

Insurance Law

Institutional “Early Claims Settlement” Program Exposed in New Mexico: Implications for Washington State

by Paul M Veillon

“Early Claim Settlement”: the euphemism for an insurance adjuster’s taking advantage of an unrepresented injured claimant’s bewilderment after a collision to offer a small cash payment (\$500-\$1,500) in exchange for a Release of Claims within a month or two after the incident to limit the insurer’s long-term liability for the full value of the claim.

ECS violates Washington’s insurance rules requiring “prompt, fair, and equitable” settlements (WAC 284-30-330(6)). Meeting the “prompt” requirement at the expense of the “fair and equitable” requirement is not acceptable. On individual cases, our Insurance Commissioner will not intervene because it does not get involved in questions of “reasonableness.”

But if insurers have adopted formal, company-wide ECS programs, including imposing ECS quotas on their claims representatives, the public as a whole is at risk. ECS artificially inflates insurer capacity by reducing incurred losses and loss adjustment expense reserves while increasing policyholder surplus. This risks insurer insolvency if the ECS programs

fail. Moreover, ECS shifts the burden of paying for medical care onto health insurers and public health providers (hospital charity care programs and Medicaid) who have a contractual right to reimbursement for casualty-related medical payments; ECS terminates that right and improperly raises health insurance premiums statewide and net state spending. Finally, injured negligence claimants have a common law and statutory right to reasonable compensation for necessary medical care, lost wages, and non-economic damages; injured underinsured motorist bodily injury claimants have policy rights to such benefits and the common law protection of the insurer’s requirement of good faith and fair dealing in handling their claims.

Every personal injury attorney has encountered prospective clients who have been subjected to ECS tactics. Is this the work of individual adjusters, or are they following a company policy?

Sherrill v. Farmers Ins. Exchange (<http://www.galileolaw.com/wp-content/uploads/2016/03/Sherrill-v-Farmers.pdf>) exposed Farmers Insurance for requiring, as company policy, its adjusters to meet an

“Early Claim Settlement” quota. Farmers required its adjusters to settle a certain percentage of injury claims for \$1,500 or less within 60 days when the injured parties did not have attorney representation. Sherrill, an adjuster, refused to comply. Farmers fired her. She sued. She lost. She appealed.

On March 22, the New Mexico Court of Appeals reversed the lower court’s dismissal of her lawsuit. The Court reasoned that Farmers’ ECS program violated public policy - that an insurer owes a duty of good faith and fair dealing to its policy holders, and ECS violated that duty by obliterating claims for less than they are worth without conducting a proper investigation to determine the fair and equitable damages to which a claimant is entitled.

Farmers Insurance Company of Washington is a domestic insurer that may have the same ECS policy as Farmers Ins. Exchange employed in New Mexico. Other foreign and domestic insurers conducting business in Washington likely have institutional ECS policies.

In Washington, unfortunately, the reasoning in the New Mexico appellate decision would be limited to injured parties

who file a claim against their own insurance company. Insurers owe no judicial duty of good faith to people who make claims against their customers. For those individuals, the Washington State Office of the Insurance Commissioner (OIC) is the only regulatory agency available to enforce WAC 284-30-330(6), which by its plain language applies to both first- and third-party claimants.

We have filed a global complaint with the OIC asking the agency to investigate Farmers and other Washington insurers to ascertain whether they have company-wide ECS programs and, if so, to take action to stop these programs and impose penalties for past regulatory violations. You can read our Complaint here: <http://www.galileolaw.com/wp-content/uploads/2016/03/160326-s-ecs-program-oic-complaint.pdf>.

Whether the OIC will use its “limited resources” to undertake the investigation we requested, what it would find if it did so, and what remedial action it would take for violations remain open questions.

Paul Veillon is a WSAJ EAGLE Member and solo practitioner at Galileo Law PLLC in Seattle.

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(206) 330-0482
ryan@rcnutelaw.com
19929 Ballinger Way NE, Suite 200
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ATTORNEYS AT LAW

8203 W. Quinault Ave.
Quinault Point, Suite 600
Kennewick, WA 99336
P. 509.783.7326
F. 509.783.1631

fmm-law.com