

COLE | WATHEN | LEID | HALL

Insurance Law Newsletter

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Highlights

- **CWLH Proudly Announces New Senior Associate – A. Elyse O’Neill**
- **Defense Ruling Rejecting PIP Income Continuation Claim**
- **CWLH Obtains Ruling Foreclosing Claim in Excess of \$1,000,000**
- **CWLH Secures Summary Judgment Dismissal of Claim based on Waiver of Provider Bills**
- **CWLH Prevails on Summary Judgment , No UM Coverage**
- **Court of Appeals Upholds Trial Court’s Dismissal on Summary Judgment Re Failure to Cooperate**
- **CWLH Prevails on Diminished Value Claim**

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*Proudly Announces A. Elyse O'Neill's
Promotion to Senior Associate*

A. Elyse O'Neill, Esq. – Senior Associate

Our clients deserve the dedication, skill, tenacity, and experience that Elyse has demonstrated since joining our team.

Attorney O'Neill will continue her practice of insurance defense in all aspects of insurance related litigation, including first party coverage, bad faith claims and third party defense claims.

*A. Elyse O'Neill
promoted to
Senior Associate*

Ms. O'Neill graduated from Western Washington University in 2008. Prior to attending law school, Ms. O'Neill started at CWLH in 2008 as the file clerk. Upon receiving her Paralegal Certificate from the University of Washington in 2009, Ms. O'Neill was promoted to a legal assistant, and handled client correspondence, federal and state court filings, discovery requests, and trial preparation. Ms. O'Neill left CWLH in 2010 to attend law school; she continued to return to CWLH during her school breaks to assist with research projects and drafting briefing.

Ms. O'Neill graduated in 2013 from New England Law | Boston, and returned back to the Pacific Northwest to rejoin CWLH as an Associate Attorney. Ms. O'Neill has remained dedicated to CWLH over the past 10 years, be that in a support staff role, or most recently as an Associate Attorney. She has displayed her ability to achieve great results for our clients through hard work and enthusiasm. Her current practice focuses on all aspects of insurance defense including first party coverage, bad faith claims and third party defense claims.

Ms. O'Neill is admitted to practice in Washington State, the United States District Court for the Western & Eastern Districts of Washington, as well as the United States District Court for the Western District of Washington Bankruptcy Court, and is a member of the Washington State Bar Association, the Washington Young Lawyer's Division, and the American Bar Association.

Defense Ruling Rejecting PIP Income Continuation Claim

Ryan J. Hall represented Allstate Fire & Cas. Ins. Co., in the matter of Abinesh Ray v. Allstate Fire & Casualty Insurance Company, Multnomah County Circuit Court Case No. 18CV0303. Plaintiff filed suit for benefits under PIP. Plaintiff alleged that although not working full time at the time of loss, he was required to postpone employment while he recovered from an accident. At the arbitration, Mr. Hall successfully argued that because Plaintiff was not "usually engaged in a remunerative occupation..." under ORS 742.524(1)(b) and was owed no income continuation. Mr. Hall obtained a defense verdict and Plaintiff was awarded no damages for all issues brought before the arbitrator.

*Abinesh Ray v. Allstate
Fire & Casualty
Insurance Company*

Multnomah County
Circuit Court Case No.
18CV0303

Ryan J. Hall

CWLH Obtains Ruling Foreclosing Claim in Excess of \$1,000,000

Rory Leid and Christopher Roslaniec successfully prevailed on summary judgment in establishing that motorcycle UIM coverage is not afforded by operation of statute.

The Luckes did not purchase insurance coverage for a motorcycle, and Mr. Lucke was subsequently injured while riding the uninsured motorcycle. The Luckes claimed that RCW 48.22.030(9) operated to provide motorcycle UIM coverage by operation of statute, and that the claim was worth over \$1,000,000.

On motion for summary judgment, Commerce West prevailed in establishing as a matter of law that the statute does not operate to create coverage where none otherwise existed. Thus, Commerce West bore no liability under the policy.

Commerce West v. Lucke

*US District Court,
Western District of
Washington, No. 2:18-cv-
00625*

Rory W. Leid, III and
Christopher J. Roslaniec

CWLH Secures Summary Judgment Dismissal of Claim based on Waiver of Provider Bills

Ryan J. Hall, assisted by A. Elyse O'Neill, represented Allstate Fire & Cas. Ins. Co., in the matter of Gomora v. Allstate Fire & Casualty Insurance Company, Multnomah County Circuit Court Case No. 17CV50399. Plaintiff filed suit for benefits under PIP coverage. The insured claimed medical bills were owed under PIP despite the fact that the medical provider had agreed to waive medical bills for purposes of any PIP claim. Allstate was successful in obtaining a dismissal of the Plaintiff's claims, as the medical bills were found to not be an expense under the policy, as the provider had waived payment of the same.

*Gomora v. Allstate Fire &
Casualty Insurance
Company*

Multnomah County
Circuit Court Case No.
17CV50399

Ryan J. Hall
A. Elyse O'Neill

CWLH Prevails on Summary Judgment, No UM Coverage

Rory Leid and Christopher Roslaniec successfully prevailed on summary judgment in establishing that PIP and UIM coverage do not apply to an adult child of insureds when riding an uninsured moped.

The Kanes did not purchase insurance coverage for a moped that their adult son purchased. The son was subsequently involved in a collision and made claims for PIP and UIM coverage.

Commerce West prevailed on summary judgment in establishing that the adult son was not covered as a resident relative, or a "pedestrian," which the Kanes had argued. Claimed damages were several hundred thousand dollars.

Court of Appeals Upholds Trial Court's Dismissal on Summary Judgment Re Failure to Cooperate

Ryan J. Hall represented Allstate Fire & Cas. Ins. Co., in the matter of Theresa Ali v. Allstate Fire & Casualty Insurance Company, Multnomah County Circuit Court Case No. 15CV28210. Plaintiff filed suit for benefits under PIP coverage.

Allstate moved for summary judgment dismissal of Plaintiff's claims, arguing Allstate was not required to pay PIP benefits until Plaintiff submitted to an examination under oath. The Trial Court granted the MSJ, on the grounds that Plaintiff's refusal to submit to an EUO was a failure to cooperate.

Ali appealed the Trial Court's decision, arguing Allstate materially breached the policy by failing to pay medical bills within 60 days of submission. The Court of Appeals agreed with Allstate.

The Court ruled that the insured was not allowed to refuse to cooperate with the insurance company's investigation simply because medical bills were not paid within 60 days of submission.

CWLH Prevails on Diminished Value Claim

William L. Weber III received a directed verdict on this novel diminished value case. Plaintiff contended his carrier, American Family, was negligent in its claims handling of a damaged relatively-new pickup truck by not making him "whole" following the third party tortfeasor's liability carrier's offer on the diminished value. American Family opted to repair the vehicle rather than determining it was a total loss when the net cost to repair was only slightly lower than the net cost to "total" the vehicle.

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Commerce West v. Kane

*US District Court,
Western District of
Washington, No. 2:18-cv-
00662*

Rory W. Leid, III and
Christopher J. Roslaniec

*Theresa Ali v. Allstate
Fire & Casualty
Insurance Company*

Multnomah County
Circuit Court Case No.
15CV28210

Ryan J. Hall

*George v. American
Family,*

*Pierce County Superior
Court 17-2-05029*

William L. Weber, III

*George v. American
Family,*

*Pierce County Superior
Court 17-2-05029*

William L. Weber, III

Plaintiff further asserted the claims handling was done in bad faith and violated IFCA and the CPA by arguing Am Fam was putting its own financial interests before the insured's. Tellingly, plaintiff did not bring a breach of contract claim because he understood that there was no contract language that would support such a claim. Plaintiff offered testimony of an expert appraiser that the amount offered by the third party carrier was about half the "true" diminished value following the repairs.

The court concluded that the policy language did not require the insured be "made whole" and that the insurer is entitled to limit its liability in policy language as was the case here. As a result, the adjuster was not negligent or acting in bad faith when complying with the policy language and following typical claims handling procedure.

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Please contact our office if you have any questions about any of the cases discussed in this newsletter or any other issues. Thank you for your continued interest.