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Take It Personally: Washington Imposes Extracontractual Liability on Claims Handlers

By Matthew J. Sekits, Owen R. Mooney

This week, Washington's Division One Court of Appeals, decided an individual insurance claims handler can be personally liable to an insured for bad faith and violations of Washington's Consumer Protection Act. The decision is *Keodalah v. Allstate Ins. Co.*, No. 75731-8-I, 2018 WL 1465526 (Wash. Ct. App. Mar. 26, 2018).

Keodalah involved an underinsured motorist claim. The defendant was the claims handler who handled the UIM claim for the insurer. Last year, a Washington court concluded that a corporate insurance adjuster could be sued for "bad faith." *Merriman v. American Guarantee*, 396 P.3d 351 (2017). What makes *Keodalah* significant is it expands that exposure to individual claims professionals, including those who are employees of the insurance company.

In Washington, there is a duty of good faith under RCW 48.01.030. In *Keodalah*, the appellate court read the statutory language regarding "good faith" as to "all persons" involved in insurance to mean that an individual company employee claims handler could be held personally liable for bad faith conduct. The court reached this conclusion in part because in the same chapter of the code, "person" was defined as "any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation." This led the appellate court to conclude the individual insurance claims handler acting as the insurer's representative fell within the statute's plain language, meaning the individual employee claims handler had a duty to act in good faith, and could be sued for breaching that duty.

On the Consumer Protection Act claim, the appellate court concluded the existence of a contractual relationship between the individual claims handler and the policyholder was not a necessary element of the claim. In so doing, it relied, in part, on a decision by the Washington Supreme Court, *Panag v. Farmers Insurance Company of Washington*, 204 P.3d 885 (Wash. 2009), which held a Consumer Protection Act claim does not require proof of a consumer or other business relationship between the policyholder and the person or entity against whom the claim is brought.