WILLIAMS KASTNER

NORTHWEST INSURANCE LAW

QUARTERLY NEWSLETTER | SPRING 2025

Williams Kastner has been delivering legal and business advice to a broad mix of clients since our Seattle office opened in 1929. With more than 60 lawyers in Washington and Oregon, the firm provides national and regional capabilities that offer a client first approach with a practical sensibility only a local firm can provide. We are dedicated to advancing the strategic objectives of our clients by combining knowledge and experience with creativity both in and out of the courtroom. The firm culture is characterized by quality legal work, high-performance teamwork, diversity and the trusted relationships we form with our clients and the local community.

TABLE OF CONTENTS

9TH CIRCUIT COURT OF APPEALS AFFIRMS DISMISSAL OF EXTRA-CONTRACTUAL CLAIMS IN WASHINGTON UIM CASE REGARDING PAYMENT OF "UNDISPUTED" DAMAGES

Authored by Eliot Harris

Washington State has seen an increase in bad faith claims against insurers regarding settlement of uninsured/underinsured ("UIM") motorist claims in the past decade. One of the primary reasons for this increase is the development of a duty by a UIM insurer to pay so-called "undisputed" amounts arising out of *Beasley v. GEICO Gen. Ins. Co.*, 517 P.3d 500 (Wash. Ct. App. 2022). While many Washington federal courts have limited the application of bad faith liability based on an insurer's failure to pay "undisputed" amounts, a recent ruling by the 9th Circuit Court of Appeals goes further to recognize how *Beasley* applies to a narrow set of circumstances.

On June 16, 2025, the 9th Circuit Court of Appeals issued its decision in *Vorhees v. Esurance Insurance Services, Inc.*, 2025 WL 1682180 (9th Cir. 2025), which affirmed a Washington Federal District Court's decision dismissing all extracontractual claims against the insurer for its handling of the plaintiff's UIM claim. The *Vorhees* case arises out of two-car accident, in which the plaintiff sustained personal injuries and received $10,000 in personal injury protection ("PIP") payments from Esurance and the $25,000 policy limits from the at-fault driver.

In May 2022, the plaintiff demanded the $100,000 UIM policy limits, claiming $24,918.80 in medical expenses and over $75,000 in lost income. After review of the demand and supporting documentation, Esurance determined the plaintiff's total damages ranged between $45,000 - $54,000. Esurance informed Plaintiff that it did not dispute the medical expenses and that the range did not include the lost income claim because of insufficient documentation to establish lost income. Between 2021 and 2022, Esurance repeatedly asked the plaintiff to provide documentation to support his lost income claim. The plaintiff only provided incomplete profit and loss records for his handyman business that he had started just months before the accident. Esurance then offered $5,000 for lost income due to the insufficient documentation. Esurance also interviewed the plaintiff to ascertain additional information about the claimed damages. Esurance later increased the total estimated value of the claim to $73,916.56, plus $3,280.20 in *Winter's* fees, but minus the PIP and at-fault driver's payments. Esurance never issued a payment to the plaintiff under the UIM policy. The plaintiff continued to demand the UIM policy limits and filed suit, which included claims for bad faith, violation of Washington's Consumer Protection Act ("CPA") and violation of Washington's Insurance Fair Conduct Act ("IFCA").

During discovery, the plaintiff took the depositions of various Esurance claims personnel as well as Esurance's bad faith claim handling expert. During those depositions, the witnesses testified that Esurance's offer was "fair," "reasonable," and "considered," but never said that it was "undisputed," and never conceded that Esurance's failure to pay the offered amount constituted a violation of the CPA or IFCA. During his deposition, the plaintiff testified that he was unsure how he came up with the numbers for his profit and loss records and admitted that his bookkeeping was incomplete and did not give an accurate picture of the business's activities during the relevant time period.

Esurance moved for summary judgment on the bad faith, CPA, and IFCA claims, which the District Court granted. In doing so, the District Court rejected the plaintiff's argument that, under *Beasley*, Esurance's failure to pay the amount offered to settle the UIM claim was an "undisputed" amount, and that failure to make this payment may create extra-contractual liability. The District Court further noted that the plaintiff had presented no evidence that he actually requested that Esurance tender the supposedly undisputed amounts to him. The plaintiff appealed to the 9th Circuit Court of Appeals, which affirmed.

The 9th Circuit Court of Appeals held that there were no genuine issues of material fact that Esurance acted reasonably because Esurance's UIM settlement offer was based on a lack of supporting documentation as a result of the plaintiff's failure, and not a failure of the insurance company. In addressing *Beasley*, the 9th Circuit Court of Appeals held that *Beasley* was distinguishable from the present case because there was no testimony by the adjusters who handled the plaintiff's claim that they did not dispute the amount owed to the plaintiff, but instead conceded only that the offers were "fair" and "reasonable," and described the offers as "generous" and a "compromise." The 9th Circuit found that this testimony was insufficient to infer that the UIM settlement offer was an undisputed amount to trigger an obligation to make payment under *Beasley*.

The *Vorhees* case not only provides an example of how to limit the application of *Beasley* for potential extra-contractual liability in UIM litigation, but serves as an example of how important the claim handlers' depositions can be towards the determination of extra-contractual liability. Even when extra-contractual claims have not been filed in a UIM lawsuit, a plaintiff may amend the complaint to add such claims after a claim handlers' deposition. As a result, insurers defending against UIM litigation must be adequately prepared for how to avoid *Beasley*-type questions both before and after suit is filed, even if extra-contractual claims have not yet been asserted.

HARRIS V. SAFECO – WHEN ARE EMOTIONAL DISTRESS DAMAGES RECOVERABLE?

Authored by Miranda Russell

In *Richard Harris, et al. v. Safeco Insurance Company of Illinois*, the U.S. District Court for the District of Oregon clarified when policyholders may recover litigation-related emotional distress damages under Oregon's unfair settlement practices statute (ORS § 746.230(1).)

Following a house fire in August 2022, the plaintiffs filed a claim under their Safeco insurance policy for Additional Living Expenses ("ALE"). Due to delays in payment, they initiated legal action. By late 2024, the plaintiffs pursued a single claim of negligence per se, seeking both economic and noneconomic damages, including emotional distress.

Safeco sought to exclude damages tied to litigation-related emotional distress. The plaintiffs responded that their emotional-distress stemmed from Safeco's wrongful handling of the claim, not the litigation itself, which the court found to be a factual issue for the jury. The court then addressed the plaintiffs other argument that litigation-related emotional distress damages are recoverable in cases alleging a violation of ORS § 746.230(1).

After reviewing Oregon Supreme Court precedent on the issue of emotional-distress damages in other areas and federal court precedent involving the recovery of emotional-distress damages for insurance claims, the court concluded that litigation-related emotional distress damages are only recoverable under ORS § 746.230(1)(g). This provision prohibits insurers from compelling policyholders to file lawsuits to obtain benefits, making litigation-related stress foreseeable and compensable in limited circumstances.

While emotional distress damages may be available in insurance disputes, recovery for litigation-related distress is narrowly limited to cases where an insurer's conduct violates ORS § 746.230(1)(g). This underscores the importance of understanding the specific protections afforded under Oregon's insurance regulations.

INSURANCE TEAM

For over 95 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.

ELIOT HARRIS

SEATTLE
(206) 233-2977
eharris@williamskastner.com

MIRANDA RUSSELL

SEATTLE
(206) 628-6653
mrussell@williamskastner.com