



BAD FAITH BLOG

Washington Court of Appeals Finds No Preclusion for Bad Faith Claim After Resolution of UIM Benefits Action

AUTHOR: MEGHAN SHOLY, KATRINA L. SMELTZER

Anastasia Fortson-Kemmerer ("Plaintiff") sued Allstate Insurance Company ("Allstate") to recover for bad faith and violation of the Insurance Fair Conduct Act ("IFCA") for its actions when investigating her underinsured motorist ("UIM") coverage claim. Allstate moved for summary judgment on the affirmative defense that Plaintiff's previous action to enforce her UIM policy provisions operated as *res judicata* and barred her bad faith claim. The trial court granted summary judgment and Plaintiff appealed. The Washington Court of Appeals reversed, stating Allstate failed to demonstrate the operation of *res judicata*.

Fortson-Kemmerer v. Allstate Insurance Company

Plaintiff was involved in an automobile accident in December of 2005. The other motorist fled the scene and was presumed uninsured. Plaintiff sued for UIM benefits of \$75,000. Following mandatory arbitration, Plaintiff was awarded \$44,000.

Plaintiff then sued Allstate to recover for bad faith and for violation of the IFCA, alleging Allstate compelled her to bring suit to recover what she was owed under her policy. Allstate filed summary judgment on the basis of *res judicata*. The trial court granted summary judgment, and Plaintiff appealed, contending when an insured joins UIM and bad faith claims together in one action the insurer moves for bifurcation and stays of discovery as to the bad faith action. Plaintiff further argued as a result of the bifurcation and stays of discovery, insureds are entitled to bring the contract and bad faith actions in separate and subsequent lawsuits.

Res judicata is “an act to prevent relitigation of claims that were or should have been decided among the parties in an earlier proceeding.” The Washington Court of Appeals stated that in order for a judgment to operate as res judicata in a subsequent action, the (1) subject-matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made all must have a common identity. Here, the court only focused on the quality of the arbitration and bad faith claims. The court noted while insurers often obtain bifurcation of UIM and bad faith claims in Washington courts, like in other jurisdictions, insurers are not required to do so. Notably, the court pointed out that only Texas, Rhode Island, and New Jersey require bifurcation and stays of discovery where UIM claims and bad faith claims are joined.

Under Washington law, the quality of a bad faith case is determined by the character, position, or role assumed. The court stated under the use of the word “quality,” Allstate had a different quality in Plaintiff’s UIM arbitration than it had in the bad faith claim. It explained in arbitration, Allstate defended Plaintiff’s claim for damages from the collision “in the shoes of the underinsured motorist” and as a pure adversary. In the bad faith claim, however, Allstate would defend its own actions as Plaintiff’s insurer. Because there was a different posture as to the two claims, the court determined that it was prejudicial for the claims to proceed in the same lawsuit. Therefore, the court concluded the bad faith action did not result in relitigation of an already determined cause, and thus, was not subject to res judicata. The court reversed and remanded for further proceeding.

The Washington Court of Appeals’ ruling clarifies what “quality” means in regard to the applicability of res judicata to bar a bad faith claim brought after a UIM policy claim. When there is a question of preclusion, a bad faith claim can only survive if its identity is different than that of the previous UIM policy proceeding.