BULLIVANTHOUSER

Matthew J. Sekits
Seattle,
Shareholder-in-Charge

Direct Dial: 206.521.6452
Fax: 206.386.5130
Email Attorney

Owen R. Mooney
Seattle, Associate

Direct Dial: 206.521.6406
Fax: 206.386.5130
Email Attorney

Washington Supreme Court Protects Individual Adjusters from Bad Faith Liability

By Matthew J. Sekits, Owen R. Mooney

On October 3, the Washington Supreme Court held that individual employee insurance adjusters cannot be sued for "bad faith" under a state statute regarding the business of insurance and the public interest, nor for per se claims under the Washington Consumer Protection Act—reversing a 2018 Washington Court of Appeals decision that had prompted policyholders to name individual claims handlers as defendants in bad faith suits.

Keodalah v. Allstate Ins. Co. – P.3d. – (10/3/2019), arose out of an underinsured motorist claim, where the policyholder sued not only the insurer, but also the individual claims handler, a company employee. In reversing the 2018 Court of Appeals decision (413 P.3d 1059 (Wash. Ct. App. 2018)), the Washington Supreme Court protected individual claims handlers who are simply doing their jobs.

Washington has both a Consumer Protection Act, which applies to insurance, as well as a statute that sets out a statutory good-faith duty, RCW 48.01.030. In this decision, the Washington Supreme Court, by a 5-4 vote, held that "employee adjusters are not subject to personal liability for insurance bad faith or per se claims under the CPA."

Keodalah arose out of an underinsured motorist claim. In addition to suing the insurer, the policyholder sued the claims handler who handled the UIM claim. In the earlier decision, the Court of Appeals had concluded the statutory language regarding "good faith" as to "all persons" to mean that an individual company employee claims handler could beheld personally liable for bad faith. In the earlier decision, the court had also concluded the existence of a contractual relationship between the individual claims handler and the policyholder was not a necessary element of a Consumer Protection Act claim.

The Washington Supreme Court felt differently. Significantly for both insurers and their employees, the court concluded that RCW 48.01.030 was intended to benefit the general public, but it did not create a statutory cause of action for insurance bad faith. The Supreme Court found the individual claims adjuster was not an insurer against whom the policyholder could seek to enforce alleged violations of the Consumer Protection Act—likewise, the policyholder could not base a Consumer Protection Act claim against the adjuster on the statutory duty of good faith under RCW 48.01.030.

This is very good news for insurers and their employees. There has a been a slowly developing nationwide trend towards exposing individual claims handlers to personal liability (See, *Bockv. Hansen*, 225 Cal.App.4th 215 (2014)) and reversing the intermediate appellate decision in *Keodalah* is a significant win for the insurance industry.