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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 PATRICIA POTTER and WILLIAM H.  
8 POTTER,

9 Plaintiffs,

10 v.

11 AMERICAN FAMILY INSURANCE,

12 Defendant.

CASE NO. C16-5406BHS

ORDER DENYING PLAINTIFFS'  
MOTION TO CERTIFY  
QUESTION TO SUPREME  
COURT OF WASHINGTON

13  
14 This matter comes before the Court on Plaintiffs Patricia and William Potter's  
15 ("Potters") motion to certify question to the Supreme Court of Washington (Dkt. 23). The  
16 Court has considered the pleadings filed in support of and in opposition to the motion and  
17 the remainder of the file and hereby denies the motion for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On May 26, 2016, the Potters filed a complaint against Defendant American  
20 Family Insurance ("American Family") asserting ten causes of action including bad faith  
21 insurance practices and violations of Washington's Insurance Fair Conduct Act ("IFCA")  
22 and Consumer Protection Act ("CPA"). Dkt. 1.

1 On October 27, 2016, American Family moved for summary judgment on  
2 damages. Dkt. 14. On December 20, 2016, the Court denied the motion, but recognized  
3 that some issues in this case may be certified to the Supreme Court of Washington. Dkt.  
4 19.

5 On January 13, 2017, the Potters filed the instant motion. Dkt. 23. On January 30,  
6 2017, American Family responded, Dkt. 27, and, the next day, it filed a corrected brief,  
7 Dkt. 29. On February 2, 2017, the Potters replied. Dkt. 30. On February 2, 2017, the  
8 Potters replied and filed a copy of *Perez-Crisantos v. State Farm Fire & Cas. Co.*,  
9 92267-5, 2017 WL 448991 (Wash. Feb. 2, 2017). On February 7, 2017, the Potters filed  
10 a supplemental brief. Dkt. 32.

## 11 **II. FACTUAL BACKGROUND**

12 This case stems from Mrs. Potter's insurance claim. American Family issued the  
13 Potters an automobile insurance policy with coverage for underinsured motorists. Dkt.  
14 17, Declaration of Sok-Khieng Lim, ¶ 3. On June 1, 2014, an uninsured motorist struck  
15 Mrs. Potter's car inflicting a severe head injury. *Id.*, ¶ 2.

16 On June 15, 2015, the Potters sent American Family a policy limit demand of  
17 \$100,000. *Id.*, ¶ 4. On August 31, 2015, American Family counter offered a lower  
18 amount, and the Potters initiated arbitration. *Id.*, ¶¶ 5, 6. On February 29, 2016, the  
19 arbitrator awarded the Potters \$130,259.41. *Id.*, ¶ 10. American Family issued a check to  
20 the Potters for the policy limit of \$100,000. *Id.* This suit followed.

1 **III. DISCUSSION**

2 Under the Washington statutes, a federal court may certify certain questions to the  
3 Supreme Court of Washington as follows:

4 When in the opinion of any federal court before whom a proceeding  
5 is pending, it is necessary to ascertain the local law of this state in order to  
6 dispose of such proceeding and the local law has not been clearly  
7 determined, such federal court may certify to the supreme court for answer  
8 the question of local law involved and the supreme court shall render its  
9 opinion in answer thereto.

10 RCW 2.60.020.

11 In this case, the Potters have failed to show that the resolution of actual damages  
12 under the IFCA is necessary to “dispose” of this proceeding. In *Bauman v. Am.*  
13 *Commerce Ins. Co.*, C15-1909 BJR (W.D. Wash. Feb. 14, 2017), the court recognized  
14 that Washington courts have differed on the interpretation of “actual damages” under the  
15 IFCA, but resolution of these differing opinions would not dispose of the proceeding.  
16 The court concluded that “[d]amages are, by definition, dependent on a finding of  
17 liability and hence not dispositive of a proceeding.” *Id.* at 2. The Potters’ case is similar  
18 to *Bauman* in that unanswered questions exist, but it is unclear whether answers to these  
19 questions would dispose of the proceeding as opposed to merely providing additional  
20 guidance on one aspect of the proceeding. Accordingly, the Court denies the motion to  
21 certify at this time.

22 American Family argues the merits of the Potters’ IFCA claim asserting that it is  
subject to dismissal. The Court agrees with American Family “that IFCA does not create  
an independent cause of action for regulatory violations.” *Perez-Crisantos*, 2017 WL

1 448991, at \*7. It seems, however, that American Family is incorrect in asserting that “[i]t  
2 is well established that IFCA claims require a denial of coverage.” Dkt. 29-1 at 13. For  
3 example, the IFCA authorizes causes of action for “[a]ny first party claimant to a policy  
4 of insurance who is unreasonably denied a claim for coverage *or payment of benefits* by  
5 an insurer . . . .” RCW 48.30.015 (emphasis added). American Family appears to ignore  
6 the latter part of the disjunctive phrase in the operative statute. The Court expects the  
7 parties to address this issue in a properly filed dispositive motion. Moreover, the Court  
8 also expects the parties to address the Potters’ actual damages for American Family’s  
9 alleged IFCA violation. While the Court held that the Potters were not limited to the  
10 arbitration award, Dkt. 19 at 5, the Court and the parties can avoid problems during trial  
11 if the type, category, and/or amount of actual damages are known well in advance of trial.

#### 12 **IV. ORDER**

13 Therefore, it is hereby **ORDERED** that the Potters’ motion to certify question to  
14 the Supreme Court of Washington (Dkt. 23) is **DENIED**.

15 Dated this 28th day of February, 2017.

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18 **BENJAMIN H. SETTLE**  
United States District Judge