WASHINGTON INSURANCE LAW LETTER™

A SURVEY OF CURRENT INSURANCE LAW AND TORT LAW DECISIONS

edited by William R. Hickman

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WHAT PART OF **STOP** DON'T YOU UNDERSTAND?

FACTS**:**

Dick was riding his bike south on the Interurban Trail. Allen was driving her SUV east on the two-lane road. At the point where the trail intersected the road, there was a STOP sign for Dick. For Allen there was a yellow diamond C-shaped sign depicting a person walking, and a series of white parallel strips painted on the pavement.

Dick stopped, dismounted, looked, remounted, and started to pedal across the intersection. Allen's SUV struck Dick's bike, injuring him.

The Washington Legislature has established the statutory duty of a driver to someone in a crosswalk: the operator of a vehicle shall stop to "allow a pedestrian to cross the roadway."

The Legislature has also defined what it means by "pedestrian": "any person who is afoot or who is using a wheelchair or a means of conveyance propelled by human power other than a bicycle."

So the question is, did Dick on his bike fit into the statutory definition of "pedestrian" so as to be entitled to safe passage through the crosswalk? Or was Dick on his bike just another moving target on the super highway of life? Remember, the Legislature said a pedestrian included a person using a means of conveyance propelled by human power other than a bicycle.

Well dear reader, you better sit down for this. The Washington Supreme Court, by a vote of 9-0, held that Dick on his bike was a pedestrian. And to add insult to injury, the court said that Allen's argument that Dick on his bike did not fit the definition of pedestrian was "absurd" and "hypertechnical." Moreover, Allen was negligent as a matter of law while Dick on his bike, who came out from behind a STOP sign, and failed to keep a lookout for his own safety, was free, free, free of comparative fault as a matter of law.

COMMENT:

The folks in the Legislature must be surprised that even though they said a guy on a bike was not a pedestrian, the folks on the Supreme Court said he was a pedestrian.

Pudmaroff v. Allen, 138 Wn.2d 55, 977 P.2d 574 (1999).

ELECTRIFYING BAD FAITH

FACTS:

Lance was electrocuted at the lumber mill. The mill had $1 million primary coverage with Lumbermens and $5 million excess coverage with First State.

When the mill was sued, it tendered to the primary, which hired defense counsel. In response to an inquiry from the excess carrier, the primary said the incident did not occur on the mill site, and this was an excellent case for summary judgment. This was not true.

A few days later, defense counsel told the primary that potential liability was significant. The primary did not tell the excess.

Six months later, the excess again asked what was going on. The primary reported that the summary judgment would be heard in two weeks, and they would tell them what happened.

Defense counsel told the primary that if they lost the summary judgment, there was a potential for a large award. The motion was denied. Four and one-half months later, defense counsel again pointed out the potential liability.

The claimant sent defense counsel a $1 million settlement demand. The offer was open for one month. Defense counsel did not tell the primary until four days were left. With one day left, the excess carrier wrote the primary asking about the summary judgment and the status of the claim. Five days later, the court granted the claimant's motion for summary judgment on liability. The trial would be only on damages.

Five days after the settlement offer expired, the primary told the excess of the offer. Five days after that, the primary told the excess that the defense summary judgment had been denied, and claimant's summary judgment had been granted.

The claimant's attorney set up a settlement meeting. The primary cancelled, did not try to reschedule, and made no offer.

The primary informed the claimant that there was an excess carrier. The claimant asked the primary to make a $1 million offer. The primary refused.

The excess demanded that the primary offer $1 million. The primary refused.

At the start of the trial, the judge said the jury could consider liability. The primary offered $100,000 and told the excess that the case was not worth $1 million. Four days later, the jury came back at $2 million

The excess asked the primary to offer $1 million. The primary refused. The primary filed an appeal, tendered $1 million to the excess and announced that it would no longer be a party to the appeal.

The excess accepted the money under a reservation, settled the case for $1.5 million and sued the primary for bad faith, negligence, and violation of the Consumer Protection Act.

The trial judge and jury ruled in favor of the primary. The Court of Appeals reversed everything and remanded for a new trial on bad faith, negligence, and the Consumer Protection Act claim.

HOLDINGS:

(1) An excess insurer is subrogated to the rights an insured has to recover on claims the insured has against the primary insurer.

(2) An insurance company is a logical party to act as a private attorney general because it stands in the shoes of its premium-paying consumers who are affected by the underlying improper actions. Thus, allowing an excess carrier to bring a CPA action furthers the purposes of the Act.

(3) Under the doctrine of equitable subrogation, the duty a primary insurer owes an excess insurer is identical to that owed the insured.

(4) The Supreme Court has held that bad faith and CPA claims are separate causes of action.

(5) The excess carrier was entitled to instructions on negligence as well as bad faith because they are two separate and distinct causes of action.

(6) It is well established that an insurance company undertaking to defend its insured may be liable to the insured for failing to make a good faith attempt to settle once its insured's liability is established, if that failure is attributable to either bad faith or negligence.

COMMENT:

A veritable cornucopia of bad faith law. Please note that a company can be sued for bad faith, negligence, and CPA violation.

One thing comes to mind. A WSTLA stalwart once said that he loved to see one insurance company sue another insurance company. "No matter which company wins, WSTLA wins!"

First State Ins. Co. v. Kemper Nat'l. Ins. Co., 94 Wn. App. 602, 971 P.2d 953 (1999)

SLEEPING WITH THE ENEMY

FACTS:

John was involved in a child custody dispute with his ex-wife, Jeanette. Stephen was John's lawyer. Stephen told John the case was a "slam dunk."

While representing John, Stephen started sleeping with John's current wife, Sylvia.

John lost the child custody dispute. He was ordered to pay attorney fees to his ex-wife.

Two years later, John divorced Sylvia. Sylvia told John about her affair with Stephen.

John sued Stephen for fraud and violation of the Texas Consumer Protection Act.

HOLDINGS:

(1) John's claims for fraud and consumer protection are in essence claims for legal malpractice.

(2) The claims fail because there was no evidence that Stephen's representation of John was adversely affected by the affair.

(3) Stephen's silence about the affair does not raise an inference that Stephen intended to defraud John.

(4) Stephen's assurances to John that his case was a "slam dunk" did not result in "glaringly noticeable" unfairness. John had lost prior custody disputes with his ex-wife. On one prior occasion, he had been ordered to pay his ex-wife's attorney fees. John should have known he could lose and be forced to pay his ex-wife's attorney fees.

Kahlig v. Boyd, 980 S.W.2d 685 (Tex. App. 1998)

ADVERSARIAL UIM

FACTS:

Nancy made a left turn in front of Jason's speeding vehicle. She spent two months in the hospital. The eyewitnesses could not agree on who had the red light and who had the green light.

Nancy settled with Jason for $100,000. She then demanded policy limits under a UIM policy purchased by her employer. The limits were $1 million. Based on its investigation, the UIM carrier was of the view that Nancy caused the collision.

Nancy demanded arbitration. The UIM carrier offered $300,000, and then $400,000 at the arbitration. Nancy never came off her million dollar demand.

The UIM arbitrator awarded $929,803.29. Nancy sued for bad faith. She dismissed that. But a year later, sued again. The trial resulted in a hung jury. Prior to a second trial, the court dismissed Nancy's claim on summary judgment.

The Court of Appeals affirmed, finding that the settlement offers were reasonable, that there was no bad faith, and that the destruction of the home office claim file after Nancy first dismissed her case was not spoliation.

HOLDINGS:

(1) The purpose of UIM coverage is to place the insured in the same position as if a tortfeasor carried adequate liability insurance. A UIM carrier stands in the shoes of the uninsured motorist to the extent of the carrier's policy limits. A UIM insured is not entitled to be put in a better position by virtue of colliding with an uninsured or underinsured motorist than by colliding with a tortfeasor that carriers adequate liability insurance. A UIM carrier is not compelled to pay when the same recovery could not be obtained from the tortfeasor.

(2) The fact that the insurer is ultimately unsuccessful in its policy defense does not render the insurer liable for bad faith refusal to settle claims provided that the insurer's actions were reasonable, and the insurer had probable cause to pursue its defense. Therefore, the insurer should not be held liable for extra-contractual damages where there is a legitimate controversy as to whether benefits are due or the amount of such benefits.

(3) In determining whether the settlement offer violated the insurer's duty to act in good faith, a comparison of the offer to the amount ultimately recovered is not dispositive. The facts and circumstances at the time the insurer made the offer should be considered.

(4) A driver making a left turn at an intersection must yield the right-of-way to any vehicle approaching from the opposite direction. A driver turning left must yield to an oncoming vehicle, even if it can be shown that the oncoming vehicle was proceeding unlawfully.

(5) It was not unreasonable for the UIM carrier to assume that Nancy, as the disfavored driver, might be partially responsible for the accident in making their first offer.

(6) The arbitrator's later decisions do not mean that the UIM carrier's negotiation efforts were unreasonable.

(7) **The "enhanced obligation" considerations are not applicable here. UIM coverage is by nature adversarial and at arm's length. An inevitable conflict exists between a UIM carrier and a UIM insured due to the unique nature of UIM coverage.** In either the first or second action, a conflict between a UIM insurer's and insured's interests may arise. This case is an excellent example of such a conflict, because the UIM carrier had an obligation to defend Nancy in the first action but "stood in the shoes" of the tortfeasor in the second action by defending her UIM claim.

(8) Destruction of notes in a file after a suit has been dismissed does not establish a claim for spoliation.

COMMENT:

What a super out-of-this-world opinion. The insured and her attorneys threw every conceivable claim at the UIM carrier. The court just flicked them aside like they were gnats.

Our summary does not do the opinion justice. It should be read.

Ellwein v. Hartford Accident & Indem. Co., 95 Wn. App. 419, 976 P.2d 138 (1999)

SAY IT AIN'T SO…….NO DE NOVO

FACTS**:**

In April 1994, Ms. Peterson was struck by an uninsured motorist. Ms. Peterson was insured by USAA.

Ms. Peterson made a UIM claim. USAA disputed the nature and extent of her injuries. USAA and Ms. Peterson agreed to arbitrate under the policy's arbitration clause.

The policy provided, in part, that the arbitration would be binding as to damages, *unless either party demands the right to a trial within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.*

At the arbitration, Ms. Peterson was awarded $149,535. USAA timely requested a trial de novo pursuant to the policy. Ms. Peterson attempted to reduce the award to judgment in Superior Court.

PROCEDURE:

USAA filed a response to Ms. Peterson's motion to reduce the award to judgment, and also sought declaratory relief. USAA sought a declaration that: (1) the trial de novo provision of the policy was valid and enforceable, (2) it be allowed to request and seek a trial de novo, (3) attempting to enforce the policy provision wasn't bad faith, and (4) Ms. Peterson wasn't entitled to attorney fees.

Both sides moved for summary judgment concerning the validity of the clause permitting a trial de novo.

The trial court found that the arbitration clause was within the purview of the arbitration statute, RCW ch. 7.04. The court found the clause unenforceable and void as against public policy. The court reduced the arbitration award to judgment. Division III of the Court of Appeals affirmed.

HOLDINGS:

(1) A private arbitration conducted pursuant to a contractual agreement is a special proceeding governed by the agreement and RCW ch. 7.04.

(2) In an action to confirm an arbitration award, judicial review is strictly limited determining whether any of the grounds in RCW 7.04.160 and .170 for vacating, modifying, or correcting the award are present. If none are, the court must reduce the award to judgment.

(3) Under RCW 7.04.160, the grounds for vacating an arbitration award are: (1) it was procured by fraud, corruption, or other undue means, (2) biased or corrupt arbitrators, (3) arbitrators guilty of misconduct, (4) arbitrators exceeded their powers, or (5) no valid arbitration agreement exists. Under RCW 7.04.170, a court may modify an arbitration award if: (1) there was an evident miscalculation, (2) the arbitrators made award on matter not submitted to them, or (3) award is imperfect in its form.

(4) When dealing with arbitration agreements governed by RCW ch. 7.04, the trial court has no authority to conduct a trial de novo. Additionally, the parties to the arbitration agreement may not contract for the right to a trial de novo.

(5) Parties to a dispute may not, by agreement, create their own boundaries of judicial review. Judicial review of an arbitration award is wholly governed by RCW ch. 7.04.

COMMENT:

So much for the freedom of contract.

Peterson v. USAA, 91 Wn. App. 212, 955 P.2d 852 (1998)

SECOND HAND ATTORNEY FEES

On July 22, 1999, the Supreme Court filed its opinion in *McRory v. Northern Insurance*. The court held:

An insured who prevails in coverage litigation with its insurer is entitled to *Olympic Steamship* fees, even if another carrier funded the insured's prosecution of the coverage litigation.

We cannot say we are particularly surprised by the result. What gives us some concern is that the court chose to spend a great deal of time and paper commenting upon the relationship between an insurer and a policyholder. In doing this, the court demonstrated, with exquisite clarity, that it was not going to cut any slack for an insurer that delivered anything less than 100% of its contractual obligation.

The facts which gave rise to the case are moderately amusing. There was an insurance broker named Ed McRory. He had a client, J.D. Ed got J.D. insurance with Continental. J.D. had a serious fire loss and made a claim.

Continental hired a "forensic accounting firm," Compos & Stratis, to adjust the claim. Ed got himself involved in the claim process to help J.D. During that involvement, Ed became frustrated with Campos & Stratis' handling of the claim. Ed complained to Continental about Compos & Stratis, saying that Campos & Stratis had "screwed" one of Ed's clients and almost put him into bankruptcy. Campos & Stratis sued Ed for defamation.

Ed had two insurance policies. One was a CGL with Northern and the other a professional liability policy with Employers Insurance of Wausau. As soon as Campos & Stratis started making noises, Ed put both companies on notice. EIW pointed to the intentional acts exclusion. Ed's lawyer told them that in Washington there was a tort called "negligent defamation." EIW accepted under a reservation.

When he got sued, Ed tendered to both companies. Northern denied under the "insurance operations" exclusion. EIW defended, and settled the claim.

Ed sued Northern. He spent $13,000 in attorney fees and EIW paid the rest of the cost of the suit against Northern. The trial court ruled that Northern's policy covered Ed, and that as between Northern and EIW, Northern was primary and EIW was excess. Ed asked for his attorney fees. The trial court (the U.S. District Court) sent the Supreme Court the certified question: does an insured recover *Olympic Steamship* fees from a primary carrier which did not defend, if the insured was defended by the excess carrier that has funded the cost of the dec action?

Northern argued that *Olympic Steamship* should not apply because Ed had not been harmed since EIW had defended the tort action, and had paid for the dec action. The court found that the public policy which underlies the court-created *Olympic Steamship* doctrine rendered all of Northern's arguments wide of the mark.

HOLDINGS:

(1) Washington law permits an insured to sue an insurer for the entirety of the loss regardless of whether the insured has received partial reimbursement from another insurer. The obligation of co-insurers is several, not joint, and the policyholder may collect the full amount from either insurer. The insurer has a direct contractual obligation to its insured regardless of the existence of other insurance.

(2) In *Olympic Steamship*, we recognized the cost of compelling an insurer to honor its commitment includes not only the out-of-pocket expense of pursuing such action, but also the time and "vexatiousness" such litigation necessarily entails.

(3) The *Olympic Steamship* rule is designed to "encourage the prompt payment of claims." Were Northern's position to prevail, it would encourage foot dragging by insurers. The problem would be compounded in cases of multiple insurers. Each insurer with a duty to defend and indemnify would be encouraged to wait and see if some other insurer would step in. We decline to condone such conduct.

COMMENT:

One final problem with the opinion is that throughout it keeps referring to an "enhanced fiduciary relationship" between an insurer and a policyholder. It was not too many years ago, in *Tank*, that the court took a giant leap and said that in a **reserved defense** situation, the company owed an enhanced obligation of good faith.

McRory v. Northern Insurance Co., 138 Wn.2d 550, 980 P.2d 736 (1999)

"LOOSE LIPS SINK SHIPS"

FACTS**:**

Lawrence insured his 42-foot yacht in Long Beach, California, through Firemen's Fund. Lawrence dated Susan. Lawrence even romanced her on the boat.

Unfortunately, Lawrence had herpes. Although he tried "home remedies," he was unsuccessful in combating the virus. Susan eventually contracted herpes, despite the attempted treatment.

Consistent with the California rule (sue first; ask questions later), Susan sued Lawrence. Lawrence tendered the action to Firemen's Fund, the liability carrier for the yacht.

Lawrence argued that the yacht was "used"; meaning the boat was used "to transmit the herpes virus from his mouth to his girlfriend's genitals." Other arguments by Lawrence to justify his tender were that his yacht was "a sign of his wealth and status," which "fostered romantic and sexual conduct" thereby leading to "oral copulation which transmitted the virus."

The Fund won summary judgment dismissal that there was no duty to defend or indemnify Lawrence for Susan's herpes. The court found no coverage for Susan's allegations, nor any potential for coverage.

Although Lawrence claimed that the herpes was present on the boat due to "a fateful romantic boat voyage at Thanksgiving" on the "sex-filled sailing adventure," both the trial and appellate courts stated that there were "absolutely no facts giving rise to a potential for coverage."

HOLDINGS:

(1) Use, including "the movement of appellant's yacht" and "the manner of its operation" had nothing to do with the transmission of the herpes virus from the insured to the third-party claimant; and this was "not the type of boat 'use' contemplated by appellant's yacht policy."

(2) The transmission of the disease was incidental, not essential to the use of the covered boat, and since the herpes transmission "could just as easily have occurred in appellant's or Susan L.'s home," there was no coverage.

(3) Since there was "no potential for coverage," there was no duty to defend.

COMMENT:

Some cases just leave you speechless.

Peters v. Firemen's Insurance Co., 67 Cal. App., 4th 808, 79 Cal. Rptr. 2d 326 (1998)

THIS BUD'S FOR YOU

FACTS:

Hayden planted rootstock intending to graft fruit buds to create fruit trees. It hired Jim to graft the buds onto the rootstock. The buds were damaged while in Jim's control.

The next year, using new buds, Jim tried again. Less than 10% took. Jim blamed the tape. The root stock was undamaged.

The next year, Jim was going to try again. Hayden bought new buds, and gave them to Jim for storage. The buds rotted because Jim incorrectly stored them. The rootstock was still undamaged.

PROCEDURE:

Hayden sued Jim. Jim had a CGL policy with Mutual of Enumclaw. But Mutual of Enumclaw declined to defend, citing the poor work quality exclusion.

Hayden and Jim got together and entered a $498,969.51 default judgment against Jim.

Jim assigned all his rights against Mutual of Enumclaw to Hayden, and Hayden agreed not to execute against Jim.

Hayden sued Mutual of Enumclaw. The trial court held there was no coverage. The Court of Appeals affirmed.

HOLDINGS:

(1) An insurer is not estopped from denying coverage on grounds not stated in its denial letter if the policyholder is not prejudiced.

(2) The duty to defend is broader than the duty to indemnify. An insurer has no duty to defend its insured, however, for acts specifically excluded from the policy. Alleged claims which are clearly not covered by the policy, relieve the insurer of its right and duty to defend.

(3) Hayden's complaint states it suffered crop losses because of delay resulting from Jim's deficient performance of grafting the fruit buds. Delay in performance, breach of warranty, or poor work quality is excluded from coverage. This result comports with the principle that when an insurer issues a general liability policy, it is not issuing a performance bond, product liability insurance, or malpractice insurance.

(4) An exclusion in a general liability policy for the loss of use of tangible property resulting from the insured's delay in performance, breach of warranty, or poor work quality excludes coverage for loss caused by a delay that resulted from the insured's deficient performance of a contractual obligation.

COMMENT:

Could be used as a textbook guide as to how to write a clear, concise coverage opinion.

Hayden v. Mut. of Enumclaw Ins. Co., 95 Wn. App. 563, 977 P.2d 608 (1999)

EXCLUDING GUN UNLOADING

FACTS:

Dennis and Mike went on a hunting trip to Nevada. Dennis brought along his ATV.

After a day of hunting, Dennis placed his loaded rifle on top of a back pack. He then put them on top of a steel rack attached to the front of the ATV. He stretched a bungee cord over the rifle and the backpack and hooked the cord into one of the bars of the steel rack.

When Dennis went to unload the rifle and backpack, the gun discharged and Mike was hit.

PROCEDURE:

Mike sued Dennis. Dennis' homeowners carrier defended under reservation and filed a dec action. The carrier was of the view that an exclusion for bodily injury arising from the unloading of any recreational motor vehicle owned by the insured applied.

The trial court and the Court of Appeals agreed that the unloading exclusion barred coverage.

HOLDINGS:

(1) The interpretation of an insurance policy is a question of law subject to de novo review.

(2) Courts should give a fair, reasonable, and sensible construction to insurance policy language.

(3) Courts narrowly construe exclusions from coverage under an insurance policy so as to provide maximum coverage for the insured.

(4) An insurance policy exclusion for liability arising from the loading or unloading of a recreational vehicle applies to exclude coverage for injuries arising out of the removal of an item from that vehicle.

COMMENT:

The opinion clearly reflects the fact that the facts clearly established the applicability of the exclusion.

Country Mut. Ins. Co. v. McCauley, 95 Wn. App. 306, 974 P.2d 1288 (1999)

THIS CLAIM IS A LITTLE DINGHY

FACTS:

DeGeorge was a Beverly Hills attorney who liked yachts. His yachts were repeatedly lost at sea. They were always insured.

In 1970 DeGeorge owned the 43-foot yacht, Tutania. He was interested in selling it. DeGeorge took some Peruvian coffee merchants on an overnight test run. DeGeorge and a companion were drugged by the coffee merchants, but managed to escape and sail 35 miles to shore in Tutania's dinghy. DeGeorge waited 5 days to report the theft to the police. After DeGeorge threatened litigation for bad faith denial of his claim, Hartford Insurance Company paid him $43,000, the policy limits.

In 1976 DeGeorge was sailing his 57-foot racing yacht, the Epinicia, when it struck a "low profile, dark object that was not visible" off the coast of Italy. Fortunately, he had recently purchased a new dinghy. He and a companion sailed the dinghy back to the coast while the yacht sank. Lloyds of London originally declined to pay the claim, but when DeGeorge threatened litigation, Lloyds paid him $194,000.

In 1983 DeGeorge had a 47-foot yacht. He and his wife were on the yacht when a suspicious fishing boat began circling them. Later, while they were relaxing in the stateroom, explosions began to rock the boat. DeGeorge and his wife escaped in a dinghy, as the yacht sank. DeGeorge felt this was an attempt to kill him because of a suit he was handling worth billions. DeGeorge and his wife did not report this attempt on their lives to any authorities, but did report it to their insurer four days later. Fireman's Fund eventually paid DeGeorge the policy limit of $245,000.

In addition to the unfortunate yacht losses, DeGeorge had an extensive history of theft losses, including a $700,000 theft of personal property from his home in 1993.

DeGeorge also filed 29 insurance disability claims between 1976 and 1990. A 1990 claim alleged "bipolar personality disorder" and sought $11,000 per month. The insurer sought to rescind the policy. DeGeorge counterclaimed for bad faith, breach of contract, negligence, fraud, and negligent infliction of emotional distress. DeGeorge eventually settled for $550,00.

In June of 1992 DeGeorge contracted for the construction of a $1.9 million, 76-foot motor yacht, Principe. He created, and transferred title to, shell corporations (Inbanco and Polaris) in an attempt to distance himself from the motor yacht.

Inbanco and Polaris bought insurance. Their application contained no reference to DeGeorge. The total value of the policy was almost $6.5 million.

The Principe sank off the coast of Italy, during its maiden voyage. DeGeorge claimed it was Sicilian drug runners posing as a trial crew for the Principe. The drug runners left in a speedboat, after drilling holes in the hull of the Principe. DeGeorge and two companions escaped into the Principe's dinghy and were rescued by the Italian coast guard. The Principe was raised, but eventually sank again while at the dock, and was a total loss.

PROCEDURE:

Polaris and Inbanco filed claims. Cigna refused to pay and sued for rescission because neither Polaris nor Inbanco had disclosed material facts such as DeGeorge's loss history or the close ties among all the parties. Polaris and Inbanco counterclaimed, alleging, among other things, breach of the contract, and breach of implied covenant of good faith and fair dealing.

The district court granted Cigna summary judgment dismissing all of the counterclaims. It reasoned that if Cigna failed in its rescission claim, Inbanco and Polaris would get paid and have suffered no damage.

Despite the fact that Cigna had not challenged the alleged facts surrounding the sinking of the Principe, the trial judge granted rescission based upon fraud. The judge found that Inbanco and Polaris purchased the insurance from Cigna with the intent to sink the Principe.

The Ninth Circuit Court of Appeals affirmed, not on the ground of fraud, but on the ground of failure to disclose material facts in the application for marine insurance, or *uberrimae fidei*.

HOLDINGS:

(1) Doctrine of *uberrimae fidei*, which exists under both California insurance law and federal maritime law, requires a marine insurance applicant, even if not asked, to reveal every fact within his/her knowledge that is material to the risk.

(2) An insurer can rescind a marine insurance contract if it can show either intentional misrepresentation of a fact, regardless of materiality, or nondisclosure of a fact material to the risk, regardless of intent.

COMMENT:

This claim is a poster child for why insurance fraud needs to be a crime. Without the threat of punishment, the only downside is that an insured wont get his fraudulent claim paid.

Additionally, it illustrates an unfortunate reality. Some claims may get paid, when they otherwise wouldn't, because the insured threatens bad faith litigation. The best way to avoid paying a questionable claim in these situations is to have conducted a timely, thorough, and well-documented investigation.

Cigna Pro. & Cas. Ins. Co. v. Polaris Pictures Corp., 159 F.3d 412 (9th Cir. 1998)

WE HAVE MOVED!

For those of you who may not have received one of the thousands of change of address announcements we sent to everyone we could think of, and then to the people we could not think of, here it is one more time:

As of August 2, 1999, Reed McClure is at:

Two Union Square
601 Union Street, Suite 4800
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Our telephone numbers remain the same:

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REED MCCLURE IS PLEASED TO ANNOUNCE THAT:

Steven L. Burgon, Geoffrey Groshong, Vanessa Lee and Petrea Knudsen Reilly were elected shareholders.

Steve's practice consists of business planning and transaction services for nonprofit and for-profit organizations.

Geoff concentrates his practice in bankruptcy law, with a broad spectrum of representations including debtors, creditors' committees, individual creditors, trustees, and examiners in Chapter 11 bankruptcies, non-bankruptcy workouts and Chapter 7 bankruptcies.

Vanessa's practice emphasizes civil litigation, and commercial and insurance defense, including premises liability and insurance coverage. Prior to joining Reed McClure, she served as a prosecutor for the Alameda County District Attorney's Office in California.

Trea concentrates her practice in civil defense litigation involving the following substantive areas: employment law, health care law, premises liability, and insurance coverage and defense.

Janice Sue Wang was recently made a Principal.

Janice's practice focuses on insurance defense litigation, insurance coverage and professional liability.

Brian J. Todd and Jennifer L. Scully have joined the firm.

Brian, joining Reed McClure as a principal, concentrates his practice on federal and Washington State tax matters, and the planning and structuring of a wide variety of business transactions. Brian provides tax advice in connection with merger and acquisition transactions, including tax-free reorganizations and international transactions.

Jennifer focuses her practice on litigation, including commercial matters, insurance coverage, defense and appellate issues. She is a member of the Washington and New Jersey Bar Associations and joins the firm as an associate.

Kent Caputo and Kristin Jorgensen have joined Reed McClure.

Kent leads the firm's public policy practice efforts, engaging in public policy consultation and advocacy on behalf of clients. He represents clients in transactional and litigation matters, provides counsel and coordination in legal, policy and media efforts, and advises on specific public/private issues where political or public relations sensitivity is critical.

Kris is a non-attorney professional who concentrates her practice on a broad range of public policy concerns. She advises and assists governments, businesses, and individual clients in matters relating to local, state, and federal policy issues.

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206/386-7081 **MONTGOMERY**, Greg E.
206/386-7002 **OKANO**, Pamela A.
206/386-7027 **OLSON**, R. Thomas
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206/386-7056 **PICARDO**, Beth Mattler
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206/386-7053 **ROGERS**, Michael S.
206/386-7030 **ROGERS**, Sherry H.
206/386-7050 **ROWLAND**, Mark A.
206/386-7102 **SCHOOLCRAFT**, David G.
206/386-7097 **SCULLY**, Jennifer L.
206/386-7185 **SHUKIS**, Diana **
206/386-7017 **STARGARDTER**, GailAnn Y.
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206/386-7055 **TODD**, Brian J.
206/386-7040 **TOWLE**, Guy
206/386-7014 **TRACY**, J. Todd
206/386-7013 **TREPERINAS**, George S.
206/386-7042 **WALERIUS**, Robert J.
206/386-7101 **WANG**, Janice Sue
206/386-7064 **WEAKLEY**, Mark W.

* Member of the Iowa Bar
** Bar admission pending