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NORTHWEST INSURANCE LAW

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WASHINGTON COURT OF APPEALS FINDS WASHINGTON'S INSURANCE FAIR CONDUCT ACT ALLOWS RECOVERY OF NON-ECONOMIC DAMAGES

The Washington Insurance Fair Conduct Act (IFCA), RCW 48.30.015, provides up to treble damages in the event an insurer unreasonably denies coverage or refuses to pay benefits under a first-party insurance policy. To prevail under IFCA, an insured must establish that they sustained "actual damages." Until recently, the courts had not addressed whether "actual damages" under IFCA includes non-economic damages.

In *Beasley v. GEICO General Insurance Company,* 2022 WL 4353226 (2022) the Washington Court of Appeals, Division II, held that non-economic damage may be recoverable under IFCA. In *Beasley,* the claimant, a passenger in a car accident, filed a claim with the driver's uninsured (UIM) motorist insurer. The insurer denied the claimant's request for the $100,000 UIM policy limits and offered $10,000. The claimant rejected the settlement offer, but nonetheless, demanded that the insurer pay the $10,000 as the undisputed portion of the UIM claim. The insurer refused to do so, and the claimant filed suit. Among other causes of action, the claimant alleged that the insurer violated IFCA by refusing to pay the undisputed amount of $10,000. At trial, the jury awarded $84,000 under IFCA, which the trial court trebled, but refused to treble the $400,000 awarded by the jury on the claimant's bad faith claim. Specifically, the trial court rejected the claimant's request to allow non-economic damages on the IFCA claim.

On appeal, the Court of Appeals disagreed and held that the legislative intent of IFCA was that non-economic damages be included in recoverable damages under IFCA. In reaching its ruling, the Court noted that while IFCA did not define "actual damages," the term was intended to include non-economic damages. More specifically, the Court cited other statutes, such as Washington's Law Against Discrimination and the federal Fair Credit Reporting Act to find that "actual damages" was intended to include non-economic damages.

While this opinion is still subject to review by the Washington Supreme Court, it provides guidance on an traditionally unresolved issue in Washington bad faith litigation, in which IFCA claims are commonly alleged. While federal district courts are not necessarily bound to follow the *Beasley* decision, it will have an impact on state court claims for the foreseeable future until this issue is decided by the Washington Supreme Court.

WASHINGTON FEDERAL COURT ARTICULATES STANDARDS TO APPLY TOWARDS "VANDALISM" POLICY LANGUAGE

Many insurance policies cover damage resulting from "vandalism" to the covered property. Washington Courts have generally defined vandalism as: "willful or malicious destruction or defacement of public or private property." *Bowers v. Farmers Ins. Exch.*, 991 P.2d 734, 737 (Wash. Ct. App. 2000). However, the question of whether "malicious intent" is a requirement for an insured to receive coverage for property damage resulting from alleged vandalism has been a key issue in several cases. In addition, insurers have frequently faced the question of whether an Insurance Fair Conduct Act (IFCA) violation claim against them can be avoided if they accept coverage of an insured's claim within the 20-day notice period and paying for the alleged damage after initially denying the claim.

In *Duke Young and K22, LLC v. Safeco Ins. Co. of Amer.*, 2022 WL 4017893 (W.D. Wash. Sept. 2, 2022), a Washington Federal District Court was asked to determine whether an insurer violated IFCA by denying a property owner coverage for the incomplete renovations done by a former tenant. In *Young*, the insured made a claim for property damage due to vandalism after a former tenant passed away leaving the rental property in shambles from incomplete renovations. The insured argued that the incomplete renovations was a type of vandalism pursuant to the subject policy. The policy included coverage for damage resulting from vandalism, but excluded coverage for damage from "renovations." Following the investigation of the insured's allegations, the insurer denied coverage for the alleged vandalism damages because the former tenant received permission from the insured to make the renovations to the unit. Though the rental agreement stated that renovations were *not* permitted, the insurer justified its denial because there was sufficient evidence to support the claim that the former tenant received permission to complete the renovations.

Fifteen months after the insured's vandalism claim was formally denied, his counsel sent the insurer a 20-day notice of intent to sue under IFCA alleging the insurer's initial denial of coverage was "manifestly unreasonable." The insurer's counsel responded to the notice 18 days later in an email and indicated that the insurer agreed to "cure" its initial denial and "accept coverage" for the insured's alleged loss. However, the insurer informed the insured's counsel that "a re-inspection would be needed… to capture data regarding damages," and reserved the right to change its coverage position pending further investigation. The insured's counsel subsequently provided the insurer with an estimate along with a letter formally denying the insurer's request for a second inspection. The letter asserted that the insured breached the Policy by unreasonably denying the insured's vandalism claim, which the insured's counsel said relieved him of any obligation to provide access to the property.

The insured filed suit for declaratory judgment and sought extra-contractual damages under IFCA for an unreasonable denial of coverage. The insurer moved for summary judgment, arguing that the insured failed to provide evidence supporting the claim that the former tenant's actions were done intentionally in violation of the rental agreement. The insured argued that the letter from the insurer denying his claim for vandalism did not give a reason for the denial. The Court found in favor of the insurer on the coverage issues, and specifically held that the insured incorrectly deemed allegedly "illicit" renovations as vandalism because the damage resulting from an intentional act must be foreseeable.

Although the Court sided with the insurer on the coverage issue, the Court also held that the insurer's denial letter was insufficient. The Court held that an insurance company must explain why coverage is denied. Although the insurer's investigator explained to the insured verbally that he found no evidence of "malicious mischief" or intentional acts that would lead to "vandalism," this explanation was not an adequate substitute for a written explanation. However, the Court found the insurer's timely response to the insured's 20-day notice of the pending lawsuit as a sufficient defense to the alleged IFCA violation.

This case represents a positive development for insurers, as it interprets specifically-worded clauses requiring an insured to provide evidence of an intentional act that led to a foreseeable result equating to "vandalism" to receive coverage for such. In addition, this case highlights Washington Courts' willingness to allow an insurer's response within the 20-day window to a notice of a pending lawsuit as a defense to an IFCA violation claim. Washington courts generally rule in favor of the insureds when there is any evidence supporting the argument that an insured acted "unreasonably" in denying the insured's claim. However, this case set the bar for a "reasonable denial" when a situation falls square within a policy exclusion.

OREGON FEDERAL COURT DEFINES "AN INSURED VEHICLE" UNDER OREGON STATUTE AS THE VEHICLE INSURED UNDER THAT SPECIFIC POLICY

Until recently, Oregon Courts had not addressed whether the phrase "an insured vehicle" was limited to the vehicle(s) specifically described in a certain policy or whether it also included other vehicles that were insured under a different policy. A common sense reading of this phrase in the context of an auto insurance policy leads to the conclusion that coverage would only be limited to the vehicle insured under that policy, and not other vehicles insured under different policies.

This issue was not entirely clear when the District Court of Oregon in *State Farm Mutual Automobile Insurance Company v. James Watkins-Todt,* No. 6:21-cv-01650-MC, 2022 WL 3368821 (D. Or. Aug. 16, 2022) was asked to decide whether an insurer is obligated to pay for a claim made by the insured whose vehicle not named in the subject policy, but insured under a different policy with another insurer was involved in an accident with an uninsured motorist.

In *Watkins-Todt*, the insured owned three different vehicles: a Ford, a Toyota, and a Jeep. The Ford was insured under a policy with American National Property and Casualty Co., while the Toyota and Jeep were insured by State Farm, the insurer involved in this litigation. While driving the Ford, the insured was involved in an accident caused by an uninsured motorist. The insured made a UIM claim with State Farm because he believed his vehicle was "an insured vehicle" under the State Farm policy despite the fact that the State Farm policy only listed the other two vehicles. State Farm denied coverage because the policy does not provide UIM coverage when the insured is operating a vehicle not covered under the policy.

The insured argued that State Farm's interpretation of the policy conflicted with the language of Oregon's statutory model for UIM coverage, ORS § 742.504(4)(b), which provides that "this coverage does not apply to bodily injury to an insured while occupying a vehicle other than an insured vehicle, owned by, or furnished for the regular use of, the named insured …" (emphasis added). The statute further defines "insured vehicle" as "the vehicle described in the policy or a newly acquired or substitute vehicle ... or a non-owned vehicle operated by the named insured ...."

While the insured conceded that the Ford did not fall under the definition of an "insured vehicle" in the statute, he argued that because the Ford was "an insured vehicle," just not under the State Farm policy, it was "an insured vehicle" as contemplated by the statute. As such, the insured claimed that ORS § 742.504 mandates that State Farm pay the statutory minimum for the UIM claim.

The Court agreed with State Farm that the policy and its exclusions are consistent with ORS § 742.504(4)(b) and that the insured's interpretation of Oregon statutes that all vehicles driven by an insured are covered was "nonsensical." Further, the Court held that State Farm's exclusion of coverage for UIM claims when an insured is driving a vehicle that they own, but is not listed in the policy, is an enforceable exclusion.

This case shows that Oregon Courts will not simply "add" an insured's additional vehicles to a policy, even if the insured has coverage under the same policy for other vehicles they own. In preserving the intended scope of an insurance policy, courts will look to the explicit and unambiguous terms of a policy to determine if a vehicle is covered.

INSURANCE TEAM

For over 90 years Williams Kastner attorneys have represented clients in the insurance industry, including primary and excess insurers, reinsurers, self-insurers, agents, brokers, and insurance pools. Our attorneys have advised clients on regulatory and claim handling issues, and have assisted insurers in countless claims from the claim investigation through trial on cases involving coverage and bad faith claims. Please feel free to contact us if you have any questions regarding insurance law in Washington and Oregon.

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