

AUTO INSURANCE REPORT

The Authority on Insuring Personal and Commercial Vehicles

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THE GRAPEVINE

Washington State Supreme Court Says Insureds Can't Sue Adjusters for Bad Faith

By a narrow margin, the Washington Supreme Court ruled Oct. 3 that individual insurance adjusters cannot be sued for bad faith, reversing an appeals court ruling. (See AIR 09/16/19)

The case, *Keodalah vs. Allstate Insurance Co.*, involved an uninsured motorist claim resulting from a 2007 collision. Allstate offered far less than the \$25,000 in uninsured motorist benefits sought by its insured, **Moun Keodalah**. Despite evidence to the contrary, Allstate determined Keodalah was 70%, claiming he had run a stop sign and was on his cell phone.

Police, witnesses and All-

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Maryland Lawmakers Crabby About Education, Occupation

Maryland regulators surveyed the state's 15 largest insurers asking about their use of education, occupation and credit as a rating factor and the impact they have on premiums. The Maryland Insurance Administration (MIA) also surveyed other states about whether they allow auto insurers to use education or occupation for rating.

The survey came at the request of lawmakers who determined they did not have enough information as they considered bills that would bar the use of education and occupation. Commissioner **Al Redmer Jr.** expects MIA to complete the analysis of the survey by the end of this month. The data could help shape legislation on the issue likely to reappear in the 2020 session.

Redmer said he also expects that some insurers may push for legislation next session that would allow telematics-based insurance products that raise or lower premiums based on driving behaviors. So far, the MIA has only approved telematics rating plans that produce discounts based

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PartsTrader Gradually Winning Over Auto Repair Industry, But Still Has Work to Do

Auto repair shops weren't thrilled when New Zealand's **PartsTrader** arrived in the United States in 2013. The company's platform, allowing auto repairers to shop with multiple parts providers in search of the best price and delivery time, was theoretically a big improvement on traditional parts procurement. But in practice, shops didn't want to disrupt their existing purchasing relationships with parts suppliers, and they found it took time for the system to shop around, slowing down their process.

While PartsTrader is structured like **Amazon**, searching for auto parts is far more complex than looking for the

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least expensive ream of copy paper. Though few would say so aloud, shops were also unhappy to change their process just to find that most, if not all, of the savings were passed along to insurers and their customers. When **State Farm**, the nation's largest auto insurer, mandated that its direct repair network (DRP) shops use PartsTrader, it ensured that the platform would get a full and fair test.

Six years later, PartsTrader appears to have passed the initial trial by fire. The grousing by shop owners has not ended, but it has dissipated significantly. State Farm has remained committed, and several other insurers, most recently **The Hartford**, have begun requiring their pre-

PartsTrader has been able to increase the number of shops on its network, including some shops outside DRPs.

ferred shops to use the platform.

Importantly, PartsTrader has a new management team. Now that the executives have settled into their roles, they are working to solidify the gains and build a foundation for growth.

Tom O'Brien, who led **Insurance Auto Auctions** (IAA) through a dramatic expansion from 2000 until his retirement in 2014, became chairman of PartsTraders' board in March 2018. In November, the company hired **Brenda Hogen** as vice president of strategic accounts; Hogen's background includes a decade as an insurance claims adjuster and manager and eight years with IAA's main competitor, **Copart**. In February, PartsTrader named **Mark Lindner** as chief revenue officer, the same title he held during nearly three years at **Estify**, maker of collision repair estimating systems. Earlier in his career, Lindner spent more than a dozen years at **Mitchell International**, where his father, Jim, was chairman and CEO from 1997-2008. (Linder and Hogan shared the stage at the 2019 Auto Insurance Re-

port National Conference in April.)

Lindner said the changes to the company's leadership in the past 18 to 24 months are "just a natural evolution of any growth organization." The management team now in place, he said, are "experienced industry professionals who not only know the industry well and the customer base really well, but also can speak to the future state of the industry."

Lindner said PartsTrader's core value proposition for insurers remains largely the same: fostering greater competition in parts pricing.

"With over 40% of the overall cost of a claim going into parts, that's something [carriers] are paying a lot of attention to right now," he said. "Being able to tap into a network where they believe the most competitively priced parts reside is definitely a big value proposition."

The program gives insurers greater visibility into the parts purchasing decisions made by body shops. "We're also getting reports from our carrier customers that they're seeing a reduction in supplement rates due to the accuracy of the parts data," he said. "So that's been a valuable piece to it as well from a cycle time perspective."

Shops did not greet PartsTrader warmly at first, perhaps just because of the transparency it offered insurers into their choice of parts and record of parts returns. Shops complained that the minimum window of time they must allow vendors to quote prices in PartsTrader slowed down their ordering process.

"To be efficient, you have to move on to your next task while waiting for the quoting process to end," a **New Jersey** shop manager said in a survey about PartsTrader that repair industry newsletter *CRASH Network* conducted in the summer. "Bouncing back-and-forth like that is disruptive and sometimes results in a delay in submitting a file to the insurance carrier only after the quoting period ends the next business day."

Lindner said its customer base has grown, now topping 9,000 shops, up from 7,500 the

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company reported in 2014. Allowing shops to see parts availability and pricing from more vendors gives them a chance to improve their margins and get parts faster, Lindner said.

Though the vocal opposition to PartsTraders among shops has long since subsided, that doesn't mean it's been all smooth sailing. Lindner was asked about State Farm's move last year to allow some large body shop chains on the "Select Service" program – most notably the 1,100-shop **Caliber Collision** chain – to opt out of using PartsTrader but remain part of the insurer's direct repair program.

"I can't really comment on a particular carrier's internal policies," Lindner said. "All I can say is we believe that PartsTrader's marketplace provides the most competitive parts procurement option for the industry." Several large multishop operators use PartsTrader, he said, though a few do not.

In a survey of 244 repair shops using PartsTrader this summer, *CRASH Network* found about two-thirds of shops rated the support and service they receive as satisfactory, good or excellent. About 60% said the same for the choice of vendors they find on PartsTrader, and a narrow majority rated its "ease of use" as satisfactory or better. That's the good news.

But shops are still ambivalent about the system. The survey found 78% of users would not recommend PartsTrader to another shop. On a scale of 1 ("terrible") to 100 ("great"), shops on average gave PartsTrader a rating of 32. Some 90% said they use it only because an insurance company direct repair program requires them to do so. Two-thirds said they use PartsTrader only on jobs paid for by an insurer that requires its use. Another 11% said they occasionally use PartsTrader on other jobs, but it accounts for less than 10% of their other work. Just 7% said they like PartsTrader enough to use it for all of their parts ordering.

Three-quarters of users surveyed said a key

reason they wouldn't use it if it weren't required is that "it takes more time or is not as efficient as ordering by other means." More than 80% of shops surveyed said they use other electronic parts ordering systems in addition to PartsTrader. Of those, 77% said PartsTrader is "worse" or "much worse" in comparison. Less than 1 in 10 said PartsTrader is either "better" or "much better" than the other systems they use.

Lindner said those survey results do not reflect the growth the company is experiencing in its shop customer base, nor the findings of its own internal surveys of customers. He acknowledged the company's platform "absolutely caters to a DRP workflow," but said PartsTrader is "seeing a tremendous increase in independent

A survey found overall satisfaction with the platform, but not many shops were willing to recommend it to others.

usage outside of any DRP" requirement.

"In fact, one-third of our collision repair facilities that participate on the platform do it independently of any DRP," Lindner said.

A survey the company conducted in June, he said, found "67% of those surveyed responded that they would recommend PartsTrader."

Lindner found the *CRASH Network* survey results surprising "because they're quite a bit different from the numbers we're seeing," he said.

Still, he said, the company "takes customer feedback extremely seriously," and he encourages shops and insurers to share their concerns. "We'd really like to make sure all our customers are having a great experience," he said.

In addition to growing its parts ordering system business, Lindner said, PartsTrader is working to expand its offerings. "It's probably premature to comment specifically, but certainly we're looking at other complementary solutions and services to our core business that we can add in 2020 and 2021," he said. **AIR**

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State Market Focus: MARYLAND

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on driving behavior, Redmer said.

While Redmer's speculation about the prospects for a telematics bill was based on "scuttlebutt" he'd heard, legislation addressing rating factors is all but certain.

"There are folks in the General Assembly who are curious about why these rating factors are being used and what the net effect is in the marketplace," Redmer said. "They are looking for data, and our role is to provide that data."

In the letter directing the MIA to conduct the study, Sen. **Delores Kelley**, chair of the Senate Finance Committee, and Rep. **Dereck Davis**, chair of the House Economic Matters Committee, cited "concerns that these factors may duplicate or unduly amplify the effects of other allowed factors in underwriting and issuing the policies, or may correlate in an undesirable way with other factors the use of which are limited or not allowed in Maryland. The effect of these

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Maryland Personal Auto Insurers

Groups Ranked by Total 2018 Direct Premium Written (000)

Group Name	2018 Premium	Mkt share 2018	Loss Ratio 2018	2017 Premium	Mkt share 2017	Loss Ratio 2017	2016 Premium	Mkt share 2016	Loss Ratio 2016
Berkshire Hathaway/GEICO	\$1,289,470	24.4%	71.2%	\$1,173,739	23.6%	71.9%	\$1,059,508	22.9%	70.9%
State Farm Mutual	\$967,626	18.3%	67.7%	\$940,404	18.9%	76.1%	\$883,401	19.1%	77.6%
Allstate Corp.	\$611,327	11.6%	57.2%	\$582,872	11.7%	56.2%	\$571,836	12.4%	63.7%
USAA Insurance Group	\$471,969	8.9%	66.3%	\$422,116	8.5%	78.8%	\$368,121	8.0%	90.4%
Erie Insurance Group	\$416,530	7.9%	81.0%	\$376,241	7.6%	78.2%	\$335,024	7.2%	80.6%
Progressive Corp.	\$358,134	6.8%	62.4%	\$310,170	6.2%	59.9%	\$279,597	6.1%	66.1%
Nationwide Mutual Group	\$341,678	6.5%	60.8%	\$373,032	7.5%	63.4%	\$374,889	8.1%	74.5%
Liberty Mutual	\$173,446	3.3%	45.6%	\$185,153	3.7%	61.3%	\$198,120	4.3%	63.1%
Travelers Companies Inc.	\$94,055	1.8%	60.7%	\$81,122	1.6%	63.9%	\$65,448	1.4%	60.8%
Maryland Automobile Insurance Fund	\$83,021	1.6%	77.1%	\$76,647	1.5%	75.2%	\$70,008	1.5%	77.6%
Agency Insurance Co. of Maryland Inc.	\$49,132	0.9%	64.1%	\$44,106	0.9%	66.2%	\$32,549	0.7%	65.1%
Hartford Financial Services	\$48,513	0.9%	56.0%	\$50,075	1.0%	61.7%	\$52,823	1.1%	71.0%
Elephant Insurance Co.	\$33,947	0.6%	83.5%	\$33,319	0.7%	80.5%	\$28,987	0.6%	71.8%
CSAA Insurance Exchange (NorCal)	\$33,513	0.6%	74.4%	\$35,098	0.7%	78.6%	\$36,369	0.8%	86.4%
Farmers Insurance Group	\$32,562	0.6%	55.2%	\$31,712	0.6%	58.2%	\$30,158	0.7%	73.0%
MetLife Inc.	\$29,795	0.6%	68.5%	\$26,446	0.5%	67.8%	\$26,821	0.6%	73.9%
State Auto Insurance Companies	\$27,173	0.5%	57.4%	\$19,897	0.4%	56.5%	\$21,275	0.5%	65.8%
Amica Mutual Insurance Co.	\$25,375	0.5%	65.5%	\$23,579	0.5%	70.0%	\$21,442	0.5%	63.5%
Donegal Insurance Group	\$22,538	0.4%	91.5%	\$22,753	0.5%	73.5%	\$21,568	0.5%	71.1%
Brethren Mutual Insurance Co.	\$19,157	0.4%	79.3%	\$16,860	0.3%	79.7%	\$14,487	0.3%	82.5%
Cincinnati Financial Corp.	\$16,541	0.3%	90.1%	\$13,951	0.3%	80.8%	\$10,755	0.2%	96.8%
Chubb Ltd.	\$16,341	0.3%	62.7%	\$15,645	0.3%	56.0%	\$15,440	0.3%	61.7%
Penn National Insurance	\$13,618	0.3%	70.9%	\$13,196	0.3%	77.3%	\$12,166	0.3%	81.8%
Kemper Corp.	\$12,719	0.2%	44.2%	\$10,664	0.2%	65.1%	\$10,612	0.2%	59.3%
Statewide Totals	\$5,279,044		66.6%	\$4,971,736		69.7%	\$4,624,594		73.2%

Source: S&P Global Market Intelligence and the *Auto Insurance Report* database.

Loss ratio = incurred losses/direct premium earned and does not include dividends or loss adjustment expense.

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actions may have a disproportionate impact on certain populations that are economically struggling.” Maryland allows the use of credit history as a rating factor, but insurers cannot apply a surcharge more than 40% based on it.

Insurers argue that education and occupation, like other rating factors currently in use, helps them produce more accurate prices, which invites a more competitive market for drivers representing different levels of risk. Consumers who don’t want those factors to be considered can shop for policies among carriers who don’t use them, said **Nancy Egan** of the **American Property Casualty Insurance Association (AP-CIA)**. Maryland insurers are required to include a statement with policy renewals disclosing the rating factors they use.

While many states allow the use of education and occupation in rating, several of the largest markets do not, including **California**; **New York**, which recently banned the practice by regulation; and **Michigan**, which included a ban

in no-fault reform legislation.

While regulators and insurers emphasize that the market is very competitive, they recognize that auto insurance in Maryland is also very expensive. In 2016, Maryland residents spent an average of \$1,077 on auto insurance, the 11th highest in the country.

In part because of high premiums, nearly 500,000 Maryland drivers lack insurance, based on the 12.4% rate of uninsured motorists estimated by the **Insurance Research Council**.

Following a legislative directive in 2018, **Maryland Auto Insurance Fund**, the residual market now known as **Maryland Auto**, is studying the problem of uninsured motorists and possible solutions aimed at reducing those numbers. Maryland Auto Executive Director **Mark McCurdy** views the problem of uninsured drivers as “not only a safety issue, but an economic development issue” because it limits access to jobs.

The uninsured motorist study will look at three broad issues, McCurdy said: awareness of

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Maryland Auto Insurance Profit Margins Ten-Year Summary, Percent of Direct Premiums Earned

Line of Business	2017 Total Profit	2016 Total Profit	2015 Total Profit	2014 Total Profit	2013 Total Profit	2012 Total Profit	2011 Total Profit	2010 Total Profit	2009 Total Profit	2008 Total Profit	Avg Total Profit
Personal Auto Liab	2.1	-0.7	-0.6	4.8	10.1	5.4	4.1	4.6	2.3	3.5	3.6
Personal Auto Phys	7.6	2.6	3.9	6.2	7.4	7.3	4.1	4.8	6.6	4.6	5.5
Personal Auto Total	4.3	0.7	1.2	5.3	9.1	6.2	4.1	4.7	4.0	3.9	4.4
Comm. Auto Liab	11.5	7.7	11.9	7.3	15.6	12.2	18.8	19.5	8.0	18.2	13.1
Comm. Auto Phys	3.7	1.8	0.5	3.9	6.9	1.2	1.1	-1.0	6.8	6.7	3.2
Comm. Auto Total	9.8	6.4	9.4	6.6	13.8	9.9	15.2	15.3	7.7	15.7	11.0
Total All Lines*	12.0	9.9	9.3	13.0	12.6	10.0	6.3	3.0	7.4	8.7	9.2

*Auto; Home, Farm & Commercial Multiperil; Fire; Allied; Inland Marine; Med Malpractice; Other Liability; Workers Comp; All Other

Note: Profit calculations are by *Auto Insurance Report* using data from the National Association of Insurance Commissioners. Calculations are estimates, some based on national averages.

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mandatory insurance laws and the availability of the residual market for those rejected by private insurers; enforcement, including an understanding of whether consequences are appropriate; and barriers to getting insurance, including cost.

“We are going to try to come up with recommendations that will overcome these problems,” McCurdy said. One idea is to redirect money generated from fines paid by uninsured motorists into programs aimed at addressing the problem.

The **Maryland Motor Vehicle Administration (MVA)** expects to improve enforcement of the mandatory insurance law when it implements real-time verification of insurance coverage when people apply for and renew vehicle registrations. Testing begins next month, with plans to go live in May 2020. The real-time verification system will supplement the state’s current reporting system, which requires insurers to upload new policies and cancellations. Insurance indus-

try representatives have urged the state to switch solely to the web-based verification system promoted by the **Insurance Industry Committee on Motor Vehicle Administration**, saying it would be less burdensome and more effective.

Meanwhile, to help people who can’t register vehicles because of old, unpaid fines for insurance violations, lawmakers authorized the Uninsured Division of Maryland Auto, in conjunction with MVA, to launch a partial amnesty program. As of Oct. 3, 9,600 debtors had signed up for the program, which forgives 80% of the fines and allows a three- or six-month payment plan for the remaining 20%. The agency has identified 300,000 people who are potentially eligible because they have unpaid fines for insurance violations dated before Dec. 31, 2016.

In a presentation last month for the uninsured study, representatives of APCA described how Maryland’s high claims costs are the main reason

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Maryland Commercial Auto Insurers

Groups Ranked by Total 2017 Direct Premium Written (000)

Group Name	2017 Premium	Mkt share 2017	Loss Ratio 2017	2016 Premium	Mkt share 2016	Loss Ratio 2016	2015 Premium	Mkt share 2015	Loss Ratio 2015
Erie Insurance	\$67,867	11.2%	70.6%	\$64,204	11.4%	69.8%	\$57,094	10.8%	61.1%
Progressive Corp.	\$49,174	8.1%	61.6%	\$38,717	6.9%	53.3%	\$31,146	5.9%	48.3%
Nationwide Mutual Group	\$45,571	7.5%	63.3%	\$45,532	8.1%	66.4%	\$47,387	9.0%	62.4%
Travelers Companies Inc.	\$35,757	5.9%	57.4%	\$35,067	6.2%	39.7%	\$31,771	6.0%	51.8%
Selective Insurance Group Inc.	\$34,289	5.6%	58.1%	\$29,028	5.2%	65.3%	\$26,227	5.0%	43.9%
Zurich Insurance Group	\$25,894	4.3%	66.4%	\$23,245	4.1%	84.6%	\$23,341	4.4%	52.9%
Liberty Mutual	\$23,479	3.9%	83.3%	\$24,736	4.4%	60.7%	\$24,181	4.6%	78.9%
Agency Insurance Co. of Maryland Inc.	\$20,080	3.3%	68.5%	\$13,965	2.5%	54.5%	\$9,144	1.7%	81.3%
Berkshire Hathaway Inc.	\$19,297	3.2%	58.4%	\$16,518	2.9%	87.1%	\$16,833	3.2%	63.1%
Hartford Financial Services	\$18,355	3.0%	57.7%	\$21,726	3.9%	60.0%	\$20,792	3.9%	34.4%
Cincinnati Financial Corp.	\$17,549	2.9%	80.8%	\$16,991	3.0%	86.2%	\$16,360	3.1%	82.0%
Donegal Insurance Group	\$15,226	2.5%	55.0%	\$13,204	2.3%	92.7%	\$11,774	2.2%	93.7%
Tokio Marine	\$14,975	2.5%	56.3%	\$13,154	2.3%	51.6%	\$11,947	2.3%	46.9%
Statewide Totals	\$608,898		61.9%	\$563,664		64.1%	\$528,563		59.4%

Source: S&P Global Market Intelligence; SNL Insurance data, by permission, and the *Auto Insurance Report* database. Loss ratio = incurred losses/direct premium earned and does not include dividends or loss adjustment expense.

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for its expensive premiums. One factor is Maryland's relatively high mandatory insurance requirements, which are set at \$30,000 per person and \$60,000 per accident for bodily injury and \$15,000 for property damage.

Another factor is the sheer amount of congestion. In Maryland, more than 82% of miles traveled are driven under urban conditions, more than the 70% national average and significantly higher than surrounding states, other than the **District of Columbia**. The traffic problem has been exacerbated by development in the D.C. metro area. Maryland's major urban highways and roads ranked first nationally in 2017 for the average amount of traffic carried daily per-lane-mile, and second nationally in average daily commute length from 2013 to 2017, according to the national transportation research group **TRIP**.

As part of its effort to reduce crashes, the state has been beefing up highway safety measures. Maryland was one of the earliest states to ban the use of handheld cellphones while driving, and it recently tightened up of the ignition interlock program, which provides an alternative to license suspension or revocation for those arrested for drunk driving. As a result of recent legislation, ignition interlock devices installed since Oct. 1 must have a camera to verify who is breathing into the alcohol-detection device.

Redmer said that growing incidents of insurance fraud, including staged accidents, are another factor driving up insurance costs.

Despite a pure contributory negligence system – in which people cannot recover damages from an injury if they are found even partly at fault – insurers also point to litigation challenges that they believe would worsen under some legislative proposals that could emerge again in 2020. After stalling in 2017 and 2018, Senate Bill 102, a direct-action bill, passed the Senate

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Maryland Snapshot

Regulator: Insurance Commissioner Alfred Redmer Jr.

Rate regulation: file and use

Size of personal auto market: \$5.28 billion (2018 DPW) Rank: 16th

Average policy expenditure: \$1,077 (2016)

Rank: 11th

Auto Insurance Report PAIN Index rank:

27th (2016)

Property Insurance Report HURT Index rank:

48th (2016)

Auto registrations: 2.0 million (2017)

Truck registrations: 2.2 million (2017)

Vehicle miles traveled (VMT): 59.42 billion (2017)

Traffic fatalities: 0.9 per 100 million VMT;

U.S.: 1.16 (2017)

Vehicle thefts: 224.2 per 100,000 residents;

Region: 200.8 (2017)

Liability defense: pure contributory negligence

Minimum Insurance Requirements:

BI: \$30,000/\$60,000 • PD: \$15,000

Safety Laws

Ban on handheld cellphones and texting for all drivers; cell phone ban for novice drivers

Graduated licensing

Primary seat belt law

Motorcycle helmets required for all riders

Demographics

Population: 6.0 million (2018 est.)

Change 2010-2018: +4.7%, U.S.: +6.0%

Median household income (avg. 2013-2017):

\$78,916; U.S.: \$57,652

Population density: 594.8 per square mile;

U.S.: 87.4 per square mile (2010)

Sources: S&P Global Market Intelligence; NAIC;

U.S. Dept. of Transportation; NAMIC; U.S.

Census; Insurance Institute for Highway Safety;

FBI; Matthiesen, Wickert & Lehrer

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state's own accident reconstruction expert found that excessive speed by the motorcyclist who died in the accident caused the collision.

Keodalah filed suit for bad faith and violations of the state's Consumer Protection Act (CPA) against both Allstate and its adjuster, **Tracey Smith**.

The suit alleged that Smith "misrepresented facts [and] asserted facts that contradicted both her and Allstate's investigation."

The trial court dismissed Keodalah's claims against Smith, but an appeals court reversed that decision. The Supreme Court ruled 5-4 that the appeals court ruling was in error and that bad faith claims and CPA claims cannot be brought against individual insurance adjusters.

The ruling noted that the legislature gave the state insurance commissioner broad authority to enforce the insurance code.

"In our view, the presence of such specific provisions for enforcement of the insurance code suggests that the legislature's omission of a provision creating a private cause of action for violations of [the statute's] duty of good faith was intentional."

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The CPA law only applies to insurance companies, not adjusters who are "outside the quasi-fiduciary relationship" that the insurer has with the insured, the court ruled.

"Smith did not owe Keodalah a duty under that regulation because that regulation defines only unfair acts or practices of the insurer," according to the decision. **AIR**

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this year but did not move in the House. The bill would have allowed a third-party claimant to directly sue an insurer in a personal or commercial auto insurance claim. Insurance representatives argued that having an insurance company as the defendant would result in larger verdicts and might force insurers to defend suits without the required cooperation of the insured.

Another bill, SB 776, would have doubled Maryland's jury threshold to \$30,000. Maryland has the nation's second-highest threshold, after **Louisiana**. Any case pled for more than \$15,000 can currently be moved up to a jury trial. Insur-

ers oppose raising the threshold because they believe juries produce fairer verdicts than elected judges. SB 388 would bar insurers from disclaiming coverage on a liability policy based on an insured's failure to cooperate.

Insurers recognize that bills promoted by the trial bar are always a threat in a state where Democrats hold a more than 2-to-1 majority in both legislative chambers. Despite Democratic strength, Republican Gov. **Larry Hogan** sailed to a second term in the November election. Redmer could not capture that same magic to win the election for Baltimore County executive, rarely held by Republicans. **AIR**

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