

# Insurer Loses Bad Faith Summary Judgment for Ignoring the Opposing Medical Expert's Opinions

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The Washington Court of Appeals held that an insurer's refusal to consider the causation opinion of its insured's equally qualified expert could be bad faith conduct.

In the underlying case, State Farm's insured was involved in a car accident where she was rear-ended and suffered neck and back injuries. The rear-ending at fault driver had only a \$25,000 liability limit to split between three injured parties. The insured's portion was only \$9,128.50. State Farm provided the insured with \$25,000 of personal injury protection insurance (PIP) and \$100,000 in underinsured motorist coverage (UIM).

About a year and a half after the accident, the plaintiff sought compensation under her UIM coverage for her medical expenses associated with dermatomyocitis. She alleged that the accident had either caused or triggered the condition. The State Farm claims representative discussed with internal injury claim trainers whether that condition was accident related. Those trainers thought it was not related. When they requested a demand letter from the plaintiff's counsel, it estimated nearly \$300,000 in damages and sought the PIP and UIM policy limits.

State Farm responded that it did not have sufficient information to conclude the dermatomyocitis was caused by the accident and offered to waive \$1,615 of State Farm's PIP subrogation rights. The plaintiff then submitted the medical report of her treating rheumatologist who had concluded the dermatomyocitis was caused by the accident. State Farm countered with the opinion of another rheumatologist, who claimed there was no support that car accident trauma caused dermatomyocitis. It also forwarded the report of a licensed chiropractor who determined the plaintiff was receiving excessive treatments for the condition. Based on the findings of its experts, State Farm refused to pay the policy limits and offered only an \$11,000.00 waiver of its PIP subrogation rights.

A lawsuit followed this denial, and the jury awarded the plaintiff \$884,017.31 in damages. State Farm paid the \$100,000 UIM policy limit and the PIP limit, but this was not the end; the plaintiff added extra contractual claims, including bad faith to her contract claims.

After the trial court granted summary judgment to State Farm on the plaintiff's bad faith claim, the plaintiff appealed to the Washington Court of Appeals. The Court of Appeals reversed, holding that there were genuine issues of material fact whether State Farm's refusal to pay UIM benefits was reasonable. The court summarized the summary judgment standard for bad faith claims as "questions of fact such as whether an insurer acted in bad faith may only 'be determined on summary judgment as a matter of law where reasonable minds could reach but one conclusion.'" The court framed the issue here as whether State Farm acted reasonably in relying solely on its expert on causation, while "ignoring" the plaintiff's expert.

With conflicting reports from the medical experts, the court held there was a genuine issue of material fact whether State Farm acted reasonably in denying UIM coverage. The takeaway from the holding is that in Washington, if there are two opposing causation expert opinions, then it is up to the jury to decide whether the insurer acted in bad faith in denying a claim. This appears to be the case even when the insurance company has more "experts" than the claimant. State Farm had both a rheumatologist and examining chiropractor, while the plaintiff had only her treating rheumatologist. Some would argue that an examining chiropractor does not qualify as an expert on such issues. In order to avoid this result, insurers should clearly state their reasoning for denying a claim, such that a court could not possibly be left with the impression that the insurer simply "ignored" an opposing expert. If an insurer considers opposing expert opinions and it chooses to accept one for reasons it can justify when making its decision, at most the court should find it may have made a mistake, but not that it acted in bad faith.