

# No Independent Cause of Action for Stand Alone Regulatory Violations of Washington's Insurance Fair Conduct Act

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Perez-Crisantos sustained injuries resulting in more than \$50,000 in medical bills. After settling with the underinsured motorist (UIM) and collecting \$10,000 in medical expenses and \$400 in lost wages under the PIP coverage from State Farm, his insurer, he sought additional funds from State Farm, claims which eventually went to arbitration. The arbitrator largely ruled in favor of Perez-Crisantos who then filed claims for bad faith, negligence, violation of Washington's Consumer Protection Act (CPA), and violation of IFCA. After a reduction for the sums already paid, there was a net UIM award of \$24,000. Perez-Crisantos's "IFCA claim [was] based on the violation of IFCA regulations relating to unfair settlement practices[.]" contending "that State Farm forced him to litigate in order to get payments that were due to him." The trial court granted State Farm's motion for summary judgment after concluding there was no "scintilla of evidence" that State Farm's actions were "unreasonable and there must have been some ulterior motive" for them, such as "some sort of incentive program to 'lowball claims.'" On direct appeal to the Supreme Court of Washington, the court affirmed.

*Perez-Crisantos v. State Farm Fire and Casualty Company*

The Court first considered the parameters of the IFCA cause of action. For many years insureds had been able to sue insurers for violations of "certain insurance regulations in a CPA or bad faith action." However, the *Perez-Crisantos* case presented the question "whether first party insureds can also sue their insurance companies under IFCA for regulatory violations."

The Washington federal courts were split on the issue of whether private causes of action included regulatory violations. Because IFCA was ambiguous, the courts had to look to extrinsic evidence to determine the legislative intent. Some courts had looked to the voters' guide regarding the initiative and also pattern jury instruction, neither of which the Washington Supreme Court found persuasive. After reviewing several arguments for and against recognition of an independent cause of action for regulatory violations, the majority concluded "IFCA does not create an independent cause of action for regulatory violations."

The Court also concluded there were no disputed material facts preventing entering summary judgment in State Farm's favor. In support of its holding, the Court noted that there had to be something more than a "[d]isparity between an offer and an arbitration award" to establish a statutory violation. Furthermore, the fact that State Farm paid PIP benefits while rejecting some of the UIM claim did not create a material question of fact.

Regarding the CPA claim, the insured had to prove five distinct elements in order to prevail: "(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation." The Court agreed that the insured's CPA claim failed because Perez-Crisantos did not "present a genuine issue of fact that [State Farm] violated [statutory] provision." The Court also rejected the argument that the summary judgment was premature, because Perez-Crisantos failed to preserve the issue.

The *Perez-Crisantos* case makes clear that in order to prevail on a first party IFCA claim in Washington, there is no independent cause of action for regulatory violations *unless* there was also evidence of *an unreasonable denial of coverage or benefits*.