

THE HONORABLE JUDGE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DARLENE GONZALES,

Plaintiff,

vs.

SAFECO INSURANCE COMPANY OF  
AMERICA, a foreign company,

Defendant.

NO. 2:24-cv-01832-RAJ

PLAINTIFF DARLENE GONZALES’  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

NOTE ON MOTION CALENDAR:  
APRIL 28, 2026

ORAL ARGUMENT REQUESTED

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

[RCW 48.01.030.](#)

**I. INTRODUCTION & RELIEF REQUESTED.**

Plaintiff Darlene Mendoza Gonzales (hereinafter “Plaintiff” or “Ms. Mendoza Gonzales”) respectfully seeks partial summary judgment on three discrete aspects of this insurance bad faith case.

**The April 2024 Lowballing.** While Plaintiff believes there was pervasive bad faith claim handling on the part of the Defendant, Safeco Insurance Company of America (“Safeco”), the bad faith “lowballing” by Safeco that took place in April of 2024 is sufficiently detailed in the record (including through the testimony of Safeco’s claim handler, John Windmueller) that it is not

1 subject to any reasonable question of fact. Therefore, partial summary judgment on liability (*i.e.*  
2 duty and breach) should be entered in favor of Plaintiff on that portion of the claim handling; that  
3 is, given the lack of any relevant questions of fact, the Court can find that Safeco committed  
4 lowballing in April 2024 and that this fell below the proper standard for claim handling.

5 **The Overlap Issue.** Because Plaintiff suffered two consecutive, insured water losses, in  
6 September 2023 and January 2024, respectively, Safeco took the position that it could deduct from  
7 payments on the second loss an amount based on the alleged overlap between the damages in the  
8 two losses. Summary judgment should be entered in favor of Plaintiff on that issue for two reasons.  
9 First, Safeco adjuster John Windmueller admitted in the claim log that such an overlap deduction  
10 constituted a partial denial of coverage; yet neither he nor anyone else at Safeco issued either a  
11 reservation of rights (“ROR”) letter or a partial denial of coverage letter on this overlap issue. This  
12 constituted a violation of Washington Administrative Code (“WAC”) §§ 284-30-330(13) and 284-  
13 30-380(1)—and critically harmed Plaintiff’s ability to evaluate the factual and legal grounds for  
14 the partial denial. Second, while such a deduction might make sense as a theoretical matter, there  
15 is no support in the governing insurance policy for such a deduction—which may explain the lack  
16 of written notice, as a denial of coverage under § 284-30-330(13) must “provide a reasonable  
17 explanation of the basis in the insurance policy.”<sup>1</sup>

18 **The Counterclaim by Safeco.** Safeco has asserted a counterclaim based on the fraud or  
19 concealment provision in the policy. Safeco contends that: “Plaintiff’s representative made claim  
20 for property that had been damaged in a prior loss but not repaired.” ECF No. 9, at p. 9, ¶ 3. Partial  
21 summary judgment should also be entered disposing of this claim for the following reasons: (1)  
22 the fraud or concealment provision in the insurance policy expressly requires a showing of  
23 *intentional* conduct and there is no evidence to support such a finding; (2) in fact, there is no  
24 evidence of any false statement at all by the Plaintiff or the Public Adjuster (“PA” or “Pacific  
25

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26 <sup>1</sup> In addition, as a factual matter to be resolved at trial, it appears that adjuster Windmueller made excessive use of any alleged overlap.

1 Public Adjusters” or “PPA”); at most, there was a good faith dispute between Safeco and the PA  
2 about the scope and dollar amount of the second loss and the propriety of any overlap at all; and  
3 (3) the fraud or concealment provision drafted by Safeco explicitly requires that any such  
4 misconduct be committed by “you or an insured,” with a very specific definition for “you” and an  
5 equally specific definition of “insured,” yet neither definition refers to a PA or other representative  
6 of the insured; here, if any miscommunication occurred, it was by the PA, not Ms. Mendoza  
7 Gonzales; therefore, even accepting *arguendo* that there is some question of fact regarding the  
8 communications between the PA and Safeco, Plaintiff cannot be held responsible.

## 9 **II. STATEMENT OF FACTS.**

### 10 **A. The First Loss.**

11 Plaintiff is a single mother who lived in her Tacoma home (the “Home”) with her three  
12 children. Declaration of Darlene Mendoza Gonzales (“DMG Decl.”) at ¶¶ 2-3. On September 3,  
13 2023, a hot water pipe burst in the crawlspace under her Home (the “First Loss”). *Id.* at ¶ 4.

14 She reported the loss to Safeco, the insurer for her Home. Initially, Safeco significantly  
15 “lowballed” the cost to repair the Home, estimating only \$22,237.16. *Id.* at ¶¶ 2, 5. Eventually  
16 Safeco relented, agreeing to increase its repair estimate from \$22,237.16 to \$88,609.10 (an  
17 approximate four-fold increase); but this happened only after Safeco received two detailed  
18 demands from Plaintiff. *See* Declaration of Michael N. Poli (“Poli Decl.”), **Exhs. 1-4.**

### 19 **B. The Second Loss.**

20 On January 24, 2024, when repairs on the First Loss were finally ready to begin, there was  
21 a historic cold snap in Washington. As a result of the freeze event (to quote the Safeco claim log):  
22 “Multiple pipe bursts occurred throughout dwelling. The two visible breaks are in the upstairs  
23 Master bathroom and the garage.” Poli Decl., **Ex. 5**, claim log, at SAFECO\_003120 (the “Second  
24 Loss”).

25 Safeco issued a belated ROR letter on February 22, 2024, and did not extend coverage until  
26 February 29, after receiving utility records confirming that heat was maintained in the Home. *Id.*

1 at SAFECO\_003115; 3118; 3124.

2 However, after Safeco finally extended coverage on the Second Loss, it engaged in severe  
3 lowballing on that claim as well. The April 2024 lowballing is shown by two documents, both  
4 dated 4/12/24. First, Mr. Windmueller undertook a “Tech [Technical] Review” with his manager,  
5 where they set a reserve for the dwelling repair at \$238,249.38; also, per this Tech Review, Mr.  
6 Windmueller was given authority to pay up to that amount for the dwelling repair. Poli Decl., **Ex.**  
7 **6**; *see also* Poli Decl., **Ex. 10**, at pg. 36 (Windmueller testified that the \$238,249.38 number was  
8 “the projection on the dwelling repair”).<sup>2</sup>

9 Second, on the same day, Mr. Windmueller prepared an estimate for the repair, with a  
10 supposed good faith repair figure of just \$66,791.42. Poli Decl., **Ex. 7**, at SAFECO\_001408. A  
11 few days later, Mr. Windmueller increased his supposed good faith estimate just slightly, to  
12 \$68,577.76, *see* Poli Decl., **Ex. 8**, at SAFECO\_002252, and this estimate was then sent to the  
13 insured, via her PA, also on 4/15/24. Poli Decl., **Ex. 9**.

14 In addition to the above-referenced documents, the record on the April 2024 lowballing  
15 was recently fleshed out in detail through the deposition testimony of Mr. Windmueller. As set  
16 forth in his testimony:

- 17 ▪ Mr. Windmueller agreed that lowballing in the context of insurance claim handling is  
18 where a carrier tries to pay less than what is reasonably owed on a claim, and he further  
agreed that this “wouldn’t be proper handling of the claim.” Poli Decl., **Ex. 10**, at p. 23.
- 19 ▪ In his “Tech Review” with his manager, Windmueller and the manager projected the  
20 dwelling repair on the Plaintiff’s home at \$238,249.38. *Id.* at p. 36 (“Q. That’s the  
***projection on the dwelling repair***, as part of his tech review; **have I got that right? A.**  
21 **Yes.**”) (emphasis added).
- 22 ▪ When Windmueller sets reserves for a claim, they are set “based on the particular facts of  
23 each particular claim” and “we don’t want to under reserve,” but they also “don’t really  
want to over reserve too much.” *Id.* at p. 40.
- 24 ▪ The reserve here was not set based on some sort of general algorithm, but, rather, was set  
as a projection or a “best guess as to where things could go.” *Id.*

25 <sup>2</sup> References to page numbers are to the handwritten page numbers added to the rough  
26 version of the transcript. The Windmueller deposition was just recently taken, and the official  
transcript will be filed as soon as it is received.

- 1     ▪     On the very same day that Mr. Windmueller and his manager set the reserve for the  
2     dwelling repair at \$238,249.38, Mr. Windmueller prepared an “estimate” for the dwelling  
3     repair to be sent to the Public Adjuster, in the amount of \$65,776.11. *Id.* at p. 38. This was  
4     barely ¼ of the amount that Mr. Windmueller had just reserved for the dwelling repair.
  - 5     ▪     Windmueller “never told the PA or the insured that, hey, we just set a reserve that’s 3.6  
6     times higher, for the same loss on the same date,” and he would not disclose this because  
7     the reserve is “internal business. So, no, you wouldn’t tell them what – you know what the  
8     reserves are, no.” *Id.* at pp. 38-39.
  - 9     ▪     Despite admitting to an obligation to be “candid and transparent” with the insured, when  
10    asked whether setting “a reserve that’s 3.6 times greater than what you tell them [the  
11    insured] is the good faith estimate” is something that should be disclosed to the insured,  
12    Mr. Windmueller testified, “I wouldn’t disclose any financial reports to the insureds.” *Id.*  
13    at 39.
  - 14    ▪     Mr. Windmueller took the position that there was no need to disclose a reserve that was  
15    much higher than the estimate because it was “not pertinent to my estimate or the repair  
16    cost.” *Id.* at pp. 73-74.
  - 17    ▪     Once the reserve was set, Windmueller had the actual authority to pay up to \$238,249.38  
18    for the dwelling loss repair. *Id.* at pp. 47-48.
  - 19    ▪     Mr. Windmueller testified that it was the job of an adjuster to “[r]ead the policy and apply  
20    the policy to the loss, based on the policy language.” *Id.* at p. 30.
  - 21    ▪     He was unable to identify any language in the insurance policy that permitted Safeco to  
22    unilaterally withhold payment on the basis of an alleged overlap in damages between two  
23    distinct claims:
    - 24           Q.     Well, anyway, this is a [policy] form that you’ve reviewed many, many  
25                 times in your thousands of claims, right?
    - 26           A.     Yes. I’ve looked through different policies, yeah, yeah.
    - Q.     Have you ever seen anything in this policy form, that addresses an overlap  
                  issue between two distinct claims?
    - A.     I’m not sure if there’s wording for that in the policy.
- Id.* at p. 25 (objection omitted). In fact, he testified that there was nothing in the policy that would give him guidance on how to adjust an alleged “overlap” situation:
- Q.     Does this policy give any guidance to an adjuster, on how to handle an  
                  overlap issue between two distinct claims, yes or no? [Objection omitted]
  - A.     It doesn’t tell you how to handle it, no.
- Id.* at p. 29; *see also id.* at pp. 30-31.

- 1     ▪     He acknowledged that the two separate losses and claims here each had a separate deductible, as well as new coverage limits. *Id.* at pp. 27-28.
- 2     ▪     He also admitted that the PA “cooperated with [his] attempt to investigate the loss, including the overlap issue.” *Id.* at pp. 62-63.

3  
4     Notably, **after** the deposition of Mr. Windmueller and in response to a demand, counsel  
5 for Safeco produced a less redacted version of the claim log, which further reinforces the April  
6 2024 lowballing by Mr. Windmueller. In that less-redacted claim log, in a 3/18/24 log note  
7 detailing how he analyzed the alleged overlap, Windmueller then set the reserve for the dwelling  
8 loss at \$300,000, again, far above his payment of approximately \$65,000. Poli Decl., **Ex. 11**,  
9 SAFECO\_3113-3114. *See also* Poli Decl., **Ex. 9**, reflecting the \$68,577.76 repair estimate, which,  
10 after various deductions, turned into a payment of approximately \$65,000 to the insured.

11     It is relatively rare in a bad faith lowballing case to have a proverbial “smoking gun” from  
12 the insurer’s own claim file. During the discovery phase of this case, Safeco refused to produce  
13 documents relating to reserves, but it produced the “Tech Review” – leading to a reasonable  
14 inference that this document was produced by accident. But the fact remains, the Tech Review was  
15 indeed produced, it is highly relevant to the bad faith lowballing in April of 2024, and, when  
16 combined with the highly damaging testimony of Mr. Windmueller, provides a basis for entering  
17 summary judgment against Safeco and in favor of Plaintiff on the liability portion of the April  
18 2024 lowballing claim. The following chart, first prepared by Mr. Windmueller and then copied  
19 and pasted in the response email by his manager, concluded that the **actual exposure** for the repair

of the Home was \$238,249.38:

DWELLING EXPOSURE	
\$ 228,249.38	DW Base Covered Damages
\$ -	DW Debris Removal Damages - over base limit
\$ 10,000.00	Ordinance & Law/Code Damages
\$ -	Fixed Limits Coverage(s) Damages
\$ -	TSP Damage
\$ -	TSP Debris Removal Damage
<b>\$ 238,249.38</b>	<b>Total Dwelling Exposure Authority Requested</b>
OTHER STRUCTURE EXPOSURE	
\$ -	OS Base Covered Damages
\$ -	OS Debris Removal Coverage - over base limit
\$ -	<b>Total OS Exposure Authority Requested</b>
MOLD EXPOSURE	
N/A	Mold Is Included with Base Coverage
\$ 238,249.38	<b>Total of DW, OS and Mold Exposures</b>

Poli Decl., **Ex. 6**. Significantly, this was not only a reserve for the dwelling repair exposure, it was also an actual authorization for Mr. Windmueller to pay up to that amount for the dwelling repair. *See id.* at p. 4 (**Total Dwelling Exposure Authority Requested**) (bold emphasis in original) and p. 1 (note by manager, “I will note the file with the authority”).

Obviously, this internal assessment by Safeco was a far cry from the actual estimate and payment that Safeco provided to the Plaintiff. Safeco paid approximately \$65,000 – only twenty-seven percent (27%) of its reserve for the dwelling repair, which was more than 3.6 times higher, and if we consider Mr. Windmueller’s earlier \$300,000 dwelling reserve, *see* Poli Decl., **Ex. 11**, at SAFECO\_3113-3114, the disparity is even greater.

While damages will be for the jury to evaluate, the result of the April 2024 lowballing is that Plaintiff never received enough money to repair her Home, meaning she and her family have now been displaced from the Home for two and one-half years (from September of 2023). Also, because Plaintiff did not have sufficient funds to make both her mortgage payment and her rent payment for substitute housing, the Home is now on the verge of foreclosure. DMG Decl., at ¶¶ 29-36.

1 **C. Factual and Procedural Background on the Overlap Issue.**

2 The Second Loss was distinct in time, cause, and scope from the First Loss. Unlike the  
3 First Loss, which occurred in the crawlspace under the Home, the Second Loss occurred in the  
4 garage and the second-floor master bedroom and led to much more substantial damage – affecting  
5 the electrical system, impacting ceilings, and damaging the walls as standing water filled the  
6 Home. Poli Decl., Ex. 15, claim file excerpts, SAFECO\_3100; 3115; 3120. The first inspection of  
7 the Second Loss by Safeco (before the re-inspection by Mr. Windmueller) revealed that on the  
8 second floor, the “[p]ipe burst under vanity [in the master bathroom] and caused water damage  
9 throughout upper floor.” *Id.* Similarly, when a Safeco water mitigation unit expert later inspected  
10 the Home, he found: “This claim is Large Loss, and *the damage the home took on was extremely*  
11 *extensive*. All file notes, moisture readings, photos, and other supporting documentation show that  
12 the level of mitigation performed was necessary, and that all demo was needed based on materials  
13 being wet/taking on secondary damages. Compared photos and invoice for this claim to previous  
14 claim for the home, *no building material tear out overlaps were found.*” Poli Decl., Ex. 5. at  
15 SAFECO\_3111-12 (emphasis added).

16 Notably, in the less redacted claim log produced by Safeco *after* Mr. Windmueller’s  
17 deposition, in an entry where the redaction was removed, Mr. Windmueller states: “*The Following*  
18 *Partial Denial Applies: Damage and mitigation from the prior claim is not covered under this*  
19 *claim event.*” Poli Decl., Ex. 11 at SAFECO\_3107 (emphasis added).<sup>3</sup>

20 Mr. Windmueller also admitted that, consistent with the internal partial denial, he would  
21 not pay on any items that he viewed as “overlapping”:

22 \_\_\_\_\_  
23 <sup>3</sup> Mr. Windmueller defined the “overlap” issue as “items that were on the prior claim that  
24 were being addressed on the repair estimate, from the contractor or the public adjuster, and what I  
25 had on—you, what damages were additional on the 2nd claim, then, yes, the overlap between the  
26 two claims, what are the similar items that are handled on both, basically.” Poli Decl., Ex. 10, at  
19.

1 Q. When you did an estimate for the second claim, you did not include in that estimate  
any damages that you thought were covered in the first claim; have I got that right?

2 A. I left—yes, I did not pay for repairs that we’d already paid for on the prior claim.

3 Poli Decl., **Ex. 10**, at p. 20 (objection omitted).

4 Given this admission by Mr. Windmueller in the claim log that the overlap issue constituted  
5 a partial denial of coverage, the Washington Administrative Code is clear; namely, there should  
6 have been a letter issued to the insured providing a “reasonable explanation of the basis *in the*  
7 *insurance policy* in relation to the facts or applicable law for denial of a claim.” WASH. ADMIN.  
8 CODE § 284-30-330(13) (emphasis added).

9 This would, of course, have been a difficult letter to draft since the Safeco insurance policy  
10 is silent on any type of overlap situation, and there is no policy language allowing the carrier to  
11 take a deduction based on an alleged overlap between two distinct loss events. *See generally* Poli  
12 Decl., **Ex. 13**, insurance policy (the “Policy”). Possibly, it was for this reason that neither Mr.  
13 Windmueller nor anyone else at Safeco issued a partial denial of coverage based on the alleged  
14 overlap. Regardless, however, the fact remains that no partial denial of coverage was ever issued  
15 to the insured on the alleged overlap of damages. Taylor Babb Declaration (“Babb Decl.”), at ¶  
16 23. In addition to WAC § 284-30-330(13), referenced above, WAC § 284-30-380 addresses first-  
17 party claims like this one, and it provides detailed guidance on coverage denials:

18 The insurer must not deny a claim on the grounds of a specific policy  
19 provision, condition, or exclusion unless reference to the specific  
20 provision, condition, or exclusion is included in the denial. *The*  
*denial must be given to the claimant in writing* and the claim file  
of the insurer must contain a copy of the denial.

21 WAC § 284-30-380(1) (emphasis added).

22 It is worth noting that when Safeco wants to issue a partial denial of coverage, it certainly  
23 knows how to do so. In this regard, in the First Loss, the Policy provides coverage for so-called  
24 ensuing damages, but not for the repair of the pipe or plumbing fixture itself. *See* Poli Decl., **Ex.**  
25 **13**, GONZALES\_000030, exclusion 6. Therefore, in the First Loss, Safeco made certain to issue  
26 a partial denial of coverage addressing this issue. Poli Decl., **Ex. 14**.

1 **D. Relevant Undisputed Facts re the Counterclaim.**

2 Despite its lowballing and the related failure to disclose the true reserve, Safeco seeks to  
 3 muddy the waters by claiming that the Plaintiff's PA violated the "fraud and concealment"  
 4 provision of the Policy. In reality, the alleged "concealment" was simply the PA's disagreement  
 5 with Safeco's "overlap" theory; certainly, in the Counterclaim, Safeco does not claim any actual  
 6 misrepresentation or confusion about Plaintiff's position. *See generally* ECF No. 9. In any event,  
 7 **nothing** in Safeco's policy permits it to claim "fraud or concealment" based on statements by a  
 8 PA.

9 Safeco's policy provides in relevant part that:

10 **Concealment or Fraud....** We may void this policy or deny  
 11 coverage for a loss or **occurrence** if you or an **insured** have  
 12 intentionally concealed or misrepresented any material fact or  
 circumstance, or engaged in fraudulent conduct, in connection with  
 the presentation or settlement of a claim.

13 Poli Decl., Ex. 13 (Policy), at GONZALES\_000050 (emphasis in original). "Insured" is a defined  
 14 term in the Policy:

15 "Insured" means:

- 16 (1) you; and  
 17 (2) so long as you remain a resident of the **residence**  
**premises**, the following residents of the **residence**  
**premises:**  
 18 (a) your relatives;  
 19 (b) any other person under the age of 24 who is  
 in the care of any person described in (1) or  
 (2)(a) above....

20 *Id.* at GONZALES\_000053. Similarly, there is a very specific definition of "you" in the Policy.

21 *Id.* at GONZALES\_000052. Neither of these definitions give any hint that they would cover  
 22 alleged misconduct by a "public adjuster" or other representative of the insured.

23 But even if the foregoing clause applied to the PA, they still did not misrepresent or conceal  
 24 anything. Plaintiff hired the PA in January of 2024, after the Second Loss occurred. Babb Decl.,  
 25 at ¶ 3. Plaintiff's PA never conducted any assessment of the Home with respect to the First Loss,  
 26 and only knew its condition following the Second Loss. *Id.* at ¶¶ 5-7.

1 During an inspection with the PA and Mr. Windmueller, in March of 2024, Mr.  
2 Windmueller brought up the concept that some damages from the Second Loss may have been  
3 compensated as part of the First Loss, but the repairs were not completed; the PA disagreed with  
4 this position. *Id.* at ¶¶ 8-10. This was the first that the PA had heard of the overlap, and Safeco was  
5 the entity with knowledge about the First Loss repairs and reimbursements. *Id.* at ¶¶ 5-7.

6 Mr. Windmueller admitted that his process of figuring out the supposed “overlap” was very  
7 complicated:

8 Q. So in your own log note, you candidly disclose to your team that the overlap  
9 analysis is, as you say, is going to be difficult because of the lack of enough  
10 documentation from the first water loss, that’s what you candidly disclosed in your  
11 log note, correct? [objection omitted]

12 A. Yes. That’s what I said, *it was difficult and time consuming to figure out the*  
13 *different damages.*

14 Poli Decl., Ex. 10, at pp. 70-71 (emphasis added). In fact, Mr. Windmueller testified that the PA  
15 provided information in this regard and was helpful to his overlap analysis:

16 Q. And so the point is they never impeded your investigation. They just told you they  
17 couldn’t help you because they weren’t involved on the previous, the first water  
18 loss, that’s what happened here, right?

19 A. No. They actually gave me the iGuide from February so at least I could see, you  
20 know, some additional—that was additional information they provided....

21 Q. So as far as you can recall, the PA cooperated with your attempt to investigate the  
22 loss, including the overlap issue, correct?

23 A. I mean, they did. Yeah, they gave me what they could.

24 *Id.* at p. 63.

25 What little overlap analysis that the PA did receive from Mr. Windmueller was completely  
26 unhelpful for the PA to evaluate the basis for Windmueller’s alleged overlap analysis. Exhibit 12  
to Mr. Windmueller’s deposition was a “list” he created with respect to one contractor’s repairs  
from the First Loss, Runland Painting and Renovation. *See* Poli. Decl., Ex. 10 and Poli Decl., Ex.  
12.

1 With respect to the overlap issue, the PA never received any coverage denial or ROR letter  
2 from Safeco. Babb Decl., at ¶ 23.

3 Over the summer of 2024, following back-and-forth between the PA and Safeco, the PA  
4 did not uncover any information or evidence that undercut its estimate. Thus, in a September 17,  
5 2024, email, the PA advised Safeco: “We disagree that major revisions are necessary to our  
6 estimate. As we mentioned in that conversation, we did review the estimate in comparison to the  
7 previous claim. However, we believe that your estimate significantly underpays and does not fully  
8 indemnify our client.” Poli Decl., **Ex. 16**. In short, despite the lack of any formal notice of the  
9 partial denial by Safeco as to the overlap issue, the PA firm was always upfront and candid about  
10 their evaluation of the evidence. A disagreement does not constitute fraud.

11 Indeed, when asked whether either the PA or the insured did anything to mislead him or  
12 whether they engaged in dishonesty or lack of candor with respect to *either* the First Loss or  
13 Second Loss, Mr. Windmueller commented that he never spoke to the insured, and he could point  
14 to nothing that the PA did that was reflective of dishonesty or lack of candor. Poli Decl., **Ex. 10**,  
15 at pp. 60-61, 63.

### 16 **III. SUMMARY JUDGMENT STANDARD**

17 The interpretation of an insurance policy is a question of law, and as such, this Court “must  
18 make its own independent determination of the meaning of the relevant contract language.”  
19 *Universal Cable Prods., LLC v. Atl. Specialty Ins. Co.*, [929 F.3d 1143, 1151](#) (9th Cir. 2019)  
20 (quoting *Conestoga Servs. Corp. v. Exec. Risk Indem.*, [312 F.3d 976, 981](#) (9th Cir. 2002)). “The  
21 burden is on the insured to establish that the claim is within the basic scope of coverage and on the  
22 insurer to establish that the claim is specifically excluded.” *Id.* (quotation omitted); *see also State*  
23 *Farm Fire & Cas. Co. v. Ham & Rye, L.L.C.*, [142 Wash. App. 6, 13, ¶ 14](#) (2007) (same under  
24 Washington law).

25 Exclusions from insurance coverage are contrary to the fundamental  
26 protective purpose of insurance and we will not extend them beyond

1 their clear and unequivocal meaning. In the same vein, we construe  
2 exclusions against the insurer.

3 *Ham & Rye*, [142 Wash. App. at 13, ¶ 14](#).

4 The Court must enter summary judgment against a party who fails to make a showing  
5 sufficient to establish the existence of an element essential to that party's case, and on which that  
6 party will bear the burden of proof at trial. *Sagdai v. Travelers Home & Marine Ins. Co.*, [639 F.  
7 Supp. 3d 1091, 1100](#) (W.D. Wash. 2022) (quotation omitted). “Once the moving party has carried  
8 its burden under Rule 56(c), the nonmoving party must come forward with ‘specific facts showing  
9 that there is a genuine issue for trial.’” *Id.* (quotation omitted).

#### 10 **IV. ARGUMENT.**

11 **1. Safeco breached its duties to Ms. Mendoza Gonzales by waiting three months after  
12 the Second Loss to send out a supposed good faith repair estimate that was only 27%  
13 of Safeco’s own internal estimate of the repair cost.**

14 Ms. Mendoza Gonzales and her family have not lived in their Home since November of  
15 2023. The Second Loss occurred in January of 2024. As noted above, the damage from the Second  
16 Loss was extensive and extended to more areas of the Home than the First Loss.

17 Nonetheless, it took Safeco three months—then six months after the Plaintiff and her  
18 family had moved out of their Home following the First Loss—for Safeco to send out a repair  
19 estimate, which was only 27% of Safeco’s own internal estimate of the repair cost. Safeco had set  
20 a reserve of \$300,000 on the matter, and it later came up with a repair estimate of \$238,249.38.  
21 Yet it paid Ms. Mendoza Gonzales only about \$65,000 to repair her Home.

22 “[A]n insurer has a duty of good faith to its policyholder and violation of that duty may  
23 give rise to a tort action for bad faith.” *Smith v. Safeco Ins. Co.*, [150 Wash. 2d 478, 484](#) (2003).  
24 “To succeed on a bad faith claim, the policyholder must show the insurer's breach of the insurance  
25 contract was unreasonable, frivolous, or unfounded.” *Id.* With respect to first party claims,  
26 Washington statutes provide that:

Any first party claimant to a policy of insurance who is unreasonably  
denied a claim for coverage or payment of benefits by an insurer

1 may bring an action in the superior court of this state to recover the  
2 actual damages sustained, together with the costs of the action,  
including reasonable attorneys' fees and litigation costs, as set forth  
in subsection (3) of this section.

3 WASH. REV. CODE § 48.30.015(1). The Washington Administrative Code has expressly codified  
4 this provision with respect to unreasonably low offers, stating that “unfair methods of competition  
5 and unfair or deceptive acts or practices of the insurer” including “[c]ompelling a first party  
6 claimant to initiate or submit to litigation, arbitration, or appraisal to recover amounts due under  
7 an insurance policy by offering substantially less than the amounts ultimately recovered in such  
8 actions or proceedings.” WASH. ADMIN. CODE 284-30-330(7). “[A] breach of these regulations  
9 also constitutes a per se unfair trade practice violation and insureds may bring a private action  
10 against their insurers for breach of duty of good faith under the [Consumer Protection Act] based  
11 on such breaches.” *Am. Manufacturers Mut. Ins. Co. v. Osborn*, 104 Wash. App. 686, 697 (2001).

12 Washington state and federal courts applying this law have held that a trial court may enter  
13 summary judgment where an insurer’s unreasonably low offer is evident from the record. In  
14 *Morella v. Safeco Ins. Co. of Illinois*, No. C12-0672RSL, 2013 WL 1562032 (W.D. Wash. Apr.  
15 12, 2013), the district court rejected Safeco’s proffered restrictive reading of section 48.30.015(1),  
16 and instead, held that the Washington statute encompassed lowball offers such as occurred here:

17 Having reviewed RCW 48.30.015 as a whole and virtually all of the  
18 relevant case law, the Court concludes that an insurer cannot escape  
19 IFCA simply by accepting a claim and paying or offering to pay an  
20 unreasonable amount. The benefits to which a first-party insured is  
21 entitled are generally described as payment of the reasonable  
22 expenses or losses incurred as a result of an insured event. **Where  
23 the insurer pays or offers to pay a paltry amount that is not in  
line with the losses claimed, is not based on a reasoned  
evaluation of the facts (as known or, in some cases, as would  
have been known had the insurer adequately investigated the  
claim), and would not compensate the insured for the loss at  
issue, the benefits promised in the policy are effectively denied.**

24 Id. at \*3 (citations to record omitted; emphasis added). Following *Morella*, another federal district  
25 court recently held: “But accepting a claim and paying or offering to pay *any* amount is not enough  
26 to escape liability....” *Jin v. GEICO Advantage Ins. Co.*, 700 F. Supp. 3d 988, 992 (W.D. Wash.

2023) (emphasis in original). “Whether an offer effectively denies an insured the benefits of their insurance policy is gauged by what the insurer knew or should have known when it made the offer.” *Id.*; see also *Kramer v. Safeco Ins. Co. of Oregon*, [428 F. Supp. 3d 456, 465](#) (W.D. Wash. 2019) (granting summary judgment for insured on bad faith claim where Safeco compelled insured to waste resources suing an insolvent at-fault driver).

Here, based on Safeco’s own documents, it *knew* that the dwelling repair number from the Second Loss was in the hundreds of thousands of dollars. Yet it chose to pay a repair amount that was only *twenty-seven percent* of its own internal estimate (*i.e.*, 27% of 238,000). There are no disputed issues of fact with respect to Safeco’s lowball repair payment. This Court should grant partial summary judgment as a matter of law on this issue, at least as to liability.

**2. In violation of Washington law, Safeco failed to notify Ms. Mendoza Gonzales of its intent to partially deny the Second Loss based on the alleged overlap issue.**

Under Washington law, an insurer’s duty of good faith is a “bedrock” statutory requirement. RCW 48.01.030. Washington courts recognize that this duty includes an obligation not to mislead the insured and to disclose material information relevant to coverage. See *Tank v. State Farm Fire & Cas. Co.*, [105 Wash.2d 381, 388](#) (1986); *Van Noy v. State Farm Mut. Auto. Ins. Co.*, [142 Wash.2d 784, 793](#) (2001). Consistent with this enhanced duty, Washington regulations prohibit insurers from “[m]isrepresenting pertinent facts or insurance policy provisions over which there is a dispute,” [WAC § 284-30-330\(1\)](#), and require insurers to “*promptly provide a reasonable explanation of the basis for denial or compromise.*” [WASH. ADMIN. CODE § 284-30-330\(13\)](#) (emphasis added). Failure to follow *either* directive constitutes “unfair or deceptive acts or practices of the insurer.” [WASH. ADMIN. CODE § 284-30-330](#).

Furthermore, WAC § 284-30-380(1) requires that an insurer notify a first-party claimant of the “acceptance or denial of the claim by the insurer within fifteen working days after receipt” of a properly executed proof of loss. This regulation specifies that any “denial must be given to the claimant in writing and the claim file of the insurer must contain a copy of the denial.” [WASH.](#)

1 ADMIN. CODE § 284-30-330(1). “The insurer must not deny a claim on the grounds of a specific  
2 policy provision, condition, or exclusion ***unless reference to the specific provision, condition, or***  
3 ***exclusion is included in the denial.***” *Id.* (emphasis in original).

4 Further, because an insurer occupies a “quasi-fiduciary” role, it has an affirmative “duty  
5 not to mislead its insureds” and a duty to “disclose those facts that would aid the insured in  
6 protecting his or her interests.” *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wash.2d 784, 793  
7 (2001). Safeco’s failure to issue a formal, written partial denial while internally denying a portion  
8 of the Second Loss (based on the overlap issue) violates these clear statutory and regulatory  
9 mandates.

10 Washington case law demonstrates that courts take these regulatory requirements  
11 seriously. In *Hayden v. Mutual of Enumclaw Insurance Co.*, 141 Wash.2d 55 (2000), the  
12 Washington Supreme Court, while holding that a violation of the Consumer Protection Act did  
13 not, by itself, have preclusive effect, *see id. at 62*, insurers remain subject to the regulation's timing  
14 and content requirements, and violations can support claims under the Consumer Protection Act  
15 and expose insurers to the remedies specified in RCW 48.30.015, including actual damages, fines  
16 and penalties, cease and desist orders, and license sanctions, *Id. at 62-63*.

17 Moreover, Washington Administrative Code § 284-30-330(13) is triggered by partial  
18 denials (such as what occurred here), and requires an accurate explanation. *See Sagdai v. Travelers*  
19 *Home & Marine Ins. Co.*, 639 F. Supp. 3d 1091, 1110 (W.D. Wash. 2022). The *Sagdai* Court  
20 explained:

21 There is also an issue of fact regarding whether Travelers’  
22 explanation for its coverage decision was reasonable. Insurers in  
23 Washington are required to provide a reasonable explanation for a  
24 compromise offer, Wash. Admin. Code § 284-30-330(13), and a  
25 violation of the insurance code regulations constitutes a breach of  
26 the insurer's duty of good faith. Travelers’ explanation of its  
compromise offer contained at least two inaccuracies.

1 *Id.* (citation omitted); *see also* *Spurlock v. State Farm Fire & Cas. Co.*, [No. 2:23-CV-00467-JHC](#),  
2 [2024 WL 5008872](#), at \*8 (W.D. Wash. Dec. 6, 2024) (denying State Farm’s motion for summary  
3 judgment, and stating that State Farm’s notice included the policy language, but “[i]t is undisputed  
4 that the denial letter does not explain State Farm’s reason for denying the claim”).

5 Clearly, Safeco did not provide Ms. Mendoza Gonzales with the notice required under §  
6 284-30-330(13). This is undisputed. Safeco certainly knew of this obligation, as it issued such a  
7 partial denial during its handling of the First Loss. With respect to the Second Loss, Safeco did not  
8 issue a partial denial letter, did not clearly explain the basis for any limitation of coverage, and did  
9 not provide Plaintiff with the information necessary to understand that portions of her claim were  
10 being denied. Plaintiff needed to know this information—since the Second Loss generally  
11 impacted areas of the Home separate from the First Loss, Plaintiff needed to understand **both** the  
12 areas of the Home that Safeco believed were impacted by **both** Losses, and why it believed that  
13 the repairs would be identical in these areas in the Second Loss versus the First Loss. Without this  
14 information, Plaintiff and the PA lacked any ability to truly evaluate Safeco’s position.

15 Safeco chose to keep Plaintiff in the dark. It proceeded through informal communications  
16 and partial (and unreasonable) payments that obscured the true scope of its position.<sup>4</sup>

17 **3. Safeco’s insurance policy does not contain any provision authorizing a partial denial**  
18 **for an alleged “overlap” between independent losses, which, standing alone, warrants**  
19 **summary judgment for the Plaintiff.**

19 Safeco’s “overlap” theory fails for the independent reason that it has no basis in the  
20 insurance policy. Safeco’s policy is bereft of **any** language that it could use to deny coverage due  
21 to an “overlap” between two independent losses. Under Washington law, coverage limitations  
22 must be grounded in the express language of the policy. *Quadrant Corp. v. Am. States Ins. Co.*,

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23 <sup>4</sup> A violation of WAC 284-30-330 does not, standing alone, create an independent Insurance  
24 Fair Conduct Act claim against an insurer. *See Perez-Crisantos v. State Farm Fire & Cas. Co.*,  
25 [187 Wash. 2d 669, 685, ¶ 21](#) (2017). However, it is relevant to several of the elements of a  
26 Consumer Protection Act case. *Id.* at ¶ 24. It is also relevant to both damages (including treble  
damages) and an award of attorney’s fees. *Id.* at ¶ 677, ¶ 10.

1 [154 Wash.2d 165, 171](#) (2005). Because coverage exclusions “are contrary to the fundamental  
2 protective purpose of insurance,” this Court must “strictly construe exclusions against the insurer,  
3 not extending them beyond their clear and unequivocal meaning.” *Vision One, LLC v. Phila.*  
4 *Indem. Ins. Co.*, [174 Wash.2d 501, 512](#) (2012). Safeco’s attempt to reduce or deny coverage in the  
5 Second Loss based on an alleged overlap between two separate losses is not supported by any  
6 policy provision.

7 1. Safeco’s attempt to treat the January 2024 loss as anything other than a separate  
8 and distinct occurrence is contrary to both Washington law and the policy’s structure. The  
9 undisputed facts establish that the September 2023 and January 2024 losses were distinct events,  
10 arising from different causes and separated in time. As a matter of law, they constitute separate  
11 losses, each triggering independent deductibles, coverage, and limits.

12 Washington courts apply a “cause” analysis to determine the number of occurrences under  
13 an insurance policy. Under this approach, the focus is on the underlying cause of the damage—not  
14 the number of resulting injuries or the extent of the loss. “[T]he number of triggering events  
15 depends on the number of causes underlying the alleged damage and resulting liability.” *Transcon.*  
16 *Ins. Co. v. Washington Pub. Utilities Districts’ Util. Sys.*, [111 Wash. 2d 452, 467](#) (1988). “Under  
17 [Washington’s] approach if each accident, collision, or injury has its own proximate cause then  
18 each will be deemed a separate ‘accident’ for insurance policy purposes even if the two accidents  
19 occurred coincident, or nearly coincident, in time.” *Greengo v. Pub. Emps. Mut. Ins. Co.*, [135](#)  
20 [Wash. 2d 799, 814](#) (1998). Here, the two losses are **both** causally and temporally distinct. They  
21 are separate occurrences as a matter of law.

22 2. The Safeco Policy at issue here is an all-risk policy that provides coverage for direct  
23 physical loss unless expressly excluded or limited. It defines an “occurrence” and limits liability  
24 based on “any one loss,” but it contains no provision aggregating separate losses, allocating  
25 damage between distinct losses, or reducing coverage based on alleged overlap with a prior loss.  
26

1 Nothing in the Policy authorizes Safeco to deny coverage for otherwise covered damage  
2 on the basis that similar or related damage may have existed from an earlier claim. Nor does the  
3 policy contain any language permitting Safeco to collapse two distinct losses into a single adjusted  
4 loss for purposes of limiting payment.

5 Where, as here, the Policy is silent on a purported limitation, Washington law requires that  
6 such silence be construed in favor of coverage—not as a license for the insurer to impose its own  
7 internal and unilateral limitations.

8 Safeco’s theory is particularly untenable because it attempts to override the Policy’s basic  
9 structure. The Policy contemplates coverage on a per-loss basis and does not provide for cross-  
10 claim allocation or reduction. Courts reject attempts to impose limitations inconsistent with an  
11 insurance policy’s structure or plain language. See *Findlay v. United Pac. Ins. Co.*, [129 Wash.2d](#)  
12 [368, 374](#) (1996) (ambiguities resolved in favor of coverage and consistent with insured’s  
13 reasonable expectations).

14 Moreover, Safeco’s position is inconsistent with its own conduct. It treated the Second  
15 Loss as a separate claim, assigned a new claim number, and applied new benefits, coverages, and  
16 deductibles. Having done so, it cannot now invoke an unwritten “overlap” limitation to reduce  
17 coverage.

18 **4. Safeco is estopped to deny coverage here.**

19 By April 15, 2024, Safeco had decided that it was going to do a partial denial of coverage.  
20 But Safeco never provided any written notice of this intent, nor did it provide the required  
21 explanation that such a notice would have required. Accordingly, Safeco rests its defense (and  
22 counterclaim) on informal communications, with no line-item explanations, where the potential  
23 for misunderstanding abounded. As such, Safeco is estopped from denying coverage.

24 In *Safeco Ins. Co. of Am. v. Butler*, [118 Wash. 2d 383](#) (1992), the Washington Supreme  
25 Court expressly addressed what was not addressed in *Tank v. State Farm Fire & Cas. Co.*, [105](#)  
26 [Wash.2d 381](#) (1986), namely, the remedy for an insurer’s bad faith handling of a claim under a

1 reservation of rights. *Butler*, [118 Wash. 2d at 392](#). It answered the question as follows: “*We now*  
2 *hold that where an insurer acts in bad faith in handling a claim under a reservation of rights,*  
3 *the insurer is estopped from denying coverage.*” *Id.* (emphasis added). Safeco’s efforts to do a  
4 partial denial *sub silentio* and then change its coverage position falls squarely within this principle.  
5 It is estopped from denying coverage. Washington also recognizes the “mend the hold” doctrine,  
6 which “precludes an insurer from changing the basis for avoiding liability after the onset of  
7 litigation.” *Karpenski v. Am. Gen. Life Companies, LLC*, [999 F. Supp. 2d 1235, 1245](#) (W.D. Wash.  
8 2014). “This doctrine has been extended in the insurance context in a number of states to prevent  
9 insurers from shifting the grounds for non-performance from the reasons stated in the insurer’s  
10 declination letter.” *Id.*; see also *Microsoft Corp. v. Fed. Ins. Co.*, [No. C01-1815C, 2003 WL](#)  
11 [24330081, \\*7](#) (W.D. Wash. Feb. 13, 2003) (granting summary judgment for insured on a waiver  
12 by estoppel theory based on failure to notify insured).

13 **5. The Court should also grant summary judgment to Plaintiff on Safeco’s**  
14 **counterclaim.**

15 Safeco has asserted a fraud counterclaim against the Plaintiff, purportedly based on her  
16 PA’s failure to deduct alleged overlap damages based on Safeco’s demand. In its truncated fraud  
17 counterclaim, Safeco alleged:

18 Specifically, and not by way of limitation, Plaintiff’s representative  
19 made claim for property that had been damaged in a prior loss but  
20 not repaired. These misrepresented claims were brought to the  
21 attention of Plaintiff’s representative by Safeco, who failed to  
22 withdraw the claims.

23 ECF No. 9, at p. 9, ¶ 3. This counterclaim should be dismissed for the following reasons: (1) Safeco  
24 cannot point to any actual false statement made by Ms. Mendoza Gonzales or her agents; (2) any  
25 dispute or confusion was the direct result of Safeco’s own delay and lowballing; (3) good faith  
26 disputes over the extent of coverage or losses do not give rise to an insurance fraud claim; and (4)  
statements by an insured’s PA do not constitute “fraud” by the insured based on the clear language  
of Safeco’s Policy.

1           1.       First and foremost, as set forth above, Safeco’s concealment or misrepresentation  
2 clause only applies to “you or the *insured*,” *e.g.*, it only applies to Ms. Mendoza Gonzales and her  
3 family, and based on the clear language drafted by Safeco, that provision does not create some  
4 imputed liability for miscommunications by a PA. “Insured” is a defined term under Safeco’s  
5 policy, as is the term “you.” Poli Decl., **Ex. 13**, Policy, at GONZALES\_000050, 52, 53. “It is  
6 settled that we may not modify clear and unambiguous language in an insurance contract....”  
7 *Dairyland Ins. Co. v. Uhls*, [41 Wash. App. 49, 52](#) (1985). It is clear that Safeco did not include  
8 PAs within the scope of its concealment and misrepresentation clause, and it cannot assert that  
9 now.<sup>5</sup>

10           2.       “In order to avoid liability based on a material misrepresentation, the insurance  
11 company must demonstrate that the insured knowingly made the untrue representations and that,  
12 in making those representations, the applicant intended to deceive the company.” *Ki Sin Kim v.*  
13 *Allstate Ins. Co.*, [153 Wash. App. 339, 355, ¶28](#) (2009). Here, Safeco cannot even establish the  
14 most basic element of a fraud theory, namely, a “misrepresentation.” Safeco’s entire theory is  
15 based on the fact that Plaintiff’s PA did not change his analysis to reflect Safeco’s theory of the  
16 case. But it cannot point to anything the PA said that was untrue. The PA utilized a standard  
17 estimating software tool used in the insurance industry, Xactimate, to establish estimates for the  
18 loss. Declaration of Amanda Collins (“Collins Decl.”), at ¶¶ 7-8. The Xactimate estimate identifies  
19 *each specific component of repair* that the PA believed to require repair. *Id.* at ¶ 24. **Nothing was**  
20 **hidden from Safeco.** The PA did not exaggerate or make-up injuries, *see Ki Sin Kim, supra*, or  
21 create a fraudulent lease, *see Johnson v. Safeco Ins. Co. of Am.*, [178 Wash. App. 828, 836-37, ¶ 6](#)

22 \_\_\_\_\_  
23 <sup>5</sup>       The use of “public adjusters” to assist insureds is a known concept in insurance law, even  
24 being a defined term in Washington’s insurance statutes. *See* [RCW § 48.17.010\(1\)\(b\)](#). Moreover,  
25 as this claim illustrates, there is nothing unfair to Safeco or other insurance companies in reaching  
26 such a result. When faced with a colorable (or perhaps clear) claim of insurance carrier bad faith,  
insurance companies are quick to parse their files for anything they can construe as a  
“misrepresentation” or “concealment,” which often may be a simple and understandable  
miscommunication between an insured and a PA, the basic “telephone tag” concept.

1 (2013), or include items on a personal property list that in fact had not been destroyed in a fire, *see*  
2 *Mut. of Enumclaw Ins. Co. v. Cox*, [110 Wash. 2d 643, 645–46](#) (1988).

3 Here, there were two separate loss occurrences, generally impacting different parts of the  
4 Home, but with some overlap. Even if there was some limited overlap, however, this does not  
5 mean that the nature or extent of repairs from the Second Loss were identical to the First Loss.  
6 The Plaintiff's PA was very clear in his estimate as to what he believed were damages caused by  
7 the Second Loss. Indeed, ***Safeco has never disputed that it was uncertain as to what the PA***  
8 ***believed to be damage caused by the Second Loss***. Safeco admitted that it understood the PA's  
9 position, and the parties met on May 23, 2024, and exchanged emails and other information.  
10 Ultimately, however, the PA concluded, "We disagree that major revisions are necessary to our  
11 estimate. As we mentioned in that conversation, we did review the estimate in comparison to the  
12 previous claim. However, we believe that your estimate significantly underpays and does not fully  
13 indemnify our client." Poli Decl., **Ex. 16**. In short, rather than making any misrepresentations,  
14 Plaintiff's PA was very clear that while they had considered Safeco's position, they just did not  
15 believe that Safeco's position was valid. Whatever else this might be, it is not fraud.

16 Washington courts have consistently rejected attempts to transform coverage disputes into  
17 fraud claims. Disagreements over the extent of damage, causation, or valuation are inherent in the  
18 claims adjustment process and do not constitute actionable fraud. In *Sentry Select Insurance Co.*  
19 *v. Royal Insurance Co. of America*, the Ninth Circuit (applying Washington law) held that "Royal's  
20 bare allegation that Kelly-Ryan made false or misleading statements during the course of  
21 negotiations regarding coverage for Jones Act claims under the MEL endorsement is not sufficient  
22 for us to conclude that Kelly-Ryan knowingly made false material statements giving rise to the  
23 presumption of 'intent to deceive' under Washington law." *Sentry Select Ins. Co. v. Royal Ins. Co.*  
24 *of America*, [481 F.3d 1208, 1220-21](#) (2007).

25 3. In addition, Washington courts apply a specific materiality standard for insurance  
26 fraud claims. *See, e.g.*, [WASH. REV. CODE ANN. § 48.135.010\(1\)](#) ("insurance fraud" requires proof

1 that the alleged fraud or concealment involve “material information”). “A misrepresentation is  
2 ‘material’ if, *when made*, it *could have* affected the insurer's investigation.” *Allstate Ins. Co. v.*  
3 *Huston*, 123 Wash. App. 530, 540 (2004) (emphasis in original). In other words, it is material when  
4 it “concerns a subject relevant and germane to the insurer's investigation as it was then proceeding”  
5 at the time the inquiry was made. *Id.*

6 Here, Safeco’s own statements and actions belie any “fraud” by either Plaintiff or her PA.  
7 Indeed, a brief summary of the facts show that the **only** concealment was by Safeco:

- 8 • Safeco adjusted **both** the First Loss and the Second Loss. Plaintiff’s PA did not  
9 become involved until after the Second Loss—due in large part to Plaintiff’s  
10 frustration with Safeco during the First Loss. In short, Safeco had **superior**  
11 information about the nature of the damages from both the First Loss and the  
12 Second Loss and any potential overlap.
- 13 • By the middle of April of 2024, Safeco had **already decided** that there was overlap,  
14 **not** based on anything that it did or did not learn from the PA.
- 15 • Safeco chose **not** to communicate its partial denial of coverage on overlap grounds  
16 to Plaintiff as required by Washington law.
- 17 • In May of 2024, a Safeco representative sought to convince the PA that there was  
18 overlap. The PA promised to, and did, consider the information provided by Safeco.  
19 However, the PA ultimately concluded that the available evidence did not support  
20 Safeco’s position, and the PA candidly told Safeco so in September of 2024: “We  
21 disagree that major revisions are necessary to our estimate. As we mentioned in that  
22 conversation, we did review the estimate in comparison to the previous claim.  
23 However, we believe that your estimate significantly underpays and does not fully  
24 indemnify our client.” Poli Decl., **Ex. 16**.

19 Safeco does not, and cannot, show any “material misrepresentation or concealment” here.

20 4. Indeed, as the foregoing summary demonstrates, it was Safeco’s own conduct that  
21 created this entire dispute. The First Loss occurred in early September of 2023, and Ms. Mendoza  
22 Gonzales and her family eventually had to move out of their Home. Had there been a prompt  
23 resolution of this first claim, the repairs from that First Loss would have been completed by the  
24 time of the Second Loss in mid-January 2024 and any alleged overlap would not have been an  
25 issue. The issue of having to segregate damages from the First Loss and the Second Loss was a  
26

1 direct result of Safeco’s own delay on the First Loss. Thus, any alleged miscommunications  
2 between Safeco and the PA were caused by Safeco’s own delays.

3 **V. RELIEF REQUESTED.**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court grant her Motion  
5 for Partial Summary Judgment and enter an Order:

6 1. Holding that Safeco breached its contractual and statutory duties by issuing an  
7 unreasonably low payment in April 2024;

8 2. Holding that Safeco violated Washington law by failing to provide notice and a  
9 reasonable explanation for its partial denial of coverage based on the alleged “overlap”;

10 3. Holding that the Policy does not permit an “overlap” deduction between two  
11 separate and distinct loss events;

12 4. Precluding Safeco from asserting an “overlap” reduction to limit coverage for the  
13 Second Loss; and

14 5. Dismissing Safeco’s fraud counterclaim with prejudice.

15 Ms. Mendoza Gonzales further requests such other and additional relief as the Court deems  
16 just and proper.

17 DATED this 31st day of March, 2026.

18 *I certify that this brief contains 8,369 words, in*  
19 *compliance with the Local Civil Rules.*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under the penalty of perjury under the laws of the United States of America that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the following party(ies):

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DATED this 31st day of March 2026, at Seattle, Washington.

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