

NO. 72947-1-1
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION 1

ALLSTATE INSURANCE COMPANY, a foreign insurance company
Plaintiff,

vs.

BANK OF AMERICA, a foreign corporation
Defendant,

BANK OF AMERICA, a foreign corporation,
Third-Party Plaintiff,

vs.

EFLEDA PAZ
Third-Party Defendant

EFLEDA PAZ,
Petitioner/Fourth-Party
Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY, a foreign insurance company
Respondent/Fourth-Party
Defendant

2016 JUN 25 PM 12:06

APPELLATE
STATE COURT
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**APPELLANT'S OPENING BRIEF
FOR DISCRETIONARY REVIEW
FOR THE ERRONEOUS DISMISSAL OF PAZ'S FOURTH
PARTY COMPLAINT AGAINST ALLSTATE
FROM KING COUNTY SUPERIOR COURT
Honorable Monica J. Benton, Judge**

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INTRODUCTION

Efleda Paz (“PAZ”) Petitioner “fourth” party petitioner respectfully requests this Honorable Court to please review and grant an approval to Paz’s Motion for Discretionary review and allow this case to go to trial.

I. ASSIGNMENTS OF ERRORS

A.- Assignment of Error No I.

Discretionary Review

The Trial Court erred when significant questions of law under the Constitution of the State of Washington and the United States were ignored thus violating RAP 2.3 (b) (1), (2), (3), (4) & RAP 2.3 (d) (2), (3)

B.- Assignment of Error No II

“ALLSTATE MOTION FOR SUMMARY JUDGMENT DISMISSING EFLEDA PAZ’S FOURTH PARTY COMPLAINT Filed 9/19/2014”

The Superior Court erred when fail to consider

2.1 Standard of review

2.2 “Ms. Paz’s Claims Based on the Policy Should not be dismissed because plaintiff did not failed to comply with the policy’s one year suit limitation clause

2.3 Efleda Paz’s claim for civil liability for unlawful issuance of checks failed to state a claim for relief.

2.4 Eflada Paz's negligence claims are not barred by the Statute of Limitations

C.- Assignment of Error No III.

"ALLSTATE'S RESPONSE IN OPPOSITION TO PAZ'S MOTION FOR RECONSIDERATION" Filed on 12/4/2014

The Superior Court erred when fail to consider

A= New discovered evidence

B= Outcome of the summary judgment

C= That WAC 284-30-380(5) shouldn't be time barred

D.- Assignment of Error No IV

"ALLSTATES INSURANCE COMPANY'S ANSWER TO MOTION FOR DISCRETIONARY REVIEW" Filed on 4/21/2015

4.1 The superior court erred when time barred Paz's claim by the one year policy and by the 3 year statute of limitations for any negligence claims.

4.2 The superior court erred when they fail to consider ALLSTATE'S IFCA violations.

4.3 The superior court erred when fail to consider that WAC 284-30-380(5) was timely, supported and warranted.

4.4 The superior court erred when fail to see that ALLSTATE was in negotiations for a settlement with PAZ.

4.5 ALLSTATE argued WAC 284-30-380(5) Superior court never ruled on the issue.

4.6 ALLSTATE argued that PAZ did not appeal the final judgment

II. STATEMENT OF THE CASE

A. PARTIES

FOURTH PARTY PLAINTIFF - EFLEDA B. PAZ (Appellant)

- Eflada B. Paz ("APPELLANT ") is a Third Party Defendant and 4th & 5th Party Plaintiff residing at 1918 E. Alder St. Seattle, WA 98122. Appellant purchased a Landlord Package Policy from Respondent. Insurance binder issued on 1-6-2007 with a Policy # 9 17 805 287. At the time of the claim at issue here, Paz's insurance was current. The rental property was vandalized by a tenant who was evicted in August 2010. The ALLSTATE adjuster contacted PAZ to set up an appointment to meet at the house for an inspection. A claim was opened by PAZ 8-17-2010 and approved on 9-21-2010 and a settlement offer # 000174820639 was made to PAZ. On 9/22/2010 Appellant rejected the settlement offer via email because there were too many mistake. Paz emailed ALLSTATE to remind them that no binder has been received yet premium increased without authorization property at 415 Railroad Av. S. Kent, WA

In 2014, Paz called and sent emails reminding them that no binder had been received for 415 Railroad Av. S. Kent, WA. Allstate released the binders for the other houses via email except the one for 415 Railroad Ave S. Kent, WA. that one was released on 1/14/2014 via regular mail because the lawsuit had commenced. Paz filed her claim without having retained a lawyer. ALLSTATE told PAZ to stop emailing and stop calling. The ALLSTATE adjuster did not write the instructions given to PAZ, which were to stop calling and stop emailing because as per the Adjuster, "they needed more time to be able to do their job." PAZ waited to no avail. PAZ tried several times to call and the the adjuster claimed to be in training or unavailable or simply he did not answer PAZ'S phone calls anymore. That was the end of PAZ'S claim. PAZ hired a Lawyer in early 2014 to reach a resolution of this matter.

B. PARTIES

Fourth Party Defendant - ALLSTATE (Respondent)

- Allstate Insurance Company ("ALLSTATE") is a foreign Insurance Company authorized to and does conduct business in King County, State of Washington.

C. PARTIES

FIFTH PARTY PLAINTIFF - BANK OF AMERICA

- Third Party Plaintiff Bank of America Corporation ("BANA") or ("BOFA") is a Corporation organized and existing under the Laws of the State of Delaware and is authorized to and does conduct business in King County, State of Washington.

D. THE LAWSUIT

12/9/2013 BANA named PAZ as a Third Party Defendant accused of "Endorsement was allegedly forged" on the checks deposited ^{Ex 78, 79}
ALLSTATE was named Fourth Party Defendant & BANA was named Fifth Party Defendant

III. ARGUMENT

Argument # I

"ALLSTATE INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT DISMISSING EFLEDA PAZ'S FOURTH PARTY COMPLAINT" Filed on 9/19/2014

2.1 "Standard of Review"

Summary judgment shall be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c), in responding, the nonmoving party may not rely on the allegations made in its pleadings, but "by affidavits or as otherwise provide in this rule, must set forth specific facts showing that there is a genuine issue for

trial” CR 56(e); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989).

A party moving for summary judgment may meet its initial burden of proof by showing that there is an absence of evidence to support the non-moving party’s case. *Ingersoll v. DeBartolo, Inc.*, 123 Wn.2d 649, 654, 869 P.2d 1014 (1994); *Young*, 112 Wn.2d at 225.

The burden then shifts to the non-moving party to show the existence of a genuine issue of material fact. *Ingersoll*, 123, Wn.wd at 654; *Young*, 112, Wn.2d at 225. If the non-moving party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, on which that party will bear the burden of proof at trial”, the trial court should grant summary judgment in favor of the defendant. *Id.* 112 Wn.2d at 223, (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

Here, the court neglected to acknowledge the many genuine issues of material fact that should have denied Allstate’s motion for summary judgment. Among them, the court, as a matter of law, failed to acknowledge WAC 284-30-380(5). Second, the court failed to recognize the disclosure of the one year policy suit limitation and the three year statute of limitation needed to be served in writing to claimant(s)—here, Eflada Paz—30 days before their due date if the statute of limitations was

to be enforced and the claimant time barred. Before either the one year or the three year statute of limitations can be enforced, they needed to be filed in writing as part of the record as required by WAC 284-30-380.

When ALLSTATE filed their Motion for Summary Judgment dismissing Eflada Paz's Fourth Party Complaint, ALLSTATE argued that PAZ failed to comply with the insurance policy's one year statute of limitation clause and, further, that her claim was time barred by the statute of limitations.

PAZ responded by alleging ALLSTATE had failed to oblige by "WAC 284-30-380 (5)" which voided the validity and enforceability of the Statute of Limitations since ALLSTATE did not comply with WAC 284-30-380 (5), which the lower court failed to note in its summary judgment ruling.

Paz duly noted that ALLSTATE agreed with PAZ'S argument regarding WAC 284-30-380 (5) and the enforceability of the Statute of Limitations because ALLSTATE'S response in opposition to Paz's motion reconsideration failed to address PAZ'S argument regarding WAC 284-30-380 (5) and the enforceability of the Statute of Limitations, and the lower court erred by failing to address ALLSTATE's silence.

2.2 ALLSTATE ARGUED

“Ms. Paz’s Claims Based on the Policy Should be Dismissed because Plaintiff Failed to Comply with the Policy’s One Year Suit Limitation Clause”

For the statute of limitations to be enforced, ALLSTATE needed to comply with WAC 284-30-380 (5), which the lower court failed to acknowledge. PAZ’S unique set of circumstances meet all of the requirements pursuant to WAC 284-30-380 (5), which are:

- ALLSTATE negotiated and continued to negotiate a settlement claim with PAZ although PAZ is not a lawyer nor was she represented by one.
- PAZ is not a lawyer and Paz was not represented by a lawyer
- ALLSTATE failed to give proper notice 30 days before the one year and three year Statute of Limitation to PAZ
- ALLSTATE fail to file a copy of the Proof of Service for both notices
- ALLSTATE fail to file a written copy of both statutes on the record for the one year and for the three year statute of limitations

“WAC 284-30-380 (5) Settlement standards applicable to all insurers”

(5) Insurers must not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of

limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. This notice must be given to first party claimants thirty days and to third party claimants sixty days before the date on which any time limit may expire.

ARGUMENT # III

“ALLSTATE’S RESPONSE IN OPPOSITION TO PAZ’S MOTION FOR RECONSIDERATION” Filed 12/4 /2015

The Superior Court erred when fail to consider:

- a) The Superior Court erred when it failed to read and rule ALLSTATE’S “Response in Opposition to PAZ’S Motion for Reconsideration” filed on 12/4/15. ALLSTATE failed to mention or even address once “PAZ’S argument regarding WAC 284-30-380 (5) and the enforceability of the Statute of Limitations. ” The lower court failed to find with Allstate’s silence on this matter, of which Allstate had no viable defense.
- b) The Superior Court erred when fail to rule that Allstate needed to oblige by WAC 284-30-380(5)
- c) The Superior Court erred when it failed to rule that the one year or three year statute of limitation need to be *disclosed in writing* 30 days before the statute is to begin if Claimant is to be time barred.

- d) The Superior Court erred when it failed to rule that the proof of service needed to be recorded for each of the statutes with a written copy of each Statute of Limitation
- e) The Superior Court erred when it failed to rule that ALLSTATE failed to give the Claimant proper written notice that the time limit may be expiring and that it may affect the Claimant's rights due to the statute of limitations or a policy or contract time limit. This material fact is considered evidence and it needed to be disclosed (as required by WAC 284-30-380(5)).
However, claimant PAZ was not provided with said copy.
- f) The Superior Court erred when it failed to rule that due to the lack of proof of service the statute of limitations should be excluded from this proceeding and, by extension, her claim should not be time barred.

B. OUTCOME OF THE SUMMARY JUDGMENT

PAZ is not trying to assert a new claim against ALLSTATE. PAZ is simply objecting to ALLSTATE'S argument where they claim that PAZ should be time barred due to the Statute of Limitations.

The reason why Paz objects, and by extension the reason why the lower court erred in its summary judgment ruling, is because before PAZ can be time barred ALLSTATE needed to have filed a written copy of the Statute of Limitations 30 days before the one year suit policy limitation and 30 days before the three years statute of limitation as defined in WAC

284-30-380(5). Further, ALLSTATE needed to have proof of service to demonstrate that they were in compliance and that the claimant has been informed.

WAC 284-30-380(5) gives a specific set of conditions that needed to be followed in regards to the one year suit policy limitation and the three years statute of limitations "before Claimant(s) can be time barred."

One such condition is ALLSTATE needed to serve PAZ 30 days before the one year statute of limitations, whereby PAZ is warned that the time needed to file any negligence claim was about to expire. ALLSTATE needed to file proof of service for both statutes of limitation before PAZ could be time barred by ALLSTATE. ALLSTATE violated WAC 284-30-380(5);

"ARGUMENT # IV"

ALLSTATE'S MOTION FOR DISCRETIONARY REVIEW 4/21/15

The Superior Court erred when it failed to note that the cases cited by ALLSTATE to argue how the statute of limitations should be enforced against PAZ are in no way analogous to the facts present in PAZ's case. For that reason, the lower court erred by not not finding them to be inapposite to the case at hand.

IV. CONCLUSION

Appellant's Motion for Discretionary review should be granted and this appellate proceeding should be remanded for trial.

DATED this 25 day of January, 2016.

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SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

ALLSTATE INSURANCE COMPANY, a
foreign insurance company,

Plaintiff,

vs.

BANK OF AMERICA, a foreign
corporation,

Defendant.

NO. 13-2-33834-3 SEA

ALLSTATE INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT
DISMISSING EFLEDA PAZ'S FOURTH
PARTY COMPLAINT

I. INTRODUCTION AND REQUEST FOR RELIEF

Allstate Insurance Company ("Allstate") plaintiff/"fourth" party defendant asks this Court to grant summary judgment dismissing the Fourth Party Complaint of Eflada Paz. The claims asserted by Eflada Paz are barred by the suit limitation provision in the insurance policy. In addition, the claim for civil liability based on RCW 9A.56.060 fails to state a claim upon which relief can be granted. Finally and alternatively, any negligence claim is barred by the three year tort statute of limitations. The Fourth Party Complaint should be dismissed with prejudice.

II. STATEMENT OF FACTS

Eflada Paz purchased a Landlords Package policy from Allstate Insurance Company number 9 17 805287 11/12 effective November 22, 2009, to November 22, 1020, and November 22, 2010 to November 22, 2011 for property located in Kent, Washington. See Declaration of Marilee C. Erickson in Support of Allstate Insurance Company's Motion for

1 Summary Judgment (“Erickson Dec.”), Exhibits B and C, ¶ 3.1 Fourth Party Complaint and
2 Allstate’s Answer ¶ 1.1.

3 Fernando & Eflada Paz were the named insureds on the policy and Select Portfolio
4 Servicing Inc Its Successors & Assigns (“SPS”) was listed as the Mortgagee on the policy. See
5 Erickson Dec., Ex. B and C, ¶ 3.2 Fourth Party Complaint and ¶ 1.2 Allstate’s Answer.

6 In August 2010, Allstate received notice from Fernando Paz of damage done by former
7 tenants to the insured property in Kent, Washington. Allstate opened claim number
8 0174820639 and investigated and handled the claim. See Erickson Dec., Ex. B and C, ¶ 3.3
9 Fourth Party Complaint and ¶ 1.3 Allstate’s Answer.

10 Allstate issued check number 545526897 dated September 21, 2010, in the amount of
11 \$30,634.10 payable to Fernando & Eflada B. Paz and Select Portfolio Servicing, Inc. ISAOA.
12 See Erickson Dec., Ex. B and C, ¶ 3.5 Fourth Party Complaint and ¶ 1.1 Allstate’s Answer.

13 Allstate issued check number 144714725 dated January 27, 2011, in the amount of
14 \$5,102.15 to Fernando & Eflada B. Paz and Select Portfolio Servicing, Inc. ISAOA. See
15 Erickson Dec., Ex. B and C, ¶ 3.6 Fourth Party Complaint and ¶ 1.6 Allstate’s Answer.

16 Both checks were endorsed by Eflada Paz and presented for and accepted for deposit by
17 the Bank of America. See Erickson Dec., Ex. B and C, ¶ 3.9 Fourth Party Complaint.

18 Eflada Paz filed the Fourth Party Complaint against Allstate on January 14, 2014. See
19 superior court docket. The Fourth Party Complaint asserts two causes of action related to the
20 August 2010 loss for damages done at the Kent property.

21 III. STATEMENT OF ISSUES

22 1. Should Eflada Paz’s Fourth Party Complaint and any claims Ms. Paz has
23 asserted against Allstate be dismissed with prejudice because they were not brought within the
24 one year suit clause and therefore are barred?
25

1 grant summary judgment in favor of the defendant. *Young*, 112 Wn.2d at 223, (quoting *Celotex*
2 *Corp. v. Catrett*, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

3 Here Allstate has established that there are no genuine issues of material fact and that it
4 is entitled to judgment as a matter of law on all of Eflada Paz's claims.

5 **B. Ms. Paz's Claims Based on the Policy Should be Dismissed because Plaintiff Failed**
6 **to Comply with the Policy's One Year Suit Limitation Clause.**

7 The Allstate policy contains a specific statute of limitations. Any suit against Allstate
8 must be brought within one year. Section I – Conditions, Item 13 states:

9 **13. Suit Against Us.**

10 No suit or action may be brought against us unless there has been
11 full compliance with all policy terms. Any suit or action must be
brought within one year after the inception of loss or damage.

12 See Erickson Dec., Ex. A. Ms. Paz filed her Fourth Party Complaint against Allstate on
13 January 14, 2014, nearly three and one-half years after the date of loss. Her lawsuit was not
14 timely commenced and is barred by the one year suit limitation clause in the policy.

15 Washington courts consistently uphold contractual limitation provisions in insurance
16 contracts. *Panorama Village Condominium Owners Ass'n v. Allstate Ins. Co.*, 144 Wn.2d 130,
17 138-39, 26 P.3d 910 (2001) (enforcing one year suit limitation clause in property insurance
18 policy); *Hassett v. Pennsylvania Fire Ins. Co.*, 150 Wash. 502, 508, 273 P. 745 (1929)
19 (recognizing that suit limitation clauses are enforceable); *O'Neill v. Farmers Ins. Co. of Wash.*
20 124 Wn. App. 516, 529-531, 125 P.3d 134 (2004) (affirming dismissal of claims on the
21 contract where lawsuit not commenced within one year as required by suit limitations clause);
22 *Wothers v. Farmers Insurance Company*, 101 Wn. App. 75, 5 P.3d 719 (2000) (dismissing
23 claims based on insurance contract); *Simms v. Allstate Ins. Co.*, 27 Wn. App. 872, 873-74, 877,
24 621 P.2d 155 (1980) (upholding one year limitation period in fire insurance policy).

1 "A contract limitation period prevails over the general statute of limitations unless
2 prohibited by statute or public policy, or unless the provision is unreasonable." *Yakima Asphalt*
3 *Paving Co. v. Department of Transp.*, 45 Wn. App. 663, 666, 726 P.2d 1021 (1986) (citing
4 *Ashburn v. Safeco Ins. Co. of Am.*, 42 Wn. App. 692, 713 P.2d 742). A statute of limitation
5 cannot enlarge the time for the commencement of an action when the time limitation therefor is
6 fixed by contract. *Lane v. Department of Labor & Indus.*, 21 Wn.2d 420, 151 P.2d 440 (1944);
7 *see Logon v. North-West Ins. Co.*, 45 Wn. App. 95, 99, 724 P.2d 1059 (1986).

8 The contract limitation clause here is reasonable and valid. It is enforceable. Any
9 lawsuit against Allstate had to be brought within one year of the date of the loss. The only date
10 of loss here is the August 2, 2010, date. Ms. Paz brought this lawsuit, through her Fourth Party
11 Complaint, on January 3, 2014.

12 **C. Efleda Paz's Claim for Civil Liability for Unlawful Issuance of Checks Fails to**
13 **State a Claim for Relief.**

14 Ms. Paz's Fourth Party Complaint, Cause of Action A asserted civil liability for
15 unlawful issuance of checks or drafts. The Fourth Party Complaint refers to RCW 9A.56.060.
16 RCW 9A.56.060 deals with unlawful issuance of checks or drafts. It establishes the crime of
17 unlawful issuance of bank check.

18 (1) Any person who shall with intent to defraud, make, or draw, or utter, or
19 deliver to another person any check, or draft, on a bank or other depository for
20 the payment of money, knowing at the time of such drawing, or delivery, that he
21 or she has not sufficient funds in, or credit with the bank or other depository, to
22 meet the check or draft, in full upon its presentation, is guilty of unlawful
23 issuance of bank check. The word "credit" as used herein shall be construed to
24 mean an arrangement or understanding with the bank or other depository for the
25 payment of such check or draft, and the uttering or delivery of such a check or
26 draft to another person without such fund or credit to meet the same shall be
27 prima facie evidence of an intent to defraud.

(2) Any person who shall with intent to defraud, make, or draw, or utter, or
deliver to another person any check, or draft on a bank or other depository for
the payment of money and who issues a stop-payment order directing the bank

1 or depository on which the check is drawn not to honor the check, and who fails
2 to make payment of money in the amount of the check or draft or otherwise
3 arrange a settlement agreed upon by the holder of the check within twenty days
4 of issuing the check or draft is guilty of unlawful issuance of a bank check.

5 (3) When any series of transactions which constitute unlawful issuance of a bank
6 check would, when considered separately, constitute unlawful issuance of a
7 bank check in an amount of seven hundred fifty dollars or less because of value,
8 and the series of transactions are a part of a common scheme or plan, the
9 transactions may be aggregated in one count and the sum of the value of all of
10 the transactions shall be the value considered in determining whether the
11 unlawful issuance of a bank check is to be punished as a class C felony or a
12 gross misdemeanor.

13 Ms. Paz's cause of action fails to state a claim upon which relief. RCW 9A.56.060 is a
14 criminal statute. A criminal statute only provides a basis for civil liability if the situation meets
15 the test from Restatement (Second) Torts sec. 286. *Barrett v. Lucky Seven Saloon, Inc.*, 152
16 Wn.2d 259, 269, 96 P.2d 386 (2004). Restatement (Second) Torts sec. 286 provides a four-
17 part test for determining whether standards of civil liability may be derived from criminal
18 statutes. *Id.* at 272. The Restatement states:

19 The court may adopt as the standard of conduct of a reasonable [person] the
20 requirements of a legislative enactment . . . whose purpose is found to be
21 exclusively or in part

22 (a) to protect a class of persons which includes the one whose interest is
23 invaded, and

24 (b) to protect the particular interest which is invaded, and

25 (c) to protect that interest against the kind of harm which has resulted, and

(d) to protect that interest against the particular hazard from which the harm
results.

In *Barrett*, the Washington Supreme Court applied the Restatement test to determine
whether a provision of the Washington state alcoholic beverage control act ("WABC") created
a standard for civil liability of a commercial host who allegedly overserved a patron who later

1 injured a person in an accident. The *Barrett* court concluded the statutory provision applied.
2 The *Barrett* court relied on the general purpose of the WABC as enacted by the Legislature.
3 The *Barrett* court also relied on a series of Washington court decisions which had concluded
4 other WABC provisions set a civil liability standard.

5 Unlike *Barrett*, here the Legislature is silent regarding any overriding purpose of the
6 criminal statutes. And no Washington court has recognized that violation of RCW 9A.56.060
7 imposes civil liability. If RCW 9A.56.060 was enacted to protect any persons, it would be
8 persons who receive checks written by issuers who knowingly write checks with insufficient
9 funds. Assuming that was a purpose of the statute, Ms. Paz's situation does not fit that
10 scenario. The checks had sufficient funds. The checks were cashed. The question involved
11 here was who had the right to receive the funds—the Pazes and/or SPS. The issue did not arise
12 until years after the checks had been written and cashed. RCW 9A.56.060 does not fit the four
13 part test of Restatement (Second) Torts Sec. 286. Any purported violation of RCW 9A.56.060
14 does not establish a basis for civil liability.

15 Assuming for purposes of argument only that RCW 9A.56.060 could impose civil
16 liability, the statute does not apply here. The features of the statute do not fit the situation
17 alleged in Ms. Paz's Fourth Amended Complaint. Allstate did not issue any check that had
18 insufficient funds. Allstate did not issue a stop payment on any check. The checks were
19 cashed. There is no basis for a civil suit against Allstate under RCW 9A.56.060(1), (2), (3),
20 (4), or (5)(a) and (b). Allstate is entitled to judgment as a matter of law on Cause of Action A.

21 **D. Efleda Paz's Negligence Claims are Barred by the Statute of Limitations.**

22 Efleda Paz asserts varying bases of negligence. She states Allstate owed a duty to (a)
23 honor the policy, (b) act in a reasonable time while handling the claim, and (c) owes her for
24 loss of rent from May 2010 to May 2013. Assuming for sake of argument only that any of Ms.
25

1 Paz's claims survive the contractual suit limitation clause, the negligence claim is barred by the
2 three year tort statute of limitation.

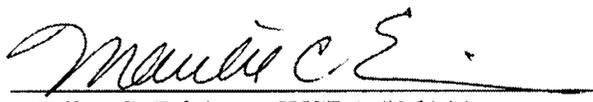
3 Tort claims have a three year statute of limitations. RCW 4.16.080(2). A negligence
4 claim is undisputedly a tort claim. Here the three year statute of limitation for any tort based
5 claims ran in August 2013---three years after the date of loss. Ms. Paz did not file the Fourth
6 Party Complaint until January 2014, more than three years after of loss. The claims asserted in
7 Cause of Action B are barred and should be dismissed.

8 **VI. CONCLUSION**

9 Allstate asks for summary judgment dismissing Ms. Paz's Fourth Party Complaint in its
10 entirety. Plaintiff failed to bring this suit within the one year contractual limitation clause.
11 There is no basis to assert a civil cause of action for any presumed violation of RCW
12 9A.56.060. Any negligence claims are also time barred.

13 DATED this 19th day of September, 2014.

14 REED McCLURE

15
16 By 
17 Marilee C. Erickson, WSBA #16144
18 Attorney for Plaintiff/Fourth Party Defendant
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HONORABLE MONICA J. BENTON

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

ALLSTATE INSURANCE COMPANY, a
foreign insurance company,
Plaintiff,

vs.

BANK OF AMERICA, a foreign corporation,
Defendant.

NO. 13-2-33834-3 SEA
MOTION FOR RECONSIDERATION

BANK OF AMERICA, a foreign corporation,
Third-Party Plaintiff,

vs.

EFLEDA PAZ,
Third-Party Defendant.

EFLEDA PAZ,
Fourth-Party Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY, a

MOTION FOR RECONSIDERATION
Page 1 of 7

CHRIS JACKMAN
THE JACKMAN LAW FIRM, PLLC
800 FIFTH AVE, STE 4100
SEATTLE, WA 98104
TEL: (206) 245-6442

1 foreign insurance company,

2 Fourth-Party Defendant.

3
4
5 **I. INTRODUCTION AND RELIEF REQUESTED**

6 COMES NOW plaintiff Efleda Paz by and through her attorney of record, Chris
7 Jackman of The Jackman Law Firm, PLLC and moves for reconsideration, pursuant to
8 CR 59 and LCR 59, concerning the court's order of summary judgment against Ms.
9 Paz. While it is Ms. Paz's counsel's understanding that oral argument is not customary
10 in a motion for reconsideration, because this is a dispositive motion, Ms. Paz also asks
11 for oral argument.

12 Ms. Paz's ex-husband, Fernando, has uncovered evidence to suggest that
13 Allstate willfully and continually withheld Ms. Paz's insurance policy that covered the
14 property that is the subject of this cause of action. Given that an order of summary
15 judgment in this case was granted on Ms. Paz's inability to bring suit within Allstate's
16 one year of statute of limitations, Ms. Paz respectfully requests this court reconsider its
17 order under CR 59 given this new evidence. Consequently, Ms. Paz respectfully
18 requests the court reconsider and deny Allstate's motion for summary judgment and
19 allow this case to proceed to a jury trial.

20
21
22
23 **II. STATEMENT OF FACTS**

1 On October 17, 2014, in open court, Allstate's motion for summary judgment
2 was granted. Ms. Paz brought a Fourth Party Complaint against Allstate and alleged
3 three causes of action. Ms. Paz lost on all three causes of action. Specifically, the court
4 struck down Ms. Paz's attempt to overcome Allstate's one year statute of limitations
5 based on a public policy argument and one cited case, *Hunter v. North Mason High*
6 *School*, 12 Wn. App. 304, 529 P.2d 898 (1974) (See Order Granting Allstate Insurance
7 Company's Motion for Summary Judgment and Dismissing Paz's Fourth Party
8 Complaint).

9 In Ms. Paz's response to Allstate's Motion for Summary Judgment, Ms. Paz
10 requested the court to dismiss Mr. Paz's negligence claim without prejudice to allow
11 Ms. Paz to amend her original complaint and add an Insurance Fair Conduct Act claim.
12 (See Exhibit One, Eflada Paz's Response to Allstate's Motion for Summary Judgment.)

13 After an order granting summary judgment against Ms. Paz was entered, Mr. Paz
14 reviewed his correspondence with Allstate and discovered that he had never been
15 provided with the insurance binder that was due to him to cover his rental home in
16 Kent, WA. On March 11, 2010, Mr. Paz sent an email to an Allstate adjustor, Mitzi
17 Majano, requesting his insurance policy. The policy was not sent to him. (See Exhibit
18 Two, Declaration of Fernando Paz, ¶5). Mr. Paz sent another email on June 30, 2010
19 requesting for his insurance policy. None was sent. (See Exhibit Two, Declaration of
20 Fernando Paz, ¶6). While Mitzi Majano emailed Mr. Paz back stating that Mr. Paz
21 should check his mailbox for the policy, Mr. Paz did not receive them. (See Exhibit
22 Sevent). As Mr. Paz's declaration makes clear, with corresponding exhibits one
23 through six, Mr. Paz contacted Allstate both via email and telephone from 2010 until
24

1 January 2014, which was when he brought suit against Allstate, requesting his insurance
2 policy for his rental home in Kent, Washington, but without avail.

3
4
5 **III. STATEMENT OF ISSUE**

6 Whether this court should reconsider the order granting Allstate's motion for
7 summary judgment when Mr. Paz found newly discovered evidence proving that
8 Allstate willfully and continually denied the Paz's insurance policy for the property that
9 is the subject of this lawsuit?

10
11 **IV. EVIDENCE RELIED UPON**

12
13 For her motion for reconsideration, Ms. Paz relies upon the Declaration of
14 Fernando Paz and corresponding e-mail exhibits.

15
16 **V. AUTHORITY AND ARGUMENT**

17
18 Under CR 59(a)(4), reconsideration may be granted if there is newly
19 discovered evidence, material for the party making the application, which he could not
20 with reasonable diligence have discovered and produced at the trial. Mr. Paz, Eflada
21 Paz's ex-husband, has presented newly discovered evidence that is sufficient to grant a
22 motion for reconsideration under CR59(a)(4). His declaration and corresponding
23 exhibits prove that he was attempting to obtain the insurance policy for his rental home
24 in Kent, Washington between 2010 and the early part of 2014.

1 Allstate's refusal to issue the Paz's their insurance binder for the rental
2 property in Kent, Washington violates WAC 284-30-560(1)(d) and WAC 284-30-
3 350(1). WAC 284-30-560(1)(d) states that a copy of such application shall be delivered
4 or mailed to the applicant promptly following its execution. WAC 284-30-350(1) states
5 that no insurer shall fail to fully disclose to first party claimants all pertinent benefits,
6 coverage of other provisions of an insurance policy or insurance contract under which a
7 claim is presented. The tort of bad faith has been defined as a breach of the obligation
8 to deal fairly with an insured, giving equal consideration to the insured's interest. *Tank*
9 *v. State Farm Fire & Casualty Co.*, 105 Wash.2d 381, 385-86, 715 P.2d 1133 (1986).
10 The duty of good faith owed by an insurer to its insured is statutory. "The business of
11 insurance is one affected by the public interest, requiring that all persons be actuated by
12 good faith, abstain from deception, and practice honesty and equity in all insurance
13 matters." RCW 48.01.030. The insurer's fiduciary duty to act in good faith is fairly
14 broad and may be breached by conduct short of intentional bad faith or fraud, *Industrial*
15 *Indem. Co. of the Northwest, Inc. v. Kallevig*, 114 Wash.2d 907, 916-917, 792 P.2d 520
16 (1990), although not by a good faith mistake, *Coventry Associates v. American States*
17 *Ins. Co.*, 136 Wash.2d 269, 280, 961 P.2d 933 (1998).

18 Here, Allstate's refusal to issue Mr. Paz his insurance binder is in clear
19 violation of WAC 284-30-560 and WAC 284-30-350. Mr. Paz made repeated requests
20 over a four year period to obtain his Allstate insurance policy for the rental home he had
21 in Kent, Washington. While it may be an open to debate as to why Ms. Paz did not
22 report this violation sooner, Mr. Paz, as he stated in his declaration, was mending from
23 a serious car collision in 2011 that left him with a brain injury, and his then-wife, Mrs.

1 Eflada Paz, was not a proficient English speaker. It is only now, in 2014, that Mr. Paz
2 noted while browsing old emails that Allstate refused to issue his policy, which stated
3 within that he only had one year to bring an action in a court of law for loss or damage
4 done to his property. It is evident that Allstate behaved in bad faith by not issuing the
5 Paz's their insurance policy despite numerous requests. This evidence is newly
6 discovered and squarely within the framework of CR59. Consequently, Mr. Paz
7 respectfully requests this court to reconsider its order granting summary judgment.
8
9

10 **VI. CONCLUSION**

11 In light of the foregoing, Ms. Paz respectfully requests this Court reconsider and
12 reverse the order granting summary judgment.
13

14 DATED: October 26, 2015
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21 Presented by:

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23 THE JACKMAN LAW FIRM, PLLC
24

25 MOTION FOR RECONSIDERATION
Page 6 of 7

CHRIS JACKMAN
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1 Chris Jackman
2 Attorney for Eflada Paz
3 WSBA #46182
4 The Jackman Law Firm, PLLC
5 800 Fifth Ave, Ste 4100
6 Seattle, WA 98104
7 Tel: 206-245-6442
8 Chris@TheJackmanLawFirm.Com
9

10 DECLARATION OF SERVICE

11 I declare that I served the foregoing MOTION FOR RECONSIDERATION on
12 the attorney below:

13 Marilee Erickson
14 Reed McClure
15 1215 4th Ave #1700
16 Seattle, WA 98161

17 [x] by causing a full, true and correct copy to be hand delivered to the attorney of record
18 above.

19 I declare under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true and correct.

21 Executed at _____ on this ____ day of _____, 2014.

22 _____
23 Chris Jackman
24 Attorney for Ms. Paz

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SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

ALLSTATE INSURANCE COMPANY, a
foreign insurance company,

Plaintiff,

vs.

BANK OF AMERICA, a foreign corporation,
Defendant.

NO. 13-2-33834-3 SEA

PLAINTIFF/FOURTH PARTY
DEFENDANT ALLSTATE
INSURANCE COMPANY'S
REQUESTS FOR ADMISSION TO
FOURTH PARTY PLAINTIFF EFLEDA
PAZ

BANK OF AMERICA, a foreign corporation,
Third-Party Plaintiff,

vs.

EFLEDA PAZ,
Third-Party Defendant.

EFLEDA PAZ,
Fourth-Party Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY, a
foreign insurance company,
Fourth-Party Defendant.

TO: EFLEDA PAZ, Fourth Party Plaintiff

AND TO: CHRIS JACKMAN, Attorney for Fourth Party Plaintiff

PLAINTIFF/FOURTH PARTY DEFENDANT ALLSTATE INSURANCE COMPANY'S
REQUESTS FOR ADMISSION TO FOURTH PARTY PLAINTIFF PAZ – I

1 Pursuant to Civil Rule 36, Plaintiff/Fourth Party Defendant Allstate Insurance
2 Company hereby serves on you these Requests for Admission. These requests are to be
3 answered in compliance with CR 36, within thirty (30) days of the date you are served with
4 these requests or all requests will be deemed admitted.

5 Please type responses in the spaces provided, adding pages if additional space is
6 required. Return the original requests for admission to this office and serve a copy upon all
7 other parties. These requests for admission are directed to the above named parties and to
8 their attorneys, and extend to all information of said party or parties, their attorneys, their
9 liability insurers, and their attorneys' and liability insurers' agents.

10 If you cannot admit or deny a fact, you must set forth in detail pursuant to the Civil
11 Rules the reasons why you cannot truthfully admit or deny the matter. A lack of information
12 or knowledge may not be used as a response to a request unless you have made a reasonable
13 inquiry and the information known to you is insufficient to enable you to admit or deny the
14 request. If objection is made to any request for admission, you must set forth in detail
15 pursuant to the Civil Rules the reason and basis for the objection.

16 If you fail to admit the truth or any matter set forth in these requests, and if the
17 serving party later proves the truth of that matter, you may be liable for reasonable expenses
18 incurred in making that proof, including attorney's fees and legal costs, and other sanctions
19 available under CR 36 and 37. If a portion of the request for admission is admitted and the
20 remainder denied, please specify what portion is admitted and what portion is denied.

21 These Requests for Admission are continuing, and in the event you discover further
22 information or documentation which alters, modifies, deletes, or augments the answers given
23 now or anytime hereafter, you are to provide such information by supplemental answer to the
24 full extent provided by the Civil Rules.

25
PLAINTIFF/FOURTH PARTY DEFENDANT ALLSTATE INSURANCE COMPANY'S
REQUESTS FOR ADMISSION TO FOURTH PARTY PLAINTIFF PAZ – 2

1 **DEFINITIONS**

2 1. The terms “You” and “Your” is intended to include all information known to
3 the persons to whom these Requests are directed, and their agents, personal representatives,
4 attorneys, and investigators.

5 2. The term “Kent property” refers to 415 Railroad Avenue S., Kent,
6 Washington.

7 **REQUESTS FOR ADMISSION**

8 You are hereby requested to admit the truth of the following facts:

9
10 **REQUEST FOR ADMISSION NO. 1:** Admit that Allstate Insurance Company
11 (“Allstate”) issued Landlords Package policy number 9 17 805287 11/12 effective November
12 22, 2009, to November 22, 2010, the Kent property.

13 **RESPONSE: [] ADMIT [] DENY**

14 **REQUEST FOR ADMISSION NO. 2:**

15 Admit that Fernando & Eflada B Paz were the named insureds on policy number 9 17
16 805287 11/12 effective November 22, 2009, to November 22, 2010.

17 **RESPONSE: [x] ADMIT [] DENY**

18 **REQUEST FOR ADMISSION NO. 3:**

19 Admit that Select Portfolio Servicing Inc Its Successors &/or Assigns (“SPS”) was listed as
20 the Mortgagee on policy number 9 17 805287 11/12 effective November 22, 2009, to
21 November 22, 2010.

22 **RESPONSE: [x] ADMIT [] DENY**

23 **REQUEST FOR ADMISSION NO. 4:**

24 Admit that in August 2010, Allstate received notice from Fernando Paz of damage done by
25 the former tenants to the Kent property.

RESPONSE: [x] ADMIT [] DENY

PLAINTIFF/FOURTH PARTY DEFENDANT ALLSTATE INSURANCE COMPANY’S
REQUESTS FOR ADMISSION TO FOURTH PARTY PLAINTIFF PAZ – 3

1 **REQUEST FOR ADMISSION NO. 5:**

2 Admit that Allstate opened claim number 0174820639 and proceeded to investigate and
3 handle the claim.

4 **RESPONSE: ADMIT [] DENY**

5 **REQUEST FOR ADMISSION NO. 6:**

6 Admit that Allstate determined that damages to the Kent property totaled at least \$30,634.10.

7 **RESPONSE: [] ADMIT DENY**

8
9 Per Allstate's letter, the figure is \$55,309.93. See Exhibit 1. Further, there were several other
10 claims that remained open and were never reflected in Allstate's estimate.

11 **REQUEST FOR ADMISSION NO. 7:**

12 Admit that Allstate issued check number 545526897 dated September 21, 2010, in the
13 amount of \$30,634.10 payable to Fernando & Eflada B. Paz and Select Portfolio Servicing,
14 Inc. ISAOA.

15 **RESPONSE: [] ADMIT DENY**

16 The check was not received until October 5, 2010. See Exhibits 2, 3, 4.

17
18
19 **REQUEST FOR ADMISSION NO. 8:**

20 Admit that check number 545526897 was for the August 2010 loss, claim no. 0174820639.

21 **RESPONSE: [] ADMIT DENY**

22 Payment received was a partial payment for the claim No. 0174820639.

23 **REQUEST FOR ADMISSION NO. 9:**

24 Admit that check number 545526897 was presented to the Bank of America in Seattle,
25 Washington.

RESPONSE: ADMIT [] DENY

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REQUEST FOR ADMISSION NO. 10:

Admit that check number 545526897 was endorsed only by Efleda Paz.

RESPONSE: [x] ADMIT [] DENY

REQUEST FOR ADMISSION NO. 11:

Admit that after August 2010 Fernando Paz did not notify Allstate of any further loss to the Kent property.

RESPONSE: [] ADMIT [x] DENY

- Damage claims were submitted, as were lost of rent claims. On 9/22/2010, I complained of warping to the floor. See Exhibit 5.
- On 9/29/2010, the adjustor asked for discrepancies, which were sent. See Exhibit 6.
- On 1/10/2011, additional discrepancies on the claim were submitted due to paint and drywall estimates not being enough. The Allstate adjustor ignored the claim. See Exhibit 7.
- On 10/28/2010, loss of rent payment was filed and a note reminding adjustor that loss of rent funds were not enough and that they had been calculated wrong. See Exhibit 8 and 9. Fernando Paz had to make several phone calls to the Allstate adjustor in order for him to do something about this. The adjustor finally processed the loss of rent on 2/1/2011, with the funds being received in either late February or early March of 2011.
- On 1/10/2011, an electrical bill was submitted. Adjustor ignored it. See Exhibit 10.
- On 1/10/2011, a claim for plumbing, water, waste, venting, mechanical venting for the microwave, stove, and a heavy mold infestation in the drywall was entered via email. Nothing was done by the adjustor. See Exhibit 11.
- On January 10, 2011, a claim for the paint, drywall, and electrical was entered again by Paz. See Exhibit 12, 7, and 10.

1
2 **REQUEST FOR ADMISSION NO. 12:**

3 Admit that after August 2010 Eflada Paz did not notify Allstate of any further loss to the
4 Kent property.

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6 **RESPONSE: ADMIT DENY**

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8 **REQUEST FOR ADMISSION NO. 13:**

9 Admit that after August 2010, Fernando Paz did not ask Allstate to open any claim other than
10 claim no. 0174820639 for the Kent property.

11 **RESPONSE: ADMIT DENY**

12 Please refer to answer 11. Several claims were requested and opened. See exhibits 5, 6, 7,
13 12, 13, 14, 15, 16, 17, 18, 19, 20, 21.

14
15 **REQUEST FOR ADMISSION NO. 14:**

16 Admit that after August 2010, Eflada Paz did not ask Allstate to open any claim other than
17 claim no. 0174820639 for the Kent property.

18 **RESPONSE: ADMIT DENY**

19
20 **REQUEST FOR ADMISSION NO. 15:**

21 Admit that Fernando and Eflada Paz jointly owned the Kent property.

22 **RESPONSE: ADMIT DENY**

23
24 **REQUEST FOR ADMISSION NO. 16:**

25 Admit that Allstate paid \$2,200 to Fernando and Eflada Paz in September 21, 2010, for two
months of lost rent.

RESPONSE: ADMIT DENY

The payment was not issued on 9/21/2010. Fernando Paz emailed Allstate to inquire into the
check's whereabouts on 9/29/2010 and 9/30/2010. See Exhibits 6, 14, and 15. When I

1 received the adjustor's summary for the loss of rent, the first loss of rent check was for
2 \$2,200; it was supposed to cover August 2010 and September 2010. Allstate sent a summary
3 which reflected three months of payment credit. See Exhibit 9. An Allstate adjustor was
4 notified on 10/28/2010 of the mistake and that the funds were not enough. See Exhibit 16.
5 On January 10, 2011, an Allstate adjustor was notified again that the funds were not enough
6 for the loss of rent. See Exhibit 17. On February 1, 2011, loss of rent processed the check
7 which was received in March of 2011 for \$2,200, and \$550.00 funds were incorrect because
8 it only covered through mid-December as of 1/10/2011. The adjustor was notified that the
9 funds were not enough for the extent of the repairs.

10
11 **REQUEST FOR ADMISSION NO. 17:**

12 Admit that Allstate paid \$2,750 to Fernando and Efleda Paz in February 2011, for two and
13 one-half months of lost rent.

14 **RESPONSE: [] ADMIT [x] DENY**

15 Although the payment was processed on 2/1/2011, it wasn't received on 2/1/2011. It was not
16 received until late February or early March of 2011. Those funds paid the months of
17 October, November, and half of December 2010. We don't know the exact date of when it
18 was received; Allstate does.

19 **REQUEST FOR ADMISSION NO. 18:**

20 Admit that Fernando Paz did not provide written notice to Select Portfolio Services of the
21 August 2010 loss.

22 **RESPONSE: [] ADMIT [x] DENY**

23 See Exhibit 6 and 22. Fernando Paz asked the status of the written request sent on 9/18/2010
24 via telephone and was told on 9/21/2010 that the lender needed a request in writing, and
25 since the written request had been sent, it was a matter of waiting a few more days. On
9/29/2010, Allstate reminded Fernando Paz to contact lender to let them know and request

PLAINTIFF/FOURTH PARTY DEFENDANT ALLSTATE INSURANCE COMPANY'S
REQUESTS FOR ADMISSION TO FOURTH PARTY PLAINTIFF PAZ - 7

1 permission to do the work. On 9/29/2010, lender was contacted via telephone to request
2 permission once more. This time the letter sent on 9/18/2010 had been received and this time
3 the receptionist told Fernando that Select Portfolio's policy was that no written permission
4 was ever sent via mail and that a verbal OK should suffice as a valid authorization to move
5 ahead with the repairs at the Kent property.

6
7 **REQUEST FOR ADMISSION NO. 19:**

8 Admit that Eflada Paz did not provide written notice to Select Portfolio Services of the
9 August 2010 loss.

10 **RESPONSE: ADMIT [] DENY**

11 **REQUEST FOR ADMISSION NO. 20:**

12 Admit that in 2010, Fernando and Eflada Paz were charging renters \$1,100 a month for rental
13 of the Kent property.

14 **RESPONSE: ADMIT [x] DENY**

15 Although the contract stated \$1,100.00 due to the fact that the tenant was not paying
16 the water bill the Landlord was forced to pay for it and for that reason Landlord was trying to
17 charge the water bill from Tenant which brought the monthly charge higher than the
18 \$1,100.00 shown on the contract. The rental contract was valid through July 2010. See
19 Exhibit 23.

20 It stopped being valid after the eviction took place on 7-22-2010.

21 A writ of restitution was granted by a judge on July 22, 2010. See Exhibit 26.

22 The correct loss of rent payment needed to be adjusted to \$1,545.08. See Exhibit 24
23 and 25. The rental contract wasn't valid any longer and the actual mortgage payment had to
24 be used as the new loss of rent amount.

25 Consequently, in 2010, there were two different rental amounts:

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- 1.- \$1,100.00 January through July 2010.
- 2.- \$1,545.08 August through December 2010.

REQUEST FOR ADMISSION NO. 21:

Admit that Exhibit A is a true and correct copy of the Residential Lease Agreement for the Kent property in effect from October 2009 to November 2010.

RESPONSE: **ADMIT** **DENY**

REQUEST FOR ADMISSION NO. 22:

Admit that Exhibit B is a true and accurate copy of the Note signed by Fernando and Efleda Paz.

RESPONSE: **ADMIT** **DENY**

REQUEST FOR ADMISSION NO. 23:

Admit that your signature appears on the Note, Exhibit B

RESPONSE: **ADMIT** **DENY**

REQUEST FOR ADMISSION NO. 24:

Admit that Fernando and Efleda Paz were required to pay \$1,279.31 a month on the loan on the Kent property.

RESPONSE: **ADMIT** **DENY**

We were required to pay \$1,545.08. See Exhibits 24 and 25.

REQUEST FOR ADMISSION NO. 25:

Admit that Exhibit C is a true and accurate copy of the Deed of Trust which secures the loan on the Note, Exhibit B.

RESPONSE: **ADMIT** **DENY**

1 **REQUEST FOR ADMISSION NO. 26:**

2 Admit that your signature appears on the Deed of Trust, Exhibit C.

3 **RESPONSE:** **ADMIT** **DENY**

4 **REQUEST FOR ADMISSION NO. 27:**

5 Admit that Exhibit D is a true and accurate copy of the Notice of Assignment, Sale or
6 Transfer of Servicing Rights to Select Portfolio Servicing, Inc.

7 **RESPONSE:** **ADMIT** **DENY**

8 **REQUEST FOR ADMISSION NO. 28:**

9 Admit that Fernando and Eflada Paz stopped paying the monthly mortgage payment to Select
10 Portfolio Servicing, Inc. in December 2010.

11 **RESPONSE:** **ADMIT** **DENY**

12 We stopped paying our mortgage in January 2011 because Allstate refused to honor our
13 landlord's insurance policy. See Exhibit 24 for proof of December 2010 payment.

14 **REQUEST FOR ADMISSION NO. 29:**

15 Admit that Allstate advised Fernando Paz that if there was further damage to the Kent
16 property after the August 2010 loss, that Allstate needed to be notified so another claim could
17 be opened.

18 **RESPONSE:** **ADMIT** **DENY**

19 Several claims were opened as instructed by Allstate's adjuster and they were all ignored.
20 Please refer to the answer to Request for Admission #11.

21 **REQUEST FOR ADMISSION NO. 30:**

22 Admit that Exhibit E is a true and correct copy of a letter sent from Allstate to Fernando and
23 Eflada Paz.

24 **RESPONSE:** **ADMIT** **DENY**

25 Neither of us ever received that letter. We learned about the existence of this letter when
Eflada Paz was named as a third party defendant by plaintiff Bank of America.

PLAINTIFF/FOURTH PARTY DEFENDANT ALLSTATE INSURANCE COMPANY'S
REQUESTS FOR ADMISSION TO FOURTH PARTY PLAINTIFF PAZ – 10

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REQUEST FOR ADMISSION NO. 31:

Admit that you received a copy of Exhibit E.

RESPONSE: ADMIT DENY

REQUESTS FOR ADMISSION DATED this 6th day of August, 2014.

REED McCLURE

By: _____
Marilee C. Erickson, WSBA #16144
Attorneys for Plaintiff/Fourth Party Defendant
Allstate Insurance Company

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VERIFICATION

The undersigned attorney for Efleda Paz has read the foregoing responses to requests for admission and they are in compliance with CR 26(g).

DATED this ____ day of _____, 2014.

THE JACKMAN LAW FIRM PLLC

By _____
Chris Jackman, WSBA #46182
Attorneys for Fourth Party Plaintiff Efleda Paz

DECLARATION OF RESPONDING PARTY

I declare under the penalty of perjury under the laws of the State of Washington that I am Efleda Paz, the Fourth Party Plaintiff in this action. I declare that I have read the foregoing responses, know the contents thereof, and believe them to be true and correct.

Dated this ____ day of _____, 2014 at _____, Washington.

EFLEDA PAZ

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2014 copies of the following documents:

- 1. Plaintiff/Fourth Party Defendant Allstate Insurance Company's Requests for Admission to Fourth Party Plaintiff Eileda Paz; and this
- 2. Certificate of Service

were served on counsel at the following address[es] by the method[s] indicated:

Chris Jackman The Jackman Law Firm PLLC 800 Fifth Avenue, Suite 4100 Seattle WA 98104-3100	<input type="checkbox"/> U.S. Mail Postage Prepaid <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Legal messenger (8/7/2014 delivery) <input type="checkbox"/> Express mail
James P. Laurick Kilmer, Voorhees & Laurick 732 NW 19 th Avenue Portland OR 97209	<input checked="" type="checkbox"/> U.S. Mail Postage Prepaid <input checked="" type="checkbox"/> Email <input type="checkbox"/> Legal messenger <input type="checkbox"/> Express mail

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 6th day of August, 2016, at Seattle, Washington.

Katherine McBride

2016 JUN 25 PM 12:07
 COURT OF APPEALS
 STATE OF WASHINGTON

HONORABLE MONICA J. BENTON

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

ALLSTATE INSURANCE COMPANY, a
foreign insurance company,
Plaintiff,
vs.
BANK OF AMERICA, a foreign corporation,
Defendant.

NO. 13-2-33834-3 SEA
MOTION FOR RECONSIDERATION

BANK OF AMERICA, a foreign corporation,
Third-Party Plaintiff,
vs.
EFLEDA PAZ,
Third-Party Defendant.

EFLEDA PAZ,
Fourth-Party Plaintiff,
vs.
ALLSTATE INSURANCE COMPANY, a

1 foreign insurance company,

2 Fourth-Party Defendant.

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5 **I. INTRODUCTION AND RELIEF REQUESTED**

6 COMES NOW plaintiff Efleda Paz by and through her attorney of record, Chris
7 Jackman of The Jackman Law Firm, PLLC and moves for reconsideration, pursuant to
8 CR 59 and LCR 59, concerning the court's order of summary judgment against Ms.
9 Paz. While it is Ms. Paz's counsel's understanding that oral argument is not customary
10 in a motion for reconsideration, because this is a dispositive motion, Ms. Paz also asks
11 for oral argument.

12 Ms. Paz's ex-husband, Fernando, has uncovered evidence to suggest that
13 Allstate willfully and continually withheld Ms. Paz's insurance policy that covered the
14 property that is the subject of this cause of action. Given that an order of summary
15 judgment in this case was granted on Ms. Paz's inability to bring suit within Allstate's
16 one year of statute of limitations, Ms. Paz respectfully requests this court reconsider its
17 order under CR 59 given this new evidence. Consequently, Ms. Paz respectfully
18 requests the court reconsider and deny Allstate's motion for summary judgment and
19 allow this case to proceed to a jury trial.

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23 **II. STATEMENT OF FACTS**

1 On October 17, 2014, in open court, Allstate's motion for summary judgment
2 was granted. Ms. Paz brought a Fourth Party Complaint against Allstate and alleged
3 three causes of action. Ms. Paz lost on all three causes of action. Specifically, the court
4 struck down Ms. Paz's attempt to overcome Allstate's one year statute of limitations
5 based on a public policy argument and one cited case, *Hunter v. North Mason High*
6 *School*, 12 Wn. App. 304, 529 P.2d 898 (1974) (See Order Granting Allstate Insurance
7 Company's Motion for Summary Judgment and Dismissing Paz's Fourth Party
8 Complaint).

9 In Ms. Paz's response to Allstate's Motion for Summary Judgment, Ms. Paz
10 requested the court to dismiss Mr. Paz's negligence claim without prejudice to allow
11 Ms. Paz to amend her original complaint and add an Insurance Fair Conduct Act claim.
12 (See Exhibit One, Eflada Paz's Response to Allstate's Motion for Summary Judgment.)

13 After an order granting summary judgment against Ms. Paz was entered, Mr. Paz
14 reviewed his correspondence with Allstate and discovered that he had never been
15 provided with the insurance binder that was due to him to cover his rental home in
16 Kent, WA. On March 11, 2010, Mr. Paz sent an email to an Allstate adjustor, Mitzi
17 Majano, requesting his insurance policy. The policy was not sent to him. (See Exhibit
18 Two, Declaration of Fernando Paz, ¶5). Mr. Paz sent another email on June 30, 2010
19 requesting for his insurance policy. None was sent. (See Exhibit Two, Declaration of
20 Fernando Paz, ¶6). While Mitzi Majano emailed Mr. Paz back stating that Mr. Paz
21 should check his mailbox for the policy, Mr. Paz did not receive them. (See Exhibit
22 Sevent). As Mr. Paz's declaration makes clear, with corresponding exhibits one
23 through six, Mr. Paz contacted Allstate both via email and telephone from 2010 until

1 January 2014, which was when he brought suit against Allstate, requesting his insurance
2 policy for his rental home in Kent, Washington, but without avail.

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5 **III. STATEMENT OF ISSUE**

6 Whether this court should reconsider the order granting Allstate's motion for
7 summary judgment when Mr. Paz found newly discovered evidence proving that
8 Allstate willfully and continually denied the Paz's insurance policy for the property that
9 is the subject of this lawsuit?

10
11 **IV. EVIDENCE RELIED UPON**

12
13 For her motion for reconsideration, Ms. Paz relies upon the Declaration of
14 Fernando Paz and corresponding e-mail exhibits.

15
16 **V. AUTHORITY AND ARGUMENT**

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18 Under CR 59(a)(4), reconsideration may be granted if there is newly
19 discovered evidence, material for the party making the application, which he could not
20 with reasonable diligence have discovered and produced at the trial. Mr. Paz, Eflada
21 Paz's ex-husband, has presented newly discovered evidence that is sufficient to grant a
22 motion for reconsideration under CR59(a)(4). His declaration and corresponding
23 exhibits prove that he was attempting to obtain the insurance policy for his rental home
24 in Kent, Washington between 2010 and the early part of 2014.

1 Allstate's refusal to issue the Paz's their insurance binder for the rental
2 property in Kent, Washington violates WAC 284-30-560(1)(d) and WAC 284-30-
3 350(1). WAC 284-30-560(1)(d) states that a copy of such application shall be delivered
4 or mailed to the applicant promptly following its execution. WAC 284-30-350(1) states
5 that no insurer shall fail to fully disclose to first party claimants all pertinent benefits,
6 coverage of other provisions of an insurance policy or insurance contract under which a
7 claim is presented. The tort of bad faith has been defined as a breach of the obligation
8 to deal fairly with an insured, giving equal consideration to the insured's interest. *Tank*
9 *v. State Farm Fire & Casualty Co.*, 105 Wash.2d 381, 385-86, 715 P.2d 1133 (1986).
10 The duty of good faith owed by an insurer to its insured is statutory. "The business of
11 insurance is one affected by the public interest, requiring that all persons be actuated by
12 good faith, abstain from deception, and practice honesty and equity in all insurance
13 matters." RCW 48.01.030. The insurer's fiduciary duty to act in good faith is fairly
14 broad and may be breached by conduct short of intentional bad faith or fraud, *Industrial*
15 *Indem. Co. of the Northwest, Inc. v. Kallevig*, 114 Wash.2d 907, 916-917, 792 P.2d 520
16 (1990), although not by a good faith mistake, *Coventry Associates v. American States*
17 *Ins. Co.*, 136 Wash.2d 269, 280, 961 P.2d 933 (1998).

19 Here, Allstate's refusal to issue Mr. Paz his insurance binder is in clear
20 violation of WAC 284-30-560 and WAC 284-30-350. Mr. Paz made repeated requests
21 over a four year period to obtain his Allstate insurance policy for the rental home he had
22 in Kent, Washington. While it may be an open to debate as to why Ms. Paz did not
23 report this violation sooner, Mr. Paz, as he stated in his declaration, was mending from
24 a serious car collision in 2011 that left him with a brain injury, and his then-wife, Mrs.

1 Efleda Paz, was not a proficient English speaker. It is only now, in 2014, that Mr. Paz
2 noted while browsing old emails that Allstate refused to issue his policy, which stated
3 within that he only had one year to bring an action in a court of law for loss or damage
4 done to his property. It is evident that Allstate behaved in bad faith by not issuing the
5 Paz's their insurance policy despite numerous requests. This evidence is newly
6 discovered and squarely within the framework of CR59. Consequently, Mr. Paz
7 respectfully requests this court to reconsider its order granting summary judgment.
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10 **VI. CONCLUSION**

11 In light of the foregoing, Ms. Paz respectfully requests this Court reconsider and
12 reverse the order granting summary judgment.
13

14 DATED: October 26, 2015
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21 Presented by:

22
23 THE JACKMAN LAW FIRM, PLLC
24

25 MOTION FOR RECONSIDERATION
Page 6 of 7

CHRIS JACKMAN
THE JACKMAN LAW FIRM, PLLC
800 FIFTH AVE, STE 4100
SEATTLE, WA 98104
TEL: (206) 245-6442

1 Chris Jackman
2 Attorney for Eflada Paz
3 WSBA #46182
4 The Jackman Law Firm, PLLC
5 800 Fifth Ave, Ste 4100
6 Seattle, WA 98104
7 Tel: 206-245-6442
8 Chris@TheJackmanLawFirm.Com
9

10 DECLARATION OF SERVICE

11 I declare that I served the foregoing MOTION FOR RECONSIDERATION on
12 the attorney below:

13 Marilee Erickson
14 Reed McClure
15 1215 4th Ave #1700
16 Seattle, WA 98161

17 [x] by causing a full, true and correct copy to be hand delivered to the attorney of record
18 above.

19 I declare under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true and correct.

21 Executed at _____ on this _____ day of _____, 2014.

22 _____
23 Chris Jackman
24 Attorney for Ms. Paz