98274-1

No. 79676-3-I

DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

WEST BEACH CONDOMINIUM,
a Washington non-profit corporation,

Appellant

v.

COMMONWEALTH INSURANCE COMPANY OF AMERICA,
a foreign insurance company,

Respondent

RESPONDENT COMMONWEALTH INSURANCE COMPANY OF AMERICA'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER AND INTRODUCTION

Petitioner Commonwealth Insurance Company of America ("Commonwealth") respectfully asks this Court to accept review of the Court of Appeals' January 13, 2020 published opinion. The opinion acknowledges that one-year suit limitation clauses in insurance policies are approved by the Legislature and enforceable in Washington, but then creates a loophole that makes them unenforceable in every case. In particular, the Court held that an insurer's decision to deny a claim because it is time-barred under a suit limitation clause can alone violate Washington law because the "obligation" to pay the time-barred claim still exists even though it cannot be enforced through a breach of contract claim. The Court of Appeals' opinion then allows the insured to capitalize on this loophole by recovering the otherwise unavailable policy proceeds as "damages" on extra-contractual claims. This case presents the issue cleanly for review because West Beach does not dispute that its coverage claim was time-barred before it was even tendered to Commonwealth, and it claimed no damages other than loss of whatever coverage might have existed under the policy.

The Court of Appeals' opinion is erroneous and merits review under RAP 13.4(b)(1), (b)(2) and (b)(4) for two reasons. First, suit limitation periods in insurance policies are expressly permitted by the Washington Legislature and have been upheld and enforced by this Court for more than 100 years. Also, in *Coventry Assocs. v. Am. States Ins. Co.*, 136 Wn.2d 269, 961 P.2d 933 (1998), this Court specifically held that

outside the duty-to-defend context where special considerations apply, insureds cannot do what the Court of Appeals allowed here — use extra-contractual claims to recover breach-of-policy damages when there is no causal connection between the insurer's allegedly wrongful conduct and the late tender. The Court of Appeals' opinion undermines both rules, contradicts prior case law and public policy, and impermissibly permits insureds to sidestep enforceable suit limitation clauses.

Second, it is settled Washington law that insurers act reasonably and in good faith when they act on an arguable interpretation of existing law, even if ultimately incorrect. When Commonwealth denied West Beach's time-barred claim in 2017, no court had found an insurer acted unreasonably or in bad faith for refusing to pay a time-barred claim based on a suit limitation clause; rather, several courts had held that such clauses ***do*** bar insureds from pursuing extra-contractual claims for breach-of-policy damages. Thus, even if this Court agrees that Commonwealth incorrectly denied coverage, the Court of Appeals still erred by not concluding that Commonwealth acted reasonably as a matter of law.

II. COURT OF APPEALS OPINION

The Court of Appeals issued its Published Opinion on January 13, 2020, and its Order Denying Motion for Reconsideration on February 11, 2020. Copies of the Opinion and Order are attached as an Appendix.

III. ISSUES PRESENTED FOR REVIEW

1. Is an insured foreclosed from pursuing extra-contractual claims under the Consumer Protection Act ("CPA") or Insurance Fair

Conduct Act ("IFCA") to recover benefits allegedly due under a first-party insurance policy when (a) the insured's coverage claim was properly dismissed as untimely under an enforceable suit limitation clause, and (b) the insured asserts no wrongful conduct by the insurer other than reliance on the suit limitation clause and no damages other than the loss of benefits allegedly due under the insurance policy? **Yes.**

2. Even if an insured can bring extra-contractual claims to recover breach-of-policy damages otherwise foreclosed by a suit limitation clause, did Commonwealth act reasonably as a matter of law when it relied on a justifiable interpretation of existing federal and state case law to deny coverage on the basis of the suit limitation clause? **Yes.**

IV. STATEMENT OF THE CASE

The West Beach Condominiums, located on the Puget Sound waterfront south of the Fauntleroy Ferry Terminal, were built in the late 1960s. Due to poor construction, inadequate maintenance, wear and tear, and continual exposure to Seattle-area weather as well as the wind and salt spray coming off Puget Sound, the four buildings in the complex deteriorated over time. CP 305-310. Commonwealth issued West Beach two first-party property insurance policies, effective September 1, 2010 to September 1, 2012. CP 105, 184.

By 2001, West Beach recognized that its wood buildings "[r]equire a lot of maintenance" and because of their age, type of construction, and proximity to salt water, "the wood and metal portions of the buildings are vulnerable to water damage, rot and rust." CP 305-306. From 2004 to

2008, West Beach reconstructed the envelopes of two of its four buildings to address moisture intrusion. CP 309-310. West Beach did not submit insurance claims for this work.

In 2015, West Beach hired a contractor to conduct a condition assessment and intrusive investigation (*i.e.*, removing siding in sample locations to inspect the structure behind) of a third building that had not yet been repaired. CP 312-317. The contractor conducted its investigation in early August 2015, and on September 8, 2015, presented its findings to West Beach's Board of Directors in the form of a 100-slide PowerPoint presentation including dozens of photos documenting the deteriorated condition of the building and need for repairs. CP 325-458.

More than one year later, on September 26, 2016, West Beach first notified Commonwealth of its claim for coverage. The claimed "damage," was based on the repairs that West Beach's contractor described more than one year earlier in the September 8, 2015 report. CP 459-460. Unbeknownst to Commonwealth, West Beach had filed a lawsuit on September 23, 2016, three days before submitting a claim to Commonwealth. CP 3.

The Commonwealth policies each contain a one-year suit limitation clause stating:

> No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the same be commenced within Twelve (12) months next after discovery by the Insured of the occurrence which gives rise to the claim . . . .

CP 177, 264.

After conducting a thorough investigation, Commonwealth denied coverage based on the policies' one-year suit limitation provisions as well as other grounds. CP 465-477.[1]

West Beach then filed a second lawsuit[2] asserting claims for breach-of-policy, bad faith, and violations of the CPA and IFCA. CP 13-15. Following discovery, Commonwealth moved for summary judgment based on expiration of the policies' one-year suit limitation periods. CP 304-324. The trial court granted the motion and dismissed West Beach's breach-of-policy claim since the undisputed evidence established that West Beach discovered the occurrence giving rise to its coverage claim more than one year before filing suit. CP 19. West Beach has not appealed this ruling.

Despite dismissal of its breach-of-policy claim, West Beach argued that it could recover the very same contract damages through its extra-contractual claims. The parties filed cross-motions asking the trial court to determine whether West Beach's extra-contractual claims were limited to damages West Beach could prove were proximately caused by any alleged bad faith conduct by Commonwealth. CP 32-37. Since West Beach did not

[1] The other grounds for Commonwealth's denial were: the lack of evidence that the alleged property damage occurred during the 2010-2012 policy periods; the lack of fortuity for damages purportedly caused by weather and aging of the buildings; application of the policies' exclusions for damage "caused by or resulting from … repairing or faulty design, materials and/or workmanship thereon, unless an insured peril ensues ….;" and application of the policies' exclusions for damage "caused by or resulting from … wear, tear or gradual deterioration, … rust or corrosion, wet or dry rot."
[2] The original lawsuit was dismissed without prejudice after the parties agreed to toll the policies' limitation period, effective September 22, 2016, to allow Commonwealth time to investigate the claim. CP 4.

claim any damages other than the loss of any coverage under the policy, and Commonwealth did not cause West Beach to allow the suit limitation period to expire, the trial court dismissed West Beach's extra-contractual claims. CP 74-76.

The Court of Appeals reversed and remanded. Recognizing that no Washington court had addressed the issue, and relying on two unpublished federal district court rulings, the court concluded that although expiration of the policies' one-year suit limitation period barred West Beach's ability to sue for breach of contract, it did not "negate coverage" for the time-barred claim. Op. at 10-13. In particular, the court held that "the trial court erred by dismissing West Beach's extra-contractual claims based on the insurance policies' suit limitation clause" and that, on remand, the jury should decide "whether the damage at West Beach's property was caused by covered perils and, if so, whether Commonwealth unreasonably denied coverage and violated IFCA and the CPA by failing to pay for that covered damage." *Id.* at 13, 15-16.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review, reconcile conflicting case law and resolve issues of substantial public importance. RAP 13.4(b)(1), (b)(2), and (b)(4). Suit limitation clauses like Commonwealth's are authorized by statute and have been repeatedly upheld and enforced by this Court to bar insureds from bringing breach-of-policy actions. This Court also has held that policyholders may sue insurance companies for acting in bad faith — even if there is no coverage for the claim under

consideration when the bad faith conduct occurs. However, except for bad faith conduct committed during a liability insurer's reservation-of-rights defense, this Court carefully limited damages for such bad faith to those proximately caused by the bad faith conduct and rejected the contention that policyholders can use extra-contractual claims to get coverage for non-covered claims. By creating a distinction between claims that are not covered and claims in which the insured is time-barred from suing for coverage, and holding that insurers can commit bad faith solely by not paying such time-barred claims, the Court of Appeals' decision effectively reversed decades of Washington law, and rendered suit limitation clauses and the statute that authorizes them meaningless.

Moreover, this Court has repeatedly held that an insurer's reliance on an "arguable interpretation of existing law" to refuse to pay a claim is reasonable as a matter of law, even if a court later determines that the claim was in fact covered. Here, Commonwealth's 2017 determination not to pay West Beach's time-barred claim was entirely consistent with then-existing case law. Even if this Court were to conclude that the Court of Appeals' opinion is good law, this Court still should accept review and hold that this pronouncement of new law cannot be used to assess Commonwealth's — or any insurer's — conduct in hindsight.

A. Extra-Contractual Claims Cannot be Based on an Insurer's Refusal to Pay a Time-Barred Claim.

Since at least 1947, the Washington Legislature has expressly authorized insurers issuing first-party policies to contractually shorten the

general breach of contract statute of limitations, so long as the contractual limitation period is at least one year. RCW 48.18.200(1)(c). Such clauses "have been recognized to be legitimate methods by which insurance companies can eliminate uncertainty and cut off stale claims." Windt, Insurance Claims and Disputes, § 9:3 (6th ed. 2013); *see also B.S.C. Holding, Inc. v. Lexington Ins. Co.*, 625 Fed. App'x 906, 910 (10th Cir. 2015) (recognizing that suit limitation clauses "enable an insurer to fix its present and future liabilities and to close stale claim files") (quoting *Herman v. Valley Ins. Co.*, 928 P.2d 985, 990 (Or. App. 1996)). "In effect, these statutes authorize property insurers to contract for repose provisions of fairly short duration." *Aluminum Co. of Am. v. Aetna Cas. & Sur. Co.*, 140 Wn.2d 517, 548, 998 P.2d 856 (2000).

Washington courts have repeatedly recognized and upheld the validity of such clauses. *See Ashburn v. Safeco Ins. Co. of Am.*, 42 Wn. App. 692, 713 P.2d 742 (1986); *Johnson v. Phoenix Assurance Co.*, 70 Wn.2d 726, 425 P.2d 1 (1967); *Hefner v. Great Am. Ins. Co.*, 126 Wash. 390, 218 Pac. 206 (1923).[3] And, unlike violation of a prompt notice condition that only precludes coverage if the insurer suffers prejudice, the insured's violation of a suit limitation clause prohibits recovery even without proof of prejudice. *See Simms v. Allstate Ins. Co.*, 27 Wn. App.

[3] As recognized by this court, suit limitation clauses are "ubiquitous" in first-party policies. *Alcoa*, 140 Wn.2d at 548. These clauses are nearly universally enforced across the United States. *See* Windt, Insurance Claims and Disputes, § 9:3 (noting that "[m]ost states have a statute requiring the inclusion of a limitations period in at least certain types of first-party insurance policies" and that "[a]bsent a statute to the contrary, such provisions are, as a general rule, enforceable").

872, 877, 621 P.2d 155 (1980); Windt, Insurance Claims and Disputes, § 9:3 ("[A] breach of the limitations clause will ***automatically*** result in a loss of coverage.") (emphasis added).

Courts have recognized that suit limitation clauses typically do not apply to extra-contractual claims, which remain subject to statutory limitation periods. *E.g., O'Neill v. Farmers Ins. Co. of Wash.*, 124 Wn. App. 516, 530, 125 P.3d 134 (2004); *Simms*, 27 Wn. App. at 878. Until now, however, Washington courts — both state and federal — have never allowed an extra-contractual claim to be based solely on an insurer's failure to pay a claim that is not made or sued on until after the expiration of a contractual suit limitation period. Nor has any Washington appellate court allowed an insured to evade a suit limitation clause simply by characterizing the insurance policy benefits it seeks as bad faith damages.

In fact, before the Court of Appeals' decision here, two other Court of Appeals panels held that an insurer's refusal to pay a time-barred claim was not only correct, but also reasonable as a matter of law so as to preclude bad faith claims. *See Schaeffer v. Farmers Ins. Exch*., 2002 WL 662889, *5 (Wn. App. Apr. 22, 2002) (The "suit limitation clause precludes the Estate from pursuing its claim that Farmers wrongfully denied coverage."); *Hunter v. Regence BlueShield*, 2006 WL 2396643, *6 n.5 (Wn. App. Aug. 21, 2006) ("Regence could not have acted in bad faith in imposing an enforceable contractual limitation provision."). And every federal district court to address the issue, including the two cases cited by the Court of Appeals, either dismissed the claims, recognizing that an

insurer does not act wrongfully merely by enforcing a suit limitation provision,[4] or allowed them to proceed only because the insured offered evidence that the insurer had acted in bad faith in some way other than simply failing to pay a time-barred claim.[5]

This Court's decision in *Coventry* compels the result that an insured cannot base extra-contractual claims solely on an insurer's enforcement of a suit limitation provision. In *Coventry*, this Court held that an insurer's duty to act in good faith in handling insurance claims is statutory and can be violated even when the claim under consideration turns out not to be covered by the policy as a matter of contract law. *Coventry*, 136 Wn.2d at 279. Critically, however, an insurer that commits bad faith while handling a claim "is not liable for the policy benefits but, instead, liable for the consequential damages to the insured as a result of

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[4] *See Farnes v. Metro. Grp. Prop. and Cas. Ins. Co.*, 2019 WL 3501447, *4-6 (W.D. Wash. Jul. 31, 2019) (dismissing bad faith, CPA and IFCA claims because insurer's denial based on a twelve-month suit limitation clause was reasonable and could not be the basis for extra-contractual claims); *Hampton v. Allstate Corp.*, 2014 WL 1569239, *6 (W.D. Wash. Apr. 18, 2014) (holding that "the policy's suit limitation clause precludes [the insured] from pursuing his claim that Allstate wrongfully denied coverage," "[t]hus, any claim for damages arising out of [the insured's] claim for coverage … is time-barred, and cannot be revived through his [Washington Consumer Protection Act] claim"); *Smyth v. State Farm Fire & Cas. Co.*, 2005 WL 2656993 (W.D. Wash. Oct. 18, 2005) (dismissing bad faith and CPA claims because the insured's "late service of the complaint would have prevented [it] from recovering damages under their policy").

[5] *See Lakewood Shores Homeowners Ass'n v. Cont'l Cas. Co.*, 2018 WL 9439866 (W.D. Wash. Dec. 12, 2018) & 2019 WL 291661 (W.D. Wash. Jan. 23, 2019) (refusing to dismiss failure to investigate claim on Rule 12(b)(6) motion); *Yancey v. Automobile Ins. Co. of Hartford*, 2012 WL 12878687 (W.D. Wash. Oct. 23, 2012) (refusing to dismiss claims against insurer that initially agreed to pay timely-submitted claim, then refused to pay agreed claim after expiration of suit limitation period). In *Lakewood Shores*, the judge also recognized on reconsideration that the insured's extra-contractual claims could not survive in the absence of damages ***other*** than coverage. 2019 WL 291661, *2 (W.D. Wash. Jan. 23, 2019).

the insurer's breach of its contractual [good faith] and statutory obligations." Such damages include items such as expenses an insured might incur to retain experts or attorneys necessitated by the insurer's inadequate investigation or improper claims handling. *Id.* at 284.[6]

The Court of Appeals distinguished *Coventry* on the ground that the *Coventry* "limitation" applies only in the absence of coverage. Op. at 15-16. According to the Court's reasoning, a suit limitation clause does not "negate" coverage, even though it eliminates the ability to sue for it in a court of law. Thus, the court stated, insureds can recover coverage benefits via IFCA or the CPA by claiming that the insurer acted "unreasonably" in failing to pay a claim that is time-barred by a valid suit limitation clause. *Id.*

As explained below, Commonwealth acted reasonably in denying coverage on this basis given existing law. But more importantly, the Court of Appeals' reasoning misconstrues *Coventry*'s central holding. The *Coventry* damages "limitation" is not premised on the absence of coverage, but on the absence of ***causation*** between the bad faith conduct and the insured's inability to recover policy benefits. Accordingly, as recognized by the Court in *Smyth*, 2005 WL 2656993, *4, since an insured's failure to timely file a complaint prevents it from recovering

[6] *Coventry* explicitly rejected the invitation to extend the "estoppel to deny coverage" remedy to cases such as this one. Such a remedy was applied in decisions such as *Safeco v. Butler*, 118 Wn.2d 383, 393-94 (1982), to address an insurer's violation of its "heightened duty" of good faith while defending an insured under a third party liability policy, but this Court deemed it excessive and unwarranted when the insurer's heightened defense-related duties are not implicated. *Coventry*, 136 Wn.2d at 282.

damages under the policy, coverage-based damages are not recoverable unless the insurer's wrongful conduct ***caused*** the insured's noncompliance with the suit limitation clause. Absent a causal connection, an insured's failure to timely file a claim "prevents [it] from recovering under [its] policy or recovering equivalent damages under a bad faith theory." *Id.*[7]

The Court of Appeals' opinion turns the premise of *Coventry* on its head, and would allow a dilatory insured to use extra-contractual claims to make an end-run around a policy's suit limitation clause without any showing that the insurer's bad faith played a role in the insured's failure to file suit within the limitation period. The court's reasoning allows an insured to ignore the suit limitations clause (or the statute of limitations) with impunity knowing that if the insurer disclaims coverage on the ground that the claim is time barred, that denial alone provides the insured the fodder it needs to bring an IFCA or CPA claim and obtain back-door coverage for the time-barred claim in the form of statutory bad faith damages. This outcome renders suit limitation clauses wholly meaningless, and eviscerates the repose they are intended to provide.

If allowed to stand, the Court of Appeals' endorsement of this end-run around suit limitation clauses also violates the public policy of this state, as set forth by the Legislature. *See American Home Assur. Co. v. Cohen,* 124 Wn.2d 865, 875, 881 P.2d 1001 (1994) ("Because public

[7] In *Yancey*, 2012 WL 12878687, the primary case relied upon by the Court of Appeals, the causal connection existed because the insured timely tendered a claim but then refrained from filing suit and allowed the suit limitation period to expire in reliance on the insurer's agreement to pay the claim and continuing to negotiate.

policy is generally determined by the Legislature and expressed through statutory provisions, the proper starting place for a public policy analysis is in applicable legislation."). Indeed, the standard policy form mandated by the Washington Insurance Commissioner for use in fire property policies (such as the Commonwealth policy at issue here) includes a one-year suit limitation clause. *See* WAC 284.20.010 (mandating use of 1943 standard New York Fire Policy).[8] Accordingly, Commonwealth asks this Court to accept review of this important issue.

B. Commonwealth's Denial of Coverage Based on the Suit Limitation Clause Was Reasonable as a Matter of Law Based on Existing Washington and Federal Case Law.

The Court of Appeals properly recognized that under IFCA, a first-party claimant must prove the insurer acted unreasonably when denying coverage. Op. at 7 (citing RCW 48.30.015(1) & *Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wn.2d 669, 389 P.3d 476 (2017)). Likewise, under the CPA, a denial of coverage "is not an unfair or deceptive act or practice if based on reasonable conduct by the insurer, even if the denial of coverage is ultimately proved incorrect." *Id.* at 7-8 (quoting *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 434, 38 P.3d 322 (2002)); *Leingang v. Pierce Co. Med. Bur.*, 131 Wn.2d 133, 155, 930 P.2d 288 (1997) ("[D]enial of coverage, although incorrect, based on reasonable conduct of the insurer does not constitute an unfair trade practice.").

[8] See https://www.insurance.wa.gov/sites/default/files/documents/1943-ny-standard-fire-insurance-policy.pdf (policy form on Insurance Commissioner's website).

The Court of Appeals correctly stated the rule, but failed to apply it. Even accepting the Court of Appeals' premise that West Beach can sidestep the suit limitation clause via extra-contractual claims, Commonwealth's extra-contractual liability must still be based on proof that it acted unreasonably in deciding not to pay West Beach's time-barred claim. In this context, this Court has recognized that "[a]cts performed in good faith under an arguable interpretation of existing law" do not violate the CPA—even if that interpretation is later rejected. *Leingang*, 131 Wn.2d at 155; *Perry v. Island Sav. and Loan Ass'n*, 101 Wn.2d 795, 810-11, 684 P.2d 1281 (1984). Courts apply the same standard to IFCA. *Nw. Mut. Life Ins. Co. v. Koch*, 424 Fed. App'x 621, 624 (9th Cir. 2011); *160 Lee Street Condo. Homeowners' Ass'n v. Mid-Century Ins. Co.*, 2018 WL 1994059, *5 (W.D. Wash. Apr. 27, 2018).

Commonwealth denied coverage in March 2017. At the time, no court had found an insurer to have acted unreasonably solely by not paying a claim that was time-barred under a suit limitation clause. Rather, as explained above, our own Court of Appeals had held that insurers are entitled to refuse to pay time-barred claims, and insureds cannot prevail on extra-contractual claims absent proof of unreasonable conduct and harm other than denial of coverage alone. *See Hunter*, 2006 WL 2396643, at *6 n.5; *Schaeffer*, 2002 WL 66289, at *5. So had the federal district court. *Smyth*, 2005 WL 2656993, at *4 (insureds "delay in bringing this action prevents them from recovering under their policy or recovering equivalent damages under a bad faith theory"); *Hampton*, 2014 WL 1569239, at *6

("damages arising out of [the insured's] claim for coverage … cannot be revived through his WCPA claim."). Just like in those cases, West Beach claimed no unreasonable conduct or harm other than loss of coverage.[9]

Although *Yancey* — an unpublished federal district court decision upon which the Court of Appeals heavily relied, *see* Op. at 11-12 — had been decided before Commonwealth's decision not to pay West Beach's time-barred claim, *Yancey* did not make Commonwealth's conduct unreasonable. In *Yancey*, the insured made a timely claim, the insurer agreed to pay the claim, and the insurer partially paid the loss and continued to negotiate about additional payments before expiration of the limitation period. After negotiations over the amount owed by the insurer stretched beyond the one-year period, the insurer changed course and refused to pay the remaining amount owed, claiming that expiration of the suit limitation clause discharged its obligations. The district court found that while the suit limitation cause was enforceable, this allegedly bad faith conduct allowed the insured to pursue non-contractual claims under the CPA and IFCA. *Yancey*, 2012 WL 12878687, at *9. Critically, however, in *Yancey*, those claims survived because there was evidence of the insurer's unreasonable and bad faith conduct other than simply enforcing a suit limitation clause. There is no such evidence here.

[9] As noted by the Court of Appeals, West Beach contended only "that if Commonwealth violated IFCA and the CPA by unreasonably denying its claim for coverage or payment of benefits, then it can recover the contractual benefits Commonwealth should have otherwise paid." Op. at 7 (footnote omitted).

The other case cited by the Court of Appeals, *Lakewood Shores*, was decided a year and a half ***after*** Commonwealth denied coverage — and is therefore irrelevant on "interpretation of existing law." *Leingang*, 131 Wn.2d at 155. And, even if it had predated Commonwealth's denial, as noted, *Lakewood Shores* did not hold that the insurer could be liable under IFCA or the CPA for policy benefits if it relied on a suit limitation clause to deny coverage. Rather, the court held on a Civil Rule 12(b)(6) motion that the insurer could be liable if the insured could prove damages based on an insurer's refusal to ***investigate*** a claim. 2018 WL 9439866, *4. On reconsideration, the court distinguished *Schaeffer* and *Hampton* on this basis, and warned (since there was no evidence that the insurer caused the insured's delay in filing the claim) that the extra-contractual claims would not survive in the absence of damages other than coverage. *Id.*, 2019 WL 291661, at *2. Here, again, unlike *Lakewood Shores*, West Beach did not allege any damages attributable to the scope of Commonwealth's investigation. CP 74-76.

In summary, Commonwealth's decision not to pay West Beach's time-barred claim was entirely consistent with *Hunter*, *Schaeffer* and *Hampton*, and in no way contrary to *Yancey* or any other case. Until the Court of Appeals' opinion in this case, no Washington state or federal court had suggested that an insurer could act in bad faith simply by denying coverage on the basis of a suit limitation clause. Indeed, while this case was pending in the Court of Appeals, another federal district

court held that an insurer's denial of coverage on this basis was ***reasonable*** as a matter of law:

> [A]ny lawsuit seeking coverage for those losses must have been brought within twelve-months of the loss. Plaintiff failed to do so; therefore, MetLife's denial based on the twelve-month suit limitation clause was reasonable. Thus, ***MetLife's invocation of the suit limitation clause cannot be the basis for Plaintiff's bad faith claim***.

Farnes, 2019 WL 3501447 at *4-6 (granting summary judgment to insurer on insured's bad faith, CPA and IFCA claims; emphasis added).

The Court of Appeals' opinion is the ***only*** Washington appellate decision to allow an insured to proceed on CPA and IFCA claims when the only alleged unreasonable conduct was the insurer's act of denying coverage on the basis of a suit limitation clause, and the insurer did not cause the non-compliance with the suit limitation clause. This Court should accept review and, if it does not overturn that decision, reconcile it with the conflicting case law cited above, and confirm that it states a new standard upon which to assess insurer reasonableness. Before the Court of Appeals ruled, an insurer's denial of coverage based on a suit limitation clause was based on more than an "arguable interpretation of existing law"—it was ***justified*** by existing law. As such, Commonwealth acted reasonably as a matter of law.

VI. CONCLUSION

All parties agree that West Beach's failure to file suit within the suit limitation period prohibits it from maintaining a breach of contract claim against Commonwealth. Under the Court of Appeals' decision,

however, West Beach's inability to file a contract claim has no impact whatsoever because West Beach can pursue extra-contractual claims — with no evidence of wrongful conduct other than the insurer's reliance on the suit limitation provision — to recover the same contract damages. Washington law should not permit this end-run around a legally enforceable and statutorily permissible suit limitation provision. Commonwealth asks this Court to accept review of the Court of Appeals' decision so that it may correct this misinterpretation of Washington law and public policy.

RESPECTFULLY SUBMITTED this 12th day of March, 2020.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 12th day of March, 2020, I served a copy of the foregoing document on all counsel of record as indicated below:

Todd C. Hayes Charles K. Davis Harper | Hayes, PLLC 600 University Street, Suite 2420 Seattle, WA 98101 T: 206.340.8010 F: 206.260.2852 todd@harperhayes.com cdavis@harperhayes.com	☑ by **JIS E-Service through the Washington State Appellate Court Portal** ☐ by **Electronic Mail** ☐ by **First Class Mail** ☐ by **Hand Delivery** ☐ by **Facsimile**

Executed at Seattle, Washington this 12th day of March, 2020.

s/ Lou Rosenkranz
Lou Rosenkranz, Legal Assistant

APPENDIX

FILED
1/13/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

WEST BEACH CONDOMINIUM, a Washington non-profit corporation, Appellant, v. COMMONWEALTH INSURANCE COMPANY OF AMERICA, a foreign insurance company, Respondent.	No. 79676-3-I DIVISION ONE PUBLISHED OPINION FILED: January 13, 2020

ANDRUS, J. — West Beach Condominium appeals the dismissal of its claim that its property insurer, Commonwealth Insurance Company of America, wrongfully denied coverage. We conclude that the one-year suit limitation clause in the Commonwealth policies precludes West Beach from suing the insurer for breach of contract but does not bar West Beach's extra-contractual claims under the Insurance Fair Conduct Act and the Consumer Protection Act. We reverse the summary judgment in favor of Commonwealth and remand.

FACTS

West Beach is a homeowner's association for a condominium complex in West Seattle. The 84 residential units in 3 buildings were constructed in the mid to late 1960s or early 1970s. In June 2015, West Beach retained Amento Group

to conduct an assessment and intrusive investigation of the building envelope on each of the 3 buildings. Amento Group reported the results of its investigation to West Beach on September 8, 2015—documenting water damage behind the exterior cladding and building envelope.

On September 26, 2016, West Beach submitted a claim for insurance coverage to Commonwealth.[1] Included with the claim letter was an Amento Group report that detailed the discovery of, among other things, deficiencies in flashings,[2] weather resistant barriers, and waterproofing transitions at elevated walkways and unit decks; moisture issues at the belly band and cold joints in one building; below grade water intrusion; insufficient exhaust of moisture from unit interiors; improper flashings; moisture damaged gypsum; lack of waterproofing of deck surfaces; deteriorated metal fascia at deck edges; and the lack of head flashing at sliding glass doors.

West Beach also notified Commonwealth it had filed a lawsuit against it to preserve claims that may become time barred. The parties agreed to enter into a tolling agreement effective September 22, 2016, and West Beach dismissed its complaint without prejudice to allow Commonwealth to conduct an investigation.

Commonwealth retained an engineering consultant to perform a visual inspection of the property on November 15, 2016. In March 2017, Commonwealth

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[1] West Beach purchased three insurances policies through Commonwealth covering the years 2009 to 2012. The 2009 policy is not at issue on appeal. The 2010 and 2011 policies, materially identical, are "all-risk" policies.

[2] "Flashing" is a strip of sheet metal "bent to fit in the interior angle between a wall and a roof surface or in the valley between two intersecting roof surfaces in order to make a watertight joint." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 865 (2002).

denied coverage. It contended West Beach had been experiencing water intrusion issues for at least 10 years, and concluded that:

- All of the policies required suit to be commenced at least 12 months after the "occurrence" giving rise to the claim, and West Beach did not sue within that time period.
- The 2009 policy covered only direct physical loss or damage "commencing" during the policy period, and the 2010 and 2011 policies covered only direct physical loss or damage "occurring" during the policy periods. Commonwealth concluded that the losses West Beach had sustained neither commenced nor occurred during the applicable policy periods.
- The policies only covered "fortuitous risks," and none had been identified by West Beach.
- The policies did not cover faulty construction or inadequate repairs, and the Amento Group report identified numerous deficiencies that fell into this excluded category.
- The policies did not cover rust, corrosion, wear and tear, or gradual deterioration, and some of the losses fell into this excluded category.
- The policies excluded coverage for mold, bacteria, fungi, and wet or dry rot, and some of the losses fell into this excluded category.

Commonwealth also raised a number of other "potentially applicable" exclusions, including an exclusion for the settling, cracking, or expansion in foundations, and seepage of water below ground level.

In May 2017, West Beach refiled its complaint, alleging breach of contract, bad faith investigation, and Consumer Protection Act[3] (CPA) violations relating to the investigation of West Beach's claim and Commonwealth's denial of coverage. It subsequently filed an amended complaint, adding a claim for Insurance Fair

[3] Ch. 19.86 RCW.

Conduct Act[4] (IFCA) violations based on the same investigation and denial of coverage.

In December 2017, the trial court held the 2009 policy did not cover any of West Beach's losses because the claimed damage commenced years before 2009. It also held that Commonwealth's 2010 and 2011 all-risk policies covered damage from faulty construction, faulty maintenance, and wind-blown rain, contrary to the position Commonwealth had taken in its denial letter. It also concluded that the policies covered damage resulting from a combination of excluded and non-excluded perils. The court concluded that Commonwealth was liable for all covered damage if any of the damage occurred during the policy periods. But it found genuine issues of fact regarding the causes and timing of the claimed damages.[5]

Commonwealth then moved to dismiss West Beach's breach of contract claim based on the "suit limitation" provision in the policies. The provision at issue required any lawsuit to be filed no later than 12 months after discovery of the loss. Commonwealth argued that West Beach had notice of its loss no later than September 8, 2015, the date Amento Group presented the results of its investigation, and West Beach did not file suit within 1 year of that date. In August 2018, the trial court granted Commonwealth's motion and dismissed West Beach's breach of contract claim.

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[4] RCW 48.30.015.

[5] Commonwealth does not challenge these December 2017 rulings.

That same month, as both parties prepared for trial, they filed motions for a legal ruling as to whether the suit limitation provision also barred West Beach's IFCA and CPA claims and, if not, what damages West Beach could recover. Commonwealth argued that the suit limitation clause not only barred a breach of contract claim but it also voided its underlying coverage obligations under the 2010 and 2011 policies. It maintained that under Coventry Associates v. American States Insurance Co., 136 Wn.2d 269, 961 P.2d 933 (1998), West Beach could not use the CPA or IFCA to obtain policy coverage that otherwise did not exist.

West Beach contended the suit limitation clause did not affect Commonwealth's obligations under the policy. It argued Coventry only addressed what damages a policyholder could recover in the absence of coverage. It asserted both IFCA and the CPA allow a policyholder to recover policy benefits when those benefits should have been paid by the insurer.

The trial court ruled that

> [i]n light of [its] August 17, 2018 order granting [Commonwealth's motion to enforce the suit limitation provisions], [West Beach] cannot establish that Commonwealth's coverage denial was unreasonable. [West Beach] failed to allege any consequential damages proximately caused by Commonwealth's alleged bad faith or breach of the [CPA], and it cannot seek contract damages on its extra-contractual claims.

It dismissed the bad faith, CPA, and IFCA claims with prejudice and entered judgment for Commonwealth.

West Beach sought direct review by the Supreme Court.[6] The Supreme Court transferred the appeal to this court.

ANALYSIS

A. Standard of Review

West Beach's claims were dismissed on pretrial dispositive motions analogous to a summary judgment. Under these circumstances, we review the trial court's ruling de novo. Havens v. C & D Plastics, Inc., 124 Wn.2d 158, 176, 876 P.2d 435 (1994) (where trial court's pretrial ruling had effect of dismissing cause of action, review is de novo). Moreover, the interpretation of an insurance policy is a question of law, also reviewed de novo. Woo v. Fireman's Fund Ins. Co., 161 Wn.2d 43, 52, 164 P.3d 454 (2007). When we construe the language of an insurance policy, we give it the same construction that an average person purchasing insurance would give the policy. Id.

B. Commonwealth's Suit Limitation Clause

Commonwealth denied West Beach's coverage claim based on, among other reasons, the all-risk policies' suit limitation clause:[7]

> 22. SUIT
>
> No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the same be commenced within Twelve (12) months next after discovery by the Insured of the occurrence which gives rise to the claim. . . .

---

[6] West Beach does not appeal the dismissal of its breach of contract claim or the trial court's ruling that the 2009 policy affords no coverage. It assigns error only to the dismissal of its IFCA and CPA claims.

[7] RCW 48.18.200(1)(c) explicitly authorizes suit limitation clauses in insurance contracts.

West Beach argues that even though this suit limitation clause bars it from suing Commonwealth for breach of contract, it does not discharge the insurer's underlying coverage obligation. It contends that if Commonwealth violated IFCA and the CPA[8] by unreasonably denying its claim for coverage or payment of benefits, then it can recover the contractual benefits Commonwealth should have otherwise paid.

IFCA provides that "[a]ny first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained." RCW 48.30.015(1); see also Perez-Crisantos v. State Farm Fire & Cas. Co., 187 Wn.2d 669, 683, 389 P.3d 476 (2017) (claimant must prove the insurer unreasonably denied a claim for coverage or the insurer unreasonably denied payment of benefits).

And to prevail under the CPA, a plaintiff must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) with a public interest impact, (4) injury to the plaintiff's business or property, and (5) causation. Ledcor Indus. (USA), Inc. v. Mut. of Enumclaw Ins. Co., 150 Wn. App. 1, 12, 206 P.3d 1255 (2009). A denial of coverage is not an unfair or deceptive act or practice if based on reasonable conduct by the insurer, even if the denial of

[8] West Beach also alleged that Commonwealth violated the CPA by violating several regulations dealing with the regulation of Unfair Claims Settlement Practices. See WAC 284-30-330(3) (failing to adopt and implement reasonable standards for prompt investigation of claims); WAC 284-30-330(4) (refusing to pay claims without conducting a reasonable investigation); WAC 284-30-330(5) (failing to affirm or deny coverage within a reasonable time); and WAC 284-30-370 (requiring completion of investigation within 30 days of notice of claim). West Beach does not address these allegations on appeal.

coverage is ultimately proved incorrect. Overton v. Consol. Ins. Co., 145 Wn.2d 417, 434, 38 P.3d 322 (2002).

Commonwealth concedes that its suit limitation clause does not bar extra-contractual claims. But it contends its denial of coverage was reasonable as a matter of law because West Beach's non-compliance with the suit limit clause nullified all underlying insurance coverage. Commonwealth relies on Lane v. Department of Labor & Industries, 21 Wn.2d 420, 151 P.2d 440 (1944), to argue that its suit limitation clause is analogous to a "nonclaim" statute under which the time limit for asserting a claim inheres in the right or obligation itself. It distinguishes this type of provision from a contractual modification of a statute of limitations that relates only to a contracting party's remedy wholly independent of any rights or duties under a contract.

We do not find the analogy to Lane persuasive. That case identified illustrations of nonclaim statutes—materialmen's liens, claims against an estate, claims against municipalities. Id. at 425. In each example, a statute created both a right of recovery and a time limitation in which to provide notice of a claim. If a claimant fails to give notice within the statutorily specified time, the right of recovery is completely extinguished, regardless of any statute of limitations for filing suit. Id.

But claims for coverage under an insurance policy are not analogous because the Commonwealth policies do not condition coverage on receipt of notice of a claim within a specified time period. The policies provided:

> 2. NOTIFICATION OF CLAIMS
>
> The Insured, upon knowledge of any occurrence likely to give rise to a claim hereunder, shall give immediate written advice thereof to the person(s) or firm named for the purpose in the Declarations.

They also included the following paragraphs in the "General Conditions" sections:

> 11. NOTICE OF LOSS
>
> The Insured shall as soon as practicable report in writing to the Company or its agent every loss, damage or occurrence which may give rise to a claim under this Policy and shall also file with the Company within Ninety (90) days from date of discovery of such loss, damage or occurrence, a detailed sworn proof of loss. . . .
>
> 12. PAYMENT OF LOSS
>
> All adjusted claims shall be paid or made good to the Insured within Thirty (30) days after presentation and acceptance of satisfactory proof of interest and loss at the office of the Company. No loss shall be paid or made good if the Insured has collected the same from others.

Commonwealth's obligation to pay covered losses is triggered by the notice of loss, not the initiation of a lawsuit.

Commonwealth also relies on Ashburn v. Safeco Insurance Co. of America, 42 Wn. App. 692, 713 P.2d 742 (1986), to argue that the suit limitation clause limits its contractual coverage liability. But it misreads Ashburn. In that case, the Ashburns' home was damaged by a mud flow after Mt. St. Helens erupted in May 1980. Id. at 694. They sued Safeco for coverage under their insurance policy after the policy's one-year suit limitation clause expired. Id. at 693-94. The trial court granted, and Division Two affirmed, Safeco's motion for summary judgment based on the suit limitation clause. Id. at 694.

The Ashburns argued on appeal that the suit limitation clause was invalid because it frustrated their reasonable expectations of coverage in the event of loss and conflicted with the statute of limitations for contract claims. Id. at 695. The court recognized that "[an] insurance contract may include reasonable limitations on liability" and that the Ashburns' policy required suit to be filed within one year of their loss. Id. Given the lack of ambiguity in the extent of coverage, the court concluded that the limitation provision did not frustrate the insureds' reasonable expectation of coverage. Id.

As to the Ashburns' contention that the suit limitations period could not prevail over the contract statute of limitations, the court also disagreed. "Limitations of actions provisions in a contract prevail over general statutes of limitations unless prohibited by statute or public policy, or unless they are unreasonable." Id. at 696. The court held that the one-year suit limitation clause "bars the judicial remedy for enforcing the duty that had come into existence when the Ashburns filed their claim." Id. at 698.

We agree with Commonwealth that, under Ashburn, an insurance contract may place reasonable limits on the insurer's liability. But it does not follow from this premise that Commonwealth's suit limitation clause extinguishes coverage obligations if a lawsuit is not filed within a year of the loss. Ashburn makes it clear that this type of provision only bars a judicial remedy for breach of contract.

Commonwealth's reliance on similar language in Wothers v. Farmers Insurance Co. of Washington, 101 Wn. App. 75, 5 P.3d 719 (2000), and Simms v. Allstate Insurance Co., 27 Wn. App. 872, 621 P.2d 155 (1980), is also misplaced.

Both cases indicate that suit limitations clauses are contractual modifications of statutes of limitations. Wothers, 101 Wn. App. at 79; Simms, 27 Wn. App. at 876-77. Neither case holds that the expiration of a suit limitation period extinguishes the underlying coverage obligation.

We find more persuasive the reasoning of our federal judicial colleagues in Yancey v. Automobile Insurance Co. of Hartford, No. C11-1329RAJ, 2012 WL 12878687 (W.D. Wash. Oct. 23, 2012), and Lakewood Shores Homeowners Ass'n v. Continental Casualty Co., No. C18-1353MJP, 2018 WL 9439866 (W.D. Wash. Dec. 14, 2018). In Yancey, the insureds quickly notified Hartford that an accidental fire damaged their home on January 4, 2010. 2012 WL 12878687, at *1-2. Even though the extent of the damage and repair was in question, Hartford issued checks to the Yanceys for partial payment for the damage. Id. When the parties could not reach agreement on the amount of recoverable benefits, the Yanceys sued Hartford in July 2011. Id. at *2-3.

The Yanceys conceded that a breach of contract claim was barred because they filed suit more than one year after the date of loss, contrary to the policy's one-year suit limitation clause. Id. at *3-4. But as in this case, the Yanceys also alleged CPA and IFCA violations, which Hartford conceded were not barred by the one-year suit limitation period. Id. Instead, it argued that the suit limitation clause "not only prevented Ms. Yancey from suing for a breach of the Policy, it extinguished Hartford's obligation to pay Ms. Yancey." Id. at *9.

The federal court disagreed. Id. It relied on settled law that the expiration of a statutory limitation period does not extinguish legal obligations; "it simply

deprives the plaintiff of a legal remedy." Id. (citing Stenberg v. Pac. Power & Light Co., Inc., 104 Wn.2d 710, 714, 709 P.2d 793 (1985) ("A statute of limitation, in effect, deprives a plaintiff of the opportunity to invoke the power of the courts in support of an otherwise valid claim."); CHD, Inc. v. Taggart, 153 Wn. App. 94, 220 P.3d 229 (2009); Jordan v. Bergsma, 63 Wn. App. 825, 822 P.2d 319 (1992); Lombardo v. Mottola, 18 Wn. App. 227, 566 P.2d 1273 (1977)). The federal court acknowledged that no Washington court had directly addressed this issue with respect to a contractual limitations period, but relied on Ashburn for the proposition that a "contractual limitations clause [i]s a limitation on a legal remedy rather than a means to extinguish contractual duties." Id.

The federal court concluded that the language of the suit limitation clause provided only that a contract action could not be brought more than one year after the date of loss. Id. It specifically noted that the policy did not provide that Hartford's obligations ended at that time. Id.

In Lakewood Shores, a different federal court recently followed the reasoning in Yancey and held that "the suit limitation clause does not negate coverage, nor does it extinguish [the insurer's] obligations under the Policy." 2018 WL 9439866, at *3. The court further stated that it did not believe Yancey's reasoning applied only where an insured tendered the claim during the suit limitation period. 2018 WL 9439866, at *4 (citing and quoting Ashburn, 42 Wn. App. at 698, as explaining that "notwithstanding a one-year suit limitation clause, '[the insurer] had a duty to perform as soon as the [insureds] filed a claim for covered loss under the policy,' and that the insureds' 'failure to institute suit'

within one year barred only their 'judicial remedy for enforcing the duty that had come into existence when [they] filed their claim'") (alterations in original) (emphasis omitted).

As in Yancey and Lakewood Shores, Commonwealth's suit limitation clause says nothing about its underlying coverage obligations. It is thus merely a contractual modification to the statute of limitations otherwise applicable to West Beach's breach of contract claim. This clause does not negate coverage or extinguish Commonwealth's obligations under the all-risk policies.

The trial court's dismissal of West Beach's IFCA claim was based on its determination that the suit limitation clause made Commonwealth's denial of coverage reasonable as a matter of law. Because West Beach has an independent statutory claim for failure to provide coverage and because the coverage obligation was not extinguished by the suit limitation clause, the trial court erred in concluding that Commonwealth's denial of coverage was reasonable as a matter of law. Simms, 27 Wn. App. at 878 (holding that suit limitation clauses do not bar actions arising under an independent statutory scheme); see also Collazo v. Balboa Ins. Co., No. C13-0892-JCC, 2014 WL 12042561, at *2 (W.D. Wash. Oct. 22, 2014) ("[T]he suit-limitation clause does not affect Plaintiff's extra-contractual claims for bad faith, violation of the [CPA], and violation of [IFCA].").

We conclude the trial court erred by dismissing West Beach's extra-contractual claims based on the insurance policies' suit limitation clause.

C. West Beach's Recoverable Damages under IFCA and the CPA

Commonwealth argues that even if West Beach's IFCA and CPA claims survive, under Coventry Associates v. American States Insurance Co., West Beach cannot recover policy benefits as its damages.

In Coventry, an insured alleged its first party insurer failed to investigate its claim in good faith. 136 Wn.2d at 273-74. It sought policy benefits as its recoverable damages. Id. at 283. The Washington Supreme Court addressed whether "coverage by estoppel" was the appropriate remedy in that case. Id. at 284. It recognized that in the third party claim context, if an insurer acts in bad faith, that insurer is estopped from denying coverage, even if an otherwise good policy defense exists. Id. The Court held, however, that in the first party context, coverage by estoppel is not the appropriate remedy because "the loss in the first-party situation has been incurred before the insurance company is aware a claim exists." Id.

But coverage by estoppel was at issue in Coventry only because the parties both agreed that there was, in fact, no coverage for the claimed losses. Id. at 275. Coventry's only allegation was bad faith in the investigation of its claim, not bad faith in the denial of coverage. Id. It was in this context that the Court limited Coventry's damages to the amounts it incurred as a result of American States' bad faith investigation. Id. at 285; see also Peoples v. United Servs. Auto. Ass'n, No. 96931-1, slip op. at 12, __ Wn.2d __, __ P.3d __, 2019 WL 6336407, at *4 (Wash. Nov. 27, 2019), http://www.courts.wa.gov/opinions/pdf/969311.pdf (answering certified question from federal court and concluding that wrongfully denied

personal injury protection benefits constitute an injury to business or property under the CPA).

In this case, West Beach contends the Commonwealth all-risk policies actually cover its claimed losses. Under IFCA, a claimant is entitled to "actual damages sustained, together with the costs of the action." RCW 48.30.015(1). An insurer is liable for those damages proximately caused by its IFCA violations. Dees v. Allstate Ins. Co., 933 F. Supp. 2d 1299, 1312 (W.D. Wash. 2013). And under the CPA, a plaintiff must prove that the injury it sustained is causally linked to the unfair or deceptive act. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 793, 719 P.2d 531 (1986). The CPA allows a plaintiff "injured in his or her business or property" by a CPA violation to recover actual damages. RCW 19.86.090; see also Peoples, No. 96931-1, slip op. at 11, 2019 WL 6336407, at *4. And the "deprivation of contracted-for insurance benefits is an injury to 'business or property'." Peoples, No. 96931-1, slip op. at 7-8, 2019 WL 6336407, at *3. Thus, recoverable damages under both IFCA and the CPA can include policy benefits that were unreasonably denied, subject to the policy's limits and other applicable terms and conditions. Dees, 933 F. Supp. 2d at 1312-13; see also Schreib v. Am. Family Mut. Ins. Co., 129 F. Supp. 3d 1129, 1137 (W.D. Wash. 2015). Based on this reasoning, we conclude that Coventry does not apply unless and until a jury determines that no coverage exists under the two relevant policies.

We conclude the trial court erred by not allowing the jury to decide whether the damage at West Beach's property was caused by covered perils and, if so, whether Commonwealth unreasonably denied coverage and violated IFCA and the

CPA by failing to pay for that covered damage. We thus reverse the trial court's order granting Commonwealth's motion to enforce the Coventry limitation on damages for extra-contractual claims, the order denying West Beach's motion regarding its IFCA and CPA damages, and the judgment for Commonwealth. We remand to the trial court for further proceedings consistent with this opinion.

Reversed and remanded.

Andrus, J.

WE CONCUR:

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

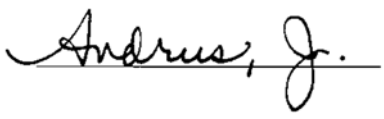
WEST BEACH CONDOMINIUM, a Washington non-profit corporation, Appellant, v. COMMONWEALTH INSURANCE COMPANY OF AMERICA, a foreign insurance company, Respondent.	No. 79676-3-I ORDER DENYING MOTION FOR RECONSIDERATION

Respondent, Commonwealth Insurance Company of America, filed a motion for reconsideration of the opinion that was filed on January 13, 2020. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



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