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NO. 62778-3-I

King County Cause No. 07-2-21367-8 SEA

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

MARY FUNG KOEHLER,
individually,

Plaintiff/Appellant,

v.

ALLSTATE INSURANCE COMPANY, an Illinois Corporation;
HILLYARD INDUSTRIES, *aka* Hillyard Inc., a Missouri corporation;
PROFESSIONAL CLEANING AND RESTORATION SERVICES,
L.L.C., *dba* SERVPRO, a Washington Corporation, BRENT YOUNG and
JANE DOE YOUNG, husband and wife and the marital community
composed thereof, and JAMES YOUNG and JANE DOE YOUNG,
husband and wife and the marital community composed thereof

Defendant/Respondent.

BRIEF OF RESPONDENT ALLSTATE INSURANCE COMPANY

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF ISSUE 2

III. STATEMENT OF CASE 3

 A. Procedural History 3

 B. Background Facts 4

 1. Koehler’s Personal History at the Time of the
 Losses 4

 2. Koehler’s Three Claims to Allstate 5

 a. February 16, 2002, Theft Loss 5

 b. June 21, 2004, Water Loss 6

 c. December 7 - 13, 2004, Theft Loss 9

 3. Allstate’s Investigation into the Losses 11

 4. Inconsistencies in Personal Property Claims 12

IV. LEGAL ARGUMENT AND AUTHORITY 14

 A. Summary Judgment Dismissal of Koehler’s Extra Contractual
 Claims was Proper 14

 1. Dismissal of Tort of Failure to Act in Good
 Faith 14

 2. Dismissal of Consumer Protection Act Claims .. 17

 3. Cancellation of Policy by Allstate is Not Bad Faith or
 Violation of the Consumer Protection Act 19

 B. Trial Court’s Order Striking Declarations in Opposition to
 Allstate’s Motion for Summary Judgment was Proper .. 20

1.	Koehler Did Not Complete the Proper Procedural Requirements to Seek this Court’s Review	21
2.	Declarations Submitted by Koehler Contain Inadmissible Hearsay	22
a.	Declaration of Timothy Ronald Fung	22
b.	Declaration of Jerry Bedlington	23
c.	Declaration of Mark Keltner	24
d.	Declaration of Nicholas Chariton	24
e.	Declaration of Gregory Koehler	24
f.	Declaration of Mary Koehler	25
g.	Declaration of Maria Roberts	25
3.	Trial Court Properly Evaluated the Declarations Submitted by Koehler	26
C.	Trial Court’s Denial of Koehler’s Oral Motion for Continuance was Proper	28
D.	Trial Court Did Not Deny Koehler Any Due Process Right by Granting Motion for Summary Judgment	29
1.	No Deprivation of Due Process by Denial of Continuance	30
2.	Trial Court Properly Considered All Admissible Evidence	31
E.	Koehler Did Not Raise Issue of “Unclean Hands” Before Trial Court and There is No Evidence of “Unclean Hands”	32
F.	There is No Evidence of Fraud or Misrepresentations by Allstate	33
G.	Koehler has Failed to Provide Required Medical Evidence	34

H. As Prevailing Party, Allstate is Entitled to Recover Its
Statutory Fees and Costs 36

V. CONCLUSION 36

TABLE OF CASES AND AUTHORITIES

Washington Cases

<i>American States v. Symes of Silverdale</i> , 150 Wn.2d 462, 78 P.3d 1266 (2003)	14-15
<i>Bay Industry, Inc v. Jefferson County</i> , 33 Wn. App. 239, 653 P.2d 1355 (1982)	30
<i>Boeing Co. v. Sierracin Corp.</i> , 108 Wn.2d 38, 50-51, 738 P.2d 665 (1987)	27
<i>Blomster v. Nordstrom, Inc.</i> , 103 Wn. App. 252, 260, 11 P.3d 883 (2000)	22
<i>Bryant v. Joseph Tree, Inc</i> , 119 Wn.2d 210, 829 P.2d 1099 (1992)	30
<i>Charbonneau v. Ellis (Wilbur) Co.</i> , 9 Wn. App. 474, 512 P.2d 1126 (1973)	22
<i>Fabrique v. Choice Hotels International</i> , 144 Wn. App. 675, 685, 183 P.3d 1118 (2008)	35
<i>Hangman Ridge training Stables v. Safeco Title Ins. Co</i> , 150 Wn.2d 778, 719 P.2d 531 (1986)	18
<i>In re Koehler</i> , 95 Wn.2d 606, 528 P.2d 461, 628 P.2d 461 (1981)	5
<i>In re Koehler</i> , 110 Wn.2d 24, 750 P.2d 254 (1986)	5
<i>International Ultimate, Inc., v. St. Paul Fire & Marine Ins. Co.</i> , 122 Wn. App. 736, 87 P.3d 774 (2004)	22
<i>JL Cooper & Co v. Anchor Securities Co</i> , 9 Wn.2d 45, 113 P.2d 845 (1941)	33
<i>Kirk v. Mt. Airy Ins. Co.</i> , 134 Wn.2d 558, 951 P.2d 1124 (1998)	14
<i>Loss v. DeBord</i> , 67 Wn.2d 318, 407 P.2d 421 (1965)	22
<i>Manteufel v. Safeco Ins. Co of Am</i> , 117 Wn. Ap. 168, 68 P.3d 1093 (2003)	29

<i>Miller v. Likins</i> , 109 Wn. App. 140, 148, 34 P.3d 835 (2001)	27
<i>Overton v. Consol Ins. Co.</i> , 145 Wn.2d 417, 38 P.3d 322 (2002)	14
<i>Parker v. United Airlines, Inc.</i> , 32 Wn. App. 722, 649 P.2d 181 (1982)	30-32
<i>Philippides v. Bernard</i> , 151 Wn.2d 376, 88 P.3d 939 (2004)	26
<i>Port of Walla Walla v. Sun-Glo Producers, Inc.</i> , 8 Wn. App. 51, 504 P.2d 324 (1972)	33
<i>Queen City Farms, Inc. v. Central Nat'l Ins. Co.</i> , 126 Wn.2d 50, 102, 882 P.2d 703, 891 P.2d 718 (1994)	27
<i>Rivers v. Washington State conference of Mason Contractors</i> , 145 Wn.2d 674, 41 P.3d 1175 (2002)	32
<i>SAFECO Insurance Company v. McGrath</i> , 63 Wn. App. 170, 177, 817 P.2d 861 (1992)	27
<i>Seattle Pump Co, Inc v. Traders in General Ins. Co.</i> , 93 Wn. App. 743, 970 P.2d 361 (1990)	18
<i>Sehlin v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.</i> , 38 Wn. App. 125, 132-33, 686 P.2d 492 (1984)	27
<i>Seybood v. Neu</i> , 105 Wn. App. 666, 19 P.3d 1068 (2001)	35
<i>Sign-O-Lite Signs v. DeLaurenti Florists</i> , 64 Wn. App. 553, 825 P.2d 714 (1992)	18
<i>Smith v. Safeco Ins. Co.</i> , 150 Wn.2d 478, 78 P.3d 1274 (2003)	14
<i>Snohomish County v. Rugg</i> , 115 Wn. App. 218, 224, 61 P.3d 1184 (2003) <i>citing Grimwood v. Univ. of Puget Sound, Inc.</i> , 110 Wn2d. 355, 753 P.2d 517 (1988)	22
<i>State v Anderson</i> , 112 Wn. App. 828, 51 P.3d 179, <i>reconsideration den, rev den</i> , 149 Wn.2d 1022, 72 P.3d 762 (2002)	21
<i>State v. Athan</i> , 160 Wn.2d 354, 158 P.3d 27 (2007)	20-21

<i>State v. Cheatam</i> , 150 Wn.2d 626, 81 P.3d 830 (2003)	27
<i>State v. Evans Campaign Committee</i> , 86 Wn.2d 503, 546 P.2d 75 (1976)	22
<i>State v. Farr-Lenzini</i> , 93 Wn. App. 453, 461, 970 P.2d 313 (1999)	27
<i>State v. Greene</i> , 139 Wn.2d 64, 984 P.2d 1024, <i>reconsideration den, cert den</i> , 120 S.Ct. 1726, 529 U.S. 1090, 146 L.Ed.2d 647, <i>grant of habeas corpus</i> <i>aff'd</i> , 228 F.3d 1081 (1999)	21
<i>State v. Martinez</i> , 105 Wn. App. 775, 20 P.3d 1062 (2001)	21
<i>State v. Perez</i> , 137 Wn. App. 97, 151 P.3d 249 (2007)	21
<i>State v. Phillips</i> , 123 Wn. App. 761, 98 P.3d 838, <i>rev den</i> , 154 Wn.2d 1014, 113 P.3d 1040 (2006)	21, 27
<i>State v. Pittman</i> , 88 Wn. App. 188, 943 P.2d 713 (1997)	27
<i>State v. Willis</i> , 151 Wn.2d 255, 87 P.3d 1164 (2004)	27
<i>Tornetta v. Allstate Ins. Co</i> , 94 Wn. App. 803, 973 P.2d 8 (1999)	19
<i>Van de Grift v. Skagit County</i> , 59 Wn. App. 545, 800 P.2d 375 (1990)	18
<i>Walker v. State</i> , 121 Wn.2d 214, 217, 848 P.2d 721 (1993)	27
<u>Washington Statutes:</u>	
RCW 4.84	36
RCW 19.86.	19
RCW 48.18.290.	19-20
<u>Rules</u>	
CR 54(d)	36
CR 56(e)	22

CR 56(f)	2, 28, 29
ER 602	22
ER 701	22, 26
ER 702	22, 26
ER 802	22
ER 901	22
RAP 2.5(a)	32-33
RAP 5.2	21

I. INTRODUCTION

Respondent, Allstate Insurance Company (hereinafter, "Allstate"), requests that this Court affirm the Trial Court's Order dismissing Koehler's extra contractual claims against Allstate. The Trial Court properly ruled that Allstate's actions were reasonable and Koehler could not establish all necessary elements of her claims.

Allstate also requests that this Court affirm the Trial Court's Order striking portions of the declarations of Timothy Ronald Fung, Jerry Bedlington, Mark Keltner, Nicholas Chariton, and Maria Roberts that contain inadmissible hearsay, speculation and unfounded expert opinions.

This case concerns three insurance claims made by Koehler to Allstate; one water loss claim and two alleged burglary claims. Allstate's investigation of the alleged burglaries produced evidence from the investigating police officers that the thefts never took place. Based upon the police investigation, there was no objective evidence that Koehler's house was ever broken into by anyone. Allstate also obtained evidence that Koehler grossly exaggerated the value of the claimed items. Finally, some of the items claimed as stolen were the same claimed items in both theft losses.

Koehler's claim for the water loss damage is also grossly exaggerated and excessive. Allstate investigated the loss and properly paid for the damage. Koehler later claimed, without any objective substantiating evidence, that there was additional damage to her house and that she suffered

physical injury.

The Trial Court properly concluded that Allstate's investigation, adjustment and coverage decisions were reasonable and appropriate. The Trial Court correctly evaluated the law and determined that there was no issue of material fact to preclude dismissal of Koehler's extra contractual claims against Allstate. As a result, the dismissal of claims against Allstate on summary judgment should be upheld.

II. STATEMENT OF ISSUE

Koehler seeks review of two of the Trial Court's rulings in Allstate's favor: (1) summary judgment dismissal of Koehler's extra contractual claims, and (2) striking inadmissible portions of declarations submitted with Koehler's response to Allstate's motion for summary judgment. Allstate submits that these motions were properly decided by the Trial Court in accordance with Washington law and thereby must be affirmed.

Koehler also requests this Court consider several discovery related issues that were raised orally at the Trial Court hearing on the summary judgment motion. Specifically, Koehler seeks review of the Trial Court's denial of her motion to continue to permit additional discovery. However, Koehler failed to bring any discovery motion compelling responses prior to the summary judgment hearing. Koehler also failed to make any showing that additional discovery was necessary or unavailable to justify a continuance pursuant to CR 56(f). The Trial Court properly denied Koehler's

request for a continuance.

Koehler has failed to present evidence to support her claim that she was denied her due process by the Trial Court at the summary judgment hearing. Specifically, Koehler claims that she was denied due process when the Trial Court struck the inadmissible portions of the declarations submitted by her and by granting Allstate's motion for summary judgment. These allegations are unsupported by law or evidence.

Koehler raises two new issues that were not before the Trial Court and therefore may not be considered by this Court. First, Koehler did not raise the issue that Allstate had "unclean hands." Second, Koehler also did not raise the issue of common law fraud or misrepresentations by Allstate.

Finally, Koehler has failed to identify any medical evidence that any injuries were caused by ServePro or Hillyard with the use of Rejuvna. As a result, her claims must fail and were properly dismissed by the Trial Court.

III. STATEMENT OF CASE

A. Procedural History

Allstate's motion for partial summary judgment to dismiss Koehler's extra-contractual claims was heard by the Trial Court on October 24, 2008, and granted on the same day. CP 111-113. Allstate's motion to strike portions of the declarations submitted by Koehler in opposition to Allstate's motion for partial summary judgment was also heard and granted on October 24, 2008. CP 108-110, RP 30.

Koehler filed a motion for reconsideration of the Trial Court's order granting Allstate's motion for partial summary judgment, which was filed on November 3, 2008. 1384-1387. On November 19, 2008, the Trial Court denied Koehler's motion for reconsideration. CP 120-121. No motion for reconsideration of the Trial Court's order on the motion to strike was ever filed by Koehler. On December 19, 2008, Koehler filed her notice of appeal. CP 124-127.

B. Background Facts

This lawsuit arises out of three (3) insurance claims which allegedly occurred on or about February 16, 2002, June 21, 2004, and December 7-13, 2004. CP 1-13. On February 16, 2002, Koehler's home was allegedly burglarized resulting in a loss of jewelry and personal property. CP 166-1072. On June 21, 2004, Koehler suffered property damages to her home as a result of water leaks and mold. CP 973-977. In December 2004, another theft loss allegedly occurred. CP 1008-1015.

Allstate's investigation of these claims found that the February 2002 and December 2004, theft losses did not take place and that Ms. Koehler made misrepresentations and concealed material facts that precluded coverage. CP 1112-1119. Based on these results, Allstate denied Koehler's theft claims. CP 1112-1119. Allstate investigated and paid all amounts due and owing for the June 2004 claim for water and mold damage. CP 976.

1. Koehler's Personal History at the Time of the Losses

Mary Koehler is a pro se plaintiff and an attorney, although she no longer practices in Washington state because she is currently suspended from practicing law in the State of Washington. See *In re Koehler*, 110 Wn.2d 24, 750 P.2d 254 (1986), and *In re Koehler*, 95 Wn.2d 606, 628 P.2d 461, 628 P.2d 461 (1981). Koehler filed bankruptcy in 1991. CP 1110. Included in her bankruptcy filing, Koehler declared that under the category of “wearing apparel, including fur, jewelry, and personal ornaments” she only owned a total of such property in the amount of \$750. CP 1110.

Koehler was insured with Allstate under a Deluxe Plus Homeowners Policy at all material times. CP 432.

2. Koehler’s Three Claims to Allstate

a. February 16, 2002, Theft Loss

The first loss allegedly occurred on February 16, 2002. CP 1066-1072. Koehler claims that her home was burglarized and jewelry and other personal property was taken. CP 1066-1072. Koehler notified the Lake Forest Police Department on the same day to report the theft. CP 1066-1072. As a result of the Police Department’s investigation, the final police report made the following conclusion:

Based on the examination of the house, the point of entry, condition of the house, VIKOEHLER’s demeanor and past history, it appeared that the claim of burglary was highly dubious.

CP 1070.

Koehler did not notify Allstate about the alleged theft until May 10, 2002, almost three months after the alleged theft took place. CP 432. Ms. Koehler failed to cooperate with Allstate's investigation and her claim was closed. CP 432, 445

Allstate's Investigation

After reporting the loss on May 10, 2002, no follow up was received from Koehler. Allstate proceeded to contact Koehler to determine if she was still pursuing her claim. CP 445. However, Koehler did not contact Allstate regarding her claim again until July 29, 2002. CP 446.

On July 29, 2002, Allstate obtained Koehler's recorded statement and requested that she complete an inventory of the claimed stolen property as well as any documentation regarding the items. CP 432, 446. Koehler never provided Allstate with any list of the claimed items. CP 484, 432. As a result, Allstate concluded that Koehler was not interested in pursuing the claim and Allstate closed its file. CP 432.

An inventory list was eventually provided by Koehler three years later on February 28, 2005, at her examination under oath obtained in conjunction with the December 2004 loss, as described below. CP 484, 1060-1063.

b. June 21, 2004, Water Loss

Koehler reported to Allstate that she discovered water damage to her home on June 21, 2004, and made the second claim to Allstate. CP 974. Koehler claims to have attempted to dry the wet carpet in her home before

notifying Allstate on June 25, 2004, of the water loss. CP 432, 974.

Allstate's Investigation

On day the water loss was reported to Allstate, June 25, 2004, Allstate contacted Servpro and requested that Servpro contact Koehler to remediate the damage. CP 432, 974. Servpro contacted Koehler and immediately began cleaning the water to prevent further damage or mold growth.

On June 28, 2004, Koehler notified Allstate that the smell of the antimicrobial spray used by Servpro was too strong to allow her to live in her home. CP 432, 972. As a result, Koehler moved into a hotel. CP 432, 972. Allstate paid a total of \$3,174.99 for Koehler to live in the hotel as the remediation continued. CP 975.

Koehler advised Allstate that she refused to move back into her home because it was contaminated by the antimicrobial used by Servpro. CP 975. Thereafter, on July 7, 2004, Indoor Air & Environmental Services (IAES) inspected Koehler's residence to determine whether the air in her home was contaminated. CP 976. IAES issued a final report on July 18, 2007. CP 468-471.

In this report, IAES concluded that the only remaining moisture and moldy areas in Koehler's home were from an ongoing plumbing problem that existed prior to the loss. CP 470. Additionally, IAES concluded proper ventilation in the home would leave no remaining residual irritant compounds present from Re-Juv-Nal or other disinfecting chemicals used by Servpro.

CP 470-471. IAES could not identify any odors from any chemical disinfectant or contamination. CP 460. The inspector from IAES reported to Allstate that she did not suffer or experience any immediate or long term medical problems, headaches, or other physical side effects from ReJuvNal or from being inside of Koehler's house. CP 963-965.

IAES also researched and reported on the chemical antimicrobial used by Servpro, ReJuvNal. CP 964. IAES reported that ReJuvNal is a mild disinfectant recommended for minor cases of contamination related to mold. CP 964. The active ingredients in ReJuvNal are water-soluble and no long term health effects are linked to its use. CP 964.

On or about August 30, 2004, Servpro advised Allstate that it had not completed all remediation work in Koehler's home because she refused to allow the workers in the house. CP 432-433.

Allstate also requested the service of American Leak Detection (ALD) to perform an inspection to identify the source of any additional water leaks. CP 976. ALD concluded that no additional leaks or backups from the plumbing system or hot water tank existed. CP 998. ALD also concluded that a long term slow water leak had been ongoing for a lengthy period of time prior to Koehler's report to Allstate. CP 998.

Allstate's Payment and Koehler's Claimed Damages

In a letter to Koehler of September 15, 2004, Allstate agreed to pay for the damage caused by the water leak, including the mold damage. CP

1000-1001. As a result, Allstate issued a check to Koehler in the amount of \$4,226.00 that constituted the remaining amount of the \$5,000 insurance policy's mold limit. CP 1001.

In total, Allstate paid Koehler \$10,802.39 for the water and mold damage. CP 976. This amount included the policy's maximum mold limit of \$5,000. CP 976.

Koehler claimed that the house was still somehow contaminated in direct contrast to the opinion of the hygienist expert from IAES. CP 1042. Yet, Koehler never produced any expert evidence of any kind to refute the opinions of IAES. Nevertheless, Koehler claimed in her deposition that it would cost approximately \$56,000 to conduct the remediation recommended in the report of IAES. CP 1041. When asked how she calculated the costs, Koehler advised that she "dowsed" the figure. CP 1041. Koehler "dowses" by using a crystal block or pendulum to provide "answers" to questions she asks. CP 1074-1075.

c. December 7 - 13, 2004, Theft Loss

The final, and third claim, involves another alleged burglary loss that allegedly took place sometime between December 7 to 13, 2004. CP 433. In this claim, Koehler again asserts that jewelry and personal property was stolen. CP 1107. Koehler reported this alleged theft to the Lake City Police Department on December 13, 2004. CP 1008-1015. The report issued by the Lake City Police Department states as follows:

A window on the back of the house, was closed, but left unlocked. The window was broken in the lower corner from a previous reported residential burglary in 2002. Sgt. Evans reported that when he checked the window from the inside, that there were cobwebs in place, indicating that the window had not been opened for sometime. Also, there was a bookcase inside of the window that was full of books. There were no books knocked over, or any wetness due from the rain...

I then accompanied Sgt. Evans and we spoke with Koehler. Koehler led us through the residence. The residence was in total disarray. There was an over abundance of household furnishings, papers, clothes, and other miscellaneous items. Officers were unable to walk through the residence without stepping onto, knocking over or having to move things in order to function. It was unclear how anyone could notice that an item had been moved, taken, or left.

CP 1014.

Allstate's Investigation

Koehler first notified Allstate of this alleged burglary on December 14, 2004. CP 433. On December 15, 2004, Allstate requested an inventory from Koehler of all items claimed as stolen. CP 433. Koehler informed Allstate that she would be unable to provide a list of all stolen property because she had not been living in her home since June 28, 2004. CP 433. Koehler advised that she could not go into her home due to the "toxic mold" from the June 2004 water loss. CP 433.

Allstate obtained Koehler's recorded statement on December 23, 2004. CP 433, 478-479. In this statement, Koehler informed Allstate that she believed the burglars entered through the same window as in the February

2002, loss. CP 479.

Allstate also obtained the police report filed by Koehler regarding this loss. CP 1008-1015. In this police report, Allstate learned that the police concluded that there were no signs of forced entry, the window referenced by Koehler exhibited no signs as the entry point, and there was no evidence that the burglary actually took place. CP 1002-1004.

3. Allstate's Investigation into the Losses

Based on this information, Allstate requested that Koehler submit a sworn proof of loss for all three claims identified above. CP 484. Allstate also requested that Koehler appear at an examination under oath. This examination took place from February 28 - March 2, 2005. CP 1073-1106.

At her examination under oath, Koehler provided an inventory of the items alleged to be stolen during the December 2004, burglary. CP 1107-1108. The 2004 Theft Loss claim totaled \$95,000. CP 483. However, the values of the claimed items were obtained by "dowsing." CP 483. Koehler was asked to define what "dowsing" meant. Koehler testified that "dowsing" is as follows:

It's—you know how people search for water with sticks? You can use sticks, twigs, and as you cross the point where water is, it will cross. Well, you can do it for anything...So what you do is ask the questions, and the more specific you are, the answers are 'yes' and 'no.' And with a quick mind and with the knowledge you have, you can find out all kinds of things.

CP 1074-1075.

Koehler also testified that the movement of a “crystal block” provided her with answers regarding the value of the stolen items. She then submitted these values to Allstate as the basis of her claim. CP 1075.

4. Inconsistencies in Personal Property Claims

Despite requests by Allstate, Koehler did not provide any supporting documentation for her claim for personal property that was allegedly stolen until her examination under oath in March 2005. CP 483. An examination of the inventories produced by Koehler revealed to Allstate that many of the items claimed by Koehler as part of the February 2002, loss were also claimed as part of Koehler’s December 2004, loss. CP 483. Specifically, in the list of items provided by Koehler, the following claimed property was identified as follows:

February 2002 Theft Loss	December 2004 Theft Loss
“Rolex reflex (p=\$750) camera	“Roliflex single lens reflex camera”
“[R]ed stamp album from Malaysia full of commemorative unused stamps set or sheets...”	“Bright red stamp book with unused commemorative sheets and in glassine bags...”
“[N]ew unused men and women’s watches in their green cases.”	“[W]atches in green boxes, men’s and women’s”

<p>“All 36+ (there were 2 or 3 necklaces on some single push pins) real and heavy chains hanging under the book shelf above headboard are missing except a blue cone sell necklace...Heavy, very long gold chain with several framed owls.”</p>	<p>“40, at least 54 necklaces, sterling silver chains gold, stones, owls”</p>
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CP 1083-1086, 1107.

Koehler subsequently admitted that the lists of claimed items also contain many items that were actually removed from the house after the theft, such as the “1933 gilt framed large black and ink of elderly gentleman, 1933,” “Nude wooden nude woman with high base and high hairdo,” “Photograph albums with photos,” and “American toiletry or jewelry holder.” CP 1054, 1064. Yet, these items were included on the list of items for which she requested payment by Allstate.

Further, total values listed on the property lists were dramatically different from the values claimed in Ms. Koehler’s 1991 bankruptcy. On her inventory submitted to Allstate, she lists “marriage bracelets” for \$5,000. CP 1060-1063. Ms. Koehler claimed to have purchased Thai jewelry during a trip in 1971 or 1972. CP 1060-1063. This jewelry is listed on her 2002 inventory list as being worth \$1,250 or \$1,200 (Thai rubies and diamond ring) and \$1,100 or \$1,250. (Thai sapphire and diamond ring). CP 1060-1063. The marriage bracelet and the Thai jewelry alone would total \$7,350 or \$7,450. Yet in Koehler’s bankruptcy, she claimed that all “wearing

apparel, including fur, jewelry, and personal ornaments” only totaled \$750.
CP 1110.

IV. LEGAL ARGUMENT AND AUTHORITY

A. Summary Judgment Dismissal of Koehler’s Extra Contractual Claims was Proper

The Trial Court’s dismissal of all of Koehler’s extra contractual claims against Allstate was proper and should be upheld by this Court.

1. Dismissal of Tort of Failure to Act in Good Faith

The Trial Court correctly dismissed Koehler’s extra contractual claims given her inability to establish any material facts to support either cause of action as a matter of law. To establish that Allstate failed to act in good faith, Koehler was required to set forth evidence that Allstate acted unreasonably, frivolously or in an unfounded manner. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 78 P.3d 1274 (2003); *American States v. Symes of Silverdale*, 150 Wn.2d 462, 78 P.3d 1266 (2003); *Overton v. Consol Ins. Co.*, 145 Wn.2d 417, 38 P.3d 322 (2002); *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 951 P.2d 1124 (1998).

The burden of an insured to establish an insurer failed to act in good faith was articulated in *Smith v. Safeco, supra* as follows:

If an 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.

Smith v. Safeco, supra at page 486.

The reasonableness of an insurer's conduct is a complete defense to any allegation of failure to act in good faith:

An insurer is entitled to a directed verdict or a dismissal on summary judgment of the policyholder's bad faith claim only if there are no disputed material facts pertaining to the reasonableness of the insurer's conduct under the circumstances and the insurer is entitled to prevail as a matter of law.

American States v. Symes, supra at page 470 (internal citations omitted).

The Trial Court appropriately concluded that Allstate's reasonable conduct required dismissal as a matter of law of Koehler's claims. The reasonableness of Allstate's conduct in the investigation of the alleged theft losses is highlighted by the following facts, each of which Koehler has failed to dispute:

- Lake Forest Park Police report stated that "the [2002] claim of burglary was highly dubious" and could not find any signs of forced entry into Koehler's home. CP 1070.
- Koehler failed to submit any proof of loss, inventory, or other documentation to support her claims for the 2002 or 2004 alleged losses until her examination under oath in 2005. CP 484,
- The information provided by Koehler in her bankruptcy proceedings revealed misrepresentations regarding the value of the items claimed as stolen in 2002 and 2004. CP 482-484.
- Koehler claimed the same items as stolen in her inventory list

for the 2002 **and** the 2004 theft losses. CP 483.

- Koehler later admitted that she found a number of items claimed as stolen and a number of claimed items were later returned to her by third parties. CP 1054-1059; 1078-1079; 1090-1091.
- Koehler admitted that the Lake Forest Park Police suspected her of fabricating the burglary loss. CP 1043-1045.
- Neither Koehler nor the Lake Forest Park Police could initially identify any items stolen in the alleged 2004 burglary. CP 1053, 1014.

Allstate's investigation revealed that Ms. Koehler misrepresented the substance of both the 2002 and 2004 theft losses. CP 482-484. The police reports and statements of Koehler indicated that the losses likely never took place. As a result, Allstate's denial of the theft claims was reasonable and the Trial Court properly dismissed Koehler's claims of negligence and failure to act in good faith in the denial of the theft claims.

Additionally, Allstate's reasonable conduct in the adjustment and handling of the water loss claim is highlighted by these undisputed facts:

- Allstate immediately contacted Servpro following the report of the water loss to clean and dry-out the affected areas of Koehler's home. CP 974.
- Allstate paid for Koehler's hotel and food expenses when she

initially claimed that the house was unlivable even though there was no objective evidence to support such a claim. CP 975.

- Allstate paid Koehler the policy's limits for mold damage of \$5,000 in addition to \$2,627.40 for costs associated with the water damage. CP 976.
- Allstate retained a certified hygienist to inspect and test the air quality and interior surfaces after receiving complaints from Koehler about a smell in her home. CP 963-965; 968-972.
- The hygienist reported no contamination from any chemical agent used by Servpro. The hygienist also concluded that the house was habitable.

Allstate followed the recommendations of the hygienist. No licensed hygienist ever provided any evidence contrary to the work of IAES. CP 976.

Allstate fully compensated Koehler for the damage to her residence following the water loss. Koehler has failed to produce any evidence of any additional damages caused by Allstate's conduct. As a result, the Trial Court properly dismissed Koehler's claims for negligence and failure to act in good faith in the adjustment of the water loss claim.

2. Dismissal of Consumer Protection Act Claims

The Trial Court appropriately dismissed Koehler's Consumer Protection Act ("CPA") claims. Koehler failed to present evidence to support

all of the necessary elements of a CPA claim. In order to establish a violation of the CPA, Koehler was required to present evidence to satisfy each of the following elements:

1. Allstate committed an unfair or deceptive act or practice;
2. That occurred in trade or commerce;
3. That affects the public interest;
4. Causes injury to Koehler's business or property; and
5. The injury is caused by the unfair or deceptive act.

Hangman Ridge training Stables v. Safeco Title Ins. Co, 150 Wn.2d 778, 719 P.2d 531 (1986).

A failure to establish all elements of a CPA claim requires dismissal of the cause of action. *Sign-O-Lite Signs v. DeLaurenti Florists*, 64 Wn. App. 553, 825 P.2d 714 (1992); *Van de Grift v. Skagit County*, 59 Wn. App. 545, 800 P.2d 375 (1990). An insurer's reasonable denial of coverage does not constitute an unfair practice prohibited by the CPA. *Seattle Pump Co, Inc v. Traders in General Ins. Co*, 93 Wn. App. 743, 970 P.2d 361 (1990).

Not only was Allstate's conduct in the investigation and adjustment of Koehler's claims reasonable, but Koehler has presented no evidence of damage to her business or property as a result of any conduct of Allstate. Koehler has also failed to present any actual evidence of an unfair or deceptive act by Allstate. As a result, Koehler cannot establish all elements of her claim.

Moreover, Koehler's misrepresentations regarding the items claimed as stolen in the 2002 and 2004 alleged burglaries precludes a finding of a

violation of the CPA. *Tornetta v. Allstate Ins. Co*, 94 Wn. App. 803, 973 P.2d 8 (1999). Therefore, the Trial Court's dismissal of Koehler's CPA cause of action was appropriate and must be upheld.

3. Cancellation of Policy by Allstate is Not Bad Faith or Violation of the Consumer Protection Act

Koehler also argues that Allstate's cancellation of her policy of insurance was somehow improper. However, Allstate's cancellation of Koehler's policy of insurance in 2005 is not a violation of the CPA or a failure to act in good faith. An insurer is permitted to cancel a policy of insurance prior to the expiration of the policy period pursuant to RCW 48.18.290. As conceded by Koehler, Allstate provided her with a proper cancellation notice. See Brief of Appellant at page 26. There is no evidence that the cancellation of the policy was improper in any way, amounted to a failure to act in good faith or violated the CPA.

Koehler claims that the "illegal" cancellation of her policy of insurance violated RCW 19.86, or the Consumer Protection Act. RCW 19.86 does not state that the cancellation of an insurance policy is a violation of the Consumer Protection Act. There is no evidence that the cancellation of Koehler's policy was "illegal" in any way.

Koehler also claims that the cancellation was based on Allstate's "fraudulent misrepresentations." Again, there is no evidence that Allstate made any misrepresentations to Koehler nor acted in any fraudulent manner.

The cancellation was made in accordance with the requirements of RCW 48.18.290.

Koehler has failed to present any evidence that Allstate's cancellation of the policy caused her damage. The only discussion of the cancellation of Koehler's policy was submitted in Koehler's amended complaint and declaration in opposition of Allstate's motion for summary judgment. CP 645 and 495 respectively. Both documents contain generalized statements that the cancellation of the policy was (1) improper, (2) impacted her ability to sell an office building, and (3) impacted her ability to obtain insurance on a condominium. CP 645 and 495. None of these allegations are supported by any evidence. More importantly, there is no identification of how the cancellation of the policy actually caused any damage to Koehler as alleged.

B. Trial Court's Order Striking Declarations in Opposition to Allstate's Motion for Summary Judgment was Proper

In the order granting Allstate's motion to strike, the Trial Court properly ordered select portions of the declarations of Timothy Ronald Fung, Jerry Bedlington, Mark Keltner, and Nicholas Chariton to be struck as containing inadmissible hearsay. The Trial Court also appropriately refused to consider any unqualified expert opinions contained in the declarations submitted by Koehler.

A Trial Court's decision to exclude testimony as inadmissible hearsay is reviewed for abuse of discretion. *State v. Athan*, 160 Wn.2d 354, 158 P.3d

27 (2007); *State v Anderson*, 112 Wn. App. 828, 51 P.3d 179, reconsideration den, rev den, 149 Wn.2d 1022, 72 P.3d 762 (2002); *State v. Martinez*, 105 Wn. App. 775, 20 P.3d 1062 (2001). Likewise, the exclusion of unqualified expert testimony by a Trial Court will not be disturbed absent abuse of discretion. *State v. Greene*, 139 Wn.2d 64, 984 P.2d 1024, reconsideration den, cert den, 120 S.Ct. 1726, 529 U.S. 1090, 146 L.Ed.2d 647, grant of habeas corpus aff'd, 228 F.3d 1081 (1999); *State v. Perez*, 137 Wn. App. 97, 151 P.3d 249 (2007); *State v. Phillips*, 123 Wn. App. 761, 98 P.3d 838, rev den, 154 Wn.2d 1014, 113 P.3d 1040 (2006). The Trial Court did not abuse its discretion in granting this motion to strike.

1. Koehler Did Not Complete the Proper Procedural Requirements to Seek this Court's Review

A party must file a notice of appeal with the Court of Appeals within 30 days of the Trial Court order of which he seeks review. RAP 5.2. The Trial Court's order striking portions of the declarations submitted by Koehler in opposition to Allstate's motion for summary judgment was entered on October 24, 2008. CP 108-110. Koehler failed to file a motion for reconsideration of this order. As a result, the 30 day time limit to seek review of the order striking portions of the declarations expired on November 23, 2008. The notice of appeal was filed by Koehler on December 19, 2008. 125; 1473-1474. Therefore, Koehler may not obtain review of this Court of the Trial Court's October 24, 2008 order on Allstate's motion to strike.

2. Declarations Submitted by Koehler Contain Inadmissible Hearsay

Washington civil rules and courts require that affidavits submitted in support of a motion for summary judgment set forth facts that would be admissible in evidence. *See, Snohomish County v. Rugg*, 115 Wn. App. 218, 224, 61 P.3d 1184 (2003) (citing *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn2d. 355, 753 P.2d 517 (1988); and CR 56(e)).

When affidavits are offered to support the position of a party as summary judgment, the affidavits must conform to what the affiant would be permitted to testify to at trial.

Blomster v. Nordstrom, Inc., 103 Wn. App. 252, 260, 11 P.3d 883 (2000).

A declaration that states beliefs formed on the basis of hearsay is not made on personal knowledge and is inadmissible. *See State v. Evans Campaign Committee*, 86 Wn.2d 503, 546 P.2d 75 (1976). *Also see Charbonneau v. Ellis (Wilbur) Co.*, 9 Wn. App. 474, 512 P.2d 1126 (1973); *Loss v. DeBord*, 67 Wn.2d 318, 407 P.2d 421 (1965).

Because hearsay statements, speculation, unqualified testimony, and unauthenticated documents are not admissible into evidence, these statements cannot be considered by the Court in determining a summary judgment motion. *See*, ER 802; ER 602, ER 701; ER 702; and ER 901. *See also, International Ultimate, Inc., v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 87 P.3d 774 (2004).

a. Declaration of Timothy Ronald Fung

All of Mr. Timothy Fung's statements regarding "contamination" of the home or how the home was "contaminated" are inadmissible as hearsay. CP 1313-1316. These statements constitute hearsay because Mr. Fung lacks personal knowledge regarding the contamination. As a result, these statements were properly stricken from Mr. Fung's declaration.

Additionally, nothing in the declaration establishes Mr. Fung's basis for personal knowledge regarding distress, worry, or emotions experienced by individuals, specifically Ms. Koehler. CP 1316. As a result, these statements were also properly struck by the Trial Court.

b. Declaration of Jerry Bedlington

All of Mr. Bedlington's statements regarding Ms. Koehler's communications with Allstate and Servpro are hearsay as he was not privy to any such communications. Additionally, Mr. Bedlington's statements regarding Ms. Koehler's physical symptoms are also hearsay as there are no statements establishing personal knowledge. CP 1318-1323. Further, nothing in the declaration establishes Mr. Bedlington's basis for personal knowledge regarding distress, worry, or emotions experienced by Ms. Koehler. Finally, any statement regarding what Ms. Koehler told Mr. Bedlington about her dealings with the police and the alleged stolen property is also hearsay. CP 1320. As a result, the Trial Court properly struck these statements from Mr. Bedlington's declaration.

Lastly, nothing in Mr. Bedlington's declaration establishes a basis for

his personal knowledge regarding (1) Bill Caughlin, Dean West, or Richard Bartlett's certifications and qualifications, (2) Ms. Koehler's medical treatments, and (3) how Ms. Koehler felt after zone therapy, massage therapy, dowsing, or chiropractic treatments. CP 1320-1321. As a result, the Trial Court also properly struck statements in this regard from Mr. Bedlington's declaration as inadmissible hearsay.

c. Declaration of Mark Keltner

Mr. Keltner's statements regarding the thoughts of Koehler or Maria Roberts and the thought process of Koehler or Maria Roberts are all hearsay and, thus, were properly stricken. CP 1324-1321.

d. Declaration of Nicholas Chariton

Mr. Chariton's statements regarding what Koehler informed him about her home or office building is hearsay. CP 1329-1332. Nothing in the declaration establishes Mr. Chariton's basis for personal knowledge regarding distress, worry, or emotions experienced by Koehler. 1329-1332. Additionally, nothing in Mr. Chariton's declaration establishes a basis for his personal knowledge regarding (1) Bill Caughlin's alleged certifications and qualifications, (2) Koehler's claimed medical treatments, and (3) how Ms. Koehler felt after zone therapy, massage therapy, dowsing, or chiropractic treatments. CP 1331-1332. As a result, the Trial Court's ruling striking these hearsay statements was proper.

e. Declaration of Gregory Koehler

Many statements in Mr. Koehler's declaration contain hearsay statements not based on personal knowledge. Specifically, Mr. Koehler includes statements regarding what unnamed officers may have told him. CP 509-513. The declaration also contains hearsay statements regarding what Koehler may have told him. CP 512. These statements are hearsay and properly stricken by the Trial Court.

f. Declaration of Mary Koehler

Koehler also submitted a declaration that contains inadmissible hearsay that was properly stricken by the Trial Court. CP 515-520. There are unsubstantiated statements regarding what she was told by neighbors, police officers and Allstate adjusters regarding the alleged theft that took place at her residence. CP 515-520. Koehler also includes unsupported statements regarding conversations with the IAES representative regarding an alleged illness after being inside Koehler's house. CP 519. These statements are not supported by any evidence and constitute inadmissible hearsay.

g. Declaration of Maria Roberts

Koehler submitted a declaration of Ms. Roberts that includes statements and thoughts made by third parties. CP1366-1371. Ms. Roberts does not have any personal knowledge of the thoughts or statements of Koehler, Ron Phillips, and Bruce Bella. CP 1366-1371. Additionally, the statements and thoughts of Ms. Roberts' eye doctor are inadmissible hearsay. CP 1370. There is also nothing to establish Ms. Roberts' basis for personal

knowledge of the condition of various employees of Labor Ready or Trevon Meyers. CP 1366-1371. Ms. Roberts' statements regarding the distress, worry or emotions suffered by any other person constitutes inadmissible hearsay and was properly stricken by the Trial Court. CP 1366-1361.

3. Trial Court Properly Evaluated the Declarations Submitted by Koehler

The Trial Court did not exclude any testimony of any declarants because they contained inadmissible expert opinions. RP 29. The court also stated on the record that he would consider the portions of the declarations that did not constitute hearsay, as lay opinions. RP 29. Despite this holding, Koehler requests this Court find that the Trial Court refused to consider the substance of the declarations submitted by Koehler. Brief of Appellant at page 34. ER 701 specifically precludes witnesses from testifying as to issues "based on scientific, technical, or other specialized knowledge..." unless the witness has been accepted by the court as an expert regarding the particular subject. ER 702 governs expert testimony, and provides as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness *qualified as an expert* by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

ER 702. (emphasis added)

A witness must qualify as an expert in order to provide expert testimony. *See Philippides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004);

State v. Willis, 151 Wn.2d 255, 87 P.3d 1164 (2004); *State v. Cheatam*, 150 Wn.2d 626, 81 P.3d 830 (2003). Even if qualified as an expert, the witness must stay within the area of his expertise. *Queen City Farms, Inc. v. Central Nat'l Ins. Co.*, 126 Wn.2d 50, 102, 882 P.2d 703, 891 P.2d 718 (1994). *Sehlin v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 38 Wn. App. 125, 132-33, 686 P.2d 492 (1984); *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 50-51, 738 P.2d 665 (1987). The expert testimony of an otherwise qualified witness is not admissible if the issue at hand lies outside the witness' area of expertise. *State v. Farr-Lenzini*, 93 Wn. App. 453, 461, 970 P.2d 313 (1999).

Expert testimony cannot be supported by mere "conjecture and speculation." *Id.* citing *Queen City Farms*, 126 Wn.2d at 104. Conclusory or speculative expert opinions lacking an adequate foundation will not be admitted. *Queen City Farms*, 126 Wn.2d at 104; see also *State v. Phillips*, 123 Wn. App. 761, 98 P.3d 838 (2004) (witness without personal knowledge who fails to satisfy requirements of an expert witness is speculating and has no relevant admissible evidence); *Miller v. Likins*, 109 Wn. App. 140, 148, 34 P.3d 835 (2001); *SAFECO Insurance Company v. McGrath*, 63 Wn. App. 170, 177, 817 P.2d 861 (1992); *State v. Pittman*, 88 Wn. App. 188, 943 P.2d 713 (1997); *Walker v. State*, 121 Wn.2d 214, 217, 848 P.2d 721 (1993).

The Trial Court properly determined that Mr. Fung, Mr. Keltner, Mr. Chariton, Mr. Bedlington, Gregory Koehler, Maria Roberts and Mary Koehler were not expert witnesses. RP at 29. As a result, the Trial Court's refusal to

consider any of the content of the declarations as “expert opinions” was appropriate.

There is no evidence that the Trial Court failed to consider the substance of the declarations to the extent they contained lay opinions. RP at 29. The lay opinions were taken into account by the Trial Court but had no bearing on the ultimate ruling on the motion for summary judgment in Allstate’s favor. Because the Trial Court properly considered the lay opinions contained in the declarations submitted by Koehler, there was no abuse of discretion by the Trial Court in striking certain portions of the declarations.

C. Trial Court’s Denial of Koehler’s Oral Motion for Continuance was Proper

Koehler disputes the Trial Court’s denial of an oral motion to continue to conduct additional discovery. At the summary judgment hearing on October 24, 2008, Koehler requested that the Trial Court issue another continuance of the summary judgment motions. RP 14. The continuance was requested by Koehler so that she could conduct additional discovery. RP 15. The Trial Court denied Koehler’s oral request for a continuance pursuant to CR 56(f). RP 28. The request was denied because of the two prior continuances granted to Koehler (CP 86-87, RP 28). The Trial Court’s subsequent denial of Koehler’s motion for reconsideration of the denial of a continuance was appropriate given Koehler’s failure to present any new

evidence or basis for the relief requested. CP 1385 and 120. Moreover, Koehler failed to raise any discovery disputes before the Trial Court and thereby waived any ability to raise complaints before this Court.

A Trial Court's denial of a continuance pursuant to CR 56(f) is reviewed for abuse of discretion. *Manteufel v. Safeco Ins. Co of Am*, 117 Wn. Ap. 168, 68 P.3d 1093 (2003). There is no abuse of discretion if the requesting party, "(1)...does not offer a good reason for the delay in obtaining the desired evidence; (2)...does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact." *Manteufel, supra* at page 175.

Koehler did not submit any affidavit that identified why she was unable to obtain evidence essential to support her opposition to Allstate's motion for summary judgment given the two prior continuances. Koehler also fails to identify what evidence would be obtained that would create a genuine issue of material fact to defeat summary judgment. As a result, the Trial Court did not abuse its discretion in denying Koehler's request for a continuance pursuant to CR 56(f).

D. Trial Court Did Not Deny Koehler Any Due Process Right by Granting Motion for Summary Judgment

The Trial Court did not deny Koehler any due process rights by granting Allstate's motion for summary judgment. Koehler claims that she was denied due process in two ways: (1) the Trial Court's denial of her

motion to continue to permit her to conduct additional discovery, and (2) the Trial Court failed to consider evidence, specifically the affidavits submitted by Koehler and Koehler's deposition testimony. However, the record does not support the conclusion that Koehler was denied due process in any way.

Procedural due process requirements must not follow any specified formula. *Parker v. United Airlines, Inc*, 32 Wn. App. 722, 649 P.2d 181 (1982). The fundamental principles require (1) notice of the proceedings, and (2) an opportunity to be heard before a competent tribunal. *Parker, supra* at page 728; *Bay Industry, Inc v. Jefferson County*, 33 Wn. App. 239, 653 P.2d 1355 (1982); *Bryant v. Joseph Tree, Inc*, 119 Wn.2d 210, 829 P.2d 1099 (1992). If a party is permitted to have her "day in court," there is no deprivation of due process. *Bay Industry, supra*, at note 2.

1. No Deprivation of Due Process by Denial of Continuance

Koehler asserts that the Trial Court's denial of a third continuance of the hearing of the summary judgment motion prevented her from conducting discovery. Brief of Appellant at page 7 and 30. The Trial Court considered Koehler's oral motion to continue and considered oral argument of all parties. RP 14-25, 28-29. The Trial Court noted that the hearing on the summary judgment motions had been previously continued twice. RP 28, CP 86-87. The Trial Court also noted that at the time of the second continuance, the court indicated that it would not grant a further continuance without medical evidence identifying when Koehler would be able to appear at a hearing. RP

28-29. There was no evidence submitted by Koehler prior the summary judgment hearing to support a third continuance. RP 29.

The Trial Court properly considered the oral arguments of all parties in regard to Koehler's request for a continuance. As the moving party, there is no dispute that Koehler had notice of the hearing on the motion to continue and there can be no dispute that she was provided the opportunity to be heard. As a result, there was no denial of any due process right by the Trial Court's denial of Koehler's motion to continue.

2. Trial Court Properly Considered All Admissible Evidence

Koehler asserts that she was deprived of due process because the Trial Court failed to consider the affidavits of Koehler, other affidavits of lay witnesses and her deposition testimony. Brief of Appellant at pages 34 and 38. The record does not support these allegations. Rather, the record shows that the Trial Court carefully considered all affidavits submitted by Koehler and read Koehler's entire deposition transcript. RP 29-30 and 15, respectively. The Trial Court also considered lengthy oral argument by Koehler. RP 13-25. The consideration by the Trial Court was more than adequate to protect Koehler's due process rights.

In fact, the Trial Court's consideration of the written materials in addition to oral argument provided adequate protection of Koehler's due process rights. In the case of *Parker v. United Airlines, supra*, the claimant was provided a hearing and the Trial Court considered "all pleadings, briefs,

and affidavits of the parties.” *Parker, supra* at page 728. This conduct of the Trial Court was found to comply with any procedural due process requirements.

Additionally, in the case of *Rivers v. Washington State conference of Mason Contractors*, 145 Wn.2d 674, 41 P.3d 1175 (2002), the court found that due process was adequate when a Trial Court considered written submissions of the parties only. The court concluded that the Trial Court’s consideration of written memorandum and denial of a request for oral argument complied with the requirements of notice proceedings and opportunity to be heard. *Rivers, supra* at page 697.

In this case, the Trial Court considered oral argument and extensive written briefing. The court considered all admissible evidence before it. Therefore, there is no indication that Koehler was deprived of any due process right and the Trial Court’s rulings should not be overturned on the basis of any deprivation of due process.

E. Koehler Did Not Raise Issue of “Unclean Hands” Before Trial Court and There is No Evidence of “Unclean Hands”

The issue of whether any party had “unclean hands” was not before the Trial Court and is thereby not properly before this Court. RAP 2.5(a). Moreover, Koehler’s statement of the law regarding “unclean hands” is erroneous. Despite this erroneous statement of law, there is no evidence that Allstate acted as alleged by Koehler or acted with “unclean hands.”

The doctrine of “unclean hands” is an equitable principle that precludes a claimant from asking a court for relief when he has himself acted improperly to cause his own injury. *Port of Walla Walla v. Sun-Glo Producers, Inc*, 8 Wn. App. 51, 504 P.2d 324 (1972); *JL Cooper & Co v. Anchor Securities Co*, 9 Wn.2d 45, 113 P.2d 845 (1941).

In this case, Allstate is not the claimant seeking relief or attempting to enforce a contract. As a result, whether Allstate had “unclean hands” is immaterial and will not preclude dismissal of Koehler’s claims for failure to meet her legal burden for each cause of action. The Trial Court appropriately concluded that Koehler could not establish a genuine issue of material fact to preclude dismissal of her extra-contractual claims on summary judgment.

Moreover, the “facts” cited by Koehler on page 44 of her opening brief are not established by the record. There is no evidence that Allstate paid any police officers to make any statements. The evidence does establish that the claimed burglaries never took place. There is simply no basis to conclude that Allstate has “unclean hands” nor is there a legal basis to disturb the Trial Court’s rulings on this equitable legal principle.

F. There is No Evidence of Fraud or Misrepresentations by Allstate

Koehler did not plead in her amended complaint any allegations of fraud or misrepresentations by Allstate. CP 634-651. Moreover, these causes of action were not presented by Koehler before the Trial Court for consideration and may not now be considered by this Court. RAP 2.5(a).

Regardless, the Trial Court appropriately dismissed all of Koehler's extra-contractual claims. CP 11-113. This necessarily includes any potential claims for fraud and/or misrepresentations.

Additionally, Koehler offers no evidence to support her allegation that Allstate committed fraud. Koehler asserts without any rational support or analysis that Allstate committed fraud when ServePro sprayed the interior of her home with a mold spray. Brief of Appellant at page 42. This assertion is nonsensical and unsupported by any law or fact.

Koehler also asserts that "Allstate's misrepresentations that she had made material intentional misstatements" constitutes fraudulent conduct. However, the evidence established that Koehler made material misrepresentations of fact to Allstate, which constituted the basis of the denial. CP 482-488. In support of this theory, Koehler suggests that Allstate's cancellation of her policy and reliance on her bankruptcy filing was fraudulent. These statements are not supported by any evidence or law and does not amount to any "fraudulent" conduct by Allstate.

Because Koehler failed to plead common law fraud in her amended complaint and because this issue was not before the Trial Court, this Court may not consider fraud as a basis for overturning the Trial Court's dismissal of Koehler's extra contractual claims against Allstate. Moreover, there is no evidence in the record to support such a cause of action.

G. Koehler has Failed to Provide Required Medical Evidence

Koehler has failed to establish any expert testimony or medical evidence that any claimed injuries were caused by the conduct of Hillyard or ServPro. RP 30. Washington law is clear that in cases where medical injuries are beyond an ordinary lay person's knowledge, medical expert testimony on causation is necessary:

[E]xpert medical testimony is necessary to establish causation where the nature of the injury involves obscure medical facts which are beyond the ordinary lay person's knowledge, which would necessitate speculation in order to make findings.

Fabrique v. Choice Hotels International, 144 Wn. App. 675, 685, 183 P.3d 1118 (2008).

Koehler's claims relate to injuries allegedly suffered as a result of exposure to ReJuvNal. See Brief of Appellant at pages 12-13, 19, 20, 33-34, and 41-42. However, Koehler has provided no medical evidence in the form of records, declarations or other testimony to support the theory that ReJuvNal caused any of her claimed injuries.

Additionally, Koehler has presented no evidence or expert testimony that ReJuvNal has the capacity to cause any of the claimed damage to her person or property. Expert testimony is required where an essential element is best established by an opinion that is beyond the expertise of a layperson. *Seybood v. Neu*, 105 Wn. App. 666, 19 P.3d 1068 (2001). Where the use and composition of such a product is an essential element to Koehler's case, she is required to present expert testimony to support her claims. Koehler has

failed to produce such expert testimony or evidence. As a result, her claims against Allstate and other co-defendants were properly dismissed.

H. As Prevailing Party, Allstate is Entitled to Recover Its Statutory Fees and Costs

As the prevailing party, Allstate is entitled to recovery of its costs as allowed by CR 54(d) and RCW 4.84, *et seq.* from the date of the dismissal of Koehler's claims on summary judgment, October 24, 2008, to the present.

V. CONCLUSION

Allstate respectfully requests that this Court uphold the dismissal of Koehler's claims on summary judgment by the Trial Court. The ruling of the Trial Court was appropriate given the evidence of Allstate's reasonable conduct in the investigation and adjustment of Koehler's three claims. Koehler has failed to establish all elements of a CPA violation or of any failure to act in good faith by Allstate. Koehler has set forth no basis to disturb the Trial Court's ruling.

Additionally, the Trial Court's ruling to strike the portions of the declarations submitted by Koehler that contained inadmissible hearsay was appropriate. The Trial Court's denial of Koehler's oral motion to continue was also appropriate and not an abuse of discretion.

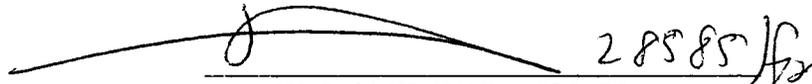
Finally, Koehler has set forth no evidence that she was denied any due process right, that Allstate acted with "unclean hands" or that Allstate committed common law fraud. As a result, Koehler's request to overturn the

Trial Court's rulings should be denied.

DATED this 14 day of July, 2010

Respectfully Submitted,

COLE, LETHER, WATHEN,
LEID, & HALL, P.C

A handwritten signature in black ink, appearing to read 'Rory W. Leid III', is written over a horizontal line. To the right of the signature, the number '28585' is handwritten, followed by a stylized initial or mark.

Rory W. Leid III, WSBA #25075
Attorneys for Respondent Allstate

NO. 62778-3-I

King County Cause No. 07-2-21367-8 SEA

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

MARY FUNG KOEHLER,
individually,

Plaintiff/Appellant,

v.

ALLSTATE INSURANCE COMPANY, an Illinois Corporation;
HILLYARD INDUSTRIES, *aka* Hillyard Inc., a Missouri corporation;
PROFESSIONAL CLEANING AND RESTORATION SERVICES,
L.L.C., *dba* SERVPRO, a Washington Corporation, BRENT YOUNG and
JANE DOE YOUNG, husband and wife and the marital community
composed thereof, and JAMES YOUNG and JANE DOE YOUNG,
husband and wife and the marital community composed thereof

Defendant/Respondent.

DECLARATION OF SERVICE

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2010 JUL 14 PM 4:37

I, Jan Sherred, the undersigned, hereby certify and declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct.

1. I am over the age of eighteen (18) years and not a party to the above-referenced action.

2. I hereby certify that on July 14, 2010, I sent via legal messenger for service of an original and one copy of Brief of Respondent Allstate Insurance Company to the Court of Appeals, Division I, and a copy of the aforementioned document was forwarded for service as indicated below to:

Mary Fung Koehler

Place: 2629 B - 11th Avenue East
Seattle, WA 98102-3902
maryfung7@yahoo.com

Manner: By Email and Postage Prepaid First Class Mail

William J. Leedom

Timothy E. Allen

Amy Magano

Place: Bennett Bigelow & Leedom, PS
1700 Seventh Avenue, #1900
Seattle, WA 98101

Manner: Via ABC Legal Messenger

David M. Soderland

Robert B. Gardner

Place: Dunlap & Soderland, PS
901 Fifth Avenue, #3003
Seattle, WA 98164

Manner: Via ABC Legal Messenger

I certify under penalty of perjury under the laws of the State of

Washington that the foregoing is true and correct.

DATED this 14th day of July, 2010, at Seattle, WA.

A handwritten signature in cursive script that reads "Jan Sherred". The signature is written in black ink and is positioned above a horizontal line.

Jan Sherred