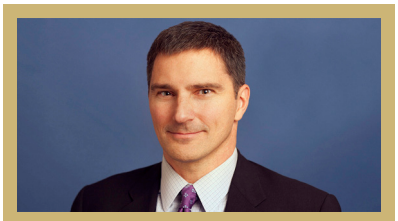
Sedgwick LLP

Washington Insurance Law
2013 Year in Review

2013 was a particularly eventful year in Washington insurance law. This paper summarizes the holdings of several notable Washington insurance decisions that were filed in 2013.



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Bob Meyers has extensive experience representing insurers in complex insurance matters in Washington State. His experience includes advising insurers about their rights and obligations under a wide variety of insurance policies; helping insurers navigate the complexities of Washington's insurance statutes, regulations, and common law; successfully helping insurers to avoid Washington courts and the application of Washington law; and representing insurers in coverage and bad faith litigation.

Mr. Meyers has repeatedly been heralded as a superb insurance lawyer in Washington State. He has an AV peer-review rating in Martindale-Hubbell, he has a Superb rating by *Avvo*, and he has been recognized as a Super Lawyer in *Washington Law & Politics* and as a Top Lawyer in *Seattle Metropolitan.*

Mr. Meyers is also licensed to practice law in Oregon, and he has successfully represented insurers in claims arising in several other jurisdictions.

Bad Faith

Attorney-Client Privilege and Work-Product Protection in Bad Faith Suits

- *Cedell v. Farmers Ins. Co. of Washington,* 176 Wn.2d 686, 295 P.3d 239 (February 21, 2013) (A 5-4 majority of the Washington Supreme Court declared that it will presume that a first-party insurer may not assert the attorney-client privilege or work-product protection in a bad faith lawsuit. The majority held that an insurer may seek to rebut that presumption by demonstrating that the insurer's attorney "was not engaged in the quasi-fiduciary tasks of investigating and evaluating or processing the claim, but instead providing the insurer with counsel as to its own potential liability; for example, whether or not coverage exists under the law." If the insurer can satisfy that burden, it should be entitled to an *in camera* review of the disputed information and the redaction of privileged and protected information).

- *Carolina Cas. Ins. Co. v. Omeros Corp.*, 2013 WL 1562963 *2+ (W.D. Wash. April 12, 2013) (The Court declared that the Washington Supreme Court's analysis of attorney-client privilege and work-product protection in *Cedell v. Farmers, supra*, applies to a bad faith lawsuit relating to a third-party liability insurance policy. The Court declared that the *Cedell* Court's *in camera* review procedure is not mandatory in federal court. However, the Court exercised its discretion in favor of applying that procedure in the case).

- *Philadelphia Indem. Ins. Co. v. Olympia Early Learning Center,* 2013 WL 3338503 (W.D. Wash. July 2, 2013) (Without analysis, the Court applied *Cedell, supra,* in a bad faith lawsuit relating to a third-party liability insurance policy. The Court alluded to the claim as a "first party" claim, and observed that "it is now clear that the scope of discovery in first party bad faith actions is very broad, and the attorney-client privilege and work product doctrine are less difficult to overcome now prior than they were prior to [*Cedell*]." The Court opined

that *Cedell* "creates rather than alleviates confusion about what must be produced, and under what circumstances." However, it expressed its understanding that attorney-client communications and attorney work product are discoverable under *Cedell* [1] if the insurer does not rebut the initial presumption that the documents are discoverable by demonstrating that its attorney had given legal advice, [2] "if, and to the extent that" an *in camera* review reveals that the attorney had engaged in quasi-fiduciary tasks such as investigating, processing, or evaluating the claim, [3] if the *in camera* review reveals that the attorney's opinion work product "is directly at issue in [the insurer's] quasi-fiduciary duties," or [4] if the *in camera* review suggests that there is a foundation of a bad faith claim that is tantamount to civil fraud. The Court then ordered an *in camera* review of the disputed documents).

- *Palmer v. Sentinel Ins. Co.,* 2013 U.S. Dist. LEXIS 95643 (W.D. Wash. July 9, 2013) (Citing *Cedell, supra,* the Court in a bad faith lawsuit granted a motion to compel the insurer to produce its attorney's legal analysis, because that attorney had also been involved in the insurer's fact investigation. The Court acknowledged that *Cedell* does not prohibit an insurer's attorney from performing "mixed duties." However, the Court posited that if an insurer's attorney has been involved in both the fact investigation and legal analysis, "the attorney-client privilege and work-product protections are likely to be waived in many, if not most, cases . . . because counsel's legal analysis and recommendations to the insurer regarding liability generally or coverage in particular will very likely implicate the work performed and information obtained in his or her quasi-fiduciary capacity." In contrast, the Court observed that another of the insurer's attorneys apparently had not been involved in the insurer's fact investigation; the Court held that if that attorney had not, in fact, been involved in the insurer's fact investigation, then "the attorney-client privilege would likely not be waived").

- *Palmer v. Sentinel Ins. Co.,* 2013 WL 3819925 (W.D. Wash. July 23, 2013) (Citing *Cedell*, *supra*, the Court denied a motion to compel the production of e-mails from an insurer's attorney who had not been "active in the investigation by interviewing witnesses, evaluating or processing [the insured's] claim, or [by] either supervising or directing some or all of the investigation." The Court also held that the attorney's review of documents that had been prepared by others in order to provide legal analysis did not waive the insurer's attorney-client privilege under *Cedell*).

- *Garoutte v. American Family Mut. Ins. Co.,* 2013 WL 5770358 (W.D. Wash. October 24, 2013) (The Court observed that a document does not necessarily constitute protected work product simply because it has been prepared after litigation commenced. If a document has been prepared during the regular course of the insurer's business "as opposed to . . . in anticipation of litigation," it might not be subject to work-product protection).

- *Everest Indem. Ins. Co. v. QBE Ins. Co.,* -- F.Supp.2d --, 2013 WL 5885277 (W.D. Wash. October 31, 2013) (The Court declared that *Cedell, supra,* applies to a bad faith lawsuit relating to a third-party liability insurance policy. Citing *Cedell*, the Court granted a motion to compel the insurer's coverage counsel to testify during a deposition, and the Court ordered the insurer to pay the moving party's attorneys' fees and costs. The Court recognized that the insurer had the right to object to questions that it believed elicited answers and information that were protected by *Cedell*.)

Coverage by Estoppel

- *Tim Ryan Construction, Inc. v. Burlington Ins. Co.,* 2012 WL 6567586 (W.D. Wash. December 17, 2012), 2013 WL 1192481 (W.D. Wash. March 22, 2013), 2013 WL 1774627 (W.D. Wash. April 25, 2013) (An insurer had issued an insurance policy to a subcontractor that named a general contractor as an additional insured to the extent that a claim arose out of the subcontractor's operations and the subcontractor was solely responsible for the loss. A property owner sued the general contractor, alleging that defective construction had caused property damage. The underlying complaint [1] generally alleged that the general contractor had done deficient work, [2] did not specifically identify the named insured subcontractor, [3] generally alleged that the general contractor had "con-

tracted with various subcontractors to perform work and supply materials," and [4] did not specifically attribute any defective work, negligence, or property damage to the named insured subcontractor or any other subcontractor. Ten months later, the general contractor tendered its defense to the subcontractor's insurer. The insurer denied the tender of defense, taking the position that the underlying complaint had not alleged property damage arising out of the named insured subcontractor's operations and for which the named insured subcontractor was responsible. On summary judgment, the Court declared that the insurer owed a duty to defend the general contractor, declared as a matter of law that the insurer's denial of the general contractor's tender of defense was unreasonable, and declared as a matter of law that the insurer's denial of the general contractor's tender of defense constituted common law bad faith and violated Washington's Insurance Fair Conduct Act. In a separate decision, the Court denied the insurer's motion for reconsideration, in which the insurer maintained that it was manifest error for the Court to declare that the insurer's conduct constituted bad faith as a matter of law. In a third decision, the Court estopped the insurer from denying coverage).

- *Madera West Condominium Ass'n v. First Specialty Ins. Corp.,* 2013 WL 4015649 (W.D. Wash. August 6, 2013) (The Court declared that an insurer had committed bad faith as a matter of law by denying a tender of defense where it was "conceivable" that the complaint had alleged property damage that had occurred during the policy period, and where the insurer had denied coverage based on "an arguable legal interpretation of its own [exclusion]." The Court also presumed that the insured had been harmed, declared that the insurer could not rebut the presumption of harm by demonstrating that another insurer had defended the insured, estopped the insurer from denying coverage, and declared that the insurer was liable as a matter of law for the judgment against the insured).

- *Dye Seed, Inc. v. Farmland Mut. Ins. Co.,* 2013 WL 6587914 (E.D. Wash. December 16, 2013) (The Court declared that an insurer had committed bad faith as a matter of law by denying coverage under the terms of a policy that had been cancelled and by failing to divulge and evaluate the claim under the terms of the operative insurance policy. The Court estopped the insurer from denying coverage and also declared that the insurer had violated the Consumer Protection Act and Insurance Fair Conduct Act).

Insurance Fair Conduct Act ("IFCA")

- *Morella v. Safeco Ins. Co. of America,* 2013 WL 1562032 *3-*4 (W.D. Wash. April 12, 2013) (The Court declared that if an insurer makes a settlement offer or a settlement payment that is unreasonably low based on the information that the insurer possesses at the time of the offer or payment, that offer or payment can constitute an unreasonable "denial of payment of benefits" for purposes of establishing a *prima facie* case under Washington's Insurance Fair Conduct Act. The Court also declared that an insurer's offer that was 10% of the amount of the insurer's internal valuation of the claim violated IFCA as a matter of law. The Court also declared that under IFCA, "actual damages" means "the actual amount necessary to compensate the plaintiff for an injury or loss").

- *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.,* 176 Wn.App. 185, 312 P.3d 976 (August 19, 2013) (A third party to an insurance policy does not have standing to sue an insurer under IFCA. An insurer that pays a claim does not become equitably subrogated to an insured's rights to pursue an IFCA claim against another insurer. Arguably in *dicta*, and without analysis, the Court stated that an insured may assign its rights to pursue an IFCA claim. However, there, the Court observed that the insured had not assigned its rights under IFCA to its insurer, and declared that the insurance policy's subrogation clause did not assign the insured's rights to pursue an IFCA claim. The Court also held that if an insurer pursues its equitable subrogation rights against another insurer, the subrogating insurer is not entitled to recover attorney fees under *Olympic Steamship* if it prevails).

- *Emery v. National Union Fire Ins. Co. of Pittsburgh, PA,* 2013 WL 5552449 (E.D. Wash. October 8, 2013) (The Court declared that IFCA "applies exclusively to first-party insurance contracts" and that a violation of the Washington Administrative Code is independently "actionable under

IFCA." In contrast, judges in the U.S. District Court for the Western District of Washington have routinely applied IFCA to third-party [liability] insurance and have unanimously held that a violation of the Washington Administrative Code is not independently actionable under IFCA).

Consumer Protection Act

- *Dees v. Allstate Ins. Co.,* 933 F.Supp.2d 1299 (W.D. Wash. March 21, 2013) (In *dicta*, the Court stated that an insured on an underinsured motorist policy might be able to establish damage to "injury or property" for purposes satisfying her *prima facie* case under Washington's Consumer Protection Act by demonstrating that she had been charged interest or fees on unpaid medical bills. In other cases, Washington courts have held that personal injuries and related costs such as medical bills are not recoverable under the Consumer Protection Act).

Fraudulent Claim

- *Johnson v. Safeco Ins. Co. of America,* 2013 WL 5288167 (Wn. App. September 16, 2013) (The Court dismissed an insured's complaint that had asserted causes of action for common law bad faith, under the Consumer Protection Act, and under IFCA because the insured had misrepresented facts and had untruthfully inflated the value of his claim).

Statute of Limitations

- *Everest Indem. Ins. Co. v. QBE Ins. Co.,* -- F.Supp.2d --, 2013 WL 5885277 (W.D. Wash. October 31, 2013) (The Court declared that for purposes of applying the statute of limitations, a cause of action for bad faith failure to defend accrues when the underlying suit has been resolved).

Suit Against Adjuster

- *Garoutte v. American Family Mut. Ins. Co.,* 2013 WL 231104 (W.D. Wash. January 22, 2013) (The Court declared that an insured does not have a viable cause of action for bad faith, under the Consumer Protection Act, or under IFCA against an insurance company's employee who was acting within the scope of his employment).

Duty to Defend

- *National Surety Corp. v. Immunex Corp.,* 176 Wn.2d 872, 297 P.3d 688 (March 7, 2013) (A 5-4 majority of the Washington Supreme Court declared that if an insurance policy imposes a duty to defend, the insurer's duty to defend begins when a complaint is filed, and the insurer must pay its insured's pre-tender defense costs unless the insurer can demonstrate that it was actually and substantially prejudiced by late notice. The majority also held that if such an insurer is defending subject to a reservation of rights, it may not seek to recoup defense costs from the insured, even if a court ultimately determines that the insurer owes no duty to defend).

- *Axis Surplus Ins. Co. v. Hartford Acc. & Indem. Co.,* -- F. Supp.2d --, 2013 WL 2318847 (W.D. Wash. May 14, 2013) (Plaintiff co-insurer sought contribution from the defendant alleged co-insurer toward their mutual insured's defense costs. Citing *Immunex, supra,* the Court declared that the defendant co-insurer would be responsible to contribute toward the mutual insured's defense costs from the date on which the complaint was filed until the Court declared that the defendant owed no duty to defend. The Court declined to distinguish *Immunex* on the basis that the dispute in *Immunex* was between an insured and its insurer, but instead declared that the analysis in *Immunex* applied equally to a contribution claim between insurers).

- *Zurich American Ins. Co. v. Certain Underwriters at Lloyd's London,* 2013 WL 3208566 (W.D. Wash. June 24, 2013) (The Court declared that an insurer's duty to defend an additional insured does not terminate by virtue of the named insured's settlement of the lawsuit).

- *Madera West Condominium Ass'n v. First Specialty Ins. Corp.,* 2013 WL 4015649 (W.D. Wash. August 6, 2013) (The Court reaffirmed that an insurer owes no duty to defend until an insured "tenders a claim and asks for a defense," but observed that Washington law is unclear about what

constitutes a "tender." The Court acknowledged that simply notifying an insurer about a claim does not constitute a tender, and it observed that the insured had not sent the insurer a "formal tender letter." However, the Court observed that the insured had repeatedly sent litigation documents to the insurer and that the insurer's responsive communications had characterized the insured's communications as a "tender." The Court concluded that the insured had tendered the claim by no later than the date on which it had sent a construction defect claim to the insurer that asked, "Please advise on what we do at this point." The Court also reaffirmed that an insurer must defend an insured against a complaint if the policy "conceivably" covers the allegations or unless the allegations "clearly fall outside the policy." It also reaffirmed that an insurer may not deny a defense based on extrinsic evidence and opined in *dicta* that the insurer's reliance on extrinsic evidence "is arguably an independent basis for a finding of bad faith against it").

- *Grange Ins. Ass'n v. Roberts,* 2013 WL 5806663 (Wn. App. October 28, 2013) (The Court declared that an insurer owed no duty to defend an insured against causes of action for outrage, tortious interference, interference with an expected inheritance, or tortious interference with a parent-child relationship, because those causes of action did not allege accidental bodily injury that could have conceivably triggered the policy's bodily injury and property damage liability coverage. The Court also declared that an insurer owed no duty to defend an insured against a cause of action for defamation under the policy's personal and advertising injury coverage, because the cause of action fell within the scope of coverage's exclusions for "knowing violation of rights of another" and "material published with knowledge of falsity").

- *Bayley Construction v. Great American E&S Ins. Co.,* -- F.Supp.2d --, 2013 WL 5913424 (W.D. Wash. November 1, 2013) (The insurer issued a claims-made professional liability policy that required the insurer to pay loss and legal expenses that the insured became obligated to pay as a result of a claim because of an error or omission in professional services. The policy language that the Court cited in its opinion did not specifically impose a "duty to defend." That said, the insured had engaged a subcontractor that paid its laborers less than the legally mandated prevailing wage. Because of the subcontractor's conduct, the project owner served the insured with a Notice of Withholding Contract Payments. The insured then tendered the notice to the insurer under the professional liability policy. The insurer denied the claim, maintaining that the notice did not allege an error or omission in "professional services." Without explanation, the Court evaluated the claim under Washington case law that addresses an insurer's "duty to defend." The Court ultimately concluded that the insurer had breached its "duty to defend" by relying upon an equivocal interpretation of case law addressing a "professional service" and by failing to construe the allegations in the notice liberally in favor of a defense. However, the Court declared that there was a triable issue of fact as to whether the insurer's conduct had constituted bad faith or violated IFCA).

Conditions

Binding Arbitration

- *State, Dept. of Transp. v. James River Ins. Co.,* 176 Wn.2d 390, 292 P.3d 118 (January 17, 2013) (The Washington Supreme Court unanimously declared that binding arbitration provisions in insurance policies that are issued in Washington State and that cover subjects located in Washington State are void and unenforceable).

- *Philadelphia Indem. Ins. Co. v. Noteworld, LLC,* 2013 U.S.Dist. LEXIS 58304 (W.D. Wash. April 25, 2013) (The Court declared that a policyholder may enforce a binding arbitration provision in an insurance policy that is issued in Washington State and that covers subjects located in Washington State, and held that the Washington Supreme Court in *WSDOT v. James River Ins. Co., supra,* had only precluded an insurer from enforcing an insurance policy's binding arbitration provision).

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Examination Under Oath

- *Staples v. Allstate Ins. Co.,* 176 Wn.2d 404, 295 P.3d 201 (January 24, 2013) (An insured's van was stolen. When the insured reported the theft to the police, he told the officer that his tools in the van were also stolen and that the tools were worth $15,000. Two weeks later, the insured submitted a claim to his homeowners insurer, and he told his insurer that the stolen tools were worth between $20,000 and $25,000. In light of the discrepancies between the insured's statements, the insurer assigned the claim to its special investigation unit, which requested documents, a sworn proof of loss, and three years of tax returns. The insured failed to provide the documents despite several written requests spanning approximately three months, but he eventually produced a sworn proof of loss. The insurer then scheduled an examination under oath ["EUO"], but cancelled it because the insured still had not produced all of his documents. The insured then retained counsel; the insurer contacted the insured's counsel to reiterate the insurer's request for documents and to ask the insured to reschedule the EUO. In response, the insured's counsel accused the insurer of harassment, making burdensome and vexatious requests, and violating Washington's Insurance Fair Conduct Act. The insurer then gave the insured a date certain by which he must produce the documents and reschedule the EUO. When the insured did not produce the documents or reschedule the EUO, the insurer denied the claim. The insured sued his insurer for breach of contract, common law bad faith, and violating Washington's Insurance Fair Conduct Act. The trial court dismissed the lawsuit on summary judgment, the Court of Appeals affirmed, and the insured appealed to the Washington Supreme Court. The Washington Supreme Court reversed and articulated a new analysis of parties' respective rights and obligations under insurance EUO conditions: First, the Court held that an insurer may only demand an EUO if the EUO is "material to the investigation or handling of a claim." By so ruling, the Court expressly disapproved of an earlier Court of Appeals' decision in which the Court of Appeals had declared that insurers have an "absolute right to at least one EUO." Second, the Court held that an EUO condition is a form of "cooperation clause." As such, the Court held that a policyholder need only "substantially comply" with an EUO condition, and an insurer must demonstrate that it was actually prejudiced by any breach of an EUO condition. By so ruling, the Court again disapproved of a Court of Appeals' ruling in which the Court of Appeals had declared that an insurer need not demonstrate that it was prejudiced by a breach of an EUO condition. Applying that new standard to the facts of the case, the Court held that there were genuine issues of material fact with respect to [1] whether an EUO was material to the insurer's investigation, [2] whether the policyholder had substantially complied with the insurer's requests for an EUO, and [3] whether the insurer had been prejudiced by any breach of the policy's EUO condition. Therefore, the Court concluded that a jury must resolve the issues).

Cooperation

- *Townsley v. GEICO Indem. Co.,* 2013 WL 3279274 (W.D. Wash. June 27, 2013) (The insured sued her insurance company for underinsured motorist benefits. During the litigation, the insured refused to submit to a mental health examination. The insurer moved to compel the insured to submit to the examination, citing F.R.C.P. 35 and the insurance policy's cooperation clause. The Court denied the motion under F.R.C.P. 35, but granted the motion under the policy's cooperation clause. Citing *Staples, supra,* the Court declared that the insurer had demonstrated that the mental examination was relevant to the insurer's defense and that the insurer would be unfairly prejudiced if the insured did not submit to the examination).

- *McAlpine v. State Farm Fire and Cas. Ins. Co.,* 2013 WL 4017408 (9th Cir. [Wash.] August 8, 2013) (The Court precluded an insurer from asserting a defense under its insurance policy's cooperation clause "at the last minute" before trial, where the insurer had not addressed the cooperation clause in its denial letter, the insurer's representative had testified that the insurer had not denied coverage because of a failure to cooperate, and the insurer had represented that "its contractual defenses are limited to misrepresentation and concealment").

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Other Insurance

- *Safeco Ins. Co. of Illinois v. American Family Mut. Ins. Co.,* 2013 WL 557012 (W.D. Wash. February 13, 2013) (Two insurers' respective other insurance conditions provided that the policy was excess any other applicable insurance. The Court declared that the conditions were mutually repugnant, and ordered the insurers to pay the claim on a pro rata basis).

Fraud

- *Johnson v. Safeco Ins. Co. of America,* 2013 WL 5288167 (Wn. App. September 16, 2013) (An insurer issued a property insurance policy that included a condition that provided that the insurer would not cover any insured if the insured made false statements relating to the claim. The insured submitted falsified documents that inflated the value of the claim. The Court enforced the condition, and generally declared that an insurer owes no duty to indemnify an insured who "commits fraud with the intent of deceiving the insurance company").

Exclusions

- *Oregon Mut. Ins. Co. v. Rain City Pizza, LLC,* 172 Wn. App. 1043, 2013 WL 150173 (January 14, 2013) (The Court declared that a provision that excluded coverage for "'bodily injury . . . arising directly or indirectly out of any act or omission that violates or is alleged to violate [certain statutes]" applied to damages for bodily injury alleged against any and all insureds, regardless of whether an insured was alleged to have violated any of the statutes. The Court held that the provision serves to exclude bodily injury arising from "any act," and is not limited to an act of a particular actor).

- *Carolina Cas. Ins. Co. v. Omeros Corp.,* 2013 U.S. Dist. LEXIS 38811 (W.D. Wash. March 11, 2013) (The Court declared that an analysis of whether certain acts or omissions constitute "related acts" that comprise one claim under one claims-made policy does not control the analysis of policy exclusions that are unrelated to the claims-made nature of the policy).

Policy Limits

- *Philadelphia Indem. Ins. Co. v. Olympia Early Learning Center,* -- F.Supp.2d --, 2013 WL 5652456 (W.D. Wash. October 16, 2013) (The Court construed the language of a sexual molestation coverage to impose one general aggregate policy limit for "multiple claims of abuse over multiple policy periods").

- *Ibrahim v. AIU Ins. Co.,* 312 P.3d 998 (Wn. App. November 4, 2013) (The policy limits in an underinsured motorist policy provided that the insurer would pay "[t]he amount needed to restore the covered auto to its pre-loss condition." The insurer paid that amount, but refused to pay the insured's alleged "stigma damages." The Court acknowledged that stigma damages would have been recoverable from the underinsured motorist. However, it declared that the limits in the policy did not contravene Washington State's underinsured motorist statute, did not contravene public policy, and were enforceable.).

Excess Insurance

- *Navigators Ins. Co. v. National Union Fire Ins. Co.,* 2013 WL 441743 (W.D. Wash. February 5, 2013) (The Court declared that an additional insured on an excess liability insurance policy was not required to exhaust the limits of its own primary insurance policy before coverage could be triggered under the named insured's excess insurance policy. The Court based its conclusion on the language of a contract between the named insured and additional insured, which provided that the named insured's "liability insurance is primary as respects coverage afforded to the [additional insured]").

- *Quellos Group LLC v. Federal Ins. Co.,* 312 P.3d 734 (November 12, 2013) (An excess insurer issued an insurance policy that provided, "[Coverage] shall attach only after the insurers of the Underlying Insurance shall have paid in legal currency the full amount of the Underlying Limit." The insured settled certain underlying claims, and the underlying insurer contributed less than the full amount of its policy limit toward the settlement. The insured then

demanded that the excess insurer fund the settlement to the extent that the settlement exceeded the underlying insurer's policy limit, notwithstanding that the underlying insurer had not fully paid its policy limit. The Court declared that the excess insurer owed no duty to cover the settlement, because the underlying insurer had not actually paid the full amount of its policy limit as the excess insurer's policy required).

Professional Liability

- *Carolina Cas. Ins. Co. v. Omeros Corp.,* 2013 U.S. Dist. LEXIS 38811 (W.D. Wash. March 11, 2013) (The Court declared that causes of action for violating anti-retaliation provisions of the False Claims Act and for *qui tam* under the False Claims Act were "Related Wrongful Acts" under the D&O coverage of an insurance policy. In reaching that conclusion, the Court applied the plain language of the policy's definition of "Related Wrongful Acts" to the allegations in the complaint, and concluded that the causes of action presented "any common fact, circumstance, situation, event or decision that logically connects the acts." The Court specifically observed that "*any* common fact or event is sufficient to make the two wrongful acts related" [italics in original]).

- *MSO Washington, Inc. v. RSUI Group, Inc.,* 2013 WL 1914482 (W.D. Wash. May 8, 2013) (The Court declared that a policy that covers a "negligent act, error or omission in the rendering of . . . professional services" did not cover causes of action under the Fair Claims Act, which requires a plaintiff to prove that the insured knowingly presented false information).

Reformation

- *Axis Surplus Ins. Co. v. Hartford Acc. & Indem. Co.,* 2013 WL 5674987 (W.D. Wash. October 17, 2013) (Plaintiff co-insurer sought to reform the defendant co-insurer's policy, alleging that a certain entity had been omitted as a named insured in the defendant's policy because of a mutual mistake. The Court held that the plaintiff had the burden of proving a mutual mistake by "clear, cogent, and convincing evidence," and declared that the plaintiff had failed to satisfy its burden).