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Court concludes insurance fair conduct act applies prospectively only

By Matthew J. Sekits

In *HSS Enterprises, LLC, v. AMCO Insurance Co.*, Case No. C06-1485-JDP, the plaintiff sued for breach of contract, bad faith, and violations of the Washington Consumer Protection Act related to the insurer's investigation and payment of a fire loss. The loss occurred on September 15, 2005, and the plaintiff filed suit in 2006. On January 14, 2008, before the U.S. District Court Western District, the plaintiff moved to amend its complaint to add a claim for relief under Washington's Insurance Fair Conduct Act ("Act"), which went into effect December 6, 2007. Magistrate Judge Donohue denied the motion. In doing so, Judge Donohue concluded the Act "should be applied prospectively only" because:

- The Legislature did not express an intent to apply the Act retroactively;
- Section (1) of the Act uses present and future tenses, strengthening the "presumption in favor of prospectivity";
- Section (1) creates a new cause of action for a claimant who is unreasonably denied a claim for coverage or payment of benefits and is, therefore, not remedial; and
- The Act imposes a penalty.