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5 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 OSCAR TRINIDAD and SUSAN  
TRINIDAD, husband and wife,

8 Plaintiffs,

9 v.

10 METROPOLITAN PROPERTY AND  
11 CASUALTY INSURANCE COMPANY,

12 Defendant.

CASE NO. C13-5191 BHS

ORDER DENYING PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT AND MOTION FOR  
RECONSIDERATION

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14 This matter comes before the Court on Plaintiffs Oscar and Susan Trinidad's  
15 ("Trinidads") motion for summary judgment (Dkt. 15) and motion for reconsideration  
16 (Dkt. 24). The Court has considered the pleadings filed in support of and in opposition to  
17 the motions and the remainder of the file and hereby denies the motions for the reasons  
18 stated herein.

19 **I. PROCEDURAL HISTORY**

20 On February 13, 2013, the Trinidads filed a complaint against Defendant  
21 Metropolitan Property and Casualty Insurance Company ("Metropolitan") in King  
22 County Superior Court for the State of Washington. Dkt 1. The Trinidads assert claims  
for (1) violations of the Washington Insurance Fair Conduct Act, WAC 284-30, *et seq.*

1 (“IFCA”), (2) violations of the Washington Consumer Protection Act, RCW Chapter  
2 19.86 (“CPA”), (3) bad faith, and (4) breach of duty to defend. *Id.* Exh. 1.

3 On March 13, 2013, Metropolitan removed the matter to this Court. *Id.*

4 On October 31, 2013, Metropolitan filed a motion for summary judgment. Dkt. 9.  
5 On November 18, 2013, the Trinidads responded. Dkt. 11. On November 21, 2013, the  
6 Trinidads filed a motion for partial summary judgment. Dkt. 15. On November 22,  
7 2013, Metropolitan replied. Dkt. 18. On December 6, 2013, Metropolitan responded to  
8 the Trinidads’ motion. Dkt. 20. On December 13, 2013, the Trinidads replied. Dkt. 22.

9 On December 19, 2013, the Court granted in part and denied in part  
10 Metropolitan’s motion; dismissed the Trinidad’s IFCA, CPA, and breach of the duty to  
11 defend claims; and renoted the Trinidad’s motion. Dkt. 23. On January 2, 2014, the  
12 Trinidads filed a motion for reconsideration of the portion of the Court’s order that  
13 granted summary judgment. Dkt. 24. On January 6, 2013, Metropolitan filed a  
14 supplemental response to the Trinidads’ motion. Dkt. 26. On January 9, 2013, the  
15 Trinidads filed a supplemental reply. Dkt. 28.

## 16 **II. FACTUAL BACKGROUND**

17 This lawsuit arises out of the Trinidads’ insurance claim they submitted to  
18 Metropolitan and request for defense. On May 7, 2010, the Trinidads filed a lawsuit in  
19 state court against their neighbors for malicious harassment, outrage, negligent infliction  
20 of emotional distress, intentional interference with a business relationship, defamation  
21 and nuisance. The neighbors filed a counterclaim against the Trinidads contending that  
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1 they had engaged in a pattern of surveillance and made false accusations against the  
2 neighbors. The subsequent undisputed timeline is as follows:

- 3 • A counterclaim was served on the Trinidads on or about 5/26/10.
- 4 • A claim and request for defense was tendered to their insurer, MetLife,  
on 6/1/10.
- 5 • The claim was assigned to Bette-Jon Schrade of MetLife on 6/2/10.
- 6 • Ms. Schrade spoke with Mr. Wathen, the Trinidads' attorney on the  
underlying litigation, on June 3, 2010.
- 7 • Also on June 3, 2010, Attorney Jack Rankin was contacted by MetLife  
to conduct a claims analysis and/or investigation.
- 8 • A certified copy of the policy and counterclaim was forwarded to  
Rankin only as of June 15, 2010.
- 9 • As late as October 3, 2010, Attorney Rankin advised Ms. Schrade the  
coverage opinion had been completed. It was also discussed that  
10 MetLife would defend under a Reservation of Rights and file a  
Declaratory Judgment Action, asking the Court to declare there was no  
coverage for the allegations contained in the counterclaim.
- 11 • On February 10, 2011, Ms. Schrade wrote to Mr. Wathen that MetLife  
would defend the Trinidads under a reservation of rights and may seek a  
declaratory judgment.
- 12 • On February 20, 2011, Johnson, Keay, Graffe, Moniz & Wick appeared  
as the defense firm provided by MetLife to defend the Trinidads on the  
13 counterclaim more than eight months after the claim was tendered.
- 14 • The counterclaim was dismissed subsequent to the appearance of  
Counsel provided by MetLife.

15 Dkt. 22 at 2.

### 16 **III. DISCUSSION**

#### 17 **A. Reconsideration**

18 Motions for reconsideration are governed by Local Rule CR 7(h), which provides  
19 as follows:

20 Motions for reconsideration are disfavored. The court will ordinarily  
21 deny such motions in the absence of a showing of manifest error in the  
prior ruling or a showing of new facts or legal authority which could not  
22 have been brought to its attention earlier with reasonable diligence.

1 Local Rule CR 7(h)(1).

2 In this case, the Trinidads move for reconsideration based on new evidence. The  
3 evidence, however, could have been brought to the Court's attention earlier with  
4 reasonable diligence because Mr. Wathen's lien on the Trinidads' settlement funds was  
5 known to the Trinidads when they filed their response to Metropolitan's motion. Such  
6 failure to submit this evidence is sufficient reason alone to deny the motion. Nonetheless,  
7 even if the Court considers the evidence, the Trinidads have failed to establish that they  
8 were harmed.

9 First, the Trinidads contend that they have been damaged because Mr. Wathen's  
10 fees are recoverable as *damages*. Dkt. 24 at 3 (citing *Jacob's Meadow Owners Ass'n v.*  
11 *Plateau 44 II, LLC*, 139 Wn. App. 743 (2007)). In *Jacob's Meadow*, the court held that  
12 "attorney's fees recoverable pursuant to a contractual indemnity provision are an element  
13 of damages, rather than costs of suit." 139 Wn. App. at 760. As such, the fees must be  
14 proven to a jury and not decided by the trial judge. *Id.* at 762. The characterization of  
15 damages, however, is completely different than the fact of actual damages. On the latter  
16 issue, the Trinidads have failed to show that being billed for fees that were ultimately  
17 paid by Metropolitan results in actual damages. Therefore, the Court denies the  
18 Trinidads' motion on this issue.

19 Second, the Trinidads argue that they were damaged by the attorney lien that Mr.  
20 Wathen placed on their settlement funds in the underlying action. The Trinidads received  
21 notice of the lien on July 12, 2012 (Dkt. 25, ¶ 10), Metropolitan issued the reimbursement  
22 check on September 4, 2012 (Dkt. 21, Exh. 9), and the lien currently remains on the

1 | Trinidads' settlement funds (Dkt. 25, ¶ 12). The Court finds that no reasonable juror  
2 | would conclude that the Trinidads suffered financial damage during the approximately  
3 | two months that Mr. Wathen filed the lien and Metropolitan issued a check to the  
4 | Trinidads. Moreover, the Trinidads may be misleading the Court as to the effect of the  
5 | lien on the settlement funds. The Court may take judicial notice of public documents,  
6 | and the Court accessed the underlying electronic docket.<sup>1</sup> According to that docket, a  
7 | notice of settlement was filed on August 30, 2012 and the funds were deposited on June  
8 | 20, 2013. Based on this information, it appears that Metropolitan reimbursed the  
9 | Trinidads almost nine months before they had access to the settlements funds, which  
10 | would result in no damages whatsoever. Therefore, the Court denies the Trinidads'  
11 | motion for reconsideration.

## 12 | **B. Summary Judgment**

13 | The Trinidads move for summary judgment on the issue of liability for their  
14 | remaining claim of bad faith. Dkt. 15. "If . . . reasonable minds could differ that the  
15 | insurer's conduct was reasonable, or if there are material issues of fact with respect to the  
16 | reasonableness of the insurer's action, then summary judgment is not appropriate." *Smith*  
17 | *v. Safeco Ins. Co.*, 150 Wn.2d 478, 486 (2003).

18 | In this case, the Court finds that reasonable minds could differ whether  
19 | Metropolitan's conduct was reasonable. At most, Metropolitan delayed appointing an  
20 | attorney while the Trinidads were represented by Mr. Wathen. Reasonable jurors could

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22 | <sup>1</sup> [https://linxonline.co.pierce.wa.us/linxweb/Case/CivilCase.cfm?cause\\_num=10-2-10482-3](https://linxonline.co.pierce.wa.us/linxweb/Case/CivilCase.cfm?cause_num=10-2-10482-3).

1 find that Metropolitan's conduct in diligently investigating the claim was reasonable.

2 Therefore, the Court denies the Trinidads' motion for summary judgment on liability.

3 **IV. ORDER**

4 Therefore, it is hereby **ORDERED** that the Trinidads' motion for summary  
5 judgment (Dkt. 15) and motion for reconsideration (Dkt. 24) are **DENIED**.

6 Dated this 16th day of January, 2014.

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BENJAMIN H. SETTLE  
United States District Judge