

WASHINGTON CASE UPDATE

No Independent Cause of Action for Regulation Violation under IFCA

case in point...

From the Desk of Kyle D. Riley: In 2007, the Washington legislature passed, and the voters ratified, the Insurance Fair Conduct Act (“IFCA”), giving insureds a new cause of action against insurers who unreasonably deny coverage or benefits. IFCA also requires courts to award attorney fees and authorizes courts to award treble damages if the insurer acts unreasonably or violates certain insurance regulations related to unfair practices. However, it has been unclear since IFCA’s adoption whether it also created a new and independent cause of action for violation of these regulations even without any unreasonable denial of coverage or benefits.

Claims Pointer: In this case arising out of the alleged denial of UIM benefits, the Washington Supreme Court held that IFCA did not create a separate cause of action for violation of insurance regulations. The case clarifies an important Washington law governing insurance companies, putting to rest an argument plaintiffs have long raised that merely violating an insurance regulation exposes an insurer to liability under IFCA.

Perez-Crisantos v. State Farm Fire and Casualty Company, No. 92267-5, Washington Supreme Court (February 2, 2017)

Isidro Perez-Crisantos (“Perez-Crisantos”) was injured in a car accident in November 2010, and he incurred more than \$50,000 in medical bills that he contended were the result of the accident. He had personal injury protection (“PIP”) and underinsured motorist (“UIM”) coverage from State Farm Fire and Casualty Company (“State Farm”). State Farm paid the PIP limits of \$10,000 in medical expenses and \$400 in lost wages. Because the other driver had liability limits of only \$25,000, Perez-Crisantos settled with him for his policy limits and made a UIM claim to State Farm for the remaining damages resulting from the accident. State Farm did not pay benefits under the UIM policy.

According to Perez-Crisantos, State Farm denied his UIM claim after its adjuster concluded that he was seeking benefits for excessive chiropractic treatment and an unrelated shoulder surgery. According to State Farm, however, it never denied UIM benefits; rather, it disagreed with Perez-Crisantos’s valuation of the claim. Perez-Santos sued on a variety of grounds, including allegations that State Farm had violated Washington’s

Insurance Fair Conduct Act (“IFCA”), several of IFCA’s implementing regulations, and the Consumer Protection Act (“CPA”). Most of the claims were stayed while the UIM claim was sent to arbitration, where the arbitrator found total damages to be \$51,000, which resulted in approximately \$24,000 in additional payments. The court then lifted the stay, and Perez-Crisantos amended his complaint to make it clear he was alleging an IFCA claim based on the violation of IFCA regulations relating to unfair settlement practices. Specifically, he alleged that State Farm forced him to litigate in order to get payments that were due to him and making what amounted to a “zero offer” to settle the claim.

Both parties moved for summary judgment. State Farm argued that there was no genuine dispute that it had acted reasonably and in good faith throughout the claims process, that Perez-Crisantos had not alleged a cognizable claim, and that the parties merely had a reasonable disagreement about the value of the claim. Perez-Crisantos argued that State Farm forced him to litigate his claims by offering substantially less than the amounts ultimately recovered in violation of the Washington Administrative Code. The trial judge concluded that there was no evidence State Farm’s actions were unreasonable,



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and the case was dismissed with prejudice. Perez-Crisantos sought direct review from the Washington Supreme Court.

The Court framed the issue before it as whether first party insureds can sue their insurance companies under IFCA for regulatory violations alone. IFCA permits claimants to sue their insurers when they are denied coverage or benefits. It also provides trial courts with discretion to award treble damages and directs trial courts to award attorney fees if the insurer is found to have acted unreasonably or violated listed insurance regulations. The Court pointed out, however, that it was not immediately clear what a finding of a regulatory violation would accomplish under the statute. The regulations largely direct insurance companies to act fairly and promptly. A violation of some of the regulations might therefore be actionable under IFCA, but a violation of other regulations would likely not be enough, on their own, to be actionable.

Because IFCA was ambiguous on this point (in fact, two federal courts interpreting IFCA reached opposite conclusions), the Court turned to other evidence to determine the intent of the statute. Notably, the ballot title that was in front of voters as they voted on IFCA did not suggest that IFCA created a private cause of action for regulatory violations. Instead, it merely suggested that IFCA created a cause of action for unreasonable denials of coverage and also permitted treble damages in some circumstances. Thus, the Court concluded that the legislative history suggested that IFCA did not create a cause of action for regulatory violations.

The Court also noted that it was unlikely the legislature would have intended to create a private cause of action for violation of only some of the specific regulations listed in the statute. For example, were the Court to conclude that violating regulations listed in IFCA was independently actionable, then an

insured could sue an insurance company for making a claim payment without a statement identifying the coverage under which the payment was made, for not responding until the 11th working day to communications from a claimant indicating that a response was expected, and for failing to notify a claimant that a claim had been accepted until the 16th working day, even if the insured was never denied coverage or benefits. Accordingly, the Court concluded that IFCA did not create an independent cause of action for regulatory violations. The Court also determined that the disparity in offer and arbitration result was not sufficient to create a material issue of fact concerning bad faith or Consumer Protection Act claims. Plaintiff's claims were properly dismissed on summary judgment.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/922675.pdf>

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