Sedgwick LLP

Washington Insurance Law

2014 Mid-Year Update

During the first six months of 2014, Washington judges issued several notable insurance-related decisions. Some of those decisions were favorable to insurers and could benefit insurers in future insurance claims and lawsuits in Washington. For instance, Washington judges declared that:

- Washington's Insurance Fair Conduct Act ("IFCA") does not apply to liability insurance claims,
- Insurers do not have a fiduciary relationship with their insureds and cannot be liable for an alleged breach of a fiduciary duty, and
- CGL insurers owe no duty to defend an insured in an environmental claim in the absence of a lawsuit or an administrative agency action that is "adversarial or coercive in nature."

However, several of those decisions were unfavorable to insurers and reaffirm that it can be difficult for insurers to litigate in Washington State. For instance, judges declared that:

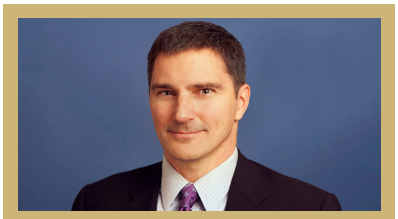
- A reasonable covenant judgment "establishes a floor, not a ceiling" on damages that a jury may award against an insurer,
- Insurance policy benefits are recoverable as damages under IFCA and are therefore subject to an award of treble damages under IFCA, and
- A violation of certain Washington Administrative Code regulations can independently give rise to a cause of action under IFCA.

Below, we have summarized some of the most notable insurance-related decisions that Washington courts filed during the first six months of 2014.

Extra Contractual

- *Gebrekidan, et al. v. USAA Ins. Co., et al.,* No. C13-0508 JLR, 2014 WL 171931 (W.D. Wash. January 15, 2014) (dismissing a third-party claimant's bad-faith cause of action against an alleged tortfeasor's insurer, declaring that a third-party claimant may not sue an insurer for bad faith).

- *Baker v. Phoenix Ins. Co.,* No. C12-1788 JLR, 2014 WL 241882 (W.D. Wash. January 22, 2014) (dismissing an insured's cause of action against his insurer for breach of a fiduciary duty, reasoning that Washington courts have neither recognized such a cause of action against an insurer, nor declared that there is a fiduciary relationship between an insurer and an insured).



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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 successfully 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*. He has also published many articles and papers about Washington insurance law, he is a regular contributor to Sedgwick LLP's *Insurance Law Blog*, and he has given several presentations on Washington insurance law.

Mr. Meyers is also licensed to practice law in Oregon, and he has successfully represented insurers in many claims arising in Oregon and other jurisdictions throughout the United States.

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- *Kloster v. Roberts, et al.,* No. 30546-5-III, 2014 WL 470742 (Wn. App. February 6, 2014) (declaring that a title insurer's agent is not an "insurer" under Washington law, and therefore cannot be liable as an insurer for bad faith or under the Consumer Protection Act. The court also declared that a title insurer's alleged failure to establish internal claim handling rules and to train its employees about claims handling regulations can violate the Washington Administrative Code and form the basis of claims for bad faith and under the Consumer Protection Act. However, the court declared that the insured had failed to show that those alleged omissions had delayed the insurer's investigation or had caused any damages. The court also rejected the insured's argument that the insurer's denial of coverage was evidence of bad faith because the insurer had not previously denied coverage in its "initial claim report"; the court reasoned that the dispositive inquiry was whether the insurer had denied coverage based on a reasonable interpretation of the policy).

- *Ainsworth v. Progressive Cas. Ins. Co.,* No. 69433-2-I, -- Wn. App. --, 322 P.3d 6 (February 10, 2014) (affirming a trial court's order [1] declaring that an insurer had violated the Insurance Fair Conduct Act ["IFCA"] by denying payment of certain disputed lost wages under the insured's first-party PIP coverage, and [2] awarding "actual damages" that encompassed the amount of the disputed wage-loss benefits. The court observed that a cause of action exists under IFCA if an insurer unreasonably denies coverage or unreasonably denies "payment of benefits"; it thus declared that IFCA can apply even if an insurer has not wholly denied coverage for a claim. In the context of causes of action for bad faith and under the Consumer Protection Act, the court also acknowledged that Washington courts have declared insurance policy benefits are not recoverable as damages. However, the court declined to address whether policy benefits are recoverable as "actual damages" under IFCA, because the insurer had raised that issue for the first time on appeal).

- *Grange Ins. Ass'n, et al. v. Lund, et al.,* No. C13-5362 RBL, 2014 WL 584011 (W.D. Wash. February 13, 2014) (dismissing causes of action for bad faith and under the Consumer Protection Act that an insured had asserted or could have asserted in prior litigation, declaring that *res judicata* barred those causes of action. However, the court allowed the insured to pursue causes of action for bad faith and under the Consumer Protection Act relating to the insurers' alleged acts and omissions after the judgment had entered in the prior litigation. Then, citing the Washington Supreme Court's decision in *Cedell v. Farmers Ins. Co. of Washington,* 176 Wn.2d 686, 295 P.3d 239 [2013], the court ordered the insurer to produce for an *in camera* review the contents in its claim file that were generated after the judgment had entered in the prior litigation).

- *Hazzard v. Union Bankers Ins. Co.,* No. C13-1162 RSL, 2014 WL 773533 (W.D. Wash. February 25, 2014) (declaring that one should not separately consider the value of "contract benefits" in addition to the value of a potential award of treble damages on those contract benefits for purposes of calculating a potential award of damages under the Insurance Fair Conduct Act ["IFCA"], reasoning that separately considering the contract benefits would improperly award quadruple damages on the contract benefits under IFCA. The court also declared that an insured might be able to recover treble damages separately under both the Consumer Protection Act and IFCA). *Accord, Rain v. Ameriprise Auto & Home Ins. Agency, Inc., et al.,* No. C14-5088RJB, 2014 WL 1047244 (W.D. Wash. March 18, 2014) (calculating a potential award of damages under IFCA by simply multiplying the alleged contract damages by three).

- *Water's Edge Associates, et al. v. Farmers Ins. Exchange, et al.,* No. 71066-4-I, 2014 WL 866042 (Wn. App. March 6, 2014) (affirming the dismissal of an insured's bad-faith claims against an insurer, declaring that the insurer had satisfied its duty to defend and indemnify its insured. The court also rejected the insured's argument that it had incurred $90,000 in attorneys' fees because of the insurer's alleged bad faith, stating that the insured had not proved that the insurer had "caused" the insured to retain counsel and that "the hiring of outside counsel was a choice the insureds made as part of a deliberate strategy developed in collusion with the Association").

- *Woodward v. American Family Mut. Ins. Co.,* No. C13-6005 BHS, 2014 WL 1047240 (W.D. Wash. March 17, 2014) (denying an insured's motion for a summary judgment declaring that her auto insurer had unreasonably denied medical expense coverage, breached the insurance policy, committed bad faith, and violated the Insurance Fair Conduct Act. The insured had argued that its insurer had unreasonably denied medical expense coverage after the insurer had stipulated to the amount of the insured's medical bills. In response, the court declared that there was an issue of material fact as to whether the insurer's decision was reasonable, as the amount of the insured's medical bills was less than the amount that the insured had recovered for her damages from the tortfeasor's insurer. The insured had also argued that the insurer had unreasonably delayed payment after an arbitrator had entered an award in the insured's favor. Citing WAC 284-40-360, the court opined that the insurer should have paid the award "within ten days," and observed that the insurer instead paid

the award 24 days after the judgment. However, the court declared that "[a] technical violation alone . . . may not support a claim for unreasonable denial of coverage and resulting statutory damages." Therefore, the court denied the insured's motion).

- *Schnell v. State Farm Fire and Cas. Co.,* No. C13-5114 RBL, 2014 WL 1089752 (W.D. Wash. March 18, 2014) (denying an insurer's motion to dismiss an insured's bad-faith claims. The insurer had argued that the insured could not demonstrate that he had sustained harm resulting from the insurer's alleged bad faith, because the insurer's alleged acts and omissions occurred after the policy's one-year suit limitation period had expired, at which point the insurer owed no duty to pay and had "no enforceable duty NOT to engage in bad faith." The insurer had also argued that its conduct was reasonable as a matter of law. The court denied the motion, declaring that there were issues of fact regarding whether the insurer had waived or should be estopped from asserting the suit-limitation clause, and whether the insurer's conduct had been reasonable. The court also expressed concern about the potential implications of the insurer's first argument, opining that it is premature for an insured to sue its insurer until after the insurer denies the claim, and surmising that under the insurer's analysis, insurers could escape contractual and extra-contractual liability by making it a standard practice to deny claims only after the limitations period expires).

- *Pleasant v. Regence Blue Shield,* No. 69143-1-I, 2014 WL 1286566 (Wn. App. March 31, 2014) (dismissing an insured's causes of action for bad faith and violations of the Consumer Protection Act, declaring that the insurer's Explanation of Benefits had satisfied the insurer's duty to provide a reasonable written explanation of the basis upon which the insurer had denied coverage).

- *Gallion v. Medco Health Solutions, Inc.,* No. 13-CV-0135-TOR, 2014 WL 1328764 (E.D. Wash. April 2, 2014) (dismissing an employee's causes of action against her employer for bad faith and under the Insurance Fair Conduct Act, declaring that the causes of action were barred by the one-year suit-limitation provision in a disability insurance policy. The court also opined that the suit-limitation provision could apply to the employee's cause of action against her employer under the Consumer Protection Act. However, the court dismissed that cause of action for a different basis, observing that the employee had alleged that her employer had violated the Consumer Protection Act by violating certain provisions of the Insurance Code, and declaring that the employer could not have violated the Insurance Code because it had not been "engaged in the business of insurance." In *dicta*, the court similarly observed that the Insurance Fair Conduct Act and the Washington Administrative Code's claim-handling regulations also "apply exclusively to persons engaged in 'the business of insurance'").

For regular updates on insurance law in Washington State and other jurisdictions, please visit Sedgwick LLP's *Insurance Law Blog* at **www.SedgwickInsuranceLaw.com** or follow us on Twitter **@SedgwickLLP**.

- *Beasley v. State Farm Mut. Auto. Ins. Co.,* No. C13-1106 RSL, 2014 WL 1494030 (W.D. Wash. April 16, 2014) (rejecting an insured's argument that his UIM insurer had committed bad faith by allegedly misrepresenting facts during discovery in UIM arbitration proceedings. The court did not specifically evaluate whether an insurer can be held liable for bad faith because of acts and omissions during the course of litigation with its insured; rather, it simply declared that the insurer had not misrepresented any facts during the arbitration and therefore had not acted in bad faith. The court also rejected the insured's argument that the insurer had committed bad faith by making unreasonably low settlement offers, declaring that the insurer's offers were reasonable based on the information that the insured had produced at those times. The court also rejected and dismissed the insured's causes of action for bad faith and under the Consumer Protection Act, declaring that the insured had not proven that he had been harmed by the insurer's alleged acts and omissions. The court also rejected and dismissed the insured's causes of action under the Insurance Fair Conduct Act, declaring that the insurer had not unreasonably denied coverage or payment of benefits, but had made reasonable decisions based on the information that the insured had produced. Finally, the court dismissed the insured's cause of action for breach of a fiduciary duty, declaring that Washington courts have neither recognized such a cause of action against an insurer nor have declared that there is a fiduciary relationship between an insurer and an insured).

- *Hampton v. Allstate Corp., et al.,* No. C13-0541 JLR, 2014 WL 1569239 (W.D. Wash. April 18, 2014) (dismissing an insured's cause of action under the Consumer Protection Act, because the insured had not produced compe-

tent evidence of compensable damages. The insured had alleged that because the insurer had failed to pay to repair fences on his property, he had lost income from his horse breeding business. The insured had also alleged that he had to incur investigative and expert expenses in the litigation as a result of the insurer's alleged violation of the Consumer Protection Act. In response, the court excluded evidence of damage to the insured's horse breeding business, because the insured had not timely disclosed such damages; alternatively, the court declared that the insurer had owed no duty to pay such damages, because they were barred by the policy's one-year suit-limitation provision. Additionally, the court declared that the insured's litigation expenses were not recoverable as damages under the Consumer Protection Act. The insured had not produced any other evidence of damages, so the court dismissed his cause of action under the Consumer Protection Act).

- *Seaway Properties, LLC v. Fireman's Fund Ins. Co.,* No. C13-633 RAJ, -- F.Supp.2d --, 2014 WL 1612696 (W.D. Wash. April 22, 2014) (declaring that an insurer had committed bad faith, violated the Consumer Protection Act, and violated the Insurance Fair Conduct Act by refusing to defend a lessor that was an additional insured for liability arising out of the use of the leased premises, against a suit that sought damages for an accident that had occurred while someone had been walking from the parking lot toward the entrance of the leased premises. The court declared that it must construe "arising out of" broadly, and held that under Washington and Ninth Circuit precedent, the underlying plaintiff's injury had "arisen out of" the leased premises because the plaintiff had been on her way to the leased premises. The court also declared that the insurer had committed unreasonable "delays" and thereby violated the Washington Consumer Protection Act by denying the claim just two months after the additional insured had tendered the claim directly to the insurer. The court reasoned that [1] the insurer had learned about the claim 20 months before the additional insured tendered the claim to the insurer, [2] the insurer had known that the additional insured was seeking a defense and indemnity 18 months before the additional insured tendered the claim to the insurer, and [3] four months before the additional insured had tendered the claim to the insurer, the additional insured tendered the claim to the named insured, who then "quickly" forwarded the tender to the insurer).

- *Miller v. Kenny, et al.,* No. 68594-5-I, -- Wn. App. --, -- P.3d --, 2014 WL 1672946 (April 28, 2014) (opining that it is a "fair practice" for an insured to enter a covenant judgment with a claimant and assign its rights against its insurer, and declaring that a reasonable stipulated covenant judgment between an insured and a claimant "establishes a floor, not a ceiling" on the damages that a jury may award against the insurer. The court also declared that the post-judgment interest rate on a judgment for bad faith or violations of the Consumer Protection Act is the statutory rate for a tort judgment prescribed by RCW 4.56.110[3][b] and not the contractual rate established in a settlement agreement between the insured and the claimant. The court also declared that an insured or assignee that prevails in a bad-faith suit may not recover "all reasonable and necessary costs incurred for the successful resolution of the bad faith suit," but is limited to a recovery of statutory costs. The court also affirmed an award of reasonable attorneys' fees based on rates of up to $450 per hour, observing that insurance bad-faith cases are difficult and require a high level of skill and specialization).

- *Hell Yeah Cycles v. Ohio Sec. Ins. Co.,* No. 13-CV-0184-TOR, -- F.Supp.2d --, 2014 WL 1671491 (E.D. Wash. April 28, 2014) (declaring that an insurer had breached the Consumer Protection Act as a matter of law by misstating the amount of the policy limits, by issuing payments that had been unaccompanied by a statement identifying the coverage under which the payment was being made, and by denying coverage without providing a reasonable explanation of the basis of the denial. However, the court observed that the insured had "not yet" demonstrated that those violations had proximately caused damages. The court also opined that the Insurance Fair Conduct Act ["IFCA"] allows a first-party claimant to sue its insurers for violating certain regulations promulgated by the Insurance Commissioner, but declared that there was a genuine issue of fact with respect to whether the insurer had violated any of those regulations).

- *Cox v. Continental Cas. Co.,* No. C13-2288 MJP, 2014 WL 2011238 (W.D. Wash. May 16, 2014) (dismissing an insured's cause of action against his liability insurer under the Insurance Fair Conduct Act ["IFCA"], declaring *sua sponte* that an insured under a liability insurance policy does not have a right of action under IFCA. The court reasoned that only a "first party claimant" has a right of action against IFCA, it observed that a liability insurance policy is a "third-party" insurance policy, and it observed that the Washington Supreme Court has consistently recognized that there are material differences between first-party insurance and third-party insurance. It thus declared that an insured under a third-party liability policy does not a right of action under IFCA).

- *Merrill v. Crown Life Ins. Co.,* No. 13-CV-0110-TOR, 2014 WL 2159266 (E.D. Wash. May 23, 2014) (observing that the Insurance Fair Conduct Act ["IFCA"] "ap-

plies exclusively to first-party insurance contracts," and opining that IFCA applies if an insurer has unreasonably denied a claim for coverage or payment of benefits "and/or violates one of several claims handling regulations." The court denied an insurer's motion for summary judgment dismissing an insured's IFCA and bad-faith claims, finding that there was an issue of fact about whether the insurer had reasonably denied total disability benefits for a nine-month period during which the insured had continued to work).

- *Woodward v. American Family Mut. Ins. Co.,* No. C13-6005 BHS, 2014 WL 2198808 (W.D. Wash. May 27, 2014) (interpreting the Washington Supreme Court's decision in *Cedell v. Farmers Ins. Co. of Washington,* 176 Wn.2d 686, 295 P.3d 239 [2013], to presume that an insurer must produce its "entire claim file," and advising the parties that it would unlikely find that *Cedell* would authorize an insurer to refuse categorically to produce documents after the insurer had changed the case's designation from "claims" to "legal") citing *Garoutte v. American Family Mut. Ins. Co.,* No. C12-1787 BHS, 2013 WL 5770358 (W.D. Wash. 2013) ("[T]he Court is not persuaded that every document created by an insurance company after suit has commenced is protected by the work product privilege").

- *Cox v. Continental Cas. Co.,* No. C13-2288 MJP, 2014 WL 2560433 (W.D. Wash. June 6, 2014) (denying an insured's motion for reconsideration and reaffirming its ruling, *supra*, that an insured under a liability insurance policy does not have a right of action under the Insurance Fair Conduct Act ["IFCA"]. The court acknowledged that there are examples of other judges applying IFCA to claims involving liability insurance policies, but observed that those judges had not specifically addressed whether the insureds in those cases were "first party claimants" as IFCA requires).

Coverage

General Liability Insurance

- *Atlantic Cas. Ins. Co. v. Earth Metals & Junk Co., et al.,* No. C13-1177 TSZ, 2014 WL 583988 (W.D. Wash. February 12, 2014) (declaring that a CGL policy did not require an insurer to defend its insured against an underlying complaint that asserted causes of action for breach of contract, violation of the Uniform Trade Secrets Act, unjust enrichment, violation of the Consumer Protection Act, tortious interference, and conversion. Without citing to any specific policy provisions or policy language, the court declared that the insurance policy excludes coverage for damages resulting from a breach of contract and from the infringement of trade secrets, and that the policy does not cover liability for unjust enrichment, under the Consumer Protection Act, or for conversion. The court also rejected the insured's argument that the insurer owed a duty to defend against causes of action that were "implied in the Complaint's statement of facts," and declared that an insurer owes no duty to defend against "hypothetical unpleaded claims").

- *Century Surety Co. v. Belmont Seattle, LLC,* No. C12-823 MJP, 2014 WL 1386540 (W.D. Wash. April 9, 2014) (denying an insured's motion for summary judgment, rejecting the insured's argument that its insurer's declaratory judgment action had become moot because the underlying suit had settled and the insured was therefore no longer seeking coverage for the underlying suit. The court observed that the insured was still seeking to recover its attorneys' fees in the lawsuit, and reasoned that it had to resolve insurance coverage issues before it could rule on the insured's request for attorneys' fees).

- *Terhune Homes, Inc. v. Nationwide Mut. Ins. Co.,* No. C13-798 RAJ, -- F.Supp.2d --, 2014 WL 1998528 (W.D. Wash. May 9, 2014) (declaring that there was a genuine issue of fact about whether a liability insurance policy's notice condition relieved an insurer of its duty to defend, where an additional insured had tendered the lawsuit more than five years after counterclaims had been asserted and more than two years after a judgment on the merits had ended the lawsuit. The court observed that an insurer must prove that an insured's late notice "had an identifiable and material detrimental effect on its ability to defend its interest," and that the issue is seldom decided as a matter of law. The insurer had argued that if the additional insured had timely notified the insurer about the counterclaims, the insurer "could have" retained the additional insured's defense counsel and mitigated its defense costs by settling the claim or obtaining a judgment declaring that it owed no duty to defend. In response, the court declared that the insurer had not presented any evidence to support its arguments that the delay had deprived the insurer of the ability to commence a declaratory judgment action or settle the claim. However, the court declared that there was a genuine issue of fact about whether the insurer had been actually and substantially prejudiced by the amount of the additional insured's defense costs. So, the court denied summary judgment, but observed that if a jury found that the insurer had been prejudiced by the late notice, it would be relieved of its obligations under the policy).

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- *Gull Industries, Inc. v. State Farm Fire & Cas. Co.,* No. 69569-0-I, -- Wn. App. --, -- P.3d --, 2014 WL 2457236 (June 2, 2014) (declaring as a matter of first impression that where a CGL policy did not define "suit," "suit" was ambiguous and could include "administrative enforcement acts that are the functional equivalent of a suit" in an environmental liability claim. In turn, for an administrative enforcement act to constitute a "suit" in the context of an environmental liability claim, the court declared that an administrative agency's action "must be adversarial or coercive in nature." That said, applying that standard, the court held that the insurer did not owe a duty to defend an insured, where the insured had received a letter from the Washington Department of Ecology that simply acknowledged receiving a notice from the insured that the property was contaminated and that the insured intended to pursue an independent voluntary cleanup. The court held that that letter "did not present an express or implied threat of immediate and severe consequences by reason of the contamination," and therefore did not constitute a "suit" that triggered the insurer's duty to defend).

Excess / Umbrella Insurance

- *Lewark v. Davis Door Services, Inc., et al.,* No. 68634-8-I, -- Wn. App. --, 321 P.3d 274 (February 10, 2014) (declaring that the plaintiff was not an additional insured under an umbrella liability insurance policy, where the policy's additional insured endorsement provided that a person or entity is an additional insured if a written contract required the named insured "to provide the kind of insurance that is afforded by this policy," and where the subject contract required the named insured to procure only primary commercial general liability coverage).

Claims-Made Insurance

- *Great American Ins. Co. v. Sea Shepherd Conservation Soc., et al.,* No. C13-1017 RSM, 2014 WL 2170297 (W.D. Wash. May 23, 2014) (declaring that an insurer owed no duty under a claims-made policy to defend or indemnify an insured in a lawsuit, where the insured had not timely notified the insurer about the suit in compliance with the policy. The court observed that claims-made policies serve to define the risk "so that it is ascertainable at the end of the policy period," that Washington courts strictly construe and enforce claims-made policies to effectuate their intent, and that an insurer that issues a claims-made policy need not demonstrate that it was prejudiced by late notice. The court also rejected the insured's argument that the insurer owed a duty to defend the insured against contempt proceedings within the subject litigation, declaring that those proceedings constituted the same claim that the insured had not timely reported, or were "related claims" that related back to the claim that the insured had not timely reported).

Homeowner's Insurance

- *United Services Auto. Ass'n v. Speed,* 178 Wn. App. 184, 317 P.3d 532 (January 28, 2014) (declaring that a homeowner's policy did not require an insurer to defend its insured against a bodily injury claim alleging that the insured had deliberately assaulted the claimant in a road-rage incident, reasoning that the claim did not allege an "accident" or "occurrence" as the policy required. The court observed that the policy required the insurer to defend against a "claim" if the policy conceivably covered the claimant's allegations. It therefore evaluated the allegations in the claimant's demand letter to determine whether the insurer owed a duty to defend. That said, the court observed that the claimant's demand letter unambiguously alleged that the claimant had sustained damages because of the insured's "intentional conduct" and not because of negligence. So, the court concluded that the claim did not allege an "accident" or "occurrence" that could trigger the insurer's duty to defend. The court also rejected the insured's argument that the insurer owed a duty to defend because it had allegedly initially been "uncertain" about whether it owed a duty to defend. The court stated that an insurer's alleged uncertainty does not trigger a duty to defend, that the duty to defend is a question of law for the court based on the claimant's allegations, and that a contrary ruling "would conflict with the rule that insurance coverage cannot be created by equitable estoppel").

Title Insurance

- *Kloster v. Roberts, et al.,* No. 30546-5-III, 2014 WL 470742 (Wn. App. February 6, 2014) (declaring that a title insurer's agent is not an "insurer" under Washington law, and therefore could not be liable as an insurer for breach of contract, breach of the duty to defend, or breach of the duty to indemnify. The court also declared that a duty to defend arises when a complaint is filed that alleges covered claims, and held that a title insurance company owed no duty to defend an insured in the absence of a lawsuit. The court also reversed a trial court's ruling that a title insurance policy provided coverage because there was no access easement; the court observed that the title insurance policy unambiguously insured against loss due to "lack of a right of access to and from the land," and that the insureds had "actual and legal access to their land" notwithstanding the lack of an easement).

All-Risk Insurance

- *Alaska Village Elec. Co-op, Inc. v. Zurich American Ins. Co., et al.,* 552 Fed. Appx. 709 (9th Cir. January 17, 2014)

(reversing an order granting summary judgment to an insurer under an all-risk insurance policy, declaring that there was a genuine issue of fact regarding whether the policy covered faulty workmanship and thus covered the claim. The court declared that the policy was ambiguous, and opined "where the parties have actually negotiated for specific terms, Washington law requires that courts consider extrinsic evidence to determine the policy's meaning." Moreover, the court declared that the extrinsic evidence presented a genuine factual dispute about the parties' intent and thus the policy's meaning).

Auto Insurance

- *Dennis v. Liberty Mut. Group, et al.,* No. C13-989 JPD, 2014 WL 1089291 (W.D. Wash. March 14, 2014) (declaring that a change in an auto policy from coverage for specified autos to coverage for "all" autos constituted a "material change" to the policy, which created a "new" policy, which in turn required a new written rejection of UIM coverage under RCW 48.22.030. Moreover, because the insured had not rejected UIM coverage in writing after the material change to the policy, per RCW 48.22.030, the insured's auto policy included UIM coverage in the same amount as the insured's auto liability coverage).

Exclusions

- *Hartford Cas. Ins. v. Mark,* No. C13-5433 RJB, 2014 WL 300989 (W.D. Wash. Jan. 28, 2014) (declaring that a property insurance policy's "vacant building" exclusion unambiguously applied to the building that was identified in the policy's Declarations, and that the insured need not have owned the entire building for the exclusion to apply).

- *National Union Fire Ins. Co. of Pittsburgh, PA v. Coinstar, Inc.,* No. C13-1014 JCC, 2014 WL 868584 (W.D. Wash. February 28, 2014) (declaring that causes of action against an insured for alleged violations of the Video Privacy Protection Act ["VPAA"] fell within the scope of an exclusion that provided that the insurance does not apply to any loss, claim, or suit arising out of "any statute . . . that addresses or applies to the sending, transmitting or communicating of any material or information, by any means whatsoever." The court did not address whether the cause of action under the VPAA fell within the scope of the policy's insuring agreement).

- *Western Nat. Assur. Co. v. Wargacki,* No. C13-05373 RBL, 2014 WL 1317571 (W.D. Wash. March 31, 2014) (declaring that a homeowner's policy's criminal acts exclusion applied to an underlying wrongful death case in which the victim had been shot in the back of the head at close range. The court acknowledged that no one had witnessed the shooting and that the specific circumstances of the shooting were unclear. Nevertheless, the court concluded that even if the shooting had been accidental, it would have constituted criminal negligence as a matter of law, such that any resulting damages would fall within the scope of the criminal acts exclusion).

- *IDS Property Cas. Ins. Co. v. Crawford,* No. C12-5095 RBL, -- F.Supp. --, 2014 WL 1494080 (W.D. Wash. April 16, 2014) (declaring that a homeowner's policy's intentional act exclusion applied to fire damage to an insured's home, where the insured had intentionally set the fire with the motive to kill herself rather than to destroy her home. The court declared that the insured's motive for starting the fire was irrelevant, and that it was also irrelevant if the scope of the damages differed from what the insured had intended. Rather, the court declared that insured's intent was dispositive, and observed that the insured had admitted that she had intentionally doused her garage with fuel and set it on fire. The court also observed that houses are necessarily damaged when they are set on fire. Therefore, the court held that a reasonable jury could only conclude that the insured had intended to damage her property and that the exclusion applied).

- *Western Nat. Assur. Co. v. Shelcon Const. Group, LLC,* No. 70143-6-I, 2014 WL 1828993 (Wn. App. May 5, 2014) (declaring that a lawsuit seeking damages for the reduction in value of the underlying plaintiff's real property fell within the scope of CGL exclusion j.[5], which provides that the policy does not apply to property damage to "that particular part of real property on which you . . . are performing operations, if the 'property damage' arises out of those operations." In the underlying suit, the plaintiff alleged that [1] the insured had removed markers that enabled the property owner monitor and measure the settlement of the ground, [2] once the insured removed the markers, it was impossible to measure the settlement of the ground accurately, and [3] it therefore had to reduce the price of the property by more than $2 million to sell it. The insured tendered the complaint to the insurer and the insurer denied the tender, taking the position that the underlying complaint did not allege "property damage," and that even if it did, the property damage fell within the scope of exclusions j.[5], j.[6], and m. On summary judgment, the court "assum[ed]" that the underlying complaint had alleged "property damage" and fell within the scope of the policy's insuring agreement, and then evaluated coverage under only exclusion j.[5]. Addressing that exclusion, the insured argued that exclusion j.[5] applied only to any property damage to the settlement markers themselves, and did not apply to consequential damages

relating to the removal of the settlement markers, such as the reduction of the value to the property. The court rejected the insured's argument and declared that exclusion j.[5] applied to the alleged consequential damages relating to the removal of the settlement markers).

Suit-Limitation Provisions

- *Stellar J. Corp. v. Argonaut Ins. Co., et al.,* No. 3:12-cv-05982 RBL, 2014 WL 1513292 (W.D. Wash. April 16, 2014) (rejecting a surety's argument that a bond holder's suit was barred by a performance bond's suit-limitation provision. The bond's suit-limitation provision required the bond holder to commence a suit before the earlier of [1] one year from the date on which a contract required the delivery of materials, or [2] one year from the date of any other default under the contract. There, the contract required delivery of the materials on January 15, 2010, and a subcontractor defaulted in March 2012 by walking off the job. The surety argued that the suit-limitation provision began to run on January 15, 2010, such that the bond holder was required to commence a suit by January 15, 2011. However, the court rejected that argument, declaring that as applied, the delivery-related section of the suit-limitation provision violated RCW 48.18.200, which declares that suit-limitation provisions are void and unenforceable if they limit a right of action "to a period of less than one year from the time when the cause of action accrues." The court reasoned that a cause of action could not have "accrued" on the January 15, 2010 delivery date or any earlier than when the subcontractor walked off the job in March 2012, so it would violate Washington law to establish a limitations deadline of January 15, 2011. Instead, the court declared that a cause of action had accrued in March 2012 when the contractor walked off the job, such that the bond holder had until March 2013 to file its suit. Moreover, the bond holder had filed its suit in November 2012, before the suit-limitation period expired).

Choice-of-Law Provisions

- *Karpenski v. American General Life Companies, LLC,* et al., No. C12-1569 RSM, -- F.Supp.2d --, 2014 WL 585843 (W.D. Wash. April 2, 2014) (declaring that a choice of law provision in a master group long-term disability policy that provided that the master policy "is issued and governed under the laws of Virginia" also controlled a Certificate of Insurance that had been issued to an insured in Washington State. The court also rejected the insured's argument that applying Virginia law would contravene the public policy of Washington State, observing that the insured had not even demonstrated that there was a material conflict between Washington law and Virginia law).

Procedure

- *Bunch v. Nationwide Mut. Ins. Co.,* No. 69600-9-I, -- Wn. App. --, 321 P.3d 266 (February 3, 2014) (declaring that if two actions share an identity of subject matter, parties, and relief, "the court which first gains jurisdiction . . . retains the exclusive authority to deal with the action until the controversy is resolved." It then declared that a state trial court erred by denying an insurer's motion to stay an insured's Consumer Protection Act claim in state court, where the insured had previously filed a Consumer Protection Act claim that was proceeding in federal court).

- *First Mercury Ins. Co. v. SQI, Inc., et al.,* No. C13-2110 JLR, No. C13-2109 JLR, 2014 WL 1338657 (W.D. Wash. April 3, 2014) (citing and applying the *Brillhart* abstention doctrine, the court granted an insured's motion to stay the litigation in favor of a parallel state court action that had been commenced several years earlier).

- *Ridemind LLC v. South China Ins. Co., Ltd.,* No. C14-489 RSL, 2014 WL 2573310 (W.D. Wash. June 9, 2014) (declaring that the court had personal jurisdiction over a Taiwanese insurer that had issued a certificate of insurance to an additional insured in Washington State, reasoning that the insurer had "created a continuing obligation to a forum resident," had availed itself of the benefits of doing business in the forum, and thus should be subject to any burdens of litigating in the forum. The court also declared that it had pendent personal jurisdiction over the Taiwanese insurer with respect to the additional insured's causes of action against the insurer under the Consumer Protection act and Insurance Fair Conduct Act, since those causes of action arose out of a common nucleus of facts with the additional insured's contract claims).