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**Breaking News: Washington
Passes Stringent Insurance
Fair Conduct Act**

Washington Passes Stringent Insurance Fair Conduct Act

by Gabe Baker and Emilia Sweeney

On May 15, 2007, Washington State Governor Christine Gregoire signed the Insurance Fair Conduct Act into law. 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.

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

Prior to this Act, an insured who proved insurance bad faith was entitled to his actual damages, plus treble damages up to \$10,000 per act of bad faith, plus attorney fees. This Act now 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. However, only "actual" damages may be trebled. This means that emotional distress awards may not be trebled.

Where does this Act apply?

This Act only applies to claims filed under Washington state law.

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 generally recognized as giving rise to private suits. Prior to this Act, an insured could bring a claim for violation of the insurance regulations entitled "Specific Unfair Claims Settlement Practices Defined" in a Consumer Protection Act claim. In addition to "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 30 380 (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.

When does this Act become effective?

The Act will become effective 90 days from the date the Legislature adjourned, on or about July 22, 2007. However, there is currently an effort underway to repeal this Act by referendum. If sufficient signatures are gathered before July 22, the Act will not go into effect at that time.

Should the Act become effective at that time, however, we do not believe it will have retroactive effect. While there will undoubtedly be litigation over this issue, we believe courts will interpret this Act to allow recovery of uncapped treble damages only for suits filed after the effective date. However, it is also likely that courts will allow suits to be brought for actions occurring prior to the effective date.

How does this Act affect the London insurance market?

Due to the harsh penalties imposed by this Act for insurance bad faith, the market must ensure that it is complying with the applicable Washington claims handling regulations to the letter.

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