

Nonpayment of an Insurance Claim is Not Elder Abuse

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Does the failure to pay an insurance claim constitute elder abuse? Not under Oregon's elder financial abuse laws. In January, the Oregon Supreme Court, answering a certified question from the Ninth Circuit, held that "[a]llegations that an insurance company, in bad faith, delayed the processing of claims and refused to pay benefits owed to vulnerable persons under an insurance contract do not state a claim under ORS 124.110(1)(b) for wrongful withholding of money or property." The plaintiffs in *Bates v. Bankers Life and Casualty Company* accused Bankers of developing onerous procedures that were intended to delay and deny long-term care insurance claims. They argued that the failure to pay insurance claims to which they were entitled violated Oregon's elder financial abuse laws because the insurance company was retaining money or property that belonged to them.

The payment and administration of insurance claims is not the type of conduct the financial abuse statute was intended to govern. The Oregon Supreme Court applied fundamental tenets of insurance law to determine that neither the long-term care policies, nor plaintiffs' contractual right to receive benefits under the policies, constitute money or property that was acquired by the insurance company. The money the plaintiffs paid for the insurance (premiums), is "factually and legally" distinct from the insurance benefits themselves which are subject to payment upon the occurrence of certain risk contingencies. Plaintiffs were thus unable to demonstrate a key element of their claim – that Bankers acquired ownership or control of money or property belonging to them.

The federal government, states, territories, and the District of Columbia all have laws designed to protect older adults from financial exploitation. While it does not appear that these laws are patterned on a model act, and they can vary considerably from jurisdiction to jurisdiction, the laws generally address improper use of assets or property belonging to the vulnerable or elderly adult. Consequently, the *Bates* decision could have far-reaching implications beyond Oregon.