68029-3

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No. 68029-3

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

JOEL JOHNSON

Appellant,

v.

SAFECO INSURANCE COMPANY OF AMERICA AND
MOUNT VERNON FIRE INSURANCE COMPANY

Respondents.

BRIEF OF RESPONDENT SAFECO INSURANCE COMPANY OF AMERICA

Counsel on Appeal for Respondent Safeco Insurance Company of America:
David M. Jacobi, WSBA #13524
Shawnmarie Stanton, WSBA #20112
WILSON SMITH COCHRAN DICKERSON
901 Fifth Avenue, Suite 1700
Seattle, Washington 98164-2050
Telephone 206.623.4100
Facsimile 206.623.9273
Electronic Mail jacobi@wscd.com; stanton@wscd.com

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I. INTRODUCTION

This case hinges on one of the most basic rules of insurance law – if the insured fails to pay the required premium to renew his policy, the insurance policy will expire and will not cover a loss that occurs after expiration.

Plaintiff/Appellant Joel Johnson failed to pay the renewal premium for the homeowners policy that Defendant/Respondent Safeco Insurance Company of America ("Safeco") issued for his residence. Safeco sent Mr. Johnson prior notice of non-renewal in compliance with clear and controlling Washington law – and gave him considerable extra time to pay the premium to keep coverage in place. Mr. Johnson did not pay the premium. The policy was not renewed. A fire occurred at Mr. Johnson's residence when coverage was no longer in force.

When Safeco declined to pay for the loss, Mr. Johnson sued Safeco for coverage, "bad faith" and other extra-contractual claims. The trial court properly dismissed all of Mr. Johnson's claims against Safeco Insurance Company of America ("Safeco"). This Court should affirm.

II. ASSIGNMENTS OF ERROR

Mr. Johnson assigns error to the trial court's dismissal of his claims against Safeco on summary judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Did the trial court properly dismiss Mr. Johnson's claim for coverage because the Safeco homeowners policy expired on November 17, 2008, was not renewed for non-payment of the required premium and was, therefore, not in force at the time of the January 25, 2009, fire?

B. Did the trial court properly dismiss Mr. Johnson's "bad faith" and other extra-contractual claims because Safeco had no relationship with Mr. Johnson and owed no duties to him when there was no Safeco insurance policy in force?

IV. STATEMENT OF THE CASE

A. Johnson's Safeco homeowners policy expired because he did not pay a premium to renew or to reinstate the policy.

Safeco issued a Quality-Plus Homeowners Policy to Joel Johnson with effective dates from November 17, 2008, to November 17, 2009. On September 28, 2008, Safeco sent a Renewal Notice to Mr. Johnson plainly advising him that "it is now time to renew your Quality-Plus Homeowners policy." (CP 41, 46 – 52) The Notice indicated the required renewal premium was $630.00 and that a bill was being sent to Mr. Johnson's mortgagee. (CP 46) A copy of the renewal information was also mailed to the mortgagee, Taylor Bean & Whitaker Mortgage Co. ("Taylor Bean"). (CP 48)

The Safeco policy included a specific provision that told Mr. Johnson he would not be covered if he failed to pay the renewal premium when due:

> **SECTION I AND II - PROPERTY AND LIABILITY CONDITIONS**
>
> **1. Policy Period and Changes**
>
> **a.** The effective time of this policy is 12:01 A.M. at the residence premises. This policy applies only to loss under Section I, or bodily injury or property damage under Section II, which occurs during the policy period. ***This policy may be renewed for successive policy periods if the required premium is paid and accepted by us on or before the expiration of the current policy period.*** The premium will be computed at our then current rate for coverage then offered.
>
> **b.** Changes:
>
> **(1)** Before the end of any policy period, we may offer to change the coverage provided in this policy. Payment of the premium billed by us for the next policy period will be your acceptance of our offer.
>
> **(2)** This policy contains all agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us. . . .

(CP 51 – 52, emphasis added). The policy also provided that Safeco would pay claims and provide coverage *only if* the premiums were paid when due:

> **INSURING AGREEMENT**
>
> In reliance on the information you have given us, we will pay claims and provide coverage as described in the ***policy if you pay the premiums when due*** and comply with all the applicable provisions outlined in the policy.
>
> ***This policy applies only to losses occurring during the policy period.***

(CP 49, emphasis added).

Safeco did not receive the premium payment on Mr. Johnson's policy by the November 17, 2008, expiration date. On December 2, 2008, Safeco mailed an Expiration Notice to Mr. Johnson at the address he provided to Safeco. (CP 41, 54) The Expiration Notice notified Mr. Johnson that his policy had expired at 12:01 a.m. on November 17, 2008, because the premium had not been paid. At the same time, Safeco also gave Mr. Johnson an additional month to make the payment to keep the policy in force with no lapse in coverage:

> We value your business and hope to serve your insurance needs for many years to come. Therefore, we are concerned that as of December 1, 2008, we have not yet received your renewal premium of $630.00 from your mortgage company. This payment was due on November 17, 2008. ***Your Homeowners policy expired at 12:01 a.m. standard time on November 17, 2008.***
>
> Fortunately, we can continue your policy, with no lapse in coverage, if you send your payment to us postmarked no later than January 5, 2009. We urge you to contact your mortgage company to ensure that payment is sent in time to keep your policy in effect.

(CP 54, emphasis added). Safeco also prepared a certificate documenting that the Expiration Notice was mailed to Mr. Johnson at 5703 145th Street SW, Edmonds, WA 98026-3731 – the address of the residence that was insured under the policy that had expired. (CP 42, 55 – 56)

Neither Mr. Johnson nor his mortgage company paid the renewal premium by the January 5, 2009, deadline. (CP 42).

With regard to the mortgage company's separate interest in the policy, the Safeco policy included the following provision:

> **12. Mortgage Clause.**
>
> The word "mortgagee" includes trustee. If a mortgagee is named in this policy, any loss payable under Coverage A or B shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order of precedence of the mortgages.
>
> If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:
>
> . . .
>
> **b.** pays any premium due under this policy on demand if you have neglected to pay the premium;
>
> . . .
>
> Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee. If the policy is canceled or not renewed by us, the mortgagee shall be notified at least 20 days before the date of cancellation or nonrenewal takes effect.
>
> . . .

(CP 50)

Consistent with this provision, on January 11, 2009, Safeco prepared a separate Notice of Cancellation for nonpayment of premium to send to Taylor Bean. (CP 42, 58) Safeco mailed the Notice to Taylor Bean on January 12, 2009, and prepared a Certificate documenting the mailing. (CP

60 – 61) The Notice stated that the policy would be cancelled as to Taylor, Bean effective February 5, 2009, and coverage would end at 12:01 a.m. on that date. (CP 58)

On January 26, 2009, Mr. Johnson called Safeco to report that a fire had occurred the previous day at 5703 145th Street SW in Edmonds, Washington. (CP 43) Safeco advised Mr. Johnson that the policy previously covering that property had expired on November 17, 2008, for non-payment of the policy premium. (*Id.*)

On April 8, 2009, Taylor Bean filed a claim under the Safeco policy. (CP 43)

B. Taylor Bean procured separate coverage from Mount Vernon Fire Insurance Company.

Taylor Bean's internal records indicate that it sent payment for the renewal premium to Safeco, but later stopped payment on the check. (CP 115) Upon learning the Safeco policy had been cancelled for non-payment of premium, Taylor Bean obtained coverage under a policy from Mount Vernon Fire Insurance Company ("Mount Vernon") to protect its interest in the residence. (CP 197 – 292)

Following the fire, Mr. Johnson made a claim under the Mount Vernon policy, including a claim for additional living expense (ALE). The record reflects that during the course of his ALE claim, Mr. Johnson

submitted false information to Mount Vernon and his claim was denied. However, Mr. Johnson's claim under the Mount Vernon policy is not relevant to his claims against Safeco, which were dismissed on summary judgment before the trial court considered and decided the merits of his claims under the Mount Vernon coverage.

C. The trial court entered a summary judgment order dismissing all of Johnson's claims against Safeco and denied Johnson's motion for reconsideration of that order.

Mr. Johnson initially filed suit only against Safeco. He subsequently filed his First Amended Complaint against Safeco, Mount Vernon and Taylor Bean on May 24, 2010. (CP 1 – 11) Taylor Bean filed for bankruptcy and Mr. Johnson voluntarily dismissed it from the lawsuit without prejudice. (CP 185 – 186)

Mr. Johnson alleged causes of action against Safeco for Breach of Contract, Breach of the Washington Administrative Code, Breach of the Consumer Protection Act, Bad Faith, Negligence, and Violation of the Insurance Fair Conduct Act. (CP 5 – 9) Safeco filed a motion for summary judgment on all claims. (CP 15 – 39) The trial court granted that motion and dismissed all claims against Safeco with prejudice and without recovery. (CP 156 – 58)

Mr. Johnson filed a motion asking the court to reconsider its summary dismissal of Safeco. (CP 160 – 82) The court denied that motion. (CP 183 – 184)

V. SUMMARY OF ARGUMENT

It is undisputed that Safeco sent notice to Mr. Johnson and his mortgage company that the Safeco policy covering Mr. Johnson's residence was going to expire and a renewal premium had to be paid to keep the policy in force. It is also undisputed that the premium was not paid. After the policy expired, Mr. Johnson was given additional time to pay the premium, yet he still failed to do so. Therefore, the policy was not in force on the day the residence was damaged by a fire.

Mr. Johnson argues that, simply because a copy of the renewal policy was delivered to him, he was not required to pay the premium in order for the policy to remain in force. That argument is directly contrary to the express language of the policy and the applicable case law. Simply put, an insurance policy does not renew unless a renewal premium is actually paid. No premium was paid and the policy expired before Mr. Johnson's fire loss occurred.

Because there was no Safeco homeowners insurance policy in force at the time of the fire, Safeco properly denied Mr. Johnson's claim for homeowners insurance coverage. In addition, all of Mr. Johnson's extra-

contractual claims fail as a matter of law because there was no longer an insurer-insured relationship between Mr. Johnson and Safeco at the time of the fire or at the time Mr. Johnson made his insurance claim.

As a result, the trial court properly dismissed all claims against Safeco on summary judgment. Mr. Johnson's appeal has no merit and the trial court should be affirmed.

VI. ARGUMENT

A. Standard of Review

The trial court's dismissal of the claims against Safeco on summary judgment is subject to *de novo* review.[1] This Court may affirm summary judgment on any grounds supported by the record.[2]

B. The Safeco policy expired before the loss because the renewal premium was not paid.

This matter is easily resolved based upon the express language of the Safeco policy and the undisputed facts. Mr. Johnson's Safeco policy was set to expire on November 17, 2008. Safeco notified Mr. Johnson and Taylor Bean in a Notice dated September 28, 2008, that the new policy period would begin on November 17, 2008, and the renewal premium would be due. (CP 46 – 47) It is undisputed that the renewal premium was not

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[1] *Blue Diamond Group, Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453, 266 P.3d 881 (2011) (citing *Simpson Tacoma Kraft Co. v. Dep't of Ecology,* 119 Wn.2d 640, 646, 835 P.2d 1030 (1992); *Michak v. Transnation Title Ins. Co.,* 148 Wn.2d 788, 794, 64 P.3d 22 (2003)).

[2] *Id.* (citing *Allstot v. Edwards,* 116 Wn. App. 424, 430, 65 P.3d 696 (2003)).

paid. Safeco notified Mr. Johnson of that fact in an Expiration Notice sent to him on December 2, 2008. (CP 54 – 56) Mr. Johnson incorrectly argues the Expiration Notice warned him only that "his policy *might* not be renewed."[3] The Expiration Notice expressly states "Your Homeowners policy expired at 12:01 a.m. standard time on November 17, 2008." (CP 54) This is not simply a warning – it is clear notice that the policy had expired.

Despite the fact that the renewal premium had not been paid and the policy had already expired, Safeco offered to reinstate the policy with no lapse in coverage, *if the premium was sent and postmarked no later than January 5, 2009.* (CP 54) Again, the premium remained unpaid. Therefore, the policy remained in its expired state – it had not been renewed and was not in force as to Mr. Johnson's interest on the date of the fire.

Although Mr. Johnson claims he "never saw" the Expiration Notice that Safeco mailed to his residence on December 2, 2008, (CP 118, ¶ 5) he does not even attempt to assign any legal effect to that purported fact. While he raises it in the facts section of his brief,[4] he does not address it in any manner in the argument section, nor are there any legal arguments he could have made regarding that issue. It is, therefore, undisputed that Mr. Johnson's testimony that he "never saw" the Expiration Notice is irrelevant with regard to resolution of the legal issues before this Court.

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[3] Opening Brief of Appellant at 25 (emphasis in original).
[4] *Id.* at 6.

The facts of this care are remarkably similar to *Safeco Insurance Co v. Irish*.[5] The automobile insurance policy in that matter was to expire on December 29, 1978. The insured requested changes to the policy in December 1978 and on January 23, 1979, Safeco issued a statement of coverage effective December 29, 1978; the Statement also indicated the renewal premium was due on January 27, 1979.[6] The insured did not pay the renewal premium by that date.[7] Safeco sent a notice to the insured entitled Cancellation Notice, stating that coverage could continue in force if the company received the premium by 12:01 a.m. on February 17, 1979.[8] The vehicle was stolen in the evening on February 16, 1979, and the insured never made the premium payment.[9]

The trial court concluded the policy was not in force on the day of the loss. In affirming that judgment, the Court of Appeals explained that the notice Safeco sent to the insured after the policy had expired due to nonpayment of the renewal premium *was not* a cancellation notice, although Safeco had denominated it as such.[10] The Court explained that the "term 'cancellation' refers to a unilateral act of the insurer terminating coverage

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[5] 37 Wn. App. 554, 681 P.2d 1294 (1984).
[6] 37 Wn. App. at 556.
[7] *Id.*
[8] *Id.*
[9] 37 Wn. App. at 557.
[10] *Id.* at 558.

during the policy term."[11] Such a cancellation may be governed by specific cancellation requirements. In contrast to such a mid-policy period unilateral cancellation, an insured's failure to pay a renewal premium "results in a lapse of coverage as of the last day of the policy period." No "cancellation notice" is required to make the non-renewal effective.[12]

The *Irish* court held that the notice Safeco sent to the insured after the policy had expired for non-payment of the renewal premium was "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."[13] Because the insured failed to pay the renewal premium by the required dated, the policy was not reinstated.

The reasoning of *Irish* is directly applicable to the present matter. Mr. Johnson's policy was set to expire on November 17, 2008. Just as in *Irish*, the issue is whether the policy *expired* for failure to pay the renewal premium, not whether it was *cancelled*. It is undisputed that Safeco notified Mr. Johnson and his mortgage company that the renewal premium had to be paid. It is likewise undisputed that the renewal premium was not paid. Safeco sent an Expiration Notice to Mr. Johnson giving him additional time to pay the premium, yet the premium remained unpaid. The policy,

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[11] *Id.*
[12] *Id.*
[13] 37 Wn. App. at 557 – 58.

therefore, expired by its express terms on November 17, 2008, and was not reinstated before the fire occurred. Just as in *Irish*, this is a matter of expiration, not cancellation. Thus, there was no need for Safeco to send a cancellation notice to Mr. Johnson. The inquiry need go no further; the trial court's decision should be affirmed on that basis.

C. Safeco's Renewal Notice did not automatically renew the policy and did not relieve Mr Johnson of the obligation to pay a premium to obtain coverage.

Safeco's September 28, 2008, Renewal Notice to Mr. Johnson and Taylor Bean included a copy of the Declarations for the renewal policy and a copy of the renewal policy. (CP 41, 46 – 48) The Declarations state the policy period is November 17, 2008, to November 17, 2009. (CP 48) It is apparently Mr. Johnson's position that, by mailing him the Declarations and a copy of the policy, Safeco automatically renewed the policy for that period. However, such an argument fails as a matter of law under the express terms of the policy.

The policy provides that it may be renewed "if the required premium is paid and accepted by [Safeco] on or before the expiration of the current policy period." (CP 51 – 52) Under Washington law, Mr. Johnson is deemed to have read his policy and to know its contents.[14] Consistent with the express terms of the policy, the September 28, 2008, Renewal Notice

[14] *Carew, Shaw & Bernasconi v. General Cas. Co.*, 189 Wash. 329, 341, 65 P.2d 689 (1937).

stated "it is now time to renew your Quality-Plus Homeowners policy." (CP 46) It did not state the policy was *automatically* renewed in the absence of the payment of the renewal premium. That Notice also stated that the renewal premium was $630.00 and a bill was being sent to the mortgage company. (*Id.*)

Mr. Johnson does not even attempt to explain why the express policy requirement that *the renewal premium be paid* in order to renew the policy does not apply here. He simply argues that Safeco sent him a copy of the policy and, therefore, the policy was in force.[15] In support of that argument, Mr. Johnson cites *Frye v. Prudential Insurance Co. of America*,[16] a case which has no bearing on the issue before this Court.

Frye involved the issuance of a life insurance policy. The premium on the policy had not been paid because the insurance company's own agent had failed to follow through with his appointment to deliver the policy to the insured and collect the premium. The court held that, "[s]ince the failure of the insured in the case now before us to pay the premium was due to the fault or neglect of the agent of the [insurance company], the case stands in the same situation as though the premium had in fact been paid[.]"[17] The court *did not* hold that mere delivery of a policy means it is automatically in

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[15] Opening Brief of Appellant at 22 – 23.
[16] 157 Wn. 88, 288 P. 262 (1930).
[17] 157 Wash. at 95.

effect until formally cancelled by the insurance company. The decision is clear that, in addition to delivery of the policy, payment of the premium is necessary for a policy to be binding. It is undisputed in the present matter that the premium was not paid and such failure was due to the fault of Mr. Johnson and *his own* agent.[18] *Frye* is, therefore, inapplicable to this matter.

Mr. Johnson also cites the cases of *Webster v. State Farm Mutual Automobile Ins. Co.*[19] and *McGreevy v. Oregon Mutual Insurance Co.*[20] in support of his assertion that the Safeco policy was automatically renewed simply because Safeco mailed a copy of the policy to him. Like *Frye*, those cases are thoroughly distinguishable. In *Webster*, the insureds claimed a non-stacking provision in the policy did not apply because they had not received the policy. The court found the policy had been delivered to the insured and the provision, therefore, applied. The decision does not address or offer guidance on the expiration of a policy due to the non-payment of the required renewal premium.

In *McGreevy*, the insurance company attempted to attach an anti-stacking provision to a previously issued policy via an endorsement. The

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[18] Mr. Johnson argued below that Taylor Bean should be considered Safeco's agent. (CP 97 – 98) He has abandoned that argument on appeal. Even if he were to attempt to renew that argument, it would fail as a matter of law because Mr. Johnson submitted no evidence supporting his assertion that Taylor Bean was acting as Safeco's agent rather than as Mr. Johnson's own agent for purposes of making the premium payment. Indeed, Taylor Bean was a co-insured under the Safeco homeowners policy and cannot possibly have been Safeco's agent.

[19] 54 Wn. App. 492, 774 P.2d 50 (1989).

[20] 74 Wn. App. 858, 876 P.2d 463 (1994).

jury concluded the company had not mailed the endorsement to the insured. Therefore, the court concluded the endorsement was not effective.[21] The case did not involve the failure to pay a renewal premium, thereby resulting in expiration of the policy. Indeed, no Washington court has ever held that, by sending a copy of a renewal policy to the insured, the insurance company has automatically renewed the policy even if the renewal premium is not paid. Rather, the opposite is true. Where, as here, the policy expressly requires that the renewal premium must be paid in order for the policy to renew, there is no renewal in the absence of payment.[22]

Finally, Mr. Johnson's argument that a contract was formed through "offer and acceptance" also fails. Mr. Johnson claims that, by mailing the Renewal Notice to him, Safeco offered to renew the policy and that Taylor Bean accepted that offer on his behalf by sending the premium check – the same check on which the stop payment was placed.[23] The flaw in that argument is apparent on its face. Safeco's "offer" was to renew the policy if the premium was paid. "Acceptance," therefore, required actual payment of the premium. That did not occur. Sending a check and then stopping payment did not satisfy the terms of the offer. It is a fundamental principle of contract law that the "acceptance of an offer is always required to be

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[21] 74 Wn. App. at 867 – 68.
[22] *Irish*, 37 Wn. App. at 559.
[23] Opening Brief of Appellant at 23 – 24.

identical with the offer, or there is no meeting of the minds and no contract."[24] An "expression that changes the terms of the offer in any material respect may be operative as a counteroffer; but it is not acceptance and consummates no contract."[25] At best, by sending the check and then stopping payment on it, Taylor Bean made a counteroffer – i.e., an offer to accept the policy *without* actually paying the premium. Clearly, Safeco did not accept this counteroffer. Therefore, the policy was not in effect at the time of the fire and the trial court properly dismissed Mr. Johnson's Breach of Contract claim.

D. <u>The trial court properly dismissed Johnson's extra-contractual claims against Safeco because there no longer was an insurer-insured relationship between Johnson and Safeco at the time of the fire or when Johnson made his insurance claim</u>.

In addition to properly dismissing the Breach of Contract claim, the trial court properly dismissed Mr. Johnson's claims for Breach of the Washington Administrative Code, Breach of the Consumer Protection Act, Bad Faith, Negligence, and Violation of the Insurance Fair Conduct Act. All of those extra-contractual claims depend upon the existence of a contractual relationship between Mr. Johnson and Safeco at the time of the

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[24] *Blue Mountain Const. Co. v. Grant County School Dist. No. 150-204*, 49 Wn.2d 685, 688, 306 P.2d 209 (1957) (citing *Schuehle v. Schuehle*, 21 Wn.2d 609, 152 P.2d 608 (1944)).

[25] *Id.* (citing 1 CORBIN, CONTRACTS, 259, § 82; *St. Paul & Tacoma Lumber Co. v. Fox*, 26 Wn.2d 109, 173 P.2d 194 (1946)).

fire.[26] Such a relationship did not exist because the policy had expired by its own terms before the fire occurred.

In his Opening Brief, Mr. Johnson concedes that, if the insurance policy was not in force at the time of the fire, his extra-contractual claims were properly dismissed. He does not argue that he has a right to assert extra-contractual claims against Safeco in the absence of a valid insurance policy. Rather, he argues only that his contract was effective at the time of the fire and, therefore, his extra-contractual claims should not have been dismissed.[27] As explained above, the policy expired by its own terms due to non-payment of the renewal premium. Because the policy was not effective on the date of the fire, the trial court's dismissal of the extra-contractual claims was proper and should be affirmed.

Even if Mr. Johnson were to attempt to argue he has a right to pursue extra-contractual claims in the absence of a valid insurance policy, his claims would fail as a matter of law because he presented no evidence creating a material issue of fact regarding any of those claims.

Under Washington law an insurer's denial of a claim is not in bad faith unless the denial was unreasonable, frivolous, or unfounded.[28] The test

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[26] *See Dussault v. American Int'l Group, Inc.*, 123 Wn. App. 863, 867, 99 P.3d 1256 (2004) (citing *Tank v. State Farm Fire and Cas. Co.*, 105 Wn.2d 381, 393, 715 P.2d 1133 (1986)).
[27] Opening Brief of Appellant at 26.
[28] *Wright v. Safeco Ins. Co.*, 124 Wn. App. 263, 279, 109 P.3d 1 (2004) (citing *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 560, 951 P.2d 1124 (1998)).

for bad faith is not whether the insurer's interpretation of the insurance policy is correct, "but whether the insurer's conduct was reasonable."[29]

> If the insured claims that the insurer denied coverage unreasonably in bad faith, then the insured must come forward with evidence that the insurer acted unreasonably. The policyholder has the burden of proof. The insurer is entitled to summary judgment if reasonable minds could not differ that its denial of coverage was based upon reasonable grounds.[30]

Similarly, the reasonable conduct of an insurer does not give rise to a CPA claim.[31] Moreover, Mr. Johnson can cite to no Washington case holding that any other extra-contractual claim may be maintained when an insurer's conduct is reasonable.

Mr. Johnson did not present any evidence supporting a claim that Safeco acted unreasonably when it denied his claim because the policy had expired due to non-payment of the renewal premium. Indeed, he did not even attempt to address the extra-contractual claims in his summary judgment response. (CP 88 – 103) Therefore, the trial court properly dismissed his extra-contractual claims.

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[29] *Id.*, 124 Wn. App. 279 – 80 (citing *Torina Fine Homes v. Mutual of Enumclaw Ins. Co.*, 118 Wn. App. 12, 21, 74 P.3d 648 (2003)).
[30] *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 486, 78 P.3d 1274 (2003).
[31] *Villella v. Pemco Ins. Co.*, 106 Wn.2d 806, 821, 725 P.2d 957 (1986).

VII. CONCLUSION

For the reasons set forth above, Safeco respectfully requests that the Court AFFIRM the trial court's dismissal of Mr. Johnson's claims against Safeco.

DATED and respectfully submitted this 25th day of July, 2012.

By _____

Counsel for Safeco Insurance Company of America:

David M. Jacobi, WSBA #13524
Shawnmarie Stanton, WSBA #20112
WILSON SMITH COCHRAN DICKERSON
901 Fifth Avenue, Suite 1700
Seattle, Washington 98164-2050
Telephone: 206.623.4100
Electronic mail: jacobi@wscd.com

Counsel for Mount Vernon Fire Insurance Company

Joseph D. Hampton, WSBA #15297
Jeffrey S. Tindal, WSBA #29286
BETTS, PATTERSON & MINES, P.S.
701 Pike Street, Suite 1400
Seattle, Washington 98101-3927
Telephone: 206.292.9988
Electronic mail: jtindal@bmplaw.com

CERTIFICATE OF SERVICE

I certify that I delivered, or caused to be delivered, a copy of the foregoing document on the 27th day of July, 2012 to the following counsel of record at the following address:

Attorney for Plaintiff/Appellant
Joel B. Hanson
2825 Eastlake Ave. E., Ste. 115
Seattle, WA 98102

Attorneys for Defendant/Respondent Mount Vernon:
Joseph Hampton
Jeffrey Tindal
Betts Patterson Mines
One Convention Place
701 Pike Street, Suite 1400
Seattle, WA 98101

DATED at Seattle, Washington this 27th day July, 2012.

Traci Jay