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## **An Insurance Law Update**

**11/26/07**

### **A Ray of Hope for Washington Insurance Defense Law**

Insurance companies in Washington are still allowed to make good-faith mistakes. On November 15, 2007, the Honorable Ronald B. Leighton of the U.S. District Court for the Western District of Washington held that an insurance company's good-faith mistake is not enough to turn a \$25,000 insurance policy into a \$2 million bad faith claim. Judge Leighton granted full summary judgment to defendant Sentry Insurance in the matter of *Taylor v. Sentry Group of Companies, et al.*, No. C06-5497RBL. The victory for Sentry is one piece of good news for insurance companies in Washington, which have faced a series of tough judicial and legislative decisions in recent months.

Plaintiff Jim Taylor was severely injured in a motor vehicle accident caused by Sentry's insured, Larry Green. Upon notice of the accident, Sentry immediately admitted full liability and tendered the full \$25,000 limit of Mr. Green's policy to Mr. Taylor. Mr. Taylor refused to accept the policy limits. Sentry continued to attempt to settle the matter for almost two years, but Mr. Taylor never accepted the limits. Furthermore, Mr. Taylor never divulged his reasons for refusing to accept the limits. As a result, Sentry released the entire \$25,000 to Department of Social and Health Services ("DSHS"), which would have received the money anyway because of a statutory lien on Mr. Taylor's recovery in excess of the policy limits. This was a mistake. Despite frustration with Mr. Taylor, misleading advice from counsel and pressure from DSHS, Sentry should never have disbursed the policy limits to anyone without first obtaining a full release for its insured.

Having never signed a release, Mr. Taylor filed suit against Sentry's insured, Mr. Green. Sentry vigorously defended its insured and reinstated the policy limits. Mr. Taylor again refused to accept the limits. In the end, Mr. Green signed a confession of judgment and assigned all his claims against Sentry over to Mr. Taylor. The settlement was valued at \$850,000. Mr. Taylor subsequently filed suit in state court against Sentry for bad faith insurance conduct, violation of the Washington Consumer Protection Act ("CPA"), negligent claims handling, emotional distress and attorneys' fees. Mr. Taylor sought approximately \$2 million. Sentry removed the action to federal court.

After more than a year of discovery, Judge Leighton ruled on the parties' cross motions for summary judgment. Judge Leighton dismissed with prejudice all claims against Sentry and held that a good-faith mistake is not a sufficient basis for a claim of bad faith insurance conduct or violation of the CPA. Judge Leighton further held that there is no such cause of action as

negligent claims handling: an insurance company's only duty is to act in good faith (refrain from bad faith).

Recent court decisions such as *Woo v. Fireman's Fund Ins. Co.*, 161 Wn.2d 43, 1647 P.3d 454, (2007) and the recently enacted Washington Insurance Fair Conduct Act have created a somewhat hostile environment for insurance companies in Washington. Taking advantage of this, the plaintiffs' bar has been increasingly ambitious in expanding the tort of insurance bad faith. Despite these trends, the Taylor decision affirms the principle that insurance companies are still allowed to make mistakes, as long as they are made in good faith and with some reasonable justification. Judge Leighton's decision also exemplifies the benefits of an independent federal judiciary and the importance of removal when available.

Sentry Insurance was successfully represented in this matter by Mark Beard and Andrew Steen of Lane Powell.

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