

BAD FAITH BLOG

Claim Professionals Beware: Adjusters Can Be Held Liable In Their Individual Capacity For Bad Faith In Washington State

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Insured motorist who was injured in an accident with an at-fault motorcyclist brought action against the automobile insurer's adjuster who handled the claim for bad faith and violation of the Consumer Protection Act. After the trial court dismissed the action and certified it for appellate review, the Court of Appeals held the duty of good faith imposed on "all persons" involved in insurance applies equally to individuals acting as insurance adjusters. Also, the appellate court held individual insurance adjusters can be liable for a violation of the Consumer Protection Act, even if no contractual relationship exists with the individual insured.

Keodalah v. Allstate Insurance Company

The insured collided with a motorcyclist after the insured stopped at a stop sign and began to cross the street in his truck. The collision killed the motorcyclist and injured the insured. The insured purchased auto insurance from his insurer, including underinsured coverage (UIM). The motorcyclist was uninsured.

The police report found the motorcyclist was traveling between 70 and 74 miles per hour in a 30 mile per hour zone. The police also reviewed the insured's cell phone records and confirmed he was not on his cell phone at the time of the collision.

The insurer also investigated the collision and hired an accident reconstructionist. According to witnesses, the motorcyclist was traveling faster than the speed limit, and had proceeded between cars in both lanes. The accident reconstructionist found the insured stopped at the stop sign and the motorcyclist was traveling at a minimum of 60 miles per hour, and the motorcyclist's excessive speed caused the collision.

The insured demanded the insurer pay him the limit of his UIM policy, \$25,000.00. However, the insurer refused and offered to settle for \$1,600.00, based on the assessment the insured was 70% at fault. The insured asked the insurer to explain its evaluation and the insurer increased its offer to \$5,000.00.

Thereafter, the insured sued the insurer asserting a UIM claim. The insured designated the individual adjuster handling the claim as its corporate representative. Although the insurer possessed both the police report and the accident reconstruction analysis, the adjuster claimed the insured had run the stop sign and had been on his cell phone. However, the adjuster later admitted the insured did not run the stop sign and had not been on his cell phone. Prior to trial, the insurer offered \$15,000.00 to settle the claim, but the insured refused, and again demanded the \$25,000.00 policy limit. The jury determined the motorcyclist was 100% at fault and awarded the insured over \$100,000.00 for his injuries, lost wages, and medical expenses.

The insured then proceeded to file a second lawsuit against both the insurer and the individual adjuster. The insured asserted claims for bad faith and Consumer Protection Act violations. After the trial court dismissed the insured's claims against the individual adjuster, the appellate court granted discretionary review to determine whether an individual insurance adjuster may be liable for bad faith and liable for violation of the Consumer Protection Act. The appellate court noted that the insured could not maintain a claim against the individual adjuster for violation of Washington's Insurance Fair Conduct Act, which does not create an independent cause of action.

The appellate court, reviewing the plain language of Washington's bad faith statute noted it imposes a duty of good faith on "all persons" involved in insurance, including the insurer and its representatives. A person who violates this duty may be liable for the tort of bad faith in Washington. Washington's statute defines person as "any individual, company, insurer, association, organization, reciprocal or inter insurance exchange, partnership, business trust, or corporation." The appellate court found the individual adjuster was engaged in the business of insurance and was acting as a representative of the insured. Therefore, under the plain language of the statute, the individual adjuster had a duty to act in good faith and could be sued for breaching the duty.

Turning to whether the individual adjuster could be sued for violation of Washington's Consumer Protection Act, the appellate court found the act prohibits "unfair methods of competition and unfair deceptive acts or practices in the conduct of any trade or commerce." The Washington legislature had stated the Consumer Protection Act is to be "liberally construed [so] that its beneficial purposes may be served."

The individual adjuster, citing to a Washington Supreme Court case argued one of the elements to prevail on a Consumer Protection Act claim was to show the parties had a contractual relationship. However, the appellate court, citing to a more recent Washington Supreme Court case held there was no such element to prove a violation of the Consumer Protection Act. Citing to the *Panag v. Farmers Insurance Company of Washington*, 204 P.3d 885 (Wa. 2009), opinion by the Washington Supreme Court as well as the plain language of the Consumer Protection Act, the appellate court found that a contractual relationship was not required. The Consumer Protection Act allows "any person who is injured in his or her business or property by a violation" of the act to bring a Consumer Protection Act claim. The appellate court found nothing in this language required that the insured must be a consumer or in a business relationship with the actor, in this case, the individual adjuster. Therefore, the appellate court reversed for further proceedings on both the bad faith claim and Consumer Protection Act violation.

Washington, a state which already is known to be risky for unaware insurers, became even riskier after this decision. Claims professionals handling claims in Washington need to understand attempting to save money in settlement to protect relatively low limits not only exposes their company but themselves to bad faith and statutory claims. Proceed with caution.