was joined by three other justices. While it agreed with the majority's holding, the dissent stated that they "would hold that Keodalah's complaint states a viable cause of action for common law insurance bad faith against Smith [the adjuster], an issue the majority fails to address." The dissent discussed the procedural history of the case, including in its view that the insured's common law bad faith claim was never addressed by the Court of Appeals, and should have been addressed by the Supreme Court or in the trial court on remand. The dissent advocated for recognition of a common law bad faith claim against adjusters.

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