



Washington Policyholders Can Sue Insurance Adjusters Personally for Bad Faith Claims Handling

In a new decision, a Washington State appellate court ruled recently that insureds may sue an insurance adjuster personally for bad faith claims handling. The decision is unusual and has interesting implications for policyholders and insurance companies nationwide.

*Keodalah et. al. v. Allstate Insurance Co. et. al.*¹, arose out of a motor vehicle accident. The plaintiff, Moun Keodalah, and a motorcyclist collided in April 2007. After Keodalah stopped at a stop sign and began to drive through the intersection, the motorcyclist struck his truck. The collision injured Keodalah and killed the motorcyclist. The motorcyclist was uninsured.

The Seattle Police Department determined that the motorcyclist was traveling between 70 and 74 m.p.h. in a 30 m.p.h. zone and that Keodalah had not been using his cell phone at the time of the accident. Allstate, Keodalah's underinsured motorist carrier, also determined after its own investigation that Keodalah had stopped at the stop sign, that the motorcyclist was traveling a minimum of 60 m.p.h., and that the motorcyclist caused the collision.

Keodalah sued Allstate for contractual UIM benefits. Although the per person limit was \$25,000, Allstate offered \$1,600 to Keodalah, arguing 70% contributory negligence. The adjuster on the claim, Tracey Smith, alleged that Keodalah had run the stop sign and had been on his cell phone. She later admitted in the course of litigation that both of those claims were untrue. Allstate ultimately offered \$15,000 to settle the claim before trial. At trial, Allstate maintained that Keodalah was 70% at fault, but the jury found the motorcyclist 100% at fault and awarded Keodalah \$108,868.20 in damages.

Keodalah filed a second lawsuit against Allstate, this time joining its adjuster Tracey Smith as a defendant, alleging bad faith claims handling and trade practices violations. Allstate and Smith moved for judgment on the pleadings, and the trial court dismissed the claims against Smith. Pursuant to Washington procedure, the trial court certified the case for interlocutory review.

The Washington Court of Appeals, First Division, held that Keodalah had a cause of action against the individual adjuster, Smith, pursuant to Revised Code of Washington, § 48.01.030, which states:

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

The Court cited established case law from Washington that "persons" unambiguously includes adjusters, and that the statute imposed a duty of good faith on the claims adjuster.

The decision gives policyholders a few new tools to pursue claims involving bad faith claims handling. Every insurance adjuster managing Washington claims will now have a strong incentive to deal fairly with customers and claimants. Adjusters will not be incentivized solely to negotiate down claims so they can reap the harvest of praise from their employer.

¹ 413 P.3d 1059 (Wash. Ct. App. 2018)

For litigators, the decision may also provide a way to defeat diversity jurisdiction. Washington plaintiffs pursuing a bad faith claim against the insurance company can join an in-state insurance adjuster as a defendant and remain in state court because the plaintiff and one defendant reside in the same state.

The decision's impact appears to be limited to Washington and states with similar statutes requiring representatives of insurers to act in good faith. Many states derive their insurance bad faith law from the covenant of good faith and fair dealing. In those states, without some type of contractual privity between a policyholder and an adjuster, the individual adjuster currently owes no common law duty of good faith to the policyholder.

It remains to be seen if policyholders can boot-strap *Keodalah* into direct action against adjusters in the absence of statutory authority.

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