70540-7

70540-7

NO. 70540-7

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SETH LAYMAN and MOLLY LAYMAN, husband and wife,

Appellants,

v.

21st CENTURY NORTH AMERICA INSURANCE CO.; and
FARMERS INSURANCE COMPANY OF WASHINGTON,

Respondents.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

The 21st Century Policy in this matter automatically terminated on January 3, 2011, because the Laymans failed to pay the renewal premium upon 21st Century's offer of renewal. The Laymans do not dispute that they did not timely pay the renewal premium.

After the 21st Century Policy automatically terminated, Seth Layman caused an auto accident resulting in damage to the vehicle he hit. The owner of that vehicle submitted a property damage claim reported to 21st Century. 21st Century properly denied that claim, because the Laymans had no insurance at the time of the loss.

While the Laymans suggest they never received notice of the renewal offer, the offer and other related notices were delivered as required by the applicable Washington statute, RCW 48.18.292, and the Laymans' elected mode of delivery. The Laymans failed to read those notices.

Specifically, prior to 21st Century's offer of renewal, the Laymans enrolled in 21st Century's electronic delivery system for certain insurance communications, including the offer of renewal. The Laymans received email notices at the email address "molly@whidbey.com" stating that the documents were available for review via 21st Century's electronic delivery system. The Laymans simply ignored those notifications and did not

renew their insurance policy prior to the auto accident. The Laymans are not entitled to equitable relief for their own lack of diligence and mistakes.

21st Century did nothing wrong. 21st Century acted in good faith in investigating and in denying the Laymans' non-covered claim. 21st Century determined that the 21st Century Policy had automatically terminated due to the Laymans' failure to accept the renewal offer and properly denied the Laymans' claim because no insurance was in place at the time of the loss.

Accordingly, the trial court correctly dismissed all of the Laymans' claims against 21st Century on summary judgment.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court properly deny the Laymans' claims against 21st Century, because 21st Century complied with RCW 48.18.292 in its offer of renewal, but the Laymans did not accept the offer resulting in an automatic termination of their auto insurance coverage prior to the loss at issue?

2. Did the trial court properly dismiss the Laymans' "bad faith" claims, because 21st Century's denial of the Laymans' claim based on the Laymans' failure to renew their insurance was reasonable and proper?

III. STATEMENT OF THE CASE

A. The Laymans Enroll in 21st Century's Paperless System.

21st Century began providing auto insurance to the Laymans in mid-2008. CP 1096. The Laymans timely renewed their auto insurance until January 3, 2011, when policy number 4388075, effective for the period July 3, 2010 to January 3, 2011 (the "21st Century Policy") automatically terminated. CP 1096; CP 365-403.

On November 17, 2010, prior to termination of the 21st Century Policy, the Laymans enrolled in 21st Century's paperless document delivery system using their email address "molly@whidbey.com". CP 1096; CP 324-348 (¶¶ 3-10 & Ex. 1); CP 412-413.[1] In order to enroll, the Laymans were required to select which types of documents they wished to receive via the paperless system. CP 1096; CP 324-348 (¶ 7 & Exs. 1-2.); CP 413. 21st Century's records show that the Laymans elected to receive policy documents, billing documents, and correspondence documents via the paperless delivery system. CP 324-348 (¶ 7 & Ex. 1).

Having made their selection, the Laymans were then required to check a box indicating that they had read and agreed to the Terms and

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[1] Although the Laymans contend that 21st Century offers only "inadmissible" illustrative screen prints to support the Laymans' enrollment in the paperless delivery system, their existence and the process illustrated is supported by the unrebutted testimony of Diana Yeager and the additional exhibits attached to the Yeager Declaration. Furthermore, Molly Layman generally admits that she enrolled through the process illustrated. See, e.g., CP 412-17; CP 325-348.

Conditions of the paperless system for the 21st Century Policy before they were formally enrolled in the paperless delivery system. CP 324-348 (¶¶ 5, 8 & Exs. 1, 3); CP 415. The Terms and Conditions to which the Laymans agreed provide:

> **What are my responsibilities?**
> Once you enroll in the Paperless option, it is your responsibility to inform us of any changes to your e-mail address. *It is also your responsibility to keep your e-mail address active and capable of receiving new e-mails.* To do this, ensure that your e-mail account has sufficient space for new e-mails and that your e-mail server and spam-blocking software do not block our e-mails. We are not responsible for problems arising from e-mails sent to an inactive or out-of-date e-mail address, unless we are solely negligent for using an incorrect address.
>
> **Which documents will I receive electronically?**
> *You will only receive the categories of documents that you have elected to receive electronically.* There may be some documents that we cannot deliver electronically due to legal and technological constraints in your state. These documents will be delivered to you via USPS to your postal address.
>
> **How do I access my documents?**
> Your bills are sent to you via e-mail and provide the option to pay online (login required) or over the phone (via our Automated Billing System). *If you have selected the documents and bills option, we will send you an e-mail message with a link to our Web site when new documents are available to review, print, or save to your computer. It is your responsibility to log in to our Web site to view your documents.*

CP 324-348 (¶ 7 & Ex. 4) (emphasis added).

Once enrolled, a final confirmation Web page presented the

Laymans with all information they provided through the enrollment process. For the Laymans, this final confirmation page would have confirmed: 1) their Policy number 4388075; 2) their email address molly@whidbey.com; 3) their mailing address 5805 Pioneer Park Pl., Langley, WA 98260-0000; and 4) their election to receive Policy documents, Billing Documents, and Correspondence Documents through the paperless electronic delivery system. CP 324-348 (¶ 9 & Ex. 5).

Upon registering for the paperless delivery system, the Laymans received an email notification of documents available to review via the system, however they admittedly did not log in to the system. CP 1097 (¶¶ 3.12-3.13). The Laymans concede that they never logged in to view a document in the paperless delivery system until February 24, 2011, following the motor vehicle accident giving rise to this litigation and in order to investigate the circumstances of their terminated insurance coverage. CP 1097-98 (¶¶ 3.13, 3.18, 3.21); CP 324-348 (¶¶ 5-6, 12, 14 & Ex. 1). Had the Laymans logged in to the system as the Terms and Conditions required, they would have seen their initial enrollment elections, and would have been able to change those elections as they did on three occasions after their motor vehicle accident. See CP 328 (¶ 10); CP 333-34.

B. The Laymans Failed to Pay Their Renewal Premium to Obtain Insurance, Despite Additional Warning.

On December 1, 2010, 21st Century processed and issued its offer of renewal of the 21st Century Policy for policy term January 3, 2011 to July 3, 2011 via its paperless delivery system. CP 324-348 (¶¶ 11-12 & Ex. 6). See also CP 1097 (¶¶ 3.14-3.18). 21st Century also physically mailed the standard Insurance Identification Cards (i.e. proof of insurance for the vehicle itself), which are required to be in a vehicle at time of policy inception by law.[2] CP 1097 (¶ 3.14); CP 324-348 (¶ 11-12). The process also included email notice to the Laymans that the renewal bill was available for review online. CP 324-348 (¶¶ 11-12 & Ex. 6). See also CP 1097 (¶ 3.16). The renewal bill stated a premium renewal amount due of $494.12, which had to be received by 12:01 am Standard Time on January 3, 2011, the payment due date, to avoid expiration of the policy. CP 324-348 (¶ 11 & Ex. 6). The Laymans, however, again failed to log in to review the documents despite their acceptance of the system's Terms

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[2] See RCW 46.30.020 ("(1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16A RCW in this state unless the person is insured under a motor vehicle liability policy...(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance." RCW 46.30.030 ("Whenever an insurance company issues or renews a motor vehicle liability insurance policy, the company shall provide the policyholder with an identification card as specified by the department of licensing."). From a practical standpoint, an insurer must mail these insurance cards prior to policy inception and often prior to premium payment to comply with these statutory requirements.

and Conditions. CP 1097 (¶ 3.18).

On January 7, 2011, having received no renewal premium, 21st Century processed and issued a second billing invoice via the paperless delivery system which both notified the Laymans that the 21st Century Policy had expired for failure to pay the renewal premium and offered to reinstate the policy without a lapse in coverage if 21st Century received the premium before January 26, 2011. CP 324-348 (¶¶ 13-15 & Ex. 7). CP 1097-98 (¶ 3.19 & 3.21). 21st Century did not receive a payment from the Laymans prior to the January 26, 2011 due date or the date of the accident and, therefore, the 21st Century Policy remained expired. See id.

C. Relevant Claim and Litigation History.[3]

On February 23, 2011, the Laymans were involved in a motor vehicle accident. CP 1098 (¶ 3.24). The accident was reported to 21st Century that same day. E.g., CP 1098 (¶ 3.25). Because the Laymans had no auto insurance in effect at the time of the loss, 21st Century timely denied the claim by letter dated February 25, 2011. CP 1098-99 (¶¶ 3.27-3.28); CP 405-06.

On March 2, 2011, Molly Layman submitted a complaint to the

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[3] The Laymans' Statement of the Case section entitled "Litigation History and Current Status" presents arguments and incorrect and/or misleading statements. For example, the Laymans wrongly suggest that the letter at CP 198-99 addresses RCW 48.18.291, which it does not. 21st Century addresses those issues in its Argument section below, not in this statement of relevant procedural history.

Washington State Office of Insurance Commissioner ("OIC") contesting the denial of coverage. CP 30-31. On March 22, 2011, 21st Century responded to the Laymans' complaint by explaining to the OIC that 21st Century denied the claim because the Laymans' 21st Century Policy lapsed due to their failure to pay the renewal premium. CP 198. 21st Century then outlined the notification history sent to the Laymans via the paperless delivery system to which they enrolled. CP 198-99.

On or about February 29, 2012, the Laymans filed a declaratory judgment lawsuit against 21st Century in Island County Superior Court asserting claims for breach of insurance contract, violation of the Consumer Protection Act, violation of the Insurance Fair Conduct Act, and bad faith. E.g., CP 1094-1103. The parties briefed cross-motions for summary judgment that were ultimately heard by Island County Superior Court Judge Vickie Churchill on remand from federal court. CP 10-495. See, also, generally, CP 496-1093.

In support of their position on the cross-motions for summary judgment, the Laymans filed an "Expert Report of Irving Buddy Paul", an attorney. CP 69-74. 21st Century moved to strike the "expert report" of Irving "Buddy" Paul, arguing that Mr. Paul was not qualified to testify as an insurance expert on the subject matters. CP 452-55.

21st Century also filed the Declaration of David W. Mandt, an

insurance industry expert, in rebuttal. CP 246-277. Mr. Mandt opined "that 21st Century's decision to reject [the Laymans'] claim for coverage under 21st Century policy number 438 80 75 in connection with the February 23, 2011 motor vehicle accident was reasonable and appropriate under the facts and was consistent with generally accepted insurance industry custom and practice." CP 249. Mr. Mandt also outlined the key evidence of 21st Century's claim handling activities that support his opinion. CP 249-251, 262-277.

On June 18, 2013, Judge Churchill ruled in 21st Century's favor on the parties' cross-motions for summary judgment, dismissing the case with prejudice. CP 5-8. The Laymans filed this appeal. CP 1-2.

IV. ARGUMENT

A. The Trial Court Properly Dismissed the Laymans' Contract Claims, Because the Laymans Did Not Accept 21st Century's Prior Statutory Offer of Insurance Renewal.

The Washington statutes implicated by this case are codified at Title 48, Chapter 18. In this case, the Laymans have tried to make an issue of Sections 290 and 291 of that Title and Chapter, but have misconstrued those statutes and their relevance to this case. The operative Section is 292, which addresses the scenario presented here: automatic termination of a policy because of an insured's failure to pay a renewal premium to accept an offer of renewal. 21st Century complied with the

applicable Washington law, RCW 48.18.292, and the Laymans failed to renew their insurance by accepting 21st Century's offer.

1. The 21st Century Policy Language Complies with Washington Statutory Requirements Regarding Policy Termination.

a) The statutory language is clear.

In this case, the applicable statute, RCW 48.18.292, entitled "Refusal to renew private automobile insurance by insurer — Change in amount of premium or deductibles," states in pertinent part as follows:

> (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.291 unless one of the following situations exists:
>
> * * *
>
> (b) At least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof[.]
>
> * * *

By its plain language, this statute applies to private automobile insurance situations for which RCW 48.18.291 does not apply. Those situations

include, as here, where the insurer provided at least 20-days' notice of a willingness to renew the policy, but the insured fails to accept the offer of renewal by paying the premium when due. This statute does not require a mailing, but rather only that the offer is "communicated" "in writing."

RCW 48.18.290, entitled "Cancellation By Insurer," states in pertinent part as follows:

> (1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:
>
> (a) For all insurance policies other than medical malpractice insurance policies or fire insurance policies canceled under RCW 48.53.040:
>
> (i) The insurer must deliver or mail written notice of cancellation to the named insured at least forty-five days before the effective date of the cancellation; and
>
> (ii) The cancellation notice must include the insurer's actual reason for canceling the policy.

b) By its plain language, RCW 48.18.291 only applies to situations in which the insurer unilaterally attempts to cancel the policy, in which case the insurer must deliver or mail written notice of cancellation with the reason.

RCW 48.18.291, entitled "Cancellation of private automobile insurance by insurer — Notice — Requirements," states in pertinent part as follows:

> (1) A contract of insurance predicated wholly or in part upon the use of a private passenger automobile may not be terminated by cancellation by the insurer until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured, accompanied by the reason therefor. If cancellation is for nonpayment of premium, or is within the first thirty days after the contract has been in effect, at least ten days notice of cancellation, accompanied by the reason therefor, shall be given. In case of a contract evidenced by a written binder which has been delivered to the insured, if the binder contains a clearly stated expiration date, no additional notice of cancelation or nonrenewal is required.

By its plain language, this statute applies to the subset of insurance for private automobile insurance and again addresses the situation in which the insurer unilaterally attempts to cancel the policy, in which case the insurer must mail written notice of cancellation with the reason.

c) The 21st Century Policy tracks the statutes, and the plain language bars coverage in this case.

The 21st Century Policy terms track and comply with these statutory insurance provisions under the policy's section captioned

"TERMINATION." CP 279-81; CP 312-13. Specifically, with respect to the operative statute, RCW 48.18.292, the policy states:

> C. Automatic Termination
>
> 1. If we offer to renew or continue your policy and you or your representative do not accept by making timely payment of the premium due, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer[.]

Here, the Laymans assert that this is a termination controlled by RCW 48.18.290 and/or .291 and the corresponding 21st Century Policy provisions. However, the facts do not support the Laymans' assertion.

Consistent with Washington law and the express terms of the 21st Century Policy, 21st Century sends notices of cancellation and notices of nonrenewal to its insureds via United States Mail in compliance with RCW 48.18.290 and/or RCW 48.18.291, and those notices would never be communicated to the insured via the 21st Century paperless delivery system. See CP 280.

"Cancellation" refers to a unilateral decision by an insurer to terminate a policy during the policy period. The procedures to be followed in the event of "cancellation" are set forth in subsection A. of the "TERMINATION" provisions of the 21st Century Policy. See CP 312. According to the "cancellation" provisions, a notice of cancellation will be

sent to the insured via United States Postal Service. The circumstances of the termination of the Laymans' 21st Century Policy do not involve "cancellation" because the policy was not terminated during the policy period and because 21st Century never unilaterally decided to terminate the Laymans' policy.

Similarly, "nonrenewal" refers to a unilateral decision by 21st Century to terminate a policy at the end of the policy period as opposed to during the policy. The procedures to follow in the event of "nonrenewal" are set forth in subsection B. of the "TERMINATION" provisions of the policy. See CP 312-13. According to the "nonrenewal" provisions of the Laymans' policy, a notice of nonrenewal will be sent to the insured via United States Postal Service. The circumstances of the termination of the Laymans' policy do not involve "nonrenewal" because 21st Century did not unilaterally decide to terminate the Laymans' policy at the end of the July 3, 2010 to January 3, 2011 policy period. In fact, 21st Century never decided that it would terminate the Laymans' policy.

As in this case, offers of renewal are "communicated" to the insured in compliance with RCW 48.18.292, and such notices would be communicated to the insured via the 21st Century paperless delivery system when, as here, the insured elected to receive billing documents via the paperless delivery system. "Automatic Termination" can involve a

situation in which 21st Century offers to renew a policy but the insured does not accept that offer by failing to make a timely payment of the premium necessary to renew. The procedures to follow in the event of "automatic termination" are set forth in subsection C. of the "TERMINATION" provisions of the policy. See CP 313. According to the "automatic termination" provisions of the Laymans' policy no additional notice of termination is necessary if the premium due is not received by 21st Century because, by the terms of the policy, failure to make timely payment constitutes the insured's decision not to accept the offer to renew. See CP 313. The circumstances of the termination of the Laymans' policy involve the "automatic termination" provisions of the policy because 21st Century delivered, via the paperless delivery system, its offer to renew the 21st Century Policy for the period January 3, 2011 to July 3, 2011 and the Laymans failed to make timely payment of the premium due for renewal. As a result, the policy terminated automatically by its own terms. See, generally, CP 278-323.

2. Washington Courts Agree That Neither RCW 48.18.290 Nor RCW 48.18.291 Apply to the Laymans' Failure to Accept an Offer to Renew the 21st Century Policy Pursuant to RCW 48.18.292.

a) 21st Century complied with the requirements of the applicable notice statute, RCW 48.18.292.

The notice requirements for an insurer's offer to renew an expiring policy are addressed in RCW 48.18.292:

> (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.291 *unless one of the following situations exists*:
>
> (a) The insurer gives the named insured at least twenty days' notice in writing as provided for in RCW 48.18.291(1), that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or
>
> (b) *At least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof*; or
>
> (c) The insured's insurance producer has procured other coverage acceptable to the insured prior to the expiration of the policy period.

RCW 48.18.292 (emphasis added). By its plain language, the statute provides three separate scenarios in which an insurer is not required to renew an insurance contact. The first scenario (a) addresses a unilateral

decision of nonrenewal (i.e. a cancellation at the end of a policy period) that expressly requires compliance with the notice provisions of RCW 48.18.291(1). The second scenario (b), however, which is the section applicable to the facts of this case, requires only that a willingness to renew is "communicated" "in writing" at least 20 days prior to the policy's expiration date.

It appears that no Washington court has construed the terms "communicate" and "in writing" in the context of the statute. When terms are undefined, however, Washington courts give the terms their "plain, ordinary and popular" meaning, according to standard English language dictionaries. E.g., Boeing Co. v. Aetna Cas. & Sur. Co., 113 Wn.2d 869, 877, 784 P.2d 507 (1990). Washington courts commonly refer to Webster's Third New International Dictionary. Id. Using this authority, "communicate" means "to send information or messages sometimes back and forth" and "writing" means "the act or art of forming letters on stone, paper, wood, or *other suitable medium to record the ideas which characters and words express* or to communicate the ideas by visible signs." Webster's Third New International Dictionary, 460, 2641 (2002). There is no reasonable dispute that uploading a document onto a server and sending an email notification that the document is available for

review, both of which are visible on a computer screen conveying information in the English language, constitutes a written communication.

Here, on December 1, 2010, 21st Century uploaded the offer of renewal showing the renewal premium amount of $494.12 and the due date of January 3, 2011, which is the date that the 21st Century Policy would automatically terminate in the event the Laymans did not accept the offer of renewal by payment of the renewal premium. See CP 344-45. The process also included email notice to the Laymans according to the Terms and Conditions of the paperless delivery system that the renewal bill was available for review online. CP 328-29. See also CP 1097 (¶ 3.16). These are "communications" "in writing" that comply with the express language of the applicable statute, RCW 48.18.292.

The Laymans admit they received the email notification and that they failed to log in to the paperless system to review the renewal offer and pay the bill. E.g., CP 1097 (¶ 3.18). Thus, they did not "accept" the offer of renewal and the 21st Century automatically terminated.

In Safeco Ins. Co. v. Irish, 37 Wn. App. 554, 558, 681 P.2d 1294 (1984), the Court of Appeals held that neither RCW 48.18.291, nor the cancellation provisions of the policy were applicable to a situation where the insured fails to pay the premium in response to an offer of renewal. The Court of Appeals explained:

> Although denominated a "cancellation" notice, it was, in fact, merely a reminder that, (1) Irish had not accepted Safeco's offer to renew, (2) his policy had lapsed and, (3) he was being given an opportunity to reinstate.
>
> The term "cancellation" refers to a unilateral act of the insurer terminating coverage during the policy term. Cf Continental Ins. Co. v. Paccar, Inc., 26 Wn. App. 850, 614 P.2d 675 (1980), rev'd on other grounds, 96 Wn.2d 160, 634 P.2d 291 (1981). Neither RCW 48.18.291, relied upon by Irish, nor his policy provisions governing cancellation apply to a situation where the insured fails to pay a premium as a condition to renewal. Shelly v. Strait, 634 P.2d 1017 (Colo. App. 1981); Sampson v. State Farm Mutual Ins. Co., 205 Neb. 164, 286 N.W.2d 746 (1980); Farmers Ins. Co. v. Hall, 263 Ark. 734, 567 S.W.2d 296, (1978); Sereno v. Lumbermens Mutual Casualty Co., 132 Ariz. 546, 647 P.2d 1144 (1982). Thus, the general rule is that failure of an insured to pay a renewal premium by the due date results in a lapse of coverage as of the last day of the policy period. Thomason v. Schnorr, 41 Colo. App. 546, 587 P.2d 1205 (1978).

Irish, 37 Wn. App. at 558. Just like the policy in Irish, the 21st Century Policy involved the successive renewal of a policy with a clearly defined policy term and expiration date, and express provisions dealing with non-renewal for non-payment of a renewal premium following the insurer's offer to renew. See, e.g., CP 285; CP 313. There is no dispute that the Laymans failed to accept the renewal offer and failed to pay the premium due. As a result, the condition precedent to renewal was not met, and the policy automatically terminated as of the last day of the policy period, January 3, 2011. The Laymans had no insurance coverage as of the time of their auto accident.

b) Neither Olivine nor Kachman apply to the Laymans' automatic policy termination for failure to accept an offer of renewal.

The Laymans' reliance on Olivine Corp. v. United Capitol Ins. Co., 147 Wn.2d 148, 162, 52 P.3d 494 (2002) is misplaced. In Olivine, the first named insured gave a premium finance company a power of attorney to request cancellation of the policy in the event of nonpayment of premiums. The first named insured received mailed notice of the requested cancellation. Olivine, the second named insured, did not give the finance company a power of attorney and was not mailed notice of the requested cancellation. Under this unique factual scenario, the court distinguished Irish and treated the cancellation as "a unilateral act of the insurer terminating coverage during the policy term" with respect to the effect the policy termination had on the second named insured and, therefore, the notice provisions of RCW 48.18.290 applied as to that second named insured. Olivine, 147 Wn.2d at 161. The court held that, pursuant to the notice requirements of RCW 48.18.290, the insurer's failure to notify Olivine of the cancellation of the policy left it in effect with respect to the second named insured. Olivine, 147 Wn.2d at 166. This has nothing to do with the Laymans' situation and the controlling provisions of RCW 48.18.292 involving an insured's failure to accept a timely offer of renewal.

The Laymans' reliance on Cornhusker Casualty Ins. Co. v. Kachman, 165 Wn.2d 404, 198 P.3d 505 (2008) is equally misplaced. The certified question before the Washington Supreme Court in Kachman specifically related to RCW 48.18.290. The Kachman Court was asked to decide the following question: "Does sending notice of cancellation by certified mail satisfy the "mailed" requirement of RCW 48.18.290 (1997) and give sufficient notice of cancellation to comply with RCW 48.18.290, even if there is no proof that the cancellation letter was received by the insured?" Kachman, 165 Wn.2d at 407. Kachman involved a unilateral cancellation decision by the insurer for the insureds' repeated failures to pay quarterly premium installment payments on a policy that renewed annually. Id. Kachman did not involve an insured's failure to accept an insurer's offer to renew an automatically-terminating semi-annual policy. The insurer attempted to provide notice of its unilateral cancellation decision to the insured by mailing a certified letter with return receipt requested. The Kachman Court held that a certified mailing does not satisfy the "mailed" prong of RCW 48.18.290 because it adds additional burdens on the insured in order to obtain receipt of the notice, but that it would satisfy the "actually delivered" prong of section 290 with a signed return receipt showing that the insured actually received the certified mail. Kachman, 165 Wn.2d at 412-13. The Kachman Court never discussed the

notice requirements for a situation where, as here, an insurer offers to renew an automatically expiring policy, but the insured fails to accept the offer of renewal.

The notice statute discussed in Olivine and Kachman provides in pertinent part as follows:

> (1) *Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date*, may be effected as to any interest only upon compliance with the following:
>
> (a) Written notice of such cancellation, accompanied by the actual reason therefor, must be actually delivered or mailed to the named insured not less than forty-five days prior to the effective date of the cancellation except for cancellation of insurance policies for nonpayment of premiums, which notice shall be not less than ten days prior to such date and except for cancellation of fire insurance policies under chapter 48.53 RCW, which notice shall not be less than five days prior to such date;
>
> * * *

RCW 48.18.290 (emphasis added). The plain words of the statute require that written notice be mailed or "actually delivered" in the event of unilateral cancellation "by the insurer" of an existing policy or a policy without a clearly defined expiration date. The statute does not require written mailed or delivered notice under its provisions where, as here, a policy expires of its own terms after an insureds' failure to accept an offer of policy renewal. RCW 48.18.290 simply does not apply here, and

neither Olivine nor Kachman have any bearing on this case where the insureds failed to accept a renewal offer.

The Laymans also rely heavily on RCW 48.18.291, which is equally inapplicable under the facts of this case. That statute states in relevant part:

> (1) A contract of insurance predicated wholly or in part upon the use of a private passenger automobile *may not be terminated by cancellation by the insurer* until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured, accompanied by the reason therefor.

RCW 48.18.291 (emphasis added). Here, again, 21st Century did not unilaterally cancel the 21st Century Policy and, therefore, was not subject to the notice requirements of RCW 48.18.291. Rather, 21st Century provided a communication of written notice to the Laymans that 21st Century was offering to renew the 21st Century Policy upon payment of the renewal premium stated in the written notice. When the Laymans failed to pay that renewal premium, the policy automatically terminated by its own terms. It was not cancelled.

3. The Laymans' Actions Ratified 21st Century's Documentation That the Laymans' Signed Up to Receive Billing and Policy Documents Along with Correspondence Documents Via 21st Century's Paperless Delivery System.

21st Century provided notices to the Laymans regarding the renewal policy offer in accordance with the Laymans' election to receive such documents via the paperless delivery system. See, generally, CP 324-48. Although the Laymans claim they only elected to receive "correspondence" documents via the 21st Century paperless delivery system, their contention is contrary to the unrebutted testimony of how enrollment in the paperless delivery system works and the documented elections that the Laymans made with respect to the enrollment process. See id. The Laymans provide no documentary evidence that they only signed up to receive correspondence documents via the paperless delivery system, and they cannot provide competent testimonial evidence because they admit that they never logged on to the system to confirm their delivery elections or review the documents they were sent. See CP 417-19.

Regardless of their unsupported argument, the Laymans in fact signed up to receive correspondence, billing, and policy information via the paperless delivery system as demonstrated by 21st Century's own contemporaneous records of the elections the Laymans made. E.g., CP

333. The Laymans admit that they received regular email notifications that documents were available to review by logging in to the system. Furthermore, pursuant to the Terms and Conditions of the paperless delivery system, the Laymans were required to "log in to [the 21st Century] Web site to view your documents." CP 340. The Laymans began receiving email notifications that documents were available for review on the system right after they enrolled and received these email notifications throughout their enrollment in the paperless system. CP 1096-98 (¶¶ 3.2, 3.12, 3.13, 3.15, 3.16, 3.19); CP 418-19. The Laymans never logged in to the paperless system to review the confirmation information or notice documents for which they received email notification until after they were informed that their insurance had automatically terminated for nonpayment of renewal premium. Id. See also CP 421-22 (67:9-68:9); CP 324-48 (¶¶ 5-6, 12, 14 & Ex. 1).

If the Laymans had logged in at the time of the initial email notice or any time thereafter, they would have seen the documents they signed up to receive and would have been able to change their choices. CP 327-28 (¶ 10). Any issue of fact that the Laymans' attempt to create regarding their elections is simply not material because the Laymans ratified 21st Century's records and delivery of that offer of renewal via the paperless system. "Ratification is the affirmance by a person of a prior act which

did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." National Bank of Commerce v. Thomsen, 80 Wn.2d 406, 413, 495 P.2d 332 (1972) (citing Restatement (Second) of Agency § 82 (1958)). A person who ratifies a previously unauthorized transaction thereby gives that transaction the same effect as if originally authorized. They are therefore estopped from challenging that transaction.

The Laymans admit they received numerous emails, beginning at the time of enrollment in the paperless delivery system, notifying them that documents were available for review online relating to their insurance. The Laymans cannot argue lack of notice when they admit they never bothered to read the documents or confirm that 21st Century properly recorded their delivery elections by logging in to the system. Cf., Dombrosky v. Farmers Ins. Co., 84 Wn. App. 245, 257, 928 P.2d 1127 (1996) (insureds have an affirmative duty under Washington law to read their policy and be on notice of the terms and conditions of the policy). The Laymans' failure to act on information presented to them by 21st Century regarding their elections to receive documents electronically ratified those elections and the information provided based on those elections. Stuart v. Am. States Ins. Co., 85 Wn. App. 321, 327, 932 P.2d

697 (1997) aff'd, 134 Wn.2d 814, 953 P.2d 462 (1998); Brown v. Jackson Nat'l Life Ins. Co., 48 Wn. App. 268, 274, 738 P.2d 701 (1987).

In short, based on the Laymans' ratified elections to receive correspondence, billing, and policy documents via 21st Century's paperless delivery system, there is no issue of material fact that the Laymans received written communication by 21st Century offering to renew the 21st Century Policy, which complied with the notice provisions of RCW 48.18.292. The Laymans simply failed to read their written communications and failed to pay the renewal premium resulting in automatic termination of their insurance coverage pursuant to the terms of the 21st Century Policy. As a matter of law, the Laymans had no insurance coverage at the time of their February 23, 2011 auto accident, and 21st Century properly denied coverage for that loss.

B. The Trial Court Properly Dismissed The Laymans' Bad Faith Claims, Because 21st Century Properly Denied The Claim And Acted In Good Faith At All Times.

The Laymans' bad faith claims against 21st Century also fail as a matter of law. "An action for bad faith handling of an insurance claim sounds in tort." St. Paul Fire and Marine Ins. Co. v. Onvia, Inc., 165 Wn.2d 122, 130, 196 P.3d 664, 668 (2008) (citing Safeco Ins. Co. of Am. v. Butler, 118 Wn.2d 383, 823 P.2d 499 (1999)). Claims of insurer bad faith are analyzed applying the same principles as any other tort: duty,

breach of that duty, and damages proximately caused by any breach of duty. Onvia, 165 Wn.2d at 130. In order to establish bad faith, an insured is required to show the breach was unreasonable, frivolous, or unfounded. Id.

Here, the Laymans admit that they enrolled in the paperless delivery system and received emails notifying them that documents were available for viewing, yet they never logged in to the paperless delivery system to actually view the documents. The Laymans enrolled in the 21st Century paperless communication program through their own conscious choice and were not required to do so. It is undisputed that the Laymans received notice via the paperless system that documents, including the 21st Century Policy renewal offer, were available to review on the system. Once the Laymans enrolled in the program, they were responsible for using the system. Their failure do so does not establish any unreasonable action by 21st Century. They simply failed to review the documents sent to them via the system, including 21st Century's offer to renew their automobile insurance. 21st Century properly and reasonably denied the Laymans' claim because they failed to accept 21st Century's offer of renewal resulting in a lapse of insurance coverage.

For these same reasons, the Laymans also are not entitled to their attorneys' fees and costs in pursuing the coverage to which they are not

entitled. An award of attorneys' fees and costs pursuant to the Olympic Steamship doctrine requires that the insureds prove coverage. Wood v. Mut. of Enumclaw Ins. Co., 97 Wn. App. 721, 727, 986 P.2d 833, 836 (1999) (citing Olympic S.S. Co. v. Centennial Ins. Co., 117 Wn.2d 37, 52-53, 811 P.2d 673 (1991)) ("Because Wood was not wrongfully denied coverage, he was not entitled to an award of attorney fees."). As discussed below, any other theory for an award of attorneys' fees would require the Laymans to prove that 21st Century acted unreasonably.

Although the Laymans complain that 21st Century failed to adequately investigate their claim, the undisputed facts demonstrate the contrary. On February 23, 2011, Seth Layman t-boned another vehicle driven by a third party and that third party reported the loss to 21st Century. Within two days of that loss, a 21st Century claim representative had multiple communications with the Laymans, investigated 21st Century's records concerning whether the Laymans had a policy in force, determined that the 21st Century Policy automatically terminated due to their failure to accept 21st Century's offer of renewal by paying their insurance renewal premium, determined that the Laymans enrolled to receive notification of billings and correspondence via 21st Century's paperless delivery system, and determined that the Laymans never bothered to log in to the system to review documents despite their

agreement to do so. See, generally, CP 457-76. Based on this investigation of the circumstances regarding the third-party loss notice under the 21st Century Policy, 21st Century timely denied any coverage, because the policy was not in force. 21st Century's investigation and actions were both reasonable and proper.

Under Washington law, an insurer's mistakes or clumsiness alone do not amount to bad faith. See, e.g., Insurance Co. of State of Pennsylvania v. Highlands Ins. Co., 59 Wn. App. 782, 787, 801 P.2d 284 (1990). Thus, even if 21st Century's claim representative did not immediately know that the policy renewal notice was sent to the Laymans via the paperless delivery system (as opposed to the U.S. Postal system), the fact that it took the claim representative a day or two to gather the facts and correct a misperception certainly does not constitute bad faith, and the written denial of coverage, which was always proper, was based on the entire facts a mere two days after the loss. See, generally, CP 246-77; CP 457-76.

The Laymans also claim that 21st Century violated the Consumer Protection Act ("CPA") in its handling, investigation and evaluation of their claim. But, like the "bad faith" claim, the Laymans cannot establish the core element of a CPA violation—namely that the actions of the insurer be unfair, deceptive or unreasonable. To establish a CPA violation:

the Laymans must prove that 21st Century's act or practice (1) is unfair or deceptive; (2) occurs in the conduct of trade or commerce; (3) affects the public interest; (4) causes injury to the their business or property; and (5) causes the injury suffered. See, Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 719 P.2d 531 (1986); State Farm Fire and Casualty Co. v. Huynh, 92 Wn. App. 454, 962 P.2d 854 (1998). Insurance has been held by Washington courts to affect a "public interest" and, consequently, the second and third elements of proving a CPA claim are established as a matter of law in most cases involving claims handling by an insurance company. See, Hangman Ridge, 59 Wn. App. at 786 (citing RCW 48.01.030 which declares insurance to be affected by the public interest). The same rule also applies to technical violations of Washington Administrative Code ("WAC") claim handling regulations that are often cited as "per se" CPA violations.

However, there is still a requirement under the CPA that the alleged WAC claims handling regulation violation be unreasonable or without basis. Keller v. Allstate Ins. Co., 81 Wn. App. 624, 633, 915 P.2d 1140, 1144 (1996). Accord, Starczewski v. Unigard Ins. Group, 61 Wn. App. 267, 273, 810 P.2d 58, rev. denied, 117 P.2d 1017 (1991); Insurance Co. of Pennsylvania v. Highlands, 59 Wn. App. at 786. As stated by the Insurance Co. of Pennsylvania v. Highlands court:

> The denial of coverage or benefits ... is not bad faith unless it is both frivolous and unfounded. Miller v. Indiana Ins. Co., 31 Wn. App. 475, 642 P.2d 769 (1982). Neither denial of coverage because of a debatable coverage question nor delay, unaccompanied by an unfounded or frivolous reason, constitutes bad faith. Felice v. St. Paul Fire & Marine Ins. Co., 42 Wn. App. 352, 711 P.2d 1066 (1985), rev. denied, 105 Wn.2d 1014 (1986). Although Highlands may have been mistaken, the extent of its responsibility was debatable, and the delay throughout was related to Highlands' attempts albeit clumsy to resolve the coverage issue. Therefore, Highlands' acts were not frivolous, nor was its position unfounded.

Id. at 786-87. See also 6A Washington Practice (2005), WPI 310.02 ("reasonableness defense" jury instruction). The only qualified insurance expert to address 21st Century's claim handling and denial in relation to this case opines that the actions were reasonable and proper. See, generally, CP 246-77. There is simply no basis on which 21st Century can be found to have violated the CPA in this case.

Likewise, Washington's Insurance Fair Conduct Act ("IFCA") is premised on a reasonableness standard for an insurer's conduct. Washington's IFCA statute establishes a cause of action for a first party insurance claimant only when an insurer has "... unreasonably denied a claim for coverage or payment of benefits[.]" RCW 48.30.015(1). "Violations of the regulations enumerated in RCW 48.30.015(5) ... do not, on their own, provide a cause of action absent an unreasonable denial of coverage or payment of benefits." Weinstein & Riley v. Westport Ins.

Corp., 2011 WL 887552 at * 30 (W.D. Wash. 2011). Here, 21st Century's denial was correct, and its prompt denial was reasonable.

Furthermore, an insurer owes no duty of good faith after an insurance policy has expired, because the duty arises out of the contractual relationship between an insurer and an insured. See, e.g., 2 Insurance Claims and Disputes 5th § 9:34 (citing Brethorst v. Allstate Property and Cas. Ins. Co., 2011 WI 41, 334 Wis. 2d 23, 798 N.W.2d 467, 480 (2011). See also Hartford Fire Ins. Co. v. Leahy, 774 F. Supp. 2d 1104, 1120 (2011) ("Under Washington law, a bad faith claim may only be brought by an insured under the policy.") Here, the Laymans have not met their threshold burden of proving that a valid insurance contract exists from which 21st Century's duty of good faith would flow. However, even if 21st Century did owe a duty of good faith to the Laymans, no reasonable finder of fact could conclude that 21st Century's investigation and claim denial was unreasonable, frivolous or unfounded. See, generally, CP 246-77.

21st Century was advised of a potential claim against the Laymans on February 23, 2011, with notice from AAA Insurance on behalf of the other vehicle involved in the accident. See CP 248-49, 263. 21st Century immediately began its investigation into the claim by determining whether the Laymans were 21st Century insureds and had a policy in force at the

time of the accident. That investigation revealed that the 21st Century Policy had lapsed for non-payment of premium prior to the date of the accident. CP 249, 265.

As part of 21st Century's initial investigation into possible coverage for the accident, on February 24, 2011, 21st Century's Claims Representative, Heather Turner, indicated in her electronic claim notes the "Policy is currently cancelled. Cancelled for failure to accept renewal on 1/03/11." This entry is entirely consistent with the reason provided for 21st Century's ultimate rejection of the Laymans' claim, namely that the policy automatically terminated for failure to accept the offer of renewal by timely payment of the premium amount. CP 249, 267.

In response to the Laymans' disputing the non-renewal, 21st Century conducted additional investigation into the circumstances of the policy's automatic termination. This investigation revealed that the Laymans were sent e-mails on December 1, 2010, January 7, 2011, and February 24, 2011, advising that new images were available for review through the paperless delivery system the Laymans had agreed to use in November, 2010. In fact, the additional investigation revealed that 25 images were available in the paperless delivery system. CP 249, 269-74.

The additional investigation also revealed that between enrolling in the paperless delivery system in November, 2010 and the day following

the accident, the Laymans never accessed the documents that they had received e-mail notifications for in December, 2010 and January, 2011. The Laymans have never disputed this fact. CP 249, 276-77.

Based upon the information obtained through its investigation into the status of the 21st Century Policy, and the fact that the offer to renew the policy for the 1/03/11 to 7/03/11 policy period had not been accepted by the payment of the required premium as required by the express terms of the policy, 21st Century's investigation into whether coverage is afforded under that policy was reasonable and consistent with industry standards. See, generally, CP 246-77. Based on its reasonable investigation into the facts of the claim and the automatic termination of the policy, 21st Century's decision to reject the Laymans' claim because there was no policy in force was reasonable and consistent with industry custom and practice as well. See id.

In short, the Laymans cannot support their bad faith claims. The Laymans have not demonstrated that they are insureds entitled to bring a bad faith claim against 21st Century and they simply cannot prove that 21st Century's actions are unreasonable, frivolous or unfounded.

C. The Court Should Not Consider the "Expert Report" of Irving "Buddy" Paul, Because He Is Not Qualified to Testify as an Expert on Such Matters.

This Court should not consider the inadmissible evidence of Irving

"Buddy" Paul. See CP 69-74. In its reply brief on summary judgment below, 21st Century requested that the trial court strike the impermissible legal conclusions contained in Mr. Paul's report and not consider them in connection with the pending motions.[4] 21st Century also requested that the court strike Mr. Paul's opinion regarding the duty to defend as irrelevant and without adequate basis. Finally, 21st Century requested that the court strike Mr. Paul's opinion regarding the nature of 21st Century's electronic communications with the Laymans as outside the scope of permissible expert testimony. This Court reviews evidentiary issues presented in connection with a summary judgment ruling de novo. Ensley v. Mollmann, 155 Wn. App. 744, 752, 230 P.3d 599 (2010) (citing Ross v. Bennett, 148 Wn. App. 40, 45, 203 P.3d 383 (2008); Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).[5]

"A court may not consider inadmissible evidence when ruling on a motion for summary judgment." King County Fire Protection Dist. No. 16

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[4] The motion to strike was made pursuant to LCR 7(g) of the Western District of Washington prior to remand of the case to Island County Superior Court. The parties stipulated that Island County would consider their cross-motions as presented to the Western District.

[5] In contrast, the Laymans did not move to strike any evidence below. See Jacob's Meadow Owners Ass'n v. Plateau 44 II, LLC, 139 Wn. App. 743, 755, 162 P.3d 1153, 1160 (2007) (A party that believes proffered evidence is not properly before the trial court must move the trial court to strike such evidence from the record.) Thus, the Laymans arguments regarding admissibility of evidence are not properly before this Court. At any rate, as previously discussed above, they are without merit.

v. Housing Auth., 123 Wn.2d 819, 826, 872 P.2d 516 (1994). "The legal opinions of witnesses are inadmissible." King County Fire Protection Dist., 123 Wn.2d at 826. Under ER 704 and established Washington law, a witness may testify as to matters of law but no witness's legal conclusions are admissible. State v. Olmedo, 112 Wn. App. 525, 532, 49 P.3d 960 (2002) (citations omitted). "Experts may not offer opinions of law in the guise of expert testimony." Id. (citation omitted). "Improper legal conclusions include testimony that a particular law applies to the case, or testimony that the defendant's conduct violated a particular law." Id. (citation omitted). See also RSUI Indem. Co. v. Vision One, LLC, No. C08-1386RSL, 2009 WL 5125420, at *1.

Mr. Paul offers several impermissible legal conclusions. First, he states that the 21st Century's "policy was cancelled without complying with Washington law." While he attempts to couch his opinion in terms of industry "custom and practice," ultimately his opinion is that 21st Century's paperless delivery system and its communication of its offer to renew the Laymans' policy did not comply with RCW 48.18.291 or 48.18.292. He also offers the opinion that 21st Century "violated" the following statutes and regulations: RCW 48.18.190 (with no discussion and no basis), "RCW 48.18.291 and or 292," RCW 48.30.015 (again, with no discussion and no basis), WAC 284-30-300(1), (3), (4), and (13)

(similarly, with no discussion and no basis). Mr. Paul's opinion that "electrons in a "Dropbox" do not constitute a written communication is, again, an impermissible and inadmissible legal opinion stated in the guise of an "expert" opinion. This Court should ignore all of Mr. Paul's legal opinions as lacking evidentiary value.

Mr. Paul's opinion regarding the duty to defend is without any basis and should be stricken and not considered in connection with the issues before this Court. As he admits, liability coverage under the policy is only "triggered" if the policy was in force at the time of the accident. For purposes of his "opinion" regarding the duty to defend, Mr. Paul assumes the very fact that the Laymans must prove to obtain the benefits of the policy. If the policy was not in force, they are not insureds under that policy and are not entitled to any defense (or any other benefits). Unless the Laymans can carry their burden to establish they are insureds, Mr. Paul's opinion regarding the duty to defend is irrelevant and immaterial. Moreover, while Mr. Paul indicates he reviewed a copy of the Laymans' automobile insurance policy he fails to base his conclusions regarding the duty to defend on the policy language. A review of that language demonstrates that his opinion is without any basis. The policy expressly states that 21st Century "may settle or defend any claim or lawsuit as [21st Century] deem[s] appropriate." See CP 373. That

statement is permissive in that it gives 21st Century the right to decide how to defend lawsuits or settle claims. The policy also provides that 21st Century "ha[s] no duty to defend any lawsuit or settle any claim for bodily injury or property damage not covered under this policy." Id. In addition, the policy expressly provides "[21st Century] ha[s] no duty to provide coverage under this policy unless you have paid the required premium when due and we have agreed to provide coverage. Id. Unless and until the Laymans can demonstrate they are insureds under the policy by timely payment of their policy premium, no duty to defend or indemnify is ever created. Mr. Paul's opinion regarding the duty to defend and custom and practice in the "industry" is without any foundation whatsoever and has no evidentiary value.

Mr. Paul also offers an opinion that using a "Dropbox" method for premium notification is "burdensome, fraudulent, and unreasonable." His opinion that it is "burdensome" should be ignored because it is not "helpful" to the trier of fact to understand the evidence or … determine a fact in issue" as required by ER 702. The trier of fact is perfectly capable of determining whether something is burdensome and no expert opinion is necessary. His opinion that it is fraudulent is an impermissible opinion of law, which is, again, inadmissible under settled Washington law. Finally, Mr. Paul's opinion that the "Dropbox" method of communication is

unreasonable has no basis, other than Mr. Paul's personal opinion and ignores the fact that the Laymans agreed to use the "Dropbox" method of communication under the terms and conditions of the paperless delivery system to which they agreed. See CP 340. Mr. Paul claims to have considered a large number of documents but fails to refer directly to any of the documents he reviewed in reaching this opinion except two, "Farlay 657, 695" (see CP 71), neither of which speak to the obligations the Laymans undertook when they signed up for paperless delivery. This fact is also fatal to Mr. Paul's attempt to provide "expert" opinion.

Finally, Mr. Paul's opinion regarding the adequacy of the claims handling and investigation should be stricken and ignored by the court. Mr. Paul has failed to establish that he has any relevant experience in the investigation of a claim by an individual where the insurance company's records unequivocally indicate that a policy in question was automatically terminated for non-payment of premium. Mr. Paul has never worked within an insurance company as an adjuster and does not describe any experience by which he has come to understand the "custom and practice" of the insurance industry in dealing with claims made under policies that had automatically terminated because of non-payment of the required premium. Again, this lack of foundation is fatal to Mr. Paul's opinion and, therefore, his opinion has no evidentiary value in this case.

V. CONCLUSION

Washington law is clear. RCW 48.18.292 required 21st Century to "communicate" to the Laymans a willingness to renew the 21st Century Policy "in writing" at least 20 days prior to the policy's expiration date. 21st Century communicated a written offer of renewal via the paperless delivery system to which the Laymans enrolled in compliance with this statutory requirement. The Laymans admittedly neglected to log in to the system to review of the offer of renewal or other documents sent to them, despite acknowledging that they received numerous emails notifying them to log in to review the documents. The Laymans then failed to accept the offer of renewal by failing to pay the renewal premium. The policy automatically terminated per its express terms and RCW 48.18.292.

The Layman's subsequent automobile accident was not covered because they had no insurance at the time of the loss. Therefore, the Laymans' attempt to gain insurance coverage must fail as a matter of law.

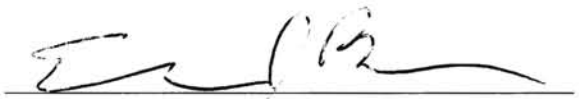
The Layman's bad faith claims also are meritless. The record shows that 21st Century properly identified that the Laymans failed to pay their renewal premium and the policy lapsed. Within a few days, 21st Century also determined that the Laymans were sent the notice of renewal and follow up notices via the paperless delivery system, but that the Laymans still did not pay their insurance premium. 21st Century's claim

denial was based on those facts. 21st Century's denial was reasonable as a matter of law.

The trial court properly dismissed the Laymans' claims. 21st Century respectfully requests that this Court affirm the dismissal.

Respectfully submitted this 28th day of October, 2013.

NICOLL BLACK & FEIG PLLC



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CERTIFICATE OF SERVICE

I certify that on the 28th day of October, 2013, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated below:

Randall C. Johnson Badgley Mullins Turner, PLLC Columbia Center 701 Fifth Avenue, Suite 4750 Seattle WA 98104 (206) 801-0423 Telephone (206) 621-9686 Facsimile	__X__ VIA HAND DELIVERY _____ VIA FACSIMILE _____ VIA U.S. MAIL

DATED this 28th day of October, 2013.

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