

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RED OAKS CONDOMINIUM)	
OWNERS ASSOCIATION,)	
)	No. 56591-5-1
Appellant,)	
)	
v.)	
)	DIVISION ONE
AMERICAN STATES INSURANCE)	
COMPANY,)	
)	
Defendant,)	
)	
and MUTUAL OF ENUMCLAW)	UNPUBLISHED OPINION
INSURANCE COMPANY,)	
)	
Respondent.)	FILED: July 30, 2007

DWYER, J. — General contractor Sundquist Holdings, Inc., was responsible for the construction of the Red Oaks condominium complex. Sundquist was insured by Mutual of Enumclaw Insurance Company (MoE). Water damage stemming from construction defects was discovered in the Red Oaks structures. The Red Oaks Condominium Owners Association (Red Oaks) and Sundquist were unable to agree on a plan to repair the buildings and the situation became contentious. As litigation of the dispute loomed, Sundquist notified MoE of the damage and the potential for a lawsuit. Although Sundquist and Red Oaks eventually negotiated a monetary settlement, MoE declined to

provide funds for the settlement, asserting that the insurance policies it issued to Sundquist did not cover Sundquist's liability for damages resulting from its own work on the condominium construction. Sundquist thereafter brought claims against MoE seeking declaratory relief and monetary damages.

Sundquist settled its dispute with Red Oaks by assigning to Red Oaks Sundquist's rights as an MoE insured. Red Oaks then commenced this lawsuit against MoE asserting claims based on Sundquist's assigned rights, and alleging breach of contract, breach of the insurer's duty of good faith to its insured, and violations of chapter 19.86 RCW, the Consumer Protection Act (CPA). Following multiple motions for summary judgment brought by both MoE and Red Oaks, the trial court granted summary judgment in favor of MoE, dismissing all claims against it. Red Oaks appeals; we affirm.

FACTS

At all times relevant to the claims advanced in this lawsuit, Sundquist was insured by MoE under both a commercial general liability (CGL) policy and a supplemental umbrella policy.¹

Exclusively utilizing subcontracted labor, Sundquist completed construction of the Red Oaks condominium project in mid-1999. By early 2002, water seepage in the condominium buildings had caused extensive damage.

¹ An umbrella policy provides coverage for amounts exceeding CGL policy limits, and protects against gaps in coverage in the underlying policy. Prudential Property & Cas. Ins. Co. v. Lawrence, 45 Wn. App. 111, 119, 724 P.2d 418 (1986).

After Sundquist and Red Oaks unsuccessfully attempted to reach an agreement to repair the buildings, Sundquist notified MoE of the water damage.² MoE thereafter sent Sundquist a letter accepting tender of the defense of Red Oaks' claims and reserving its right to deny coverage, stating:

The Umbrella Policy will not pay for the cost of damage to your clients' own work or products, or products they sold; damage caused by their "faulty workmanship" . . . or for the loss of use of undamaged property caused by [Sundquist's] delay, failure to perform a contract, or failure of their products or work to meet the standards represented or warranted.

In an effort to reach a negotiated settlement, Sundquist and Red Oaks agreed to retain an independent engineer to inspect the buildings and determine what repairs were needed. Bids on the repair work were then solicited from two independent contractors.³ After the bids were submitted, the parties were scheduled to participate in a mediation proceeding to determine the cost of settling the dispute. Three days before the scheduled mediation, MoE reiterated to Sundquist its position that the Red Oaks claim was not covered under the policy and that it would not provide money to fund a settlement. Thus, the scheduled mediation did not occur. Thereafter, Sundquist added claims to an existing lawsuit against MoE, seeking declaratory relief and monetary damages

² In the first half of 2003, Sundquist submitted five coverage claims to MoE for completed projects that had been damaged by water intrusion. The five claims, Red Oaks, Wethersfield, Mill Creek Court, Barrington, and Gold Leaf, were identical for purposes of coverage determination.

³ MoE agreed to pay the cost of the independent engineer and up to \$25,000 of the attorney fees and costs Red Oaks incurred during this negotiated settlement process.

related to the Red Oaks dispute.⁴

Red Oaks then initiated a lawsuit against Sundquist asserting claims for breach of the implied warranty of quality, violations of chapter 64.34 RCW, the Washington Condominium Act, and violations of the CPA. Red Oaks and Sundquist subsequently settled this lawsuit. Red Oaks exchanged a covenant not to execute on a stipulated judgment of \$1,948,000 against Sundquist for an assignment of Sundquist's rights against MoE arising from MoE's handling of Red Oaks's claims against Sundquist.⁵

Red Oaks then initiated this lawsuit against MoE premised upon the rights assigned by Sundquist. In its complaint, Red Oaks asserted claims for breach of contract, breach of the insurer's duty of good faith to its insured, and CPA violations.

MoE brought its first motion for summary judgment on issues of coverage. The trial court ruled in favor of MoE with respect to the CGL policy.⁶ However, the trial court denied summary judgment with respect to coverage under the umbrella policy. MoE brought a second motion for summary judgment that the trial court granted, determining that no coverage existed under the umbrella

⁴ Sundquist's lawsuit originally asserted claims concerning the Barrington project. MoE filed an answer and counterclaims relating solely to the Barrington project, but subsequently amended the counterclaim to cover all of the claims against Sundquist, including the Red Oaks claim.

⁵ The dispute between Red Oaks and Sundquist was previously before this court. See Red Oaks Condo. Owners Ass'n v. Sundquist Homes, Inc., 128 Wn. App. 317, 116 P.3d 404 (2005).

⁶ No appeal was taken from this order.

policy. Thereafter, both Red Oaks and MoE moved for summary judgment on the remaining bad faith and CPA claims. The trial court granted summary judgment in favor of MoE and dismissed Red Oaks's claims with prejudice.

DISCUSSION

We engage in a de novo review of a trial court's grant of summary judgment, viewing all facts and inferences therefrom in the light most favorable to the non-moving party. Safeco Ins. Co. of Am. v. Butler, 118 Wn.2d 383, 394-95, 823 P.2d 499 (1992). The interpretation of an insurance policy is a question of law, also subject to de novo review. Alaska Nat'l Ins. Co. v. Bryan, 125 Wn. App. 24, 30, 104 P.2d 1 (2004). Insurance policy language is interpreted as it would be understood by an average person and in a manner giving effect to each provision. McDonald v. State Farm Fire & Cas. Co., 119 Wn.2d 724, 733, 837 P.2d 1000 (1992).

A. Insurance Contract

Red Oaks first asserts that the trial court erred by determining that the insurance policy provision excluding coverage for claims arising from work performed "by the named insured" also excluded coverage for claims arising from work performed by a subcontractor. We disagree.

The umbrella policy Sundquist initially purchased from MoE clearly excluded coverage for property damage caused by the work done by or "on

behalf of” the named insured. That policy provides, in relevant part:

This policy does not apply. . . to property damage to . . . work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts, or equipment furnished in connection therewith.

(Emphasis added.) Thus, the policy exclusion specifically excluded coverage for claims arising from work performed on behalf of the named insured, such as work performed by a subcontractor.

However, Sundquist also purchased a supplemental endorsement to the policy. That endorsement expressly replaced the property damage exclusion contained in the umbrella policy. The supplemental endorsement provides that policy coverage does not apply:

With respect to the COMPLETED OPERATIONS HAZARD to Property Damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of the materials, parts or equipment furnished in connection therewith.

(Emphasis added.)⁷ In contrast to the original exclusion, this exclusion omits the phrase “on behalf of.”

Red Oaks contends that the specific terms of the supplemental endorsement to the policy compel the conclusion that only claims for damage arising out of work performed by the named insured, i.e., Sundquist, are excluded from coverage, not claims for damage arising out of work performed by

⁷ The policy defines “named insured” as “the person or organization named in the declarations.” The person or organization named in the declaration is Sundquist Homes, Inc., and its owners.

subcontractors.

In support of its argument, Red Oaks points to cases in several other jurisdictions involving endorsements similar to the one at issue here, which held that where an exclusion omits the phrase “on behalf of,” the exclusion does not encompass work performed by subcontractors. See, e.g., Fireguard Sprinkler Sys., Inc. v. Scottsdale Ins. Co., 864 F.2d 648 (9th Cir. 1988); Fejes v. Alaska Ins. Co., 984 P.2d 519 (Alaska 1999); McKellar Dev. of Nevada, Inc. v. N. Ins. Co. of N.Y., 108 Nev. 729, 837 P.2d 858 (1992).

However, an argument substantially similar to that advanced by Red Oaks was rejected by this court in Schwindt v. Underwriters at Lloyds of London, 81 Wn. App. 293, 305-07, 914 P.2d 119 (1996). The plaintiff in that case similarly argued that a policy exclusion precluding coverage for work done by “the Assured,” rather than “on behalf of the Assured,” must be interpreted to preclude only work actually performed by the policy-holder, rather than by subcontractors on the policy-holder’s behalf.

In discounting that argument in Schwindt, we expressly addressed and rejected the rule adopted by those cases now cited by Red Oaks. The Schwindt decision held, rather, that “work of subcontractors is necessarily included in exclusions pertaining to faulty work or defective products of the contractor.” Schwindt, 81 Wn. App. at 306. In so holding, we reasoned that the policy-holder was the party in control of, and responsible for, the quality of work performed by

a subcontractor. As stated therein:

[H]ere, [the general contractor] undertook construction. . . and was obligated by the contract to perform that work in a satisfactory manner. The fact that it subcontracted out some of the work on the project did not relieve it of its contractual obligation to produce a product free of defects and faulty workmanship.

Schwindt, 81 Wn. App. at 307.

In support of our holding in Schwindt, we favorably cited two Minnesota Supreme Court cases, Knutson Construction Co. v. St. Paul Fire & Marine Insurance Co., 396 N.W.2d 229 (Minn. 1986), and Bor-Son Building Corp. v. Employers Commercial Union Insurance Co. of America, 323 N.W.2d 58 (Minn. 1982). The court in these cases held that similar policy exclusions precluded coverage for the work of subcontractors despite the absence of “on behalf of” language. The court reasoned that the risk of supplying faulty goods or services is a business expense most appropriately borne by the general contractor who has control over the quality of goods and services supplied. Knutson, 323 N.W. at 235; Bor-Son, 323 N.W.2d at 64.

No subsequent Washington case has invalidated either the rule established in Schwindt or the rationale supporting it. To the contrary, we recently applied the Schwindt rule in another case, Mutual of Enumclaw Ins. Co. v. Patrick Archer Construction, Inc., 123 Wn. App. 728, 735-76, 97 P.3d 75 (2004) (“There can be no question that the quality of work performed, both by [the general contractor] as well as by its subcontractors, was the responsibility of

[the general contractor] and no one else.”).

Red Oaks contends, nonetheless, that Schwindt is no longer valid, asserting that the Minnesota Supreme Court recently “dispensed” with the rule established by that court in Bor-Son and Knutson in Wanzek Construction, Inc. v. Employers Insurance of Wausau, 679 N.W.2d 322 (Minn. 2004). That contention is unavailing.

The court in Wanzek held that the exclusion there at issue did not preclude coverage for the work of subcontractors. However, unlike the policy exclusions at issue in Schwindt, Bor-Son, and Knutson, the policy exclusion in Wanzek explicitly excepted damages caused by the faulty workmanship of subcontractors. Wanzek, 679 N.W. at 326.⁸ The plaintiff in that case contended, nonetheless, that damage caused by a subcontractor’s work should be excluded from coverage pursuant to rule expressed by the court in Bor-Son and Knutson. Unsurprisingly, the court in Wanzek disagreed and held that the express terms of the exclusion controlled. Wanzek, 679 N.W. at 326.

The Wanzek decision did not, however, invalidate the holdings in Bor-Son and Knutson, in which the exclusions at issue contained neither an express exception for work performed by a subcontractor nor any other direct evidence of

⁸ The exclusion at issue in Wanzek stated: “This insurance does not apply to . . . “Property damage” to “your work” arising out of it or any part of it and including in the “products-completed operations hazard.” This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.” Wanzek, 679 N.W.2d at 326 (emphasis added).

intent to except the work of subcontractors from the exclusions at issue. In Schwindt as well, we noted that there was no “evidence that the insurers did not intend to include the work of subcontractors” in the exclusion at issue. Schwindt, 81 Wn. App. at 305-06. Accordingly, the reasoning of the court in Wanzek does not cast doubt on our holding in Schwindt, a well-reasoned holding to which we adhere.

Accordingly, in the absence of evidence that such an exclusion was intended to operate to the contrary, “work of subcontractors is necessarily included in exclusions pertaining to faulty work or defective products of the contractor.” Schwindt, 81 Wn. App. at 305. Accord Patrick Archer Constr., Inc., 123 Wn. App. at 735.

Red Oaks next attempts to distinguish this case from Schwindt, arguing that, by omitting the phrase “on behalf of” in the endorsement exclusion, MoE specifically intended to broaden coverage to encompass damage arising out of the work of subcontractors. In support of this contention, Red Oaks refers to a draft insurance policy form disseminated by the Insurance Services Office (ISO) containing language that was later adapted by MoE to create the endorsement at issue here. The ISO later published a “circular” stating that the draft form’s omission of the “by or on behalf of” language was intended to have the effect of providing coverage for damages caused by the work of subcontractors.

However, Red Oaks has not presented evidence indicating that, by including

language used in the ISO draft form, MoE intended to adopt the intent discussed in the ISO circular.

Under Washington law, once an operation is completed, the work of the subcontractors has merged with the work of the general contractor, Schwindt, 81 Wn. App. at 305, rendering the “by or on behalf of” language superfluous. Thus, the removal of the superfluous “on behalf of” language in the supplemental endorsement does not support the conclusion that MoE intended to broaden the coverage provided by the policy.

Red Oaks also asserts both that the insurance agent from whom Sundquist purchased the MoE policies represented to Sundquist that the umbrella policy provided coverage for liability stemming from the work of subcontractors and that MoE is bound by that representation. However, the record demonstrates that MoE gave this agent limited authority to collect premiums and bind coverage. Under the agency agreement between MoE and the insurance agent, the agent “has no authority to waive any provisions, terms or conditions of any policy of insurance issued.” Furthermore, under the agency agreement, the agent may only bind “such classes of risks and to such limits as to which [MoE] may from time to time authorize.” Thus, the agent did not have the actual authority to alter the terms of the policy.

Furthermore, the policy contains an anti-waiver clause which states that the terms of the policy shall not be waived, changed, or modified, “except by

endorsement issued to form a part of this policy.” This anti-waiver clause is required by RCW 48.18.190, which states that “[n]o agreement in conflict with, modifying, or extending any contract of insurance shall be valid unless in writing and made a part of the policy.” Furthermore, RCW 48.18.100 requires that no policy shall be issued, delivered or used unless it has been filed with and approved by the insurance commissioner. Thus, the insurance agent had neither actual nor apparent authority to bind MoE to policy provisions at variance with the express terms of the policies issued to Sundquist.

Red Oaks has not provided sufficient reason to depart from the rule clearly expressed and applied by this court in Schwindt. Thus, the exclusion of coverage for damages arising from the work performed by Sundquist also precludes coverage for damages arising from the work performed by subcontractors.

We affirm the trial court’s summary judgment ruling on this issue.

B. Duty of Good Faith

Red Oaks next asserts that MoE breached its duty of good faith to its insured by (1) failing to perform a thorough investigation into whether there was coverage under Sundquist’s policies, (2) failing to inform Sundquist of its coverage position and of developments that would affect coverage, and (3) demonstrating greater concern for its own interests than those of Sundquist by refusing to fund the settlement agreement for the Red Oaks claims without first

attempting to resolve the coverage issues.

Insurance companies must conduct their relations with their policyholders in good faith. RCW 48.01.030; Coventry Assocs. v. Am. States Ins. Co., 136 Wn.2d 269, 276, 961 P.2d 933 (1998). An insurer has a duty to consider the interests of its insured equally with its own in all matters. Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 391, 715 P.2d 1133 (1986). Dismissal of a bad faith claim on summary judgment is only appropriate if the insurer is entitled to prevail as a matter of law on the facts as construed most favorably to the insured. Smith v. Safeco Ins. Co., 150 Wn.2d 478, 484, 78 P.3d 1274 (2003).

Red Oaks first contends that MoE failed to perform a thorough investigation into whether there was coverage under Sundquist's policies. Red Oaks's argument on this issue is unavailing.

The implied covenant of good faith and fair dealing requires the insurer to conduct a reasonable investigation before denying coverage and to perform any necessary investigation in a timely manner. Coventry Assocs., 136 Wn.2d at 281.

MoE's investigation was not undertaken in such a way that it breached its duty of good faith. MoE was fully apprised of the facts it needed in order to make a coverage determination. MoE correctly believed that those facts did not result in coverage for the damages claimed. MoE reserved its rights on that basis. Further, MoE did not have any duty to immediately seek judicial

resolution of the coverage issues. An insurer can wait for a resolution of the underlying action before seeking a declaratory judgment as to coverage issues without violating the duty of good faith. Associated Indem. Corp. v. Wachsmith, 2 Wn.2d 679, 685, 99 P.2d 420 (1940); Alaska Nat'l Ins. Co. v. Bryan, 125 Wn. App. 24, 35, 104 P.3d 1 (2004); Western Nat'l Assurance Co. v. Hecker, 43 Wn. App. 816, 821 n.1, 719 P.2d 954 (1986). MoE's actions were consistent with the requirements imposed by its duty.

Red Oaks next contends that MoE breached its duty to sufficiently inform Sundquist of its reservation of rights and of developments relevant to coverage. Again, we disagree.

An insurer has the responsibility to fully inform the insured of its reasons for its reservation of rights and of developments relevant to coverage under the policy. Tank, 105 Wn.2d at 388. The duty of full disclosure also obligates an insurer to disclose the policy provisions it relies upon in denying a claim. WAC 284-30-330(13).

MoE did not breach its duty to inform Sundquist of its reasons for its reservation of rights. MoE informed Sundquist of its position that the "Umbrella Policy will not pay for the cost of damage to your clients' own work or products, or products they sold; damage caused by their 'faulty workmanship.'" MoE expressly cited the supplemental endorsement, which provides that the policy does not apply "to Property Damage to work performed by the Named Insured

arising out of the work or any portion thereof, or out of the materials, parts, or equipment furnished in connection therewith.” MoE also informed Sundquist that coverage could exist for damage to property other than Sundquist’s work or products, but that MoE reserved its rights pending a judicial determination of the scope of coverage. This informed Sundquist of MoE’s position that the policy did not cover claims arising from Sundquist’s own work. By setting forth its rationale for its reservation of rights in its letter to Sundquist, MoE complied with the insurer’s duty of good faith.

Red Oaks next argues that MoE breached its duty of good faith by allegedly failing to inform Sundquist of developments relevant to Sundquist’s coverage. Red Oaks argues that MoE breached its duty by failing to apprise Sundquist that MoE prevailed in a separate superior court case involving a dispute similar to Sundquist’s. However, a trial court’s coverage determination in a separate matter is not a “development” that would trigger MoE’s obligation to apprise Sundquist, because the decision is neither a “fact” impacting Sundquist’s claim nor controlling authority for the purpose of interpreting the language of Sundquist’s policy. MoE’s actions in this regard did not contravene its obligations to apprise Sundquist of developments related to MoE’s analysis of whether the policy issued to Sundquist covered the losses claimed.

Red Oaks next contends that MoE violated its duty of good faith by demonstrating greater concern for its own interests than for those of its insured.

Red Oaks argues that MoE's refusal to settle claims against its policyholder with knowledge that it "would likely expose its insured to an additional five or six hundred thousand dollars of liability" amounted to bad faith. We conclude that it did not.

As our Supreme Court stated:

If the insurer is unsure of its obligation to defend in a given instance, it may defend under a reservation of rights while seeking a declaratory judgment that it has no duty to defend. A reservation of rights is a means by which the insurer avoids breaching its duty to defend while seeking to avoid waiver and estoppel. "When that course of action is taken, the insured receives the defense promised and, if coverage is found not to exist, the insurer will not be obligated to pay."

Truck Ins. Exch. v. VanPort Homes, Inc., 147 Wn.2d 751, 761, 58 P.3d 276 (2002) (quoting Kirk v. Mt. Airy Ins. Co., 134 Wn.2d 558, 563 n.3, 951 P.2d 1124 (1998)) (citation omitted). However, an insurer has no obligation to pay for claims not actually covered by the policy. James E. Torina Fine Homes, Inc. v. Mut. of Enumclaw Ins. Co., 118 Wn. App. 12, 18, 74 P.3d 648 (2003); Hayden v. Mut. of Enumclaw Ins. Co., 141 Wn.2d 55, 1 P.3d 1167 (2000).

MoE argues, and we agree, that that the duty to give equal consideration to the insured's interests in all matters does not require an insurer to abandon its own rights under the insurance contract. MoE's "refusal" to settle claims against its policyholder based on its coverage position was properly premised on its correct analysis of its coverage obligation.

We decline to rule that an insurer's refusal to pay out a settlement negotiated by its insured, at a time when the insurer contests whether the applicable policy covers the loss, amounts to a breach of the duty of good faith, simply because the insured might eventually face greater financial liability for non-covered losses. This is consistent with the principle that "If coverage is found not to exist, the insurer will not be obligated to pay." Truck, 147 Wn.2d at 761 (quoting Kirk, 134 Wn.2d at 563 n3.).

We affirm the trial court's summary judgment ruling on these issues.

C. Insurance Regulations

Red Oaks next contends that MoE's conduct violated the standards for insurers set forth within chapter 284-30 WAC, and constituted bad faith as a matter of law. We disagree.

Red Oaks argues that MoE violated these standards by failing to (1) promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement, as required by WAC 284-30-330(13), or (2) comply with WAC 284-30-380(1), which provides:

No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

Red Oaks argues that MoE violated these regulations by never expressly

denying Sundquist's claim, and asserts that MoE might have formed the intention not to cover Sundquist's claims related to the Red Oaks damage months before it informed Sundquist of the policy provisions that MoE relied upon in contesting such coverage.

Red Oaks does not establish that MoE violated these regulations. First, MoE informed Sundquist of its bases for contesting coverage, stating that "[t]he Umbrella Policy will not pay for the cost of damage to [Sundquist's] own work or products, or products they sold," and citing the supplemental endorsement, which provides that the policy does not apply "to Property Damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of the materials, parts, or equipment furnished in connection therewith." This is precisely the position that MoE has maintained ever since. Furthermore, MoE defended under a reservation of rights while seeking a declaratory judgment concerning its coverage obligations. Thus, MoE did not simply deny Sundquist's claim. Red Oaks has not raised a genuine issue of material fact as to whether MoE breached its duty of good faith to Sundquist.

We affirm the trial court's summary judgment ruling on this issue.

D. Consumer Protection Act

Red Oaks next asserts that the trial court erred when it determined as a matter of law that MoE's conduct did not violate the CPA.

To successfully assert a cause of action under the CPA, a claimant must

show (1) an unfair or deceptive act or practice in trade or commerce that impacts the public interest, and (2) a resulting injury to the claimant's business or property. Torina, 118 Wn. App. at 20. The first element may be satisfied by showing a violation of any subsection of WAC 284-30-330. Van Noy v. State Farm Mut. Auto. Ins. Co., 98 Wn. App. 487, 496, 983 P.2d 1129 (1999). Where the insured is injured by incurring expenses as a direct result of an insurer's breach of its duty of good faith, the second element is met. Griffin v. Allstate Ins. Co., 108 Wn. App. 133, 148, 29 P.3d 777 (2001).

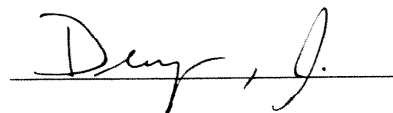
Because MoE did not violate any insurance regulation, Red Oaks has not established a per se violation of the CPA. Furthermore, Red Oaks has not established any other actions by MoE that violate the CPA.

We affirm the trial court's summary judgment ruling on this issue.

E. Attorney Fees

Because we affirm the trial court's summary judgment dismissing Red Oaks' claims, we deny Red Oaks' request for attorney fees on appeal under either the attorney fees provision of the CPA or the authority of Olympic Steamship v. Centennial Insurance Co., 117 Wn.2d 37, 811 P.2d 673 (1991).

Affirmed.

A handwritten signature in black ink, appearing to read "Denny, J.", written over a horizontal line.

WE CONCUR:

Schindler, ACF

Cox, J.