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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER H. ANDERSON,

Plaintiff,

v.

COUNTRY MUTUAL INSURANCE  
COMPANY,

Defendant.

CASE NO. C14-0048JLR

ORDER DENYING CROSS-  
MOTIONS FOR SUMMARY  
JUDGMENT

**I. INTRODUCTION**

Before the court are the parties' cross-motions for summary judgment. (Pltf.'s Mot. (Dkt. # 55); Def.'s Mot. (Dkt. # 58).) The court has considered the parties' submissions, the balance of the record, and the relevant law. Being fully advised,<sup>1</sup> the court DENIES both motions.

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<sup>1</sup> The court finds that oral argument is unnecessary.

## II. BACKGROUND

This is an insurance coverage case arising out of a fire at a house that Plaintiff Christopher H. Anderson owned in Seattle, Washington (“the House”). (*See* Ver. of State Ct. Rec. (Dkt. # 3) Ex. 1 (Dkt. # 3-1) (“Compl.”); Anderson Decl. (Dkt. # 56) ¶ 3.) The fire occurred on December 26, 2012, and caused significant damage to the House. (Compl. ¶ 3.1.) The Seattle Fire Department (“SFD”) responded to the scene and conducted an investigation. (*See* Thielbar Decl. (Dkt. # 61) ¶ 6, Ex. I (Dkt. # 61-3) (“SFD Report”).) The investigation concluded that the fire occurred due to an overheated electrical outlet in the basement that was rewired for an illegal marijuana growing operation (“the Operation”). (*See id.*)

The Seattle Police Department (“SPD”) also conducted an investigation. (4th Carsley Decl. (Dkt. # 49) ¶ 11, Ex. F. (Dkt. # 49-6) (“SPD Report”).) In the course of this investigation, Detective Marco Ortiz found that the Operation was concealed within the basement with false walls, that electricity was diverted to the Operation so that the power used for the Operation would not show up on the electricity meter, and that an air-filtering and venting system was installed to hide the smell of the Operation. (*See* SPD Report at 2-4; Thenell Decl. (Dkt. # 59) ¶ 2, Ex. A (Dkt. # 59-1) (“Ortiz Dep.”)<sup>2</sup> at 19:17-20:13, 21:3-22:18; Weber Decl. (Dkt. # 64) ¶ 5, Ex. D (Dkt. # 64-4) (“Lefebvre Dep.”) at 40:19-41:5.)

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<sup>2</sup> Detective Ortiz’s deposition transcript also appears in the record in another location. (*See* 5th Carsley Decl. (Dkt. # 57) ¶ 7, Ex. F (Dkt. # 57-6).)

1 Mr. Anderson had a homeowner’s insurance policy with Defendant Country  
2 Mutual Insurance Company (“Country Mutual”) that was effective at the time of the fire.  
3 (See Thielbar Decl. ¶ 3, Ex. H (Dkt. ## 61-1, 61-2) (“Policy”).) On January 3, 2013, Mr.  
4 Anderson reported the fire to Country Mutual, which began its own investigation. (See  
5 Theilbar Decl. ¶¶ 5-6.) Country Mutual collected SFD and SPD reports, reviewed news  
6 reporting on the fire, and interviewed witnesses. (See, e.g., 5th Carsley Decl. (Dkt. # 57)  
7 ¶ 2, Ex. A (Dkt. # 57-1) (“Thielbar Dep.”) at 67:24-69:12, 84-94; Weber Decl. ¶ 7, Ex. F  
8 (Dkt. # 64-6) (“Lefebvre Email”); Lefebvre Decl. (Dkt. # 60) ¶ 3, Ex. G (Dkt. # 60-3)  
9 (“Anderson 1/10/13 Statement”)<sup>3</sup>.) To facilitate this investigation, Mr. Anderson signed  
10 multiple releases enabling Country Mutual to obtain documents and made available a  
11 number of additional documents not covered by the releases. (See, e.g., 4th Carsley Decl.  
12 ¶ 19, Ex. J. (Dkt. # 49-10) (“1/9/13 Email”).) In addition, Mr. Anderson hired Paul  
13 Gaouette of Adjusters International, a private adjusting firm, to assist him with the  
14 presentation of his claim. (See 5th Carsley Decl. ¶ 8, Ex. G (Dkt. # 57-7) (“Gaouette  
15 Dep.”) at 7:5-7.)

16 Since the outset of Country Mutual’s investigation, Mr. Anderson has maintained  
17 that he did not know about the Operation and suggested that it was likely carried on by  
18 his tenant, Mark Gray. (See, e.g., Anderson 1/10/13 Statement at 30; 2d Carsley Decl.  
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21 <sup>3</sup> Mr. Anderson’s statement from January 10, 2013, also appears in the record at another  
22 location. (See 2d Carsley Decl. (Dkt. # 22) ¶ 7, Ex. F (Dkt. # 22-1) at 25-29; 5th Carsley Decl.,  
¶ 3, Ex. B (Dkt. # 57-2).)

1 (Dkt. # 22) ¶ 8, Ex. G (Dkt. # 22-2) at 2-13 (“Anderson 2/8/13 Statement”)<sup>4</sup>; Pltf.’s Mot.  
2 at 3-4.) Mr. Anderson told Country Mutual about his tenant around the time he gave  
3 notice of the fire and provided a form lease agreement signed by Mr. Gray. (*See*  
4 Anderson 1/10/13 Statement at 6; Lefebvre Decl. ¶ 2, Ex. E (Dkt. # 60-1) (“Lease  
5 Email”), Ex. F (Dkt. # 60-2) (“Lease”).) Mr. Anderson told Country Mutual that he  
6 thought Mr. Gray had lived in the House for about 19 months with his girlfriend and two  
7 children. (Anderson 1/10/13 Statement at 6-7; Anderson 2/8/13 Statement at 18; Pltf.’s  
8 Mot. at 3.) In addition, Mr. Anderson related that he had visited the House on several  
9 occasions while Mr. Gray lived there, including to repair the deck, but had never  
10 conducted a walkthrough, gone into the basement, or detected the Operation. (*See*  
11 Anderson 1/10/13 Statement at 7-9, 26-27; Anderson 2/8/13 Statement at 28-31, 35-36.)  
12 Mr. Anderson further asserted that he does not smoke marijuana and has never grown it.  
13 (Anderson 2/8/13 Statement at 36-37.)

14 On January 10, 2013, Country Mutual claims handler James Lefebvre conducted  
15 an initial interview with Mr. Anderson. (*See generally* Anderson 1/10/13 Statement.)  
16 During that interview, Mr. Lefebvre asked Mr. Anderson where he was at the time of the  
17 fire. (*Id.* at 20.) Mr. Anderson responded that he was golfing in Chelan, Washington.  
18 (*See id.*; *see also* Anderson 2/8/13 Statement at 38-39.) In checking Mr. Anderson’s  
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21 <sup>4</sup> Mr. Anderson’s statement from February 8, 2013, also appears in the record at another  
22 location. (*See* Thielbar Decl. ¶ 11, Ex. K (Dkt. # 61-5); 5th Carsley Decl. ¶ 4, Ex. C (Dkt. # 57-3).)

1 | story, Country Mutual learned that the golf course was closed on December 26, 2012, due  
2 | to snow. (Thielbar Decl. ¶ 12.)

3 |         Approximately one month later, Country Mutual special investigator Chris  
4 | Thielbar conducted a second interview with Mr. Anderson. (*See id.* ¶ 11; Anderson  
5 | 2/8/13 Statement.) Mr. Theilbar confronted Mr. Anderson with the facts about the snow,  
6 | to which Mr. Anderson responded that he had actually been in Roslyn, Washington, on  
7 | December 26, 2012, with a prostitute named Teyana Dorsey. (*See* Anderson 2/8/13  
8 | Statement at 37-41.) Mr. Anderson acknowledged that he had lied about his whereabouts  
9 | but explained that his only motive was to prevent his daughter from finding out that he  
10 | was with Ms. Dorsey. (*See id.* at 38-43.)

11 |         In addition to that misrepresentation, Country Mutual claims to have discovered  
12 | several other irregularities in Mr. Anderson's statements. (*See* Def.'s Mot. at 3-6.) For  
13 | example, Country Mutual asserts that Mr. Anderson has testified inconsistently about the  
14 | frequency and timing of his visits to the House in the months leading up to the fire and  
15 | about how he received and processed rent payments from Mr. Gray. (*See id.* at 4-6.)  
16 | Country Mutual highlights contradictory statements from Mr. Anderson about Mr. Gray's  
17 | vehicle. (*See id.* at 4, 6.) Country Mutual also points out that after the fire the SPD  
18 | found property belonging to Mr. Anderson in the House; that the lease agreement is  
19 | inconsistent with Mr. Anderson's statements because it lists Mr. Anderson as a co-  
20 | resident and prohibits children; and that the utilities for the House were in Mr.  
21 | Anderson's name. (*See id.* at 3, 5.) Furthermore, Country Mutual has been unsuccessful  
22 | in locating Mr. Gray. (Thielbar Decl. ¶ 20.)

1 On October 9, 2013, Country Mutual sent a letter to Mr. Anderson informing him  
2 that it was denying coverage. (*See* 2d Carsley Decl. ¶ 15, Ex. N (Dkt. # 22-3) at 21-25.  
3 (“Denial Letter”).) It based this denial on two policy exclusions. (*See id.* at 4.) The first  
4 exclusion precludes coverage when the insured has misrepresented any material fact  
5 relating to the insurance (“the misrepresentation exclusion”). (*See id.*; Policy at 32.) The  
6 second exclusion bars coverage when the loss results from the illegal manufacture of  
7 controlled substances and the insured has knowledge of such manufacture (“the  
8 controlled substances exclusion”). (*See* Denial Letter at 4; Policy at 26, 28.) The denial  
9 letter supported application of those exclusions with the following facts: Mr. Anderson  
10 admitted to visiting the House on numerous occasions before the fire and misrepresented  
11 his whereabouts at the time of the fire. (*See* Denial Letter at 3-4.)

12 During the investigation, Country Mutual made payments to Mr. Anderson  
13 totaling \$5,565.29 and \$29,200.00. (*See* Thielbar Decl. ¶ 21, Ex. O (Dkt. # 61-9)  
14 (“Ledger”).) The first sum was, in Country Mutual’s words, “towards the Dwelling,”  
15 while the second was for rent replacement. (*See id.*) Also during the investigation,  
16 Country Mutual paid \$97,996.74 for the actual cash value (“ACV”) of the House to Mr.  
17 Anderson’s mortgagee as the loss payee under Mr. Anderson’s policy. (*See id.*; Def.’s  
18 Mot. at 14.) Mr. Anderson alleges that the denial of coverage caused him to lose the  
19 property because he could no longer afford his mortgage and had to sell the property to  
20 avoid foreclosure. (*See* Anderson Decl. ¶ 3.) Mr. Anderson also contends that if  
21 coverage had not been denied, he would have retained the property and repaired or  
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1 replaced the House. (*See id.*; Weber Decl. (Dkt. # 64) ¶ 15, Ex. L (Dkt. # 64-12)  
2 (“Neupert Dep.”) at 5, 7.)

3 On December 20, 2013, Mr. Anderson filed this lawsuit in the Superior Court for  
4 King County, Washington, bringing claims against Country Mutual for breach of  
5 contract, bad faith, and violation of the Consumer Protection Act (“CPA”), RCW ch.  
6 19.86.010, *et seq.*, and the Insurance Fair Conduct Act (“IFCA”), RCW 48.30.15. (*See*  
7 *generally* Compl.) Country Mutual removed the case to this court on January 10, 2014.  
8 (Not. of Rem. (Dkt. # 1).) Shortly thereafter, Country Mutual filed an answer and  
9 asserted two counterclaims for breach of contract. (*See* Answer (Dkt. # 6) at 8-9.)

10 The parties filed the instant cross-motions for summary judgment on December  
11 16, 2014. (*See* Pltf.’s Mot.; Def.’s Mot.) Mr. Anderson moves for partial summary  
12 judgment on two issues. (Pltf.’s Mot. at 2.) First, Mr. Anderson asks the court to rule  
13 that Country Mutual is estopped from relying on evidence other than what it stated in its  
14 denial letter, provided Country Mutual knew or should have known of the additional  
15 evidence at the time of the denial letter. (*See id.* at 11-18; Pltf.’s Reply at 2-9.) Second,  
16 Mr. Anderson seeks to preclude Country Mutual from asserting the controlled substances  
17 exclusion. (*See* Pltf.’s Mot. at 2.) Mr. Anderson argues that Country Mutual had so little  
18 evidence of Mr. Anderson’s knowledge of the Operation that its conclusion in that regard  
19 is unreasonable as a matter of law. (*See id.* at 18-23; Pltf.’s Reply at 9-12.) He points out  
20 that Country Mutual lacked any direct evidence of Mr. Anderson’s knowledge, distrusted  
21 Mr. Anderson, and failed to pursue avenues of investigation that might have corroborated  
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1 Mr. Anderson's story, such as the efficacy of the various measures concealing the  
2 Operation. (*See* Pltf.'s Mot. at 20-23; Pltf.'s Reply at 10-12.)

3 Country Mutual, in turn, moves for summary judgment on five issues. (*See* Def.'s  
4 Mot. at 10-17.) First, it asks the court to rule that the misrepresentation exclusion applies  
5 because Mr. Anderson's initial statement about his whereabouts is a material  
6 misrepresentation. (*See id.* at 10-11; Def.'s Reply at 2-3.) Second, it moves for summary  
7 judgment on the reasonableness of its conclusion that Mr. Anderson knew about the  
8 Operation and thus that the controlled substances exclusion barred coverage. (*See* Def.'s  
9 Mot. at 13-14; Def.'s Reply at 4-5.) Third, Country Mutual argues that it enjoys  
10 immunity from Mr. Anderson's bad faith, IFCA, and CPA claims under RCW 48.50.075.  
11 (*See* Def.'s Mot. at 14-15; Def.'s Reply at 6-7.) That statute protects insurance  
12 companies who deny coverage in reliance on a written opinion from a qualified agency  
13 that the claim involves criminal activity and that the insured is the target of the  
14 investigation. *See* RCW 48.50.075. Fourth, Country Mutual contends that Mr.  
15 Anderson's bad faith claim must fail because he has no evidence of damages. (*See* Def.'s  
16 Mot. at 16-17; Def.'s Reply at 7.) Fifth and finally, it requests a determination that it has  
17 fulfilled its obligations under the contract by paying the ACV of the House to Mr.  
18 Anderson's mortgagee. (*See* Def.'s Mot. at 14; Def.'s Reply at 5-6.)

19 The parties' cross-motions are now before the court. For the reasons stated below,  
20 the court finds that summary judgment is inappropriate on the issues raised by the parties  
21 and therefore DENIES the parties' cross-motions for summary judgment.  
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1 **III. DISCUSSION**

2 **A. Summary Judgment Standard**

3 Summary judgment is appropriate if the evidence, when viewed in the light most  
4 favorable to the non-moving party, demonstrates “that there is no genuine dispute as to  
5 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.  
6 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cnty. of L.A.*,  
7 477 F.3d 652, 658 (9th Cir. 2007). A fact is “material” if it might affect the outcome of  
8 the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is  
9 “genuine” if the evidence is such that reasonable persons could disagree about whether  
10 the facts claimed by the moving party are true. *Aydin Corp. v. Loral Corp.*, 718 F.2d  
11 897, 902 (9th Cir. 1983).

12 [T]he issue of material fact required . . . to be present to entitle a party to  
13 proceed to trial is not required to be resolved conclusively in favor of the  
14 party asserting its existence; rather, all that is required is that sufficient  
evidence supporting the claimed factual dispute be shown to require a jury  
or judge to resolve the parties’ differing versions of the truth at trial.

15 *First Nat. Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968).

16 The court is “required to view the facts and draw reasonable inferences in the light  
17 most favorable to the [non-moving] party.” *Scott v. Harris*, 550 U.S. 372, 378 (2007).

18 The court may not weigh evidence or make credibility determinations in analyzing a  
19 motion for summary judgment because these are “jury functions, not those of a judge.”  
20 *Anderson*, 477 U.S. at 249-50.

21 The moving party bears the initial burden of showing there is no genuine issue of  
22 material fact and that he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S.

1 at 323. If the moving party meets his or her burden, the non-moving party “must make a  
2 showing sufficient to establish a genuine dispute of material fact regarding the existence  
3 of the essential elements of his case that he must prove at trial.” *Galen*, 477 F.3d at 658.

4 **B. Mr. Anderson’s Knowledge of the Operation**

5 Both Country Mutual and Mr. Anderson move for summary judgment on the issue  
6 of whether Country Mutual reasonably concluded that Mr. Anderson knew about the  
7 Operation. (*See* Def.’s Mot. at 13-14; Pltf.’s Mot. at 18-23.) As described above,  
8 Country Mutual invoked the controlled substances exclusion as one of its bases for  
9 denying coverage. (*See* Denial Letter at 4.) In doing so, it relied on its conclusion that  
10 Mr. Anderson knew about the Operation. (*See id.*) Mr. Anderson now alleges that  
11 Country Mutual’s denial of coverage on that basis amounts to bad faith because Country  
12 Mutual lacked a reasonable basis for its determination that Mr. Anderson knew about the  
13 Operation. (*See* Pltf.’s Mot. at 20-23.)

14 An insurer has an obligation to act in good faith when dealing with its insureds.  
15 *See* RCW 48.01.030; *Indus. Indem. Co. of the Nw., Inc. v. Kallevig*, 792 P.2d 520, 526  
16 (Wash. 1990). “This fiduciary duty . . . is fairly broad and may be breached by conduct  
17 short of intentional bad faith or fraud.” *Kallevig*, 792 P.2d at 526 (citing *Phil Schroeder,*  
18 *Inc. v. Royal Globe Ins. Co.*, 659 P.2d 509 (Wash. 1983)). “Thus, an insurer’s denial of  
19 coverage, without reasonable justification, constitutes bad faith.” *Id.* Notably, however,  
20 bad faith is an issue of fact that is rarely appropriate for summary judgment. *See Hell*  
21 *Yeah Cycles v. Ohio Sec. Ins. Co.*, 16 F. Supp. 3d 1224, 1235 (E.D. Wash. 2014) (citing  
22 *Smith v. Safeco Ins. Co.*, 78 P.3d 1274, 1277 (Wash. 2003)).

1 In raising this issue on summary judgment, therefore, each party is effectively  
2 arguing that, even viewing the facts in the light most favorable to the opposing side, no  
3 reasonable jury could disagree about the reasonableness (or unreasonableness) of Country  
4 Mutual's determination regarding Mr. Anderson's knowledge. *See Hell Yeah Cycles*, 16  
5 F. Supp. 3d at 1235; *Smith*, 78 P.2d at 1277-78. Both parties are mistaken. Viewing the  
6 evidence as it must at summary judgment, *see Scott*, 550 U.S. at 378, the court finds that  
7 reasonable minds could differ regarding the reasonableness of Country Mutual's decision  
8 to invoke the controlled substances exclusion. *See Hell Yeah Cycles*, 16 F. Supp. 3d at  
9 1235. Summary judgment is therefore inappropriate.

10 Country Mutual points to the following facts to support its position that Mr.  
11 Anderson knew about the Operation: Mr. Anderson admitted to visiting the House in the  
12 months leading up to the fire, the SPD discovered items belonging to Mr. Anderson at the  
13 House, few other items consistent with tenancy were found at the House, the utilities  
14 remained in Mr. Anderson's name, the lease agreement lists Mr. Anderson as a resident,  
15 Mr. Anderson misrepresented his whereabouts on the night of the fire, Mr. Anderson  
16 waited a week to inform Country Mutual of the fire, and Mr. Gray has not been located.  
17 (*See* Def.'s Mot. at 13; Def.'s Resp. at 9-10.) Based on those facts, Country Mutual  
18 argues that it reasonably concluded that Mr. Anderson knew about the Operation. (*See*  
19 Def.'s Mot. at 13-14; Def.'s Resp. at 9-10.)

20 Mr. Anderson, on the other hand, relies on weaknesses in Country Mutual's  
21 evidence and on his own repeated and consistent denials of knowledge. For example,  
22 Mr. Anderson notes that Country Mutual's conclusion depends entirely on inferences

1 from circumstantial evidence and total disbelief of Mr. Anderson’s denials of knowledge.  
2 (See Pltf.’s Mot. at 21-23; Pltf.’s Reply at 10-12; Pltf.’s Resp. at 16-18.) Mr. Anderson  
3 further points out that Country Mutual failed to investigate aspects of the claim that might  
4 have corroborated Mr. Anderson’s denial, such as the efficacy of the measures used to  
5 hide the Operation. (See, e.g., Pltf.’s Mot. at 22.) On the basis of these arguments, Mr.  
6 Anderson contends that Country Mutual’s conclusion regarding his knowledge of the  
7 Operation amounts to nothing more than unreasonable speculation. (See Pltf.’s Mot. at  
8 22-23.)

9         Neither party has shown that the undisputed facts entitle it to judgment as a matter  
10 of law on the reasonableness of Country Mutual’s conclusion. See *Hell Yeah Cycles*, 16  
11 F. Supp. 3d at 1235. Country Mutual relies on inferences from circumstantial evidence  
12 and judgments about Mr. Anderson’s credibility. (See Def.’s Mot. at 13; Def.’s Resp. at  
13 9-10.) Yet viewing the facts in the light most favorable to Mr. Anderson, the court  
14 cannot say that reasonable minds could only agree with Country Mutual. Rather a  
15 reasonable jury could potentially find that Country Mutual’s inferences from the evidence  
16 and mistrust of Mr. Anderson were unwarranted, based on an inadequate investigation,  
17 and unreasonable. See *Anderson*, 477 U.S. at 455 (“Credibility determinations, the  
18 weighing of the evidence, and the drawing of legitimate inferences from the facts are jury  
19 functions, not those of a judge . . . on a motion for summary judgment . . . .”); see also,  
20 e.g., *Safeco Ins. Co. of Am. v. JMG Rests., Inc.*, 680 P.2d 409, 417-418 (Wash. Ct. App.  
21 1984). Conversely, viewing the facts in the light most favorable to Country Mutual, a  
22 jury could find that Mr. Anderson lacks credibility and conclude that Country Mutual

1 reached a reasonable conclusion based on the available information. *See Anderson*, 477  
2 U.S. at 455. Accordingly, summary judgment is not appropriate for either party on this  
3 issue.<sup>5</sup>

#### 4 **C. Materiality of Mr. Anderson’s Misrepresentation**

5 Country Mutual contends that there is no genuine dispute of material fact that Mr.  
6 Anderson’s misrepresentation regarding his whereabouts on the day of the fire constitutes  
7 a material misrepresentation that precludes coverage. (*See* Def.’s Mot. at 10-11.) In  
8 addition to the controlled substances clause, Country Mutual denied coverage on the  
9 basis of the misrepresentation clause. (Denial Letter at 4.) That clause precludes

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11 <sup>5</sup> The parties are somewhat unclear about the particular issue on which they seek  
12 summary judgment. Some of the language in the cross-motions suggests that the parties want  
13 summary judgment on the issue of whether Mr. Anderson in fact knew about the operation. (*See*,  
14 *e.g.*, Pltf.’s Mot. at 18 (“Mr. Anderson is entitled to summary judgment on the application of the  
15 policy’s controlled substances exclusion.”); Def.’s Mot. at 1 (“Country Mutual . . . asks that this  
16 [c]ourt find that an exclusion for coverage exists . . .”).) Other language suggests that the  
17 parties merely seek a ruling on the reasonableness of Country Mutual’s decision to invoke the  
18 controlled substances exclusion in light of the information then available. (*See, e.g.*, Pltf.’s Mot.  
19 at 19-20 (“Country Mutual did not act with reasonable justification in denying Mr. Anderson’s  
20 claim on the basis of the policy’s controlled substances exclusion.”); Def.’s Mot. at 1-2  
21 (“Country Mutual had a reasonable basis to conclude that . . . Plaintiff knew [about the  
22 Operation].”).) The former issue relates to Mr. Anderson’s basic breach of contract claim, while  
the latter relates to his bad faith claim. *See, e.g., Scanlon v. Life Ins. Co. of N. Am.*, 670 F. Supp.  
2d 1181, 1194 (W.D. Wash. 2009) (noting that breach of contract is erroneous denial of coverage  
while bad faith is, at least in some cases, unreasonable denial of coverage); *Glamuzina v. Glens  
Falls Ins. Co.*, No. C07-5011 FDB, 2008 WL 2719564, at \*3 (W.D. Wash. July 10, 2008) (“The  
fact that a jury could ultimately determine the insureds are entitled to coverage does not require  
that the insurer acted unreasonably in denying coverage.”). The court has thus far construed the  
cross-motions as seeking a determination on the bad faith issue only; however, to the extent the  
parties move for summary judgment on the breach of contract issue, the court denies that request  
for largely the same reasons as described above with reference to bad faith. In considering  
whether Mr. Anderson in fact knew of the Operation, the court notes Country Mutual’s  
contention that Mr. Anderson made further misrepresentations that it discovered after it denied  
coverage. (*See, e.g.*, Def.’s Mot. at 4-7.) Those additional misrepresentations are insufficient,  
however, to show the absence of a genuine dispute of material fact regarding Mr. Anderson’s  
knowledge.

1 coverage under Mr. Anderson’s policy where the insured “intentionally misrepresent[s]  
2 any material fact . . . relating to this insurance.” (Policy at 32.) Mr. Anderson contends  
3 that his misrepresentation regarding his whereabouts was not material. (*See* Pltf.’s Resp.  
4 at 14-15.)

5 Key to resolving this issue is what constitutes a material misrepresentation. “A  
6 misrepresentation is material ‘if a reasonable insurance company, in determining its  
7 course of action, would attach importance to the fact misrepresented.’” *See Ki Sin Kim v.*  
8 *Allstate Ins. Co.*, 223 P.3d 1180, 1188-99 (Wash. Ct. App. 2009) (internal quotation  
9 marks omitted) (quoting *Onyon v. Trucks Ins. Exch.*, 859 F. Supp. 1338, 1341 (W.D.  
10 Wash. 1994)) (“A misrepresentation is material if it involves a fact that is relevant to a  
11 claim or the investigation of a claim.”); *Allstate Ins. Co. v. Huston*, 94 P.2d 358, 363  
12 (Wash. Ct. App. 2004) (“[A] misrepresentation is material ‘when it concerns a subject  
13 relevant and germane to the insurer’s investigation as it was then proceeding at the time  
14 the inquiry was made.’” (internal quotation marks omitted) (quoting *Tran v. State Farm*  
15 *Fire & Cas. Co.*, 961 P.2d 358 (Wash. 1998) (construing materiality as a limitation on the  
16 insured’s duty to cooperate)); *Huston*, 94 P.2d at 363 (“[A] misrepresentation is material  
17 if, when made, it *could have* affected the insurer’s investigation . . . .” (emphasis in  
18 original)). Prejudice to the insurer is not an element of materiality. *See Ki Sin Kim*, 223  
19 P.3d at 1188. In addition, “materiality is generally a mixed question of law and fact” that  
20 may be decided as a matter of law only “‘if reasonable minds could not differ on the  
21 question.’” *Onyon*, 859 F. Supp. at 1341 (quoting *Long v. Ins. Co. of N. Am.*, 670 F.2d  
22 930, 934 (10th Cir. 1982)).

1           The misrepresentation at issue here occurred when Mr. Anderson told Country  
2 Mutual in his initial interview that he was golfing in Chelan, Washington, on the day of  
3 the fire. (*See* Def.’s Mot. at 11; *compare* Anderson 1/10/13 Statement at 20 *with*  
4 Anderson 2/8/13 Statement at 37-41.) As Mr. Anderson later admitted, he was actually  
5 in Roslyn, Washington, with a prostitute named Teyana Dorsey. (*See* Anderson 2/8/13  
6 Statement at 37-41.) Country Mutual does not dispute the accuracy of Mr. Anderson’s  
7 second statement. Instead, Country Mutual argues that the initial misrepresentation was  
8 material because it concerned a subject that was relevant to its investigation at that  
9 time—namely, Mr. Anderson’s whereabouts at the time of the fire. (*See* Def.’s Mot. at  
10 11; Def’s Reply at 2-3.)

11           Mr. Anderson counters that his whereabouts were not material to Country  
12 Mutual’s investigation at that time. (*See* Pltf.’s Resp. at 14-15.) In support of this  
13 contention, Mr. Anderson explains that at the time of the misrepresentation, all of the  
14 information in Country Mutual’s possession indicated that the fire was accidental and had  
15 resulted from an overheated electrical outlet. (*See id.* at 4, 7-9, 14 (citing Lefebvre Dep.  
16 at 36:4-11; Lefebvre Email; Thielbar Dep. at 68:1-16 (noting Mr. Thielbar’s receipt on  
17 1/10/13 of the SFD’s opinion that the fire was accidental)).) Thus, Mr. Anderson argues,  
18 Country Mutual knew that arson had not caused the fire and could not have cared about  
19 his whereabouts at the time of the fire. (*See* Pltf.’s Resp. at 14-15.) Country Mutual  
20 responds that it was entitled to conduct its own investigation and had not yet determined  
21 the cause of the fire. (*See* Def.’s Reply at 2-3.) Yet, as Mr. Anderson points out, this  
22 argument suffers in light of the absence of any independent opinion or analysis on the

1 cause of the fire in the cause and origin report that Country Mutual later issued. (*See*  
2 Pltf.'s Resp. at 15; Weber Decl. ¶ 10, Ex. H (Dkt. # 64-8) ("Kreg Report").)

3 Viewing the record in the light most favorable to Mr. Anderson, the court cannot  
4 say that reasonable minds would invariably conclude that Mr. Anderson's  
5 misrepresentation of his whereabouts was material. *See Onyon*, 859 F. Supp. at 1341.  
6 Instead, a rational jury could conclude that a reasonable insurance company in Country  
7 Mutual's position would not attach importance to the fact misrepresented. *See Ki Sin*  
8 *Kim*, 223 P.3d at 1188-99. In particular, a jury could look at the information that Country  
9 Mutual had before it at the time of the misrepresentation, including the SFD opinion on  
10 the fire's cause, and conclude that Mr. Anderson's location was not a material fact. (*See*  
11 *Thielbar Dep.* at 68:1-16.) Accordingly, the court denies summary judgment on the  
12 materiality of Mr. Anderson's misrepresentation of his whereabouts.<sup>6</sup>

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15 <sup>6</sup> *Allstate Insurance Co. v. Huston*, 94 P.3d 358 (Wash. Ct. App. 2004) is instructive in  
16 demonstrating the extent to which materiality is not appropriate for summary judgment in this  
17 case. There, the Hustons' house burned down, and investigators determined that arson was to  
18 blame. *Huston*, 94 P.3d at 359. Allstate denied coverage on the basis of policy exclusions for  
19 arson and material misrepresentations by the insured. *Id.* at 360. The misrepresentations at issue  
20 related to (1) a possible motive to burn the house down, (2) whether Mr. Huston had disabled the  
21 smoke alarm, (3) threats of arson by a third party, and (4) whether Ms. Huston could see Mr.  
22 Huston at the moment when he was last in the location where the fire started. *See id.* at 359-60.  
Throughout the litigation Allstate maintained that the Hustons were guilty of arson, *see id.*, yet  
the Washington Court of Appeals held that a rational trier of fact could have looked at the  
evidence and "found or declined to find" that the Hustons' misrepresentations were material  
when made, *id.* at 363-64. Here, the facts are even less supportive of materiality. There is no  
evidence that anyone suspected arson at any point during the investigation, nor is there any other  
explanation of why Mr. Anderson's presence in Roslyn as opposed to Chelan was relevant to  
Country Mutual's investigation.



1 **D. Equitable Estoppel**

2 Mr. Anderson moves for summary judgment on the issue of whether Country  
3 Mutual can rely on grounds for denying coverage that it did not state in its denial letter.  
4 (See Pltf.'s Mot. at 11-18; Pltf.'s Reply at 2-9.) As a basis for barring Country Mutual  
5 from doing so Mr. Anderson asserts the doctrine of equitable estoppel.<sup>7</sup> (See Pltf.'s Mot.  
6 at 11-14.) This doctrine prevents an insurer from raising grounds to support a denial of  
7 coverage that it did not assert in its denial letter if (1) the insurer knew or should have  
8 known of the additional grounds when it denied coverage, and (2) the insured  
9 demonstrates that it suffered prejudice from the insurer's failure to raise the new grounds  
10 in its initial letter. See *Hayden v. Mut. of Enumclaw Ins. Co.*, 1 P.3d 1167, 1171 (Wash.  
11 2000) (citing *Bosko v. Pitts & Still, Inc.*, 454 P.2d 229, 234 (Wash. 1969)).

12 The parties' dispute on this issue centers on what constitutes new grounds for  
13 denying coverage. They agree that equitable estoppel may preclude an insurer from  
14 justifying its denial of coverage on the basis of a policy provision not asserted in the  
15 denial letter. (Compare Pltf.'s Reply at 4 with Def.'s Resp. at 6-7.) They dispute,  
16 however, whether this doctrine can preclude the insurer from introducing new evidence

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18 <sup>7</sup> Mr. Anderson refers to the doctrine on which he relies as "mend the hold"; however, it  
19 appears to the court that Washington has not recognized that doctrine. See *Integrated Health*  
20 *Professionals, Inc. v. Pharmacists Mut. Ins. Co.*, 422 F. Supp. 2d 1223, 1228 n.2 (E.D. Wash.  
21 2006). Rather it appears that Washington recognizes the related doctrine of equitable estoppel  
22 applied in the context of insurance disputes. See *Hayden v. Mutual of Enumclaw Ins. Co.*, 1 P.3d  
1167, 1171 (Wash. 2000). The doctrines are similar but distinct. Both doctrines bind a party to a  
prior position during subsequent litigation. See Robert H. Sitkoff, Comment, "Mend the Hold"  
and Erie: Why an Obscure Contracts Doctrine Should Control In Federal Diversity Cases, 65 U.  
Chi. L. Rev. 1059, 1062-63 (1998). Yet the majority version of mend the hold is an absolute bar  
on changes of position, whereas equitable estoppel requires the party asserting it to show  
prejudice from the change. *Id.*

1 to support denial under the provision cited in the denial letter. (*Compare* Pltf.’s Reply at  
2 4-8 *with* Def.’s Resp. at 6-9.) Mr. Anderson contends that the language of the opinions  
3 applying equitable estoppel is broad enough to encompass new evidence (*see* Pltf.’s  
4 Reply at 4-7), while Country Mutual argues that such an interpretation of the doctrine is  
5 unprecedented and would impose an unfair sanction on insurers who continue to  
6 diligently develop a defense after litigation has begun (*see* Def.’s Resp. at 7).

7         Precisely what evidence is in issue remains unclear from the parties’ filings.  
8 Nevertheless, it is clear that the disputed evidence would support the applicability of the  
9 controlled substances and misrepresentation exclusions. (*See* Denial Letter at 3-4; Def.’s  
10 Resp. at 6-7.) Accordingly, the court will discuss whether additional evidence would  
11 constitute a new ground for denial with reference to each of those exclusions.

12         1. Additional Misrepresentations

13         In its denial letter, Country Mutual stated that it was denying coverage in part  
14 under the misrepresentation exclusion. (*See* Denial Letter at 3-4.) The letter explained  
15 that “Mr. Anderson misrepresented his whereabouts at the time of the loss and the  
16 identity of the person he was with at the time. . . . Based on Mr. Anderson’s  
17 misrepresentations of material facts during the claims process there is no coverage under  
18 the applicable policy.” (*Id.* at 4.) The letter mentions no other alleged  
19 misrepresentations, yet Country Mutual has apparently identified additional  
20 misrepresentations. (*See, e.g.*, Pltf’s Mot. at 14; Def.’s Mot. at 5-7.) The parties now  
21 dispute whether Country Mutual may avoid coverage by showing that Mr. Anderson  
22 made other material misrepresentations.

1 The court finds that each alleged material misrepresentation is an independent  
2 ground for denying coverage. Notably, “[a]n insured need only make one material  
3 misrepresentation to void all coverage under the policy.” *Ki Sin Kim*, 223 P.3d at 1188  
4 (citing *Onyon*, 859 F. Supp. at 1341). Thus, each new material misrepresentation  
5 constitutes a discrete and independently sufficient ground on which the insurer may deny  
6 coverage. *See id.* Moreover, another court in this district has held that an insurer claims  
7 a new basis for rejecting an insured’s claim when the insured asserts misrepresentations  
8 beyond those on which it relied at the onset of litigation. *See Karpenski v. Am. Gen. Life*  
9 *Ins. Cos.*, 999 F. Supp. 2d 1235, 1245-46 (W.D. Wash. 2014). Country Mutual attempts  
10 to distinguish *Karpenski* by pointing out that *Karpenski* dealt with rescission of an  
11 insurance policy rather than denial of coverage based on a policy exclusion. (*See Def.’s*  
12 *Resp.* at 7-8.) Yet Country Mutual fails to articulate why this distinction is pertinent.  
13 (*See id.*)

14 Nevertheless, the court denies Mr. Anderson’s motion. Mr. Anderson has the  
15 burden on summary judgment to show that there is no genuine dispute of material fact  
16 that Country Mutual knew or should have known of a particular misrepresentation at the  
17 time of the denial letter, and that Country Mutual’s failure to raise that misrepresentation  
18 in the denial letter has prejudiced him. *See Celotex*, 477 U.S. at 323; *Hayden*, 1 P.3d at  
19 1171. He has not met that burden. Instead, he simply references several subjects to  
20 which additional misrepresentations might relate, and two pages later describes some  
21 aspects of Country Mutual’s discovery timeline. (*See Pltf.’s Mot.* at 14, 16.) Without  
22 further analysis or explanation, Mr. Anderson’s motion fails to show that Country Mutual

1 knew or should have known about any particular misrepresentation when it sent the  
2 denial letter. *See Hayden*, 1 P.3d at 1171; *Karpenski*, 999 F. Supp. 2d at 1245-47.

3 Mr. Anderson likewise fails to carry his burden of demonstrating prejudice. In his  
4 motion, Mr. Anderson contends that he initiated litigation and has prepared his case in  
5 reliance on Country Mutual's denial letter. (*See* Pltf.'s Mot. at 15.) He argues that  
6 Country Mutual's failure to raise additional misrepresentations in its denial letter "has  
7 significantly prejudiced [his] ability to develop an effective litigation strategy and prepare  
8 for trial." (*Id.* at 17.) Yet Mr. Anderson admits that he learned of Country Mutual's  
9 intention to rely on additional misrepresentations in discovery (*see id.* at 14-15), and he  
10 does not explain why he has nevertheless had insufficient time to adapt his strategy and  
11 preparation. Indeed, Mr. Anderson provides no evidence and almost no argument to  
12 show prejudice. (*See id.* at 15-18.) As such, the court finds that genuine issues of fact  
13 remain and that summary judgment is therefore inappropriate. *See also Time Oil Co. v.*  
14 *Cigna Prop. & Cas. Ins. Co.*, 743 F. Supp. 1400, 1419 (W.D. Wash. 1990) (citing *Bosko*,  
15 454 P.2d 229 (Wash. 1969)) (noting that, as a general matter, estoppel claims are  
16 inappropriate for summary judgment because they implicate factual issues such as  
17 whether the insured suffered actual prejudice).

## 18 2. Additional Evidence that Mr. Anderson Knew of the Operation

19 In addition to the misrepresentation exclusion, Country Mutual rests its denial of  
20 coverage on the controlled substances exclusion. (*See* Denial Letter at 3-4.) The denial  
21 letter explains that "[t]he evidence shows that Mr. Anderson knew of the marihuana  
22 grow." (*Id.* at 4.) Earlier paragraphs also cite several facts that presumably are intended

1 to support that conclusion—namely, that Mr. Anderson admitted to visiting the House  
2 and lied about his whereabouts on the day of the fire. (*See id.* at 3-4.) Beyond those  
3 facts, the letter refers only to “the evidence.” (*See id.*) Mr. Anderson now seeks to  
4 preclude Country Mutual from introducing any other evidence of his knowledge,  
5 provided that Country Mutual knew or should have known of the evidence when it wrote  
6 the denial letter and that he is prejudiced by Country Mutual’s failure to raise the  
7 evidence in the denial letter.<sup>8</sup>

8         The court finds that additional evidence of Mr. Anderson’s knowledge does not  
9 amount to a new ground for denial in the context of equitable estoppel. Unlike an  
10 additional material misrepresentation, additional evidence of knowledge is not a discrete  
11 and sufficient basis for denying coverage. *Cf. Ki Sin Kim*, 223 P.3d at 1188 (noting that a  
12 single material misrepresentation is enough to preclude coverage). Instead, such  
13 evidence is merely support for a previously articulated basis. Further, the court’s  
14 research has not uncovered a single case in which a court has held that an insurer is  
15 equitably estopped from presenting evidence to support its previously articulated position  
16 simply because that evidence was not mentioned in a denial letter.

17         The court agrees with Country Mutual that Mr. Anderson’s new evidence theory  
18 of equitable estoppel would constitute an unprecedented extension of the law and would

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20         <sup>8</sup> Mr. Anderson also expresses concern that Country Mutual might rely on the policy  
21 exclusion for an insured who actually engages in the manufacture of controlled substances. (*See*  
22 *Pltf.’s Mot.* at 18-19 n.6.) In its response memorandum, however, Country Mutual repeatedly  
refers to its bases for denial solely as material misrepresentations and Mr. Anderson’s knowledge  
of the Operation (*see Def.’s Resp.* at 5-7), and makes no mention of its intention to rely on the  
actual manufacture exclusion. The court will hold Country Mutual to that position at trial.

1 impose harsh and unfair limitations on insurers. (*See* Def.’s Resp. at 7.) In effect, Mr.  
2 Anderson’s theory would require insurers to exhaustively list in their denial letters every  
3 shred of evidence supporting their basis for denial lest they forfeit that evidence in  
4 subsequent litigation. As such, the court denies Mr. Anderson’s motion for summary  
5 judgment insofar as it seeks to preclude Country Mutual from introducing evidence of  
6 Mr. Anderson’s knowledge that does not appear in the denial letter.<sup>9</sup>

7 **E. Immunity under RCW 48.50.075**

8 Country Mutual also moves for summary judgment on the ground that under RCW  
9 48.50.075 it enjoys immunity from Mr. Anderson’s extra-contractual claims. (*See* Def.’s  
10 Mot. at 14-15.) RCW 48.50.075 provides immunity from extra-contractual claims, such  
11 as bad faith, to an insurer who [1] “[i]n denying a claim . . . relies [2] upon a written  
12 opinion [3] from an authorized agency specifically enumerated in RCW 48.50.020(1)(a)  
13 through (g) [4] that criminal activity that is related to that claim is being investigated . . .  
14 and [5] that the claimant is a target of the investigation . . . .” RCW 48.50.075. The  
15 immunity exists, however, “only so long as [6] the incident for which the claimant may  
16 be responsible is under active investigation . . . .” *Id.* Country Mutual argues that the

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18 <sup>9</sup> In addition, Mr. Anderson requests that the court bar Country Mutual “from relying  
19 upon the files and testimony . . . identified in its answer to Interrogatory No. 8 because these  
20 documents are not responsive to the interrogatory.” (Pltf.’s Mot. at 15 n.4.) Interrogatory No. 8  
21 requested a specific, detailed description of the facts on which Country Mutual bases its denial of  
22 coverage but which it did not include in the denial letter, yet Country Mutual responded with a  
citation to almost 5,000 pages of documents. (*See id.*) Mr. Anderson now takes issue with the  
generality of Country Mutual’s response. (*See id.*) The court, however, rejects Mr. Anderson’s  
request as untimely. The deadline for discovery motions was October 17, 2014. (*See* Sched.  
Ord. (Dkt. # 10).) If Mr. Anderson objected to the sufficiency of Country Mutual’s interrogatory  
responses, he should have raised the issue by that date, not in a footnote to a motion for partial  
summary judgment filed on December 16, 2014. (*See* Pltf.’s Mot. (Dkt. # 55).)

1 immunity applies here because in conducting its investigation and deciding to deny Mr.  
2 Anderson’s claim it relied on reports from the SPD. (*See* Def.’s Mot. at 15.) Country  
3 Mutual points out that the Operation was illegal and contends that Mr. Anderson was the  
4 “person of interest” in the SPD’s investigation into the Operation. (*Id.*)

5 Country Mutual’s argument for RCW 48.50.075 immunity fails for multiple  
6 reasons. First, although the SPD is an authorized agency under the statute, *see* RCW  
7 48.50.020(1)(c), Country Mutual admits that no written SPD opinion identifies Mr.  
8 Anderson as the target of the SPD investigation into the Operation (*see* Def.’s Mot. at  
9 15). Detective Ortiz ultimately stated that Mr. Anderson was of interest to the SPD’s  
10 investigation; however, that statement came during a deposition that Country Mutual  
11 conducted over one year after it denied coverage. (*Compare* Ortiz Dep. at 1, 31:13-22,  
12 33:17-34:10 *with* Denial Letter at 1.) Thus, even if Detective Ortiz’s deposition was in  
13 some sense a “written opinion,” a proposition that the court does not endorse, Country  
14 Mutual has not demonstrated that it relied on that opinion “[i]n denying [Mr. Anderson’s]  
15 claim.” RCW 48.50.075. Finally, Country Mutual offers no evidence or even argument  
16 to suggest that the SPD’s investigation of the Operation was ongoing at the time Country  
17 Mutual denied coverage.

18 Country Mutual’s assertion of RCW 48.50.075 immunity relies on a mix-and-  
19 match approach to the immunity. According to this approach, the immunity applies  
20 where its discrete components exist even if they do not bear the required connection to  
21 one another. (*See* Def.’s Mot. at 14-15.) Thus, if a police officer has an opinion that the  
22 insured was of interest to a criminal investigation, that opinion need not be in written

1 form, and the insurer need not have actually relied on that opinion in denying coverage.  
2 (*See id.*) Country Mutual offers no support for this interpretation of RCW 48.50.075, and  
3 the court has found none. The plain language of the statute requires that in denying  
4 coverage the insurer rely upon a written opinion identifying the insured as the target of a  
5 criminal investigation. *See* RCW 48.50.075. Because Country Mutual fails to make such  
6 a showing, the court denies its motion for summary judgment with respect to immunity  
7 under RCW 48.50.075.

#### 8 **F. Evidence of Damages from Bad Faith**

9 In addition, Country Mutual asks the court to grant it summary judgment on Mr.  
10 Anderson's bad faith claim because, according to Country Mutual, Mr. Anderson has no  
11 allegations or evidence of damages, an essential element of a bad faith claim. (*See* Def.'s  
12 Mot. at 16-17.) Country Mutual is right on the law but wrong on the facts. Damages  
13 attributable to bad faith are indeed an essential element of a bad faith claim. *Coventry*  
14 *Assocs. v. Am. States Ins. Co.*, 961 P.2d 933, 935-36 (Wash. 1998). Yet Mr. Anderson  
15 has made allegations and produced evidence sufficient to create a genuine issue of  
16 material fact as to whether he suffered damages from Country Mutual's alleged bad faith.

17 In his complaint, Mr. Anderson alleges wrongful denial of coverage amounting to  
18 bad faith and prays for compensation for "all consequential losses he has suffered or may  
19 suffer as a result of Country Mutual's breaches." (*See* Compl. at 2-3.) Furthermore, Mr.  
20 Anderson provides a declaration in which he suggests that he would have retained the  
21 House had Country Mutual not denied coverage. (*See* Anderson Decl. ¶ 3.) He also  
22 offers testimony from a proposed expert who asserts that Mr. Anderson has lost money



1 | by failing to retain the House and use it as a rental property. (*See* Neupert Dep. at 5, 7.)

2 | In other words, Mr. Anderson has produced evidence showing that Country Mutual's

3 | alleged bad faith denial of coverage has cost him money by preventing him from

4 | retaining and renting out the House. (*See* Pltf.'s Resp. at 20-21.) The court therefore

5 | finds that a genuine issue of material fact exists regarding damages attributable to bad

6 | faith, and denies summary judgment on that question.

7 | **G. Fulfillment of Contractual Obligations**

8 | Finally, Country Mutual contends that there is no genuine issue of material fact

9 | that it has fulfilled its obligations under the contract and, therefore, that Mr. Anderson has

10 | no damages for breach of contract. (*See* Def.'s Mot. at 14.) This argument hinges on a

11 | provision in Mr. Anderson's policy that conditions payment of replacement costs on

12 | actual repair or replacement by the insured. (*See id.*; Policy at 30.) Absent actual repair

13 | or replacement, the insured is entitled only to the ACV of the property. (*See* Policy at

14 | 30.) Because Country Mutual paid the ACV to Mr. Anderson's mortgagee, Country

15 | Mutual argues that it has discharged its obligations under the policy. (*See* Def.'s Mot. at

16 | 14.)

17 | Mr. Anderson disputes Country Mutual's reasoning on several grounds (*see* Pltf.'s

18 | Resp. at 18-20), but the court finds it necessary to focus on only one to resolve this aspect

19 | of Country Mutual's motion. Specifically, Mr. Anderson argues that Country Mutual

20 | cannot rely on his failure to repair or replace when its own wrongful denial of coverage

21 | prevented repair or replacement. (*See id.* at 19-20.) Mr. Anderson claims that he would

22 | have kept the House and repaired or replaced it if Country Mutual had not denied

1 coverage. (*See id.* at 19; Anderson Decl. ¶ 3; Neupert Dep. at 5, 7.) Following Country  
2 Mutual’s denial, however, Mr. Anderson lacked the funds to repair the House or even  
3 stay current on his mortgage. (*See* Pltf.’s Mot. at 19; Anderson Decl. ¶ 3.) He ultimately  
4 sold the House to avoid foreclosure. (*See* Pltf.’s Mot. at 19; Anderson Decl. ¶ 3.)

5 Mr. Anderson relies on three out-of-state cases to support the notion that Country  
6 Mutual cannot rely on his failure to perform the repair condition where its wrongful  
7 denial caused that failure. (*See* Pltf.’s Mot. at 19-20 (citing *Zaitchick v. Am. Motorists*  
8 *Ins. Co.*, 554 F. Supp. 209, 216-217 (S.D.N.Y. 1982); *Rockford Mut. Ins. Co. v. Pirtle*,  
9 911 N.E.2d 60, 64-67 (Ind. Ct. App. 2009); *McCahill v. Commercial Union Ins. Co.*, 446  
10 N.W.2d 579, 584-85 (Mich. Ct. App. 1989)).) Country Mutual counters that such cases  
11 are “not controlling and . . . thus irrelevant.” (Def.’s Reply at 6.)

12 Although the court agrees that the authority to which Mr. Anderson cites is not  
13 controlling, the court nevertheless finds it to be persuasive. All three opinions are  
14 grounded in the unremarkable proposition that an insurer cannot withhold replacement  
15 value because the insured has not actually repaired or replaced where the insured was  
16 unable to repair or replace due to the insurer’s wrongful conduct. *See Zaitchick*, 554 F.  
17 Supp. at 216-217; *Pirtle*, 911 N.E.2d at 64-67; *McCahil*, 446 N.W.2d at 584-85.  
18 Furthermore, Washington contract law recognizes the equitable principle underlying  
19 these out-of-state cases. Under Washington law, when a party prevents the occurrence or  
20 fulfillment of a condition precedent, the condition is excused. *See Highlands Plaza, Inc.*  
21 *v. Viking Invest. Corp.*, 435 P.2d 669, 676-77 (Wash. 1967); *Tacoma Northpark, LLC v.*  
22 *NW, LLC*, 96 P.3d 454, 459 n.4 (Wash. Ct. App. 2004) (“Failure to satisfy a condition

1 precedent does not excuse the promisor’s performance if the failure was the result of  
2 misconduct or fault of the promisor.”).

3 Applying that principle to this case, the court concludes that genuine issues of  
4 material fact remain regarding whether Country Mutual has fulfilled its obligations under  
5 the contract. Mr. Anderson contends that he would have repaired or replaced the House  
6 if Country Mutual had not wrongfully denied coverage. (*See* Pltf.’s Resp. at 19;  
7 Anderson Decl. ¶ 3; Neupert Dep. at 5, 7.) Although Country Mutual maintains that it  
8 properly denied coverage (*see* Def.’s Mot. at 14), the court has denied Country Mutual’s  
9 motion for summary judgment on that issue (*see supra* Parts III.B-C, E), and thus a jury  
10 could decide that denial was improper. Country Mutual also contends that Mr. Anderson  
11 could not have repaired in any case because his mortgagee would not have allowed it.  
12 (*See* Def.’s Reply at 5.) Yet Country Mutual fails to explain that contention or provide  
13 evidence to demonstrate its merit. (*See id.*) In light of Mr. Anderson’s testimony and the  
14 testimony of his expert witness indicating that he would have repaired or replaced, the  
15 court finds that a genuine issue of material fact exists on this issue.<sup>10</sup> Consequently, the

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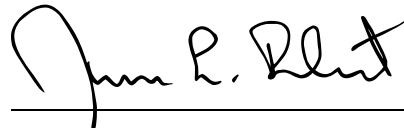
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18 <sup>10</sup> Country Mutual also faults Mr. Anderson for failing to establish that he ever collected  
19 rental payments and thus was ever entitled to rent replacement (*see* Def.’s Reply at 5), which Mr.  
20 Anderson claims he would have used to maintain ownership of the House (*see* Pltf.’s Resp. at 19;  
21 Anderson Decl. ¶ 3). This argument fails for the same reason as Country Mutual’s other  
22 arguments on this topic. Namely, Country Mutual has not shown the absence of a genuine issue  
of material fact. Mr. Anderson claims that he had a paying tenant and has provided a lease  
signed by his alleged tenant. (*See* Anderson 1/10/13 Statement at 6; Lease Email; Lease;  
Anderson 2/8/13 Statement at 29-30.) Country Mutual has pointed to contrary evidence and  
weaknesses in Mr. Anderson’s position (*see, e.g.,* Def.’s Mot. at 5-7); however, it has not thereby  
demonstrated its entitlement to summary judgment. Viewing the evidence in the light most  
favorable to Mr. Anderson, the court finds that genuine issues of material fact remain regarding

1 court denies summary judgment on the issue of whether Country Mutual has fulfilled its  
2 obligations under the contract.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the court DENIES the cross-motions for summary  
5 judgment (Dkt. ## 55, 58).

6 Dated this 18th day of February, 2015.

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9  
10 JAMES L. ROBART  
United States District Judge

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22 whether Mr. Anderson had a paying tenant. Country Mutual may present its arguments and  
evidence to the jury.