

## Washington Supreme Court Rules That Filed-Rate Doctrine Applies To Suits Against Intermediaries Who Do Not File Rates

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Our [January 2021 Alert](#) reported on a Ninth Circuit decision that asked the Washington Supreme Court to decide whether the filed-rate doctrine extends to scenarios in which an intermediary, rather than a regulated entity, charges the filed rate to its customers. Last month, an *en banc* panel of the Washington Supreme Court answered the certified question in the affirmative, ruling that the filed-rate doctrine applies to rates charged by mortgage servicers and brokers that participated in the procurement of the policy at issue. *Alpert v. Nationstar Mortgage, LLC*, 494 P.3d 419 (Wash. 2021).

A homeowner was required by Nationstar, his mortgage company, to maintain a hazard insurance policy. When his policy lapsed, Nationstar purchased “force placed” insurance and charged the homeowner a rate approved by the Washington Insurance Commissioner. The homeowner sued Nationstar and the insurer’s brokers, alleging that although the rate he was charged accurately reflected the rate approved by state authority, it did not represent the true cost of the insurance. He claimed that Nationstar and the brokers participated in an unlawful kickback scheme in which his premiums were artificially inflated. The defendants argued that the homeowner’s claims were barred by the filed-rate doctrine.

The Washington Supreme Court agreed, ruling that the doctrine applies to suits against intermediaries that, unlike regulated insurers, do not actually file the rates with state agencies. The court emphasized that “labels do not necessarily govern the doctrine’s applicability” and noted that the Second, Third and Eleventh Circuits have also concluded that application of the doctrine does not depend on the identities of the defendants as rate filers. Rather, it “turns on whether awarding damages squarely attacks the filed-rate.”

The court declined to answer a second certified question, relating to what damages are barred by the filed-rated doctrine. Instead, the court remanded the matter to the Ninth Circuit with instructions to analyze whether the particular relief sought by the homeowner comports with state law precedent.

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