

NO. 33733-9-II

COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

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OREGON MUTUAL INSURANCE COMPANY, a foreign corporation

Appellant/Defendant

v.

ATLANTIC CASUALTY INSURANCE COMPANY,
A North Carolina Corporation,
Respondent/Defendant,

GORDON CHASE and AUDREY CHASE, husband & wife,
Respondents/Defendants,

BENJAMIN STARKWEATHER and JANE DOE STARKWEATHER,
husband and wife, dba STARKWEATHER ROOFING,
Respondents/Defendants

**REPLY BRIEF OF APPELLANT OREGON MUTUAL
INSURANCE COMPANY**

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ORIGINAL

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This second-in-time declaratory judgment action is Atlantic Casualty's attempt to abuse the judicial process by filing a duplicative suit to collaterally attack unfavorable rulings in the first-filed garnishment proceeding. Atlantic Casualty also admittedly filed this action hoping to circumvent the appellate process by vigorously litigating this case while the garnishment was stayed due to Atlantic Casualty's appeal in Case No. 33105-5-II. Thus, this duplicative suit has produced the very same evils that the "priority of action" rule is intended to prevent: conflicting decisions from different courts on the same issues, and "unseemly, expensive, and dangerous conflicts of jurisdiction and of process."¹

Because this declaratory judgment suit is the mirror-image of the first-filed garnishment and involves the very same parties, claims and relief as were already at issue in the garnishment, the garnishment court has exclusive jurisdiction over this controversy.² Consequently, the trial court below had no "discretion" to retain this case, and it committed error in refusing to enter a dismissal.

¹ See, e.g., *Sherwin v. Arveson*, 96 Wn.2d 77, 80, 633 P.2d 1335 (1981).

² See, e.g., *American Mobile Homes of Wash., Inc. v. Seattle-First Nat'l Bank*, 115 Wn.2d 307, 317, 796 P.2d 1276 (1990).

A. This Second-In-Time Declaratory Action Should Be Dismissed Under The “Priority Of Action” Rule.

1. This Case And The Garnishment Involve The Same Subject Matter And Parties.

Atlantic Casualty attempts to duck the “priority of action” rule by arguing that this case involves construction of its insurance policy, while the garnishment involves compelling payment under its policy. (*See Opp.* at 12 n. 1.) This “distinction” is wholly artificial. Both actions ask the courts to decide the very same controversy: whether Atlantic Casualty’s insurance policy must pay the default judgment entered against Starkweather. The subject matter of both cases is undisputedly identical.

In addition, Atlantic Casualty admits that the parties in both actions are identical. (*See Opp.* at 16.)

Thus, this case undisputedly satisfies the first two elements for application of the “priority of action” rule.

2. This Case And The Garnishment Also Involve The Same Relief.

a. Insurance Coverage Issues Are Commonly Decided In Garnishment Proceedings.

Recognizing the manifest identity of subject matter and parties between the two cases, Atlantic Casualty devotes the majority of its opposition to arguing that the relief sought in the garnishment is different from the relief sought in this declaratory action. As a threshold matter,

these arguments flow from a false factual premise, *i.e.*, that the garnishment court will not consider Atlantic Casualty's insurance policy. (*See, e.g.*, Opp. at 2-3, Issues 1 and 4.) Specifically, Atlantic Casualty claims that the garnishment court has never seen its insurance policy. (*See* Opp. at 7 ("In neither this action nor the garnishment action, did OMI put into evidence a copy of the Atlantic Casualty insurance policy"); Opp. at 8 ("[the policy] is not part of either record below"); and Opp. at 13 ("construction was impossible when the garnishment court was not even provided an opportunity to review the insurance policy").)

These statements are incorrect. OMI filed Atlantic Casualty's policy in the garnishment as part of its motion for a hearing to determine whether a trial is necessary, under RCW 6.27.220. ***See CP 338 n. 1.*** Thus, the insurance policy *is* before the garnishment court and will be part of the record when the merits are addressed in that proceeding.

Atlantic Casualty also implies that the garnishment court lacks power to address insurance coverage issues. This is incorrect because the garnishment and this declaratory action were both filed in Pierce County Superior Court, a court of general jurisdiction.³ Thus, the judges in both

³ *See* RCW 2.08.010 (defining scope of superior court jurisdiction).

cases have power to grant the same relief.⁴

More importantly, there is no significant difference between garnishments and declaratory actions when insurance coverage is at issue:

A garnishment is a derivative process that allows a judgment creditor to collect the judgment by attaching the insurance “debt” owed by an insurer to its insured. . . . If an insurer denies that it has an “indebtedness” to its insured, the garnishment is joined and litigated. At that juncture, a garnishment proceeding does not differ in any significant respect from a declaratory-judgment action. The judgment creditor “stands in the shoes of the insured” with respect to the insurance policy. If the court determines that the policy provided coverage to the insured, the insurer must pay the claimant, subject to its policy limit, the full amount necessary to satisfy the judgment.⁵

Accordingly, in most cases “the courts have implicitly recognized that their consideration of coverage questions is the same whether they are raised in a declaratory-judgment action or a garnishment proceeding.”⁶

For example, *Van Dyke v. White*⁷ involved a writ of garnishment filed against the insurer of a tortfeasor for damages arising out an automobile accident. The insurer/garnishee argued that it was not indebted to the judgment debtor/insured because the insured failed to

⁴ Cf. *State ex rel. Evergreen Freedom Found. v. Washington Education Ass’n*, 111 Wn. App. 586, 606-09, 49 P.3d 894 (2002) (affirming application of “priority of action” rule where administrative agency and superior court both had power to grant the same type and form of relief).

⁵ T. Harris, *Washington Insurance Law*, § 10.1 at p. 10-1 (2d ed. 2006) (emphasis added; footnotes omitted). The referenced section of this treatise is attached as Appendix A for the Court’s reference.

⁶ *Id.* at n. 3.

⁷ 55 Wn.2d 601, 349 P.2d 430 (1960).

cooperate in his defense. The Supreme Court held that the insurer waived its defense of failure to comply, and reversed the trial court decision dismissing the writ.⁸ *Van Dyke* is but one of many cases where insurance coverage issues were adjudicated in a garnishment proceeding.⁹

Like the insurer in *Van Dyke*, Atlantic Casualty has defended against the garnishment on the grounds that it owes no coverage for the default judgment because Starkweather failed to give notice of the Chases' suit and because Starkweather failed to cooperate. **See CP 68 lines 12-17.** And, as in *Van Dyke* and many other cases, the garnishment proceeding can and will fully adjudicate the issues relating to Atlantic Casualty's coverage for the default judgment against Starkweather.

Atlantic Casualty's reliance on *Mutual of Enumclaw v. Dan Paulson Constr., Inc.*¹⁰ and *Alaska Nat'l Ins. Co. v. Bryan*¹¹ is misplaced.

⁸ In *Van Dyke*, the insurer was held to have waived the defense of non-cooperation because (1) the insurer continued to defend the insured after the failure without notice to the insured that the insurer might assert the breach of cooperation, and (2) the insurer used the breach at the underlying trial to improve its position in any subsequent coverage action against the insured. *Id.* at 610.

⁹ See, e.g., *Royse v. Boldt*, 80 Wn.2d 44, 45, 491 P.2d 644 (1971) (garnishment appeal affirming trial court's construction of "non-resident driver" exclusion in auto policy); *Madden v. Vitamilk Dairy, Inc.*, 59 Wn.2d 237, 238-39, 367 P.2d 127 (1961) (garnishment appeal affirming trial court's application of "care, custody or control" exclusion in general liability policy); *East v. Fields*, 42 Wn.2d 924, 925, 259 P.2d 639 (1953) (garnishment appeal reversing trial court's ruling on application of exclusion in auto policy); *Eakle v. Hayes*, 185 Wn. 520, 55 P.2d 1072 (1936) (insurer's defense of non-cooperation adjudicated in garnishment); *Burr v. Lane*, 10 Wn. App. 661, 517 P.2d 988 (1974) (garnishment court adjudicated insurer's defenses of late notice and non-cooperation).

¹⁰ 132 Wn. App. 803, 134 P.3d 240 (2006).

¹¹ 125 Wn. App. 24, 104 P.3d 1 (2004).

Those cases involved an insurer's declaratory action to obtain a coverage determination *before* the insured's liability had been determined in an underlying tort proceeding. In contrast, Starkweather's liability to the Chases has already been determined by default judgment. Once judgment was entered, OMI could execute upon that judgment using the garnishment process.¹² Thus, neither *Dan Paulson* nor *Alaska National* supports Atlantic Casualty's argument that a declaratory action is the only way to adjudicate insurance coverage after judgment has been entered.¹³

For the foregoing reasons, Atlantic Casualty's claim that its coverage defenses cannot be litigated in the garnishment is meritless.

b. The Same Relief Is At Issue In Both Actions.

Moreover, in this case Atlantic Casualty is seeking the very same relief that is at issue in the garnishment, albeit in the negative. In the garnishment, the court has been asked to decide whether Atlantic Casualty is indebted to Starkweather, *i.e.*, whether and to what extent Atlantic Casualty's insurance policy applies to the default judgment. In this second-in-time declaratory action, Atlantic Casualty asks the court to declare that its insurance policy does *not* apply to the default judgment. This action is therefore the "flip-side" of the garnishment.

¹² See RCW 6.27.020 (courts may issue writs of garnishment for benefit of judgment creditors).

¹³ See also cases cited at footnote 9, *supra*.

This identity of relief is demonstrated by the fact that Atlantic Casualty's defenses in the garnishment are the mirror-images of its claims in this declaratory action. In both actions, Atlantic Casualty alleges, *inter alia*, that it has no obligation to pay the default judgment because Starkweather failed to provide notice of the Chases' suit, because Starkweather failed to cooperate with Atlantic Casualty, and because Atlantic Casualty was prejudiced by any late notice or non-cooperation.¹⁴ (*See* table at pp. 14-15 of OMI's opening brief.)

It makes no difference whether Atlantic Casualty is the garnishee in the garnishment or the plaintiff in this declaratory action. The relief to be granted in the two actions is identical: a determination as to whether Atlantic Casualty's policy applies to the default judgment against Starkweather. In deciding this issue, both courts would consider the very same matters, including Atlantic Casualty's coverage defenses.¹⁵

Accordingly, the third element for application of the "priority of action" rule is satisfied, the garnishment proceeding is vested with exclusive jurisdiction over this controversy, and the trial court erred in not dismissing this second-in-time declaratory action.¹⁶

¹⁴ In the garnishment appeal, Case No. 33105-5-II, this Court ruled that Starkweather was properly served, thereby disposing of Atlantic Casualty's claim/defense of improper service that was raised in both actions.

¹⁵ *See, e.g., Van Dyke, supra.*

¹⁶ *See, e.g., American Mobile Homes, supra.*

c. Atlantic Casualty Admits The Application Of Res Judicata Between The Two Actions.

Moreover, the “priority of action” rule applies where the identity between two cases is such “that a decision of the controversy by one tribunal would, as *res judicata*, bar further proceedings in the other tribunal.”¹⁷ Atlantic Casualty effectively concedes the identity of the two cases when it argues that any rulings in this second-in-time declaratory action would be *res judicata* as to the garnishment. (*See Opp.* at 14.)

However, Atlantic Casualty wants *res judicata* to be a one-way street, such that rulings in this declaratory action would be binding in the garnishment, but not the other way around. To the contrary, the “priority of action” rule applies where rulings in either case would be *res judicata* as to the other.¹⁸ Atlantic Casualty’s “one-way” *res judicata* argument stands the “priority of action” rule on its head by favoring the later-filed action, and it creates an incentive to file duplicative suits to collaterally attack unfavorable rulings in the first action. This would contravene both the letter and intent of the priority rule.

The admitted *res judicata* effect of rulings in this declaratory suit establishes the identity of the two proceedings. The trial court therefore

¹⁷ *Yakima v. International Ass'n of Fire Fighters*, 117 Wn.2d 655, 675, 818 P.2d 1076 (1991).

¹⁸ *See, e.g., Yakima, supra*, at 675 (rule applies where decision of one tribunal would be *res judicata* as to the other).

erred in not dismissing this duplicative action in favor of the first-filed garnishment.

d. Garnishment Cases May Be Tried To Juries.

Lastly, Atlantic Casualty suggests that the garnishment does not provide the same relief because there would be no guarantee of a jury trial:

[T]he Uniform Declaratory Judgment Act provides for a trial by jury; the garnishment statute does not. This denial of a right to a jury trial deprives Atlantic Casualty of constitutional due process under Art. I § 3 of the Washington Constitution.

(Opp. at 22 (internal citations omitted).)

This argument is meritless. Under the garnishment statute, the court will decide whether a trial is necessary, or, alternatively, whether the case will be decided based only on pleadings and other documents of record.¹⁹ If the court determines that there are issues that should be tried, the trial “shall be noted as in other cases.”²⁰ Hence (and contrary to Atlantic Casualty’s implication), the garnishment statute does not rule out the availability of a jury trial and, in fact, numerous garnishment cases have been tried to juries.²¹ Atlantic Casualty’s argument to the contrary

¹⁹ See RCW 6.27.220.

²⁰ *Id.*

²¹ See, e.g., *Van Dyke v. White*, 55 Wn.2d 601, 604, 349 P.2d 430 (1960) (controverted garnishment action against insurer “came on for trial before a jury”); *Johnson v. McGilchrist*, 174 Wn. 178, 24 P.2d 607 (1933) (appeal of judgment on jury verdict in garnishment); *Cypert v. Roberts*, 169 Wn. 33, 13 P.2d 55 (1932) (same). Cf. *Weber v. Biddle*, 4 Wn. App. 519, 483 P.2d 155 (1971) (jury was instructed on both garnishment and bad faith issues).

ignores well-entrenched Washington law.²²

B. The First-Filed Garnishment Is An Adequate Remedy And Will Provide The Same Relief As This Declaratory Action.

Atlantic Casualty argues that the garnishment is not an adequate alternative remedy, based on a narrow reading of *Reeder v. King County*,²³ and *Lu v. King County*.²⁴ While *Reeder* and *Lu* involved somewhat different facts than are presented here, the principle underlying those cases applies with equal force: Where a plaintiff has a “completely adequate remedy available,” apart from a declaratory action, that plaintiff “is not entitled to relief by way of a declaratory judgment.”²⁵ While the existence of another adequate remedy does not automatically preclude a declaratory judgment in an appropriate case²⁶ (e.g., where other available remedies are unsatisfactory), “situations justifying exceptional treatment are very rare.”²⁷

Declaratory relief is not appropriate here because the same parties were already litigating the same issues in the garnishment when Atlantic Casualty filed this action. The first-filed garnishment is therefore an

²² Notably, in *Yakima v. International Ass'n of Fire Fighters, supra*, the Washington Supreme Court ruled that two declaratory actions should have been dismissed because the same dispute was already presented in an administrative proceeding, which would be decided by a hearing examiner and not a jury.

²³ 57 Wn.2d 563, 564, 358 P.2d 810 (1961).

²⁴ 110 Wn. App. 92, 98-99, 38 P.3d 1040 (2002).

²⁵ *Reeder, supra*, at 564.

²⁶ CR 57.

²⁷ *See Lu, supra*, at 106.

adequate alternative remedy because it will be deciding the very same controversy as is presented there. There is simply no reason why the parties should also be litigating a concurrent, mirror-image declaratory action involving the same subject matter and relief. The trial court therefore erred in refusing to dismiss Atlantic Casualty's second-in-time declaratory action.

C. Atlantic Casualty's Substantive Arguments Are Immaterial.

The remainder of Atlantic Casualty's arguments are directed to its substantive claims and defenses to payment of the default judgment, *e.g.*, whether Atlantic Casualty acted in bad faith,²⁸ whether Atlantic Casualty is estopped to deny coverage for the default judgment, whether Atlantic Casualty's coverage denial letter waived any right to notice of the Chases' suit or cooperation by Starkweather, whether Starkweather failed to comply with any obligation to give notice of suit or cooperate, or whether Atlantic Casualty's policy covers the default judgment.

These arguments go to the merits of the parties' claims and defenses in both actions. They have no connection to the threshold jurisdictional issue raised in this appeal, *i.e.*, whether Atlantic Casualty's mirror-image declaratory action should be dismissed in favor of the first-

²⁸ Contrary to Atlantic Casualty's arguments, OMI's opening brief does not raise the issue of bad faith.

filed garnishment. Atlantic Casualty's substantive arguments are thus immaterial.

D. OMI Is Entitled To Its Attorney Fees And Costs For This Frivolous And Unfounded Action.

As set forth in OMI's opening brief, OMI is entitled to all of its attorney fees and costs because this duplicative action is frivolous and was filed without any valid legal or factual basis.²⁹

E. Conclusion.

By declining to dismiss this duplicative declaratory action, the trial court disregarded the clear mandate of the "priority of action" rule, which provides that the first court to acquire jurisdiction is vested with exclusive authority to adjudicate that controversy. The trial court's decision effectively ratifies Atlantic Casualty's deliberate abuse of the judicial process by filing a duplicative suit to collaterally attack unfavorable rulings in the garnishment and to improperly interfere with the pending garnishment appeal.

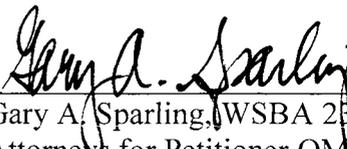
OMI, therefore, respectfully submits that the trial court should be reversed and that this action should be dismissed, in order to prevent further duplicative and expensive litigation, and to avoid the confusion and jurisdictional conflicts that Atlantic Casualty sought to inject into this

²⁹ See RCW 4.84.185; CR 11.

dispute. Dismissal of this duplicative action will leave this controversy before one court that has exclusive jurisdiction and can provide complete relief to all of the parties. OMI also requests its attorney fees incurred in the trial court and in this appeal.

Respectfully submitted this 7th day of August, 2006.

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By 

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APPENDIX A

WASHINGTON
INSURANCE
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Second Edition

by

THOMAS V. HARRIS

2006

CHAPTER 10

Scope of a Claimant's Right to Proceed Directly Against a Tortfeasor's Insurer

SYNOPSIS

- § 10.1 **Garnishment**
- § 10.2 **Assignment Of Bad-Faith Claims**

§ 10.1 **Garnishment**

In third-party cases, securing a judgment against a tortfeasor is only an intermediate goal. A successful claimant must then find a way to execute upon that judgment. In many situations, a tortfeasor does not have the financial strength necessary to discharge the tort obligation. Many people and businesses depend upon their insurers to satisfy such third-party judgments. However, even when a tortfeasor has adequate insurance, his insurer may dispute coverage and refuse to pay a valid judgment that has been entered against him. An injured third party faces an additional problem when the judgment against the insured is for an amount greater than the policy limit of the insurance contract.

A garnishment is a derivative process that allows a judgment creditor to collect the judgment by attaching the insurance "debt" owed by an insurer to its insured.¹ By issuing a writ of garnishment, a third-party claimant can compel an insurer, which legitimately owes coverage to its tortfeasor-insured, to pay the judgment amount directly to the injured claimant. If an insurer denies that it has an "indebtedness"² to its insured, the garnishment is joined and litigated. At that juncture, a garnishment proceeding does not differ in any significant respect from a declaratory-judgment action. The judgment creditor "stands in the shoes of the insured" with respect to the insurance policy.³ If the court determines that the policy provided coverage to the insured, the insurer must pay the claimant, subject to its policy limit, the full amount necessary to satisfy the judgment.

In *Murray v. Mossman*,⁴ the court determined that a third-party claimant is not a third-party beneficiary to an insured's bad-faith claim against his insurer.⁵ As a result, a claimant has no independent right against an insurer to recover the amount of an excess

¹ Wash. Rev. Code § 6.27.020 (1995) authorizes a prevailing tort claimant, and other judgment creditors, to invoke the garnishment process.

² See, e.g., *Philadelphia Fire & Marine Ins. Co. v. City of Grandview*, 42 Wn.2d 357, 359, 255 P.2d 540 (1953).

³ *Van Dyke v. White*, 55 Wn.2d 601, 613, 349 P.2d 430 (1960). In most cases, the courts have implicitly recognized that their consideration of coverage questions is the same whether they are raised in a declaratory-judgment action or a garnishment proceeding. *East v. Fields*, 42 Wn.2d 924, 925, 259 P.2d 639 (1953); *Madden v. Vitamilk Dairy, Inc.*, 59 Wn.2d 237, 238-39, 367 P.2d 127 (1961); *Royce v. Boldt*, 80 Wn.2d 44, 45, 491 P.2d 644 (1971).

⁴ *Murray v. Mossman*, 56 Wn.2d 909, 355 P.2d 985 (1960).

⁵ *Murray v. Mossman*, 56 Wn.2d 909, 913, 355 P.2d 985 (1960); *Planet Ins. Co. v. Wong*, 74 Wn. App. 905, 909, 877 P.2d 198 (1994) (an injured third party has no right to assert a bad-faith action against the tortfeasor's insurer).

judgment above the insured's policy limit.⁶ That limitation is not based on restrictions inherent in the statutory garnishment procedure. The judiciary itself has prohibited such a garnishment recovery. The Washington courts have determined that (1) any insurer liability for an excess judgment arises out of the relationship between the insured and the insurer, (2) a claimant is a stranger⁷ to that relationship,⁸ and (3) an injured party should not be able to enforce a bad-faith cause of action that an insured himself either "does not believe exists or is unwilling to enforce."⁹

§ 10.2 Assignment Of Bad-Faith Claims¹⁰

Although they cannot invoke the garnishment process for such a purpose, third-party claimants may use a different strategy to recover an excess judgment directly from an insurer. The three-part approach used by the injured claimant in *Chaussee v. Maryland Cas. Co.*¹¹ is the standard technique. Implementing that strategy involves (1) the third-party claimant¹² issuing a legally binding covenant in which she promises not to execute against the insured tortfeasor, (2) the insured-tortfeasor assigning his coverage and bad-faith claims against his insurer to the claimant, and (3) the injured claimant and the insured entering into a consent judgment.¹³ A consent judgment¹⁴ is one to which the parties

⁶ *Murray v. Mossman*, 56 Wn.2d 909, 913, 355 P.2d 985 (1960). The court's holding applies to any type of bad-faith claim that might be asserted by an insured against his or her insurer.

⁷ However, an insurer is not a "stranger" to its insured's tort litigation, and may be required to participate in a first-tier action reasonableness hearing after its insured and the claimant enter into a consent judgment. See *Howard v. Royal Specialty Underwriting, Inc.*, 121 Wn. App. 372, 379, 89 P.3d 265 (2004).

⁸ In that regard, the court carefully distinguished between the rights owed by an insurer to its insured and the status of a third-party claimant:

. . . The duty of an insurance company to protect its insured in the settlement of claims cannot consistently be extended to include protection to one who is prosecuting a claim against the insured. . . .

Likewise, the duty of the insurance company to use good faith in the handling of a claim against the insured springs from a fiduciary relationship that is entirely lacking between the person injured and the insurance company. . . .

Murray v. Mossman, 56 Wn.2d 909, 912, 355 P.2d 985 (1960).

⁹ *Murray v. Mossman*, 56 Wn.2d 909, 914, 355 P.2d 985 (1960).

¹⁰ As a logical matter, the same principles should also be applied with respect to any third-party judgment based upon negligence or Consumer Protection Act theories of liability. In this chapter, distinct tort theories based upon negligence, the Consumer Protection Act, and statutory/judicial bad faith are subsumed within the term "bad faith."

¹¹ *Chaussee v. Maryland Cas. Co.*, 60 Wn. App. 504, 803 P.2d 1339 (1991).

¹² An insured has an absolute right to assign claims to third parties after they arise. Even if the policy contains a no-assignment clause, such clauses do not prohibit assignments "made after the events giving rise to liability have already occurred." *Public Util. Dist. No. 1 v. International Ins. Co.*, 124 Wn.2d 789, 800, 881 P.2d 1020 (1994).

¹³ *Chaussee v. Maryland Cas. Co.*, 60 Wn. App. 504, 507, 803 P.2d 1339 (1991); *Hayden v. Mutual of Enumclaw Ins. Co.*, 95 Wn. App. 563, 565, 977 P.2d 608 (1999), *aff'd*, 141 Wn.2d 55, 1 P.3d 1167 (2000) (the plaintiff and alleged tortfeasor entered into a settlement agreement which included entry of a default judgment, execution of a covenant not to execute, and an assignment of the insured's bad-faith claim against his own insurer); *Planet Ins. Co. v. Wong*, 74 Wn. App. 905, 909, 877 P.2d 198 (1994) (citing *Safeco Ins. Co. of Am. v. Butler*, 118 Wn.2d 383, 395, 823 P.2d 499 (1992) for the proposition that an insured may assign her bad-faith claim to a third party).

¹⁴ *Chaussee v. Maryland Cas. Co.*, 60 Wn. App. 504, 507, 509, 803 P.2d 1339 (1991).

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AUDREY CHASE, husband & wife,
Respondents/Defendants, BENJAMIN
STARKWEATHER and JANE DOE
STARKWEATHER, husband and wife,
dba STARKWEATHER ROOFING,

Respondents/Defendants

**CERTIFICATE OF
SERVICE**

I hereby certify that I served **REPLY BRIEF OF APPELLANT
OREGON MUTUAL INSURANCE COMPANY**, as indicated below,
upon the following counsel of record:

Gregory B. Curwen	<input type="checkbox"/>	U.S. Mail
Mark Dynan	<input checked="" type="checkbox"/>	Hand Delivery
Gierke Curwen Metzler & Erie P.S.	<input type="checkbox"/>	Facsimile
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2102 North Pearl Street		
Tacoma, WA 98406-2550		

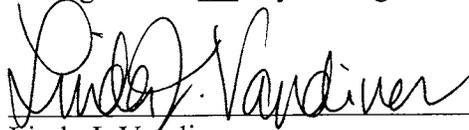
ORIGINAL

Donald Anderson [] U.S. Mail
Eisenhower & Carlson [X] Hand Delivery
1201 Pacific Avenue, #1200 [] Facsimile
Tacoma, WA 98402 [] Electronic .pdf

Alan Hughes [] U.S. Mail
Alan B. Hughes, P.S. [X] Hand Delivery
520 Pike Street, Suite 2510 [] Facsimile
Seattle, WA 98101 [] Electronic .pdf

**I declare under penalty of perjury under the laws of the State
of Washington that the above is true and correct.**

Executed at Seattle, Washington this 7th day of August, 2006.



Linda J. Vandiver
Assistant to Gary Sparling