

What a Mess!—Insurer Has No Right to Jury Trial to Determine if Settlement Between Its Insured and Claimant Was Reasonable

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Summary: After the insurer denied a settlement demand for the \$2 million policy limits, the insured, a plumbing contractor, and the land owner plaintiff (“claimant”) reached a settlement agreement for approximately \$3.75 million. The trial court judge determined that the settlement was reasonable. The insurer appealed arguing it had a right to a jury trial on the issues of reasonableness and that the reasonableness finding was supported by substantial evidence. The appeals court affirmed.

Bird v. Farmers Insurance Exchange, 260 P.3d 209 (Wash.App. 2011)

The claimant’s next door neighbor contacted the insured, a plumbing contractor, to repair a leaking sewer line. The insured’s employee, without claimant’s consent, went on to claimant’s property and cut claimant’s pressured sewer line. When the claimant returned home from work, his system cycled on and engulfed him in an explosion of sewage, which caused him to fall and crack his elbow. The claimant later learned that the insured’s employee had cut the sewer line and he demanded that the insured fix the line. The insured attempted to repair the line. However, over the next 8 months, sewage continued to escape from the line and to cause extensive damage to the residence. The claimant then removed contaminated soil from his lot. The claimant attributed his subsequent heart attack to the physical labor undertaken during the soil removal. Moreover, to determine the full extent of the damage, the claimant hired a geotechnical engineering firm, contractors, and others. Eventually, a retaining wall estimated to cost approximately \$850,000 had to be installed due to instability problems in the hillside water-front property.

Claimant sued the insured for trespass and negligence. The insurer provided a defense without a reservation of rights. Subsequently, the insured admitted its employee went on the claimant’s property without permission and the court granted partial summary judgment in favor of the claimant on liability on his trespass claim. The nature and extent of the claimant’s damage remained for trial.

The parties began settlement talks after their mediation efforts had failed. Eventually, claimant made a \$2 million policy limits demand, which was rejected. Concerned about the company's potential exposure in excess of policy limits, the insured's President retained personal counsel who negotiated a \$3.75 million settlement agreement that included an assignment of the insured's claims against the insurer, a stipulated judgment, and a covenant not to execute against the insured.

The claimant moved for a determination that the settlement was reasonable. The trial court granted the insurer's motion to continue the reasonableness hearing and to conduct discovery. However, the trial court denied the insurer's jury trial demand. The trial court conducted a reasonableness hearing over 4 days and issued a memorandum ruling finding that the \$3.75 million settlement was reasonable.

On appeal, the insurer contended that the reasonableness hearing was unconstitutional because it sets the presumptive amount of damages in a bad faith action under Washington law. The appeals court found the reasonableness hearing, which is subject to Washington statute, is equitable in nature, not legal, and therefore no right to a jury trial attached. The Washington statute specifically states that "a determination by the court that the amount to be paid is reasonable must be secured." RCW 4.22.060. The appeals court also relied on persuasive authority from other jurisdictions, which found that reasonable determinations in situations like this are within the discretion of the trial court.

The appeals court held there was sufficient evidence to find the settlement was reasonable. The trial court heard evidence over the course of 4 days which created a record of several thousand pages. In addition, the trial court issued a lengthy memorandum opinion which discussed each of the 9 factors required by Washington's statute when determining reasonableness. The appeals court found that the trial court had appropriately weighed the liability and damages evidence supporting its reasonableness finding. Furthermore, the court of appeals found that there was no collusion or fraud.

Moreover, the fact that the insurer was allowed to intervene and participate in the reasonableness hearing weighed in favor of the reasonableness finding. The appeals court opined that the insurance company was given the opportunity to present evidence and argue its point regarding potential liability and damages, but the trial court was not persuaded. In some states, insurance companies may be foreclosed from intervening in such hearings once they have denied coverage or failed to settle within policy limits.

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