

## Consumer Protection Act Applies to Subrogation Collection in Washington State

The NASP Amicus Committee would like to alert all subrogation professionals about a recent set of cases in the State of Washington Court of Appeals for Division I. The two cases are: Stephens v. Omni Insurance Company Case No. 57068-4-I and Panag v. Farmers Insurance Company of Washington, Case No. 56625-3-I. Anyone doing subrogation collection in the State of Washington needs to read these cases and be aware of this disturbing trend of applying Consumer Protections to the subrogation arena.

In the Stephens case, the insurer engaged a collection agency (agency) that sent Formal Collection Notices. Despite Stephens disputing the debt, the agency sent a second letter. As a result, Stephens sought legal advice and sued the agency and the insurance company for violation of Washington State's Consumer Protection Act (CPA). The trial court granted Stephens summary judgment on the issue of liability under the act but reserved ruling on damages.

Likewise in the Panag case, the insurer determined Panag was 40% at fault for the accident and was uninsured. Again, a collection agency was retained and sent a Formal Collection Notice for 100% of the subrogated amount. The agency sent second and third letters demanding payment and threatening suit. Panag consulted her personal injury attorney who sued both the insurer and the agency for a class action suit for violating the CPA. The trial court granted summary judgment for the insurer and agency but allowed the attorney additional discovery from both over others who received deceptive letters.

On appeal, the Washington Court of Appeals in a thirty-eight page opinion affirmed summary judgment for the consumer in Stephens against the agency and reversed summary judgment for the insurer and agency in the Panag case. The Consumer Protection Act requires a plaintiff to prove: (1) unfair or deceptive practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in her or her business or property; and (5) causation. The court found all five elements to exist in both cases.

On the issue of "deceptive practices," the Court of Appeals ruled that the letters don't have to be inaccurate to deceive. Instead, the Court found the "Formal Collection Notice" and "amount due" were deceptive to the public as they did not delineate the nature of the debt as being disputed tort liability or list what payments were made. In the Panag case, the court found deceptive the demand for 100% when only 40% by the insurance company's estimate was attributable to Panag.

On the issue of "trade or commerce," the Court of Appeals found that the sale of the agency's services to the insurance companies established the trade or commerce necessary to trigger the act. The Court rejected arguments that "trade and commerce" relate to the public at large saying the act did not limit it to such transactions.

On the issue of "public interest," the Court of Appeals found that sending of form letters and notice meant that the practice affected the public at large and were not isolated to the two parties in the lawsuit. The Court also looked to a California case which highlighted similar practices in the state of California. Finally, the Court used a sales power point presentation by the agency to an insurer with form letters to show the public impact of the practices.

On the issues of "injury and causation," the Court of Appeals found that injury was sustained by both in the time and expense on investigating fear of damaged credit and consultation to counsel. The Court found that getting a credit report was damage enough for the act and was caused by the notices sent by the agency. Thus, both Stephens and Panag had satisfied the elements necessary to prove a violation of the Consumer Protection Act.

As seen from the Washington Court of Appeal's decision, judges will go to great lengths to reach subrogation recovery in the context of Consumer Protection laws. In light of the Washington decision, Insurers need to review their practices in order to see that they are not violating Washington's Consumer Protection Act. Subrogation vendors need to be careful in use of form letters and their content to avoid claims under such Consumer Protection laws. The Amicus Committee will continue to monitor the situation and keep you informed.