WASHINGTON INSURANCE LAW LETTER™

A SURVEY OF CURRENT INSURANCE LAW AND TORT LAW DECISIONS

EDITED BY WILLIAM R. HICKMAN

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CHANGE OF ADDRESS: Please call Mary Clifton at 206/292-4900; Fax: 206/223-0152; E-mail: mclifton@rmlaw.com.

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MY BUDDY

FACTS:

Gina had a little dog named Buddy. The neighbors had a couple of Rottweilers. One day, the Rottweilers came to play with Buddy. They played with Buddy. They used Buddy as a plaything. Buddy ended up with permanent injuries, both physical and emotional.

Gina sued on her own behalf and as guardian for Buddy. She sued the neighbors for negligent and malicious infliction of emotional distress and for destruction of the human/dog relationship.

The trial court dismissed the case. The Court of Appeals affirmed, holding that Gina could not recover for her emotional distress, and the cause of action for destruction of a companionship relationship did not extend to injury to a dog.

HOLDINGS:

(1) Gina could not recover for negligent or malicious infliction of emotional distress.

(2) The neighbors did not maliciously inflict severe emotional distress, and at most, they were negligent for failing to keep their dogs contained.

(3) A cause of action for destruction of a companionship relationship did not extend to dog owner's loss suffered when her dog was mauled by the neighbor's dogs.

(4) Damages are recoverable for the actual or intrinsic value of Buddy but not for sentimental value.

COMMENT:

Most courts continue to take the view that there will be no recovery for loss of companionship due to the death of an animal. The Washington court noted that if there is to be such an extension of duty and liability, it must come from the legislature, not the courts.

MORE COMMENT:

On appeal, the neighbors were represented by Reed McClure's Pam Okano.

Pickford v. Masion, ___ Wn. App. ___, 98 P.3d 1232 (2004).

PAMELA A. OKANO

PRACTICE

Ms. Okano focuses her practice on appeals and insurance coverage matters.

Appellate

Ms. Okano has represented parties or amici in appeals before the Washington Supreme Court, Washington Court of Appeals, the United States Court of Appeals for the Ninth Circuit, the Alaska and Montana Supreme Courts, and the Idaho Court of Appeals. She has also briefed appeals before the United States Supreme Court. Her appellate practice involves a wide range of cases including insurance coverage, bad faith, tort, commercial, and contract matters.

Insurance Coverage

Ms. Okano provides clients with opinions and advice on insurance coverage and bad faith matters, drafts policy provisions, and handles coverage and bad faith cases on appeal. She has dealt with a broad spectrum of coverage issues including construction defects, employment, discrimination, advertising injury, personal injury, sexual harassment, sexual abuse, property damage, automobile liability, professional liability, first-party property and collapse, underinsured motorists, fraud, and bad faith.

PUBLISHED WORKS:

Coverage Uncovered
Washington Defense Trial Lawyers website
www.wdtl.org, see Law Letters/Articles page for link

Liability Insurance: Exclusions, Washington Motor Vehicle Accident Insurance Deskbook (Supp. 1995 & 1998)

Appellate Practice, Washington Civil Practice Deskbook, 1993

(Co-Editor), Washington Motor Vehicle Accident Insurance Deskbook (Supp. 1998)

(Co-Author) Washington Civil Trial & Evidence Manual (4th ed. 1994)

HONORS

Super Lawyer 2001-2004

TANK RULES – STILL

FACTS:

Sheilana got hit by a car while crossing a street. She sued the City. She and the City reached a settlement under which Lexington, the City insurer, was to pay the settlement sum no later than April 15, 2003, i.e., several weeks later. The settlement agreement, not signed by Lexington, provided that Lexington would endeavor to make the payment as soon as practically possible.

Lexington made the payment May 1, 2003. Sheilana sued Lexington, alleging violation of the WAC, breach of contract, fraud, misrepresentation, breach of duty of good faith, breach of fiduciary obligation, negligence, intentional infliction of emotional distress, and insurance bad faith. The trial court dismissed the case for failure to state a claim upon which relief could be granted.

On appeal, the Court of Appeals affirmed in part, and reversed in part, saying that (1) Sheilana was barred from suing Lexington under unfair claims-handling practices regulations; (2) Sheilana was barred from suing Lexington for breach of duty of good faith and fair dealing; (3) Sheilana failed to establish an oral contract between herself and Lexington; and (4) Sheilana was not barred from bringing intentional tort claims against Lexington.

HOLDINGS:

(1) In *Tank*, the Washington Supreme Court held that the state's unfair claims settlement practices regulations do not create a cause of action against insurers for third-party claimants.

(2) Third-party claimants may not sue an insurance company directly for an alleged breach of the duty of good faith under a liability policy. An action for breach of good faith against an insurer is limited to the insured. Third-party claimants are not intended beneficiaries of liability policies and are owed no direct contractual obligation by insurers.

(3) A fiduciary relationship exists between an insurer and an insured. *Tank*, 105 Wn.2d 381, 385, 715 P.2d 1133 (1986).

(4) An insurer owes fiduciary duties toward the insured. When it convenes settlement negotiations and makes communications to a third-party claimant, it does so as a fiduciary of the insured. It does not receive its own consideration, necessary for a contract, when a third-party claimant and an insured reach a settlement agreement.

(5) The *Tank* court did not address the possibility of a third-party claimant's intentional tort claim. Intentional tort claims do not require a preexisting duty. Because intentional tort claims do not require a preexisting duty, they are not barred by *Tank*.

(6) To an insured, an insurer owes an elevated duty of good faith. But to a third-party claimant, an insurer owes no duty—only a responsibility to refrain from tortious acts.

(7) We affirm the dismissal of the claim under Washington's unfair practice regulations and the claim for breach of the duty of good faith and fair dealing as barred by *Tank*. We affirm the dismissal of the breach of contract claim because no oral contract is created solely on the basis of an insurer's statements during settlement negotiations between the third-party claimant and the insured. We reverse the dismissal of the intentional tort claims.

COMMENT:

Although most of the opinion is taken up with identifying a whole lot of obligations which do not exist, it is significant because claimant's attorneys are constantly claiming these nonexistent duties do exist. If I were to quibble about something, it would be holding #6. The statement that an insurance company owes no duty to a third-party claimant, "only a responsibility to refrain from tortious acts," strikes me as a bit self-contradictory.

Dussault v. American International Group, ___ Wn. App. ___, 99 P.3d 1256 (2004).

NANCY C. ELLIOTT

PRACTICE

Nancy Elliott is a trial lawyer with over twenty years experience representing physicians, hospitals, and other health care providers in medical malpractice cases, disciplinary actions, and professional board and privilege disputes. During her legal career, Nancy has successfully defended hundreds of healthcare providers in trials, litigation, and disciplinary proceedings. She has tried more than fifty cases to juries, judges and arbitrators. Nancy has extensive experience advising on risk management and quality assurance matters. She has defended virtually every specialty and type of claim confronting health care providers and truly enjoys defending health care professionals.

EDUCATION

Ms. Elliott graduated cum laude with a B.A. from Gonzaga University, Spokane Washington in 1976 majoring in journalism and history. She spent 1975 studying art history in Florence, Italy. She received her J.D. from the Gonzaga University School of Law in 1980.

BACKGROUND

Nancy was licensed by the Washington State Bar Association and the State Bar of Montana in 1980. She is also admitted to practice in the United States District Court Western District of Washington. Nancy is a member of the Washington Defense Trial Lawyers Association, Defense Research Institute, and the Washington State Society of Hospital Attorneys. She had the opportunity to clerk for the Honorable Jack Scholfield. Ms. Elliott has been named Super Lawyer for Law and Politics Magazine for the last four years. She was named as a Top Lawyer by the Seattle Magazine in January 2003 and is AV rated by Martindale Hubbell.

HONORS

Super Lawyer 2001-2004
Seattle Magazine, January 2003 - Top Lawyer
AV rated by Martindale Hubbell

SNOWMOBILE IS NOT MOTOR VEHICLE

FACTS:

David went to Newtok. That is in Alaska, way out by the Bering Sea. The region was covered by ice and snow. The only means of ground transportation was a snowmobile. So David hired a driver with a snowmobile. While cruising along the shore of the Bering Sea, the driver lost control and crashed. David was injured. The driver had no liability insurance.

David had an auto policy with a UIM endorsement. It also had an exclusion for vehicles or equipment operated on rails or crawler treads.

American States filed a declaratory action. After a bench trial, the court ruled that a snowmobile is not a motor vehicle for purposes of the UIM statute, and the exclusion is valid. David appealed, but the Court of Appeals affirmed, holding: (1) excluding snowmobiles from UIM does not violate public policy, and (2) the exclusion unambiguously applies to snowmobiles.

HOLDINGS:

(1) A policy exclusion is void under the UIM statute if it is "directly contrary to specific language in the statute," or is contrary to the "declared public policies of the UIM statutory scheme."

(2) An exclusion of vehicles operated on crawler treads does not conflict with any express language of the statute.

(3) The legislature intends to require UIM coverage only for claims involving vehicles for which liability insurance is required. Snowmobiles are not in this category.

(4) The exclusion excluding from UIM coverage vehicles operated on crawler treads unambiguously refers to a snowmobile.

COMMENT:

Only a bunch of lawyers who have spent too much time cut off from the real world would even think there was a question as to whether a snowmobile would be a motor vehicle for purposes of the UIM statute. However, when we note that folks have litigated whether an airplane was a motor vehicle for purposes of the UIM, this does not seem quite so bizarre.

MORE COMMENT:

The insurer was represented by Reed McClure's GailAnn Stargardter.

American States Ins. Co. v. Bolin, 122 Wn. App. 717, 94 P.3d 1010 (2004).

WHOSE EMPLOYEE IS HE?

FACTS:

Chris was on his way to work. He was an employee of Cascade. While driving on I-405, he looked down, reached for something and rear-ended Jodi.

Jodi sued Chris and Cascade, arguing that an employer is liable for the torts of an employee committed in the scope of his employment.

Not so fast, said Cascade, invoking the rule of going and coming. That's the rule which says that, generally, an employee is not within the scope of his employment while going to or coming from work.

Now wait a minute, says Jodi, what about the well-known exception to the rule of going and coming? The one which applies when an employee is coming or going in a vehicle furnished by his employer.

Too bad, said Cascade, we did not furnish the car. It was Chris's car. To which Jodi responded: But you gave him a $400/month car allowance and expected him to use his car in performance of his duties as an outside salesman.

The superior court awarded the point to Cascade. But the Court of Appeals overruled and gave game, set, and match to Jodi because there was enough evidence to support a finding that Chris was acting within the scope of his employment when he rear-ended Jodi.

Michael v. Laponsey, ___ Wn. App. ___, 99 P.3d 1254 (2004).

JOHN W. RANKIN, JR.

PRACTICE

Mr. Rankin has 28 years of litigation experience. During that period, his practice has emphasized defense of liability claims, including product liability, construction site accident, construction defect, and general liability claims. Mr. Rankin has also defended a wide varitey of professionals against malpractice lawsuits, including architects and engineers, attorneys, physicians, insurance and securities brokers.

In addition, Mr. Rankin has had substantial involvement in insurance coverage analysis and coverage litigation, particularly in the areas of construction defects and failures, construction site injuries, and general liability.

Mr. Rankin holds a Bachelor of Science degree in Mechanical Engineering. This background assists him immeasurably in litigation of construction and product liability claims. His experience in this field includes structural failures, air pollution, electrical and electronic systems, wastewater plants, utility construction and design, work site injury claims and many others.

EDUCATION

University of Washington School of Law, J.D., 1975
University of Washington, B.S. (Mechanical Engineering), 1969

BACKGROUND

Mr. Rankin was born in Ayer, Massachusetts. He served in the United States Navy from 1969-1972.

Mr. Rankin has been admitted to practice in the State of Washington, and the United States District Court, Eastern, and Western Districts of Washington.

HONORS

Super Lawyer for 2004

ARSON IS NOT VANDALISM

FACTS:

The Bank had a mortgage on an abandoned building, and was a named insured on the policy on the building.

Someone drove a car into the building, and then set fire to the car and another part of the building. The Bank made a claim. The policy covered, among other things, fire, smoke, leakage from fire extinguishing equipment, and vandalism. However, if the building was vacant for more than 60 days, the policy did not cover vandalism. Vandalism was not defined. The company took the position that the vandalism exclusion excluded coverage for the fire loss.

The Bank and the company went to court to resolve the dispute. The court ruled for the Bank. On appeal, the court said: Arson is not vandalism.

HOLDINGS:

(1) The analysis is in two steps: Is the loss within the scope of insured perils? And if so, is it nonetheless excluded? The insured must show the first. The insurer must show the second.

(2) The loss falls squarely within the scope of insured perils. So the question is whether the loss is excluded under the vacancy clause because "vandalism" includes arson.

(3) We read the insurance contract as a whole. And we read it in a fair, reasonable, and sensible manner as it would be understood by the average person, giving effect to each provision of the policy.

(4) The policy treated "fire" and "vandalism" as two separate "Specified Causes of Loss." It provided a $5,000 reward for information leading to the conviction of an arsonist. The policy specified coverage for losses by arson as well as by vandalism. But any reward for information was limited to arsonists, not vandals.

(5) According to this policy, "arson" is different from "vandalism."

(6) This policy does not exclude arson. Not all arson is an act of vandalism. So when the vacancy exclusion is read strictly, arson is covered.

COMMENT:

The average purchaser of insurance might be hard pressed to explain why arson is not a particularly insidious form of vandalism. But what the average purchaser of insurance believes has little or nothing to do with the determination of coverage. Here, the company said it would cover loss caused by "X" and loss caused by "Y." The policy had an applicable exclusion for "Y."

That still leaves "coverage for loss caused by "X." The company wrote the policy which indicated that "X" and "Y" were two separate items. An exclusion addressed to "Y" has no effect on the "X" coverage.

American States Ins. Co. v. Rancho San Marcos Properties, LLC, 123 Wn. App. 205, 97 P.3d 775 (2004).

REED MCCLURE IS PROUD TO BE A FIRM WHERE RISING STARS CONTINUE TO SHINE

We congratulate our 2004 Rising Stars
Jennifer Moore, Ryan Foltz, and Anne Nanna.
They join our 2003 Rising Stars Dan Keefe and Jake Winfrey.

CLIMBING JACOB'S LADDER

FACTS:

Sharon was a teacher at a Head Start program which leased a hall in a church from 8 a.m. to 5 p.m. weekdays. One day, Sharon wanted to get into the loft, which was a space between the kitchen ceiling and the roof of the church. To do this, Sharon:

1. stood on one of the school's child-size chairs;

2. from the chair, she climbed onto the kitchen stove;

3. from the stove, she climbed onto the refrigerator;

4. then she climbed onto the microwave which was on top of the refrigerator;

5. and then she climbed into the loft, reached for a box, and fell out of the loft.

And then Sharon sued the owner of the church—God. No, she sued the Bishop of Spokane, arguing that the opening to the loft should have been fitted with a protective rail.

The trial court dismissed Sharon's claim, concluding that the Bishop had no duty because the condition was open and obvious. The Court of Appeals said: "The danger was open and obvious."

HOLDINGS:

(1) There was no dangerous condition known to the Bishop that was not equally obvious to Sharon. The landowner had no duty to inspect rafters, attics, and lofts inaccessible in the course of the anticipated use of the property and not within the scope of the license.

(2) An attic with no stair, handhold, or handrail is an open and obvious danger. The Bishop would not expect that a person will climb over stoves, countertops, refrigerators, and microwaves to access this area.

COMMENT:

The court spent a great deal of time giving this claim the appearance of legitimacy. You can put perfume on the pig, but it is still a pig. It was unfortunate that it was not published so that it could stand as a reminder to counsel that some claims just should not be brought.

Miller v. The Catholic Bishop of Spokane, 2004 WL 2074328 (Wn. App. 2004).

THE "OWNED" PROPERTY EXCLUSION

FACTS:

ECA developed a condominium project. After ECA had sold 117 of the 160 units, the homeowners association sued it for physical damage to the common areas arising out of water intrusion.

ECA had a comprehensive business liability policy with State Farm. The policy excluded from coverage damage to property owned by the insured. State Farm provided a defense under a reservation of rights, citing the "owned property" exclusion. After the homeowners suit was settled, State Farm and ECA went to court to resolve the dispute.

The trial court granted ECA's motion for summary judgment. State Farm appealed and the Court of Appeals reversed, holding that the "owned property" exclusion applied to ECA to the extent it had retained ownership of 43 of the unsold units.

HOLDINGS:

(1) An "owned property" exclusion is intended to prevent a third-party general liability policy from providing first-party benefits to the insured.

(2) The proper interpretation of an insurance policy is a question of law.

(3) Courts will give insurance policies a fair, reasonable, and sensible construction as would be given by the average person purchasing insurance.

(4) Insurance is a contract, and therefore, the unexpressed intention of one party is meaningless.

(5) In construing an insurance policy, courts give undefined terms their popular and ordinary meaning, turning to dictionaries if the plain meaning of the term is not clear.

(6) An insurance policy provision is ambiguous when it is fairly susceptible to two different interpretations, both of which are reasonable.

(7) If the court cannot resolve an ambiguity in an insurance policy by resort to extrinsic evidence, the court will apply the rule that ambiguities in insurance contracts are construed in favor of the insured.

(8) If the plain language of an insurance policy does not provide coverage, the court will not rewrite the policy to do so.

(9) We hold that the word "own" in the owned property exclusion is not ambiguous and bars coverage to the extent of ECA's ownership interest in the damaged common elements of the condominium.

COMMENT:

A remarkably well-written, concise opinion. It is refreshing to read a coverage analysis which treats the insurance policy as a business contract. In addition to the points noted above, the opinion also contains a discussion of how to allocate the loss. ECA argued that the loss was non-allocable. The court disagreed, citing *Waite v. Aetna Cas. & Sur. Co.,* 77 Wn.2d 850, 859, 467 P.2d 847 (1970), for the proposition that allocation is allowable when there is a reasonable means of allocating between covered and non-covered losses.

MORE COMMENT:

State Farm was represented by Reed McClure attorneys Michael S. Rogers and Pamela A. Okano.

State Farm Fire & Cas. Co. v. English Cove Ass'n Inc., 121 Wn. App., 358, 88 P.3d 986 (2004).

PERSONAL RESPONSIBILITY: DOA

FACTS:

Mother picked up her son Aaron at kindergarten. She met him at the door and walked him to her car. She did not wait for him to get in the car. She did not buckle him in his seat. She walked back to the driver's door. He walked into traffic. He was killed.

And now, dear gentle readers, can you guess who got sued? You are right! The School District! In response, the School pointed out that the mother's fault contributed to the harm. The father and the estate then cross-claimed against the mother. And then they settled with the mother for $30,000. Mother was to remain in the lawsuit, but the plaintiffs would not execute against her.

The case went to trial. The jury said that the damages caused by Aaron's death were $1,800,000. And the jury allocated fault 25% to the mother and 75% to the School. But it gets better. The trial judge ruled that the covenant not to execute was not a release, and therefore, the School is on the hook for the full $1,800,000.

On appeal, the Court of Appeals held that the practical effect of the covenant not to execute was a release and so the School is liable for only $1,350,000. (You can or could hire a lot of teachers for that amount of money.) The court relied on a Division I opinion, *Maguire v. Teuber,* 120

Wn. App. 393, 85 P.3d 939 (2004), which also held that a covenant not to execute was the same as a "release" as that term is used in the Tort Reform Act.

COMMENT:

There is something fundamentally wrong with a system which condones this result. Personal responsibility appears to have become an ancient relic. If something bad happens, look around for someone to blame (particularly one with deep pockets). "It's not my fault" is the battle cry of the 21st century.

Presumably with a straight face, the court said that the School's duty did not end when Aaron's mother picked up Aaron from his classroom. Oh, really? Can you imagine the scene if the School had been out in the parking lot telling mother how to care for her child, that she needed to buckle him up, that she was a negligent mother? The first response would be, "How dare you tell me how to raise my child! I'm his mother." The second response would be for a lawsuit for harassment, negligent infliction of emotional distress, interference with the child-parent relationship, and defamation.

The School pointed out that if the mother had done what every parent should do, put Aaron in the car, buckle him into his car seat, and shut the door, Aaron would not have died. The court said that was "a plausible factual argument." No, it's not. It is a fact. The jury's allocation is contrary to fact. This verdict is no more entitled to deference than one which says the sun rises in the west and water runs up hill.

Romero v. West Valley Sch. Dist., _____ Wn. App. ___, 98 P.3d 96 (2004).

QUICKLY, QUICKLY, QUICKLY

Division One of the Court of Appeals recently released an unpublished opinion which covers a remarkable number of insurance issues. It is all the more remarkable because it was premised on a $43 million stipulated judgment from Alaska. Some of the significant rulings include:

1. Filing a declaratory judgment action is not bad faith.

2. An insurance company has no duty to defend its insured in a coverage declaratory judgment action.

3. *Olympic Steamship* attorney fees are payable only after a court has ruled that there is coverage.

4. Bad faith estoppel may arise only when the insurer in fact controls the reserved defense.

5. A clear and cogent discussion of reservations of rights letters.

Because of the significance of the opinion, motions to publish have been filed.

Alaska Nat'l Ins. Co. v. Bryan, 2004 WL 2526612 (Wn. App. 2004).

A Ninth Circuit panel decided it understood Washington insurance law better than a judge in Tacoma. It ruled that the collapse provision in a policy provides coverage not only for actual collapse, but also for imminent collapse.

Assurance Co. of America v. Wall & Associates, 379 F.3d 557 (9th Cir. 2004).

Reed McClure's Pam Okano and Mike Rogers, representing Allstate, secured a reversal of a trial judge who had found coverage for a condominium special assessment. The Court of Appeals reversed because the "loss," i.e., water intrusion, had occurred a couple of years before the policy was issued, and the policy covered only loss that recurred the policy during period.

White v. Allstate Ins. Co., ___ Wn. App. ___, 98 P.3d 496 (2004).

A plaintiff learned that her defendant had died. So she filed a petition to have herself appointed personal representative of the defendant's estate. And then, without an oath or bond, she accepted service of the summons and complaint. The trial court let her do this, but, on appeal, via discretionary review, Reed McClure's Marilee Erickson convinced the Court of Appeals to reverse the trial court because the plaintiff was not authorized to act as the defendant's personal representative when she accepted service of the complaint.

Williams-Moore v. Estate of Shaw, 122 Wn. App. 871, 96 P.2d 433 (2004).

Reed McClure attorney Mary DeYoung represented WIGA in the Court of Appeals. The appellate court reversed the trial court and held that the employer had made an effective rejection of the statutory UIM limits. The case has an excellent review and discussion of what it takes to reject UIM coverage in Washington.

Marks v. Washington Ins. Guar. Ass'n , ___ Wn. App. ___, 94 P.3d 352 (2004).

After losing in front of a jury on the ultimate question of coverage, a policyholder convinced the

trial court she was entitled to an award of *Olympic Steamship* fees anyway. Reed McClure's Pam Okano, representing State Farm, secured a reversal in the Court of Appeals. The court held that a policyholder must do more than merely prove a specific peril is covered. The policyholder must also prove it was entitled to the benefits of coverage. The opinion, which was not published but should have been, contains an excellent analysis of *Greengo v. PEMCO*, 135 Wn.2d 799, 959 P.2d 657 (1998), and reveals what the true majority opinion was in that case.

Breakwater Homeowners Ass'n v. State Farm Fire & Cas. Co., 122 Wn. App. 1025, WL 1552058 (2004).

The problems arising from a non-English speaking passenger signing a release written in English, and explained to her by her sister-in-law, a potential defendant, were handled by Reed McClure's Marilee Erickson in a recent Supreme Court decision. The court was caught in a dilemma between the Washington public policy which favors finality in private settlements, and the court's policy which favors showering accident victims with compensation. Ultimately, the court decided to send the case back for a new trial, this time utilizing "traditional contract theories."

Del Rosario v. Del Rosario, 152 Wn.2d 375, 97 P.2d 11 (2004).

A while back, we noted a Division III opinion which indicated that there might indeed be a limit to how much speculation, conjecture and assumption an expert witness could stack in front of the factfinder. Division III had reversed the trial court because it based its decision not on facts but on the expert's assumption and speculation. (*Rogers Potato Serv. L.L.C. v. Countryside Potato L.L.C.*, 119 Wn. App. 815, 820 (2003)). Well, not to worry, bunkie, order has been restored to the universe, God is back on her throne, and all is right with the world. The Washington Supreme Court, has reversed the Court of Appeals. Now, you might think that the reversal of a published Court of Appeals opinion would call for a relatively sophisticated judicial opinion. You might think that, but what came out was a "Per Curiam" (i.e., no justice would put his/her name on it) opinion which said that while the evidence did not support the trial court's finding, it was close enough.

Rogers Potato Serv. L.L.C. v. Countryside Potato L.L.C., 152 Wn.2d 387, 97 P.3d 745 (2004).

Your Editor managed to discuss the esoteric topic of ERISA pre-emption in front of Division One of the Court of Appeals. Notwithstanding, the court still ruled in our healthcare provider's favor, holding that the claim of negligent failure to timely schedule an appointment was directly connected with an ERISA plan and hence preempted.

Wascher v. OSI Collection Services Inc., 122 Wn. App. 1060, 2004 WL 1774660 (Wash. App. 2004)

Reed McClure has moved

Two Union Square

601 Union Street, Suite 1500

Seattle, WA 98101-1363

Phone: 206/292-4900

Fax: 206/223-0152

www.rmlaw.com

Select back issues of the Law Letter are available on our web site at www.rmlaw.com/newsletter.html ... and Pam Okano's periodic Coverage Column is available at www.wdtl.org/ (see Coverage Uncovered).

REED MCCLURE ATTORNEYS

Levi Bendele	**206/386-7154**	**lbendele@rmlaw.com**
Mary R. DeYoung	**206/386-7091**	**mdeyoung@rmlaw.com**
Nancy C. Elliott	**206/386-7007**	**ncelliott@rmlaw.com**
Marilee C. Erickson	**206/386-7047**	**merickson@rmlaw.com**
Ryan G. Foltz	**206/386-7024**	**rfoltz@rmlaw.com**
Anamaria Gil	**206/386-7061**	**agil@rmlaw.com**
Kelly A. Hebert	**206/386-7014**	**khebert@rmlaw.com**
William R. Hickman	**206/386-7011**	**whickman@rmlaw.com**
Dan J. Keefe	**206/386-7165**	**dkeefe@rmlaw.com**
Jennifer L. Moore	**206/386-7185**	**jmoore@rmlaw.com**
Anne M. Nanna	**206/386-7008**	**ananna@rmlaw.com**
Pamela A. Okano	**206/386-7002**	**pokano@rmlaw.com**
John W. Rankin, Jr.	**206/386-7029**	**jrankin@rmlaw.com**
Michael S. Rogers	**206/386-7053**	**mrogers@rmlaw.com**
Sherry H. Rogers	**206/386-7030**	**srogers@rmlaw.com**
Gregory G. Silvey	**206/386/7022**	**gsilvey@rmlaw.com**
GailAnn Y. Stargardter	**206/386-7017**	**gstargardter@rmlaw.com**
Earl M. Sutherland	**206/386-7045**	**esutherland@rmlaw.com**
Katina C. Thornock	**206/386-7006**	**kthornock@rmlaw.com**
Jake Winfrey	**206/386-7097**	**jwinfrey@rmlaw.com**
Cheryl A. Zakrzewski	**206/386-7037**	**czakrzewski@rmlaw.com**

WHERE TO FIND US:

REED McCLURE
TWO UNION SQUARE
601 Union Street, Suite 1500
Seattle, WA 98101-1363

OUR TELEPHONE NUMBERS:

main: 206.292.4900
fax: 206.223.0152
www.rmlaw.com