“Bad faith” damages against an insurer or an insurance adjuster is an issue of great concern for those in the insurance industry and for policyholders alike. Recent caselaw deepens that sentiment on both the insurer and the policy holder’s sides, notably the 2018 Washington Supreme Court case of *Keodalah v. Allstate Ins. Co.*, 413 P.3d 1059 (Wash. Ct. App. 2018), which affirmed in yet another jurisdiction that an insurance adjuster can be held personally liable, in addition to the insurance entity itself. This case further opens the potential for consumer protection claims against insurance companies and adjusters, as well as “bad faith” liability for policyholders as well. This articles explores the brief history of bad faith, the split in jurisdictions on adjuster liability for first-party insurance bad faith, and the impact of *Keodalah*.

**What is Bad Faith?**

Implied within every contract, including all insurance policies, is a covenant to act in good faith and deal fairly with the other contracting party. The implied covenant means neither party will do anything which will injure the right of the other to receive the benefits of the agreement. *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658.

Although an implied term in every contract, the covenant of good faith and fair dealing has unique implications in the context of an insurance policy. A breach of the implied covenant of good faith and fair dealing (or bad faith) is the unreasonable failure to satisfy duties owed under an insurance policy. Bad faith may involve negligence, or negligence may be indicative of bad faith, but negligence alone is generally insufficient to render the insurer liable. *Brown v. Guarantee Ins. Co.* (1957) 155 Cal.App.2d 679, 689. Yet, unlike most non-insurance related
contracts, tort damages, legal fees, and/or extra-contractual penalty damages are available where an insurer is liable for bad faith.

Nearly every jurisdiction recognizes insurance bad faith, either as an independent cause of action or as a component of a breach of contract cause of action. Typically, to establish a first party bad faith claim against an insurer, the policyholder must show: (a) the insured suffered a loss covered under the policy; (b) the insurer was notified of the loss; (c) the insurer withheld benefits owed under the policy, i.e., failed to pay the amount owed, delayed payment, denied the claim, or refused to defend the insured or settle a claim (within the limits of the policy) against the insured by a claimant; (d) the withholding of the benefits owed was unreasonable or without proper cause; and (e) the insured was harmed as a result of the insurer’s conduct. See, Justin v. Guardian Ins. Co., 670 F.Supp. 614, 617 (D.V.I. 1987); Chateau Chamberay Homeowners Ass’n v. Associated Int’l Ins. Co., 90 Cal.App.4th 335, 345 (2001); and Waller v. Truck Ins. Exch., Inc., 11 Cal.4th 1, 35-36 (1995).

Third-party insurance (such as liability insurance coverage) requires a similar showing. However, unlike first-party bad faith which evaluates the insurer’s misconduct toward its own policyholder, third-party bad faith arises when a claimant (or third party) asserts a claim against the policyholder’s insurance company. Even though the insurer is that instance is dealing with a claimant and not its own insured, bad faith can still arise when the insurer engages in certain conduct, such as: (a) Unduly delaying the claims investigation; (b) Failing to conduct a fair claims investigation; (c) Refusing to defend a lawsuit without a reasonable basis; (d) Unreasonably interpreting the insurance policy; (e) Threatening the insured parties; (f) Refusing to make a reasonable settlement offer within policy limits.
In determining bad faith liability, the majority of states focus on the reasonableness of the insurer’s conduct while adjusting the claim, not incorrect claim decisions. For example, an insurer may face liability for breach of contract where the insurer denies a claim based on an erroneous interpretation of coverage. However, bad faith liability would not attach unless the denial, even if erroneous, was unreasonable or without proper cause.

In general, to act in good faith, the insurer must give at least as much consideration to the interests of the insured as it gives to its own interests. The insurer’s reasonableness is typically evaluated based on the totality of facts and circumstances of the claim, at the time of the insurer’s actions. Whether an insurer has acted reasonably is based on several general factors and guiding principles, not clear rules and standards. Specifically, an insurer must do the following, among others duties: (a) fully investigate a claim, which includes considering or seeking to discover evidence relevant to the issues of liability and damages; (b) in the event of a denial, fully investigate the grounds for denial and similarly demonstrate a willingness to reconsider its denial; and (c) inform the insured of his or her rights under the policy.

*First-Party Bad Faith vs. Third-Party Bad Faith*

The concept of “bad faith” applies to all types of insurance coverage as, like any other contract, a duty of good faith and fair dealing exists with every policy. Liability, however, is assessed differently depending upon the type of insurance coverage applicable to the loss. Generally speaking, courts have historically drawn a distinction between liability (“third-party”) and “first-party” policies (such as property, health insurance, uninsured motorist, and workers compensation) because of the contractual obligations contained therein.

With respect to liability (“third-party”) policies, courts look to the insurer’s obligation under the policy to control litigation and settlement. In such cases:
the insurer’s duty to the insured comes down to this: In conducting the defense of a claim against an insured, including the investigation, negotiation, and litigation of the claim, the insurer must use such care as would have been used by an ordinarily prudent insurer with no policy limit applicable to the claim. The insurer is negligent in failing to settle, where an opportunity to settle exists, if in choosing not to settle it would be taking an unreasonable risk—that is, a risk that would involve chances of unfavorable results out of reasonable proportion to the chances of favorable results.

*Maine Bonding v. Centennial Ins. Co.*, 693 P.2d 1296 (Or. 1985). In other words, an insurer, in deciding whether a claim should be compromised, must consider the interest of the insured and give it at least as much consideration as it does to its own interest. *Comunale v. Traders & General Ins. Co.*, 50 Cal. 2d 654, 659, 328 P.2d 198, 201, 68 A.L.R.2d 883 (1958); *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Continental Illinois Corp.*, 658 F. Supp. 775 (N.D. Ill. 1987). A failure to provide this “equal consideration” gives rise to an independent tort claim for bad faith, and can expose an insurer to extracontractual liability.

By contrast, in the context of first-party coverage, no such contractual duty to defend generally exists. As such, many courts have rejected the concept of “equal consideration” in a first-party context. *See, e.g., Zochert v. Protective Life Ins. Co.*, 2018 S.D. 84, --- N.W.2d --- (S.D. Dec. 12, 2018). In response, some jurisdictions have enacted Bad Faith statutes. For example, Pennsylvania Stat. § 8371, provides:

> Actions on insurance policies. In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions: (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%. (2) Award punitive damages against the insurer. (3) Assess court costs and attorney fees against the insurer.”

Missouri Statute §375.420 for “Vexatious refusal to pay claim damages” provides:

> In any action against any insurance company to recover the amount of any loss under a policy of automobile, fire, cyclone, lightning, life, health, accident,
employers' liability, burglary, theft, embezzlement, fidelity, indemnity, marine or other insurance except automobile liability insurance, if it appears from the evidence that such company has refused to pay such loss without reasonable cause or excuse, the court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed twenty percent of the first fifteen hundred dollars of the loss, and ten percent of the amount of the loss in excess of fifteen hundred dollars and a reasonable attorney's fee; and the court shall enter judgment for the aggregate sum found in the verdict.

Minnesota Statute §604.18 “Insurance Standards of Conduct” provides yet another variation, imposing liability under subdivision 2(a) of the statute when the insured proves:

(1) the absence of a reasonable basis for denying the benefits of the insurance policy; and
(2) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.

(b) A violation of this section shall not be the basis for any claim or award under chapter 325D or 325F [the consumer fraud statutes].

(c) An insurer does not violate this subdivision by conducting or cooperating with a timely investigation into arson or fraud.

Damages are also capped under subdivision 3 to a maximum of $250,000 in penalties and $100,000 in attorney fees incurred to prove bad faith. *Id.*

Yet, all of these statutes beg the question of what conduct constitutes “bad faith”. Generally, courts look to the reasonableness of the insurer’s claims handling practices and will find “bad faith” only where there is: (1) the absence of a reasonable basis for denying benefits of the policy, and (2) an insurer’s knowledge or reckless disregard of the lack of a reasonable basis for denying the claim. *E.g. Anderson v. Continental Ins. Co.*, 271 N.W.2d 368 (Wis. 1978); *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790 (Iowa 1988); *Bibeault v. Hanover Ins. Co.*, 417 A.2d 313 (R.I. 1980).


However, all courts generally agree that, in the first-party context, an insurer may challenge a claim that is “fairly debatable.” See *Anderson, supra; Hein v. Acuity*, 731 N.W.2d 231 (S.D. 2007); *Pickett v. Lloyd’s*, 131 N.J. 457 (N.J. 1993).

**Early Cases Addressing Bad Faith**

Although the origins of third-party bad faith liability can be traced as early as the 1930s (see, e.g., *Hilker v. Western Automobile Ins. Co.*, 204 Wis. 1, 231 N.W. 257, 235 N.W. 413 (1930, 1931)), the concept of first-party bad-faith did not find significant traction for decades thereafter. This distinction was due to the disparate obligations of the respective contracts; because a third-party liability policy allows an insurer to control settlement and litigation, a fiduciary relationship was said to exist between an insurer and insured. See, e.g., *Dumas v. State Farm Mut. Auto Ins.*


Still other jurisdictions rejected extending bad faith to first party claims on a theory of preemption, where regulatory safeguards or procedural remedies were legislatively enacted to protect insureds from “insurer abuses” in the claims-handling process. See, e.g., Leonard v. Firemen’s Ins. Co., 111 S.E.2d 773 (Ga. Ct. App. 1959); Spencer v. Aetna Life & Cas. Ins. Co.,

These legislative safeguards are included as part of many state statutory schemes, that expressly prohibit certain claims handling practices. See for example, Minn. Stat. § 72A.201 (the Fair Claims Practices Act). These statutes and their attendant regulations set forth a wide array of conduct deemed to be unfair, including: Misrepresenting facts or policy provisions; Failing to promptly respond to claim communications within a reasonable time; Failing to promptly deny claims or pay claims; Failing to pay undisputed amounts owed; Attempting to settle claims for less than a reasonable amount (i.e., “lowballing”); Failing to provide a reasonable explanation of the basis for a denial or settlement of a claim; Compelling the insured to commence litigation to recover policy benefits owed; Delaying investigation of a claim.

Under the majority approach, these regulatory statutes do not create a private cause of action for a violation of the statutes. See Moradi-Shalal v. Fireman’s Fund Ins. Cos., 46 Cal.3d 287, 313 (1988)(there is no private right of action for a violation of California’s Fair Claims Settlement Practices Act); Melancon v. USAA Cas. Ins. Co., 174 Ariz. 344, 347, 849 P.2d 1374, 1377 (App.Div.2 1992) (holding that Arizona’s Unfair Claims Practices Act does not create a private right or cause of action). Although a violation of the statutes does not support a bad faith cause of action in and of themselves, violations can be used in some jurisdictions as evidence of or to support bad faith. See Moradi-Shalal v. Fireman’s Fund Ins. Cos., 46 Cal.3d 287, 313 (1988); see in contrast Minn. Stat. § 604.18 (prohibiting use of 72A violations to prove bad faith).

However, not all states follow the majority rule. Some jurisdictions allow a private cause of action for violations of the claims regulatory statutes. For example, Colorado Revised Statutes Section 10-3-1104(1)(h)(I) provides for bad faith liability where there is a misrepresentation of
pertinent facts or insurance policy provisions relating to coverages at issue. Under the minority rule, a violation of this type of statute does not give rise by an insured to a private cause of action and, in fact, may be prohibited as being evidence of bad faith. For example, Minn. Stat. § 604.18 specifically excludes the admissibility of conduct under the Minnesota Fair Claims Practices Act as “standards of conduct”.

**Adjuster Liability**

Historically, the insurance institution bore liability for bad faith—not the individual adjuster handling the claim. In the 1970 Pennsylvania Supreme Court case of *Hudock v. Donegal Mut. Ins. Co.* 264 A.2d 668 (Pa. 1970), the Court rejected the notion of independent adjuster liability because there was no contractual relationship between the insured and the adjuster. Other jurisdictions followed suit. See e.g., *Egan v. Mutual of Omaha Insurance Co.* 620 P.2d 141 (Cal. 1979) (insurer’s employees not liable for bad faith because they are agents of the insurer, not parties to the contract).

In fact, to date, the majority of state supreme courts that have ruled an insured cannot bring a negligence claim against an independent insurance adjuster because the independent insurance adjuster owes no duty of care. *See Trinity Baptist Church v. Bhd. Mut. Ins. Servs., LLC*, 341 P.3d 75, 82, 84-87 (Okla. 2014); *Hamill v. Pawtucket Mut. Ins. Co.*, 179 Vt. 250, 892 A.2d 226 (Vt. 2005); *Murphy v. Patriot Ins. Co.*, 106 A.3d 911 (Vt. 2014)); and *Lodholtz v. York Risk Servs. Grp.*, 778 F.3d 635, 641 & n. 11 (7th Cir.2015) (predicting the Indiana Supreme Court would align itself with the “majority rule in American jurisdictions”). Yet, the minority of jurisdictions have recognized adjuster liability, with recent cases expanding that concept.

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1 Various appellate court decisions have also found that an insured may not bring a negligence claim against an insurance adjuster. *See Sanchez v. Lindsey Morden Claims Services, Inc.*, 72 Cal.App.4th 249, 253-56 (1999) (holding that to impose a duty on the adjuster to the insured would conflict with the duty the adjuster owes the insurer that hired it); *King v. National Security Fire & Casualty Co.*, 656 So.2d 1338, 1339 (Fla.Dist.Ct.App.1995) (finding that

That trend has continued. In *Tippett v. Ameriprise Ins. Co.*, 2015 WL 1345442 (E.D. Penn. 2015), the Eastern District of Pennsylvania was asked to predict how the Pennsylvania Supreme Court would rule where the insureds had filed suit, in part, against the insurance company’s independent adjuster. Specifically, the Tippetts brought suit against their insurers as well as All American Adjusters (“Adjusters”), the insurance adjuster hired by the insurers to evaluate the claim after a fire damaged their house. In particular, the Tippetts asserted third-party beneficiary and negligence claims against Adjusters in preparing the dwelling loss estimate.

With regard to their claim for negligence, the Court granted Adjusters’ motion to dismiss, noting that Pennsylvania courts permit insureds to sue their insurers for the actions of their agents, including adjusters. As such, the court held it was unlikely the Supreme Court of Pennsylvania would adopt the position that an adjuster owed a duty to care to the insured. Similarly, the Court in *Tippett* dismissed the insureds third-party beneficiary claim. In so doing, the court concluded that the Tippetts could not satisfy the intended beneficiary test, beginning with the “standing requirement”, which leaves the trial court with discretion to determine if recognition of third-party beneficiary status would be appropriate. Because Pennsylvania law permits insureds to recover

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*independent adjusters owe no duty to the insured unless the insured is suing for an intentional tort); Koch v. Bell, Lewis & Associates, Inc., 627 S.E.2d 636 (N.C. App. 2006) (holding that to impose a duty on the adjuster to the insured would subject the adjuster to conflicting loyalties); Dear v. Scottsdale Ins. Co., 947 S.W.2d 908, 916-17 (Tex.App.1997) (holding that insured may not maintain negligence claim against adjuster because adjuster’s duties are contractual ones owed solely to insurer).*
for adjusters’ misconduct via breach of contract actions against the insurer, it would be inappropriate to allow the Tippetts to also sue Adjusters, with whom they lack contractual privity.

The Court also noted that the insurer hired Adjusters to aid in their policy coverage determination, not to advocate for the benefit of the Tippetts. In that regard, the Court concluded that the Tippetts knew Adjusters’ work was not intended for their benefit, because they hired their own public adjuster to represent their interests during the claim.

The Tippett decision is in line with a majority of state supreme courts that have ruled an insured cannot bring a negligence claim against an independent insurance adjuster because the independent insurance adjuster owes no duty of care. See Trinity Baptist Church v. Bhd. Mut. Ins. Servs., LLC, 341 P.3d 75, 82, 84-87 (Okla. 2014); Hamill v. Pawtucket Mut. Ins. Co., 179 Vt. 250, 892 A.2d 226 (Vt. 2005); Murphy v. Patriot Ins. Co., 106 A.3d 911 (Vt. 2014); and Lodholtz v. York Risk Servs. Grp., 778 F.3d 635, 641 & n. 11 (7th Cir.2015) (predicting the Indiana Supreme Court would align itself with the “majority rule in American jurisdictions”).

While a vast majority of courts have held that liability of adjusters and investigators falls primarily on the insurer, as its employer, some courts have held that personal liability on the adjuster may exist.

In Aung v. Geico, 2017 WL 2416475 (D.S.C. 2017), the United States District Court for South Carolina confirmed that the insured may be able to peruse a claim for negligence against an “in-house adjuster”. While the court noted that the South Carolina Supreme Court in Charleston

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2 Various appellate court decisions have also found that an insured may not bring a negligence claim against an insurance adjuster. See Sanchez v. Lindsey Morden Claims Services, Inc., 72 Cal.App.4th 249, 253-56 (1999) (holding that to impose a duty on the adjuster to the insured would conflict with the duty the adjuster owes the insurer that hired it); King v. National Security Fire & Casualty Co., 656 So.2d 1338, 1339 (Fla.Dist.Ct.App.1995) (finding that independent adjusters owe no duty to the insured unless the insured is suing for an intentional tort); Koch v. Bell, Lewis & Associates, Inc., 627 S.E.2d 636 (N.C. App. 2006) (holding that to impose a duty on the adjuster to the insured would subject the adjuster to conflicting loyalties); Dear v. Scottsdale Ins. Co., 947 S.W.2d 908, 916-17 (Tex.App.1997) (holding that insured may not maintain negligence claim against adjuster because adjuster's duties are contractual ones owed solely to insurer).
Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co., 586 S.E.2d 586 (S.C. 2003) did decline to hold that independent adjusters owe insureds a “general duty of due care” in the handling first-party insurance claims, the opinion was limited to independent adjusters, leaving open the possibility of negligent against claims against in house insurance adjusters. Since no opinion in South Carolina definitively precluded negligence liability for in-house adjusters, the insured had a “glimmer of hope” in bringing such an action and could do so.

Previously, the New Hampshire Supreme Court in Morvay v. Hanover Ins. Co., 506 A.2d 333 (N.H. 1986), found that investigative agents hired by the insurer to investigate the insured’s fire claim, while not in privity with the insureds could still be held liable. The court noted that since the independent adjusters were aware that the insureds could be harmed financially if they performed their investigation in a negligent manner and they knew there was a mutual duty of fair dealing between the insurer and the insureds, they had a duty to conduct a fair and reasonable investigation and could be held liable if the insureds provide a breach of that duty. See also Cont’l Ins. Co. v. Bayless & Roberts, Inc., 608 P.2d 281 (Alaska 1980) (holding an individual adjuster personally liable in negligence to insured for breaching the general tort duty of ordinary care by failure to adequately investigate insurance claim).

While many insureds may believe that they have a legitimate claim against the adjuster for negligence, in many cases insureds may include the adjuster as a defendant in an effort to defeat diversity jurisdiction and prohibit removal of the case to federal court. This is commonly referred to as “fraudulent joinder”. In order to prove fraudulent joinder, the removing party must prove either (1) actual fraud in the pleading of jurisdictional facts, or (2) plaintiff’s inability to establish a cause of action against the non-diverse party in state court. Smallwood v. Illinois Cen. R.R. Co., 385 F.3d 568, 573 (5th Cir. 2004); First
In determining whether fraudulent joinder has occurred, courts often look to the following factors: (1) Does it appear the plaintiff intended to pursue a claim against the in-state defendant? (2) Does state law recognize the cause of action against the defendant? (3) Does the state court petition allege sufficient facts against the defendant? (4) When the state court petition fails to allege sufficient facts, is there other evidence in the record which clarifies the claim set forth in the petition? *Baptist Church of Mauriceville, Texas v. GuideOne Mut. Ins. Co.*, 2008 WL 4533729 (E.D. Tex. 2008).

The issue of fraudulent joinder was hotly contested in Texas given that their Supreme Court recognizes that an insurance adjuster can be held personally liable for a breach of the Texas Insurance Code. As such, insurance adjusters were often included as defendants in lawsuits. Thus, the issue of whether a non-diverse adjuster was properly joined became the subject of many opinions in the Northern District of Texas.

In fact, the Northern District of Texas saw a split within the Court on this issue. In 2015, Judge McBryde for the Northern District of Texas issued eight opinions consider the “badges of improper joinder” and generally ruled that nondiverse adjusters were improperly joined. In concluding that non-diverse adjusters were improperly joined as a matter of course, Judge McBryde stated as follows:

Certain attorneys representing insureds/claimants who are citizens of Texas and who are dissatisfied with the noncitizen insurer’s response to the insured’s/claimant’s policy demand have developed a practice of filing suit in state court against the noncitizen insurer and an insurance adjuster or agent who is a citizen of Texas with the goal of preventing the insurance company from exercising its right to have the case removed to and heard by a federal court. *Davis v. Metro. Lloyds Ins. Co. of Texas*, 4:14-CV-957-A (N.D. Tex. Feb. 3, 2015).

Conversely, a number of District Court Judges, including Judge Boyle, have found that improper joinder was irrelevant to whether a plaintiff could establish a cause of action against a nondiverse defendant in state court. In *Linron Properties v. Wausau Underwriters Ins. Co., et al.*, No. 3:15-CV-00293 (N.D. Tex. June 16, 2015), the insured filed suit against its insurer and adjuster. In relevant part, plaintiff’s petition alleged that the adjuster failed to conduct a full, fair, prompt and reasonable investigation of the claimed damages, and conducted an outcome-oriented investigation. Judge Boyle focused on the fact that “an individual adjuster” may be held individually liable for violating chapter 541 of the Insurance Code. Therefore, because an adjuster is responsible for evaluating and adjusting insurance claims, the Court concluded that Section 541.060 would potentially apply and the allegations were sufficient to support a claim against the

Adjuster Liability Expands in 2018

Most recently, the Washington State Court of Appeals in Keodalah v. Allstate Ins. Co., 413 P.3d 1059 (Wash. Ct. App. 2018) ruled that a policyholder may directly sue and that an individual insurance adjusters may be personally liable for violations of Washington’s bad faith statute, RCW 48.01.030, as well as Washington’s Consumer Protection Act. In its entirety, the Washington bad faith statute provides as follows:

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives resets the duty of preserving inviolate the integrity of insurance.

In concluding that insureds may bring bad faith claims against individual insurance adjusters, the Court of Appeals noted that Washington’s bad faith statute imposes a duty of good faith on “all persons” involved in insurance, including the insurer and its representatives. The court held that the agent was engaged in the business and was acting as an Allstate representative and thus, under the plain language of the statute, had a duty to act in good faith. The court further held that the duty of good faith applied equally to individuals and corporations acting as insurance adjusters. Such a duty was not obviated because the agent was working within the “scope of her
employment”. Washington’s bad faith statute imposed a duty of good faith upon the agent, not just the employer. As such, suit can be brought against individual and corporate insurance adjusters alike. It is also important to note that the decision in *Keodalah* also held that the bad faith statute also applies to insureds, and their representatives.

The court in *Keodalah* also held that adjusters may be personally liable for violations of Washington’s Consumer Protection Act (“CPA”), RCW 19.86.020. The CPA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” RWC 19.86.020. The CPA serves to deter unfair or deceptive acts or practices, protect the public, and foster fair and honest competition. As such, because the Washington Supreme Court declined to include a contractual relationship requirement for a claim under the CPA, an agent could be liable under the CPA if the following five elements are shown:

1. an unfair or deceptive act or practice,
2. the act or practice occurs in trade or commerce,
3. a public interest impact,
4. injury to the plaintiff in his or her business or property,
5. a causal link between the unfair or deceptive act and the injury.

*Keodalah*, as it currently stands, further expands policyholder’s rights to recovery against adjusters for both bad faith and consumer protection violations, if the decision is upheld. The Supreme Court of Washington has granted review of the *Keodalah* decision but has not ruled.

However, the courts’ historical broad application of Washington’s bad faith statute has paved the way for this decision. It was in no way an anomaly or departure from the existing jurisprudence Washington State. In *Merriman v. Am. Guarantee & Liability Ins. Co.*, 198 Wn. App. 594, 396 P.2d 351 (2017), the Court held that the statutory duty of good faith applies to **all persons** engaged in the business of insurance. The United States District in the Western District of Washington, at Seattle in the 2009 in the case of *Lease Crutcher Lewis WA, LLC v. Nat’l. Union*
Fire Ins. Co., 2009 WL 3444762 (W.D. Wash. Oct. 20, 2009) similarly found that corporate adjusters can be liable for bad faith. (“(T)he legislature has expressly imposed an obligation of good faith on those who represent insurers and insureds…” at *2).

While Garoutte v. Am. Family Mutual Ins. Co., later decided by the United States District in the Western District of Washington at Seattle in 2013 conflicts with Lease Crutcher by concluding that there is no claim for bad faith against individual adjusters, the Keodalah court rejected the federal’s court’s interpretation of the statutory language in Garoutte. In doing so, the Keodalah court specifically reiterated “Just as corporate insurance adjusters are representatives, so too are individual employee insurance adjusters” both of which owe a duty of good faith under RCW 48.01.030. Keodalah supra at 1062-3.

**The Impact of Keodalah**

No cases in jurisdictions other than Washington have cited Keodalah. However, since the Keodalah decision, the federal district court in the Western District of Washington at Seattle has upheld the policyholder’s right to sue a claims adjuster directly. See Tidwell v. Gov’t Employees Ins. Co., No. C18-318RSL, 2018 WL 2441774 (W.D. Wash. May 31, 2018); Mort v. Allstate Indem. Co., C18-568RSL, 2018 WL 4303660 (W.D. Wash. Sept. 10, 2018). Moreover, when an adjuster is added during the pendency of a state court action and the matter is subsequently removed to federal court, “the Court has allowed plaintiffs to add claims against individual insurance adjusters—including when doing so destroys complete diversity for jurisdictional purposes.” Mort, 2018 WL 4303660 at *2. The Court in Mort rejected the insurance company’s use of Rule 21 to undermine the policyholder’s ability to litigate the claim with all chosen defendants.