

No. 47659-2-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

NATALIE & JAMES RYAN BOLDT, and the Marital Community
Comprised Thereof,

Plaintiff/Appellant,

v.

QUICK COLLECT, INC., an Oregon Corporation, and STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Respondent.

BRIEF OF APPELLANT
NATALIE & JAMES RYAN BOLDT, and the Marital Community
Comprised Thereof

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I. INTRODUCTION

Natalie and James Ryan Boldt (“Boldts”) are insured by State Farm Mutual Automobile Insurance Company (“State Farm”) for Personal Injury Protection (“PIP”) coverage.

Natalie Boldt (“Boldt”) was injured in a car accident in 2009 caused by an uninsured motorist. State Farm opened a PIP Claim file for Boldt upon her initial contact. State Farm obtained information from Boldt regarding the collision and pursued its own investigation. State Farm received medical records and billings from Boldt’s health care provider, Kriss Chiropractic (“Kriss”). State Farm initially paid for Boldt’s treatment at Kriss pursuant to Boldt’s PIP coverage.¹

State Farm closed Boldt’s PIP Claim file and ceased making payments while Boldt was still treating for her injuries, because, according to State Farm, State Farm mailed a PIP application to the Boldts’ address three times and the Boldts did not return it. Boldt completed and returned the one PIP application she received from State Farm on or about December 29, 2009. The Boldts deny receiving subsequent PIP applications and provided evidence that their neighborhood had a problem with mail theft.

State Farm did nothing else to assist Boldt with her PIP claim in any way. State Farm closed the file without calling the Boldts, emailing

¹ Third party Defendant Kriss Chiropractic, P.S. (“Kriss”) provided chiropractic care to Boldt. Boldt dismissed Kriss from the Pierce County Superior Court lawsuit with prejudice on February 19, 2014.

the Boldts, or in any other way attempting to assist Boldt with her PIP claim.²

When State Farm unilaterally closed Boldt's PIP claim and refused to pay medical bills that were pending, without notice to Boldt, Boldt's account with Kriss became delinquent. Kriss sent Boldt's account to Quick Collect, Inc. ("Quick"), a debt collection agency, for collection.³

Quick sued the Boldts. Upon being served, Boldt immediately contacted her State Farm agent and the State Farm PIP office. Boldt spoke to several people at State Farm, and was told to fax the Summons and Complaint to State Farm.

State Farm assured Boldt that State Farm would "take care of" the lawsuit and that Boldt did not need to do anything further. Boldt specifically asked John Brines, a speaking agent adjuster for State Farm, if she needed to respond to the lawsuit filed against her by Quick. Mr. Brines said that State Farm was looking into it.

Having heard nothing, Boldt later called Mr. Brines when there was still time to appear in the lawsuit. Boldt asked Mr. Brines

² See, *Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn.App. 383, 421 – 423, 161 P.3d 406 (Div. II 2007), *infra*.

³ On May 22, 2015, Boldt obtained summary judgment on the issue of liability against Quick for Quick's violations of the Fair Debt Collection Practices Act, the Washington Consumer Protection Act, and the Washington Collection Agency Act. On October 16, 2015, Boldt obtained summary judgment dismissal of all of Quick's counterclaims and affirmative defenses asserted against Boldt. On the same date, Kriss obtained summary judgment dismissal of all of Quick's third-party claims against Kriss. Quick and Kriss are not parties to this appeal. Trial on the issue of damages against Quick is set for December 21, 2015 in Pierce County Superior Court.

specifically if she needed to respond to the lawsuit. Mr. Brines answered, “it is taken care of.” Boldt asked Mr. Brines a second time, and Mr. Brines, clearly annoyed at the second call and Boldt’s question, told Boldt again, “it is taken care of.”

Boldt relied on State Farm’s assurance that it was “taken care of.”

It was not “taken care of.” A default judgment was entered against the Boldts. A wrongful garnishment ensued.

The Boldts suffered damages from the judgment and wrongful garnishment. The garnishment caused financial harm to the Boldts, including the amounts garnished, lost wages, late fees that were incurred on utility bills due to the garnishment, and out-of-pocket expenses such as travel and parking.

Boldt sent a 20-day Insurance Fair Conduct Act (“IFCA”) notice to State Farm asking State Farm to fix the problem. Boldt was ultimately reimbursed by State Farm for the amounts garnished, but not for any lost wages, late fees incurred when Boldt was late on bills due to the garnishment, time spent on the problem, out-of-pocket expenses such as travel and parking, emotional distress and a lowered credit rating that has chilled the Boldts from refinancing their mortgage.

On April 24, 2015, the Trial Court granted State Farm’s motion for Summary Judgment dismissal of Boldt’s claims arising out of common law Bad Faith, IFCA, and the Washington Consumer Protection Act (“CPA”) and denied Boldt’s Motion for Reconsideration.

This appeal ensued.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The Trial Court erred by granting summary judgment dismissal of Boldt's IFCA, Bad Faith, and CPA claims, despite disputed issues of material fact; and
2. The Trial Court incorrectly calculated the statute of limitations on Boldt's Bad Faith, IFCA and CPA claims.

B. Issues Pertaining to Appellants' Assignments of Error

1. Did the trial court err in dismissing Boldt's claims pursuant to the tort of Bad Faith, WAC 284-30 *et seq.*, RCW 48.30 *et seq.* and RCW 19.86 *et seq.* because a reasonable juror could find that State Farm acted unreasonably and/or in bad faith when it failed to assist Boldt with her claim, closed her claim, and delayed payment of her claim?
2. Did the trial court improperly assume the role of assessing credibility when making factual determinations in favor of Respondent State Farm when said facts were specifically contradicted by Appellant Boldt's sworn statements and deposition testimony?
3. Did the trial court err in determining that the statute of limitations for Boldts' claims had run, precluding the lawsuit altogether?

4. Did the trial court err in dismissing Boldt's Bad Faith and CPA claims requiring a finding that a reasonable juror could not find that State Farm acted unfairly and/or deceptively when its adjuster told Boldt "it is taken care of" when Boldt asked what to do about a 20-day summons for a collection lawsuit, when in fact State Farm did not "take care of" the lawsuit?
5. Did the trial court err in dismissing Boldt's Bad Faith and CPA claims requiring a finding that a reasonable juror could not find that State Farm acted unreasonably, unfairly and/or deceptively when it unilaterally closed Boldt's PIP claim without notice to Boldt or to Boldt's health care provider, Kriss, and made no effort to assist Boldt in any way?

III. STATEMENT OF THE CASE

The Boldts contracted for and were current on their payments to State Farm for Personal Injury Protection ("PIP") coverage. CP 4; 114.

Boldt was injured in a car accident in 2009 caused by an uninsured motorist. CP 4; 116. State Farm initially paid for Boldt's treatment at Kriss Chiropractic pursuant to Boldt's PIP coverage.⁴ CP 4; 116. Boldt completed and returned her PIP form to State Farm on or about December 28, 2009. CP 631. Boldt did not receive any

⁴ Third-Party Defendant Kriss provided chiropractic care to Boldt. CP 2 – 4; 114-116. Plaintiffs dismissed Kriss from the Pierce County Superior Court lawsuit with prejudice on February 19, 2014. CP 26-27.

subsequent PIP applications in the mail from State Farm. CP 628 – 630; 688 – 689. Her neighborhood had a mail theft problem. CP 628 – 630; 632; 688 – 689. State Farm stopped paying Kriss and closed Boldt’s PIP claim file, asserting that it did not receive a completed PIP application from Boldt and that Boldt “ignored” subsequent PIP applications that State Farm claimed it mailed to Boldt. CP 577 - 604. State Farm made no other effort to follow up with Boldt or assist her with her claim in any way. CP 633. State Farm stopped paying Kriss, which caused Boldt’s account to become delinquent. CP 4; 116. Kriss sent Boldt’s account to Quick for collection.⁵ CP 4; 117.

On or about May 2, 2013, Quick sued Boldt to collect the Kriss account. CP 5; CP 117. Upon being served with the 20-day summons and complaint, Boldt immediately contacted her State Farm agent and the State Farm PIP office. CP 5; 117; 408 – 418; 621. Boldt spoke to several people at State Farm, and was instructed to take it to the local Jeff Ward State Farm office in Bonney Lake and fax the Quick Collect, Inc. summons and complaint to State Farm from Jeff Ward’s office. CP 5; 117-118; 233 – 242; 408 – 418; 620 - 621. Boldt was concerned about the 20-day timeframe in which to respond to the summons, so she

⁵ On May 22, 2015, Plaintiff/Appellant obtained summary judgment on the issue of liability against Quick Collect, Inc. (“Quick”) for Quick’s violations of the Fair Debt Collection Practices Act, the Washington Consumer Protection Act, and the Washington Collection Agency Act. CP 859 - 863. Quick is not a party to this appeal. Trial on the issue of Boldt’s damages against Quick is set for December 21, 2015 in Pierce County Superior.

circled the phrase “20 days” on the paperwork. CP 235.

John Brines was the adjuster State Farm assigned to Boldt’s claim. CP 575 – 576. Boldt initially had trouble getting a hold of Mr. Brines by telephone. CP 620. Boldt persisted in contacting Mr. Brines because she was worried about the 20-day summons. CP 620.

Mr. Brines, a speaking agent adjuster for State Farm, assured Boldt that State Farm would “take care of” the lawsuit and that Boldt need not appear or defend. CP 5; 118; 408 – 418; 621; 634; 636.

Boldt testified about her conversation with John Brines:

Answer: I remember him saying there was a difference in the amount of the bills, and that it didn’t match up with what they had put in the claim, and that those bills had since been written and mailed to Kriss Chiropractic, and that everything had been taken care of. And I specifically asked if I needed to contact someone in regard to the summons, and he told me no, it had been taken care of.

Question: Okay. Those are the words you think he used?

Answer: Those are the exact words he said to me.

Question: It had been taken care of?

Answer: Yes.

CP 634.

Boldt relied on State Farm’s advice that it was taken care of and that she need not do anything further. CP 5; 620 - 623.

On or about July 19, 2013 State Farm mailed two payments totaling \$640.50 to Kriss. CP 6; 559 - 573. Upon State Farm's payment of \$640.50, Boldt's patient account at Kriss was paid in full. CP 6; 118; 559 - 573. State Farm paid a total of \$2,087.50 to Kriss for Boldt's treatment for bills incurred between September 29, 2009 and February 19, 2010. CP 6; 118; 559 - 573.

State Farm did not "take care of" the collection lawsuit. On or about August 1, 2013 the Pierce County District Court entered default judgment against Boldt in the amount of \$2,454.24. CP 5; 120; 263 - 264.

On or about September 19, 2013, Boldt learned from Mr. Boldt's employer that Mr. Boldt's wages were being garnished in the amount of \$299.58 per paycheck. CP 5; 120; 244 - 251; 258. Mr. Boldt's take-home pay averages \$1,150.00 per paycheck. CP 6; 120. As soon as Boldt learned of the garnishment, she arranged for child care and drove over 200 miles to try to solve the problem, having to drop off her children and then go to Kriss' office to obtain her patient file. CP 14; 119; 622 - 623. Mr. Boldt missed overtime hours. CP 15; 120; 622 - 623; 686. Boldt and her family went to the office of their State Farm agent, Debra Nelons for help. CP 838. The Boldts suffered damages from the wrongful garnishment and the judgment itself. CP 15; 120; 622 - 623. The Boldts were ultimately reimbursed by State Farm solely for the total amount garnished, \$1,198.32. CP 120. The \$1,198.32 did not include lost wages, fuel, late fees, interest on money borrowed, or other

out of pocket expenses that Boldt incurred due to State Farm's wrongdoing. CP 121; 126; 253 – 256; 622 - 623.

On or about August 19, 2014, Boldt moved for leave to amend her complaint against Quick to add State Farm as a defendant. CP 35 – 99. On or about September 8, 2014, Boldt's Motion was granted. CP 110 – 112. State Farm was served with the Motion for Leave to Amend, the First Amended Complaint and the Order Granting Motion for Leave to Amend. CP 100 – 109.⁶ Boldt pled the following causes of action against State Farm: Insurance Fair Conduct Act (IFCA), Bad Faith, and the Washington Consumer Protection Act (CPA). CP 132 – 138.

In State Farm's Answer, it pled the affirmative defense of "breach of policy condition," stating that Boldt was required to "notify us [State Farm] of the claim and give us details about the claim" and that "the insured must cooperate with us." CP 164.

State Farm moved for Summary Judgment dismissal. CP 371 – 393. Months after Boldt's deposition, State Farm obtained a declaration from John Brines denying what he told Boldt. CP 553 – 556. Boldts' Opposition to State Farm's Motion for Summary Judgment was mostly set forth in Boldts' Motion for Summary Judgment against Quick which was set for hearing on the same day. Most of the Boldts' response to State Farm's Motion for Summary Judgment were not considered by the

⁶ In State Farm's Motion to Dismiss it claimed it was not properly served, but the trial court denied State Farm's motion on the basis of service, granting it only on the merits and the statute of limitations. CP 737.

Trial Court due to an internal court system administrative error and in no way the fault of Boldt. CP 605 – 606; 718 – 720; 738 – 740; 743. Boldt did everything correctly and timely, but the pleadings were not delivered to the Trial Court, resulting in the Trial Court not considering Boldt’s side of the story. CP 738 - 740.

As detailed in State Farm’s Motion and Boldt’s Opposition, Natalie Boldt testified she filled out her PIP form in December 2009 and placed it in the mailbox across from her workplace. CP 631. She testified that she did not receive any subsequent forms. CP 628 – 630; 688 – 689. Boldt’s neighborhood had a mail theft problem. CP 629 – 630; 688 – 689. She further testified that she cooperated with State Farm every time State Farm contacted her or requested information from her, and trusted State Farm every step of the way, including believing State Farm when told that the collection lawsuit was “taken care of.” CP 636.

Mr. Boldt testified that he missed work to drive to Kriss’s office and to State Farm to deal with the garnishment and related issues, and how as a result, he missed overtime hours. CP 285 – 287. State Farm did not reimburse those sums that were beyond the specific amount garnished nor did State Farm do anything about the adverse effect on the Boldts’ credit rating, nor the existing record of a judgment against the Boldts. CP 628 - 630.

Boldt’s IFCA notice letter asked State Farm to “fix” the problem and State Farm, in response, reimbursed the wrongfully-garnished wages

but did nothing else. CP 419 – 420; 628 - 630. These facts were detailed in materials not considered by the trial court at the April 24, 2015 Summary Judgment hearing.⁷ CP 718 – 720; 738 - 740. The Trial Court apologized for not having all the declarations and exhibits in support of Boldt’s Opposition to State Farm’s Motion for Summary Judgment, but went forward with the hearing and ruled against Boldt. CP 718 – 720; 738 – 740; 743.

With only State Farm’s story, the Trial Court assessed Boldt’s credibility and determined that she was “uncooperative” with State Farm. CP 727. In order to so find, the Trial Court had to disregard Boldt’s declaration and deposition testimony that clearly stated, under oath, that Boldt filled out and returned the only application for PIP benefits Boldt received. The Trial Court made the factual determination that State Farm sent Boldt “four different claim forms that she didn’t return,” disregarding her sworn testimony that she never received them. CP 731. The Trial Court determined that State Farm did not need to do anything “beyond what they did” because “they sent her the forms and she sent nothing back.” CP 731. The Trial Court found no bad faith and ignored Boldt’s testimony that John Brines said “it is taken care of.” CP

⁷ Boldt’s Opposition to the State Farm motion expressly stated: “A detailed timeline of the actions of defendant Quick Collect, Inc. and cross-defendant Kriss Chiropractic, P.S. is in Plaintiffs’ Motion for Summary Judgment against Quick Collect, pending before this Court....This Motion is based on the accompanying memorandum of points and authorities, Plaintiffs’ Amended Complaint, the Declarations of Plaintiffs and attached exhibits submitted with Plaintiffs’ Motion for Summary Judgment on Liability against Quick Collect....”

717 – 737. The Trial Court further found that Boldt’s claims were barred by the statute of limitations. CP 737.

The Trial Court denied Plaintiff’s Motion for Reconsideration. CP 871. The Trial Court affirmed its determination that the statute of limitations had expired on Boldt’s IFCA claim, despite the fact that Boldt had not been damaged until the garnishment that came as a result of Brines’ twice assuring her “it is taken care of.”

IV. ARGUMENT

A. STANDARD OF REVIEW

On appeal from the grant of summary judgment, the appellate court makes the same inquiry as the trial court; i.e., summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Bishop v. Miche*, 973 P.2d 465 (Wash. 1999) (citing *Taggart v. State*, 118 Wn.2d 195, 198-99, 822 P.2d 243 (Wash. 1992)). Review of a summary judgment dismissal is de novo. *Sheikh v. Choe*, 128 P.3d 574 (Wash. 2006) (citing *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002)). Summary judgment is appropriate only where, considered in the light most favorable to the non-moving party, there are no issues of material fact and Defendant is entitled to judgment as a matter of law. CR 56(c). Summary judgment is proper when reasonable minds could reach but one conclusion regarding the material facts. *Cotton v. Kronenberg*, 44 P.3d 878, 881, 111 Wn.App. 258 (Div. I 2002). All facts and reasonable inferences must be considered

in the light most favorable to the nonmoving party, and summary judgment is appropriate only if reasonable minds could reach but one conclusion. *Staples v. Allstate Ins. Co.*, 295 P. 3d 201, 205, 176 Wn.2d 404 (Wash. 2013) (citing *Dowler v. Clover Park Sch. Dist. No. 400*, 172 Wn.2d 471, 484, 258 P.3d 676 (2011)). Courts do not weigh the evidence or assess witness credibility on a motion for summary judgment. *Volk v. Demeerleer*, 184 Wn.App. 389, 430, 337 P.3d 372 (Div. III 2014) (citing *Am. Express Centurion Bank v. Stratman*, 172 Wn.App. 667, 677, 292 P.3d 128 (Div. I 2012)).

B. ANALYSIS

- 1. The Trial Court erred in dismissing Boldt’s claims pursuant to WAC 284-30-330, RCW 48.30 and Bad Faith because a reasonable juror could find that State Farm acted unreasonably and/or in bad faith when it closed the claim, delayed payment of the claim and failed to assist with the claim.**

In Washington, an insurer has a duty to act in good faith. These duties are explicit in Washington statutes and caselaw. See, RCW 48.30.010; WAC 284-30-300⁸; *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 385, 715 P.2d 1133, 1134 (1986). An insured who is damaged by the insurer’s conduct may have more than one claim against

⁸ The following acts and practices are included in the list of unfair and deceptive claims settlement acts and practices under WAC 284-30-330: (1) Misrepresenting pertinent facts or insurance policy provisions; (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear... (19) Failing to adopt and implement reasonable standards for the processing and payment of claims after the obligation to pay has been established....

the insurer. Causes of action arise under common law bad faith, breach of contract, IFCA and the CPA. “Bad faith claims, insurance-related CPA claims, and IFCA claims are similar.” *Seaway Properties, LLC v. Fireman’s Fund Ins. Co.*, 16 F.Supp.3d 1240, 1252 (W.D. Wash. Apr. 22, 2014).

Here, Plaintiff has alleged claims under common law bad faith, IFCA and CPA. Each will be discussed in turn.

a. Tort of Bad Faith.

In Washington, an insurer is liable to its insured for bad faith when: (1) the insurer fails to act in good faith, (2) the insured suffers damages and (3) the insurer’s failure to act in good faith is a proximate cause of the insured’s damages. *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 765, 58 P.3d 276 (2002).

An insurer breaches its duty of good faith by acting without reasonable justification in handling an insured's claims. *Villella v. Public Employees Mut. Ins. Co.*, 106 Wn.2d 806, 821, 725 P.2d 957 (1986). The duty of good faith may be breached by conduct short of intentional bad faith or fraud. *Industrial Indem. Co. of Northwest, Inc. v. Kallevig*, 114 Wn.2d 907, 916-917, 792 P. 2d 520 (1990).

An insurer must give at least equal consideration to the interests of the insured as well as its own. *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d at 385-386 (citations omitted). The duty to act in good faith is broad and based on the quasi-fiduciary relationship between insurer and insured; this goes beyond a duty to refrain from acting in bad faith; *see*

Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 385, 715 P.2d 1133, 1134 (1986); *Truck Ins. Exch. v. Century Indem.*, 76 Wn.App. 527, 533, 887 P. 2d 455 (Div. III 1995), *review denied*, 127 Wn.2d 1002 (1995).

A longstanding industry standard, fundamental principle of claims handling in a first party setting is that the insurer has a duty to assist the insured with his/her claim. *Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn.App. 383, 421 – 423, 161 P.3d 406 (Div. II 2007).

Whether an insurer acted in bad faith is a question of fact. *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wn.2d 784, 796, 16 P.3d 574 (2001) (citing *Smith v. Safeco Ins. Co.*, 78 P. 3d 1274, 1277 (Wash. 2003)). An insurer is only entitled to dismissal on summary judgment of a insured's bad faith claim if there are no disputed material facts pertaining to the reasonableness of the insurer's conduct under the circumstances, or the insurance company is entitled to prevail as a matter of law on the facts construed most favorably to the nonmoving party. *Indus. Indem. Co. of the NW, Inc. v. Kallevig*, 114 Wn.2d 907, 920, 792 P.2d 520 (1990) (citing *Smith v. Safeco Ins. Co.*, 78 P. 3d 1274, 1277 (Wash. 2003)).

A bad faith action can be based on the insurer's negligent misrepresentations about coverage and negligent legal advice: faulty advice from the insurer upon which the insured relies to the insured's detriment. "[L]iability may be imposed on an insurance agent for making negligent misrepresentations as to how policy limits are to be determined where the client justifiably relies on the representations. *Peterson v. Big Bend*, 202 P.3d 372, 379, citing *Shah v. Allstate Ins. Co.*, 130 Wn.App. 74,

84-85, 121 P.3d 1204 (2005). And, an insurer is held to the same standard as a lawyer when giving legal advice. When an adjuster gives legal advice, he is held to the same standard as a lawyer. *Jones v. Allstate*, 146 Wn.2d 291, 45 P. 3d 1068 (Wash. 2002).

b. Washington IFCA Statute.

Washington also has a statutory cause of action for bad faith; the Insurance Fair Conduct Act, Revised Code of Washington (“RCW”) 48.30 *et seq.* The statute provides, in relevant part, “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...” RCW 48.30.010(1). An insured who is harmed by the action or inaction of the insured’s insurer may bring an IFCA claim against the insurer based on a violation of RCW 48.30, which includes by specific reference any violation of several enumerated sections of the Washington Administrative Code (“WAC”).

Before suing, the insured must first provide written 20-day notice to the insurer. If the insurer fails to resolve the insured’s basis for the action, then the insured may initiate litigation without further notice. RCW 48.30.015(8). The test for whether an insurer violated IFCA examines whether the insurer’s denial of coverage (or other covered conduct such as delay in payment) was “reasonable.” *Safeco Ins. Co. v. JMG Restaurants*, 37 Wn.App. 1, 14 680 P.2d 409 (Div. I 1984). An insurer’s delay in payment or failure to pay supports a claim for violation of IFCA. *Rizzuti v. Basin Travel Service of Othello, Inc.*, 105 P. 3d 1012

(Div. III 2005); *Ins. Co. of Penn. v. Highlands Ins. Co.*, 59 Wn. App. 782, 786-787, 801 P. 2d 284 (Div. II 1990) (citations omitted).

c. Washington Administrative Code Violations (i) as evidence of IFCA Violations and Bad Faith; (ii) as *per se* CPA Violations

Specific sections of the Washington Administrative Code impose obligations on insurers that, when violated, are evidence of IFCA violations, evidence of bad faith, and constitute *per se* violations of the CPA. These sections include, but are not limited to:

WAC 284-30-330, Specific unfair claims settlement practices defined.

- (1) Misrepresenting pertinent facts or insurance policy provisions.
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (4) Refusing to pay claims without conducting a reasonable investigation.

[...]

- (16) Failing to adopt and implement reasonable standards for the processing and payment of claims after the obligation to pay has been established.

Violation of Washington's insurance regulations is evidence of bad faith. *Seaway Properties, LLC v. Fireman's Fund Ins. Co.*, 16 F.Supp.3d 1240, 1253 (W.D. Wash. Apr. 22, 2014), citing *Coventry Assocs. v. Am. States Ins. Co.*, 136 Wn.2d 269, 961 P.2d 933, 935 (1998). Furthermore, an insured can show an unfair or deceptive practice that impacts the public interest (a violation of the CPA, *infra*) by establishing a violation of the

regulations related to unfair insurance company practices as set forth in WAC 284-30. *Dombrosky v. Farmers Ins. Co.*, 84 Wn.App. 245, 260, 928 P.2d 1127 (1996); *Indus. Indem. Co. of the N.W. v. Kallevig*, 114 Wn.2d 907, 792 P.2d 520, 530 (1990) (holding that a single violation of WAC § 284-30-330 is sufficient to support a CPA violation). A violation of one of the insurance WACs is not a *per se* violation of IFCA, but a violation of one of the insurance WACs is *not* required to support a violation of the CPA. See, e.g. *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 784-87, 295 P.3d 1179 (2013) (a CPA action does not have to be a *per se* violation to violate the CPA; what is required is simply an unfair or deceptive act or practice). The Washington State Legislature has declared that "[T]he business of insurance affects the public interest..." *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 951 P.2d 1124, 1126 (1998); RCW 48.01.030.

d. An Insurer Claiming the Affirmative Defense of Breach of the Insured's Duty to Cooperate Must Show Actual Prejudice on a Material Matter.

Failure of the insured's duty to cooperate with the insurer is a defense to bad faith. *Staples v. Allstate Ins. Co.*, 295 P. 3d 201 (Wash. 2013). "The only limitation on the requirement that insureds cooperate with the insurer's investigation is that the insurer's requests for information must be material to the circumstances giving rise to liability on its part." *Tran v. State Farm Fire & Cas. Co.*, 136 Wn.2d 214, 224 (1998) (citing *Pilgrim v. State Farm Fire & Cas. Ins. Co.*, 89 Wn.App. 712 (1997)). Information is "material" if it "concerns a subject relevant and germane to

the insurer's investigation as it was then proceeding.” *Tran*.

It is the insurer’s burden to prove that the insured’s non-cooperation was “prejudicial.” *Staples v. Allstate Ins. Co.*, 295 P.3d 201, 210, 176 Wn.2d 404, (2013). “Prejudice” means a damage or detriment to one's legal claims. *Nat'l Sur. Corp. v. Immunex Corp.*, 176 Wn.2d 872, 889, 297 P.3d 688 (2013). Actual prejudice requires “affirmative proof of an advantage lost or disadvantage suffered as a result of the breach, which has an identifiable detrimental effect on the insurer's ability to evaluate or present its defenses to coverage or liability.” *Tran v. State Farm Fire & Cas. Co.*, 136 Wn.2d 214, 228-29 (1998). “[M]any factors may determine whether an insurer was actually prejudiced.” *Mut. of Enumclaw Ins. Co. v. USF Ins. Co.*, 164 Wn. 2d 411, 429-30 (2008) (internal citations omitted). For example, “[i]f the insurer claims that it was deprived of the ability to investigate, it must show that the kind of evidence that was lost would have been material to its defense.” *Mut. of Enumclaw Ins. Co. v. USF Ins. Co.*, 164 Wn.2d 411, 430 (2008). “Whether or not late notice prejudiced an insurer is a question of fact, and it will seldom be decided as a matter of law.” *Tran v. State Farm Fire & Cas. Co.*, 136 Wn.2d 214, 228 (1998); *Staples*, 176 Wn.2d at 419; *Immunex*, 297 P.3d at 696. “Prejudice will be presumed only in ‘extreme cases.’” *Staples*, citing *Pub. Util. Dist. No. 1, Klickitat County v. International Insurance Co.*, 124 Wn.2d at 805, 881 P.2d 1020 (1994).

Here, the Trial Court erred in dismissing Boldt’s claims pursuant to WAC 284-30-330, RCW 48.30 and Bad Faith. This is

because a reasonable juror could find that State Farm acted unreasonably and/or in bad faith when it failed to assist Boldt with her claim, closed her claim, and delayed payment of her claim, and that Boldt fully cooperated with State Farm – and even if a reasonable juror could find that Boldt did not cooperate, State Farm was not prejudiced.

A. State Farm breached its fiduciary duties to Boldt.

In this case, State Farm breached two critically important duties to Boldt: (1) to assist her with claims process and (2) avoid giving unauthorized and faulty legal advice that also misrepresented the policy. State Farm’s actions and inaction placed itself ahead of its insured, which caused Boldt’s patient account to go to collection, which led to the lawsuit. State Farm was also negligent in how it responded once informed of the lawsuit that its bad faith actions set into motion; State Farm gave unauthorized, faulty legal advice and misrepresented the policy. State Farm’s misrepresentations were such that Boldt relied on State Farm and trusted State Farm but paid dearly for her faith in State Farm. These acts were not in line with a fiduciary that is charged with placing its customer’s interests at least on par with its own.

i. State Farm breached a duty to assist Boldt with the claim.

What State Farm alleged as a fact in its favor – that all it did was mail PIP applications and did not receive a response – works against State Farm, because if true, it shows that State Farm did too little for its insured and therefore acted in bad faith. There is a genuine issue of fact as to whether that is all State Farm has to do to fulfill its duty to “assist the Insured.”

For example, did State Farm call to see if there was any particular problem, to see if indeed Boldt had even received the Application? *No*. Did State Farm email Boldt in an effort to make contact with her and assist her in completing the Application? *No*. Did State Farm try to call either Boldt or Mr. Boldt at work? *No*. Did State Farm send the Application via Certified Mail, Return Receipt Requested or in any other way that would ensure it reached the addressee? *No*. Did State Farm call the State Farm agent for Boldt to make any inquiry that might have resolved the PIP Application “problem?” *No*. State Farm made little attempt to do anything to assist its Insured, then denied payments and closed the file. None of the above efforts, if taken by State Farm, would have been any inconvenience to State Farm, and would have gone a long way to place the interests of Boldt at least on par with State Farm’s own interests.

There is a genuine issue of fact as to whether Boldt received the PIP applications allegedly sent to her, and Boldt clearly denied ever receiving any more applications in the mail from State Farm after the one PIP application she received and returned (a genuine issue of material fact). There is no contractual requirement that a PIP application has to be completed and returned before State Farm can open a PIP Claim file and make payments (and in fact in this case that is exactly what State Farm had done). There was no warning that if the insured receives but does not return a completed PIP application that State Farm will deny payments and close the file. Even if Boldt received a PIP application and did not return it, it is not proper for the Trial Court to summarily conclude that

State Farm's efforts were adequate. It is reversible error for the Trial Court to conclude that Boldt received the PIP applications, and assume further that since Boldt did not return the application that Boldt did not do so *deliberately*, and further conclude that State Farm did not act in bad faith when it reacted by denying payments and closing Boldt's claim.

State Farm closed Boldt's claim for PIP benefits without notice to Boldt based on State Farm's assertion that it had mailed Boldt PIP applications which were not returned and that it need not do anything further to assist its insured with the claim. This scenario does not entitle State Farm to summary judgment. First, there is no requirement that the insured return a PIP application before PIP benefits can be paid (and in fact State Farm had opened the PIP file and paid benefits without before it received her PIP application); and second, Boldt testified that she did return the only PIP application that she received, which clearly creates a genuine issue of a material fact. It was improper for the Trial Court to adopt all of State Farm's factual assumptions, ignore Boldt's testimony and deprive Boldt from presenting her case to a jury. Summary judgment dismissal of the Bad Faith claim was error.

ii. Boldt was harmed by State Farm's misrepresentations. State Farm gave unauthorized, faulty legal advice leading to a default judgment being entered against Boldt, followed by garnishment of Mr. Boldt's wages and the resulting significant harm. When Boldt asked about responding to the collection lawsuit, State Farm told Boldt, "it is taken care of." It would have cost State Farm nothing to tell Boldt that she had

to seek counsel or respond to the collection lawsuit herself, and the comment, “it is taken care of,” comes from an adjuster who is trying to quickly dispose of the insured and her questions. The facts here are strikingly similar to *Shah v. Allstate Ins. Co.*, 130 Wn.App. 74, 84-85, 121 P.3d 1204 (2005), where an insurance agent glossed over the details of what the policy provided, and promised the insured “not to worry,” when nothing was further from the truth.

In *Shah*, an insurance adjuster miscalculated the amount of full replacement value coverage that was necessary to protect the Shahs in the event their rental property was destroyed. When Shah asked the adjuster why the amount was so low, the adjuster told him not to worry, that Shah had replacement value. *Shah*, 121 P.3d at 1206. When the Shahs’ property was destroyed by a fire, the coverage was insufficient. The trial court in *Shah* assumed that Allstate had breached a duty to its insured to supply the insured with correct information. *Id.* On the Shahs’ appeal of the summary judgment dismissal of their negligent misrepresentation claims, Division One held that disputed issues of material fact precluded summary judgment on the negligence and misrepresentation claims. *Id.*

Like in *Shah* where the insureds were told “not to worry,” when in fact the insureds were not covered and had quite a bit to worry about, Boldt relied on Mr. Brines’ advice. Reasonable jurors could find that it was reasonable for Boldt to rely on what Mr. Brines told her, especially when she asked twice, and that the misrepresentation “it is taken care of” caused the default judgment and garnishment. Whether the insurer’s

speaking agent was negligent or reckless, his oversimplification and misrepresentation of the policy terms and the false promises from the insurance company caused the insured to rely on bad advice.

Like the insurer in *Shah*, State Farm's action and inaction set up the insured to be harmed by the insurer. State Farm wrongfully closed Boldt's claim and refused to pay pending invoices for medical services, which led to the lawsuit against Boldt. When State Farm eventually acknowledged its wrongful conduct, its effort to correct the harm to the Boldts was inadequate and caused even greater harm. By State Farm's falsely stating that the pending collection litigation was "taken care of," a reasonable juror could find that State Farm caused the default judgment and garnishment, compounding the problem. This is patently unreasonable and misleading conduct.

B. State Farm acted unreasonably in violation of IFCA, and violated certain WACs, in violation of IFCA and the CPA.

Here, summary judgment dismissal of the IFCA claims against State Farm was improper because a reasonable juror could find that State Farm violated several of the statutory obligations and insurance regulations in its handling of Boldt's claim. State Farm was unreasonable in its handling of Boldt's claim, because it failed to pay all the benefits that were due; on a small-dollar claim that was only \$2,087.50, State Farm closed the claim before paying the last \$640. In *Seaway Properties, LLC v. Fireman's Fund Ins. Co.*, 16 F.Supp.3d 1240, 1254 (W.D. Wash. Apr. 22, 2014), the Western District of Washington, interpreting state law,

found that the insurer cannot blame the victim for delays when it fails to assist the insured with the claim and takes more than 30 days to complete an investigation:

“Fireman’s Fund attempts to shift the blame for its delays to Seaway, contending that Seaway both delayed in providing a copy of the lease and in sending its claim to AIC, rather than Fireman’s Fund. See WAC § 284-30-370 (“All persons involved in the investigation of a claim must provide reasonable assistance to the insurer in order to facilitate compliance with [the 30-day deadline for completing investigation of a claim].”). But even once Fireman’s Fund undisputedly had a complete copy of the lease and undisputedly knew about the claim, it took more than 30 days to complete its investigation. Fireman’s Fund’s delays were unreasonable as a matter of law.”

Here, Boldt mailed her PIP application, and State Farm, whether it received that application from Boldt or not – a material issue of disputed fact – nevertheless had enough information about the claim to pay all but \$640 of the claim before closing the claim unannounced. State Farm acted unreasonably, because all it did was mail PIP applications, with no follow-up, and no acknowledgement of the PIP application that Boldt completed and sent. It delayed for months to finish paying Kriss.

A reasonable juror could find that State Farm failed to act reasonably promptly (WAC 284-30-330(2)), failed to adopt and implement reasonable standards for prompt investigation of claims (WAC 284-30-330) and for the processing and payment of claims after the obligation to pay has been established (WAC 284-30-330(16)), and refused to pay without conducting a reasonable investigation (WAC 284-

30-330(4)). The Trial Court is obligated to view the facts in the light most favorable to Boldt, the non-moving party, and not make a snap judgment on her credibility. Summary judgment was in error.

Furthermore, a reasonable juror could find that State Farm violated RCW 48.30.090 and WAC 284-30-330 when it misrepresented the terms, benefits and/or advantages of the policy in violation when Mr. Brines stated to Boldt, “it is taken care of.” Whether to believe Boldt or Mr. Brines is within the purview of the jury and not the trial court. It is undisputed that State Farm stated they would look into it and then it took more than 20 days to respond to the lawsuit. In fact, State Farm did not respond to the lawsuit at all and waited for news of the garnishment, which is bad faith delay and failure to assist. A promise that a lawsuit against the insured is “taken care of” is broken by not “taking care of” that lawsuit.

Even if defense of third-party lawsuits such as a collection lawsuit is not covered by Boldt’s PIP policy, Boldt still states a claim for Bad Faith against State Farm for State Farm’s unreasonable handling of Boldt’s claim. See, e.g., *St. Paul Fire & Marine Ins. Co. v. Onvia, Inc.*, 165 Wn.2d 122, 131-32 (2008). Had State Farm handled Boldt’s claim differently by paying Kriss without delay and in full, the lawsuit against Boldt would have never occurred.

C. State Farm failed to meet its burden to demonstrate actual prejudice.

Although State Farm did not explicitly plead the affirmative

defense of non-cooperation by its insured, the Trial Court cited non-cooperation as a chief reason it was dismissing Boldt's claims on summary judgment. The trial court did not apply the required "actual prejudice" test to determine whether State Farm had met its burden; instead, the Trial Court decided that Boldt had not cooperated as matter of law, something that is "seldom established" except in "extreme cases." *Staples v. Allstate Ins. Co.*, 295 P.3d at 209 (citations omitted).

To do this, the Trial Court had to first improperly step into the shoes of the finder of fact, and weigh facts and assess witness credibility, improperly in favor of the moving party. At the April 24, 2015 hearing, the Trial Court made several factual determinations, including: (1) Boldt did not "cooperate" with State Farm, CP 727; 737; (2) State Farm mailed PIP forms that Boldt received and "ignored," CP 731; (3) State Farm paid Boldt's lost wages and that this was "uncontradicted" by Boldt. CP 734.

The Trial Court stated: "The Plaintiffs' own failure to cooperate with State Farm largely led to this. And when State Farm was – became aware of the additional claims, they paid them within 20 days..." CP 737.

Boldt's non-cooperation, if any, is far from an "extreme case" that would compel the court to find noncooperation as a matter of law. Typically, the cases that examine extreme non-cooperation involve an insured's active thwarting of the insurer's investigation, or something suspicious or inconsistent about the insured's claim. For example, in *Staples v. Allstate Ins. Co.*, *supra*, the insured was asked several times for documents by the insured that were allegedly not provided, and in *Torres-*

Gonzales v. State Farm, infra, the insured's evidence of his wage loss was suspect in the eyes of the insurer. Even those cases were inappropriate for summary judgment, because the court does not need to address whether the insured was uncooperative if the insurer fails to show that it suffered actual prejudice from the breach. See, e.g., *Torres-Gonzales v. State Farm Fire and Casualty Company*, No. C14-1393-JLR (W.D. Wash. November 3, 2014 Order denying defendant State Farm's motion for summary judgment).

Here, had the Trial Court properly applied the *Staples* test, it would have found that State Farm failed to demonstrate actual prejudice. State Farm was unaffected by the alleged failure to receive completed PIP applications from Boldt, because to the extent State Farm's version of the facts is true and it did not receive a PIP application from Boldt, it is undisputed that State Farm had paid Boldt's PIP benefits to Kriss Chiropractic without the completed application. In fact, State Farm paid all but the last \$640 of the balance on Boldt's patient account, where the grand total was barely more than \$2,000 worth of chiropractic care. Whether or not State Farm received a completed PIP application from Boldt does not change State Farm's liability. The amount State Farm paid for Boldt's treatment at Kriss was ultimately the same regardless of when the application was received.

The Trial Court is obligated to take all the facts in the light most favorable to Boldt, the non-moving party. The Trial Court, instead of following the Rule, was entirely dismissive of Boldt's well-documented

cooperation with State Farm – from Boldt’s mailing State Farm her PIP application in December 2009, to following the directions from everyone at State Farm (including not responding to a lawsuit that was “taken care of”). The Trial Court then conveniently ignored the additional damages of lost wages above and beyond the garnishment and other out-of-pocket costs that remain unreimbursed. The Trial Court also ignored the harm of a collection judgment against Boldt, which, even when this judgment is ultimately vacated and the case dismissed with prejudice, will be a matter of public record and permanent harm to Boldt’s reputation just for having been filed. The facts of Boldt’s full cooperation with State Farm were detailed in materials that, due to no fault of Boldt, did not make it to chambers and were not considered by the Trial Court when it ruled on State Farm’s Motion for Summary Judgment. Furthermore, these are issues to be determined by the jury, and not by the Trial Court.

Boldt testified that she returned a completed PIP form on or about December 29, 2009. At all times, when State Farm told Boldt to do something and that communication was actually received by Boldt, Boldt cooperated. In fact, Boldt was far more cooperative than the insured in *Staples*, who was asked by Allstate to agree to be interviewed under oath regarding his claim for tools stolen from his truck and did not do it. Boldt testified that she never received State Farm's only requests for more information from her -- the form that she testified that she had returned to State Farm on or about December 29, 2009. If Boldt had in fact not cooperated, her non-cooperation was benign compared to that of Mr.

Staples, and summary judgment is completely inappropriate.

Whether it is a violation of IFCA or common law Bad Faith for State Farm to (1) fail to assist Boldt with her PIP claim, and do nothing more than mail PIP forms and (2) give bad legal advice that results in a default judgment against Boldt, and then merely reimburse the garnished amount without covering the lost wages, out-of-pocket expenses and other elements of damages, are all questions for the trier of fact. With the evidence read in the light most favorable to Boldt, State Farm acted in bad faith and violated the IFCA, and the Trial Court committed reversible error by improperly assessing Boldt's credibility and dismissing these claims.

2. The Trial Court Erred In Determining That The Statute Of Limitations On Boldt's IFCA Claim Had Run.

The statute of limitations for personal injury actions is three years. RCW 4.16.080(2); *Fisher v. City of Tacoma*, 70 Wn. App. 635, 855 P.2d 299 (1993). Statutes of limitations do not begin to run until a cause of action accrues. RCW 4.16.005; *1000 Virginia Ltd. Partnership v. Vertecs Corp.*, 146 P. 3d 423, 428 (Wash. 2006). Usually, a cause of action accrues when the party has the right to apply to a court for relief. *Id.* at 428, citing *Gazija v. Nicholas Jerns Co.*, 86 Wn.2d 215, 219, 543 P.2d 338 (1975); *Lybecker v. United Pac. Ins. Co.*, 67 Wn.2d 11, 15, 406 P.2d 945 (1965). "Harm to the insured is an essential element of every bad faith or CPA claim." *Werlinger v. Clarendon Nat. Ins. Co.*, 128 Wn.App. 804, 808 (2005).

Here, Boldt tolled the applicable statute of limitations by filing the complaint within the three-year period provided for in RCW 4.16.080(2). Contrary to State Farm's assertion that Boldt had everything she needed to know to sue State Farm as of May 2010, Boldt did not know she and her husband were damaged until Mr. Boldt's paycheck was garnished. There can be no cause of action until all elements of the cause of action are met, and one of those elements is damages.

This information appears in the declaration Boldt filed in support of the motion for summary judgment against Quick, materials that the Trial Court did not consider when it ruled for State Farm. Boldt mailed her PIP form in December 2009. Boldt was not damaged by State Farm's tardiness and inaction in paying after receiving the completed PIP application until Mr. Boldt's wages were garnished. Furthermore, State Farm's promise to take care of the collection litigation, specifically advising Boldt that she need not respond to the collection lawsuit is an act of negligence or willfulness that triggered the statute of limitations in 2013, and will not be out of statute until 2016.

The refusal to pay and then the tardiness in paying PIP benefits and unilaterally closing the claim file without helping Boldt is a fact that goes to causation, not damages. The tardiness led to the collection action, which led to the garnishment. The damages did not occur until the garnishment.

When State Farm failed to "take care of" the Summons after promising Boldt that it would, Boldt was damaged, and not until then did

the claim accrue. The statute of limitations on that claim is September, 2016, three years from when the Quick judgment was executed and Boldt was wrongfully garnished.

The Trial Court made an improper legal determination that the statute of limitations began running when Boldt *asked* State Farm for PIP coverage. Considering all the facts in the light most favorable to Boldt, it defies logic to hold that statute of limitations began to run when Boldt *requested PIP coverage* from State Farm. No statute of limitations begins to run until there is a breach of a duty that proximately causes damages. Being asked for coverage does not constitute negligence or bad faith on behalf of State Farm, and to so hold makes no sense. State Farm's failure to assist its policy holder/claimant, Boldt, its failure to pay PIP benefits for reasons other than the only reasons enumerated by statute, and its failure to "fix" the problem it created by its bad faith actions were actions that would trigger the three-year statute of limitations for bad faith and IFCA violations at the *earliest* in 2013.

3. The Trial Court Erred In Dismissing Boldt's CPA Claim and Refusing To Let Boldt Amend The Complaint.

The Washington State Consumer Protection Act, RCW 19.86 et seq. (hereinafter also "CPA,") is a broad remedial statute that must be liberally construed to protect the public interest. This broad remedial purpose is explicit at RCW 19.86.920, which states:

The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints

of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. . . . To this end this act **shall be liberally construed that its beneficial purposes may be served** (Emphasis added.)

There is a private right of action under the CPA for damages and injunctive relief. A CPA claim consists of these elements: (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

Regarding the element of deception, this is inherently a fact-driven question evaluated from the perspective of the reasonable consumer. “Deception exists ‘if there is a representation, omission or practice that is likely to mislead’ a reasonable consumer.” *Panag v. Farmers Ins. Co. of Washington*, 204 P.3d 885, 895 (Wash. 2009) (citing *Sw. Sunsites, Inc. v. Fed. Trade Comm’n*, 785 F.2d 1431, 1435 (9th Cir.1986)).

Since the enactment of the CPA, Washington’s Legislature has intended that matters in the public interest, such as insurance, be liberally construed to protect the consuming public. “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.” RCW 48.01.030. Furthermore, “[a]n insurer’s breach of its duty of good faith, RCW 48.01.030, constitutes a *per se* violation of the Consumer Protection Act, RCW 19.86.020.” *Gingrich v.*

Unigard Security Ins., 57 Wn. App. 424, 434, 788 P. 2d 1096 (Div. III 1990) (quoting *Salois v. Mutual of Omaha*, 90 Wn.2d 355, 359, 581 P.2d 1349 (1978)).

“A claim under the Washington CPA may be predicated upon a *per se* violation of statute, an act or practice that has the capacity to deceive substantial portions of the public, or an unfair or deceptive act or practice not regulated by statute but in violation of public interest.” *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 787, 295 P.3d 1179 (2013). Even if the actions of an insurance company do not fit neatly into one of the enumerated acts listed in IFCA or WAC 284-30, that does not insulate the insurance company from liability under the CPA, RCW 19.86 *et seq.* An insurance company may be liable for violating the CPA where the Plaintiff establishes the five elements enunciated in *Hangman Ridge Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn.App. at 423, 161 P.3d 406 (Div. II 2007). The CPA is a “gap-filling” statute. *Panag v. Farmers Ins. Co. of Washington*, 204 P.3d 885, 895 (Wash. 2009). “By broadly prohibiting ‘unfair or deceptive acts or practices in the conduct of any trade or commerce,’ RCW 19.86.020, the legislature intended to provide sufficient flexibility to reach unfair or deceptive conduct that inventively evades regulation.” *Panag*, 204 P.3d at 895. What is “unfair” is even broader than what is “deceptive.” *Panag*. The CPA carries a “statutory mandate to liberally construe the CPA in order to protect the public from inventive attempts to engage in unfair and deceptive business practices.” *Panag*, 204 P.3d at 898.

Washington State Superior Court Civil Rule 15 provides that leave to amend shall be freely granted “when justice so requires.”

Here, Boldt’s First Amended Complaint pled violations of the Insurance Fair Conduct Act and common law Bad Faith against State Farm, as *per se* violations of the Washington State Consumer Protection Act. To the extent that State Farm’s actions against Boldt do not neatly fit into one of the *per se* violations, the CPA still applies and it is reversible error to refuse to permit Boldt to amend her complaint. Boldt is a “consumer” and State Farm is a “business,” the complaint involves conduct which occurred in the course of trade/commerce, Boldt’s property interests were damaged by State Farm’s actions and inaction, and the complaint involves a matter of public interest which is capable of repetition and affects other consumers in this state. State Farm caused Boldt to get a default judgment entered against Boldt because State Farm told Boldt the collection lawsuit was “taken care of,” when Boldt specifically asked about the lawsuit. Boldt relied on State Farm’s assertion through its employee, Mr. Brines:

Answer: I remember him saying there was a difference in the amount of the bills, and that it didn’t match up with what they had put in the claim, and that those bills had since been written and mailed to Kriss Chiropractic, and that everything had been taken care of. And I specifically asked if I needed to contact someone in regard to the summons, and he told me no, it had been taken care of.

Question: Okay. Those are the words you think he

used?

Answer: Those are the exact words he said to me.

Question: It had been taken care of?

Answer: Yes.

CP 634.

It is quite possible that Mr. Brines, a non-lawyer, sincerely believed that sending payment to Kriss would be enough to cause Quick to dismiss its lawsuit against Boldt. This is a common misperception that unsophisticated consumers make when they respond to medical debt collection lawsuits by sending payment to the hospital – a misperception that Mr. Brines might have made because he is a non-lawyer, and Boldt, cooperative and trusting, understandably relied on what her insurance company told her. Mr. Brines is held to the standard of a lawyer when giving such advice. This terrible “advice” is unfair and deceptive by any measure, and the CPA is the “gap-filling” statute that reprehends such conduct by a business, especially against its customer.

Even if Boldt did not “cooperate” with State Farm prior to July 2013, the greatest harm to Boldt occurred as a result of Mr. Brines telling Boldt “it is taken care of,” which led to the default judgment. Had Mr. Brines been honest and accurate, and clarified that “no, the collection lawsuit is not taken care of, and State Farm’s sending a check to Kriss does nothing about the collection lawsuit,” Boldt would have sought legal counsel or responded *pro se*, and not wound up with a default judgment.

Boldt acted in reliance on what State Farm told her, which led to the garnishment, and damages that go way beyond the amount garnished.

If State Farm is going to pay for the Kriss treatments and reimburse the garnishment, and if it tells an insured that it does not have to defend the lawsuit, it needs to pay for all ramifications of an unanswered lawsuit. State Farm refuses to be accountable for the ripple effect of Boldt's losing a quarter of the family's one paycheck for a month and a half with two small children to feed. State Farm cannot re-write its policy in a phone call with a trusting customer and then deny coverage when the re-written policy turns out to be faulty legal advice that caused its own customer to act against her self-interest.

These allegations are inherently fact-driven and are pled under a broad remedial statutory scheme that is to be liberally construed in favor of consumers. State Farm had to manufacture a contradictory affidavit from Mr. Brines to contradict Boldt's sworn testimony about what Mr. Brines told her, which shows that it was error for the Trial Court to expediently dismiss Boldt's CPA claims as a matter of law. Mr. Brines' declaration is an unsupported contradiction of Boldt's testimony, which precludes summary judgment. Determining whether the statement "it is taken care of" violates IFCA or is simply unfair and/or deceptive in violation of the CPA, is at least a mixed question of law and fact and the Trial Court shall not assess credibility nor refuse to let the Boldts amend. Furthermore, the Statute of Limitations on a CPA claim is four years, which means this claim does not expire until July 2017. RCW 19.86.120.

V. CONCLUSION

Boldt was injured by an uninsured motorist, and had personal injury protection coverage with State Farm for that very situation. Boldt sought medical treatment and turned in a PIP application to State Farm. State Farm did not assist Boldt with her PIP claim, then arbitrarily closed her claim. When Boldt was sued for a medical bill that, due to no fault of her own, was unpaid by State Farm, Boldt did what any consumer would do: contact State Farm. When Boldt asked State Farm what she should do about the 20-day court summons, State Farm told her it was “taken care of,” but then State Farm did not take care of it. The resulting default judgment against Boldt caused a financial domino effect in her family’s life not made whole by being reimbursed only for her husband’s wrongfully-garnished wages.

State Farm’s actions were unfair and deceptive in violation of the Consumer Protection Act. State Farm acted in bad faith and in violation of IFCA when it failed to timely pay her PIP benefits in full. Boldt’s sworn testimony lays out all these facts. The Trial Court chose not to take these facts in the light most favorable to Boldt, made an improper factual determination that Boldt was “uncooperative,” that the statute of limitations had run before the element of damages had been met and the claim accrued, that a State Farm adjuster can re-write a PIP policy on the phone and not be responsible for its customer’s reliance on its promises,

and that a jury does not get to decide whether State Farm acted unfairly or deceptively when it did all of this. This is reversible error.

DATED this 9th day of November, 2015.

Respectfully submitted,

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**COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON**

NATALIE & JAMES RYAN BOLDT,)	NO. 47659-2-II
and the Marital Community Comprised)	
Thereof,)	
)	
Plaintiff/Appellant,)	PROOF OF SERVICE OF
)	APPELLANT’S OPENING BRIEF
v.)	
)	
QUICK COLLECT, INC., an Oregon)	
Corporation, STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE)	
COMPANY,)	
)	
Defendant/Respondent.)	

PROOF OF SERVICE OF APPELLANT’S OPENING BRIEF

I hereby certify under penalty of perjury under the laws of the state of Washington that on the 9th day of November, 2015, true and correct copies of the Appellant’s Opening Brief in the above-captioned matter were served upon the following:

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