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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 ANSWER TO AMERICAN INSURANCE  
ASSOCIATION AND WASHINGTON STATE ASSOCIATION OF  
JUSTICE AMICUS BRIEFS

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A.     Substitute Senate Bill 5726

## I ANALYSIS/ARGUMENT

### 1. **Statutory Construction of the Plain Meaning of IFCA to Determine Legislative Intent Requires a Full Reading of the Statute, Giving Meaning To All Language Therein.**

The American Insurance Association (hereinafter "AIA") disregards the entirety of the IFCA statutory language, as well as language from federal court opinions, in an attempt to further support a conclusion that IFCA's language is clear and unambiguous. As such, AIA argues that Washington State's citizens do not have the right under IFCA to pursue a cause of action for a violations of the enumerated WAC provisions within IFCA at RCW 48.30.015(5). AIA would like the Court to look at RCW 48.30.010(7) and RCW 48.30.015(1), without looking in any substantive detail at the totality of the remainder of RCW 48.30.015(2) through (8).

However, the Washington State Association for Justice (hereinafter "WSAJ") properly points out that the Court in *Dep't. of Ecology v. Campbell & Gwynn, LLC*, 146 Wn.2d 1, 9, 93 P.3d 4 (2002) clarified the "plain meaning" rule in which the "fundamental objective is to ascertain and carry out the Legislature's intent". The Court noted that the "meaning of a statute is a question of law reviewed de novo". *Id.* It further goes on to state:

"Of course, if, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute

is ambiguous and it is appropriate to resort to aids to construction, including legislative history.

*Id.* citing *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001); *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994).

“Statutory construction begins by reading the text of the statute.” *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005); *see W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000). “When we read a statute, we must read it as a whole and give effect to all language used.” *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 948, 162 P.3d 413 (2007); *see State v. Young*, 125 Wn.2d 688, 696, 888 P.2d 142 (1995). To determine a statute’s plain meaning, legislative intent is derived by construing the entirety of the statute’s language while giving effect to the each and every provision. *Cent. Puget Sound Reg'l Transit Auth. v. Airport Inv. Co.*, 2016 Wash. LEXIS 893 at \*13-14, 376 P.3d 372 at 377 (2016), citing *Dep't of Ecology v. Campbell & Gwynn, LLC*, 146 Wn.2d 1, 93 P.3d 4 (2002) and *State v. J.P.*, 144 Wn.2d 444, 69 P.3d 318 (2003).

Federal courts on both sides of whether IFCA allows an independent cause of action for violations of the enumerated WACs within RCW 48.30.015(5) note problems merging IFCA subsections (2), (3), and (5) into

the remainder of the statute. AIA does not address this, and focuses upon two (2) particular subsections of the statute without completing the next logical step in the analysis. The next step should include reading the whole statute to give effect to all language used. The untaken next step of AIA shows why its conclusion is premature and how AIA's argument actually supports Appellant's positions that IFCA does support an independent/implied cause of action for a WAC violation.

As noted by Appellant Perez previously, in *Workland & Witherspoon, PLLC v. Evanston Ins. Co.*, 141 F.Supp 3d 1148, 1155 (E.D. Wash. Oct. 29, 2015), Judge Peterson found "IFCA's statutory language less than clear" agreeing with Judge Mendoza "concerning the vexing relationship of subsections (2) and (3) and subsection (5)". Importantly, Judge Pechman states that "It is not necessary to perfectly harmonize the various IFCA subsections at this time". *Id.* Judge Pechman noted that the second part of the implied cause of action analysis fails focusing in on RCW 48.30.015(1) as it shows legislative intent not to create an independent cause of action under RCW 48.30.015(1). Judge Peterson attempted to read legislative intent directly within RCW 48.30.015(1) and not taking into full

account the interrelationship between the other subsections therein to give meaning to all parts of the statute. *Id.*

Judge Pechman's analysis does not follow the Court's holding in *Dep't. of Ecology* and its progeny in determining legislative intent through reviewing the entirety of the statute and giving effect to all statutory language. Moreover, most of the federal courts finding there is no independent cause of action under IFCA for a WAC violation appear to rely on the language of RCW 48.30.015(1), most of which with little or no explanation or any attempt to give meaning to the entirety of IFCA's language. As WSAJ points out, "a federal court sitting in diversity construing a state statute is required to apply the state's rules of statutory construction". *See* WSAJ Br. at 14, Fn. 9.

Judge Mendoza in *Langley v. GEICO Gen. Ins. Co.*, 89 F.Supp.3d 1083 (E.D. Wash, 2015), utilized the proper statutory construction standard. Judge Mendoza notes that "Under the ordinary rules of statutory construction, all of the words of the statute must be given effect, so that no provision is rendered meaningless or superfluous". *Id.* at 1089. He goes on to note that "As in most matters of statutory construction, the ultimate goal is to determine the intent of the legislature". *Id.* He examined the full statutory language and looked at the Explanatory Statement of Referendum 67 in an attempt to determine legislative intent, and found to the contrary.

Cases have followed in both directions since *Langley*. See Perez Br. at 19-22.

Judge Pechman even ruled both ways in separate cases. In the first case on this subject matter, she held that a violation of the enumerated WACs in IFCA trigger a violation of the statute. *Bronsink v. Allied Prop. & Cas. Ins. Co.*, No. C09-751MJP, 2010 WL 2342538 at \*5 (W.D. Wash. June 8, 2010). 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. This suggests the language is less than clear.

AIA does correctly note that the courts will engage in statutory construction “if more than one interpretation of the plain language is reasonable”, but argues there is only one reasonable interpretation of IFCA, and it does not allow a cause of action for a WAC violation. See AIA Br. at 2-3. To say that IFCA’s language is clear and unambiguous is to ignore federal court reasoning on both sides. Moreover, it implies that lines of decisions by federal judges on one side are unreasonable.

Looking at the entirety of the IFCA statute, Appellant believes it is not fully clear what the legislative intent was in incorporating WAC violations. This is supported by numerous federal jurists on both sides of

the issue, some who have described the language of IFCA as “vexing” and “less than clear”. What AIA does not want this Court to do, is look at the legislative history, which shows the true intent of the legislature and Washington’s citizens to allow IFCA causes of action for a WAC violation.

As the IFCA language is less than clear, Appellant submits that inquiry into legislative intent is necessary, which supports Appellants position. This is evidenced by the Final Bill Report (and vote noted therein by our legislature) and through the Referendum Voter Materials. *See* Perez Br., Appendix A and WSAJ Br., Appendix.

**2. A Plain Meaning Analysis Also Supports a WAC Violation Supporting a Direct Cause of Action Under IFCA**

WSAJ also presents another reasonable view of the entirety of IFCA’s statutory language. It notes that under a “plain meaning” contextual analysis, a fair reading of IFCA supports authorization of a cause of action for an enumerated WAC violation. *See* WSAJ Br. at 15-17. It points out that reading RCW 48.30.015(2), (3) and (5) together indicate a legislative intent supporting this, which makes sense, as have different sides of the federal court positions on IFCA’s interpretation. *Id.*

WSAJ’s position is bolstered by the fact that a violation of the enumerated WACs of RCW 48.30.015(5) alone triggers a **mandatory** award of attorney fees, actual and statutory litigation costs under RCW

48.30.015(3), and discretionary trebling of the damages under RCW 48.30.015(2). With the legislative use of the word "or" in these two latter subsections, the remedy for a violation of the enumerated WAC's are independent of an unreasonable denial of claim or unreasonable denial of payment of benefits.

AIA's argument that only a unreasonable denial of a claim or unreasonable denial of payment of benefits triggers the statute makes any reference to WAC violations in RCW 48.30.015(2), (3) and (5) meaningless. Those subsections already provide mandatory award of attorney fees, actual and statutory litigation costs, including expert witness fees, and discretionary trebling of damages for an unreasonable denial of claim or unreasonable denial of payment of benefits. Under AIA's position, there would be no purpose for any WAC language at all in IFCA, other than to provide redundant remedies.

Appellant concurs with WSAJ's position/argument that a "plain meaning" analysis of IFCA supports an independent cause of action for an enumerated WAC violation. In the alternative, Appellant submits that WSAJ's position/argument is another reasonable interpretation of the statute showing that the statute is less than clear, and aids to statutory

construction would be necessary, including legislative history, which supports Appellants position.

**3. IFCA's 20-Day Notice Provision Makes Sense When Applied to WAC Violations Where There Has Been Harm and/or Damages, Which is Required Under IFCA**

AIA argues that certain WAC violations are incongruent with supporting an independent cause of action under IFCA, as they would not be able to be cured within twenty (20) days under RCW 48.30.015(8). *See* AIA Br. at 5-6. It argues that this does not make sense as it would allow incurable technical WAC violations and first party insureds to pursue an action to recover only the mandatory attorney fees and costs (and treble damages). *Id.* at 6.

Firstly, AIA's characterization of the purposes of this subsection as being to cure deficiencies of violation is overly narrow. There may be circumstances where a cure is appropriate. However, the statute specifically gives the insurer a twenty (20) day opportunity to "resolve the basis for the action" before a lawsuit can be filed. A cure may be necessary, but there also may be other ways to **resolve** claims depending upon the violation by the insurer. It provides the insurer a means to **resolve** the IFCA claim so both sides might avoid the risks and costs associated with litigation.

More importantly, AIA's argument that IFCA's twenty day notice provision does not make sense within certain WAC provisions actually

supports Appellants position that the statute is not fully clear and is ambiguous, thus supporting language pointing to an independent IFCA cause of action for a WAC violation. AIA's position makes more sense with the WAC violation read within the entirety of the IFCA statute to support a cause of action if there was harm or "actual damages", as required under IFCA, RCW 48.30.015(1). Otherwise, IFCA would be superfluous as it pertains to the enumerated WAC violations, which is inconsistent with giving effect to all statutory language within the statute.

For example, using AIA's hypotheticals involving (1) a violation of WAC 284-30-360(1) for taking eleven days to acknowledge receipt of a claim and (2) a falling tree limb on a garage, it argues that a first party insured would only be able to recover the mandatory attorney fees and litigation costs under RCW 48.30.015(3). *Id.* at 6, 19. It claims that this does not make sense and does not reflect the intent of the legislature or the voters. *Id.* However, AIA does not take the next logical step in its analysis. This would include looking at the entirety of the statute.

Doing so, it would note that the intent of IFCA was to provide a cause of action for a first party insured to recover "actual damages", as well as other remedies such as treble damages, mandatory attorney fees and other litigation costs (including expert witness fees) for IFCA violations. It does not make sense to provide a remedy for treble damages, mandatory attorney

fees and other litigation costs in IFCA for a WAC violation if there are no damages. Thus, under AIA's hypotheticals, an action for a first party insured for a WAC violation makes sense only if the WAC violation results in damages. For this to be the case, a WAC violation would impliedly need to be included under RCW 48.30.015(1) setting forth a first party claimant's right to recover "actual damages".

Again, while Appellant submits that this reading of the statute is more logical, the IFCA language is anything but clear in this regard. Given the reasonable differences in harmonizing how violations of the enumerated WACs of RCW 48.30.015(2), (3), and (5) work within IFCA as a whole, the next natural step for the Court would look to the legislative intent, including legislative history and referendum, both of which show the intent to provide a first party insured a cause of action for a violation of the enumerated WAC violations within IFCA. The Final Bill Report states:

**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.**

*See* Final Bill Report, Perez Br., Appendix A (emphasis added).

Judge Mendoza in *Langley*, 89 F.Supp.3d 1083 at 1090, noted the same language in the Explanatory Statement of Referendum 67 provided to the voters:

“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.”

Unfortunately, IFCA’s language is not entirely clear and looking to the legislative intent shows the legislature and voters of the State of Washington intended to enact IFCA to provide a cause of action for violation of the enumerated WACs within RCW 48.30.015(5).

**4. If No Cause of Action is Implied then IFCA’s Language Pertaining to WAC Violations Becomes Either Superfluous and/or Meaningless and No Remedy is Provided.**

AIA argues that WAC violations cannot be implied under IFCA as it does not “create a right or obligation” and there are other remedies available for a WAC violation. *See* AIA Br. at 8-9. However, IFCA provides a new cause of action and provides new remedies specifically directed at insurer conduct for first party claimants. IFCA provides new remedies for first party claimants pertaining to the unreasonable denial or payment of claims as well as specific remedies for specific violations of related WACs.

AIA's earlier position appears to be that, despite language under RCW 48.30.015(2), (3), and (5) providing first party claimants remedies of treble damages, mandatory attorney fees and litigation costs for a WAC violation, first party claimants have no such remedy as there is no express cause of action in RCW 48.30.015(1) for WAC violations. Nonetheless, it also argues that neither can there be an implied cause of action either as there are other remedies elsewhere for a WAC violation.

AIA first argues that IFCA does not "create a right or obligation" to follow the administrative code". See AIA Br. at 8. It claims that there are other remedies for WAC violations, pointing out that there is already a remedy under the CPA for WAC violations. *Id.* It also attempts to rely on *Kelsey Lane Homeowners Ass'n. v. Kelsey Lane Co., Inc.*, 125 Wn.App. 227, 103 P.3d 1256 (2005) where it claims the court "rejected an implied cause of action" involving a condominium declaration under the Condominium Act. However, that case is not on point as it involved a claimant attempting to use the CPA to change the language of the Condominium Act and make it encompass a new standard. In the present case, we are dealing with the construction of a new statute and remedies, with new and expanded damages and remedies.

Additionally, AIA provides no authority that the legislature cannot pass legislation regarding insurance regulations that may overlap with other

remedies. Nor does AIA provide any authority that the legislature cannot pass legislation providing new and more extensive remedies for WAC violations. Countering this argument by AIA is the fact that the legislature included within IFCA, at RCW 48.30.015(6), language specifically preserving other remedies available to insureds for wrongful conduct of an insurer.

AIA also suggests that the Court focus on RCW 48.30.010(7) and RCW 48.30.015(1) to determine whether the legislature intended a third cause of action for a WAC violation, rather than looking at the entirety of the IFCA statute. *See* AIA Br. at 10. AIA argues that the IFCA statute created a specific cause of action for a new “unfair practice” of “unreasonably denying a claim for coverage or payment of benefits” through these two (2) pieces of the statute. Along with not being proper “plain meaning” statutory construction, AIA fails to point out that the WAC violations enumerated in the statute become superfluous and/or meaningless under its analysis, leaving some first party claimants new rights under IFCA for WAC violations, without access to IFCA remedies.

In continuing AIA’s analytical process arguing that there is only a cause of action for an unreasonable denial of a claim or an unreasonable payment of benefits, if a Court finds an unreasonable denial of a claim for coverage or payment of benefits under RCW 48.30.015(1), then the

additional remedies under RCW 48.30.015(2) and (3) apply, regardless of a WAC violation. Under this scenario, the WAC violation is insignificant and adds nothing under the IFCA statute. Conversely, if a Court finds no unreasonable denial of a claim for coverage or payment of benefits, but a WAC violation occurred as noted through RCW 48.30.015(2), (3) and (5), then under AIA's logic the first party claimant is not allowed to recover the remedies specifically allowed under these sections and the IFCA language is superfluous.

AIA's argument that IFCA does not afford first party insured's implied causes of actions for WAC violations simply is not supported by a plain reading of the entirety of the statutory language and legislative history. IFCA intended to allow first party claimants the right to obtain remedies for WAC violations. The legislative history support this along with recovery of actual damages as well. However, the statute less than clearly puts these together and supports an implied cause of action under IFCA for a WAC violation. Otherwise, there will be no remedy for first party claimants under IFCA for a WAC violation.

**5. Legislative History Shows the Legislature Narrowed Down and Targeted Specific Unfair Settlement Practices as a Basis of an IFCA Violation.**

AIA again does not address the clear language of the Final Bill

Report and similar language that was passed on to the voters within the Referendum materials. Instead, it relies on unsupported speculative conclusions from a couple of IFCA amendments before placement into final form and approved by the legislature and Washington's citizens. Nowhere in the legislative materials provided by AIA is there any clear contradiction of a WAC violation serving as a basis for an IFCA claim, which to the contrary is clearly laid out in the Final Bill Report and Referendum materials. Other than the Final Bill Report and Referendum materials, nowhere in the legislative materials provided by AIA is there any indication of the interrelationship of RCW 48.30.015(1) though (5).

Additionally, the first reading of IFCA as SB 5726, allowed treble damages as well as mandatory attorney fees and actual and statutory litigation costs, including expert witness fees, for a broad violation of the Washington Administrative Code in general. *See* attached Substitute Senate Bill 5726 attached as Appendix A. The bill clearly went through several changes into its final form. Unfortunately, the bill history does not provide a great amount of explanation through the course of the bill's lifespan. What is explained is what the final bill entails for the final vote, including a cause of action for a first party insured for a WAC violation.

In coming to the final bill, the legislature narrowed the target of IFCA violations down from a general violation of the Washington

Administrative Code to five specific earmarked sections of the Unfair Claims Settlement Practices Regulation, WAC 284-30-300 through WAC 284-30-400. *See* WAC 284-30-330, which reads as follows:

RCW 48.30.010 authorizes the Washington State Insurance Commissioner to define methods of competition and acts and practices in the conduct of the business of insurance which are unfair or deceptive. The purpose of this regulation, WAC 284-30-300 through 284-30-400, is to define certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices. This regulation may be cited and referred to as the unfair claims settlement practices regulation.

Within IFCA, the legislature chose to include strong remedies for first party insureds including discretionary trebling of the actual damages, mandatory attorney fees, as well as actual and statutory litigation costs (including expert witness fees) when an insurance company violated any of the following five (5) specific enumerated unfair claims settlement practices:

- (a) WAC 284-30-330, captioned "specific unfair claims settlement practices defined";
- (b) WAC 284-30-350, captioned "misrepresentation of policy provisions";
- (c) WAC 284-30-360, captioned "failure to acknowledge pertinent communications";
- (d) WAC 284-30-370, captioned "standards for prompt investigation of claims";

(e) WAC 284-30-380, captioned "standards for prompt, fair and equitable settlements applicable to all insurers";

Appellant submits that AIA is incorrect as IFCA's remedies issued towards specific unfair trade practices are consistent with the legislative history specifically stating that first party insureds have a cause of action for violation of the above enumerated WAC provisions.

**6. Referendum Ballot Language Supports Voter Intent to Create a Cause of Action under IFCA for WAC Violations**

In the "Explanatory Statement" of the Referendum Measure 67 Voters' Pamphlet, under the subsection entitled "The effect of the proposed measure, if approved", it specifically and clearly states, in pertinent part:

"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."

See AIA Br. at Appendix E (Emphasis Added)

Nowhere in the Explanatory Statement does it inform Washington voters of any other explanation or effect such as AIA suggests. Nowhere in the entire Voters' Pamphlet is there any other clear explanation to the contrary. AIA attempts to pull out various portions of different sections of the Voters' Pamphlet, including the vaguely summarized ballot title, the fiscal impact statement, and statements for/against, and stitch them together

in hopes that this Court will disregard the clear explanation and effect to the voters.

**7. The WAC Regulations Implemented Within IFCA Are Minimum Unfair and Deceptive Practices and Standards Specifically Defined by our Washington State Insurance Commissioner**

AIA attempts to downplay some WAC regulations within IFCA as “administrative processes”. *See* AIA Br. at 4. It also describes some of these as “technical violations that do little or no harm to policyholders’ interests”. *Id.* at 17. To the contrary, the WAC regulations within IFCA were previously drafted and defined by the Washington State Insurance Commissioner, with notice and comment, as minimum unfair and deceptive standards applicable in the insurance industry. *See* Perez Br. at 16-18. While some of the WAC provisions within IFCA do provide time lines for insurance companies to act, for AIA to trivialize these duties owed to their own insureds on first party claims provides some insight into why stronger remedies on first party claims in IFCA may have been deemed necessary by our legislature.

One hypothetical from AIA included a violation of WAC 284-30-360(1), when an insurance company in a first party claim takes eleven (11) days instead of ten (10) days to acknowledge receipt of a claim. *See* AIA Br. at 6. It seems to imply that there will be no harm and describes this as

a technical violation that it cannot cure under IFCA, RCW 48.30.015(8) as they cannot go back in time. However, in first party claims traumatic and catastrophic covered losses can and often do result in loss of life, limb, loss of use of vehicles, property, etc. Insurance companies collect premiums from their insureds and are expected to be there to provide their insureds the covered benefits in a time of need. Whether the loss is catastrophic or less severe, such as when an insured is without a vehicle or home for a day or two because of a vehicle collision or house fire, while that day or two may seem technical to AIA, that extra day or two for its insured without a car or home because of delays by their insurance company can make a difference in not being able to take care of themselves, their family, get to work, and so forth.

There is good reason for the minimum unfair and deceptive insurance practices developed and defined by the Washington State Insurance Commissioner, including those that have been specifically selected and incorporated into IFCA. As noted previously, under IFCA, if a WAC violation is committed that does not result in damages, then its insured would not have standing to file suit against it under IFCA and any worries the insurance industry has in this regard are moot.

## II. CONCLUSION

IFCA, as evidenced by the legislative history, clearly shows that it was intended to provide a first party insured with an independent cause of action for a violation of one of the enumerated WAC violations in RCW 48.30.015(5). Unfortunately, the language of the statute does not clearly explain how the WAC violations remedies tie in with the remainder of the statute. Within statutory construction, the statute is to be read as a whole so that all language used is given effect.

AIA's position, and those of various federal court decisions, have provided a selective reading of IFCA that would leave first party claimants without a remedy for WAC violations and cause IFCA language in this regard to be rendered superfluous and meaningless. Through diversity jurisdiction, IFCA cases have been removed and severely restricted to the federal courts. AIA wishes to keep our Supreme Court from looking at the legislative history wherein the legislature and Washington State's citizens clearly intended approval of WAC violations to serve as a cause of action.

Appellant respectfully requests relief as outlined in his appeal brief.  
Respectfully submitted this 19<sup>th</sup> day of September, 2016.

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

**CERTIFICATE/DECLARATION OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of September, 2016, I caused to be served a true and correct copy of Appellant's Response to AIA's Brief, by the method(s) indicated below (if by mail, first class postage prepaid):

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Colleen Hackley  
Paralegal to Mark J. King IV

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**SUBSTITUTE SENATE BILL 5726**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Kline and Franklin)**

READ FIRST TIME 02/16/07.

1            AN ACT Relating to creating the insurance fair conduct act;  
2 amending RCW 48.30.010; adding a new section to chapter 48.30 RCW;  
3 creating new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** This act may be known and cited as the  
6 insurance fair conduct act.

7            NEW SECTION.    **Sec. 2.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9            (1) "Insurer" means any insurer as defined in RCW 48.01.050.

10           (2) "Commissioner" means the insurance commissioner of this state.

11           (3) "Insured" means any individual, company, insurer, association,  
12 organization, reciprocal or interinsurance exchange, partnership,  
13 business trust, corporation, or other entity that has purchased  
14 insurance, and including any first party claimant to a policy of  
15 insurance issued to any insured.

16           (4) "Insurance claim" means any request by an insured for coverage  
17 or benefits under a policy of insurance.

1       **Sec. 3.** RCW 48.30.010 and 1997 c 409 s 107 are each amended to  
2 read as follows:

3       (1) No person engaged in the business of insurance shall engage in  
4 unfair methods of competition or in unfair or deceptive acts or  
5 practices in the conduct of such business as such methods, acts, or  
6 practices are defined pursuant to subsection (2) of this section.

7       (2) In addition to such unfair methods and unfair or deceptive acts  
8 or practices as are expressly defined and prohibited by this code, the  
9 commissioner may from time to time by regulation promulgated pursuant  
10 to chapter 34.05 RCW, define other methods of competition and other  
11 acts and practices in the conduct of such business reasonably found by  
12 the commissioner to be unfair or deceptive after a review of all  
13 comments received during the notice and comment rule-making period.

14       (3) (a) In defining other methods of competition and other acts and  
15 practices in the conduct of such business to be unfair or deceptive,  
16 and after reviewing all comments and documents received during the  
17 notice and comment rule-making period, the commissioner shall identify  
18 his or her reasons for defining the method of competition or other act  
19 or practice in the conduct of insurance to be unfair or deceptive and  
20 shall include a statement outlining these reasons as part of the  
21 adopted rule.

22       (b) The commissioner shall include a detailed description of facts  
23 upon which he or she relied and of facts upon which he or she failed to  
24 rely, in defining the method of competition or other act or practice in  
25 the conduct of insurance to be unfair or deceptive, in the concise  
26 explanatory statement prepared under RCW 34.05.325(6).

27       (c) Upon appeal the superior court shall review the findings of  
28 fact upon which the regulation is based de novo on the record.

29       (4) No such regulation shall be made effective prior to the  
30 expiration of thirty days after the date of the order by which it is  
31 promulgated.

32       (5) If the commissioner has cause to believe that any person is  
33 violating any such regulation, the commissioner may order such person  
34 to cease and desist therefrom. The commissioner shall deliver such  
35 order to such person direct or mail it to the person by registered mail  
36 with return receipt requested. If the person violates the order after  
37 expiration of ten days after the cease and desist order has been

1 received by him or her, he or she may be fined by the commissioner a  
2 sum not to exceed two hundred and fifty dollars for each violation  
3 committed thereafter.

4 (6) If any such regulation is violated, the commissioner may take  
5 such other or additional action as is permitted under the insurance  
6 code for violation of a regulation.

7 (7) An insurer engaged in the business of insurance may not  
8 unreasonably or negligently deny a claim for coverage or payment of  
9 benefits to any insured.

10 NEW SECTION. Sec. 4. A new section is added to chapter 48.30 RCW  
11 to read as follows:

12 (1) Any insured or first party claimant to a policy of insurance  
13 who is unreasonably or negligently denied a claim for coverage or  
14 payment of benefits by an insurer may bring an action in the superior  
15 court of this state to recover the actual damages sustained, together  
16 with the costs of the action, including reasonable attorneys' fees and  
17 litigation costs, as set forth in subsection (3) of this section.

18 (2) The superior court may, after finding that an insurer has acted  
19 unreasonably or negligently in denying a claim for coverage or payment  
20 of benefits or has unreasonably or negligently violated the Washington  
21 Administrative Code, increase the total award of damages to an amount  
22 not to exceed three times the actual damages.

23 (3) The superior court shall, after a finding of unreasonable or  
24 negligent denial of a claim for coverage or payment of benefits, or  
25 after a finding of a violation of the Washington Administrative Code,  
26 award reasonable attorneys' fees and actual and statutory litigation  
27 costs, including expert witness fees, to the insured or first party  
28 claimant of an insurance contract who is the prevailing party in such  
29 an action.

30 (4) The remedies set forth in this chapter are separate from the  
31 remedies prescribed by RCW 19.86.090 of the consumer protection act.

--- END ---

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**Subject:**

Dear Clerk:

Attached for filing please find Appellant's Answer to American Insurance Association and Washington State Association of Justice Amicus Briefs (total of 29 pages).

Thank you for your assistance in this matter.

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