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Insurance Law Update

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Federal Court Dismisses Insurance Fair Conduct Act Claims

In a rare victory for insurers, the U.S. District Court for the Eastern District of Washington dismissed Insurance Fair Conduct Act (IFCA) claims against Evanston Insurance Company. Washington's IFCA provides a statutory cause of action against insurers for unreasonable denials of coverage or payment of benefits. The claims arose out of Evanston's pursuit of a declaratory judgment (DJ) action against a law firm and one of its attorneys regarding the availability of coverage for a malpractice claim. Evanston ultimately agreed to dismiss the DJ, but the insureds separately filed suit against Evanston alleging that it violated IFCA by pursuing a DJ while simultaneously defending the underlying claim. In the case of *Workland & Witherspoon, PLLC v. Evanston Insurance Co.*, -- F. Supp. 3d -- (E.D. Wash. 2015), Chief Judge Rosanna Malouf Peterson rejected the insureds' arguments seeking to expand the scope of IFCA claims.

Evanston initially sought dismissal of the IFCA claims because insureds under third-party professional liability policies are not "first-party claimants." Several decisions from the U.S. District Court for the Western District of Washington have held that "first-party claimants," as used in IFCA, limits the statute's application to insureds under property policies or other types of first-party policies. The Court disagreed, finding that IFCA does not distinguish between first-party and third-party coverage, and instead creates a cause of action for any entity "asserting a right to payment under an insurance policy." *See* RCW 48.30.015(4).

Next, Evanston argued that an IFCA cause of action arises only after there has been an unreasonable denial of coverage or an unreasonable refusal to pay benefits. The insureds alleged that Evanston's *attempt* to deny coverage by filing a DJ should suffice. The Court sided with Evanston on this issue, finding that IFCA creates an express cause of action for an *actual* denial of coverage or the payment of benefits, but not for an *attempted* denial. The Court ruled that the insureds failed to plead sufficient facts demonstrating an *actual* denial of coverage or the payment of benefits.

Finally, the parties disputed whether an implied IFCA cause of action exists for alleged violations of certain claims handling regulations referenced in subsection (5) of the statute even absent an insurer's unreasonable denial of coverage. The insureds relied on a prior decision from another judge in the same district, *Langley v. GEICO Gen. Ins. Co.*, 89 F. Supp. 3d 1083 (E.D. Wash. 2015), holding that IFCA impliedly recognizes claims alleging such regulatory violations standing alone. In *Workland*, however, Chief Judge Malouf Peterson rejected this argument and held that if the Washington Legislature had intended to create a cause of action under IFCA based on claims handling violations alone, it would have expressly done so.

No published Washington appellate court decisions have analyzed IFCA in detail. Until the Washington Supreme Court weighs in on this issue, there remains a split in authority (at both the state and federal levels) on whether IFCA subsection (5) impliedly creates a cause of action for standalone claims handling regulatory violations. Under this ruling, an insured must allege an unreasonable denial of coverage or an unreasonable denial of the payment of benefits to seek the consequential damages potentially available under IFCA.

For more information, please contact the Insurance Practice Group at Lane Powell: lanepowellpc@lanepowell.com