

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

33 CARPENTERS CONSTRUCTION,
INC.,

Plaintiff/Counterclaim Defendant

v.

THE CINCINNATI INSURANCE
COMPANY,

Defendant/Counterclaim Plaintiff

LAW NO. LACE128760

**DEFENDANT/
COUNTERCLAIM
PLAINTIFF'S STATEMENT
OF UNDISPUTED
MATERIAL FACTS IN
SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

COMES NOW the Defendant/Counterclaim Plaintiff, The Cincinnati Insurance Company, and pursuant to Iowa Rule of Civil Procedure 1.981(3) hereby provide the following Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment:

1. Greg Whigham owns a residential property at 5577 Kristi Lane, Bettendorf, Iowa. (Pet. ¶ 5, attached hereto as Dft.'s Summ. J. Ex. A).

2. Whigham had a policy of insurance with The Cincinnati Insurance Company, Policy Number H01 0480531, providing coverage for direct physical loss to the residence and other covered loss caused by or resulting from a covered cause of loss. (Dft.'s Summ. J. Ex. A ¶ 5; Policy of insurance, attached hereto as Dft.'s Summ. J. Ex. B at p 7 of 37).

3. Generally, damage from a storm is a covered cause of loss. (Dft.'s Summ. J. Ex. B, p. 5 of 37).

4. 33 Carpenters is a contractor specializing in exterior remodeling and storm repairs including roof repair, roof replacement, and roof maintenance. (Affidavit of Catherine M. Lucas, attached hereto as Dft.'s Summ. J. Ex. C, 33 Carpenter's homepage, attached as Dft.'s Summ. J. Ex. D).

5. According to its website, 33 Carpenters employes a six step process in assisting its customers with insurance claims:

Step 1. Contact 33 Carpenters Construction for a free comprehensive storm damage evaluation and assessment.

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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 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 responsible for your insurance deductible and any agreed upon upgrades.

(Emphasis original) (Dft.'s Summ. J. Ex. E).

6. 33 Carpenters maintains a contractor license, but does not have a public adjuster's license nor does any of its employees hold a public adjuster's license.

(Plaintiff's Answer to Counterclaim ¶ 16, attached hereto as Dft.'s Summ. J. Exhibit F).

7. A storm arose in Bettendorf on March 15, 2016. (Dft.'s Summ. J. Ex. A ¶ 7).

8. On October 6, 2016, Tony McClannahan of 33 Carpenters, with Whigham also on the phone line, called Cincinnati to report the storm damage to the aluminum siding along the south-side of Whigham's home and that some shingles flew off.

(Affidavit of Tom Busch, attached hereto as Dft.'s Ex. G).

9. Wind and hail damage were evident. (Dft.'s Summ. J. Ex. A ¶ 7).

10. McClannahan advised Cincinnati that 33 Carpenters was the contractor working with the insured and he would attend the insurance inspection. (Dft.'s Ex. G).

11. On October 10, 2016, Whigham signed a document titled "Assignment of Claim and Benefits" with 33 Carpenters. (Dft.'s Summ. J. Ex. A, exhibit 1 attached to Ex. A).

12. Cincinnati assigned an adjuster to review the claim and the adjuster prepared an estimate for repair costs. (Dft.'s Summ. J. Ex. G).

13. Actual cash value (ACV) and replacement cost value (RCV) payment were made and Cincinnati closed its file. (Dft.'s Summ. J. Ex. G).

14. On February 21 and 22, 2017, Austin Nelsen of 33 Carpenters advised Cincinnati it was necessary to replace all the siding and gutters due to a matching issue. (Dft.'s Summ. J. Ex. G, E-mail correspondence between 33 Carpenters and Cincinnati attached as Dft.'s Summ. J. Ex. H).

15. Cincinnati re-opened its file. (Dft.'s Summ. J. Ex. G).

16. 33 Carpenters had already inspected the siding and provided Cincinnati photos of why it believed the siding needed replaced. (Dft.'s Summ. J. Ex. G; Dft.'s Summ. J. Ex. H).

17. 33 Carpenters was informed by Cincinnati that Cincinnati would address any differences directly with the insured, Whigham. (Dft.'s Summ. J. Ex. G; Dft.'s Summ. J. Ex. H).

18. Nelsen sent multiple e-mails to Cincinnati demanding inspection times and arguing the siding did not match. (Dft.'s Summ. J. Ex. G; Dft.'s Summ. J. Ex. H).

19. Nelsen sent an e-mail to Whigham stating:

Ok. [Cincinnati representative] Mr. Tessen has had a difficult time communicating with me. We need to determine how Cincinnati intends to make you whole. Our suggestion is to remove and replace the siding, fascia, soffit, gutters and downs. That is the only way to make your home look like it did prior to the event. Please advise.

(Dft.'s Ex. Summ. J. G; Dft.'s Summ. J. Ex. H).

20. On March 13, 2017, 33 Carpenters filed the present lawsuit in Scott County alleging it has an assignment of Whigham's claim and Cincinnati breached its policy of insurance with Whigham to pay the full amount of the loss owed to 33 Carpenters, causing damages to 33 Carpenters. (Dft.'s Summ. J. Ex. A).

21. On March 20, 2017, Cincinnati spoke with Whigham and advised that this lawsuit has been filed by 33 Carpenters against his policy. (Dft.'s Summ. J. Ex. G).

22. Whigham was not aware of the lawsuit and indicated he was told the assignment form from the contractor was a standard practice and that clients routinely sign it. (Dft.'s Summ. J. Ex. G).

23. On April 5, 2017, Cincinnati filed a counterclaim for declaratory judgment against 33 Carpenters alleging the assignment is not valid under Iowa law because it would effectively allow 33 Carpenters to operate as a public adjuster without the license required under Iowa Code chapter 522C and thus, the assignment cannot be enforced under Iowa law. (Counterclaim attached hereto as Dft.'s Summ. J. Ex. I).

BRADSHAW, FOWLER, PROCTOR & FAIRGRAVE, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon one of the attorneys of record for all parties to the above-entitled cause by serving the same on such attorney at his/her respective address/fax number as disclosed by the pleadings of record herein, on August 3, 2017 by:

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| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivered | <input type="checkbox"/> UPS |
| <input type="checkbox"/> Federal Express | <input checked="" type="checkbox"/> Other <u>Efile</u> |

/s/ Donna Henkels