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***Staples v. Allstate*: "Substantially Complying" with an EUO Requirement Without Complying at All**

By Matthew J. Sekits, Daniel R. Bentson

Even if an insurance policy requires the insured to submit to an examination under oath ("EUO"), the insured's refusal to participate may not provide a sufficient basis for the insurer to obtain summary judgment in a later-filed coverage action. In *Staples v. Allstate Ins. Co.*, No. 86413-6 (Wash. Jan. 24, 2013), the insured, Staples, filed a claim under his homeowner's policy with Allstate, alleging that his van, which contained thousands of dollars in tools and equipment, had been stolen. Due to differences between Staples' statements to the police and to Allstate regarding the value of the stolen property, Allstate conducted an investigation, which included a request that Staples provide documents, participate in two unsworn interviews, and attend an EUO.



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Staples neither attended the EUO nor provided all of the documents requested by Allstate. After Allstate denied his claim, Staples agreed to the EUO—but only on the condition that Allstate waive the policy's one-year suit limitation provision. When Allstate refused to do so, Staples sued Allstate. The trial court granted Allstate's summary judgment motion and the Washington Court of Appeals affirmed.

The Washington Supreme Court reversed, holding that, even though the policy required Staples to submit to an EUO, genuine issues of fact remained as to whether Staples "substantially complied" with the policy and whether his failure to participate in the EUO prejudiced Allstate. The majority also stated "we hold that if an EUO is not material to the investigation or handling of a claim, an insurer cannot demand it" and noted its disagreement on this point with an earlier court of appeals opinion, *Downie v. State Farm Fire & Cas. Co.*, 84 Wn. App. 577, 929 P.2d 484 (1997). But this statement is arguably *dicta* because the court declined to rule on whether the EUO was "material" to Allstate's investigation. Rather, the court reversed summary judgment for Allstate on the ground that questions of fact remained as to whether the insured "substantially complied" with the EUO requirement and, if not, whether Allstate was prejudiced as a result.

The dissent challenged the majority's opinion, arguing that it was inconsistent with *Tran v. State Farm Fire & Cas. Co.*, 136 Wn.2d 214, 961 P.2d 358 (1998). *Tran* held that, where the insured made inconsistent statements to the police and his insurer regarding a burglary, the insured's refusal to provide financial documents requested by the insurer did not "substantially comply" with the policy's cooperation clause and prejudiced the insurer as a matter of law. The majority in *Staples*, however, distinguished *Tran*, stating that *Tran* represented an "extreme case."

Given the tension between *Staples* and *Tran*, insurers and policyholders will likely continue to litigate these issues. Still, *Staples* illustrates the difficulty of demonstrating on summary judgment that the insured failed to "substantially comply" with an EUO requirement or that the insurer suffered prejudice as a matter of law.