

News Story

## **Allstate Guilty Of Malpractice; Told Plaintiff 'Don't Hire Lawyer'**

**By Sylvia Hsieh**

Allstate engaged in the practice of law and committed legal malpractice where its claims adjuster contacted a woman whose car was struck by an Allstate-insured driver, told her that she didn't need to hire a lawyer and advised her to sign a settlement and release, the Washington Supreme Court has ruled in a 5-4 decision.

The court stopped short of holding that Allstate engaged in the unauthorized practice of law, but said if the company continues with its claims practices it must meet the standard of care for a practicing attorney.

"Allstate's claims adjuster's conduct fell below that standard when she advised the [plaintiff] to sign a release of liabilities, did not properly advise [her] that there were potential legal consequences of signing a settlement check and a release of all claims or refer [her] to independent counsel, and did not fully disclose the conflict of interest she presented," the majority wrote.

This is the first state supreme court to rule on Allstate's controversial practice of discouraging the involvement of lawyers in the settlement process.

Karen Koehler of Bellevue, Wash., called the decision a "tremendous victory for consumers." Koehler chairs the insurance section of the Washington State Trial Lawyers Association.

Charleston, W.Va., attorney James Peterson said that the ruling "upholds the position that plaintiffs' attorneys have been advancing all along - that Allstate is practicing law." Peterson is lead counsel in a nationwide class action currently seeking certification in federal court in Illinois.

He noted that this is the second major ruling to take issue with Allstate's claims practices. Last year the 4th Circuit upheld a lower court decision holding that the company was engaged in the unauthorized practice of law. (*Allstate Insurance Co. v. West Virginia State Bar*, 233 F.3d 813.)

Mary Alice Horstman of Chicago, Allstate's attorney, said the company was "disappointed" with the ruling, but continues to believe that its claims practices are "absolutely sound."

Allstate is considering whether to ask the court for reconsideration or to seek "clarification" of the ruling, Horstman noted.

### **What The Court Said**

The plaintiff in the case, Janet Jones, was injured when a driver insured by Allstate broadsided her minivan. Jones' seatbelt gave way and she was thrown from her car.

Three days later, while the plaintiff was still hospitalized, Allstate claims adjuster Christy Klein contacted her and her husband, promising to provide "quality service"

as their claims representative. Over the next two months, Klein called Jones frequently and even assisted her in securing medical insurance.

Soon after, Jones signed a general release and accepted a check for \$25,000 from Klein, even though her medical bills exceeded \$75,000.

The Joneses sued Allstate after realizing that the general release barred them from pursuing claims against the other driver or the manufacturer, DaimlerChrysler, which had recalled the minivan shortly after the accident because of a problem with the seatbelts.

A trial court ruled that Allstate was engaged in the unauthorized practice of law. Allstate appealed, and the question was certified to the state supreme court.

The Washington Supreme Court found that the Allstate agent was practicing law and, in this case, hadn't met the professional standard of care.

(The court did not address whether Allstate was engaged in the unauthorized practice of law, because it said that question would only be relevant if the plaintiff were asking the court to enjoin the practice.)

The court said it did not need to find that the Joneses were clients of Allstate in order to find that the adjuster owed them a duty.

"The essence of the duty owed in this circumstance is that of an attorney to an unrepresented third party," it said.

"The Joneses were at least one of the intended beneficiaries of the transaction to which Klein's advice pertained. Klein acted with the intent to influence the Joneses' decisions. Klein intentionally developed a trusting relationship with the Joneses. Klein knew or should have known that if the Joneses deposited the check and signed the release they would abandon all other potential claims arising from the accident," the court said.

The court rejected Allstate's argument that Klein was simply performing an administrative function by sending the plaintiff a printed settlement letter and form.

"[The Joneses] were potentially foreclosed from asserting joint and several liability against other claimants based on Klein's advice," the majority wrote. "They lost potential settlement income and 'settled' at an amount that represented a fraction of their medical expenses. Thus Klein went beyond the actions of a mere scrivener when she advised the Joneses to sign the release and failed to advise them of the consequences or to refer them to independent counsel. Therefore, to safeguard the public interest, we hold that insurance claims adjusters, when preparing and completing documents which affect the legal rights of third party claimants and when advising third parties to sign such documents, must comply with the standard of care of a practicing attorney."

The adjuster also fell short of the proper standard of care because she didn't disclose a conflict of interest - she also represented the other driver, who was insured by Allstate.

"Where a claims adjuster represents or purports to represent both an insured and a third party claimant, the adjuster must fully disclose the material facts of the representation to the claimant, consistent with the rules of professional conduct pertaining to conflicts of interest," the court said, noting that Allstate was free to continue with its claims practices if it met the required standard of care.

The case was remanded for a determination of damages.

Four dissenting judges complained that the ruling was "apt to cause confusion" and lead to "frequent findings of duty owed in adversarial situations." The dissenters argued that the only duty the Allstate adjuster owed was to explain that she was not acting as the Joneses' attorney and to advise them that they should consult a lawyer about the legal ramifications of the settlement.

### **'National Impact'**

The plaintiff's attorney, John Budlong of Edmonds, Wash., said that the ruling should have "immediate national impact" because any settlement in which Allstate used these practices could now be reopened.

"All of the settlements under [Allstate's program] are subject to being overturned. Any other situation where Allstate dealt with unrepresented claimants and advised them to sign a release, the release is subject to being voided as a matter of law, and the claimant can go back and sue Allstate and the tortfeasor for damages," he said.

If an injured person who settled a claim now decided to sue the tortfeasor and Allstate, said Koehler, "The defense would come in and say, 'You released your claim.' Your response would be, 'No, the release is improper, because you misled us.'"

The ruling also means that injured parties who in most states are not allowed to sue the tortfeasor's insurance company can now sue Allstate directly for fraud, violation of consumer protection laws and bad faith.

Plaintiffs' attorneys assert that Allstate's practices have been part of a national policy and therefore the ruling could affect thousands of cases where claims adjusters simply carried out the company's policy.

Some lawyers believe that in order to comply with the decision, Allstate will essentially have to abandon its practices.

"Allstate has a tough road to go now," said Peterson. "What it has to do is retrain all its adjusters and tell them, 'Now, when you first contact the person, you must give them full disclosure.'"

Koehler said if Allstate "continue[s] the practice and the claims adjuster gives out one wrong piece of advice - and they're bound to fall short because it is complex - they're going to be found liable."

Peterson said that having to comply with the Washington state decision will defeat the very purpose of Allstate's policy, because after hearing about the conflicts of interest and the legal consequences of signing a release, most claimants will seek out legal advice.

But Koehler said she is doubtful that Allstate will simply "abandon a very lucrative program."

[Click here](#) for a link to the majority opinion.

[Click here](#) for a link to the dissenting opinion.

*Questions or comments can be directed to the writer at:*

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