IN THE SUPREME COURT OF IOWA

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IOWA SUPREME COURT NO. 18-1354
SCOTT COUNTY CASE NO. LACE128749

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33 CARPENTERS CONSTRUCTION, INC.
Plaintiffs-Appellants,

vs.

STATE FARM FIRE AND CASUALTY COMPANY
Defendant–Appellee.

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APPEAL FROM THE IOWA DISTRICT COURT FOR
SCOTT COUNTY
HONORABLE HENRY W. LATHAM II

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# DEFENDANT–APPELLEE STATE FARM FIRE AND CASUALTY COMPANY'S FINAL BRIEF

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*Bank of the West v. Kline,* 782 N.W.2d 453 (Iowa 2010)

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2. **<u>If</u> 33 Carpenters properly preserved error, whether the district court had authority to declare the assignment invalid due to 33 Carpenters' failure to comply with public adjuster licensing requirements.**

*Bergantzel v. Mlynarik,* 619 N.W.2d 309 (Iowa 2000)

*Davis, Brody, Wisniewski v. Barrett,* 115 N.W.2d 839 (Iowa 1962)

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## ROUTING STATEMENT

This case is proper for transfer to the Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101(3)(a) as it involves the application of existing legal principles.

## STATEMENT OF THE CASE

Plaintiff 33 Carpenters Construction, Inc. ("33 Carpenters"), pursuant to a purported assignment obtained from State Farm Fire & Casualty Company ("State Farm") insureds Brant and Sarah Clausen ("Clausens"), filed this action asserting that State Farm had breached its contract of insurance with the Clausens by allegedly failing to pay "*33 Carpenters* all benefits due and owing under the policy." (App. 5, ¶ 15) (emphasis added).

Purporting, via several documents signed by the Clausens as well as its company website (App. 116-17, 162, 163-69), to be acting for and on behalf of the Clausens as an advocate with respect to their insurance claim, 33 Carpenters submitted multiple repair cost estimates to State Farm. (App. 130, 149-61). On each occasion, the estimates increased the claimed cost of replacing the Clausens' hail damaged roof and siding by tens of thousands of dollars. (App. 119, 130, 158). The last of these estimates was submitted in August 2017, after the repair work had already been performed by 33 Carpenters and paid by State Farm, and

after this action had been filed. (*Compare* State Farm Appendix, p. 52, App. 161 *with* Petition, App. 4).

After State Farm refused to pay the amount reflected in the last estimate, 33 Carpenters, in October 2017, filed a motion to compel appraisal of the loss. (App. 13-18). State Farm resisted the motion because the damage had already been repaired and, thus, the loss, scope of work, and cost of repairs set. (App. 19-24). The district court denied 33 Carpenters' motion. (App. 73-77).

Thereafter, on May 15, 2018, State Farm filed a motion for summary judgment. (App. 78-80). It argued that 33 Carpenters' claim against it fails because the claim is based on an illegal contract, *i.e.* an assignment obtained by 33 Carpenters from the Clausens while 33 Carpenters was acting as a public adjuster without the required Iowa public adjuster license. (App. 78-97).[1] 33 Carpenters resisted. (App. 171).

Following hearing, the district court granted State Farm's motion. It held that 33 Carpenters' claim was based on an invalid contract, *i.e.* an assignment agreement obtained from the Clausens without the requisite Iowa public adjuster license. (App. 206-09). The court held that 33 Carpenters could not recover from State Farm based on the invalid assignment and that, as a result, 33 Carpenters'

[1] State Farm also argued that 33 Carpenters' acceptance of State Farm's payment was an accord and satisfaction of its claim. The district court found fact issues existed with respect to accord and satisfaction. (App. 206). On appeal, State Farm does not dispute that determination.

claim against State Farm failed as a matter of law. (App. 208-09). 33 Carpenters filed this appeal.

## STATEMENT OF FACTS

A widespread hailstorm struck the Bettendorf, Iowa area on March 15, 2016. (App. 4, ¶¶ 5, 6). On June 29, 2016, 33 Carpenters' employee Matt Shepard, canvassing the storm area, knocked on the Clausens' front door and asked if he could inspect their roof for hail damage. (App. 113-14). Prior to that time, the Clausens had no idea that they had sustained damage from the storm. (App. 114). Shepard found hail damage on the Clausens' roof and siding.

When advising the Clausens of the damage he had discovered, Shepard presented them with an "Agreement" and an "Insurance Contingency", which Brant Clausen signed that day. (App. 116-17). These documents purport to authorize 33 Carpenters to act on behalf of the Clausens with respect to the submission, adjustment, and payment of an insurance claim for the hail damage to their roof. Specifically, the Agreement contains the following provision:

> 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 joint payee on all checks.

(App. 116).

Under the heading "Special Instructions", the Agreement contains the following additional provision:

> 33 Carpenters Construction will provide complete replacement per approved insurance scope in exchange for payment of the (RCV) insurance proceeds agreed upon by your insurer.

(App. 116).

The Insurance Contingency authorizes 33 Carpenters "to meet with and discuss hail and wind damage" sustained by the Clausen residence with the Clausens' insurer. (App. 117). To that end, the Insurance Contingency expressly requires the Clausens to acknowledge that 33 Carpenters would obtain "appropriate property damage adjustments" from the insurer. (App. 117).

These provisions are consistent with and accomplish the functions and objectives of 33 Carpenters' stated business model of "insurance restoration". (App. 163-69). In order to secure "insurance restoration", 33 Carpenters asserts on its website that following a hail storm "it is imperative to file a claim with your homeowners insurance." (App. 164). To that end, 33 Carpenters invites consumers to "[c]all today and get your claim started with a representative from 33 Carpenters . . . ." (App. 164). It advises that it "will work directly with your insurance company to have all the repairs/replacements made [] to restore your home back to its original beauty and value." (App. 164). 33 Carpenters then sets forth the "six step process" of an insurance claim, representing in "Step 3" that it

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 . . . ." (App. 165) (emphasis in original). It further represents in "Step 4" that it "will work directly with your insurance company to ensure that all damaged areas of your home will be included in the [insurance adjuster] report." (App. 165). And, in "Step 6", in advises that it will "provide you and your insurance company with a copy of the invoice when the work is completed." (App. 166).

Upon signing the documents presented by 33 Carpenters, the Clausens submitted a claim to State Farm for hail damage sustained in the storm. (App. 115). Tellingly, submission of the claim is virtually the only contact the Clausens had with State Farm regarding the damage and its repair. As demonstrated in the following paragraphs, virtually all communications, assessments, and discussions regarding scope and cost of repairs were thereafter handled by 33 Carpenters directly with State Farm.

Thus, engaging in its "six step process", once the Clausens had submitted the claim, 33 Carpenters' employee Matt Shepard met the State Farm adjuster at the Clausen residence to inspect and discuss the damage and necessary repairs. (App. 115). The Clausens did not participate; Shepard handled the inspection on their behalf. (App. 115).

Following the inspection, State Farm prepared an estimate of the cost of repairing the Clausens' hail damaged roof and siding. The estimate, dated July 15, 2016, reflects replacement cost value ("RCV"), *i.e.* total repair costs, of $30,607.02. (App. 119-27). Subtracting from that amount depreciation and the Clausens' deductible, the estimate reflects an actual cash value ("ACV") amount of $22,198.87. (App. 119). State Farm made an ACV payment of $22,198.87 to the Clausens and their mortgage company, who in turn endorsed it over to 33 Carpenters for deposit into 33 Carpenters' bank account. (App. 128-29).

On February 22, 2017, 33 Carpenters presented and obtained yet another agreement from the Clausens, this time a purported "Assignment of Claim and Benefits". (App. 162). The document purports to "sell[] and transfer[] to [33 Carpenters] any and all claims, payment drafts, demands, and causes of action of any kind whatsoever which the *Assignee* has or may have against State Farm arising from the [March 15, 2016] hail/wind claim." (App. 162). The document designates Brant Clausen as the "Assignor" and 33 Carpenters as the "Assignee". (App. 162). Thus, the assignment by its very terms is invalid because 33 Carpenters, the designated assignee, had no claim against State Farm absent the assignment. In any event, pursuant to the purported assignment, all future payments or settlements for the claim were to be made directly to 33 Carpenters. (App. 162).

At some point after State Farm's inspection and ACV payment, although when in relation to the assignment is unclear[2], 33 Carpenters prepared an undated "Supplement" for repairs and repair costs on the Clausen home. (App. 130). The "Supplement" reflects the State Farm "Original Scope" repair cost of $30,602.07 [sic] and adds over $15,000 in additional repair costs as well as "overhead and profit". (App. 130). Upon receipt of the Supplement, State Farm returned to the Clausen property to evaluate the newly added work and costs. Thereafter, on March 27, 2017, State Farm prepared a substituted estimate reflecting an RCV amount of $40,953.59[3] and, after subtracting the prior ACV payment, an ACV amount of $15,681.72. (App. 131-46). State Farm made an ACV payment in this amount directly to 33 Carpenters as well as the Clausens' mortgage company. (App. 147-48). 33 Carpenters accepted and deposited the payment. (App. 148).

Inexplicably, on August 21, 2017, after the repair work had already been completed by 33 Carpenters and paid by State Farm, and after this suit had already been filed, 33 Carpenters prepared and submitted yet another estimate for the cost of repairing the Clausen's damaged roof and siding. (App. 149-61). This time, 33

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[2] *But see* 33 Carpenters' opening proof brf, pp. 19-20, where it asserts the Supplement was prepared prior to obtaining the assignment.

[3] The increase was caused by the lapse in time between State Farm's original inspection/issuance of ACV payment in July 2016 and 33 Carpenters' eventual performance of the work in Spring 2017. In the interim time period, siding which matched the Clausens' original siding became unavailable, such that siding on all four sides of the home had to be replaced, rather than on only the three damaged sides.

Carpenters increased the cost of repairs by almost another $20,000, to $64,973.58, and again added "overhead" and "profit". (App. 158). It now claimed a cost of *$77,968.30* to replace the Clausens' roof and siding. (App. 158).

Despite 33 Carpenters' self-described and demonstrated role as advocate of the insureds, the Clausens, 33 Carpenters holds no public adjuster license in the State of Iowa. (App. 170).

## ARGUMENT

### A. Preservation of Error and Standard of Review

State Farm agrees that 33 Carpenters preserved error on the issue of validity of the assignment by timely appealing from the final summary judgment order of the district court. However, State Farm disagrees that 33 Carpenters preserved error on the issue of the district court's jurisdiction to consider the enforceability of the assignment under Iowa Code Ch. 522C. As discussed in detail below, the district court never passed on that issue, and 33 Carpenters failed to move for an amended or enlarged order requesting it to do so.

This Court's standard of review of a district court order granting summary judgment is for correction of errors at law. *E.g. Goodpaster v. Schwan's Home Serv., Inc.*, 849 N.W.2d 1, 6 (Iowa 2014); Iowa R. App. P. 6.907. Summary judgment is proper when, as here, the moving party demonstrates there is no

genuine issue of material fact and it is entitled to judgment as a matter of law. *Goodpaster,* 849 N.W.2d at 6.

### B. The district court correctly held that 33 Carpenters' action is based upon an invalid contract and therefore fails under Iowa law.

In granting State Farm's summary judgment motion, the district court held that 33 Carpenters was acting as more than simply a contractor hired to repair the Clausens' hail damage. Rather, by communicating directly with State Farm on the Clausens' behalf, by advocating for the Clausens regarding the extent of damage and the scope and cost of repairs, and by receiving payment from State Farm, 33 Carpenters had surpassed the role of contractor and was acting as a public adjuster, as defined by Iowa statute. 33 Carpenters obtained the purported assignment while acting as a public adjuster, yet it held no Iowa public adjuster license. Under well-settled Iowa law, the assignment is invalid and does not provide a basis for 33 Carpenters to pursue State Farm.

#### 1. 33 Carpenters was acting as a public adjuster with respect to the Clausens' hail damage claim.

Iowa Code § 522C.4 requires public adjusters in this State to hold a public adjuster license. Iowa Code § 522C.2(7) defines a public adjuster as:

> [A]ny 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 loss, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

Iowa Code § 522C.2(7) (2018).

33 Carpenters engaged in all of this conduct prior to obtaining the assignment from the Clausens. By entering into the June 29, 2016 Agreement, 33 Carpenters gained something of value: the initial State Farm check/payment, which was endorsed over to and deposited directly into 33 Carpenters' bank account. In exchange, 33 Carpenters acted on behalf of the Clausens, directing them to make a claim with their insurer, which they had not done prior to 33 Carpenters' request to inspect for damage, and then meeting with the insurer, without the Clausens present, to inspect and "ADVOCATE" regarding the damage and repairs. This conduct places 33 Carpenters squarely within the § 522C.2(7)(a) definition of a public adjuster. In addition, also prior to obtaining the assignment, 33 Carpenters "solicited business" investigating and/or otherwise handling the Clausens' first-party insurance claim. 33 Carpenters appeared uninvited on the Clausens' doorstep, requested the opportunity to inspect their home for hail damage, and upon finding damage obtained from them both the Agreement authorizing it to

communicate directly with State Farm regarding scope of work and payment and directing State Farm to include it as payee and the Insurance Contingency authorizing it to meet with State Farm and discuss with it the Clausens' hail and wind damage claim. (App. 116-17). 33 Carpenters also advertised its services on its website, representing there that it would meet with the insured's insurer to discuss repairs, "ADVOCATE on YOUR behalf", work with the insurer to ensure all damage is included in the insurer's repair estimate, and invoice the insurer directly for repairs. (App. 165-66). This conduct places 33 Carpenters squarely within the §522C.2(7)(b) and (c) definitions of a public adjuster.

33 Carpenters' contention that its pre-assignment conduct does not amount to public adjuster services rings hollow. 33 Carpenters' own contracts and website demonstrate that its role was well beyond that of a contractor and traversed into that of public adjuster. It obtained permission to discuss the scope of work and repair costs, to receive payment, and to communicate regarding the claim, all directly with State Farm and all as an "ADVOCATE on YOUR behalf". It also conducted the damage inspection directly with State Farm on behalf of the Clausens and *without the Clausens present.* Had 33 Carpenters intended to and actually served as only a contractor hired by the insured to perform repairs, none of these authorizations would have been necessary and it surely would not have met with the insurer in the insureds' absence. Further, upon receiving the initial check,

the Clausens did not cash it and make payment to 33 Carpenters, as one would do when hiring a contractor. Rather, consistent with the Agreement authorizing direct payment from State Farm to 33 Carpenters, the Clausens endorsed the check over to 33 Carpenters for deposit directly into 33 Carpenters' bank account. (App. 128-29). And, beyond that, 33 Carpenters ultimately challenged State Farm's adjustment of the claim. As 33 Carpenters admits in its opening brief, it submitted its "first estimate of $55,473.55" "*prior to the time that the Clausens grant an assignment of their claim to 33 Carpenters*". (33 Carpenters' opening proof brf. pp. 19-20). All of this conduct unequivocally demonstrates that prior to obtaining the assignment, 33 Carpenters had entered the realm of public adjuster under Iowa Code Ch. 522C.

33 Carpenters argues that it began negotiating the claim only after obtaining the assignment. (33 Carpenters' opening proof brf. p. 20). Even if this contention were accepted as true, it does not change the conclusion that 33 Carpenters acted as a public adjuster prior to obtaining the assignment. Iowa Code § 522.C(2)(7) does not delineate who is and who is not a public adjuster by "negotiation" of an insured's claim. Rather, it defines a public adjuster much more broadly to include those who solicit business investigating, adjusting, and/or advising insureds about first-party damage claims as well as those who solicit business or represent to the public that they adjust first-party damage claims. As just demonstrated, 33

Carpenters qualifies as a public adjuster under all of the Iowa Code § 522C.2(7) criteria. And, if it were simply a general contractor, as it contends, then it nevertheless violated the law when it acted contrary to Iowa Code § 103A.71(3). Pursuant to that provision, "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 . . . on the residential real estate." Iowa Code § 103A.71(3) (2018). Critically, "A contract entered into with a residential contractor is void if the residential contractor violates subsection 2, 3, or 4." Iowa Code § 103A.71(5) (2018) (emphasis added). Thus, even if 33 Carpenters were acting simply as a general contractor (contrary to all indications and the law), then its actions representing and negotiating, and offering to represent and negotiate, on behalf of the Clausens violated the statutorily allowed conduct of such a contractor.

2. **The assignment, obtained by 33 Carpenters while operating as a public adjuster without holding the required public adjuster license, is invalid.**

Iowa Code § 522C.4 requires persons acting as a public adjuster to hold an Iowa public adjuster license. Specifically, "A person[4] shall not operate as or represent that the person is a public adjuster in this state unless the person is

[4] A "person" is "an individual or a business entity". Iowa Code § 522C.2(6) (2018).

licensed by the commissioner in accordance with this chapter." Iowa Code § 522C.4 (2018). A person acting as a public adjuster without having proper licensure commits a serious misdemeanor. Iowa Code § 522C.6(2) (2018).

33 Carpenters was operating as a public adjuster without a license to do so beginning on June 26, 2016 when it appeared on the Clausens' doorstep, solicited business to inspect their home for damage, and thereafter entered into contracts with them to communicate and discuss directly with State Farm the damage and repairs. The public adjuster conduct continued when 33 Carpenters met with State Farm for State Farm's inspection of the damage and determination of repair costs and when it challenged State Farm's estimate and submitted its own "Supplement" to that estimate. It was during and in the context of all of this conduct that 33 Carpenters obtained the assignment. In other words, 33 Carpenters obtained the assignment while operating as a public adjuster and without having the required license to do so. And even if 33 Carpenters were acting only as a general contractor, it did so in violation of Iowa Code § 103A.71(3) such that the assignment it obtained is rendered void. Iowa Code § 103A.71(5).

In Iowa, a valid contract must consist of an offer, acceptance, and consideration. *Bartlett Grain Co., LP v. Sheeder*, 829 N.W.2d 18, 24 (Iowa 2013). The general and longstanding rule in Iowa is that "an agreement that is contrary to the provisions of any statute or intends to be repugnant to general common law

policy is void." *Staff Mgmt. v. Jimenez,* 839 N.W.2d 640, 650 (Iowa 2013) (citing *Reynolds v. Nichols & Co.,* 12 Iowa 398, 403 (1861)). Stated another way, "it is well-established Iowa law that contracts made in contravention of a statute are void, and Iowa courts will not enforce such contracts." *Bank of the West v. Kline,* 782 N.W.2d 453, 462 (Iowa 2010). Where a statute addresses the protection of health, safety, morals, and welfare of the people, all contracts are subject to the statute. *State ex rel. Turner v. Koscot Interplanetary, Inc.,* 191 N.W.2d 624, 630 (Iowa 1971). Importantly, the Iowa Supreme Court has declared that "a contract made in the course of a business or occupation for which a license is required by one who has not complied with such requirement is unenforceable where the statute expressly so provides, or where it expressly or impliedly, as a police regulation, prohibits the conduct of such business without compliance." *Davis, Brody, Wisniewski v. Barrett,* 115 N.W.2d 839, 841 (Iowa 1962). *See also Bergantzel v. Mlynarik,* 619 N.W.2d 309 (Iowa 2000) (holding that contract for payment of services was unenforceable where it was entered into in violation of attorney licensing requirements); *Mincks Agri Center, Inc. v. Bell Farms, Inc.,* 611 N.W.2d 270 (Iowa 2000) (adopting Restatement (Second) of Contracts § 181 (1981), which provides: "If a party is prohibited from doing an act because of his failure to comply with a licensing, registration or similar requirement, a promise in consideration of his doing that act or of his promise to do it is unenforceable on

grounds of public policy if (a) the requirement has a regulatory purposes, and (b) the interest in the enforcement is clearly outweighed by the public policy behind the requirement."); *Hoxsey v. Baker,* 246 N.W. 653, 655 (Iowa 1933) (holding it is "well settled" that where the law requires a person who practices a profession to obtain a license, that person cannot recover under a contract for services in the absence of the required license); *Food Mgmt., Inc. v. Blue Ribbon Beef Pack, Inc.,* 413 F.2d 716, 724-25 (8th Cir. 1969) (applying Iowa law and finding contracts contravening Iowa architectural and professional engineering registration statutes are unenforceable).

Here, as just demonstrated, 33 Carpenters obtained the assignment on which this action proceeds in the course and context of performing public adjuster services. However, it held no Iowa license to operate as a public adjuster. (App. 170). Although Chapter 522C does not expressly state that a contract made by a party acting without the required license is unenforceable, that implication is clear. The statute imposes penalties for non-licensure including the probation, suspension, revocation, or refusal to issue or renew a license, the imposition of a civil penalty by the insurance commissioner, and criminal penalties. Iowa Code Ch. 522C. The legislature's creation and institution of these penalties strongly indicates that it seeks to prevent persons and entities from engaging in public adjusting services without complying with the requirement of holding a public

adjuster license. In addition, the Iowa Insurance Division has noted that requiring licensure of public adjusters is in the public interest and is necessary for the protection of insurance policyholders. *In re Glaze Roofing & Remodeling*, 2010 WL 2324606 at *2 (Iowa Sec. Bur. June 2010) (summary cease and desist order). The assignment, obtained in the course of 33 Carpenters' provision of public adjusting services in violation of the § 522C.4 licensure requirement, is unenforceable. *Davis, Brody*, 115 N.W.2d 839; *Bergantzel*, 619 N.W.2d 309; *Hoxsey*, 246 N.W. 653; *Food Mgmt.*, 413 F.2d 716.

Application of the Restatement factors, outlined in *Bergantzel*, 619 N.W.2d 309, buttresses this conclusion. The Restatement (Second) of Contracts, § 178 (1981) has identified factors to consider in balancing the competing interests implicated in the enforcement of a contract that violates public policy:

> (2) In weighing the interest in the enforcement of a term, account is taken of:
>
> (a) the parties' justified expectations;
> (b) any forfeiture that would result if enforcement were denied; and
> (c) any special public interest in the enforcement of the particular term.
>
> (3) In weighing a public policy against enforcement of a term, account is taken of:
>
> (a) the strength of that policy as manifested by legislation or judicial decisions;
> (b) the likelihood that a refusal to enforce the term will further that policy
> (c) the seriousness of any misconduct involved and the extent to which it was deliberate; and

(d) the directness of the connection between that misconduct and the term.

*Bergantzel,* 619 N.W.2d at 317 (quoting Restatement (Second) § 178(2)-(3)).

Regarding factors in favor of enforcement, it is impossible that 33 Carpenters had any justified expectation of being allowed to act as a public adjuster or to enter into contracts or otherwise obtain insurance proceeds in that role. At least two Iowa Code sections preclude it from doing so (§§103A.71(3) and 552C.4), and it is a party to other actions which allege that its conduct violates the law. *E.g. 33 Carpenters Construction, Inc. v. The Cincinnati Insurance Company,* No. 17-1979. Similarly, 33 Carpenters would experience little, if any, forfeiture. It has already received payment for the work performed on the Clausens' roof. (App. 128-29, 147-48). Finally, there is no public interest in allowing a general contractor to perform public adjuster duties without holding the required public adjuster license and complying with all the statutory and regulatory requirements existing for public adjusters.

Regarding factors weighing against enforcement, the legislature has been clear that only licensed public adjusters may represent and negotiate insurance claims on behalf of insureds, and it has imposed numerous penalties for persons who violate its laws in that regard. Iowa Code §§103A.71(3) and 552C.4. Similarly, Iowa courts have repeatedly struck down contracts entered into in violation of licensure statutes. *Davis, Brody,* 115 N.W.2d 839; *Bergantzel,* 619

N.W.2d 309; *Hoxsey,* 246 N.W. 653; *Food Mgmt.,* 413 F.2d 716. Further, refusal to uphold the assignment will enforce the policy behind the public adjuster statute, impeding and discouraging 33 Carpenters and others engaging in similar conduct from doing so without meeting Iowa's public adjuster licensing requirements. Additionally, 33 Carpenters' conduct is serious, being subject to penalties under both Iowa Code §§103A.71(6) and 552C.4. 33 Carpenters' blatantly flouts these laws both by its representations on its website and by its conduct. Finally, the assignment is directly related to 33 Carpenters' violative conduct; it obtained the assignment in the course of performing and offering/advertising to perform public adjuster services without holding the required license.

33 Carpenters seems to assert that by virtue of the assignment, it owned the claim and was thereby negotiating on its own behalf, not as a public adjuster on behalf of an insured. This argument ignores that 33 Carpenters obtained the assignment after already acting as a public adjuster, *i.e.* after advertising for and soliciting business to represent the Clausens and negotiate on their behalf and after meeting with State Farm for inspection of the roof and adjustment of repair costs in the Clausens' absence. Equally importantly, the purported assignment is not an actual assignment but simply a transfer intended primarily to secure payment for services rendered. *Iowa Supreme Court Comm'n on Unauthorized Practice of Law v. A-1 Associates, Ltd.,* 623 N.W.2d 803, 808 (Iowa 2001). As in *A-1 Associates,*

the "sham" nature of the assignment is demonstrated by the fact that the purported assignee, 33 Carpenters, paid nothing for it. *Id.* at 806, 808. Calling the transfer an assignment does not make it so, and proceeding on the basis of the invalid "assignment" renders 33 Carpenters' action untenable. *Id.* at 808.

33 Carpenters further challenges the demonstrated invalidity of its assignment, arguing that the purpose of the licensing requirement, not merely the existence of the requirement, controls the validity of a contract obtained in the absence of the required license. It argues that its conduct did not contravene the purpose of Ch. 522C asserting, in conclusory fashion, that it "is merely a contractor, not a public adjusting firm" that operated in a "different realm" than a public adjuster. It asserts that it "was not seeking to evade or circumvent the [licensing requirement] in drafting the [assignment]." (33 Carpenters opening proof brf. pp. 16-17). However, "ignorance of the law is no excuse." *Clark v. Iowa Dept. of Revenue and Finance,* 644 N.W.2d 310, 319 (Iowa 2002). The Iowa Supreme Court has "consistently held that individuals are presumed to know the law." *Id.* Whether 33 Carpenters intended to or believes it did or did not act as a public adjuster is irrelevant. Its actions speak for themselves. They unequivocally demonstrate that 33 Carpenters engaged in public adjusting services. Doing so without the required license was a violation of the plain terms of § 522C.4 as well as the stated purpose of the entire Chapter: "to govern the qualifications and

procedures for licensing public adjusters in this state, and to specify the duties of and restrictions on public adjusters, including limitation on such licensure to assisting insureds only with first-party claims." Iowa Code § 522C.1 (2018). Even if 33 Carpenters were acting only as a general contractor, the assignment it obtained in the course of representing and negotiating, and/or offering to represent and negotiate, on behalf of the Clausens is void. Iowa Code § 103A.71(3) and (5).

The district court correctly applied Iowa law in holding that 33 Carpenters acted as a public adjuster without the required public adjuster license and that the assignment on which it proceeds is therefore unenforceable and an invalid basis for this action. This Court should affirm the district court's grant of summary judgment in favor of State Farm.

### C. The validity of the assignment, and this cause of action, was a matter for the district court, not the insurance commissioner.

33 Carpenters argues that even if it acted in violation of Iowa Code § 522C.4, that statute cannot be utilized by State Farm or the district court to invalidate the assignment because only the Iowa insurance commissioner has jurisdiction over issues arising under Ch. 522C. This issue was not addressed or decided by the district court. Because 33 Carpenters did not seek enlargement of the court's summary judgment order, it has failed to preserve error on this issue.

### 1. 33 Carpenters failed to preserve error.

Error preservation rules require a party seeking to appeal an issue presented to, but not considered by, the district court to call to the attention of the district court its failure to decide the issue. *Meier v. Senecaut,* 641 N.W.2d 532, 540 (Iowa 2002). The claim or issue raised does not actually need to be used as the basis for the decision to be preserved, but the record must at least reveal the district court was aware of the claim or issue and litigated it. *Id.* (issue waived where although raised in motion, it was not decided or addressed in the district court ruling, nothing in the record indicated the district court had considered it, and the party asserting it had not thereafter called the court's attention to it or asked the court to pass upon it)*; Sandbulte v. Farm Bureau Mut. Ins. Co.,* 343 N.W.2d 457, 466 (Iowa 1984) (alternative argument set forth in motion but not addressed in district court ruling was not preserved for review); *Linge v. Ralston Purina Co.,* 293 N.W.2d 191, 195-96 (Iowa 1980) (issue not preserved where it was not addressed in the district court ruling and the record and ruling did not infer the issue was decided).

Here, 33 Carpenters asserted in its resistance brief that only the insurance commissioner had authority to enforce Iowa Code Ch. 522. (App. 187-88). This district court did not resolve, address, or even acknowledge that issue. (App. 203-09). Nevertheless, 33 Carpenters failed to ask the court to enlarge or amend its

ruling to address the issue. In failing to bring the issue to the court's attention and request that the court pass upon it, 33 Carpenters failed to preserve the issue for review by this Court.

**2. The district court properly considered the enforceability of the assignment.**

If the Court reaches the issue of the district court's ability under Chapter 522C to consider the enforceability of the assignment, there can be no doubt that the district court had that ability. 33 Carpenters' argument, that only the insurance commissioner can enforce the provisions of Ch. 522C, conflates the issue of mandating compliance with Ch. 522C with the issue of validity of contracts obtained in the course of violating Ch. 522C. By its summary judgment motion, State Farm did not seek – and the district court did not enter - an order forcing 33 Carpenters to obtain a public adjuster license or imposing penalties on 33 Carpenters for its failure to do so. Those, of course, would be issues within the province of the insurance commissioner. Rather, State Farm sought – and the district court entered – an order holding that the assignment 33 Carpenters obtained while violating Ch. 522C is invalid under settled Iowa contract law and, therefore, an improper basis for the instant action. Indeed, this Court has expressly approved of district court determinations of the validity of contracts entered into in the absence of statutory license requirements. *See Bergantzel*, 619 N.W.2d at 318 (holding contract obtained by party who was not licensed to practice law to be

invalid); *Davis, Brody,* 115 N.W.2d at 841 (implicitly holding the district court could invalidate a contract despite the existence of a governing licensing board).

Moreover, 33 Carpenters is the party that brought this suit in the district court. State Farm had every right to raise all defenses to the action, including that the action is premised upon an invalid contract due to being entered into in violation of statutory licensing requirements. Iowa Code Ch. 522C and Ch. 507A do not have to provide for the negation of assignments that are contrary to statutory provisions. Long-established, well-settled Iowa case law already does that; case law which the district court was well within it right to consider and apply in determining the validity of the assignment and, resultingly, this action. And Iowa Code §103A.71(5) does expressly provide that contracts obtained by a contractor violating its provisions are void.

Clearly, the district court had the ability and authority to consider whether the assignment was invalid under Iowa contract law due to 33 Carpenters obtaining it in violation of Ch. 522C licensure requirements. As demonstrated in the preceding section, the district court correctly decided that the assignment is invalid and, therefore, that it does not provide a basis for 33 Carpenters to pursue State Farm.

## CONCLUSION

33 Carpenters' claim is premised upon an assignment that is invalid due to having been obtained in violation of Iowa Code Ch. 522C public adjuster licensure requirements. Additionally, the assignment is invalid by operation of Iowa Code § 103A.71(3) and (5). For these reasons, 33 Carpenters' action fails as a matter of law. The district court correctly granted summary judgment in favor of State Farm. This Court should affirm the district court's summary judgment order.

## CONDITIONAL REQUEST FOR ORAL ARGUMENT

33 Carpenters has requested oral argument. Oral argument may be unnecessary following the disposition of *33 Carpenters Construction, Inc. v. The Cincinnati Insurance Company*, No. 17-1979, which involves issues virtually identical to those presented in this case. In the event that 33 Carpenters' request for oral argument is accommodated, then State Farm respectfully requests that it be heard in oral argument, as well.

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## CERTIFICATE OF SERVICE AND FILING

I certify that on February 25, 2019, the foregoing document was electronically filed with the Court using the CM/ECF system and served to the parties listed by electronic means through the ECF system.

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*/s/ Brenda K. Wallrichs*

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