

SUPREME COURT NO. 92267-5  
SPOKANE COUNTY SUPERIOR COURT CAUSE NO. 12-2-02190-7

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SUPREME COURT OF THE STATE OF WASHINGTON

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ISIDORO PEREZ-CRISANTOS,

Appellant,

vs.

STATE FARM FIRE & CASUALTY COMPANY,

Respondent.

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APPELLANT'S REPLY BRIEF

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## TABLE OF CONTENTS

I.	ANALYSIS/ARGUMENT.....	1
	IFCA CONFLICT.....	1
	A. The Washington Legislature and Voters Intended IFCA to Provide a Cause of Action for a WAC Violation as Evidenced by the Legislative History, Referendum Language and the Implicit Study and Drafting of Washington’s Pattern Jury Instruction.....	1
	IFCA PURPOSE/INTENT.....	4
	B. State Farm Violated IFCA through WAC 284-30-330(7) When It Compelled Appellant Perez to Litigate and He Recovered Substantially More than the Amount Offered.....	9
	C. Appellant Perez Presented Specific Evidence of An Unreasonable Denial of Benefits by State Farm Beyond the WAC 284-30-330(7) Violation to Preclude Summary Judgment in Favor of State Farm on the IFCA claims.....	10
	D. State Farm Did Not Provide Any Evidence to Support Its UIM Evaluation of February 14, 2012 Being Reasonable Before the Trial Court.....	14
	E. State Farm’s Records Review by Dr. Youngblood Provided More than Three (3) Months after Its UIM Evaluation Was Completed Cannot Cure its IFCA Violation.....	15
	F. Summary Judgment Dismissal of the CPA Claims Was Incorrect as Appellant Provided Facts Satisfying all Elements of His CPA Claim.....	16
	G. Summary Judgment of the Bad Faith Claims Was Inappropriate In Light of the Issues of Material Facts Surrounding the Evaluation of Appellant’s UIM Claim.....	18

H. Appellant’s Negligent Claims Handling Argument Was Before the Trial Court and Issues of Fact Precluded Summary Judgment in Favor of State Farm.....	21
I. Attorney’s Fees are Appropriate under IFCA Should the Court Find that Appellant’s Motion for Partial Summary Judgment Should Have Been Granted by the Trial Court.....	22
II. CONCLUSION AND RELIEF REQUESTED.....	23
CERTIFICATE/DECLARATION OF SERVICE	

**TABLE OF AUTHORITIES/CASES**

<b>Authority</b>	<b>Page No.</b>
<b>Washington Cases:</b>	
<i>Ainsworth v. Progressive Cas. Ins. Co.</i> , 180 Wn.App. 52, 322 P.3d 6 (2014).....	4
<i>City of Seattle v. Winebrenner</i> , 167 Wn.2d 451, 456, 219 P.3d 686 (2009).....	5
<i>State v. Jacobs</i> , 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005).....	5
<i>State v. Ervin</i> , 169 Wn.2d 815 at 820 (2010).....	5
<i>State v. Bash</i> , 130 Wn.2d 594, 601, 925 P.2d 978 (1996).....	5
<i>Sign-O-Lite Signs, v. Delaurenti Florists</i> , 825 P.2d 714, 64 Wn.App. 553 (1992).....	17
<i>Ellwein v. Hartford Accident &amp; Indem. Co.</i> , 142 Wn.2d 766, 780 (2001).....	18
<i>Smith v. Safeco Ins. Co.</i> , 150 Wn.2d 478, 78 P.3d 1274 (2003).....	13,18
<i>Truck Ins. Exchange v. Vanport Homes, Inc.</i> , 147 Wn.2d 757, 58 P.3d 276 (2002).....	18

*Anderson v. State Farm Mut. Ins. Co.*, 101 Wn. App. 323,  
2 P.3d 1029 (2000), *review denied*, 142 Wn.2d 1017 (2001).....19

*Indus. Indem. Co. of the NW Inc. v. Kallevig*, 114 Wn.2d 907,  
792 P.2d 520 (1990).....19

**Federal Cases:**

*Langley v. GEICO Gen. Ins. Co.*, 89 F.Supp.3d 1083 (E.D.  
Wash. Feb. 24, 2015).....2,5

*Workland & Witherspoon, PLLC v. Evanston Ins. Co.*,  
No.2-14-CV-403-RMP, 2015 U.S. Dist. Lexis 146950  
(E.D. Wash. Oct. 29, 2015).....2,5

*Bronsink v. Allied Prop. & Cas. Ins. Co.*, No. C09-751MJP,  
2010 WL 2342538 (W.D. Wash. June 8, 2010).....3

*MK Lim, Inc. v. Greenwich Ins. Co.*, No. C10-374MJP, 2011  
U.S. Dist. LEXIS 126395 (W.D. Wash. May 23, 2011).....3

**Statutes/Regulations**

RCW 48.15.030(5).....4, 23

RCW 48.30.015(3).....22

RCW 48.30.015(8)(b).....15

WAC 284-30.....6

WAC 284-30-330.....16

WAC 284-30-330(7) .....9, 10, 11, 16, 22, 23

**Other:**

6A WA PRAC WPI 320.06.01 (2013).....8

WPI 320.06.01.....8

ESBB 5726.....6

## I ANALYSIS/ARGUMENT

### IFCA CONFLICT

#### **A. The Washington Legislature and Voters Intended IFCA to Provide a Cause of Action for a WAC Violation as Evidenced by the Legislative History, Referendum Language and the Implicit Study and Drafting of Washington's Pattern Jury Instruction.**

Respondent State Farm (hereinafter "State Farm") incorrectly argues that the language of IFCA is clear and unambiguous and points to cases leading to only one possible interpretation, that being no independent cause of action is available to Appellant Perez for a WAC violation under IFCA. The opinions from the federal courts, the legislative history, and the information underlying the Washington State Jury Instructions evidence otherwise. Clarification is needed to ensure future courts do not continue to be confused or go down an incorrect path to the detriment of Washington State's citizens.

State Farm believes its position is correct as it claims an overwhelming number of cases support its position. *See* Br. of Respondent at 16. The number of decisions on one side do not dictate the result, but whether or not those decision properly interpret Washington law. If they do not and a line of incorrect decisions continue to proliferate, a great deal of irreparable harm is done to Washington citizens, who passed IFCA by referendum approval in 2007. The line of cases relied

upon by State Farm do not correctly interpret IFCA and do not provide any substantive inquiry into IFCA's purposes as well as the intent of the Washington legislature and voters in enacting IFCA.

State Farm submits that appellant "manufactures a conflict where none exists". *Id.* at p. 18. However, Judge Mendoza in *Langley v. GEICO Gen. Ins. Co.*, 89 F.Supp.3d 1083 at 1086-1089 (E.D. Wash. Feb. 24, 2015), points out the true conflict in the lines of cases on both sides and the lack of Washington Supreme Court precedent on this issue. *See* Br. of Appellant at p. 20. This is clearly a real issue in which guidance is necessary as federal courts continue interpreting IFCA and a great deal of IFCA cases are kept out of the Washington State court system through the federal removal process. This, of course, delays the Washington State appeals court system from providing guidance and precedent to the federal courts on IFCA.

A case cited by both parties here, *Workland & Witherspoon, PLLC v. Evanston Ins. Co.*, No.2-14-CV-403-RMP, 2015 U.S. Dist. Lexis 146950 (E.D. Wash. Oct. 29, 2015), also notes problems merging IFCA subsections (2), (3), and (5). In that case, Judge Peterson noted that she "finds IFCA's statutory language less than clear" and "The Court agrees with Judge Mendoza concerning the vexing relationship of subsections (2) and (3) and subsection (5)." *Id.* at 15. After noting the IFCA language

was “vexing” and “less than clear” the court goes on to state, without looking into the legislative history, that legislative intent does not support an implied cause of action. *Id.* There is no indication that the court looked into the legislative purpose and intent of IFCA in any in-depth fashion in its ruling and relied only language of the statute itself, which it had just previously noted was “vexing” and “less than clear”. Given the conflicts clearly noted by this and other federal courts on this issue, State Farm’s reliance on cases such as this, without any comprehensive inquiry into IFCA’s intent or purposes, is misplaced.

As further evidence of the conflict in IFCA’s language, one federal court judge has ruled both ways on this issue in separate cases. In *Bronsink v. Allied Prop. & Cas. Ins. Co.*, No. C09-751MJP, 2010 WL 2342538 at \*5 (W.D. Wash. June 8, 2010), Judge Pechman noted that violations of the enumerated WAC provisions in IFCA trigger a violation of the statute. Then, less than a year later, in *MK Lim, Inc. v. Greenwich Ins. Co.*, No. C10-374MJP, 2011 U.S. Dist. LEXIS 126395 \*7-8 (W.D. Wash. May 23, 2011), Judge Pechman indicated that her previous interpretation was incorrect and a WAC violation does not trigger an IFCA violation. Again, this is not a manufactured conflict as suggested by State Farm, but one that is apparent and real at the federal court level,

which is where the majority of cases are funneled with the federal removal process.

State Farm also argues that *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn.App. 52, 322 P.3d 6 (2014) supports the fact that IFCA clearly does not allow an independent cause of action for a violation of RCW 48.15.030(5). As noted in Appellant Perez's opening brief, the *Ainsworth* case did not involve the issue of whether RCW 48.15.030(5) provided an independent cause of action under IFCA or any interpretation of the IFCA language for a WAC violation. It was based upon wage loss claimed under PIP coverage and the insurer's failure to pay his secondary income source (pizza business), which the insurer knew and had documentation supporting. *Progressive* provided no reasonable basis for denying its insured those benefits and the court found as a matter of law that it unreasonably denied coverage and payment of benefits under IFCA. *Id.* at \*79-80. There is no discussion of a WAC violation and whether such provides an independent cause of action under IFCA. This was not an issue nor was it analyzed by the court and is therefore distinguishable.

#### **IFCA PURPOSE/INTENT**

If more than one interpretation of the plain language of a statute is reasonable, the statute is ambiguous and the court engages in statutory

construction. *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 456, 219 P.3d 686 (2009); *State v. Jacobs*, 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005). The Court may then look to legislative history for assistance in discerning legislative intent. *State v. Ervin*, 169 Wn.2d 815 at 820 (2010); *State v. Bash*, 130 Wn.2d 594, 601, 925 P.2d 978 (1996). As noted above and in appellants opening brief, there are two lines of cases on the present IFCA issue before the court demonstrating different interpretations, with one federal judge even issuing decisions on both sides of these cases.

Interestingly, in light of the federal court case conflicts, while they attempt to interpret IFCA and whether a WAC violation provides an independent cause of action, Appellant Perez finds very little in any of the lines of court decisions where the legislative intent is substantively queried. State Farm notes that the court in *Workland* addressed the legislative intent as part of its decision on this issue. See Br. of Respondent at 20. However, in *Workland*, despite the court noting issues involving IFCA's vexing language, there is no apparent substantive inquiry into the legislative history.

Judge Mendoza in *Langley*, 89 F.Supp.3d 1083 at 1090, did look at the Explanatory Statement of Referendum 67 in an attempt to determine legislative intent, which he notes was explained to the voters as follows:

“ESSB 5726 would authorize any first party claimant to bring a lawsuit in superior court against an insurer for unreasonably denying a claim for coverage or payment of benefits, or violation of specified insurance commissioner unfair claims handling practices regulations, to recover damages and reasonable attorney fees, and litigation costs.”

Judge Mendoza points out that this Explanatory Statement was written by the Attorney General and revised by the court in accordance with Washington law. *Id.* He also states that:

“when voters approved the passage of IFCA, a violation of the specified regulations, i.e. subsection (5), was contemplated as a basis to bring a lawsuit.” *Id.*

More importantly, and which State Farm does not even address in its responsive brief, the legislative Final Bill Report attached by appellant as Appendix A to his opening brief, notes the clear intent of the legislature in enacting IFCA and making damages available to a first party insured for an (1) unreasonable denial of coverage, (2) unreasonable denial of benefits, or (3) the violation of any one of the five WAC rules adopted by the Washington State Insurance Commissioner:

Damages are available to plaintiffs upon a finding that the insurer unreasonably denied coverage or payment. **A plaintiff may also recover damages upon a finding that the insurer violated one of five rules adopted by the Office of the Insurance Commissioner (OIC) and codified in chapter 284-30 of the Washington Administrative Code (WAC) or any additional rules that the OIC adopts that are intended to implement this act. (Emphasis Added).**

Again, State Farm does not address the clear intent laid out in the official Final Bill Report that a plaintiff may recover damages under IFCA for a specified WAC violation. Moreover, these particular WAC provisions are minimum insurance industry unfair settlement practices/standards defined by the Washington State Insurance Commissioner as unfair or deceptive in the business of insurance. See Br. of Appellant at 4. If an insurance company violates minimum defined unfair settlement practices standards as enacted by our Washington State Insurance Commissioner, it follows that those would be actionable under IFCA, in addition to the other broader unreasonable denials of coverage or benefits that are possible under each cases particular facts.

Additionally, the Washington Supreme Court appoints a broad spectrum of the legal community, including nominees from various interested groups (WSBA, WSAD, WSAJ, Superior Court Judge's Association, etc.) to its Committee on Jury Instructions. Its job is to study and draft pattern jury instructions to guide the courts on the current state of the law and instruct Washington juries. While there is no documentation, it would be reasonably anticipated that the committee would look into the legislative history of IFCA in formulating the IFCA jury instruction as part of its role in studying and drafting this. In 2013,

after numerous federal courts had held to the contrary, the IFCA jury instruction was published, in pertinent part, as follows:

WPI 320.06.01 Insurance Fair Conduct Act

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

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

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

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

6A Wash. Prac. WPI 320.06.01 (2013)  
(Emphasis Added).

The line of federal cases holding that IFCA allows an insured a per se cause of action based upon the enumerated WAC violations therein are cases that came about after the publication of the 2013 Washington State IFCA jury instruction. See Br. of Appellant at 23. Most of the federal cases to the contrary were prior to this publication. However, despite the published IFCA jury instruction, which is consistent with the legislative intent, there are still federal courts that continue to follow the earlier lines of cases rejecting an IFCA cause of action for a WAC violation. Most of

the cases on both sides are thin on any substantive inquiry into legislative intent and history.

Given the legislative history, referendum language, and the implicit studying and drafting by the Washington Supreme Court Committee on Jury Instructions, Appellant Perez respectfully requests that the Washington State Supreme Court provide guidance to all lower and federal courts by issuing a decision in this case to make sure they are properly interpreting and applying the true intent and purposes of the Washington legislature and voters in the enactment of IFCA, which is to allow a first party insured a cause of action for:

- (1) An unreasonable denial of coverage; and
- (2) An unreasonable denial of benefits; and
- (3) A violation of the unfair claims handling practices enacted by the Washington State Insurance Commissioner in subsection (5)

**B. State Farm Violated IFCA through WAC 284-30-330(7) When It Compelled Appellant Perez to Litigate and He Recovered Substantially More than the Amount Offered.**

As it applies to this particular case, it is uncontested that State Farm made a \$0 offer of new money (above third-party liability and PIP money paid) UIM benefits to Appellant Perez. He was compelled to litigate. Approximately fifteen (15) months after the February 14, 2012 UIM claim decision by State Farm offering nothing in new money,

Appellant Perez was awarded \$51,202.79 through mandatory arbitration, which was reduced to \$26,202.79 after the third-party offset. CP 360-361. He ultimately recovered \$24,401.86 after PIP and Winters fees were factored in. CP 48. As such, Appellant Perez clearly recovered substantially more than the \$0 new money UIM offer. CP 48, Resp. Br. at p. 7.

State Farm committed a direct violation of WAC 284-30-330(7) and IFCA. At a minimum, he incurred damages for having to pay the significant increase in attorneys fees and legal costs in being compelled to litigate, as well as any further damages for the delay in payment of UIM benefits. CP 334. For this reason, the trial court erred in denying Appellant's partial summary judgment motion on the violation of IFCA through WAC 284-30-330(7) and granting summary judgment in favor of State Farm.

**C. Appellant Perez Presented Specific Evidence of An Unreasonable Denial of Benefits by State Farm Beyond the WAC 284-30-330(7) Violation to Preclude Summary Judgment in Favor of State Farm on the IFCA claims.**

The State Farm UIM evaluation in this case was completed on February 14, 2012. CP 328-334. It offered \$0 in new money at that time. Essentially, it denied Appellant Perez payment of any UIM benefits above payments made by others (PIP/third-party). State Farm's argument is that

the parties simply disagreed as to the value of the UIM claim. State Farm is incorrect as the question is whether State Farm unreasonably denied UIM benefits to Appellant.

State Farm argues that its UIM valuation was reasonable and that Appellant Perez relies only on the disparity between the original offer and the mandatory arbitration award to support its position. While Appellant did disagree with the amount of the valuation, State Farm's argument is a conclusory oversimplification of the issues and ignores the specific factual basis for Appellants IFCA and other extra-contractual claims. Appellant provided specific factual basis to State Farm (and subsequently to the Insurance Commissioner) beyond a simple disagreement as to the value of the UIM claim. See CP 272. Appellant provided the trial court with specific factual allegations for which a jury could find State Farm's actions were an unreasonable denial of UIM benefits beyond the WAC 284-30-330(7).

At the trial court level, Appellant Perez pointed out that State Farm was provided the pertinent records and authorized it to utilize any other files, including State Farm's own PIP file, to evaluate the UIM claim. CP 269-270, 274. The State Farm PIP team had previously evaluated appellant's accident related shoulder injury (SLAP tear) and paid first

party benefits to appellant towards this as reasonable and necessary accident related benefits. CP 248, 265, 272. Despite this, in its February 14, 2012 evaluation of the UIM claim, there is nothing showing that State Farm even looked at the PIP file and took the opposite position, thereby flip-flopping in separate first-party insured scenarios. CP 144.

Also, the trial court had evidence before it that despite the shoulder injury related payment of first party PIP benefits by State Farm, without any medical basis and having medical records early on supporting the shoulder injury as accident related (CP 336-343), the State Farm UIM claims adjuster/team appears to have either overlooked or discounted those records and took the opposite position on February 14, 2012, i.e. that the shoulder injury was not accident related. CP 272, 231-234. As noted in appellant's opening brief, the State Farm UIM adjuster had medical records that documented a shoulder injury within six (6) days of the accident and continuing throughout the early medical records. See Br. of Appellant at p. 7, CP 336-343. However, the State Farm UIM evaluation from February 14, 2012, states that "the records do not show a complaint of shoulder injury until 2/7/11" and "it was not until 3 months after the accident that Mr. Crisantos begins complaining of a right shoulder injury". CP 232. These facts alone provide an issue of fact for which a reasonable

jury could question State Farm's true motives in the handling of his UIM claim and its arrival of a \$0 new money offer.

An insurance company's theoretical reasonable basis for its actions does not entitle it to summary judgment as an insured may present evidence that the insurer's alleged reasonable basis was not the actual basis for its action. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478 at 486 (2013). In this regard, Appellant also presented evidence to the trial court from an insurance industry expert, Stephen L. Strzelec, who reviewed the voluminous documents obtained after several motions to compel, including State Farm claims handling practices documents and incentive/bonus programs documents. CP 130, 205-221. He opined through declaration that State Farm's incentive and bonus program does influence claims handling, including that of appellant Perez. CP 212-214. However, he did indicate that more information from the pertinent State Farm personnel files was necessary to determine the full extent of such influence. This evidence provided additional framework towards the State Farm's true motives in the handling of appellant Perez' UIM claim.

There was more than sufficient evidence before the trial court showing a genuine issue of material fact that State Farm and its employees actions in the handling of his UIM claim were unreasonable and an

unreasonable denial of benefits under IFCA. Moreover, there were still about seven (7) months of discovery left and a great deal of discovery remaining for appellant to complete. With all due respect, the trial court was incorrect in granting summary judgment for State Farm as there were genuine issues of material fact before the court, which were still being developed through discovery. At a minimum, Appellant should have been allowed the opportunity to complete discovery before a final ruling on all the issues in this case.

**D. State Farm Did Not Provide Any Evidence to Support Its UIM Evaluation of February 14, 2012 Being Reasonable Before the Trial Court.**

At no time has State Farm presented any specific evidence to support its conclusory statement that its UIM evaluation of February 14, 2012 was done reasonably. State Farm provided nothing to the trial court to evidence that its UIM claims employees held sufficient education, training, or experience to opine on the biomechanics or causation of a SLAP tear in a motor vehicle collision, as well as the particular loss in question. It provided the trial court with no explanation of why or how its PIP unit paid for SLAP tear related first party benefits earlier as accident related, then decided later on to the contrary under the first party UIM claim. Its provided nothing to explain how these same UIM employees had medical records shortly after the accident indicating a possible

shoulder injury and somehow came to the conclusion that there was no evidence of a shoulder injury until three (3) after the accident. CP 232. There were genuine issues of material fact present for which the trial court should have denied State Farm's motion for summary judgment rather than accepting its conclusory claim that its February 14, 2012, UIM evaluation was reasonable.

**E. State Farm's Records Review by Dr. Youngblood Provided More than Three (3) Months after Its UIM Evaluation Was Completed Cannot Cure its IFCA Violation.**

State Farm's reliance on the post UIM evaluation records review of Dr. Youngblood to cure its IFCA violation is misplaced. Appellant's IFCA notice was received by the Washington State Insurance Commissioner on February 21, 2012. *See* Br. of Appellant at p. 9, Appendix D. IFCA allows an insurance company twenty (20) days thereafter to resolve the basis for the action. *See* RCW 48.30.015(8)(b). State Farm submitted its self-supporting records review on May 31, 2012, approximately three (3) months after its February 14, 2012, completed UIM evaluation and the February 21, 2012 IFCA notice to the Washington State Insurance Commissioner. As noted in Appellant's opening brief, State Farm failed to avail itself of the IFCA twenty (20) days period to resolve the IFCA issue.

The records review was not a part of the February 14, 2012, UIM evaluation at issue in this case and does not provide a basis as a timely IFCA violation cure.

**F. Summary Judgment Dismissal of the CPA Claims Was Incorrect as Appellant Provided Facts Satisfying all Elements of His CPA Claim.**

With regard to the CPA claim, State Farm first argues that Appellant Perez fails to prove a violation of the first two (2) elements of a CPA claim as there was no violation of WAC 284-30-330(7), which it concedes would be a per se violation of the CPA on those basis and satisfy said elements. *See* Br. of Respondent at 29. Actually, a violation of any act that qualifies as an unfair claims settlement practice under WAC 284-30-330, would satisfy the first three (3) elements. *See* Br. of Appellant at 35.

However, State Farm is incorrect as the undisputed facts are that Appellant Perez, after State Farm compelled him to litigate for over fifteen months by making a \$0 offer in new money, recovered substantially more than the \$0 offer. After offsets and *Winters* fees he recovered \$24,401.86 in new money. This violates the plain language of WAC 284-30-330(7). The first three (3) CPA elements have been satisfied.

State Farm next argues that appellant's claimed injuries/damages for increased legal fees and costs are not recoverable and do not satisfy the remaining CPA elements of injury to business or property caused by the unfair or deceptive act based upon *Sign-O-Lite Signs, v. Delaurenti Florists*, 825 P.2d 714, 64 Wn.App. 553 (1992). See Br. of Respondent at 29. Its argument is again misplaced as that case and issues therein are distinguishable. *Sign-O-Lite* involved claimant's request for **all** litigation costs itself as damages for the CPA claim itself being pursued in a dispute about the placement and contract involving a business sign.

The case at bar involves the **increase** in litigation fees and costs of a prior underlying UIM claim after Appellant was compelled to submit to litigation after alleged wrongful UIM claims handling. He does not request all his attorneys fees and costs, only the increased fees and costs caused by the wrongful UIM claims handling. Appellant Perez laid out sufficient facts to establish all elements of his CPA claim. Again, with all due respect, Appellant submits that the trial court's dismissal of his CPA claim was incorrect and requests this decision be reversed and remanded for the parties to complete the discovery process.

**G. Summary Judgment of the Bad Faith Claims Was Inappropriate In Light of Issues of Material Facts Surrounding the Evaluation of Appellant's UIM Claim.**

State Farm again continues to avoid the specific factual disputes involved in the claims handling process and move to a oversimplified conclusory argument that Appellant only takes issue with the amount of the UIM offer, which was \$0 in new money. Citing cases from the early to late 1990's, it argues that in the UIM context it owed Appellant Perez something less than a full fiduciary duty. See Br. of Respondent at p. 32. It appears to be trying to downplay its duties owed to Appellant Perez and State Farm notes that it "does not owe him a fiduciary duty". *Id.*

Cases beyond the 1990's make it clear that an insured making a UIM claim, even though it creates a form of an adversarial relationship, is still entitled to a duty of good faith and fair dealing from their insurer and has a reasonable expectation that they will be dealt with fairly and in good faith. *Ellwein v. Hartford Accident & Indem. Co.*, 142 Wn.2d 766, 780 (2001) overruled on other grounds (summary judgment standard); *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478 (2003). Included with the duties of good faith and fair dealing from State Farm is the obligation to give the rights of the insured the same consideration that it gives to its own monetary interests. *Truck Ins. Exchange v. Vanport Homes, Inc.*, 147 Wn.2d 757, 58 P.3d 276 (2002).

An insurer acts in bad faith when it overemphasizes its own interests. *Anderson v. State Farm Mut. Ins. Co.*, 101 Wn.App. 523, 2 P.3d 1028 (2000), *review denied*, 142 Wn.2d 1017 (2001). This duty is broad and an insurer may breach it by conduct short of intentional bad faith or fraud. *Ind. Indem. Co. of the NW, Inc. v. Kallevig*, 114 Wn.2d 907, 792 P.2d 520 (1990). State Farm attempts to understate the extent of its first party obligations in the UIM context. It owed appellant a duty of good faith and fair dealing, including not putting its own interests above that of its insured.

In this case, the trial court was provided with evidence that State Farm assessed Appellant's SLAP tear under his first party PIP coverage and paid first party benefits therein as accident related under his automobile insurance policy. It was also provided evidence that, for this reason, Appellant gave State Farm authority in the first party UIM context authority to utilize the PIP file. CP 270. For reasons still to be determined through discovery, State Farm did not utilize its prior first party determination that this was accident related as there no reference to it in the February 14, 2012, UIM evaluation.

Moreover, despite appellant providing medical records to the contrary, the February 14, 2012, UIM evaluation noted no shoulder

complaints until approximately three (3) months after the automobile accident. CP 232. The February 14, 2012, UIM evaluation of the SLAP tear causation was made without the benefit of anyone with an appropriate background to do so (i.e. medical specialist, biomechanical expert, etc.). This evidence was before the trial court and presents a genuine issues of material facts as to whether State Farm acted reasonably and was putting its own interests above that of its insured.

Also before the trial court was evidence of why the State Farm employees involved in the UIM claim would take a contrary position, including not utilizing the PIP file and discounting and/or ignoring medical records to put State Farm's interests above that of its insured. The declaration of insurance industry expert Stephen L. Strzelec, a former State Farm employee, was before the trial court and indicated that incentive plans can and do influence claim handling, including Appellant's claim. CP 205-221. Mr. Strzelec pointed the trial court to several employee State Farm compensation programs, including the Enterprise Auto Growth Incentive Plan (hereinafter "EAGI"). CP 210-211. Under the EAGI program, employees of State Farm's automobile insurance division are offered financial incentives based upon State Farm's financial strength and growth in the automobile insurance division. CP 210-211.

This would included claims employees, management and senior management. CP 211.

The evidence viewed in the light most favorable to Appellant made summary judgment in favor State Farm inappropriate.

**H. Appellant's Negligent Claims Handling Argument Was Before the Trial Court and Issues of Fact Precluded Summary Judgment in Favor of State Farm**

State Farm argues that Appellant's negligence argument was raised for the first time on appeal and should not be properly before the court. *See* Br. of Respondent at p. 37. State Farm then goes on to state that even if Appellant Perez did dispute this at the trial court, he provided no such basis in the UIM context. *Id.* Appellant specifically addressed the negligence issue in the pleadings at the trial court level and incorporated the same fact pattern supporting his IFCA claims, CPA claims and other extra-contractual claims. CP 293-294.

Whether State Farm's UIM claims unit was negligent in the handling of appellant's UIM claim, breaching a duty it owed to Appellant and causing him damages was supported by the same facts and was an issue of fact that should have been saved for the jury. Again, for reasons that were to be determined with specificity through the anticipated continuing discovery, the UIM adjuster had information from medical

records that supported a shoulder injury shortly after the automobile accident but somehow came to the conclusion that there was no records supporting a shoulder injury until three (3) months after the collision. From the information and arguments made previously, a jury could conclude that this was due to the UIM adjuster's failure to use reasonable care in reviewing records or simply the negligence of State Farm in its UIM evaluation process not having a qualified individual (i.e. treating surgeon, orthopedic specialist, biomechanical) to provide a causation opinion for a SLAP tear. A jury could find a negligent claim handling scenario rather than a full blow bad faith, IFCA or CPA violation. As such, the trial court's granting summary judgment in favor of State Farm was incorrect.

**I. Attorney's Fees are Appropriate under IFCA Should the Court Find that Appellant's Motion for Partial Summary Judgment Should Have Been Granted by the Trial Court.**

Appellant requested partial summary judgment for the IFCA violation through WAC 284-30-330(7). If this court finds that the trial court ruling was incorrect and reverses, he will be a prevailing party under this IFCA cause of action and an award of attorneys fees is appropriate under RCW 48.30.015(3).

## II. CONCLUSION AND RELIEF REQUESTED

This is the first real opportunity, and perhaps the last for many years to come, for our Washington State Supreme Court to provide guidance on this particular IFCA conflict. The only issue that was ripe for determination by the trial court was Appellant's motion for partial summary judgment for violation of IFCA through WAC 284-30-330(7). Otherwise, issues of material fact and the need for further discovery existed on the various claims precluding summary dismissal of Appellant Perez's claims.

In this case, State Farm violated a minimum unfair claims settlement practice as defined the Washington State Insurance Commissioner, WAC 284-30-330(7), and incorporated by IFCA, by compelling its insured to submit to litigation to recover his UIM benefits after offering substantially less than the amount ultimately recovered through litigation. IFCA, as evidenced by the legislative history, clearly shows that it was intended to provide a first party insured an independent cause of action for a violation of one of the enumerated WAC violations in RCW 48.15.030(5). Appellant submits that his motion for partial summary judgment was the only of the motions before the court appropriate to be granted.

Appellant requests the Washington State Supreme Court reverse the superior court's granting of summary judgment in favor of State Farm and grant partial summary judgment in favor of Appellant Perez for the per se violations of IFCA and the CPA.

Respectfully submitted this 16<sup>th</sup> day of March, 2016.

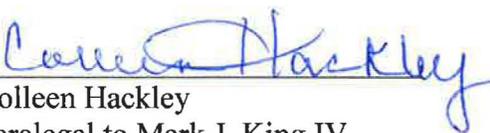
By:

  
Mark J. King, IV WSBA 29764  
Attorney for Appellant Isidoro  
Perez-Crisantos

#### CERTIFICATE/DECLARATION OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of March, 2016, I caused to be served the a true and correct copy of Appellant's Brief, by the method(s) indicated below (if by mail, postage prepaid):

Emmelyn Hart	<u>  X  </u>	U.S. MAIL (OVERNIGHT)
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