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## **An Insurance Law Update**

**11/07/07**

### **Voters Approve Insurance Fair Conduct Act**

On November 6, 2007, Washington voters approved R-67, a referral to the people of the legislation entitled "Insurance Fair Conduct Act." We first reported on this legislation in May, when it was signed by Governor Christine Gregoire. The referendum effort to repeal the legislation stayed the effective date. Now that voters have approved this legislation, the Act will go into effect on December 6, 2007.

#### **What is the Insurance Fair Conduct Act?**

The Act allows recovery of uncapped treble damages for unreasonable denial of a claim for coverage or payment of benefits, and recovery of uncapped treble damages for violation of certain insurance regulations.

#### **To whom does this Act apply?**

All those engaged in the "business of insurance" are subject to the Act, except for health plans offered by health carriers. Because long-term care insurance, disability income, employer-sponsored self-funded health plans, and dental- and vision-only coverages do not fall within the definition of "health plans," however, those insurers, too, may be subject to this provision, where not otherwise preempted.

#### **Who may bring a claim under this Act?**

Any "first party claimant" who has been unreasonably denied coverage or a claim for benefits may bring a claim under this Act, provided the claimant serves advance notice to the insurer as required under the Act. "First party claimant" means anyone asserting a right to payment as a covered person under an insurance policy or contract. "First party claimant" likely includes an insured seeking coverage under a liability policy protecting an insured from a third-party suit.

#### **How does this Act change the amount an insured may recover for "bad faith" or for a violation of certain insurance regulations?**

This Act allows a court to award uncapped treble damages and expert witness fees and actual costs of suit, in addition to all other remedies currently available. Only "actual" damages may be trebled.

## **How does this Act change the substantive law?**

This Act does not change the substantive law of bad faith appreciably. Currently, an insured must show that an insurer's denial of coverage is unreasonable, frivolous or unfounded, in order to recover on a claim for bad faith. A plaintiff may argue the Act was meant to narrow that standard, but Washington courts may well simply view this as a codification of existing substantive case law and reject that argument.

The Act also allows recovery for a violation of certain insurance regulations not previously allowed on the basis of a single violation. Prior to this Act, an insured could bring a claim for a single violation of the insurance regulations entitled “Specific Unfair Claims Settlement Practices Defined” in a Consumer Protection Act claim. The Insurance Fair Conduct Act allows recovery of uncapped treble damages under the Unfair Claims Settlement Practices, as well as for violations of four additional insurance regulations which spell out in greater detail some of the provisions under the Unfair Claims Settlement Practices. The Act further allows recovery for violations of:

- WAC 284 30 350 (misrepresentation of policy provisions): Requires an insurer and insurance agent to fully disclose all pertinent benefits, and precludes an insurer from requiring an insured to sign a release that extends beyond the subject matter that gave rise to the claim, among other things;
- WAC 284 30 360 (failure to acknowledge pertinent communications): Requires an insurer to acknowledge receipt of a claim and respond to pertinent communications within 10 working days, or 15 working days with respect to claims arising under group insurance contracts, among other things;
- WAC 284 30 370 (standards for prompt investigation of claims): Requires an insurer to complete investigation of a claim within 30 days, unless it cannot reasonably be completed within that time frame;
- WAC 284 30 380 (standards for prompt, fair and equitable settlements applicable to all insurers): Requires the insurer to accept or deny the claim within 15 working days after receipt of properly executed proofs of loss, unless the insurer notifies the insured within that time that more time is needed, among other time constraints.
- The insurance commissioner is also invited to promulgate additional regulations regarding unfair or deceptive acts.

## **What is the procedure for filing such a claim?**

A claimant must provide written notice of the basis for a cause of action under this Act to the insurer and the Office of the Insurance Commissioner 20 days prior to filing suit. If the insurer fails to resolve the matter before expiration of 20 days after receipt of notice (notice is deemed received three days after notice is mailed), the claimant may bring suit. Notice under this Act tolls the statute of limitations for 20 days.

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