

Washington Insurers Denied Right To Jury Trial

On October 25, 2012, the Washington Supreme Court ruled that an insurer was not entitled to have the reasonableness of “covenant judgment” determined by a jury. *Bird v. Best Plumbing Group, LLC*, 86109-9, 2012 WL 5269734 (Wash. Oct. 25, 2012).

The insured was a plumbing company that was sued for severing a sewage line on the claimant’s property. When the claimant sued for damages, the insurer defended the insured without a reservation of rights. The claimant made a \$2 million policy-limits demand. The demand was rejected. The insured then settled with the claimant for \$3.75 million subject to a covenant not to execute against the insured and an assignment of rights to the claimant. The trial court found the \$3.75 settlement amount reasonable after a four-day hearing, in part due to a treble-damages provision in Washington’s trespass statute that was never pled.

On appeal, the insurer contended that the reasonableness hearing violated its right to jury trial under Article I, Section 21 of the Washington State Constitution because the hearing set the presumptive damages for the claimant’s soon-to-follow bad faith lawsuit against the insurer. The Court of Appeals rejected the argument, reasoning that the reasonableness hearing was an equitable proceeding with no right to trial by jury. The Court of Appeals then affirmed the trial court’s finding of reasonableness. The insurer appealed to the Washington Supreme Court.

In a six to three opinion, the Washington Supreme Court affirmed the decisions of the trial court and Court of Appeals. The Washington Supreme Court:

- Approved the application of RCW 4.22.060 reasonableness hearings to settlements involving a covenant judgment (*i.e.* a settlement between an insured defendant and a plaintiff where the plaintiff agrees to seek recovery only from a specific asset—the proceeds of the defendant’s insurance policy and the rights owed by the insurer to the insured, but do not release the insured from liability);
- Held that determining the reasonableness of a covenant judgment under RCW 4.22.060 is an equitable proceeding to which no jury trial right is afforded;
- Held that the due process rights of the insurer were not violated where the insurer was afforded notice of the reasonableness hearing, allowed to intervene, and given the opportunity to participate in a lengthy and highly contested hearing on the issue of the reasonableness; and
- Held that the trial court did not abuse its discretion in holding the \$3.5 million covenant judgment was reasonable.

The opinions expressed in these materials are those of the author and do not necessarily reflect those of their clients or those of Soha & Lang, P.S.