

**2021 WL 1717542 (Iowa Sec.Bur.)**

Securities Bureau, Insurance Division

Department of Commerce

State of Iowa

IN THE MATTER OF  
33 CARPENTERS CONSTRUCTION, INC., RESPONDENT

Division Case No. 105269

April 19, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDERS

**DECISION**

**\*1** The sole respondent in this matter, 33 Carpenters Construction, Inc. is ordered to comply with [Iowa Code § 522C.6\(3\)\(c\)](#).

On April 17, 2020, the Iowa Insurance Division (“Division”) submitted a petition for a summary cease and desist order against 33 Carpenters Construction, Inc. (“33 Carpenters”) and two other respondents for alleged violations of Iowa Code chapter 522C. The Division's allegations and policy grounds were primarily grounded in a series of Iowa Supreme Court decisions stemming from civil litigation involving 33 Carpenters. [33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.](#), 939 N.W.2d 69 (Iowa 2020), [33 Carpenters Construction, Inc. v. Cincinnati Insurance](#), 939 N.W.2d 82 (Iowa 2020), and [33 Carpenters Construction, Inc. v. IMT Insurance](#), 939 N.W.2d 95 (Iowa 2020). The Iowa Supreme Court issued these decisions on February 14, 2020.

After fully reviewing the Division's petition and the Iowa Supreme Court decisions, and considering the facts set forth in the Iowa Supreme Court decisions, along with 33 Carpenters' direct and full opportunity to litigate these issues in Iowa courts, up to and including the Iowa Supreme Court, the Commissioner issued a summary cease and desist order on April 21, 2020. The Division also sought, and the Commissioner included in our summary orders, a prohibition of future violations by individuals alleged to be officers of 33 Carpenters.

As provided by law, the respondents requested a hearing on the matter. We issued a notice of hearing on June 4, 2020.

On June 16, 2020, the Division filed a motion for summary judgment. After extensive briefing, the Commissioner issued on October 20, 2020, an order granting partial summary judgment against 33 Carpenters and denying summary judgment against the alleged corporate officers. On December 7, 2020, the Division dismissed its petition against the two corporate officers.

The Commissioner presided over a hearing on January 28, 2021, at the offices of the Iowa Insurance Division, 1963 Bell Avenue, Des Moines, Iowa. The hearing was conducted via video conference. 33 Carpenters was represented by attorney Joseph N. Van Vooren of Moline, Illinois. The Iowa Insurance Division was represented by compliance attorneys with the Enforcement Bureau, Adam J. Kenworthy and Lanny Zieman. At the hearing, after the Commissioner provided instruction to the parties on procedural matters, evidence was received.

NOW THEREFORE, after reviewing the pleadings submitted in the case and the evidence received, we issue the following findings of fact, conclusions of law and orders:

## I. FINDINGS OF FACT

1. The Commissioner of Insurance, Douglas Ommen, directly and through his designees, administers and enforces Iowa Code chapter 522C—Licensing of Insurance Public Adjusters pursuant to [Iowa Code § 505.8](#).

\*2 2. 33 Carpenters is an Iowa corporation with its home office located in Bettendorf, Iowa.

3. During the relevant time period during 2016 through 2018, 33 Carpenters was not licensed with the Iowa Insurance Division as a public adjuster.

### Brant and Sarah Clausen/State Farm

4. On March 15, 2016, a hailstorm struck Bettendorf and damaged the roof and siding of a home owned by Brant and Sarah Clausen.

5. The Clausens initially were unaware of any storm damage to their property.

6. Their home was insured through State Farm Fire and Casualty Company (State Farm).

7. On June 29, Matt Shepherd, an employee of 33 Carpenters Construction, Inc. (33 Carpenters), approached the Clausens at their home and asked if he could inspect their roof for hail damage.

8. The Clausens agreed to permit his inspection. Shepherd found hail damage to the roof and siding, which was news to the Clausens.

9. Shepherd presented, and the parties signed, two documents, labeled ““Agreement” and “Insurance Contingency,” whereby 33 Carpenters agreed to repair the storm damage in exchange for the Clausens’ insurance proceeds. The documents also purportedly authorized 33 Carpenters to act on behalf of the Clausens regarding the submission, adjustment, and payment of an insurance claim for the hail damage to their roof.

### **Insurance/Mortgage Company Authorization:**

I authorize and direct my insurers and mortgagees to communicate directly with 33 Carpenters Construction to include discussions regarding scope of work and payment. I also authorize and direct my insurers and Mortgagees to include 33 Carpenters Construction as a joint payee on all checks.

10. The Insurance Contingency authorized 33 Carpenters to “meet with and discuss hail and wind damage” of the Clausen property with their insurance company, State Farm, and it required the Clausens to acknowledge that “33 Carpenters Construction will act as their General Contractor to obtain appropriate property damage adjustments.”

11. That same day, the Clausens made a property damage claim to State Farm.

12. About two weeks later, State Farm representatives visited the Clausen home to inspect the storm damage. Shepherd attended the inspection without the Clausens.

13. After this meeting, State Farm formulated an initial estimate calculating the replacement cost value, or total repair costs, of \$30,607.

14. After subtracting depreciation and the Clausens’ deductible, State Farm paid the Clausens \$22,198.

15. The Clausens transferred this payment to 33 Carpenters, and it began repairing the roof and siding.

16. Subsequently, 33 Carpenters prepared an undated “Supplement” to the insurance claim, claiming \$15,087 in additional repair costs, \$645 in tax, and \$9137 in overhead and profit for a new claim of \$24,869 above State Farm's initial determination of the total repair cost, amounting to an increase of 81.3%.

**\*3** 17. State Farm's adjuster returned to the Clausen home to assess the new claims.

18. On February 22, 2017, the Clausens signed another document that purportedly assigned their insurance claim with State Farm to 33 Carpenters. This “Assignment of Claim and Benefits” stated, FOR VALUE RECEIVED, the Assignor [Brant Clausen] hereby sells and transfers to the Assignee [33 Carpenters] and its successors, assigns and personal representatives, any and all claims, payment drafts, demands, and cause or causes of action of any kind whatsoever which the Assignee [33 Carpenters] has or may have against State Farm (insurance company), arising from the following claim [for hail and wind damage.]

19. This document further stated that “all future payments or settlements for the above referenced claim” should be made directly to 33 Carpenters.

20. On March 10, 33 Carpenters filed this civil action against State Farm. 33 Carpenters alleged that it is the assignee of the Clausens' rights and that State Farm had breached its insurance policy by failing to pay 33 Carpenters “all benefits due and owing under the policy.”

21. State Farm filed an answer denying those allegations.

22. Later that month, State Farm prepared a substituted estimate in response to the 33 Carpenters Supplement. The substituted estimate increased the replacement cost value to \$40,953 to reflect the need to replace all of the siding on the Clausen home since the original siding became unavailable during the interim between the initial estimate and the repair work. In recognition of this increase, State Farm paid an additional \$15,681 directly to 33 Carpenters and the Clausens' mortgage company, and 33 Carpenters deposited the payment.

23. Next, on August 21, after State Farm had made the second payment and after 33 Carpenters had completed the repairs, 33 Carpenters submitted yet another cost estimate, claiming \$64,973 for the cost of repairs and \$12,994 in overhead and profit, increasing the total claim to \$77,968, a 90.4% increase from State Farm's substituted estimate of the total replacement cost value. State Farm refused to pay the additional sums.

24. Two months later, 33 Carpenters filed a motion to compel appraisal of the loss. The district court denied the motion.

25. State Farm filed a motion for summary judgment on May 15, 2018, claiming that the contract between 33 Carpenters and the Clausens was unenforceable because 33 Carpenters was not a licensed public adjuster, as required under Iowa Code chapter 522C.

26. State Farm supported its motion with the contractual documents and other evidence showing that 33 Carpenters acted as a public adjuster for the Clausens. The summary judgment record included a printout of 33 Carpenters' public webpage that outlined its six-step process for a common insurance claim:

#### **STEP 1**

Contact 33 Carpenters Construction (<http://33carpentersconstruction.com/contact>) for a free comprehensive storm damage evaluation and assessment.

\*4 [phone numbers of the various 33 Carpenters locations]

## **STEP 2**

**Contact your insurance company to file a claim.**

Inform your insurance company that your home was impacted by recent severe storms and your home was inspected by a licensed general contractor and areas of your home are damaged.

## **STEP 3**

**Inform us when the insurance adjuster will be coming out to assess the damage on your home or property.**

We will meet personally with your insurance adjuster, as an ADVOCATE on YOUR behalf, and discuss the work that needs to be completed to repair your home to its original beauty and value. Your insurance adjuster will submit a report that will list the work that needs to be completed and a copy will be sent to you.

## **STEP 4**

**Send us a copy of the summary report put together by your insurance company.**

Included in the summary report will be the itemized costs of the work that needs to be performed. We will work directly with your insurance company to ensure that all damaged areas of your home will be included on the report.

## **STEP 5**

**We will meet with you to make product selections.**

Our entire team has a vast and comprehensive knowledge about all home exterior products and we are happy to help you in the decision making process regarding product selection and color options. We will work with your schedule to determine the best day to start the necessary repairs to your home.

## **STEP 6**

**Payment.**

We will provide you and your insurance company with a copy of the invoice when the work is completed. You may be required to get your mortgage company to endorse the check from the insurance company before payment can be submitted to us for the work completed to your home. You are only responsible for your insurance deductible and any agreed upon upgrades.

27. 33 Carpenters resisted summary judgment by arguing that the Iowa Insurance Commissioner has the sole authority to enforce the provisions of Iowa Code chapter 522C such that State Farm cannot use the statute to invalidate the assignment agreement.

28. Alternatively, 33 Carpenters argued its conduct did not violate Iowa Code chapter 522C or 507A. 33 Carpenters asserted that the only relevant event before the February 22 assignment was the evaluation of the claim attended by State Farm representatives

and Shepherd, and it stated this was not improper because Shepherd did not negotiate or advocate for the Clausens during that meeting. The other events, 33 Carpenters claimed, occurred after the Clausens assigned the claim to 33 Carpenters, which it stated it wholly owned and could negotiate without a public adjuster license.

29. The district court granted the motion for summary judgment, ruling that the Clausens' assignment of their claim to 33 Carpenters was invalid under Iowa law because 33 Carpenters acted as an unlicensed public adjuster as defined in [Iowa Code section 522C.2](#).

30. The district court considered the undisputed facts that the Clausens were unaware of any storm damage and had made no insurance claim before they were approached by 33 Carpenters, their agreement authorized 33 Carpenters to communicate with State Farm, 33 Carpenters' representative Shepherd attended the roof inspection with State Farm without the Clausens, and 33 Carpenters received the proceeds of the checks State Farm issued to the Clausens for the claim.

\*5 31. The district court determined that, by undertaking these actions, 33 Carpenters was acting as a public adjuster as defined in [Iowa Code section 522C.2](#).

32. 33 Carpenters did so without the requisite license.

33. Because 33 Carpenters was acting as an unlicensed public adjuster prior to the assignment, the assignment is invalid under Iowa law.

34. The district court ruled that 33 Carpenters could not recover from State Farm and granted State Farm's motion for summary judgment.

35. 33 Carpenters' representative Shepherd directed the Clausens to file a claim with State Farm, which they promptly did that same day, and Shepherd attended the inspection of the Clausen property with the State Farm representatives in place of the Clausens. Shepherd's conduct aligned with 33 Carpenters' representations on its website, which advertised to homeowners that it would "meet personally with your insurance adjuster, as an ADVOCATE on YOUR behalf, and discuss the work that needs to be completed to repair your home to its original beauty and value." Additionally, 33 Carpenters submitted the first estimate to State Farm before the Clausens assigned their claim. 33 Carpenters thereby acted on behalf of the Clausens in negotiating their claim.

36. Altogether, these activities demonstrate that 33 Carpenters was acting for and aiding the insureds, the Clausens, in effecting the settlement of their claim with State Farm for damage to their real property within the meaning of [section 522C.2\(7\)\(a\)](#).

37. Shepherd, as 33 Carpenters' representative, undisputedly approached the Clausens uninvited and offered to inspect their home for hail damage, and he directly solicited business for 33 Carpenters after finding damage on the roof and siding.

38. The same day, Shepherd advised the Clausens to file a claim for that damage and had them sign documents agreeing to pay 33 Carpenters with their insurance proceeds in exchange for the company agreeing to repair the storm damage. This constitutes advising an insured about first-party claims for damage to the insured's real property. 33 Carpenters' six-step process on its website additionally exemplifies solicitation of business investigating losses and advising insureds regarding claims with promises to "ADVOCATE on YOUR behalf" and work directly with the insurance company to ensure all damaged areas are included in the report, among other things. Such conduct directly aligns with that of a public adjuster within the meaning of [sections 522C.2\(7\)\(b\) and \(c\)](#).

Greg Whigham/Cincinnati Insurance

39. On March 15, 2016, a hailstorm and windstorm damaged Gregg Whigham's residence in Bettendorf.

40. Whigham had a homeowners' insurance policy with the Cincinnati Insurance Company (Cincinnati).

41. Whigham and 33 Carpenters Construction, Inc. (33 Carpenters) entered into an agreement under which 33 Carpenters would repair the storm damage to Whigham's home in exchange for Whigham's insurance proceeds.

\*6 42. On October 6, a 33 Carpenters representative, Tony McClanahan, and Whigham called Cincinnati to report the storm damage to the siding and roof of Whigham's home. During this call, McClanahan informed Cincinnati that he was Whigham's contractor and would attend Cincinnati's inspection of Whigham's home

43. Four days later, Whigham and McClanahan signed an "Assignment of Claim and Benefits," which stated, FOR VALUE RECEIVED, Assignor [Gregg Whigham] hereby sells and transfers to the Assignee [33 Carpenters] and its successors, assigns and personal representatives, any and all claims, payment drafts, demands, and cause or causes of action of any kind whatsoever which the Assignee [33 Carpenters] has or may have against Cincinnati Insurance (insurance company), arising from the following claim [for storm damage.]

44. This document further stated that 33 Carpenters "may in its own name and for its own benefit prosecute, collect, settle, compromise and grant releases on said claim as it, in its sole discretion, deems advisable" and that "all future payments or settlements for the above referenced claim" should be made directly to 33 Carpenters.

45. The same day, Whigham submitted an insurance claim for damage to his residence.

46. Cincinnati investigated the claim, prepared an estimate for the cost of repairing the damage, and made a payment to Whigham that autumn.

47. In February 2017, 33 Carpenters contacted Cincinnati to dispute the insurer's estimate of the repair cost and requested a new estimate that would include the cost of replacing all of the home's siding and gutters.

48. Cincinnati responded that it would address any differences directly with its insured, Whigham, rather than 33 Carpenters.

49. On March 13, 33 Carpenters filed the civil action against Cincinnati claiming the insurer breached Whigham's insurance policy by "failing to pay '33 Carpenters' all benefits due and owing under the policy" that had been assigned to it.

50. 33 Carpenters elected to bring the suit as an expedited civil action under [Iowa Rule of Civil Procedure 1.281](#). Whigham was unaware of the lawsuit.

51. Cincinnati's answer denied the claims and raised affirmative defenses.

52. On April 5, Cincinnati filed a counterclaim for declaratory judgment against 33 Carpenters, arguing the assignment was invalid because it effectively allowed 33 Carpenters to act as an unlicensed public adjuster in violation of Iowa Code chapter 522C (2016).

53. On August 3, Cincinnati filed a motion for summary judgment.

54. Cincinnati noted that 33 Carpenters' website outlined its six-step process that described the work of a public adjuster, that its actions aligned with that of a public adjuster, and that 33 Carpenters maintained a contractor license while neither it nor its employees had a public adjuster's license.

55. Cincinnati argued summary judgment was appropriate given that the assignment contract at issue was invalid because 33 Carpenters violated [Iowa Code sections 507A.3, 507A.5, and 522C.4](#) by acting as an unlicensed public adjuster.

\*7 56. 33 Carpenters countered that only the Iowa Insurance Commissioner could enforce chapter 522C and that the assignment contract was a valid post-loss assignment.

57. On October 30, 33 Carpenters filed a motion to compel appraisal. Cincinnati disputed the need for an appraisal given that the homeowner had accepted its scope of repairs.

58. On November 28, the district court granted summary judgment, concluding “[t]he purported assignment of Whigham's insurance claim to 33 Carpenters must be deemed invalid because it violates Iowa's licensure requirement for public adjusters.”

59. In doing so, the district court found that 33 Carpenters' website included advertisements to advocate on an insured's behalf, 33 Carpenters attempted to aid Whigham in negotiations with Cincinnati, and 33 Carpenters demanded to be present for Cincinnati's investigation of Whigham's home and conducted its own investigation.

60. The district court determined the assignment must be invalid because otherwise it effectively allowed 33 Carpenters to act as a public adjuster without the required license.

61. Therefore, the court entered summary judgment for Cincinnati.

62. 33 Carpenters appealed, and [the Iowa Supreme Court] transferred the case to the court of appeals.

63. The court of appeals rejected 33 Carpenters' argument that the dispute must be heard by the Iowa Insurance Commissioner and concluded, “[T]he statutes do not limit our authority to apply the law to the facts before us in order to resolve the legal dispute presented to us as a result of the lawsuit filed by 33 Carpenters.”

64. The court of appeals found that “there is no genuine issue of fact that 33 Carpenters was acting for and aiding Whigham in negotiating for and attempting to effect a settlement of Whigham's first-party insurance claim for loss to his home insured by Cincinnati.”

65. Therefore, it determined that 33 Carpenters was operating as an unlicensed public adjuster in violation of [Iowa Code section 522C.4](#), and the assignment contract was unenforceable.

66. The court of appeals affirmed the summary judgment in favor of Cincinnati.

67. For the reasons set forth in *33 Carpenters Construction, Inc. v. State Farm Life & Casualty Co.*, the [Iowa Supreme] Court upheld the court of appeals and the district court by holding the assignment to 33 Carpenters was void and unenforceable under section 103A.71(5), and the court rejected the argument that the Iowa Insurance Commissioner has the sole authority to enforce the licensing requirements for public adjusters. *Id.* at \*2.

Brandon Gordon/IMT Insurance

68. On March 6, 2017, a windstorm and hailstorm hit Brandon Gordon's home in Davenport.

69. Gordon had a homeowners' insurance policy with IMT Insurance Company (IMT).

70. On March 20, Gordon reported to IMT that roof shingles suffered storm damage.



71. After inspecting the roof, IMT responded a few weeks later with a repair estimate of \$2362.67, and after subtracting Gordon's deductible, enclosed a check for \$1362.67.

\*8 72. On May 1, Gordon and a representative from 33 Carpenters Construction, Inc. (33 Carpenters), Dustin Murphy, signed documents titled “Insurance Contingency,” “Agreement,” and “Assignment of Claim and Benefits.”

73. Under these documents, 33 Carpenters agreed to repair the storm damage in exchange for Gordon's insurance proceeds.

74. The Insurance Contingency authorized 33 Carpenters to “meet with and discuss hail and wind damage” to Gordon's property with IMT and required Gordon to acknowledge that “33 Carpenters Construction will act as their General Contractor to obtain appropriate property damage adjustments.”

75. The Agreement stated Gordon retained 33 Carpenters to “settle [his] claim and complete the repairs.” The “Assignment of Claim and Benefits” specified,

FOR VALUE RECEIVED, the Assignor [Brandon Gordon] hereby sells and transfers to the Assignee [33 Carpenters] and its successors, assigns and personal representatives, any and all claims, payment drafts, demands, and cause or causes of action of any kind whatsoever which the Assignee [33 Carpenters] has or may have against IMT (insurance company), arising from the following claim [for storm (wind and hail) damage.]

76. This document further stated that “all future payments or settlements for the above referenced claim” should be made directly to 33 Carpenters.

77. On February 28, 2018, IMT retained Cullen Claims to reevaluate the claim. Cullen Claims estimated \$7475.24 as the replacement cost value for the dwelling and \$4560.50 as the actual cash value. It determined the net claim was \$6475.24 after the deductible, and the net claim for the separate garage was \$1249.48.

78. On April 9, Gordon signed another document authorizing 33 Carpenters to “speak with [his] mortgage company, release claim information, request inspections, and work directly with in connection with all aspects of processing of the claim, including disbursement of claim funds.”

79. The next day, 33 Carpenters issued a “roof production form” that listed the cost of repair as \$13,016.72. IMT denied the claim.

80. On May 24, 33 Carpenters, claiming rights by Gordon's assignment, filed a civil action alleging IMT breached Gordon's insurance policy by “failing to pay ‘33 Carpenters' all benefits due and owing under the policy.”

81. On June 21, IMT filed an answer denying the allegations and raising affirmative defenses.

82. On February 12, 2019, IMT filed a motion for summary judgment. IMT asserted the assignment contract was void because 33 Carpenters violated [Iowa Code sections 507A.3, 507A.5, and 522C.4 \(2017\)](#) by acting as an unlicensed public adjuster.

83. 33 Carpenters responded by asserting the Iowa Insurance Commissioner has the sole authority to enforce the provisions of Iowa Code chapter 522C such that IMT cannot offensively use the statute to invalidate the assignment.

\*9 84. Alternatively, 33 Carpenters argued its conduct did not violate Iowa Code chapters 522C or 507A.

85. On April 4, the district court granted IMT's motion for summary judgment.



86. The district court, quoting [section 522C.2\(7\)\(a\)](#), concluded that it is clear 33 Carpenters was acting as an unlicensed public adjuster by “acting for or aiding [Gordon] in negotiating for or effecting the settlement [with IMT] of a first-party claim for loss or damage to real...property of [Gordon].”

87. The district court rejected 33 Carpenters' argument that the Iowa Insurance Commissioner is solely authorized to consider whether it was operating as an unlicensed public adjuster.

88. The district court relied on the court of appeals decision in *33 Carpenters Construction, Inc. v. Cincinnati Insurance* in rejecting the same argument and holding an equivalent assignment to 33 Carpenters is unenforceable. [No. 17-1979, 2019 WL 478254 \(Iowa Ct. App. Feb. 6, 2019\)](#).

89. 33 Carpenters appealed, and we [the Iowa Supreme Court] retained the appeal. *33 Carpenters Construction, Inc. v. IMT Insurance Company*, 2020 WL 739088, pages \*1-2, (Iowa Supreme Court, February 14, 2020).

90. For the reasons set forth in *33 Carpenters Construction, Inc. v. State Farm Life & Casualty Co.*, the [Iowa Supreme] Court affirmed the district court's summary judgment and held the assignment contract at issue here is void and unenforceable under section 103A.71(5), and the court rejected the argument that the Iowa Insurance Commissioner has sole authority to enforce the licensing requirements for public adjusters. *Id.* at \*2.

### CONCLUSIONS OF LAW

91. [Iowa Code § 522C.4](#) prohibits a person from operating as a public adjuster in Iowa unless the person is licensed by the Commissioner.

92. A “public adjuster” is defined by [Iowa Code § 522C.2\(7\)](#):

“Public adjuster” means any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:

- a. Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.
- b. Advertising for employment as a public adjuster of first-party insurance claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured.
- c. Directly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

93. [Iowa Code § 522C.6\(3\)](#) provides, in pertinent part:

b. A person, who after hearing, is found to have violated this chapter by acting as a public adjuster without proper licensure may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.

**\*10** c. If a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation constituting a violation of this chapter or any rule adopted or order issued pursuant to this chapter, the commissioner may issue a summary order that includes a brief statement of findings of fact, conclusions of law, and policy reasons for the order, and that directs the person to cease and desist from engaging in the act or practice constituting the violation and that may assess a civil penalty or

take other affirmative action as in the judgment of the commissioner is necessary to assure that the person complies with the requirements of this chapter as provided in chapter 507A.

94. The Iowa Supreme Court compared the definition of public adjuster in [Iowa Code § 522C.2\(7\)](#) with the language of [Iowa Code § 103A.71\(3\)](#), which provides:

A residential contractor shall not represent or negotiate on behalf of, or offer or advertise to represent or negotiate on behalf of, an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, exterior replacement, or exterior reconstruction work on the residential real estate.

[33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.](#), 939 N.W.2d at 80.

95. We agree that [Iowa Code § 103A.71\(3\)](#), which lists activities that a residential contractor is forbidden from doing, prohibits residential contractors from acting as public adjusters. [33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.](#), 939 N.W.2d at 80. Further, we conclude Iowa's Insurance Trade Practices law would prohibit as an unfair practice any public adjuster or residential contractor from doing indirectly what the law prohibits directly.

96. [Iowa Code § 507B.3](#) provides:

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or **an unfair or deceptive act or practice** in the business of insurance.

(Emphasis added.) [In the matter of Diamond](#), No. 96975, 2019 WL 5677529, (Iowa In. Div., Oct. 23, 2019), at 36; [In the matter of Newman](#), No. 91936, 2017 WL 6504574 (Iowa Ins. Div., Jan. 24, 2017) at 8.

97. [Iowa Code § 507B.6](#) provides:

Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

\*11 98. Iowa's Insurance Trade Practices law and its prohibitions of any “unfair method of competition or any unfair or deceptive act or practice” are the result of deliberations in Congress and at the National Association of Insurance Commissioners dating back to the origins of the McCarran-Ferguson Act. [15 U.S.C. §§ 1011-1015 \(2015\)](#); [Iowa Code § 507B.1](#); [Diamond](#),

*Id.* at 37. *Newman, Id.* Following the United States Supreme Court decision in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), the NAIC took up a discussion about the impact of federal regulation of insurance and proposals to reverse the effect of the Supreme Court's decision. *Mid Winter Meeting*, 1945 Nat'l Ass'n Ins. Comm'r's Proc. 26-28; *Diamond, Id.* at 37; *Newman, Id.* at 9. In 1945, Congress enacted McCarran-Ferguson, which includes the following:

**(a) State regulation**

The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

**(b) Federal regulation**

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, **and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C.A. 41 et seq.]**, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

15 U.S.C. § 1012 (2015) (emphasis added).

99. As emphasized above, one of the concerns addressed in McCarran-Ferguson was the Federal Trade Commission ("FTC") jurisdiction that could conflict with state regulation. *Mid Winter Meeting*, 1946 Nat'l Ass'n Ins. Comm'r's Proc. 132-134. The FTC jurisdiction over the business of insurance under discussion in 1944 through 1947 included Section 5 of the Federal Trade Commission Act, originally passed in 1914, and the Federal Trade Commission Act Amendments of 1938 (Wheeler-Lea Act), Pub. L. No. 75-447, § 3, 52 Stat. 111, 111 (1938). Section 5 of the FTC Act provides as follows:

Unfair methods of competition in or affecting commerce, and **unfair or deceptive acts or practices** in or affecting commerce, are hereby declared unlawful.

15 U.S.C. § 45 (emphasis added).

100. After several years of discussion, the NAIC adopted the model state unfair trade act, first titled "An Act Relating to Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance." *Mid Winter Meeting*, 1947 Nat'l Ass'n Ins. Comm'r's Proc. 142-143, 383-389, 392-410, 413. All of the states adopted this law. *Summer Meeting*, 1960 Nat'l Ass'n Ins. Comm'r's Proc. Vol. II, 515. The NAIC model law was specifically drawn from the concepts in Section 5 of the FTC Act, so it carried with it the broad prohibitions of unfairness and deception jurisdiction, and enumerated some unfair and deceptive acts and practices. *Mid Winter Meeting*, 1947 Nat'l Ass'n Ins. Comm'r's Proc. 142-143, 383-389, 392-410, 413. The NAIC clarified and strengthened these broad prohibitions of unfair and deceptive acts and practices in 1972. *Unfair Trade Practices (B6) Subcommittee*, 1972 Nat'l Ass'n Ins. Comm'r's Proc. Vol. I, 490-518; *Executive Committee*, 1972 Nat'l Ass'n Ins. Comm'r's Proc. Vol. I, 22. The title of this model law was changed to "Unfair Trade Practices Act" in 1990. *Plenary Session*, 1990 Nat'l Ass'n Ins. Comm'r's Proc. Vol. IA, 6, 25, 122, 146. The text of *Iowa Code* §§ 507B.3 and 507B.6, in light of NAIC and Congressional history, makes clear the Iowa Legislature's intent to prohibit enumerated unfair or deceptive acts or practices, but to also broadly prohibit unfair or deceptive acts or practices similar to the FTC Act prohibition. The primary difference with the FTC Act was the states' intent to cover the business of insurance and to vest the consumer protection and market regulation responsibility in Iowa's insurance commissioner. *Diamond, Id.* at 37; *Newman, Id.* at 9.

\*12 101. McCarran-Ferguson's policy to avoid regulatory conflicts does not mean that federal or state jurisprudence under the FTC Act or state consumer protection laws sharing similar principles of deception and unfairness, as well as other states' insurance trade laws, cannot be instructive on the Commissioner's responsibility and authority to determine and prohibit unfair methods of competition, and unfair or deceptive acts and practices in the business of insurance. *Diamond, Id.* at 38.

102. Federal decisions under the FTC Act and state consumer protection laws sharing similar principles of deception make clear the legislative intent to prohibit acts or practices that have the tendency or capacity to mislead insurers or prospective insurance purchasers. *Diamond, Id.* at 38; *Newman, Id.* at 9. (citing *Montgomery Ward & Co. v. FTC*, 379 F.2d 666 (7th Cir. 1967); *Iowa Code* § 714.16(1)(f) (2015); *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12 (Iowa 2013)). Therefore, we have concluded that the prohibition of deceptive acts and practices in *Iowa Code* § 507B.3 includes acts or practices that have the tendency or capacity to mislead insurers or prospective insurance purchasers. *Diamond, Id.* at 38; *Newman, Id.* at 9-10; *Vertrue, Id.* at 33-34. We have also consistently concluded that the prohibition of unfair acts and practices in *Iowa Code* § 507B.3 includes acts and practices that offend public policy as established by law and are likely to cause substantial injury to insurance purchasers. *Diamond, Id.* at 38; *Newman, Id.* at 10. We will also consider whether the likely injury is unavoidable and not outweighed by any consumer or competitive benefits. *Vertrue, Id.* at 33-34.

103. While we recognize the facts that gave rise to this administrative action were determined in private civil litigation, we also determine that even if 33 Carpenters, or any other residential contractor, seeks to obtain licensure as a public adjuster, the substantial risk of harm to insurance policyholders will not be avoided. Further, any residential contractor who “partners” with a public adjuster, or any public adjuster who creates either an actual or implied loyalty to or shared financial interest with a residential contractor, or other material conflict of interest with the public adjuster's duty to act solely on behalf of the policyholder, would be unfair in contravention of public policy established by Iowa law. Similarly, any financial benefit derived by a public adjuster that is dependent on a post-loss assignment of rights or benefits to a residential contractor under the Insured Homeowner's Protection Act, *Iowa Code* § 515.137A would constitute an unfair practice.

104. Contrary to the imposition of punishment under *Iowa Code* § 522C.6(2), which would require proof of willful conduct, the issuance of a cease and desist does not require proof of knowledge or intent to violate the law. However, we do consider among all other relevant facts, the violator's intent in determining appropriate relief, including orders prohibiting future conduct, and the award of civil penalties and other monetary relief. We determined that under the facts presented by the Division in this matter, 33 Construction did not willfully violate the law. At the hearing the Division did not offer any evidence concerning the intent of 33 Carpenters' officers, representatives or employees.<sup>1</sup>

\*13 **IT IS THEREFORE ORDERED** that the summary order issued in this matter on April 21, 2020 is vacated and replaced with the findings of fact, conclusions of law and final orders herein.

**IT IS FURTHER ORDERED** that 33 Construction and its agents, representatives, employees and officers pursuant to *Iowa Code* § 522C.6, shall not, directly or indirectly with another person:

- (1) Act for or aid an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured;
- (2) Advertise for employment as a public adjuster of first-party insurance claims or otherwise solicit business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured; or
- (3) Directly or indirectly solicit business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

**IT IS FURTHER ORDERED** that 33 Construction and its agents, representatives, employees and officers may perform any of the following acts without violating [Iowa Code § 522C.6](#):

- (1) Solicit and offer repair or reconstruction services to homeowners or business owners;
- (2) Offer opinion to an insured homeowner or business owner as to whether damage was caused by wind, hail, storm or other incident normally covered by an insurance policy;
- (3) Prepare an estimate and scope of work for the loss;
- (4) Discuss with the customer the estimate or scope of work;
- (5) Recommend to an insured homeowner or business owner that the policyholder file an insurance claim with their insurer;
- (6) Attend any inspection of the damage by an insurer's adjuster; and
- (7) Answer questions the policyholder or the insurer's adjuster has about the estimates.

**IT IS FURTHER ORDERED** that as requested by 33 Carpenters and without objection from the Division, the names of two officers who were dismissed from the Division's petition, shall be redacted by the Division from all published documents and be maintained as confidential information.

**SO ORDERED** on this 19<sup>th</sup> day of April, 2021.

Douglas Ommen  
Commissioner of Insurance

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### Footnotes

- 1 The Division recommended in its closing brief that a civil penalty is not necessary to expect compliance. We agree.

**2021 WL 1717542 (Iowa Sec.Bur.)**