Washington Bad Faith Law At A Glance

Foreword

Washington state can be a difficult jurisdiction for insurers. Insurers’ duties of care are sometimes interpreted or applied quite broadly, and if an insurer breaches those duties, it can be subjected to tort damages, coverage by estoppel, treble damages, and an award of reasonable attorneys’ fees.

To help insurers avoid or mitigate their extra-contractual exposure, Sedgwick LLP’s Bob Meyers prepared Washington Bad Faith Law At A Glance. In his paper, Mr. Meyers cites notable Washington authorities relating to common law bad faith, the Consumer Protection Act, and the Insurance Fair Conduct Act. For insurers’ ease of reference, he also includes excerpts from notable Washington insurance statutes and regulations. The authorities cited in the paper are illustrative and not exhaustive.

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Bob Meyers has extensive experience representing U.S. and international insurers in complex, high-value insurance matters, including advising clients about their rights and obligations under insurance policies, bad faith law, and insurance statutes and regulations, and representing insurers in disputes and lawsuits. Mr. Meyers has experience with a wide variety of insurance coverages and insurance claims, including general liability, intellectual property, advertising injury, bodily injury liability, property damage liability, professional liability, directors & officers liability, errors & omissions liability, employment practices liability, environmental liability, sexual misconduct liability, homeowners liability, auto liability, fidelity bonds, first-party property, health, excess, and umbrella. He also has considerable experience handling and managing complex multi-jurisdictional disputes and lawsuits, long-tail insurance claims, and insurance claims involving “lost” policies. He has also assisted clients with claims and disputes that have a nexus to several different jurisdictions, including Washington, Oregon, California, Hawaii, Montana, Colorado, Nevada, Idaho, New York, New Jersey, Texas, Illinois, and Tennessee.

Several publications have recognized Mr. Meyers for his legal services. Mr. Meyers has earned an AV peer-review and client-review rating from Martindale-Hubbell, he has been recognized as a “Super Lawyer” and “Rising Star” in Washington Law & Politics, he has been recognized as a “Top Lawyer” in Seattle Met, and he has earned a “Superb” rating from Avvo.

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§ 1. Common Law Bad Faith

§ 1.1. Duty — General

In all insurance matters, all persons owe a duty of good faith, to abstain from deception, to practice honesty and equity, and to preserve inviolate the integrity of insurance. RCW 48.01.030; Appendix A.


§ 1.1.a. Duty and Breach — Insurers


A third-party claimant does not have a direct right of action against an insurer for an alleged breach of the duty of good faith. See, e.g., Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 391, 715 P.2d 1133, 1139 (1986). However, an insured may assign its bad faith claim, and as an assignee, the third party would “step into the shoes” of the insured. See, e.g., Safeco Ins. Co. of Am. v. Butler, 118 Wn.2d 383, 397-399, 823 P.2d 499, 507-509 (1992).

An insurer’s duty of good faith applies to claims involving either first-party insurance or third-party insurance. See, e.g., St. Paul Fire & Marine Ins. Co. v. Onvia, Inc., 165 Wn.2d 122, 130, 196 P.3d 664, 668 (2008).


Fundamentally, an insurer’s duty of good faith connotes a duty to consider an insured’s interests equally. See, e.g., Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 387, 391, 715 P.2d 1133, 1137, 1139 (1986).


To assert a viable cause of action for common law bad faith, an insured must prove that the insurer breached its duty of care and that the breach was “unreasonable, frivolous, or unfounded.” See, e.g., Lloyd v. Allstate Ins. Co., 167 Wn.App. 490, 496, 275 P.3d 323, 326 (2012).

An insurer does not have a viable common law bad faith claim if the insurer simply made a good faith mistake. See, e.g., Coventry Associates v. American States Ins. Co., 136 Wn.2d 269, 280, 961 P.2d 933, 937-938 (1998) (“Of course, insurance companies, like every other organization, are going to make some mistakes. As long as the insurance company acts with honesty, bases its decision on adequate information, and does not overemphasize its own interests, an insured is not entitled to base a bad faith or CPA claim against its insurer on the basis of a good faith mistake”); Insurance Co. of State of Pennsylvania v. Highlands Ins. Co., 59 Wn.App. 782, 786-787, 801 P.2d 284, 286-287 (1990) (“[M]istakes and clumsiness alone do not amount to bad faith. . . . Neither denial of coverage because of a debatable coverage question nor delay, unaccompanied by an unfounded or frivolous reason, constitutes bad faith”).


§ 1.1.b. Duty — Insureds


§ 1.2. Harm and Remedies


§ 1.2.a. Tort Damages — Emotional Distress — Policy Benefits

Because bad faith is a tort, a plaintiff is not limited to economic damages, but may seek to recover tort damages. See, e.g., Coventry v. American States Ins. Co., 136 Wn.2d 269, 284-285, 961 P.2d 933, 939-940 (1998).

In common law bad faith claims, certain Washington judges
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§ 1.2.b. Presumption of Harm


§ 1.2.c. Coverage by Estoppel


§ 1.2.d. Reasonable Attorneys’ Fees

If an insured prevails in a common law bad faith claim, generally, it is not entitled to an award of reasonable attorneys’ fees. Accord, see, e.g., 35 Wa. Prac., Washington Insurance Law and Litigation § 23:1 (2014-2015 ed.). See generally Dayton v. Farmers Ins. Group., 124 Wn.2d 277, 280, 876 P.2d 896, 897-898 (2006) (observing that Washington follows the American rule vis-à-vis attorneys’ fees, and that a Washington court may not award attorneys’ fees to a prevailing party unless such an award is authorized by a contract, a statute, or a recognized ground in equity).

§ 1.3. Defenses


§ 2. Consumer Protection Act (CPA) — RCW 19.86.020

§ 2.1 Purpose and Prima Facie Case

The Consumer Protection Act (CPA) serves broadly to prohibit “unfair or deceptive acts or practices in trade or commerce.” RCW 19.86.020; Appendix C. It provides individuals and entities with a private right of action if they have sustained injury to business or property because of an unfair or deceptive act or practice. RCW 19.86.090; Appendix C.
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The Washington Legislature enacted a statute that provides that unfair or deceptive acts in the business of insurance are actionable under the CPA, and specifically provides that it is an unfair or deceptive act to unreasonably deny coverage or payment of benefits to a first party claimant. RCW 48.30.010(7).

Appendix A. Accord, see, e.g., Industrial Indem. Co. of the Northwest, Inc. v. Kallevig, 114 Wn.2d 907, 920-925, 792 P.2d 520, 528-530 (1990). The Legislature also empowered the Washington Insurance Commissioner to promulgate regulations that identify specific acts or omissions that are unfair or deceptive. RCW 48.30.010(2).

Appendix B. Those regulations are the WAC claim handling regulations.


§ 2.2. Right of Action — Third Parties — Assignments

An insured has a direct right of action against its insurer under the CPA. See, e.g., Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 394, 715 P.2d 1133, 1140 (1986).

A third-party claimant does not have a direct right of action against an insurer under the CPA. See, e.g., Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 393-395, 715 P.2d 1133, 1140 (1986). However, an insured may assign its CPA claim, and as an assignee, the third party would “step into the shoes” of the insured. See, e.g., Steinmetz for benefit of Palmer v. Hall-Conway-Jackson, Inc., 49 Wn.App. 223, 227-229, 741 P.2d 1054, 1056-1057 (1987).

§ 2.3. Liability Elements


A single violation of the WAC’s claim-handling regulations can give rise to a cause of action under the CPA. See, e.g., Industrial Indem. Co. of the Northwest, Inc. v. Kallevig, 114 Wn.2d 907, 923-924, 792 P.2d 520, 529-530 (1990).


§ 2.4. Injury and Remedies

To prevail in a CPA claim, an insured must prove that a violation of the CPA proximately caused “injury to business or property.” RCW 19.86.090; Appendix C.


§ 2.4.a. Emotional Distress and Personal Injury


Likewise, under the CPA, a plaintiff may not recover damages for personal injuries, damages that are derivative of personal injuries (e.g., medical bills, insurance benefits for medical bills), or damages for economic injuries if the plaintiff sustains economic injuries and personal injuries in the same act. See, e.g., Does v. Allstate Ins. Co., 933 F.Supp.2d 1299, 1310 (W.D. Wash. 2013).

§ 2.4.b. Treble Damages

If the insured sustained actual damages, the CPA grants the court discretion to award treble damages of up to $25,000. RCW 19.86.090; Appendix C.

§ 2.4.c. Reasonable Attorneys’ Fees

If an insured can satisfy all five elements of its prima facie case under the CPA, it is entitled to an award of reasonable attorneys’ fees, regardless of whether it sustained actual damages. See, e.g., Ledor Industries (USA), Inc. v. Mutual of Enumclaw Ins. Co., 150 Wn. App. 1, 12 n. 18, 206 P.3d 1255, 1261 n. 18 (2009).

§ 2.5. Defenses

Reasonableness is a complete defense to an insured’s CPA claim. See, e.g., Pleasant v. Regence Blue Shield, 181 Wn.App. 252, 270, 325 P.3d 237, 247 (2014); Dombrowsky v. Farmers Ins.
Insurance Fair Conduct Act (IFCA) — RCW 48.30.015

§ 3.1. “First Party Claimant”

IFCA grants a right of action only to a “first party claimant.” RCW 40.30.015(1); Appendix B. The statute defines a first party claimant to mean “an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.” RCW 48.30.015(4); Appendix B.

§ 3.1.a. Insureds on Third-Party (Liability) Policies

As of the date of this publication, no Washington appellate court has published a decision addressing whether an insured on a third-party (liability) insurance policy can constitute a “first party claimant” under IFCA.


In contrast, certain federal judges have declared that an insured on a liability insurance policy can be a “first party claimant” under IFCA. See, e.g., City of Bothell v. Berkley Regional Specialty Ins. Co., No. C14-0791–RSL, 2014 WL 5110485, at *10 (W.D. Wash. Oct. 10, 2014); Cedar Grove Composting, Inc. v. Ironshore Specialty Ins. Co., No. C14-1443-RAJ, 2015 WL 3473465, at *6 (W.D. Wash. June 2, 2015) (declaring without prejudice to future briefing that an insured on a liability insurance policy was a first party claimant under IFCA “[w]ith respect to at least its demand for defense costs”).

There are also examples of cases in which federal judges summarily applied IFCA to liability insurance claims, without specifically discussing whether an insured under a liability policy is a first party claimant. See, e.g., Tim Ryan Const., Inc. v. Burlington Ins. Co., No. C12-5770-BHS, 2012 WL 6567586 (W.D. Wash. Dec. 17, 2012).

§ 3.1.b. Assignees

As of the date of this publication, no Washington appellate court has published a decision that specifically addresses whether an IFCA claim is assignable and whether the assignee may become a “first party claimant” under IFCA. But see, Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co., 176 Wn.App. 185, 202, 312 P.3d 976, 985 (2013) (stating in dicta, “We see no reason to conclude that an IFCA claim should be treated differently than a CPA claim with respect to assignability. However, without express assignment, an insurer may not independently assert its insured’s IFCA claims.”)

§ 3.1.c. Judgment Creditors

As of the date of this publication, no Washington appellate court has published a decision addressing whether a judgment creditor can be a “first party claimant” under IFCA. In federal court, there is a split of authority. See, e.g., Ritchie v. Capitol Indem. Corp., No. C11-1903-RAJ, 2012 WL 3126809, at *7 (W.D. Wash. July 31, 2012) (holding that once judgment creditor obtains rights under insurance policy, it can become a first party claimant for purposes of IFCA); Morris v. Country Cas. Ins. Co., No. C11-719-RSM, 2011 WL 5166453, at *2 (W.D. Wash. Oct. 31, 2011) (holding that judgment creditors are not first party claimants and have no rights under IFCA).

§ 3.1.d. Subrogees

An insurer does not become a “first party claimant” under IFCA and become equitably subrogated to an insured’s rights to pursue an IFCA claim against another insurer by simply paying the insured’s claim. Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co., 176 Wn.App. 185, 200-205, 312 P.3d 976, 984-986 (2013).

§ 3.2. Actionable Conduct

IFCA provides that a first party claimant “who is unreasonably denied a claim for coverage or payment of benefits by an insurer” may bring an action under IFCA. RCW 48.30.015(1); Appendix B. IFCA also provides that a court may award treble damages and must award attorneys’ fees if it finds that an insurer has violated certain provisions of the WAC. RCW 48.30.015(2),(3); Appendix B.

§ 3.2.a. Denial of Payment of Benefits

Certain Washington judges have interpreted “den[i][a]l [of] payment of benefits” to encompass “underpayments” or disputes about the value of the claim, even where the insurer had not denied coverage. See, e.g., Ainsworth v. Progressive Cas. Ins. Co., 180 Wn.App. 52, 78-80, 322 P.3d 6, 19-21 (2014); Morella v. Safeco Ins. Co. of Illinois, No. C12-0672-RSL,
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2013 WL 1562032, at *3-*4 (W.D. Wash. April 12, 2013) (holding that an insurer’s offer of 10 percent of the insurer’s internal valuation of the claim constituted a “denial of payment of benefits” under IFCA).

§ 3.2.b. Washington Administrative Code Violations

As of the date of this publication, no Washington appellate court has published a decision addressing whether a violation of the WAC is independently actionable under IFCA, in the absence of an unreasonable denial of coverage or payment of benefits.


§ 3.3. Damages and Remedies

§ 3.3.a. Actual Damages — Policy Benefits

IFCA provides for an award of “actual damages sustained.” RCW 48.30.015(1); Appendix B.

As of the date of this publication, no Washington appellate court has published a decision addressing what constitutes “actual damages” under IFCA, or whether actual damages can include policy benefits. One federal judge has interpreted “actual damages” to mean “the actual amount necessary to compensate the plaintiff for an injury or loss.” See, e.g., Morella v. Safeco Ins. Co. of Illinois, No. C12-0672-RSL, 2013 WL 1562032, at *4-*5 (W.D. Wash. April 12, 2013).


§ 3.3.b. Treble Damages

IFCA grants the court discretion to “increase the total award of damages to an amount not exceeding three times the actual damages.” RCW 48.30.015(2); Appendix B. As this language suggests, under IFCA, treble damages are uncapped.


§ 3.3.c. Reasonable Attorneys’ Fees

If a first party claimant can satisfy its prima facie case under IFCA, the court is required to award reasonable attorneys’ fees. RCW 48.30.015(2); Appendix B.

§ 3.4. Statutory Notice

IFCA provides that a first party claimant must provide an insurer with 20 days’ advanced written notice of “the basis of the cause of action,” and it authorizes a first party claimant to assert a cause of action under IFCA only “[i]f the insurer fails to resolve the basis for the action within the twenty-day period.” RCW 48.30.015(8); Appendix B.

At least one federal judge has applied the 20-day notice requirement to an amended complaint that includes a cause of action under IFCA. See, e.g., MBK Constructors v. American Zurich Ins. Co., 49 F.Supp.3d 814, 839-840 (W.D. Wash. 2014) (declaring that insured had satisfied IFCA’s 20-day notice requirement by notifying the insurer about the basis of an action under IFCA at least 20 days before it amended its complaint to assert an IFCA cause of action).


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*Ins. Co., No. C11-5578-RJB, 2011 WL 6300253, at *6-*7 (W.D. Wash. Dec. 16, 2011) (In its IFCA notice, the insurer stated that it had tendered its defense and “had not heard anything.” The insurer responded by acknowledging the letter and advising that it was investigating. On summary judgment, the court declared that the insurer did not have a basis for a cause of action under IFCA, because the insurer’s acknowledgement had “cured” the specific defect that insured had alleged — i.e., that the insurer “had not heard anything”).

**§ 4. Choice of Law**


**§ 5. Reservations of Rights**

In lieu of denying coverage and risking contractual and extra-contractual exposure, in Washington, an insurer may agree to defend an insured subject to a reservation of rights. See, e.g., *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 761, 58 P.3d 276, 282 (2002). If an insurer defends its insured subject to a reservation of rights, the insured gets the benefit of a defense, while the insurer preserves its right to dispute coverage and to commence a lawsuit to determine whether it actually owes a duty to defend or indemnify. *Id.*

The purpose of a reservation of rights letter is to notify the insured about the insurer’s current coverage position, enable the insured to protect its interests, and protect the insurer from bad faith if the insurance policy ultimately covers the claim. See, e.g., *Alaska Nat. Ins. Co. v. Bryan*, 125 Wn.App. 24, 38-39, 104 P.3d 1, 9 (2004).

**§ 5.1. Requirements**


**§ 5.2. Equitable Estoppel**

In a reservation of rights letter, if an insurer fails to assert a known policy defense specifically and in a timely manner, and if the insurer has been prejudiced by that omission, a Washington court might equitably estop the insurer from asserting the defense. See, e.g., *Bako v. Pitts & Still, Inc.*, 75 Wn.2d 856, 864-865, 454 P.2d 229 (1969) (“If an insurer denies liability under the policy for one reason, while having knowledge of other grounds for denying liability, it is estopped from later raising the other grounds in an attempt to escape liability, provided that the insurer was prejudiced by the insurer’s failure to initially raise the other grounds”); *Karpenski v. American General Life Companies, LLC*, 999 F.Supp.2d 1235, 1245-1246 (W.D. Wash. 2014); *Anderson v. Country Mut. Ins. Co.*, No. C14-0048-JLR, 2015 WL 687399, at *8-*10 (W.D. Wash. Feb. 18, 2015).


**§ 5.3. Right to Select Defense Counsel**

Even when an insurer is defending its insured subject to a reservation of rights, Washington courts have consistently held that an insurer has the right to select defense counsel for the insured. See, e.g., *Johnson v. Continental Cas. Co.*, 57 Wn.App. 359, 363, 788 P.2d 598, 601 (1990) (“In Washington, there is simply no presumption . . . that a reservation of rights situation creates an automatic conflict of interest. Therefore, the insurer has no obligation before-the-fact to pay for its insured’s independently hired counsel”); *Weinstein & Riley, P.S. v. Westport Ins. Corp.*, No. C08-1694-JLR, 2011 WL 887552, at *19-*20 (W.D. Wash. March 14, 2011) (“Washington does not recognize an entitlement to ‘independent counsel’ as it is understood under the Cumis model”).

**§ 5.4. Commencing a Coverage Suit While Defending Subject to a Reservation of Rights — Potential Consequences**

If an insurer is defending its insured subject to a reservation of rights, and if it commences an insurance declaratory judgment action that directly undermines the insured’s in-
terests in the underlying suit, an insured might argue that the declaratory judgment action is evidence of bad faith. See, e.g., Mutual of Enumclaw Ins. Co. v. Dan Paulson Const., Inc., 161 Wn.2d 903, 918, 169 P.3d 1, 9-10 (2007).

§ 6. Privilege and Work Product

In 2013, a 5–4 majority of the Washington Supreme Court declared that it will presume that a first-party insurer in an insurance bad faith suit may not assert its attorney-client privilege or work-product protection; the insurer may rebut the presumption by demonstrating that the insurer’s attorney “was not engaged in the quasi-fiduciary tasks of investigating and evaluating or processing the claim, but instead providing the insurer with counsel as to its own potential liability.” If the insurer rebuts the presumption, the court will conduct an in camera review and redact content relating to the attorney’s legal tasks. Cedell v. Farmers Ins. Co. of Washington, 176 Wn.2d 686, 295 P.3d 239 (2013).

As of the date of this publication, no Washington appellate court has published a decision that applies the Cedell majority’s presumption in the context of a bad faith suit relating to third-party (liability) insurance. However, certain federal judges have applied the presumption in bad faith suits relating to liability insurance. See, e.g., Carolina Cas. Ins. Co. v. Omeros Corp., No. C12-287-RAJ, 2013 WL 1561963, at *3 (W.D. Wash. April 12, 2013).

As of the date of this publication, no Washington appellate court has published a decision that clarifies the Cedell majority’s distinction between “quasi-fiduciary investigative” tasks and “legal” tasks. Federal judges have struggled with that distinction. See, e.g., Philadelphia Indem. Ins. Co. v. Olympia Early Learning Center, No. C12-5759-RBL, 2013 WL 338503, at *3 (W.D. Wash. July 2, 2013) (opining that the Washington Supreme Court’s framework “creates rather than alleviates confusion about what must be produced, and under what circumstances”); Palmer v. Sentinel Ins. Co., Ltd., No. C12-5444-BHS, 2013 WL 3448128, at *2-*3 (W.D. Wash. July 9, 2013) (“[W]here an attorney involve[s] himself or herself in the investigation or its supervision, and as counsel advising its client about potential liability, . . . the attorney-client privilege and work-product protections are likely to be waived in many, if not most cases . . . This is so because counsel’s legal analysis . . . will very likely implicate the work performed and information obtained in his or her quasi-fiduciary capacity . . . Because [the attorney] appears to have performed quasi-fiduciary duties, [any privilege relating to] the documents . . . containing her legal advice, even those relating to coverage, appear to have been waived”).


APPENDIX A
Excerpts from RCW 48

RCW 48.01.030
Public interest.

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

RCW 48.30.010
Unfair practices in general — Remedies and penalties.

(1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3) (a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal, the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. “First party claimant” has the same meaning as in RCW 48.30.015.

RCW 48.30.015 (Insurance Fair Conduct Act — IFCA)
Unreasonable denial of a claim for coverage or payment of benefits.

(1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together
(2) The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages.

(3) The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys’ fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action.

(4) “First party claimant” means an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

(5) A violation of any of the following is a violation for the purposes of subsections (2) and (3) of this section:

(a) WAC 284-30-330, captioned “specific unfair claims settlement practices defined”;

(b) WAC 284-30-350, captioned “misrepresentation of policy provisions”;

(c) WAC 284-30-360, captioned “failure to acknowledge pertinent communications”;

(d) WAC 284-30-370, captioned “standards for prompt investigation of claims”;

(e) WAC 284-30-380, captioned “standards for prompt, fair and equitable settlements applicable to all insurers”; or

(f) An unfair claims settlement practice rule adopted under RCW 48.30.010 by the insurance commissioner intending to implement this section. The rule must be codified in chapter 284-30 of the Washington Administrative Code.

(6) This section does not limit a court’s existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law.

(7) This section does not apply to a health plan offered by a health carrier. “Health plan” has the same meaning as in RCW 48.43.005. “Health carrier” has the same meaning as in RCW 48.43.005.

(8) (a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection.
APPENDIX B

Excerpts from WAC 284-30

WAC 284-30-330
Specific unfair claims settlement practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

1. Misrepresenting pertinent facts or insurance policy provisions.

2. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

4. Refusing to pay claims without conducting a reasonable investigation.

5. Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss documentation has been submitted.

6. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to promptly pay property damage claims to innocent third parties in clear liability situations. If two or more insurers share liability, they should arrange to make appropriate payment, leaving to themselves the burden of apportioning liability.

7. Compelling a first party claimant to initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings.

8. Attempting to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

9. Making a claim payment to a first party claimant or beneficiary not accompanied by a statement setting forth the coverage under which the payment is made.

10. Asserting to a first party claimant a policy of appealing arbitration awards in favor of insureds or first party claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

11. Delaying the investigation or payment of claims by requiring a first party claimant or his or her physician to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.

12. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

13. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

14. Unfairly discriminating against claimants because they are represented by a public adjuster.

15. Failing to expeditiously honor drafts given in settlement of claims. A failure to honor a draft within three working days after notice of receipt by the payor bank will constitute a violation of this provision. Dishonor of a draft for valid reasons related to the settlement of the claim will not constitute a violation of this provision.

16. Failing to adopt and implement reasonable standards for the processing and payment of claims after the obligation to pay has been established. Except as to those instances where the time for payment is governed by statute or rule or is set forth in an applicable contract, procedures which are not designed to deliver a check or draft to the payee in payment of a settled claim within fifteen business days after receipt by the insurer or its attorney of properly executed releases or other settlement documents are not acceptable. Where the insurer is obligated to furnish an appropriate release or settlement document to a claimant, it must do so within twenty working days after a settlement has been reached.

17. Delaying appraisals or adding to their cost under insurance policy appraisal provisions through the use of appraisers from outside of the loss area. The use of appraisers from outside the loss area is appropriate only where the unique nature of the loss or a lack of competent local appraisers make the use of out-of-area appraisers necessary.
(18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.

(19) Negotiating or settling a claim directly with any claimant known to be represented by an attorney without the attorney’s knowledge and consent. This does not prohibit routine inquiries to a first party claimant to identify the claimant or to obtain details concerning the claim.

WAC 284-30-350
Misrepresentation of policy provisions.

(1) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(2) No insurance producer or title insurance agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(3) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

(4) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer’s rights.

(5) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(6) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

(7) No insurer shall make a payment of benefits without clearly advising the payee, in writing, that it may require reimbursement, when such is the case.

WAC 284-30-360
Standards for the insurer to acknowledge pertinent communications.

(1) Within ten working days after receiving notification of a claim under an individual insurance policy, or within fifteen working days with respect to claims arising under group insurance contracts, the insurer must acknowledge its receipt of the notice of claim.

(a) If payment is made within that period of time, acknowledgment by payment constitutes a satisfactory response.

(b) If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment must be made in the claim file of the insurer describing how, when, and to whom the notice was made.

(c) Notification given to an agent of the insurer is notification to the insurer.

(2) Upon receipt of any inquiry from the commissioner concerning a complaint, every insurer must furnish the commissioner with an adequate response to the inquiry within fifteen working days after receipt of the commissioner’s inquiry using the commissioner’s electronic company complaint system.

(3) For all other pertinent communications from a claimant reasonably suggesting that a response is expected, an appropriate reply must be provided within ten working days for individual insurance policies, or fifteen working days with respect to communications arising under group insurance contracts.

(4) Upon receiving notification of a claim, every insurer must promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer’s reasonable requirements. Compliance with this paragraph within the time limits specified in subsection (1) of this section constitutes compliance with that subsection.
WAC 284-30-370
Standards for prompt investigation of a claim.

Every insurer must complete its investigation of a claim within thirty days after notification of claim, unless the investigation cannot reasonably be completed within that time. All persons involved in the investigation of a claim must provide reasonable assistance to the insurer in order to facilitate compliance with this provision.

WAC 284-30-380
Settlement standards applicable to all insurers.

(1) Within fifteen working days after receipt by the insurer of fully completed and executed proofs of loss, the insurer must notify the first party claimant whether the claim has been accepted or denied. The insurer must not deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to the specific provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer must contain a copy of the denial.

(2) If a claim is denied for reasons other than those described in subsection (1) and is made by any other means than in writing, an appropriate notation must be made in the claim file of the insurer describing how, when, and to whom the notice was made.

(3) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it must notify the first party claimant within fifteen working days after receipt of the proofs of loss giving the reasons more time is needed. If after that time the investigation remains incomplete, the insurer must notify the first party claimant in writing stating the reason or reasons additional time is needed for investigation. This notification must be sent within forty-five days after the date of the initial notification and, if needed, additional notice must be provided every thirty days after that date explaining why the claim remains unresolved.

(4) Insurers must not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(5) Insurers must not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant’s rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant’s rights. This notice must be given to first party claimants thirty days and to third party claimants sixty days before the date on which any time limit may expire.

(6) The insurer must not make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a specified period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(7) Insurers are responsible for the accuracy of evaluations to determine actual cash value.
APPENDIX C
Excerpts from RCW 19.86

RCW 19.86.020
Unfair competition, practices, declared unlawful.

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

RCW 19.86.090 [Excerpt]
Civil action for damages — Treble damages authorized

Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee. In addition, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed twenty-five thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorneys' fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed twenty-five thousand dollars. For the purpose of this section, “person” includes the counties, municipalities, and all political subdivisions of this state.
APPENDIX D
Restatement (Second) of Conflict of Laws § 145 (1971)

§ 145 The General Principle

(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.

(2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
(d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.