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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Case No. 327451

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

The Estate of Susan Hunter

Appellant,

v.

Allstate Insurance Company,

Respondent/Cross-Appellant.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iv
STATUTES AND RULES vii

I. APPELLANT HUNTER’S REPLY:

A. FOR APPELLANT HUNTER’S SECOND PER SE IFCA CLAIM AT BAR, SHE MADE A PRIMA FACIE SHOWING OF ALLSTATE’S KNOWING AND INTENTIONAL MISREPRESENTATION AND CONCEALMENT OF PERTINENT FACTS AND POLICY PROVISIONS IN DIRECT VIOLATION OF WAC 284-30-330(1) AND WAC 284-30-350), WHICH EASILY PASSED CR 11 MUSTER AND WAS DISTINCT AND SEVERABLE FROM ALLSTATE’S EARLIER, WAC 284-30-330(6)-BASED, PER SE IFCA VIOLATION WHICH ALLSTATE TRIED TO COVER UP BY USING THIS SECOND PER SE IFCA VIOLATION IN ORDER TO SECURE ITS WITHHOLDING OF BENEFITS AND EVASION OF TREBLE DAMAGES THEREON AFTER LIABILITY ON THE POLICY HAD BECOME NOT JUST REASONABLY CLEAR, BUT MATHEMATICALLY CERTAIN, AND THIS SECOND IFCA VIOLATION BLOCKED PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT ON COVERAGE AND NEEDLESSLY EXTENDED LITIGATION FOR ANOTHER SIX PLUS YEARS IN VIOLATION OF WAC 284-30-330(7), ALL OF WHICH WAS ILLEGAL AND FULLY ACTIONABLE UNDER SECTION (1) AND/OR SECTION (5) OF THE IFCA.

1

B. THERE ARE NO ADVERSARIAL, LITIGATION, OR PRIOR DECISION EXEMPTIONS, EXPRESS OR IMPLIED, TO AN INSURER’S FIDUCIARY AND WAC DUTIES, FOR WAC VIOLATIONS, BAD FAITH, CPA VIOLATIONS, OR IFCA VIOLATIONS. THE INSURER’S DUTIES EXTEND UNTIL THERE HAS BEEN A FINAL AND BINDING RESOLUTION AND FULFILLMENT OF ALL LIABILITIES ON THE POLICY.

9

II.	ATTORNEY’S FEES AND COSTS.	24
III.	CONCLUSION	25
	APPENDICES:	iii
A.	PLAINTIFF’S FEBRUARY 8, 2012 RCW 48.30.015(8) PRE-FILING IFCA NOTICE AND WARNING TO ALLSTATE PRIOR TO FILING GRANT COUNTY SUPERIOR COURT CASE #12-2-00314-5, AND JANUARY 10, 2013 CR 11 REQUESTS FOR ALLSTATE TO AT LEAST CORRECT THE RECORD.	A
B.	VOTER’S PAMPHLET FOR REFERENDUM 67.	B
C.	WPI 320.06.01 FOR INSURANCE FAIR CONDUCT ACT (IFCA)(RCW 48.30.015 SECTIONS (1) AND (5)).	C
D.	PLAINTIFF’S JANUARY 30, 2013 LETTER TO ALLSTATE TO IDENTIFY PHANTOM ALLEGED CLAIM DENIAL, AND PLAINTIFF’S APRIL 2, 2014 LETTER FOR ALLSTATE TO AGREE TO VACATE FRAUDULENTLY OBTAINED COURT ORDER.	D
E.	ORDER GRANTING MOTON TO AMEND COMPLAINT (Docket #525) AND PLAINTIFF’S AMENDED COMPLAINT (DOCKET #528), ELIMINATING PLAINTIFF’S PRE-DISCOVERY ERRONEOUS ASSUMPTION THAT THE CLAIM HAD BEEN DENIED, FILED IN CASE #07-2-00020-4.	E

TABLE OF AUTHORITIES

<u>Aetna Life v. Washington Life</u> , 83 Wn.2d 523, 535, 520 P.2d 16 (1974)	23
<u>Allstate v. Huston</u> , 123 Wash. App. 530 (2004)	7
<u>Blake v. Federal Way Cycle Center</u> , 40 Wash. App. 302, 698 P.2d 578, review denied, 104 Wn.2d 1005 (1985)	10, 11, 18
<u>Bronsink v. Allied Property and Casualty Insurance</u> , 2010 U. S. Dist. LEXIS 56159 (W.D. Wash., June 8, 2010)	21
<u>Coventry Associates v. American States Insurance Company</u> , 136 Wn.2d 269, 961 P.2d 933 (1998)	15
<u>Deaconess v. Department of Revenue</u> , 58 Wash. App. 783, 795 P.2d 146 (1990)	21
<u>Department of Revenue v. Schaake Packing Co.</u> , 100 Wn.2d 769, 666 P.2d 367 (1983)	21
<u>Erie Railroad Co. v. Tompkins</u> , 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938)	20
<u>Evergreen Collectors v. Holt</u> , 60 Wash. App. 151, 803 P.2d 10 (1991)	9,10,11
<u>Garoutte v. American Family Mutual Insurance Company</u> , No. C12-1787 BHS, 2013 WL 3819923 (W.D. Wash., July 23, 2013)	17,18, 19
<u>Green v. Holm</u> , 28 Wash. App. 135, 622 P.2d 869 (1981)	16
<u>Hangman Ridge Training Stables v. Safeco</u> , 105 Wn.2d 778, 785-6, 719 P.2d 531 (1986)	5, 13

<u>Harkins Amusement Enterprises, Inc. v. Harry Nace Co.</u> , 890 F.2d 181 (9 th Cir. 1989))	9
<u>Heidgerken v. Dept. of Natural Resources</u> , 99 Wash. App. 380 (2000)	23
<u>Heintz v. Jenkins</u> , 514 U.S. 291, 115 S. Ct. 1489, 131 L.Ed. 2d 395 (1995)	13
<u>Industrial Indemnity Co. of the N.W., Inc. v. Kallevig</u> , 114 Wn.2d 907, 925, 792 P.2d 520 (1990))	3
<u>Langley v. Geico</u> , No. 1:14-cv-03069-SMJ (E.D., February 22 nd , 2015)	3,4,20
<u>Marsh v. General Adjustment Bureau, Inc.</u> , 22 Wash. App. 933, 592 P.2d 676 (1979)	16
<u>Navigators Ins. Co. v. National Union</u> , 2013 U.S. Dist. LEXIS 109903 (W.D. Wash. Aug. 5, 2013)	21
<u>Olympic Steamship v. Centennial Ins. Co.</u> , 117 Wn.2d 37, 811 P.2d 673 (1991)	25
<u>Panag v. Farmers Ins. Co. of Wash.</u> , 166 Wn.2d 27, 48, 204 P.3d 885 (2009)	5,13,14 15,16, 20,
<u>Robinson v. Avis</u> , 106 Wash. App. 104, 111, (2001)	21
<u>RSUI Indemnity Company, Inc. v. Vision One, LLC</u> , No. C08-1386RSL, 2009 WL 5125420 (W.D. Wash., Dec. 18, 2009)	17
<u>Salois v. Mutual of Omaha Insurance Company</u> , 90 Wn.2d 355, 361, 581 P.2d 1349 (1978)	10
<u>Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.</u> , 64 Wash. App. 553, 825 P.2d 714 (1992)	15

<u>Single Chip Systems Corp. V. Intermecc IP Corp.</u> , 495 F. Supp.2d 1052, 1062 (2007)	9
<u>Smith v. Safeco Ins. Co.</u> , 150 Wn.2d 478, 485 (2003)	3
<u>Southridge Partnership v. Aspen Specialty Insurance Company</u> , No. C08-0931-JCC, 2009 WL 1175627 (W.D. Wash., May 1, 2009)	20
<u>State v. Brown</u> , 139 Wn.2d 20, 28, 983 P.2d 608 (2009)	4
<u>State v. Roggenkamp</u> , 153 W.2d 614, 624, 106 P.3d 196 (2005)	4
<u>State ex rel. Am. Sav. Union v. Whittlesey</u> , 17 Wash. 447, 50 Pac. 119 (1897)	23
<u>State Farm Fire & Casualty v. Quang Huynh</u> , 92 Wash. App. 454, 470, 962 P.2d 854 (1998)	15
<u>Stegall v. Harford Underwriters Insurance Co.</u> , No. C08-668 MJP 2009 WL 54237 (W.D. Wash., Jan. 7, 2009)	20
<u>Van Noy v. State Farm Mutual Auto Ins.</u> , 98 Wn. App. 487, 496 (1999)	3
<u>Vogt v. Seattle-First National Bank</u> , 117 Wn.2d 541, 817 P.2d 1364 (1991)	21
<u>Washington State Dept. of Revenue v Hoppe</u> , 82 Wn.2d 539, 552, 512 P.2d 1094 (1973)	4
<u>Washington State Physicians Insurance Exchange & Association v. Fisons Corp.</u> , 122 Wn.2d 299, 858 P.2d 1054 (1993)	14
<u>Wiginton v. Pacific Credit Corp.</u> , 2 Haw. App. 435, 444, 634 P.2d 111 (1981)	15

STATUTES AND RULES

The Consumer Protection Act (CPA)(RCW 19.86)	3,5,6,9, 10,12, 13,14, 16,17, 18,21,
RCW 19.86.010(2)	13
RCW 19.86.090	25
RCW 19.86.170	21
RCW 19.86.920	21
The Insurance Fair Conduct Act (IFCA) = (RCW 48.30.015)	1,2,3,4 5,6,8,9 16,17, 18,19, 22,23 24
RCW 48.01.030	7,10,12 20, 22
RCW 48.30.010(1)	13
IFCA Section (1) = (RCW 48.30.015(1))	3,6,19
IFCA Section (2) = (RCW 48.30.015(2))	18
IFCA Section (3) = (RCW 48.30.015(3))	18,25
IFCA Section (5) = (RCW 48.30.015(5))	3,6,19, 24
RCW 48.30.015(5)(a)	24
IFCA Section (8) = (RCW 48.30.015(8))	24

RCW 48.30.040	13
RCW 48.30.230	6,7,
Referendum 67 (R-67)	3,4,14
CR 11	1,6,24 25
CR 42(a)	25
RAP 14.4	25
RAP 18.1	25
RAP 18.9(a)	24
WAC 284-30-330	8,20
WAC 284-30-330(1)	1,2,8
WAC 284-30-330(5)	24
WAC 284-30-330(6)	1,2,8, 14,
WAC 284-30-330(7)	2,14,15 20,
WAC 284-30-330(9)	7
WAC 284-30-350	1,2,8
WAC 284-30-360	20
WAC 284-30-380	20
WPI 320.06.01	3

I. APPELLANT HUNTER'S REPLY:

Allstate asks this Appellate Court to review and rule on the CR 11 validity of Appellant Hunter's per se IFCA claim against Allstate for Allstate's clear post-IFCA violations of WAC 284-30-330(1) and WAC 284-30-350 (misrepresenting and concealing pertinent facts and policy provisions). These violations were used by Allstate to fraudulently create a new, mobile home cancellation story to cover up clear liability on the policy after the invalidity of the actual bad roof cancellation was discovered. This fabricated mobile home concern story avoided summary judgment liability on the policy for the paying of policy benefits, and wrongfully evaded treble damages thereon. See prior brief; **Appendix A hereto**.

This new violation at bar came six weeks after Allstate's earlier violation of WAC 284-30-330(6) for just wrongfully refusing to voluntarily settle and withholding policy benefits which became due when liability suddenly became clear on 12/30/08 when Allstate discovered the long awaited bad roof inspection date which finally determined that its bad roof cancellation was invalid. The first violation forced the summary judgment motion and the first IFCA claim; the second IFCA violation evaded it all.

Allstate also claims Plaintiff violated CR 11 for not yielding to

Allstate's assertion of non-existent adversarial/litigation exemptions and an alleged right to stand on an allegedly baseless phantom prior claim decision in contravention of the insurer's ongoing fiduciary and WAC 284-30-330(6) and (7) duties to settle WHEN liability becomes clear and not to force the insured to submit to or institute litigation in order to recover amounts due under insurance policies. Allstate's subsequent fallback story about cancelling the policy based on sincerely believed mobile home status was knowingly and intentionally asserted to wrongfully evade summary judgment. Allstate did this without disclosing it knew at least 10 days before sending a mobile home notice of intent to cancel, that the home was actually a solid brick home, not a mobile home, and at least 9 days before sending the notice, Allstate had secretly amended the policy to correct the true structure type in full reliance on that corrected knowledge.

Neither WAC 284-30-330(1) and WAC 284-30-350, nor IFCA, nor the Consumer Protection Act list any litigation or adversarial exemptions or exceptions. A WAC violation is a fully recognized PREDICATE OFFENSE and TRIGGERING EVENT for all three of the causes of action at issue, properly pleaded against Allstate. First, any violation of any provision of the WAC insurance standards is a per se unfair and deceptive

insurance business practice and is a per se violation of the Consumer Protection Act at RCW 19.86, pursuant to Van Noy v. State Farm Mutual Auto Ins., 98 Wn. App. 487, 496 (1999)(citing to Industrial Indemnity Co. of the N.W., Inc. v. Kallevig, 114 Wn.2d 907, 925, 792 P.2d 520 (1990)).

Second, any expressly prohibited, illegal, unfair and deceptive actions or failures to act which have been forbidden by the WAC also constitute per se unreasonable and/or unfounded and/or frivolous conduct - which in turn is per se Bad Faith pursuant to Smith v. Safeco Ins. Co., 150 Wn.2d 478, 485 (2003). Third, and to complete the trifecta, any violation of the WACs at issue in this case is a PER SE VIOLATION of IFCA pursuant to RCW 48.30.015(5). See Langley v. Geico, No. 1:14-cv-03069-SMJ (E.D., February 22nd, 2015) (Holding that a completely independent, stand-alone Section (5) IFCA right of action exists for any per se violation of IFCA based on a violation of any of the listed WAC provisions therein, independent from any IFCA Section (1) general unfairness claim, and implied as a matter of law to avoid rendering parts of IFCA superfluous, as was specifically promised to Washington voters in the Washington Voter's Pamphlet when IFCA was presented as Referendum 67). See **Appendix B**; and WPI 320.06.01, at **Appendix C**, both clearly

listing WAC violations as fully valid, triggering events for IFCA.

In determining the meaning of a statute enacted through the initiative process, the court's purpose is to ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure. Wash. State Dept. of Revenue v Hoppe, 82 Wn.2d 539, 552, 512 P.2d 1094 (1973). The court focusses on the language of the initiative as the average informed voter voting on the initiative would have read it. State v. Brown, 139 Wn.2d 20, 28, 983 P.2d 608 (2009). Moreover, "[a] well-settled principle of statutory construction is that each word of a statute is to be accorded meaning . . . Statutes must be interpreted and construed so that all the language used is given effect with no portion rendered meaningless or superfluous." State v. Roggenkamp, 153 W.2d 614, 624, 106 P.3d 196 (2005)(further citations omitted); Langley v. Geico, supra. The voter's pamphlet for IFCA at Referendum 67 specifically stated as follows:

"[IFCA] would authorize any first party claimant to bring a lawsuit in superior court against an insurer for unreasonably denying a claim for coverage or payment of benefits, **OR violation of specified insurance commissioner unfair claims handling practices regulations**, to recover damages and reasonable attorney's fees, and litigation costs."

Voters Pamphlet for Referendum 67, Explanatory Statement, at page 14

(Nov. 6, 2007). See again **Appendix B**.

IFCA is part of the overall statutory consumer protection scheme, and Sections (1) and (5) of IFCA mirror the Consumer Protection Act's similar use of both GENERAL and/or SPECIFIC violations. The landmark CPA case of Hangman Ridge Training Stables v. Safeco, 105 Wn.2d 778, 785-6, 719 P.2d 531 (1986), held that actionable "unfairness or deception" banned by the CPA can be shown two different ways, either by: (a) pointing to the violation of a statute which violation has been specifically declared by the legislature to constitute a PER SE unfair or deceptive act as a matter of law **OR** (b) by undertaking the more difficult task of proving it generally, on a fact specific, case by case, arguable basis. Just as IFCA doesn't define "unreasonable" claim denial or "unreasonable" withholding of benefits, the CPA doesn't define "unfair or deceptive". Our consumer protection statutes are never limited to just the PER SE violations listed therein and will always need to allow for proof of unfairness GENERALLY as the "catch all" against human inventiveness. In Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27, 48, 204 P.3d 885 (2009), our State Supreme Court observed this interplay between PER SE (specific) violations and GENERAL violations:

‘It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again. If Congress were to adopt the method of definition, it would undertake an endless task. . .

.’

Id., at 48 (further citations omitted). As such, it is clear that IFCA Section (1) is merely the GENERAL violation component of IFCA, while Section (5) lists all the basic PER SE (specific) violations based on already established WAC standards. Violation of either Section (1) or (5) of IFCA by way of general or specific unfairness or both, triggers application of IFCA, just like it does for the CPA. In fact, just as insurers have WAC duties, RCW 48.30.230 mandates similar ongoing duties on insureds and imposes a Class C felony on any person who knowingly “prepares, makes, or subscribes any false or fraudulent account, certificate, affidavit, proof of loss, or other document or writing with intent that it be presented or used in support of [a claim for the payment of a loss under a contract of insurance].” There are no adversarial or litigation or claim denial exemptions listed therein either. Otherwise, claimants would immediately file or force litigation like Allstate did, and then just say whatever they need to get the desired outcome on coverage and risk at most a CR 11 violation - if ever

caught at all. In Allstate v. Huston, 123 Wash. App. 530, 539 (2004), Allstate got the Court to rule that any insured's violation of the insured's duties under RCW 48.30.230 was still fully actionable if, at the time of the violation, (a) it could have affected the insurer's "investigation" or (b) if at the time of the violation, it has "prospective reasonable relevance" to the resolution of liabilities on the claim. The same reasoning applies to insurer compliance with WAC obligations. RCW 48.01.030 also states:

The business of insurance is one affected by the public interest, requiring that all persons be actuated in good faith, abstain from deception, and practice honesty and equity **IN ALL INSURANCE MATTERS**. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

RCW 48.01.030 (Emphasis added). The "and their representatives" indicates the duty of good faith is ongoing even when the parties become represented should any coverage dispute spill into litigation. "All insurance matters" clearly includes all activities directly or indirectly related to the determination of liabilities on insurance policies, which of course is the very definition of litigation which of course is just a regular

¹ WAC 284-30-320(9) defines an insurer's "investigation" as "all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract".

part of the daily business of insurance in which claims are settled the only two ways there are - by voluntary agreement or by litigation (arbitration/mediation/etc.). WAC 284-30-330 sets forth the required conduct of insurers and declares the commission of any violation thereof to be an actionable incident committed "in the business of insurance".

In fact, throughout this litigation for determination of liabilities on the claim, Allstate itself always took the position that the duties owed by the parties to each other were still ongoing and well into litigation continued to state on November 4th, 2008: "You are respectfully advised that Allstate requires full and complete compliance with all of the terms and conditions of the policy." CP-1922, last para. Yet, Allstate was eventually caught red handed having violated that same position and the WACs just a month later, a year AFTER IFCA had become law on 12/06/07, when compliance with the WACs was absolutely critical to Ms. Hunter's insurance claim and had enormous prospective reasonable relevance and in fact a dispositive impact to the determination of liabilities on Ms. Hunter's pending insurance claim.

Allstate's WAC 284-30-330(1) and 350 IFCA violation was not the same violation as Allstate's earlier WAC 284-30-330(6) violation. These two WAC-based IFCA violations occurred approximately two months apart

and were independent events, subsequent to each other, and distinct and severable in both facts and time and purpose, as well as in the intended effect and scope of damages incurred. Proof of violation or acquittal on one has absolutely no effect on proof of violation or acquittal on the other. As such, and consistent with Single Chip Systems Corp. V. Intermec IP Corp, 495 F. Supp.2d 1052, 1062 (2007)(citing to Harkins Amusement Enterprises, Inc. v. Harry Nace Co., 890 F.2d 181 (9th Cir. 1989)), these WAC violations occurring at different times, are completely independent claims easily capable of segregation for fees and costs, with different elements of proof and vastly different amounts of damages, with each claim being IN ADDITION to the other. Any overly simplistic views of a relational overlap simply justified consolidation, but not dismissal.

There are no adversarial or litigation exemptions at all for general or per se, WAC-based Bad Faith and CPA claims, and as such there are none for IFCA claims either. The fact that a legal action between the parties is underway when one of the parties commits a violation of the Consumer Protection Act does not exempt the violation from coverage under the Act. Evergreen Collectors v. Holt, 60 Wash. App. 151, at 155-157, 803 P.2d 10 (1991)(Mid-litigation commission of an unfair and

deceptive act by collection agent of insurance company was fully actionable as a per se violation of the Consumer Protection Act (RCW 19.86) affecting the public interest). Evergreen also fully explained the already very narrow and limited holding of Blake v. Federal Way Cycle Center, 40 Wash. App. 302, 698 P.2d 578, review denied, 104 Wn.2d 1005 (1985). To begin with, Blake's already extremely narrow litigation exemption specifically excluded insurance matters affecting the public interest, such as the breach of a statutory obligation of good faith, from its holding. Id. at 311 (citing to Salois v. Mutual of Omaha Insurance Company, 90 Wn.2d 355, 361, 581 P.2d 1349 (1978)(rejecting Insurance company's argument that the Consumer Protection Act did not apply to an insurer's "post-sales" activity after selling the insurance policy, and keying in on the fact that "when defendant should have rendered those [policy] benefits, it . . . engaged in acts of bad faith and breached its duty of fair dealing.")

RCW 48.01.030 also clearly provides that the insurer's and insured's duties of honesty, equity and good faith to each other apply long after signing the policy, and are continuing in "ALL insurance matters". Second, Blake involved the mere nominal breach of the special terms of a private settlement agreement, the breach of which was not specifically

barred by any law or any RCW or WAC, was itself not unfair or deceptive, did not affect the public interest, and did not occur within the defendant's usual and ordinary arenas of its trade or commerce. As upsetting as the "breach" was to Blake, it was solely a missed private settlement deadline resulting in the late delivery of a brand new replacement motorcycle, simply due to an innocent miscommunication within the context of an isolated, private resolution negotiated by the litigators. Evergreen Collectors, supra at 156-7, distinguished Blake even further:

. . . the language in Blake indicating that the filing of a lawsuit took the defendant's ensuing conduct **out of the sphere of trade or commerce does not apply here, WHERE THE VERY BUSINESS OF A COLLECTION AGENCY OFTEN REQUIRES IT TO SUE DEBTORS IN COURT**. In light of the Collection Agency Act's clear intention to bring [the statutorily specified] collection agency activities within the coverage of the Consumer Protection Act, it would be ludicrous to hold that an agency's tactics after filing suit are exempt from such coverage.

Evergreen Collectors v. Holt, supra at 156-7. **The same applies all the more for insurance companies** whose very job is to properly resolve millions of insurance claims every way they can be, and as such, in their ordinary regular expected course of business, insurers initiate or submit to litigation or impose the same on their insureds, in order to obtain a full and

final, binding resolution of every disputed claim on every policy as a completely ordinary and critical, regular everyday part of the insurer's highly regulated business. When the Courtroom is essentially the insurance industry's back office, funded by the taxpaying public affected by the same, there is simply no litigation immunity and the public interest is in fact even stronger. The Panag Court pointed out the special position held by both Insurance Companies and Debt Collectors affecting the public interest, as follows:

. . . the distinction CCS attempts to draw between consensual relationships and adversarial relationships [commencing in litigation] loses persuasive force when the adversarial relationship is mediated by an insurer or collection agency. Both the insurance industry and the debt collection industry are highly regulated fields. **A primary purpose of the intensive regulation of these industries is to create public confidence in the honesty and reliability of those who engage in the business of insurance and the business of debt collection.** «7» Our legislature has declared that violations of the regulations applicable to either industry implicate the public interest and constitute a per se violation of the CPA. While the collection practices here do not come within the regulations that apply to insurance and debt collection, there is nevertheless no doubt that after decades of intensive regulation, **members of the public have come to expect that insurers and collection agencies may be held accountable for deceptive collection practices regardless of whether there is a "consensual relationship."**

«7» *See* RCW 48.01.030 ("The business of

insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance."); RCW 48.30.040 ("No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation . . . in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein."); RCW 48.30.010(1) ("No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business.")»

. . . We further hold that there is no adversarial exemption from suit under the CPA. When established, the five *Hangman Ridge* elements of a CPA citizen suit assure that the plaintiff is a proper party to bring suit.

. . . [For the second *Hangman Ridge* element – that the act or practice occur within the defendant’s trade or commerce,] “commerce” encompasses that which “directly or indirectly affect[s] *the people of the state of Washington.*” RCW 19.86.010(2).

Panag, supra. at 43-45 (Emphasis added). Panag also pointed out how the U.S. Supreme Court’s rejection of a “litigation exemption” to the Fair Debt Collection Practices Act “prevents regulated entities from evading regulation by conscripting lawyers to accomplish indirectly [in litigation] what they may not do directly [or outside of litigation].” Panag, at 56, fn 14 (citing to Heintz v. Jenkins, 514 U.S. 291, 115 S. Ct. 1489, 131

L.Ed. 2d 395 (1995)). The Panag court also called the dissent out on their attempt to add a “learned intermediary” requirement to the standing requirements for third-party consumer protection actions, by improperly taking the mere happenstance fact that the Plaintiff in Washington State Physicians Insurance Exchange & Association v. Fisons Corp., 122 Wn.2d 299, 312-13, 858 P.2d 1054 (1993), was a doctor and then usurping the legislative function by trying to turn it into a legal requirement. Panag, supra. at 46. Likewise, the mere happenstance fact that many reported cases on bad faith involve bad faith which just happened to occur prior to litigation does not mean a violation after litigation starts is not actionable.

In summary, none of the insurance WACs have any clause that says its requirements only apply “unless or until a claim decision is made or unless or until litigation starts”. If the Legislature intended such an exemption, it would have been clearly listed. There are no such exemptions, express or implied. Such an exemption would gut the law, encourage needless litigation just to create a shield for clearly illegal conduct and would actually facilitate, not deter violations, dis-incentivize compliance, and then leave victims with the same lack of meaningful remedy that led to R-67 (IFCA). Moreover, WAC 284-30-330(6) and (7) make clear that insurance companies have no

immunity for wrongfully refusing to settle and or for forcing the insured to initiate or submit to litigation to obtain the full recovery of the withheld benefits owed whenever liability becomes reasonably clear. WAC 284-30-330(7) is proof enough that litigation is the violation not the defense. Allstate's wrongful forcing of litigation was properly sued for and is an element of and proof of the violation and in fact the Plaintiff's litigation expenses incurred thereon are also actually part of the damages, not a grounds for immunity. See again Panag, supra. at 62-4 (citing to Wiginton v. Pacific Credit Corp., 2 Haw. App. 435, 444, 634 P.2d 111 (1981); Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc., 64 Wash. App. 553, 825 P.2d 714 (1992); State Farm Fire & Casualty v. Quang Huynh, 92 Wash. App. 454, 470, 962 P.2d 854 (1998)(Even a Plaintiff insurance company can recover its expenses for experts, attorneys and employees investigating the opposing side's unfair and deceptive litigation); Coventry Associates v. American States Insurance Company, 136 Wn.2d 269, 961 P.2d 933 (1998)(Holding that expenses incurred for investigating a claim one was forced to defend in litigation, which claim itself was an unfair or deceptive act in violation of the CPA, establishes an actionable injury and such expenses are fully recoverable as damages).

Allstate's baseless assertion of the mobile home story as an

affirmative defense to coverage forced the Plaintiff to litigate it, and was itself an actionable violation for which there is no litigation immunity. Litigation immunity was likewise asserted by Farmers and it was rejected outright in Panag, supra. at page 39. Farmers alleged that once litigation was commenced the parties became “tort adversaries” and the insured no longer required the fiduciary protections from Farmers which claimed it was thereafter allowed and expected to make “aggressive contentions” without any right by the insured to reasonably rely on the insurer ever honoring any fiduciary or good faith obligations. The Court in Panag responded:

We disagree with the petitioner’s claim that they are entitled to rely on an ‘adversarial relationship exemption to the CPA’, which they infer from [the third-party claimant cases of] Marsh v. General Adjustment Bureau, Inc., 22 Wash. App. 933, 592 P.2d 676 (1979), and Green v. Holm, 28 Wash. App. 135, 622 P.2d 869 (1981). We have NEVER recognized an ‘adversarial relationship’ exemption, and in fact have disapproved of case law favoring such an exemption.”

Panag, supra. at 42 (emphasis added). “We further hold that **THERE IS NO ADVERSARIAL EXEMPTION from suit under the CPA.**” Id., at 44 (emphasis added). A mid-litigation WAC violation that is illegal and not exempt under the CPA is certainly not legal and exempt under IFCA and there is no reason to judicially create any inconsistency in the law when

the CPA and IFCA are part of the same overall statutory scheme. In fact, our Federal courts, acting consistent with our State law, have also soundly rejected Allstate's arguments in RSUI Indemnity Company, Inc. v. Vision One, LLC, No. C08-1386RSL, 2009 WL 5125420 (W.D. Wash., Dec. 18, 2009) and Garoutte v. American Family Mutual Insurance Company, No. C12-1787 BHS, 2013 WL 3819923 (W.D. Wash., July 23, 2013) (Granting summary judgement to the insured for the insurer's mid-litigation WAC violation and withholding of benefits which also constituted a violation of IFCA). Both those cases also cited the obvious lack of any legal authority in Washington State for asserting any litigation immunity. RSUI held:

RSUI has not cited any legal authority for its position that an insurer is not required to investigate AFTER learning new facts that could trigger coverage, and the assertion is inconsistent with an insurer's fiduciary duty to its insured. Accordingly, defendants [first party insureds] may pursue a bad faith claim and a related CPA claim based on RSUI's [post-claim denial] conduct."

RSUI, supra at page 4 (Emphasis added). Likewise, in Garoutte, the Court fully rejected the insurer's likewise purely argumentative claim for an exemption and immunity from BOTH the Plaintiff's CPA and IFCA claims solely based on the insurer's allegation that "the parties were in an

adversarial position once litigation commenced and the dispute was under the control of the courts. . . . cit[ing] Blake v. Federal Way Cycle , . . . (1985), in support of its proposition.” In response, Garoutte ruled:

Blake is easily distinguishable because it involved a Consumer Protection Act claim [which requires a prohibited act occurring in trade or commerce affecting the public interest] and the court held that **the action in question did not occur in commerce. This rule has no application to the current set of facts, and the Court declines to adopt a rule that performance under an insurance contract need not occur once a complaint is filed by one party to the contract.** {1}

{1} Such a rule would be absurd as it would allow an insurance company to refuse to honor the duty to defend by filing a declaratory judgment action [or otherwise forcing the matter into litigation].

Id. at 7-8 (Emphasis added). The Garoutte Court then granted the insureds’ summary judgment motion for the Breach of Contract claims and for the tort of Bad Faith AND FOR THE VIOLATION OF IFCA - for the **MID-LITIGATION** violations for the failure or refusal to pay the additional living benefits owed under the insurance policy, as follows:

The following two paragraphs of the [IFCA] statute permit recovery of treble damages and attorneys’ fees if the plaintiff can show either an unreasonable denial of coverage or payment **or a violation of one of several enumerated WAC provisions. RCW 48.30.015(2), (3). One of the enumerated WAC provisions prohibits:**

Compelling a first party claimant to initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings. **WAC 284-30-330(7).**

In this case, the Garouttes assert that American Family violated IFCA and the WAC. The Court agrees. **[During this litigation,] American Family unreasonably denied the Garouttes the benefit of additional living expenses. Moreover, American Family compelled the Garouttes to submit the disputed losses to an appraisal and ultimately recovered over three times as much as American Family originally offered [thus establishing the WAC violation for Section (5) of IFCA]. Therefore, the Garouttes have shown that they are entitled to judgment as a matter of law on both elements of their IFCA claim [both Section (5) and Section (1)]. . . . It is the violation of the WAC *combined* with the failure to pay additional living expenses that violate IFCA. Therefore, the Court grants the Garoutte’s motion for summary judgment on their IFCA claim.**

Id. at 9-10 (Emphasis added). Allstate then tries to get around all the controlling State case law and WACs undercutting all their arguments by citing a few inconsistent outlier Federal cases on narrow and completely inapplicable isolated facts. However, all Federal Courts are governed by and must turn to any controlling Washington Supreme Court precedent interpreting the applicable statute, and all Federal Courts are “Erie-bound” to apply the law as the Federal Court believes the Washington Supreme

Court would do so under the circumstances. See Langley v. Geico, No. 1:14-cv-03069-SMJ, page 6 (E.D., February 22nd, 2015)(citing to Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938)). In other words, Panag, supra., and WAC 284-30-330(7) and RCW 48.01.030 all control over any Federal decision Allstate tries to cite to the contrary. Even if Washington Courts had not already rejected Allstate's adversarial litigation exemption claims outright, the Federal cases Allstate relies upon are readily distinguishable because in each instance coverage was already decided and just the reasonableness of the valuation figure was going to be decided by the courts, which each actually found absolutely no violations of the insurance WACs at all. Instead, each case simply involved a Plaintiff's attorney's own abusive litigation tactics trying to unfairly fabricate WAC communication duties out of mere litigation discovery issues. However, the WAC 284-30-360 and 380 claims asserted were **not** legislatively declared to be practices "**in the business of insurance**", like the nineteen specific insurance coverage investigation requirements listed at WAC 284-30-330. Stegall v. Harford Underwriters Insurance Co., No. C08-668 MJP 2009 WL 54237 (W.D. Wash., Jan. 7, 2009; Southridge Partnership v. Aspen Specialty Insurance Company, No.

C08-0931-JCC, 2009 WL 1175627 (W.D. Wash., May 1, 2009; Bronsink v. Allied Property and Casualty Insurance, 2010 U. S. Dist. LEXIS 56159 (W.D. Wash., June 8, 2010), Navigators Ins. Co. v. National Union, 2013 U.S. Dist. LEXIS 109903 (W.D. Wash. Aug. 5, 2013). To be sure, no court, Washington State or Federal, has ever found a violation of the insurance WACs and then simply let an insurer off the hook solely because their violation occurred during litigation.

Moreover, Allstate's affirmative "exemption" claim faces case law that is devastatingly and clearly against such heavily disfavored arguments. The burden of proof for establishing the insurer qualifies for an exemption to a statute falls entirely on the party claiming it. Deaconess v. Department of Revenue, 58 Wash. App. 783, 788, 795 P.2d 146 (1990) (citing to Department of Revenue v. Schaake Packing Co., 100 Wn.2d 769, 83, 666 P.2d 367 (1983)). Legislatively provided exemptions to any statutes - especially consumer or remedial statutes affecting the public interest - are heavily disfavored and are narrowly construed. Robinson v. Avis, 106 Wash. App. 104, 111, (2001)(citing the liberal interpretation mandate of the CPA at RCW 19.86.920 and also Vogt v. Seattle-First National Bank, 117 Wn.2d 541, 552, 817 P.2d 1364 (1991)(construing CPA exemptions under RCW 19.86.170)).

Any violations of the ongoing fiduciary, RCW 48.01.030, and WAC duties, (which all run until a final and binding resolution of the liabilities in a first party insurance claim still affecting the public interest), are all fully actionable, per se “**TRIGGERING EVENTS**” in direct violation of the IFCA - even if there was any prior “situation existing” of an alleged prior phantom claim denial (See **Appendices D and E**). Furthermore, insurers have no expectation interest or vested right to stand by any clearly erroneous, alleged prior claim decision - especially when there is no valid proof that such a prior and now irrelevant claim decision was ever given and the alleged prior decision is not the basis for the IFCA claim at bar.

Any alleged prior “**SITUATION EXISTING**” of an alleged previous phantom claim denial is wholly irrelevant. What Allstate is trying to do is set up a retroactive pre-IFCA claim that the Plaintiff has never asserted in the first place. Allstate’s retroactivity arguments are all based on the equitable theory that the offender, who has allegedly done something they cannot change, has a valid equitable expectation interest that its prior action already committed would never face a changed standard after the fact. That assumes that what was done was set in stone prior to the new law, like a fatal bullet already fired which could not be called back, and

which could not be changed or cured to comply with a new law that went into effect and when an obligation to cure arises. However, Allstate has no right to claim it can hold onto any allegedly prior erroneous phantom coverage decisions when new evidence finally surfaces making liability not only reasonably clear, but mathematically certain, with IFCA and its fiduciary WAC obligations staring Allstate in the face.

The problem for Allstate with regard to its post-IFCA violation at bar now, is that **“a statute operates prospectively when the precipitating event for the application of the statute occurs after the effective date of the statute, even though the precipitating event had its origin in a situation existing prior to the enactment of the statute.”** Aetna Life v. Washington Life, 83 Wn.2d 523, 535, 520 P.2d 16 (1974)(emphasis added)(citing to State ex rel. Am. Sav. Union v. Whittlesey, 17 Wash. 447, 50 Pac. 119 (1897)(rejecting arguments that new prospective only tax penalty laws could not reach taxes already owed from prior to the passage of the statute which become delinquent thereafter). See also Heidgerken v. Dept. of Natural Resources, 99 Wash. App. 380 (2000)(Failure to act on the subsequent notice and demand to cure regarding the prior violation then becomes the new post-Act violation [similar to Allstate’s failure to read and

heed the Plaintiff's IFCA Section (8) 20-day treble damages notices – **Appendix A]**).

Appellant Hunter properly filed valid claims in full compliance with CR 11. A per se violation of IFCA simply requires a showing of at least one the WAC violations listed in Section (5) of IFCA, along with proof that damages proximately resulted from that IFCA violation. In a per se IFCA case, the WAC violation is the “triggering event” or predicate offense. IFCA simply requires the violation asserted must occur after 12/6/07. Whether or not there was any prior claim denial decision or no decision at all is just a mere “situation existing” which has no effect on the viability of the actual per se, post-IFCA claim at issue. An alleged pre-IFCA claim denial is not the basis of the IFCA claim in this case. In fact, a per se IFCA violation lies for violation of WAC 284-30-330(5) - for the failure to give any claim decision which violates RCW 48.30.015(5)(a). This would be rendered superfluous if the Court created a claim denial requirement for all IFCA claims when our legislature never required it and in fact has made the lack of any decision per se actionable under WAC 284-30-330(5).

II. ATTORNEY'S FEES:

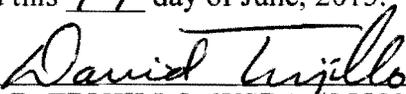
Pursuant to RAP 18.9(a), the Plaintiff should be awarded all the

Plaintiff's reasonable fees and costs incurred for defending Allstate's cross appeal. Alternatively, Appellant Hunter is specifically requesting all fees and costs and expenses incurred for the appeal and cross-appeal to abide by the final resolution of all the claims on the merits pursuant to RCW 19.86.090, RCW 48.30.015(3), and Olympic Steamship v. Centennial Ins. Co., 117 Wn.2d 37, 811 P.2d 673 (1991), as prayed for in Plaintiff's complaint at CP-1-18, and Plaintiff will comply with RAP 18.1 and 14.4.

III. CONCLUSION

This Court should affirm the trial Court's proper denial of CR 11 sanctions against the Plaintiff and confirm with a reported decision that the Plaintiff has properly asserted valid and fully CR 11 compliant claims against Allstate for which there are no valid exemptions. This Court should also reverse the order dismissing these same valid claims and remand for the trial court to properly reconsider whether consolidation makes sense under CR 42(a) or whether the trial court really wants two causes of action to proceed separately as the sole other option to avoid injustice.

Respectfully submitted this 17th day of June, 2015.


DAVID B. TRUJILLO, WSBA #25580,
Attorney for Appellant Estate of Susan Hunter

Appendix A

Michael D. Kinkley, P.S.
4407 N. Division, Suite 914
Spokane, Washington 99207
(509) 484-5611 * (509) 484-5972 Fax

February 8, 2012

Allstate Insurance Company
c/o Washington State Insurance Commissioner
Attn.: Sarah Fox/Cheyenne Johnston
Insurance 5000 Building
5000 Capitol Blvd
Tumwater, WA 98501

Re: Notice of claim of violation of Insurance Bad Faith including RCW 48.30.015
Allstate Landlord Package Policy # 9 17 132671

To Whom It May Concern:

Please be advised that the estate of Susan Hunter will be filing an action for bad faith against Allstate for misrepresentations made by Allstate including but not limited to misrepresenting the applicable policy provisions and misrepresenting the records and information possessed and maintained by Allstate.

Allstate violated Washington State Insurance Fair Conduct Act at RCW 48.30.015(5) and WAC 284-30-350(misrepresentation of policy provisions), WAC 284-30-360(failure to acknowledge pertinent communications), WAC 284-30-330(1)(misrepresentation of pertinent facts and or policy provisions), WAC 284-30-330(6)(failure to settle when liability became reasonably clear), violation of the Consumer Protection Act (RCW 19.86.090)(any unfair or deceptive act or practice), and egregious bad faith. Allstate's action constitutes a fraud on the court. Allstate's actions constitute Negligent and intentional misrepresentation.]

On January 5, 2012, for the first time in over four years of litigation Allstate identified and produced the June 5, 2004 "Amended Landlord Package Policy Declarations". January 5, 2012 is the very first time that Allstate has informed the court or parties that the May, 11, 2004 "Landlord Package Policy Declarations" had been superseded by the June 5, 2004 "Amended Landlord Package Policy Declarations".

Allstate and Mr. Schlagel, though their employees and attorneys, have repeatedly misrepresented to the court that the May, 11, 2004 "Landlord Package Policy Declarations" was the relevant Insurance Policy information, when it clearly was not.

Allstate concealed from the court, apparently from its own attorney, and concealed from opposing counsel and the insured the existence, effect, and its knowledge of the existence of the

Allstate Insurance Company
Re: Allstate - Notice of Bad Faith
February 9, 2012
Page 2 of 3

June 5, 2004 Amended Landlord Package Policy Declarations.

Allstate presented this misinformation, about their records, to the court to obtain a ruling in their favor on Summary Judgment against the insured. Allstate successfully argued to the court that Allstate's records showed the property was a "mobile home" which they would not insure at the time they sent the notice of cancellation on June 12, 2004.

In fact, the truth (which was that Allstate's records showed and that it only revealed January 5, 2012) was that the Declarations were amended effective June 5, 2004 to show that the dwelling was of "Brick construction". Allstate argued to the court and presented evidence only of the superseded May 11, 2004 Declarations convincing the court that its subjective belief be the basis for the determination of the court of whether the notice of cancellation was legally effective.

Allstate claimed it had no knowledge of the content of the June 5, 2004 Amended Declarations it had issued. The June 5, 2004, Amended Declarations contained information contrary to Allstate's assertions to the court, to the insured, and to opposing counsel.

Allstate presented evidence only of the superseded May 11, 2004 Declarations which supported its argument rather than the June 5, 2004 Amended declaration which contradicted Allstate's argument.

Allstate misled the court arguing that that Allstate "believed it was a mobile home" at the time the Notice of Cancellation was sent, to argue that its subjective belief was the "actual" reason stated in the notice even Allstate later found out this was incorrect. This misrepresentation caused substantial attorney fees to be incurred and erroneous rulings of the court.

On February 12, 2009, Allstate filed and served in support of Summary Judgment, "Territorial Product Manager", David Hart's Declaration. Mr. Hart makes the material misrepresentation under oath that "attached as Exhibit A is a true and correct copy of the initial Landlords Package Policy written for Susan Hunter" attaching the "May 11, 2004 declarations" but not the June 5, 2004 Amended Declaration contradicting Allstate's assertion that it "believed" the property is a "mobile home". *Hunter v Allstate*, sub #83.

That May 11, 2004 Declaration, together with other records, were used to convince the court that Allstate "sincerely believed" that the property was a "mobile home" when it sent the Notice of Cancellation on June 12, 2004. However, on June 4, 2004, effective June 5, 2004, Allstate issued a superseding Amended Declaration indicating that the dwelling was of "brick" construction.

Previously, on April 7, 2006, in response to a request for a certified copy of the insurance policy, Allstate employee, Kevin Westlake certified the May 11, 2004 declarations as the relevant policy.

Both Mr. Hart and Mr. Westlake made a serious misrepresentation by failing to indicate that the

Allstate Insurance Company
Re: Allstate - Notice of Bad Faith
February 9, 2012
Page 3 of 3

declarations had been amended to clarify that the dwelling was a "brick construction", not a "mobile home". Allstate claimed that its mistaken belief on June 12, 2004, that the dwelling was a mobile home was the ultimate basis for denying coverage for the April 6, 2006 fire loss. The court accepted this "subjective belief" argument.

But before the June 12, 2004, Notice of cancellation was sent indicating cancellation a mobile home Allstate had already amended the policy declarations on June 5, 2004 to indicate that the dwelling was not a mobile home. This information was in Allstate's records which they conceal from the insured and the Grant County Superior Court.

On March 19, 2009, and March 24, 2009, the attorney for Allstate argued to the Court that because Allstate "believed" it was a mobile home, that subjective belief made the cancellation for being a mobile home a "true and actual" reason for cancellation. On January 5, 2012, an attorney for Allstate filed for the first time the amended "Landlords Package Policy Declarations" showing that effective June 5, 2004, Allstate knew it was a "brick dwelling", not a mobile home. Therefore, the notice of cancellation sent June 12, 2004, stating the policy was being cancelled because the dwelling was a mobile home, was not the true and actual reason and could not have been even the subjective belief of Allstate, since the policy had been amended June 5, 20034 to correctly identify the property as a brick dwelling. The representation that Allstate made that it believed it was a mobile home was a misrepresentation.

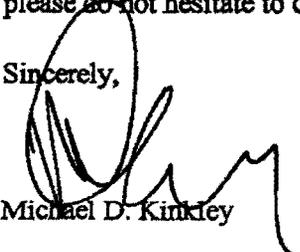
The Court relied on the misrepresentations of the Allstate employee and attorney finding:

"The evidence before the court conclusively demonstrates that the reason Allstate gave Ms. Hunter for cancellation was not true and actual in the sense the decision to-cancel was based upon false information. But it is equally clear that reason was true and actual in the sense Allstate cancelled the policy because whoever made the decision on its behalf sincerely believed the property was a mobile home and did not fit Allstate's underwriting standards."

The Court then ruled that the subjective belief was sufficient to make a notice of cancellation that was clearly wrong, "time and accurate" as Alleged by Allstate. That ruling resulted in three years of protracted continuing litigation that could have been avoided if Allstate did not make the serious misrepresentation to the Court.

Thank you for your cooperation in this matter. If you have any questions or comments, then please do not hesitate to contact our office.

Sincerely,


Michael D. Kinkley

Michael D. Kinkley, P.S.
4407 N. Division, Suite 914
Spokane, Washington 99207
(509) 484-5611 * (509) 484-5972 Fax

January 10, 2013

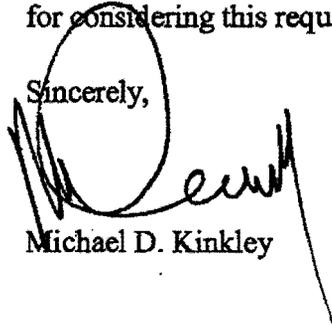
Rory Leid
Cole Lether Wathen Leid & Hall, P.C.
1000 2nd Ave Ste. 1300
Seattle, WA 98104

RE: *Hunter v. Allstate*
Grant County Superior Court, Case No. 12-2-00314-5
Grant County Superior Court, Case No. 07-2-00020-4
CR 11

Dear Mr. Leid:

On March 24, 2009, you said to the Court, "Allstate did not cancel her policy for any reason other than they thought it was a mobile home". See attached. We now know this statement was untrue. Please file a Declaration with the Court correcting this misrepresentation. Thank you for considering this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Kinkley", with a large circular flourish on the left side.

Michael D. Kinkley

Michael D. Kinkley, P.S.
4407 N. Division, Suite 914
Spokane, Washington 99207
(509) 484-5611 * (509) 484-5972 Fax

January 10, 2013

Jennifer P. Dinning
Cole Lether Wathen Leid & Hall, P.C.
1000 2nd Ave Ste. 1300
Seattle, WA 98104

RE: *Hunter v. Allstate*
Grant County Superior Court, Case No. 12-2-00314-5
Grant County Superior Court, Case No. 07-2-00020-4
CR 11

Dear Ms. Dinning:

On several occasions you have represented to the Court under oath that the May 11, 2004 Declaration pages were the operative policy on June 12, 2004 when Allstate included the attempted "Notice of Cancellation". We now know that to be untrue. Please file a Declaration or Affidavit correcting all your previously filed false Declarations. Thank you for consideration of this request.

Sincerely



Michael D. Kinkley

Appendix B



REFERENDUM MEASURE 67

Passed by the Legislature and Ordered Referred by Petition

Official Ballot Title:

The legislature passed Engrossed Substitute Senate Bill 5726 (ESSB 5726) concerning insurance fair conduct related to claims for coverage or benefits and voters have filed a sufficient referendum petition on this bill.

This bill would make it unlawful for insurers to unreasonably deny certain coverage claims, and permit treble damages plus attorney fees for that and other violations. Some health insurance carriers would be exempt.

Should this bill be:

Approved [] Rejected []

Votes cast by the 2007 Legislature on final passage:

Senate: Yeas, 31; Nays, 18; Absent, 0; Excused, 0.

House: Yeas, 59; Nays, 38; Absent, 0; Excused, 1.

Note: The Official Ballot Title was written by the court. The Explanatory Statement was written by the Attorney General as required by law and revised by the court. The Fiscal Impact Statement was written by the Office of Financial Management. For more in-depth fiscal analysis, visit www.ofm.wa.gov/initiatives. The complete text of Referendum Measure 67 begins on page 29.

Fiscal Impact Statement

Fiscal Impact Statement for Referendum 67

Referendum 67 is a referendum on ESSB 5726, a bill that would prohibit insurers from unreasonably denying certain insurance claims, permitting recovery up to triple damages plus attorney fees and litigation costs. This may increase frequency and amounts of insurance claims recovered by state and local government, the number of insurance-related suits filed in state courts, and increase state and local government insurance-premiums. Research offers no clear guidance for estimating the magnitude of these potential increases. Notice of insurance-related suits must be provided to the Office of the Insurance Commissioner prior to court filing, costing an estimated \$50,000 per year.

Assumptions for Fiscal Analysis of R-67

- There would likely be an increase in the number of cases filed in Superior Court related to the denial of insurance claims, but there is no data available to provide an accurate estimate of that fiscal impact. It is assumed that the impact to the operations of Washington courts would be greater than \$50,000 per year.
- Premiums for state and local governments that purchase auto, property, liability or other insurance may increase due to a potential increase in insurance companies' litigation costs and the amounts awarded to claimants.
- When the state or local government is a claimant, the referendum could increase the likelihood of recovering on the claim, and the amount recovered.
- Various studies have been conducted to determine how changes in law affecting insurance can affect costs for courts, insurance premiums, and claimant recovery. However, individual study results vary widely. Due to the conflicting research, there is no clear guidance for estimating the magnitude of the fiscal impact of potential increases in court costs, insurance premiums, or recovered claims.
- It is estimated that 300 notices per year of insurance-related lawsuits would be filed with the Office of the Insurance Commissioner, resulting in a minimum cost of less than \$50,000 per year increased cost to the agency.



REFERENDUM MEASURE 67

Explanatory Statement

The law as it presently exists:

The state insurance code prohibits any person engaged in the insurance business from engaging in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of their business. Some of these practices are set forth in state statute. The insurance commissioner has the authority to adopt rules defining unfair practices beyond those specified in statute. The commissioner has the authority to order any violators to cease and desist from their unfair practices, and to take action under the insurance code against violators for violation of statutes and regulations. Depending on the facts, the insurance commissioner could impose fines, seek injunctive relief, or take action to revoke an insurer's authority to conduct insurance business in this state.

Under existing law, an unfair denial of a claim against an insurance policy could give the claimant a legal action against the insurance company under one or more of several legal theories. These could include violation of the insurance code, violation of the consumer protection laws, personal injuries or property losses caused by the insurer's acts, or breach of contract. Depending on the facts and the legal basis for recovery, a claimant could recover money damages for the losses shown to have been caused by the defendant's behavior. Additional remedies might be available, depending on the legal basis for the claim.

Plaintiffs in Washington are not generally entitled to recover their attorney fees or litigation costs (except for small amounts set by state law) unless there is a specific statute, a contract provision, or recognized ground in case law providing for such recovery. Disputes over insurance coverage have been recognized in case law as permitting awards of attorney fees and costs. Likewise, plaintiffs in Washington are not generally entitled to collect punitive damages or damages in excess of their actual loss (such as double or triple the amount of actual loss), unless a statute or contract specifically provides for such payment.

The effect of the proposed measure, if approved:

This measure is a referral to the people of a bill (ESSB 5726) passed by the 2007 session of the legislature. The term "this bill" refers here to the bill as passed by the legislature. A vote to "approve" this bill is a vote to approve ESSB 5726 as passed by the legislature. A vote to "reject" this bill is a vote to reject ESSB 5726 as passed by the legislature.

ESSB 5726 would amend the laws concerning unfair or deceptive insurance practices by providing that an insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any "first party claimant." The term "first party claimant" is defined in the bill to mean an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

ESSB 5726 would authorize any first party claimant to bring a lawsuit in superior court against an insurer for unreasonably denying a claim for coverage or payment of benefits, or violation of specified insurance commissioner unfair claims handling practices regulations, to recover damages and reasonable attorney fees, and litigation costs. A successful plaintiff could recover the actual damages sustained, together with reasonable attorney fees and litigation costs as determined by the court. The court could also increase the total award of damages to an amount not exceeding three times the actual damages, if the court finds that an insurer has acted unreasonably in denying a claim or has violated certain rules adopted by the insurance commissioner. The new law would not limit a court's existing ability to provide other remedies available at law. The claimant would be required to give written notice to the insurer and to the insurance commissioner's office at least twenty days before filing the lawsuit.

ESSB 5726 would not apply to a health plan offered by a health carrier as defined in the insurance code. The term "health carrier" includes a disability insurer, a health care service contractor, or a health maintenance organization as those terms are defined in the insurance code. The term "health plan" means any policy, contract, or agreement offered by a health carrier to provide or pay for health care services, with certain exceptions set forth in the insurance code. These exceptions include, among other things, certain supplemental coverage, disability income, workers' compensation coverage, "accident only" coverage, "dental only" and "vision only" coverage, and plans which have a short-term limited purpose or duration. Because these types of coverage fall outside the definition of "health plan," ESSB 5726's provision would apply to these exceptions to "health plans."

Statement For Referendum Measure 67

APPROVE 67 – MAKE THE INSURANCE INDUSTRY TREAT ALL CONSUMERS FAIRLY.

Referendum 67 simply requires the Insurance Industry to be fair and pay legitimate claims in a reasonable and timely manner. Without R-67, there is no penalty when insurers delay or deny valid claims. R-67 would help make the Insurance Industry honor its commitments by making it against the law to unreasonably delay or deny legitimate claims.

APPROVE 67 – RIGHT NOW, THERE IS NO PENALTY FOR DELAYING OR DENYING YOUR VALID CLAIM.

R-67 encourages the Insurance Industry to treat legitimate insurance claims fairly. R-67 allows the court to assess penalties if an insurance company illegally delays or denies payment of a legitimate claim.

APPROVE 67 – YOU PAY FOR INSURANCE. THEY SHOULD KEEP THEIR PROMISES.

When you pay your premiums on time, the Insurance Industry is supposed to pay your legitimate claims. Unfortunately, the Insurance Industry sometimes puts profits ahead of people and intentionally delays or denies valid claims. R-67 makes the Insurance Industry keep its promises and pay legitimate claims on time. That is why the Insurance Industry is spending millions of dollars to defeat it.

APPROVE 67 – JOIN BIPARTISAN OFFICIALS AND CONSUMER GROUPS SUPPORTING FAIR TREATMENT BY THE INSURANCE INDUSTRY.

Insurance Commissioner Mike Kriedler, former Insurance Commissioners, seniors, workers, and consumer groups urge you to approve R-67. Supporters include the Puget Sound Alliance of Senior Citizens, former Republican Party State Chair Dale Foreman, the Labor Council, and the Fraternal Order of Police.

APPROVE 67 – R-67 SIMPLY MAKES SURE CLAIMS ARE HANDLED FAIRLY.

If the Insurance Industry honors its commitments, R-67 does not impose any new requirements – other than making sure all claims are handled fairly. R-67 would have an impact only on those bad apples that unreasonably delay or deny valid insurance claims.

For more information, visit www.approve67.org.

Rebuttal of Statement Against

Washington is one of only 5 states with no penalty when the Insurance Industry intentionally denies a valid claim. That is why the Insurance Industry is spending millions to defeat R67. Referendum 67 is only on the ballot because the Insurance Industry used its special-interest influence to block it from becoming law. Now you can vote to *approve* R67 to make fair treatment by the Insurance Industry the law. Approve R67 for Insurance Fairness.

Voters' Pamphlet Argument Prepared by:

STEVE KIRBY, Chair, House Insurance, Financial Services, Consumer Protection Committee; TOM CAMPBELL, Chair, House Environmental Health Committee; DIANE SOSNE, RN, President SEIU 1199; SKIP DREPS, Government Relations Director Northwest Paralyzed Veterans; KELLY FOX, President, Washington State Council of Firefighters; STEVE DZIELAK, Director, Alliance for Retired Americans.

Statement Against Referendum Measure 67

REJECT FRIVOLOUS LAWSUITS. REJECT HIGHER INSURANCE RATES. REJECT R-67.

As if there weren't enough frivolous lawsuits jacking up insurance rates, Washington's trial lawyers have invented yet another way to file more lawsuits to fatten their pocketbooks. They wrote and pushed a law through the Legislature that permits trial lawyers to threaten insurance companies with *triple damages* to force unreasonable settlements that will *increase insurance rates for all consumers*. The trial lawyers also included a provision that *guarantees payment of attorneys' fees*, sweetening the incentive to file frivolous lawsuits. There's no limit on the fees they can charge. What does this mean for consumers? You guessed it: *higher insurance rates*.

TRIAL LAWYERS WIN. CONSUMERS LOSE.

R-67 is a *windfall for trial lawyers* at the expense of consumers. Trial lawyers backed a similar law in California, but the resulting explosion of fraudulent claims and frivolous lawsuits caused auto insurance prices to increase 48% more than the national average (according to a national actuarial study) and *it was later repealed*.

CURRENT LAW PROTECTS CONSUMERS.

Insurance companies have a legal responsibility to treat people fairly, and *consumers can sue insurance companies under current law* if they believe their claim was handled improperly. The Insurance Commissioner can—and does—levy stiff fines, or even ban an insurance company from the state, if the company mistreats consumers.

R-67 IS BAD NEWS FOR CONSUMERS. REJECT R-67.

Not only does R-67 raise auto and homeowners insurance rates, it applies to small businesses and doctors as well. That means *higher medical bills and higher prices* for goods and services.

Laws should reduce frivolous lawsuits, not create more. Reject R-67!

See for yourself. Visit www.REJECT67.org.

Rebuttal of Statement For

Don't be fooled.

Trial lawyers didn't push this law through the legislature to protect your rights. They want this law because it gives them new opportunities to file *frivolous lawsuits* and collect *fat lawyers' fees*.

Trial lawyers don't care if frivolous lawsuits jack up our insurance rates. *Consumers, doctors and small businesses will pay more* so trial lawyers can file more lawsuits and collect larger fees.

Reject frivolous lawsuits and excessive lawyers' fees. Reject 67.

Voters' Pamphlet Argument Prepared by:

W. HUGH MALONEY, M.D., President, Washington State Medical Association; DON BRUNELL, President, Association of Washington Business; RICHARD BIGGS, President, Professional Insurance Agents of Washington; DANA CHILDERS, Executive Director, Liability Reform Coalition; TROY NICHOLS, Washington State Director, National Federation of Independent Business; BILL GARRITY, President, Washington Construction Industry Council.

Appendix C

WestlawNext **Washington Civil Jury Instructions**[Home Table of Contents](#)

WPI320.06.01 Insurance Fair Conduct Act
 Washington Practice Series TM
 Washington Pattern Jury Instructions--Civil
 6A Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 320.06.01 (6th ed.)

Washington Practice Series TM
 Washington Pattern Jury Instructions--Civil
 Database updated June 2013
 Washington State Supreme Court Committee on Jury Instructions
 Part XV. Insurance Bad Faith
 Chapter 320. Insurance Bad Faith Actions

WPI 320.06.01 Insurance Fair Conduct Act

(Name of plaintiff) claims that (name of insurer) has violated the Washington Insurance Fair Conduct Act. To prove this claim, (name of plaintiff) has the burden of proving each of the following propositions:

(1) That (name of insurer) [unreasonably denied a claim for coverage] [unreasonably denied payment of benefits] [or] [violated a statute or regulation governing the business of insurance claims handling];

(2) That (name of plaintiff) was [injured] [damaged]; and

(3) That (name of insurer's) act or practice was a proximate cause of (name of plaintiff's) [injury] [damage].

If you find from your consideration of all of the evidence that each of these propositions has been proved, your verdict [on this claim] should be for (name of plaintiff). On the other hand, if any of these propositions has not been proved, your verdict [on this claim] should be for (name of insurer).

NOTE ON USE

The instruction applies to cases filed under the Insurance Fair Conduct Act (IFCA). The first element includes a bracketed clause that can be used when *per se* violations of the act are claimed.

COMMENT

The pattern instruction was added in 2013 to incorporate IFCA provisions. See RCW 48.30.010(7); RCW 48.30.015. The act was adopted by a voter referendum in November 2007.

Recovery under IFCA is limited to first-party claimants. RCW 48.30.010(7). A first-party claimant is defined as an individual or entity "asserting a right of payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract." RCW 48.30.015(4). If the plaintiff's status as a first-party claimant is in dispute, then a jury instruction can be crafted based on this statutory definition.

Claims under IFCA are similar to, but not identical with, related bad faith or Consumer Protection Act (CPA) claims. The elements differ slightly (compare this instruction with WPI 320.01) and an IFCA claimant may recover triple damages and reasonable attorney fees without having to prove a violation of the CPA. See RCW 48.30.015.

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 6A WAPRAC WPI 320.06.01

END OF DOCUMENT

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Appendix D

LAW OFFICES OF DAVID B. TRUJILLO
4702A Tieton Drive
Yakima, Washington 98908
(509) 972-3838
Facsimile (509) 972-3841
E-Mail Address: tdtrujillo@yahoo.com

sent ✓
DBT

January 30, 2013

Rory L. Leid,
Jennifer P. Dinning
Cole, Wathen, Leid, & Hall, P.C.
1000 Second Avenue, Suite 1300
Seattle, WA 98104-1082
FAX (206) 587-2476

Re: Hunter v. Allstate, Grant Co. Sup. Ct. Case #12-2-00314-5
Your client - Allstate Insurance Company

Dear Mr. Leid and Ms. Dinning:

In your pleadings you repeatedly claim as a fact that Allstate actually "denied the claim" without any citation to the record and despite our repeated hearsay objections. We are well aware that Allstate has yet to pay the claim, but we have never seen or heard a single properly identified witness with any personal knowledge ever make such a claim in this case, in discovery or in the pleadings, let alone under oath.

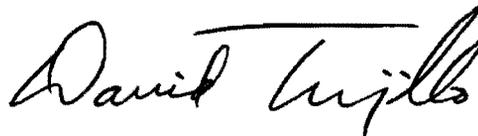
We have never seen a claim denial letter that would fit either your first story (the bad roof termination defense maintained till I sent the February 2009 IFCA notice) or your second story (the sincere belief in mobile home status defense maintained till we sent the January 2012 IFCA notice). Under WAC 284-30-380, the claim denial letter must list the specific condition and policy exclusion which should either match what you initially alleged was a bad roof underwriting disqualification, or what you later claimed was a mobile home status underwriting disqualification.

Unless you can please immediately provide a citation to admissible and fully WAC compliant evidence submitted under oath and in the court record, we will have the baseless factual claim stricken by motion against you, to end this story about there ever really being an actual claim denial on any actual fixed date, once and for all.

Before we add a motion to strike onto the pile of the nearly 325 pleadings necessitated since the claims should have ended by simply acknowledging the truth back in February of 2009, I will remind you of the following ongoing duties under what we now know is the June 5th, 2004 Amended contract:

Your quasi-fiduciary duties to the insured, the implied duty of good faith and fair dealing, the duty to cooperate, the duty not to commit bad faith, the statutory duty not to commit any unfair and deceptive act in violation of the Consumer Protection Act, not to violate of the Insurance Fair Conduct Act, not to violate WAC 284-30-330(1)(misrepresenting pertinent facts), not to violate RCW 48.01.030 (the duty to be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters, and to preserve inviolate the integrity of insurance), not to violate RCW 4.84.185 (frivolous claims and defenses), not to violate CR 11 (submitting factual claims or defenses not supported by the facts or the law), not to violate RPC 3.1 (the duty of good faith and the meritorious claims and defenses rule against frivolous assertions), not to violate RPC 3.3 (the duty of candor toward the tribunal), not to violate RPC 3.4 (fairness to opposing counsel, and the duty not to obstruct access to evidence, not to alter or conceal or misrepresent or falsify documents or evidence), not to violate RPC 4.1 which bars making any false statements of material fact or law or failing to disclose material facts necessary to avoid assisting or covering up criminal or fraudulent acts or other violations), and most importantly not to defend any of the above stated violations by ever making any false allegations against others and baselessly accusing them of CR 11 violations and fraud.

Sincerely,

A handwritten signature in cursive script that reads "David B. Trujillo". The signature is written in black ink and is positioned above the printed name.

DAVID B. TRUJILLO

cc: Clients;
Michael W. Kinkley

LAW OFFICES OF DAVID B. TRUJILLO
4702A Tieton Drive
Yakima, Washington 98908
(509) 972-3838
Facsimile (509) 972-3841
E-Mail Address: tdtrujillo@yahoo.com

*Filed ✓
DBT*

April 2, 2014

Rory W. Leid, III
Cole, Wathen, Leid, & Hall, P.C.
303 Battery Street
Seattle, WA 98121-1419
FAX (206) 587-2476

Re: Hunter v. Allstate, #07-2-00020-4
Your client - Allstate Insurance Company

Dear Mr. Leid:

This letter is to advise you that for Judge Knodell's memorandum decisions from Dockets #379 and #405 and Judge Antosz's decision expected shortly, I will circulate proposed orders right after I receive Judge Antosz's memorandum decision.

Please also advise if you would save us all the trouble of a CR 60 motion to vacate Judge Sperline's decision at #285 and can do the right thing and enter an agreed order vacating the decision.

The agreed order vacating Judge Sperline's decision would be without prejudice to any and all of the parties' other existing rights, claims, and defenses. Most importantly, it would allow both parties to simply re-note their cross motions regarding the IFCA claim to fairly and properly get at the merits thereof, fair and square. If that is acceptable, I can draft that proposed order for us too. Please advise. Thank you.

Sincerely,



DAVID B. TRUJILLO

cc: Clients;
Co-Counsel Michael W. Kinkley

Appendix E

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KIMBERLY A. ALLEN
GRANT COUNTY CLERK

JUDGE JOHN M. ANTOSZ

5
6
7
8 IN THE SUPERIOR COURT OF WASHINGTON
FOR GRANT COUNTY

9 THE ESTATE OF SUSAN HUNTER,

10 Plaintiff,

11 v.

12 GREGORY SCHLAGEL and JANE DOE
13 SCHLAGEL, husband and wife and the
14 martial community comprised thereof; and
ALLSTATE INSURANCE COMPANY,

15 Defendants.
16

Case No.: 07-2-00020-4

ORDER GRANTING
PLAINTIFF'S MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT

17 THIS MATTER having come on for hearing on March 4th, 2015, on the Plaintiff's
18 Motion to Amend Complaint, and the Plaintiff appearing by and through its attorney of
19 record, David B. Trujillo, ~~and the Defendants Schlager appearing by and through their~~
20 ~~attorney of record, Gordon Hauschild,~~ and the Defendant Allstate Insurance Company
21 ~~appearing by and through their attorney of record, Tony Reid,~~ *Jennifer Dinning*
22 appearing by and through their attorney of record, *Jennifer Dinning*, and the Court having heard
23 the arguments of counsel, and reviewed and considered the pleadings, exhibits, and records
24

1 in the court file, and the Court being otherwise fully advised in the premises, NOW
2 THEREFORE,

3
4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Plaintiff's
5 Motion to Amend Complaint, **IS HEREBY GRANTED** pursuant to CR 15.

6 DONE IN OPEN COURT this 4th day of March, 2015.

7
8 */s/ John M. Antosz*
9 JUDGE JOHN M. ANTOSZ

10
11 Presented by:
12 LAW OFFICES OF DAVID B. TRUJILLO
13 Attorneys for Plaintiffs

14 By: *David Trujillo*
15 DAVID B. TRUJILLO, WSBA #25580

16
17 Copy Received;
18 Approved as to Form and Content;
19 Notice of Presentation Waived:

20 By: _____
21 GORDON HAUSCHILD, WSBA # _____
22 Attorney for Defendants Schlagel

23 and
24 By: _____, WSBA # _____
Attorney for Defendant Allstate Insurance Company

TRUJILLO
COPY

528

JUDGE JOHN M. ANTOSZ

FILED

MAR 06 2015

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

IN THE SUPERIOR COURT OF WASHINGTON
FOR GRANT COUNTY

THE ESTATE OF SUSAN HUNTER,
Plaintiff,

Case No.: 07-2-00020-4

AMENDED SUMMONS

v.

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and the
marital community comprised thereof; and
ALLSTATE INSURANCE COMPANY,
Defendants.

TO: DEFENDANTS GREGORY SCHLAGEL and JANE DOE SCHLAGEL, husband
and wife and the marital community composed thereof:

TO: DEFENDANT ALLSTATE INSURANCE COMPANY:

A lawsuit has been started against you in the above-entitled court by The Estate of
Susan Hunter, plaintiff. The Plaintiff's claims are stated in the Amended Complaint, a
copy of which is served upon you with this Amended Summons.

In order to defend against the amended lawsuit, you must respond to the Amended
Complaint by stating your defense in writing and serve a copy of your Answer upon the

COPY

1 undersigned attorney for the plaintiff within twenty (20) days after the service of this
2 Amended Summons and the Amended Complaint, or within sixty (60) days if this
3 Amended Summons and the Amended Complaint was served outside the State of
4 Washington, or if you were served with a prior Summons and Complaint, **then you must**
5 **answer within 10 (TEN) days after service of this Amended Summons and the**
6 **Amended Complaint, excluding the day of service,** or a default judgment may be entered
7 against you without notice.
8

9
10 A default judgment is one where the plaintiff is entitled to what she asks for because
11 you have not responded. If you serve a notice of appearance on the undersigned attorney,
12 you are entitled to notice before a default judgment may be entered.
13

14
15 You may demand that the plaintiff file the amended lawsuit with the court. If you
16 do so, the demand must be in writing and must be served upon the plaintiff. Within
17 fourteen (14) days after the service or the demand, the plaintiff must file this lawsuit with
18 the court, or the service on you of this Amended Summons and the Amended Complaint
19 will be void.
20

21
22 If you wish to seek the advice of an attorney in this matter, you should do so
23 promptly so that your written response, if any, may be served on time.
24

1 This Amended Summons is issued pursuant to Civil Rules 4 and 15.

2
3 Dated this 4th day of March, 2015.

4
5 LAW OFFICES OF DAVID B. TRUJILLO

6 Attorney for Plaintiff Estate of Susan Hunter:

7
8 BY: David Trujillo

9 DAVID B. TRUJILLO, WSBA #25580

10 CERTIFICATE OF SERVICE

11
12 I, DAVID B. TRUJILLO, certify that on the 4th day of March, 2015, pursuant to
13 a service by email agreement between all the parties in this case, I Emailed a copy of this
14 document, to (1) the attorneys of record for the DEFENDANT ALLSTATE INSURANCE
15 COMPANY: Rory W. Leid, III, and Jennifer Dinning, at rleid@cwlhlaw.com; and
16 jdinning@cwlhlaw.com; and (2) to the attorney of record for the DEFENDANTS
17 SCHLAGEL: Gordon Hauschild at ghauschild@wshblaw.com.

18 DATED this 4th day of March, 2015.

19 Attorney for Plaintiff Estate of Susan Hunter:

20
21 BY: David Trujillo
22 DAVID B. TRUJILLO, WSBA #25580
23
24

TRUJILLO
COPY

JUDGE JOHN M. ANTOSZ

IN THE SUPERIOR COURT OF WASHINGTON
FOR GRANT COUNTY

THE ESTATE OF SUSAN HUNTER,
Plaintiff,

Case No.: 07-2-00020-4

v.

PLAINTIFF'S AMENDED
COMPLAINT

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and the
marital community comprised thereof; and
ALLSTATE INSURANCE COMPANY,
Defendants.

COMES NOW the PLAINTIFF, THE ESTATE OF SUSAN HUNTER, by and
through her attorney of record, DAVID B. TRUJILLO, and alleges as follows:

I. PARTIES

1.1 Plaintiff, the Estate of Susan Hunter, is fully entitled to bring the claims
asserted herein on behalf of the decedent and former Plaintiff, Susan Hunter.

1.2 Defendant Gregory Schlagel is married to Jane Doe Schlagel and all acts
alleged herein were performed for and on behalf of the marital community comprised
thereof. Greg Schlagel is a sole proprietor who did business at all material times to this

COPY

1 lawsuit as Greg Schlagel, Exclusive Agent, Allstate Insurance Company, out of his office
2 in Grant County, Washington.

3 1.3 Defendant Allstate Insurance Company, is a foreign insurer doing business in
4 Yakima County and throughout Washington State and the Washington State Insurance
5 Commissioner accepts service of process for this defendant.

6 II. JURISDICTION AND VENUE

7 2.1 This Court has jurisdiction over this matter, and venue is properly placed in
8 Grant County, Washington, because the Defendants reside in and do business in Grant
9 County, Washington.

10 III. GENERAL ALLEGATIONS

11 3.1 In May of 2004, Defendant Gregory Schlagel was hired by the Plaintiff to
12 obtain Allstate insurance coverage on a brick rental home for the Plaintiff at 251 Briskey
13 Lane in Naches, Yakima County, Washington.

14 3.2 In June of 2004, Susan Hunter received a cancellation notice and refund from
15 Allstate notifying her that the policy on the brick rental home would terminate in August
16 of 2004 because Allstate said it would not insure a mobile home as a rental.

17 3.3 In response thereto, Susan Hunter notified Defendant Schlagel of the
18 cancellation notice and reminded him that she resided in the mobile home and the brick
19 rental home was a different home and Defendant Schlagel represented to the Plaintiff that
the notice was erroneous and that Allstate had inspected the wrong home.

20 3.4 Defendant Schlagel instructed Plaintiff Hunter to write a new check in the
21 amount of \$255.00 to Allstate for policy coverage and he would take care of everything.

22 3.5 On June 29th, 2004, Plaintiff performed as instructed and paid and delivered
23 the full amount requested by Defendant to the Defendant for the Defendant to secure
24 insurance for the brick rental home for the Plaintiff as promised.

1
2 3.6 Thereafter everything seemed fine to the Plaintiff as Allstate and Schlagel did
3 not notify the Plaintiff of any cancellation or lapse on the correct home, or any new
4 problems thereafter and Plaintiff never indicated anything other than that she wanted the
5 insurance.

6 3.7. On March 6th, 2006, a fire destroyed the Plaintiff's house and the contents of
7 251 Briskey Lane in Naches, Washington.

8 3.8 Susan Hunter soon learned thereafter for the first time that Defendant Schlagel
9 had simply held onto her check and had failed to ever procure insurance for the home at
10 251 Briskey Lane as agreed, and or that Allstate had failed to notify Ms. Hunter of any
11 rejection, cancellation, or lapse either.

12 3.9 On March 7th, 2006 Defendant Schlagel reported to the Plaintiff, that his
13 computer was showing that Allstate had marked the policy as having been cancelled on
14 August 7th, 2004, not because of mobile home status which Schlagel said had been resolved
15 already back when Ms. Hunter had called in on June 22nd, 2004 and sent in her repayment
16 of \$255 which he received on July 2nd, 2004 (triggering RCW 48.17.480 and RCW
17 48.30.190), but it was solely due to an alleged bad roof found after the correct home was
18 finally inspected, although Schlagel stated that he did not see that any 45-day advanced
19 written notice of intent to cancel for a bad roof had ever been sent to Ms. Hunter (as strictly
20 required for validating any such cancellation for a bad roof in compliance with RCW
21 48.18.290), nor any non-renewal notice per RCW 48.18.2901.

22 3.10 After news of the fire and lack of insurance broke, in an apparent initial attempt
23 to distance himself from the check that had gotten left in his file, Defendant Schlagel
24 suddenly mailed the June 29th, 2004 check back to the Plaintiff without any cover letter,
and it appeared to Plaintiff, most likely because of the actions or inactions of Defendant
Schlagel, that Allstate was not responding reasonably or treating Ms. Hunter's claim for
coverage fairly if Allstate had completed its investigation into the validity of any
cancellation or any non-renewal under RCW 48.18.290 and RCW 48.18.2901, and because
Ms. Hunter had never received any notice of any true and actual underwriting concerns, no
cancellation or non-renewal notices, nor received any WAC compliant written notice of

1 any decision on coverage with the required explanation that it was based on any
2 determination of any compliance with the strict statutory prerequisites for cancellation
3 and/or non-renewal, and otherwise Allstate still owed the Plaintiff an unfulfilled
4 contractual duty to complete a good faith investigation into all the dispositive facts and
5 events upon which a valid coverage acceptance or denial decision and payment or non-
6 payment hinged in order for Allstate to ever comply with WAC 284-30-330(4) and or
7 WAC 284-30-330(6).

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IV. PLAINTIFF'S FIRST CAUSE OF ACTION

NEGLIGENCE

(AGAINST DEFENDANTS SCHLAGEL ONLY)

4.1 Plaintiff re-alleges all of the foregoing paragraphs in their entirety as if set forth fully herein.

4.2 The actions of Defendants Schlagel in failing to act reasonably and diligently to ensure that the Plaintiff's home was insured as agreed, constituted negligence for which the Plaintiff has suffered significant damages to both personal and real property, as a direct and proximate result, including but not limited to significant repair costs, lost rents, lost use and enjoyment, emotional distress, and other damages in amounts to be proven at trial.

V. PLAINTIFF'S SECOND CAUSE OF ACTION:

BREACH OF CONTRACT

(AGAINST DEFENDANTS SCHLAGEL ONLY)

5.1 Plaintiff re-alleges all of the foregoing paragraphs in their entirety as if set forth fully herein.

5.2 Defendants Gregory Schlagel took payment from the Plaintiff and assumed a contractual duty to act diligently to secure insurance for the Plaintiff.

5.3 Defendant Gregory Schlagel owed the Plaintiff a contractual duty of good faith and fair dealing, but Defendant Schlagel never forwarded the payment to Allstate as promised, nor ever properly communicated any problem whatsoever to the Plaintiff until after the fire loss occurred.

1
2 5.4 The actions of Defendant Schlagel as described above constitute a breach of
3 contract, for which the Plaintiff has suffered damages as a direct, proximate, and
4 foreseeable result in monetary amounts to be proven at trial.

5 VI. PLAINTIFF'S THIRD CAUSE OF ACTION:
6 BREACH OF CONTRACT AND DUTY OF GOOD FAITH AND FAIR DEALING
7 AGAINST ALLSTATE

8 6.1. The Plaintiff re-alleges all of the foregoing paragraphs in their entirety as if
9 set forth fully herein.

10 6.2 Defendant Allstate had an insurance contract with the Plaintiff for the brick
11 rental home at issue in this case, which Allstate refused to acknowledge and which contract
12 continued until a valid notice of lapse or termination could have been but never was sent
13 to Susan Hunter as required by law.

14 6.3 Allstate, according to Defendant Schlagel, was on notice that the wrong home
15 had been rejected and Susan Hunter had sent Greg Schlagel a new payment and that Greg
16 Schlagel had requested a new inspection/appraisal of the proper home, the brick rental
17 home, in order to secure and maintain and/or otherwise reinstate and adequately establish
18 her insurance contract and coverages and proper levels of the same and the contractual
19 relationship with Allstate including all the rights and benefits and duties of good faith and
20 fair dealing and statutory rights arising therefrom.

21 6.4 Allstate did receive and initially acted on the above notice from Schlagel and
22 did send an inspector/appraiser who did in fact come back out and inspect/appraise the
23 correct home and did nothing but verbally compliment it's quality, making all seem fine
24 unless otherwise notified; however, Allstate failed to send any notice of any concern if any
by Allstate over any results of that inspection to allow Ms. Hunter to challenge any alleged
subsequent coverage denial thereon, the basis therefore, or to point out any inadequate
appraisal amount and coverage level and did not send any notice whatsoever to Susan
Hunter that her policy on the correct house had not been maintained with the full benefits

1 and all rights and protections thereunder and at law as promised, and did not ever notify
2 Susan Hunter that the policy had ever lapsed for non-payment or any reason whatsoever.

3 6.5 When Susan Hunter reported the fire loss and opened a claim on the original
4 insurance contract with Allstate, Allstate was either still investigating or was acting as if
5 Defendant Schlagel had never taken any action to reinstate the policy on the correct home
6 and this was despite Allstate knowing full well at the time that Allstate had in fact failed to
7 send Ms. Hunter the required written notice of any proposed lapse or any notice of
8 cancellation or notice of any allegedly failed inspection after the inspection/appraisal on
9 the correct home.

10 6.6 Defendant Allstate had a contractual duty to provide a prompt and fair
11 investigation and settlement of Susan Hunter's reinstatement and fire damage claim which
12 was reported by Susan Hunter and Defendant Greg Schlagel to Defendant Allstate within
13 a prompt and reasonable time and for which Defendant Allstate owed the Plaintiff a
14 contractual duty of good faith investigation and fair dealing and fair claims settlement
15 practices at all times.

16 6.7 The actions of Defendant Allstate constitute a material breach of contract and
17 a breach of the duty of good faith and fair dealing for which Susan Hunter / now the
18 Plaintiff Estate of Susan Hunter suffered significant monetary damages as a direct and
19 proximate result in amounts to be proven at trial.

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VII. PLAINTIFF'S FOURTH CAUSE OF ACTION:
BAD FAITH (AGAINST DEFENDANT ALLSTATE ONLY)

7.1 Plaintiff re-allege all of the foregoing paragraphs in their entirety as if set forth
fully herein.

7.2 The Defendant Allstate had a duty to provide insurance claims investigation
and settlement services in accordance with industry standards set forth by law and their
contractual obligations to the Plaintiffs in order to avoid evading or prolonging the claim,
exacerbating damages or causing further injuries or inconvenience, or impairing the
Plaintiffs' use and enjoyment of her properties as well as any other inconveniences and

1 unnecessary legal fees incurred to litigate over what should have been promptly and
2 professionally paid in full under the policies Defendant Allstate had or should have had
3 with Susan Hunter.

4 7.3 The actions of Defendant Allstate, as alleged above AND ONGOING,
5 constitute BAD FAITH for which Susan Hunter, now her Estate of Susan Hunter, the
6 current Plaintiff, have suffered damages as a direct and proximate result in an amount to
7 be proven at trial.

8 VIII. PLAINTIFF'S FIFTH CAUSE OF ACTION
9 (AGAINST DEFENDANT ALLSTATE INSURANCE COMPANY ONLY)
10 VIOLATION OF THE CONSUMER PROTECTION ACT/IFCA

11 8.1 Plaintiffs re-allege all of the foregoing paragraphs in their entirety as if set forth
12 fully herein.

13 8.2 The actions of Defendant Allstate constitute multiple and ongoing unfair or
14 deceptive acts or practices in general and pursuant to violations of IFCA at RCW
15 48.30.015(5)(a) (solely for the 12/30/08 violation of WAC 284-30-330(6) upon completion
16 of the investigation and realization of the key dispositive facts governing the validity of
17 the August 7th, 2004 cancellation for an alleged bad roof that had been in question), and/or
18 other violations of WAC 284-30;

19 8.3 The actions of Defendant Allstate at issue in this case were conducted within
20 their trade or in commerce;

21 8.4 The actions of Defendant Allstate at issue in this case affect the public interest;

22 8.5 The actions of Defendant Allstate perpetrated in violation of the Consumer
23 Protection Act at RCW 19.86.020 in this case are causally related to injuries which the
24 Susan Hunter/Plaintiff have suffered to their business or property in monetary amounts to
be proven at trial.

//

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff having asserted her claims for relief, now prays for judgment against the Defendants, jointly and severally, as follows:

9.1 For judgment against Defendants on the Plaintiff's Causes of Action in such monetary amounts as may be proven at trial;

9.2 For an award of attorney's fees and costs as provided by law and or RCW 19.86.090, and or Olympic Steamship, and or pursuant to RCW 48.30.015(2) including any appropriate multipliers thereon;

9.3 For the Court to treble the total award of damages awarded against Allstate Insurance Company only, pursuant to RCW 48.30.015(2) and for punitive damages under RCW 19.86.090.

9.4 For a permanent injunction against Allstate Insurance Company in the public interest to promote and foster fair and honest competition and business practices all expressly pursuant to RCW 19.86.090, requiring affirmative corrective policy changes and employee training and corrective actions to prevent any further violations, and permanently enjoining and restraining Defendant Allstate Insurance Company and all of its parent corporations and subsidiaries in the insurance industry and each of them, their officers, directors, agents, servants, employees, partners, and co-conspirators and all other persons in active concert or participation with this Defendant, from ever again engaging in the conduct complained of in this complaint which would otherwise constitute a violation of any part of RCW 48.30 and/or WAC 284-30 and/or RCW 19.86 if this matter is contested;

9.5 For such other and further relief as the Court may deem just and equitable.

DATED this 4th day of March, 2015.

LAW OFFICES OF DAVID B. TRUJILLO

Attorney for Plaintiff Estate of Susan Hunter:

BY: David Trujillo

DAVID B. TRUJILLO, WSBA #25580

CERTIFICATE OF SERVICE

I, DAVID B. TRUJILLO, certify that on the 4th day of March, 2015, pursuant to a service by email agreement between all the parties in this case, I Emailed a copy of this document, to (1) the attorneys of record for the DEFENDANT ALLSTATE INSURANCE COMPANY: Rory W. Leid, III, and Jennifer Dinning, at rleid@cwlhlaw.com; and jdinning@cwlhlaw.com; and (2) to the attorney of record for the DEFENDANTS SCHLAGEL: Gordon Hauschild at ghauschild@wshblaw.com.

DATED this 4th day of March, 2015.

Attorney for Plaintiff Estate of Susan Hunter:

BY: David Trujillo
DAVID B. TRUJILLO, WSBA #25580