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Supreme Court No. 80357-9 (CA 56625-3-I)  
Consolidated with No. 80366-8 (CA 57068-4-I)

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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RAJVIR PANAG, on behalf of herself and all others similarly situated,  
*Respondent,*

v.

FARMERS INSURANCE COMPANY OF WASHINGTON, a domestic  
insurance company, and CREDIT CONTROL SERVICES, INC. d/b/a  
Credit Collection Services,  
*Petitioners.*

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MICHAEL STEPHENS, on behalf of himself and all others similarly  
situated,  
*Respondent,*

v.

OMNI INSURANCE COMPANY, a foreign insurance company,  
*Defendant/Appellant,*  
and  
CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,  
*Petitioner.*

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**SUPPLEMENTAL BRIEF BY FARMERS INSURANCE  
COMPANY OF WASHINGTON**

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## I. INTRODUCTION

The Court of Appeals' decision is an ill-considered judicial expansion of the CPA that:

(1) Deputizes violators of Washington law as private attorneys general charged with its enforcement;

(2) Disregards the legislative directive that CPA be construed consistently with state and federal laws on "similar matters" and labels a legitimate practice of referring to alleged obligations as debts that are due and owing a "deceptive" practice, as a matter of law; and

(3) Reduces "injury to business or property" to a meaningless level approaching strict liability.

In sum, the Court of Appeals created a "new" CPA so open-ended that it allows virtually anyone – even wrongdoers with avoidable or nonexistent injury – to act as private attorneys general and seek treble damages and attorney fees in challenging practices they dislike. If allowed to stand, this decision will subsume traditional common-law and statutory claims that require more meaningful proof and open the door to a global end-run around the American Rule on attorney fees and Washington's long-standing prohibition on punitive damages. The decision should be reversed to restore the CPA to its proper construction and scope.

## II. ARGUMENT

### A. Who Has Standing to Act as Private Attorney General

The Court of Appeals' first error is the most fundamental. It granted Ms. Panag, an uninsured driver partially at fault in a collision with the car driven by Farmers' insured, standing to sue Farmers and CCS under the CPA in connection with CCS's demands for payment. The Court of Appeals put the CPA on its head by conferring the status of private attorneys general on those who violate the law and wish to avoid financial responsibility. If allowed to stand, the decision will soon invite class actions for treble damages by plaintiffs who pirated cable programming, illegally downloaded music files or failed to pay child support, and disliked the demand letters prompted by their wrongdoing. The decision should be reversed.

The doctrine of standing in state courts is a self-imposed rule of judicial restraint "related to the doctrine that prohibits advisory opinions because the latter requires the court to dispose of only those issues that affect the rights of the parties present." 59 Am. Jur.2d *Parties* §35, at 441 (2002). *See also id.* §36, at 442 ("[s]tanding is a doctrine courts employ to refuse to determine the merits of a legal controversy irrespective of its correctness, where the party advancing it is not properly situated to prosecute the action. When standing is put in issue, the question is

whether the person whose standing is challenged is a proper party to request an adjudication of the issue ...”).

The test is “whether the interest sought to be protected by the complainant is arguably within the zone of interest to be protected or regulated by the statute ...” *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 493, 585 P.2d 71 (1978) (quoting *Ass’n of Data Proc. Serv. Org’n., Inc. v. Camp*, 397 U.S. 150, 153, 90 S. Ct. 827 (1970)). See also *DeFunis v. Odegaard*, 82 Wn.2d 11, 24, 507 P.2d 1169 (1973), *vacated on other grounds*, 416 U.S. 312, 94 S. Ct. 1704 (1974) (“the ‘gist of the question of standing’ is whether the party seeking relief has ‘alleged ... a [sufficient] personal stake in the outcome of the controversy ...’”) (citing *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691 (1962)).

Despite CPA’s statement that “*any person* injured in his or her business or property by a violation of 19.86.090 ... may bring a civil action in the superior court,” see RCW 19.86.090 (emphasis added), Washington courts have recognized that some plaintiffs are not the proper candidates to serve as private attorneys general in the enforcement of consumer protection laws because their stake in the controversy is too remote. In *Blewett v. Abbott Lab.*, 86 Wn. App. 782, 784, 938 P.2d 842 (1997), the court held, relying on guidance from federal law, that indirect purchasers of price-fixed goods “lack standing to sue [drug manufacturers]

under RCW 19.86.090.”<sup>1</sup> The court explained that standing must be addressed prior to, and independently from, the five elements of the CPA claim:

Blewett contends the plain language of the Consumer Protection Act allows her claim. She bases her position on the Act’s definition of “commerce” as “any commerce *directly* or *indirectly* affecting the people.” This definition is not a meaningful point of reference because it does not control who is injured and who may sue under the act; rather, it expansively defines what business conduct is regulated.

*Blewett*, 86 Wn. App. at 788.

Whether a plaintiff has standing to act as private attorney general depends primarily on the nature of the relationship between the plaintiff, the defendant, and any third parties that may claim protection under the CPA. See 1 *Callmann on Unfair Competition, Trademarks and Monopolies* §4:49 at 4-502 (4th Ed.) (“the better reasoned opinions proceed on a case-by-case basis ... so as to preserve the effectiveness of the treble damage remedy without overextending its availability”) (citation omitted). In *Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 311-313, 858 P.2d 1054 (1993), this Court examined the “unique relationship” between a drug manufacturer, a doctor and a patient concluded that the doctor had standing to sue the drug company for injury to his reputation

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<sup>1</sup> See *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S. Ct. 2061 (1977).

when the drug company failed to warn the doctor of the dangers of the drug about which it had knowledge. Because the drug company targeted its marketing toward the doctors, not the patients, the doctor was a logical person to act as the private attorney general in challenging the marketing as unfair or deceptive. *Id.* at 313 (“This unique relationship results in the physician being comparable to the ordinary consumer in other settings. Some cases have concluded that it is the physician who stands in the shoes of the ordinary consumer of the drug”).

In *State Farm Fire & Cas. Co. v. Huynn*, 92 Wn. App. 454, 962 P.2d 854 (1998), the court used a similar methodology. It concluded, “following the intermediary doctrine explained in *Fisons*, [that] an insurance company is a logical party to be the private attorney general because it stands in the shoes of its premium-paying consumers who are affected by false billings from doctors.” *Id.* at 460. *But see Merchant v. Peterson*, 38 Wn. App. 855, 860, 690 P.2d 1192 (1984) (the owner of a stolen diamond could not sue an innocent purchaser under the CPA; “the conduct complained of did not involve any form of trade or commercial relationship between these parties”).

The *Fisons* analysis shows that the standing question cannot be answered by stating simply that the CPA extends beyond the sale of goods and services. *See Fisons*, 122 Wn.2d at 312 (“we held that the CPA

includes sales but encompasses more than just sales”) (citation and internal quotation marks omitted). The real question is *how far* beyond “just sales” the CPA goes. In each of the cases cited above, the courts drew the line by “examining the nature of the relationship” – both direct and vicarious – between the parties, and by asking whether, in light of that relationship, the plaintiff was “a logical person to be the private attorney general.” *Id.* at 313.

Here, the only reason Ms. Panag received the letters she complains about is because she had crashed into the car driven by a Farmers’ insured and failed to provide proof of insurance, as required by Washington law. (She never bought or was solicited to buy anything from CCS or Farmers, nor can she claim to be an intermediary for those who did.) There is no dispute that if Ms. Panag had complied with the law she would not have been in the position she complains of. *See Camacho v. Auto. Club of Southern California*, 48 Cal. Rptr.3d 770, 779 (Cal. Ct. App. 2006) (“the ‘injury’ in this case is one that Camacho could have reasonably avoided by complying with the law and obtaining insurance. Thus, even if, under some theory ... Camacho can claim that he was ‘injured,’ the fact is that he could have avoided any and all action taken by defendants by obtaining and carrying insurance, as the law requires”).

No Washington court has ever allowed a plaintiff outside all direct or vicarious commercial relationship with the defendant – much less a plaintiff who violated the law and could have reasonably avoided all claimed injury by following the law – to serve as private attorney general in enforcing the statute that is “known and designated as the ‘Consumer Protection Act.’” RCW 19.86.910.<sup>2</sup> See *Scott v. Cingular Wireless*, 160 Wn.2d 843, 853, 161 P.3d 1000 (2007) (“The CPA is designed to protect *consumers* from unfair and deceptive acts or practices in commerce.”) (emphasis added); *Lightfoot v. MacDonald*, 86 Wn.2d 331, 333, 544 P.2d 88 (1976) (“It is the obvious purpose of the Consumer Protection Act to protect the public from acts or practices which are injurious to *consumers* ...”) (emphasis added).

Although the CPA has been extended to “more than just sales,” as far as peripheral and vicarious consumers, see *Holiday Resort Cmty. Ass’n v. Echo Lake Assoc., LLC*, 134 Wn. App. 210, 135 P.3d 499 (2006), consumer protection remains CPA’s core focus. See *Cingular Wireless*, 160 Wn.2d at 853. When would-be private attorneys general like

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<sup>2</sup> “The purpose of the short title is to identify briefly the principal purpose and objective of the statute. It provides, in a sense, an official designation of the law and its purpose.” 1A Norman J. Singer, *Sutherland Statutory Construction* §20:10 (6th Ed.). See also *State v. Taylor*, 21 Wash. 672, 674, 59 P.489 (1899) (“The language of an act should be construed in view of its title and its lawful purposes. The subject or object expressed in the title fixes a limit to the scope of the act.”) (citing *Sutherland*).

Ms. Panag ask the courts to stretch the CPA even further, it “must be for a reason rooted in our own statutes or case law and not in the general policy arguments.” *Blewett*, 86 Wn. App. at 788. The farther the departure, the more firmly rooted reasons are required. *See, e.g., Bruce v. Northwest Metal Prod.Co.*, 79 Wn. App. 505, 516, 903 P.2d 506 (1995) (refusing to extend the CPA to employment disputes “in light of the Legislature’s failure to expressly include such disputes under the CPA”); *Callmann, supra*, §4:49 at 4-498 (“the reason for the standing limitations ... is to avoid overdeterrence resulting from the use of the somewhat draconian treble-damage award; by restricting the availability of private ... actions to certain parties, we ensure that suits inapposite to the goals of the ... laws are not litigated”) (discussing standing in unfair competition cases).

No sound reasons exist to delegate private enforcement of Washington law to those who violate it. If Ms. Panag can act as private attorney general in challenging the demand letters prompted by her own tort, so can multitudes of other wrongdoers who wish to avoid recovery for their own wrongdoing. The Court of Appeals’ decision invites people who pirate cable programming to sue the cable company that sends them tough letters demanding payment. Those who park their cars illegally can sue property owners who demand payment; so can students who use high-speed Internet connection provided by the university to illegally download

and swap music files but dislike letters from the university and music companies that are prompted by the actions. *See Mutual of Enumclaw Ins. Co. v. Cox*, 110 Wn.2d 643, 653, 757 P.2d 499 (1988) (“The CPA exists to protect consumers not to aid and abet fraud. [Plaintiff who listed false items in his fire loss claim] is not entitled to recovery under the CPA.”).

Those who could have avoided all alleged injury by complying with the law have no standing to bring CPA actions. Washington public, like the California public, “is well served when an uninsured driver who was at fault responds to his or her obligations.” *Camacho*, 48 Cal. Rptr.3d at 779. If the demand contains misrepresentations of material fact the recipient may sue the sender under the common law. But the recipient cannot use the CPA as a tool to avoid financial responsibility for his or her own wrongdoing. There are no statutory, case law, or sound public policy reasons that warrant such misuse of the CPA.

#### **B. What is an “Unfair or Deceptive” Act**

The Court of Appeals also misconstrued the CPA in another important respect. It ignored RCW 19.86.920 that requires consistency with federal statutes on “similar matters” by holding that “characterizing an unliquidated claim as an ‘amount due’” is deceptive as a matter of law.

*Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 167 (2007).<sup>3</sup> This holding directly conflicts with federal and state statutes that explicitly *permit* referring to alleged obligations – including those that arise from consumer contracts *and* those arising from torts – as “debts” that are due and owing. This creates an anomaly where a demand letter is “deceptive” in this state while a “virtually identical” letter is non-deceptive elsewhere. *See Camacho*, 48 Cal. Rptr.3d at 779. There are no reasons “vested in our own statutes or case law” that warrant this departure from RCW 19.86.920. *Blewett*, 86 Wn. App. at 788. Rather than protect uninsured drivers in Washington from demand letters, the Court of Appeals’ approach ensured only that they would receive a summons and complaint

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<sup>3</sup> The Court of Appeals also ruled that CCS’s demand letters were “unfair or deceptive” insofar as they conveyed an exaggerated sense of urgency by purporting to be sent by Western Union, by having prominent ATTENTION headers, and by stating that they represented a “FORMAL COLLECTION NOTICE.” *See Stephens*, 138 Wn. App. at 167. However, Ms. Panag never claimed that these aspects of CCS’s letters were material or induced her to act. *See Smith v. Olympic Bank*, 103 Wn.2d 418, 425, 693 P.2d 92 (1985) (“The plaintiff here is the ward. The bank’s actions consisted of allowing the guardian to deposit the insurance check into his personal accounts. While this action was wrong, it neither induced the ward to act nor to refrain from acting. On this particular fact ... we are not prepared ... to embrace the provisions of the CPA”); *Crane & Crane, Inc. v. C & D Electric, Inc.*, 37 Wn. App. 560, 563, 683 P.2d 1103 (1984) (“[w]ithout inducement, there can be no CPA claim”) (citing *Haner v. Quincy Farm Chem. Inc.*, 97 Wn.2d 753, 760, 649 P.2d 828 (1982)).

Instead, Ms. Panag claimed that the problem with the demand letters was that they referred to an unliquidated tort claim as being “due.” CP 241. *See also* Reply Brief of Respondent/Cross-Appellant Rajvir Panag, at 1 (“the central issue in this case remains whether business entities ... [can] asser[t] that ... persons owe debts when, in fact, no such debts are owed.”). Mr. Stephens made the same argument. CP (Stephens) 594-85.

instead. It should be reversed and consistency with statutes on similar matters reinstated.

Washington's CPA is modeled after the Federal Trade Commission Act, 15 U.S.C. §41-58 (FTCA). Section 5 of the FTCA prohibits any "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. §45. Federal courts developed two standards under Section 5. A trade practice is *unfair* if: (1) the consumer injury was substantial; (2) the injury was not be outweighed by any countervailing benefits to consumers or competition; and (3) the injury was not of the type that consumers themselves could reasonably have avoided. *See Camacho*, 48 Cal. Rptr.3d at 777 (concluding that demands nearly identical to those at issue here were not unfair) (citation omitted). A trade practice is *deceptive* if: (1) it had a tendency or capacity to deceive (2) a member or members of the audience targeted by the trade practice and (3) the practice was material to a consumer's purchase decision. *See TransWorld Accounts, Inc. v. FTC*, 594 F.2d 212, 214 (9th Cir. 1979).

"The state Consumer Protection Act ... directs us to be guided by the federal precedent in our interpretation of the act." *Blewett*, 87 Wn. App. at 783. *See also id.* at 786-87 (RCW 19.86.920 provides "the directive" that courts are not "free to ignore, and indeed in practice

Washington courts have uniformly followed federal precedent in matters described under the Consumer Protection Act.”). The Court of Appeals abandoned this principle, ignoring its own warning that:

Any departure from federal law ... must be for a reason rooted in our own statutes or case law and not in the general policy arguments that this court would weigh the issue came before [it] as a matter of first impression.

*Blewett*, 86 Wn. App. at 788.

No such reasons exist. Both federal and “our own statutes” establish that referring to an alleged, unliquidated claim as debt that is due and owing is neither unfair nor deceptive. *See* Federal Debt Collection Practices Act, 15 U.S.C. §1692(e) (“FDCPA”) (“A debt collector may not use false, *deceptive* or misleading representation or means in connection with the collection of any debt.”) (emphasis added); *id.* at §1692a(5) (“the term ‘debt’ means any obligation or alleged obligation of a consumer to pay money ... whether such obligation has been reduced to judgment.”). *See also* Collection Agency Act, RCW 19.16.100 (11) (“CAA”) (“[d]ebtor means any person owing or alleged to owe a claim”); RCW 19.46.440 (“act[s] or practice[s] prohibited by RCW 19.16.250 are declared to be *unfair* ... for the purpose of the ... Consumer Protection

Act”) (emphasis is added); RCW 19.16.250 (listing 20 prohibited practices none of which include referring to unliquidated claims as debts).<sup>4</sup>

Washington statutes that regulate the collection of subrogated debts by state agencies explicitly state that alleged and unpaid obligations – including those that arise from torts – are debts that are due:

- The Department of Labor and Industries can serve on any person “a notice ... to withhold and deliver property ... which is due, owing, or belonging” to the injured worker who received industrial insurance. RCW 51.24.060(7);
- The Department of Social and Health Services (DSHS) is subrogated to the right of any dependent child or people having custody and control over dependent children if public assistance money is paid for the benefit of such child. RCW 74.20A.030. DSHS can seek recovery of “support debt,” including expenses for the reasonable and necessary care, support, and maintenance, including medical expenses, of the dependent child. RCW 74.20A.020(10). The notice of support debt includes a demand that the debt be paid within 20 days and “shall include” a statement that the property of the debtor is subject to collection action. RCW 74.20A.040(1)-(3).
- DSHS can collect from mentally ill persons committed to Western State Hospital the cost of their hospitalization for which they are “liable.” RCW 43.20B.330.

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<sup>4</sup> The CAA limits only communications about unliquidated debts with third parties, e.g., debtor’s employer. *See* RCW 19.16.250(8)-(9)

Moreover, an unliquidated tort claim – including claims arising out of car accident – is “indebtedness” that can be reached by the writ of attachment. *Buob v. Ochs*, 33 Wn.2d 732, 207 P.2d 189 (1949). In that case this Court rejected precisely the argument Ms. Panag makes here:

Respondent contends that the writ of attachment does not lie in a tort action because the parties do not stand in the relationship of creditor and debtor; and, since the amount of damage prayed for is not liquidated, there is no debt but only claim for damages.

...

We are aware that in many states attachments may not be issued in tort cases, equity cases, or for unliquidated cases; but that is not the rule in Washington ...

*Id.* at 733-35.

There is simply no support for the Court of Appeals’ contrary holding. An unliquidated tort claim is plainly a debt that is due; therefore demand letters that refer to it in those terms are not deceptive. *Cf. People v. Wendling*, 258 N.Y. 451, 180 N.E. 169, 169 (N.Y. 1932) (“One may call a spade a spade without offending decency ...”).

The Court of Appeals’ attempt to distinguish the well-reasoned decision in *Camacho* is unpersuasive. Section 17200 of California’s Business and Professions Code is “sweeping” in nature and not limited to “unfair competition” as the Court of Appeals suggested. *See Barquis v. Merchants Collection Assn.*, 7 Cal.3d 94, 111-12, 496 P.2d 817 (Cal.

1972) (“The legislature intended by this sweeping language [in Section 17200] to permit tribunals to enjoin ongoing wrongful business conduct in whatever context such activity might occur. Indeed ... most precedents under ... Section 17200 ... have arisen in a ‘deceptive’ practice framework ...”).

Washington courts have construed “unfair or deceptive” together, by focusing on the capacity or tendency to deceive. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785, 719 P.2d 531 (1986); *Blake v. Federal Way Cycle Center*, 40 Wn. App. 302, 310, 698 P.2d 578 (1985). *Camacho* focused instead on the more “sweeping” notion of unfairness, and concluded that identical letters were not unfair. *Camacho*, 48 Cal. Rptr. at 3rd 777 (the Section 5 test is “suitably broad and is therefore in keeping with the ‘sweeping nature’ of Section 17200.”); *see also id.* (the Section 5 test is focused and not dependent on “subjective notions of fairness and, for those reasons, easier to apply and administer. The element of this test that requires the injury to be weighed against the benefits of the practice claimed to be unfair ensures that the practice is subjected to normative standards.”).

The CPA requires similar balancing :

It is ... the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and

preservation of business or which are not injurious to  
the public interest ...

RCW 19.86.920.

The Court of Appeals' decision does a disservice to the Washington public by making it easier for uninsured drivers to avoid their financial obligations. If the Court of Appeals can hold that demand letters are deceptive simply because they refer to the claimed amounts as being "due" – without any authority to support this conclusion and despite statutes on similar matters that state the contrary – Washington businesses will be subjected to "divergent regulatory approaches for the same conduct," without notice. *Blewett*, 86 Wn. App. 788. RCW 19.86.920 does not allow such departure without "reasons rooted in our statutes or case law." *Blewett*, 86 Wn. App. at 788. The Court of Appeals should be reversed.

**C. What is an "Injury to Business or Property"**

Ms. Panag did not pay Farmers a cent in response to the letters she challenges in this action. This is fatal to her CPA complaint. In *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 83-84, 170 P.3d 10 (2007), this Court reiterated that "injury to business or property" in cases alleging reliance on a misrepresentation in an invoice cannot be met by simply *receiving* the invoice:

We conclude where ... there has been an affirmative misrepresentation of fact, our case law establishes that there must be some demonstration of a causal link between the misrepresentation and the plaintiff's injury. ... We reject [plaintiff's] per se rule because mere payment of an invoice may not establish a causal connection between the unfair or deceptive act or practice and plaintiff's damages. Proximate cause is a factual question to be decided by the trier of fact. Payment of an invoice may or may not be sufficient to establish a causal connection between the misrepresentation of fact and damages ...

Under *Indoor Billboard*, if Ms. Panag had paid any amounts to Farmers as a result of the CCS letters, there would have been a jury question as to the existence of injury. *Id.* at 84-85 (the jury question was, why the plaintiff paid). ***But having failed to pay, she cannot claim an injury as a matter of law.*** See *Demopolis v. Galvin*, 57 Wn. App. 47, 55, 786 P.2d 804 (1990) ("Demopolis did not pay the broker's loan fee that causes this transaction to be usurious. ... We hold that in this circumstance, no CPA injury is present."); *Crane*, 37 Wn. App. at 563 ("Mr. Carpenter falsely represented that he was an employee of C & D when in fact he was an employee of Mid-Valley. But ... there is no evidence ... that this false representation induced Crane to hire Mr. Carpenter. Without inducement, there can be CPA claim"). See also *Camacho*, 48 Cal. Rptr. 3rd at 779 ("Since Camacho was liable for the damages arising from the accident, it did not violate his right to collect

those damages. In other words, he was not injured.”); *Flores v. The Rawlings Co.*, 177 P.3d 341, 358 (Hawaii 2008) (“the attempt to collect money ... did not, without more, cause any damage to [the plaintiff]”).

Instead, Ms. Panag claims that she was “injured” because she (1) put a stamp to mail the letters to her attorney; (2) paid for parking at the attorney’s office and (3) after filing her complaint, paid \$12 for a credit report that showed no derogatory information. The first two items represent costs of litigation that exist *independently from, and have nothing to do with, the elements of the underlying CPA claim*. See *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 563-64, 825 P.2d 714 (1992) (costs incurred in pursuing a CPA claim are not injury); *Demopolis*, 57 Wn. App. at 54 (“Demopolis’ CPA claims are based upon his alleged injury resulting from having had to bring suit to protect against lenders’ foreclosure action. This alleged injury is insufficient to satisfy the injury element of a private CPA action.”); *Motorola, Inc. v. Fed. Express Corp.*, 308 F.3d 995, 1007 n.13 (9th Cir. 2002) (“costs ... are not ‘damages’”).

Similarly, the cost of a credit report is not injury, much less when purchased after the complaint is filed. *Pisciotta v. Old Nat. Bancorp.*, 499 F.3d 629, 633 (7th Cir. 2007) (“the expenditure of money to monitor one’s credit is not the result of any present injury, but rather the anticipation of a

future injury that has not yet materialized”); *Kahle v. Litton Loan Servicing LP.*, 486 F. Supp.2d 705, 710 (S.D. Ohio 2007) (“an argument that the time and money spent monitoring a plaintiff’s credit suffices to establish as injury overlooks the fact that the expenditure of time and money was not the result of any present injury, but rather the anticipation of future injury that has not materialized”) (citation and internal quotation marks omitted); *Forbes v. Wells Fargo Bank, N.A.*, 420 F. Supp. 2d 1018, 1021 (Minn. 2006).

The injury element of a CPA claim cannot be manufactured where it does not otherwise exist, out of sympathy for the plaintiff. Having paid nothing in response to the allegedly deceptive letters from CCS, Ms. Panag has no injury, just as the plaintiff in *Indoor Billboard* would have no injury if he had not paid the invoice that he claimed deceived him. No number of postage stamps, expense of parking, number of cellular phone minutes, or cost of shoe repair incurred in discussing the unpaid bill with one’s attorney can change the fundamental fact that until the bill is paid there can be no “injury” as a matter of law. Otherwise, CPA would be a strict liability statute that it is not.

### III. CONCLUSION

For each of the reasons stated, the Court of Appeals' decision should be reversed and the trial court's order dismissing Ms. Panag's complaint reinstated.

DATED: May 1, 2008.

STOEL RIVES LLP



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Rita V. Latsinova, WSBA #24447

Attorneys for Petitioner Farmers  
Insurance Company of Washington

Supreme Court No. 80357-9 (CA 56625-3-I)  
Consolidated with No. 80366-8 (CA 57068-4-I)

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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RAJVIR PANAG, on behalf of herself and all others similarly situated,  
*Respondent,*

v.

FARMERS INSURANCE COMPANY OF WASHINGTON, a domestic  
insurance company, and CREDIT CONTROL SERVICES, INC. d/b/a  
Credit Collection Services,  
*Petitioners.*

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MICHAEL STEPHENS, on behalf of himself and all others similarly  
situated,  
*Respondent,*

v.

OMNI INSURANCE COMPANY, a foreign insurance company,  
*Defendant/Appellant,*  
and  
CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,  
*Petitioner.*

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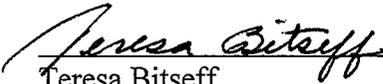
**CERTIFICATE OF SERVICE**

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I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct. I am employed by the law firm of Stoel Rives LLP. At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, and over the age of 18 years, not a party to the above-entitled action, and competent to be a witness herein. I arranged for true and correct copies of the **SUPPLEMENTAL BRIEF BY FARMERS INSURANCE COMPANY OF WASHINGTON, and CERTIFICATE OF SERVICE** to be served on the individuals below by the means described:

Mathew J. Ide, Ide Law Offices 801 Second Avenue, Suite 1502 Seattle, Washington 98104 <b>Co-Counsel for Respondent</b>	<input checked="" type="checkbox"/> hand delivery <input type="checkbox"/> facsimile transmission <input type="checkbox"/> overnight delivery <input type="checkbox"/> mailing with postage prepaid
Murray T. S. Lewis, Lewis Law Firm 2400 East Roy Street Seattle, Washington 98112 <b>Co-Counsel for Respondent</b>	<input checked="" type="checkbox"/> hand delivery <input type="checkbox"/> facsimile transmission <input type="checkbox"/> overnight delivery <input type="checkbox"/> e-mail/pdf
Melissa O'Loughlin White/John Granger Cozen O'Connor 1201 Third Avenue, Suite 5200 Seattle, Washington 98101 <b>Counsel for Defendant Credit Control Services, dba Credit Collection Services</b>	<input type="checkbox"/> hand delivery <input type="checkbox"/> facsimile transmission <input type="checkbox"/> overnight delivery <input checked="" type="checkbox"/> VIA e-mail/pdf & U.S. Mail
Philip A. Talmadge Talmadge Law Group PLLC 18010 Southcenter Parkway Tukwila, WA 98188-4630 <b>Counsel for Defendant Credit Control Services, dba Credit Collection Services</b>	<input type="checkbox"/> hand delivery <input type="checkbox"/> facsimile transmission <input type="checkbox"/> overnight delivery <input checked="" type="checkbox"/> VIA email/pdf & U. S. Mail

Executed on May 1, 2008, at Seattle, Washington.

  
Teresa Bitseff