

**THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

FILED

In the Matter of
Michael R. Marinelli
And
Insurance Appraisal Services,
Respondents,

ORDER NO. 16-0155

**HEARINGS UNIT
MOTION FOR SUMMARY JUDGMENT** OFFICE OF
INSURANCE COMMISSIONER
OF DISMISSAL

Of Dismissal

RELIEF REQUESTED

COME NOW Respondents Michael R. Marinelli ("Marinelli") and Insurance Appraisal Services ("IAS"), by and through their undersigned counsel, and hereby move this tribunal for an Order to Dismiss this Matter and to declare null and void the Order To Cease And Desist And Notice Of Intent To Impose A Fine issued by the Insurance Commissioner and the Office of the Insurance Commissioner against the Respondents in the above-captioned Matter. This Motion is based on the pleadings and documents in this Matter, the materials and documents contained in the files of the Office of the Insurance Commissioner, the Declarations of Stephanie Bennett, Michael Marinelli, and Brian Kreger, attached hereto and made a part of this Motion, and the legal authorities, exhibits, and documents supporting this Motion to Dismiss, as set forth herein.

BACKGROUND

The Insurance Commissioner and the Office of the Insurance Commissioner (referred to collectively herein as “OIC”) initiated this current action by issuing their Order To Cease And Desist And Notice Of Intent To Impose A Fine (“Order”) against the Respondents. In their

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1 Order, the OIC states: "Respondents inspect cars and prepare damage estimates based on visible
2 damage." (See, Order, paragraph 1). This is a correct statement. The OIC has identified
3 precisely what Marinelli and IAS do – they appraise auto damage. That is all they do. Marinelli
4 and IAS are damage appraisers.
5

6 The OIC further asserts that, "The Insurance Commissioner has not granted Marinelli or
7 IAS any license." (Id.) This is also true and is based on the fact that the OIC does not license
8 appraisers. The OIC's own expert, Cheryl Penn, OIC Producer Licensing & Oversight
9 Compliance Professional, says the same thing: "We do not license appraisers." (See, Exhibit C
10 to Declaration of Brian Kreger, attached hereto as Exhibit 1).

11 The OIC goes on to state that "In December 2015, an insurer retained respondents to
12 inspect a vehicle in order to determine if there were any defects and, if defects existed, to prepare
13 a damage estimate and attempt to reach an agreement with the vehicle owner on the scope of
14 necessary repairs." (See, Order, paragraph 3). This is inaccurate in that the Respondents were
15 not authorized to, and never did, contact the vehicle owner or attempt to "reach an agreement
16 with the vehicle owner."

17 There may be some question as to who the OIC was referring to when they said "attempt
18 to reach an agreement"; that is, whether the OIC was referring to the insurer or the Respondents.
19 However, the OIC's inaccurate and ambiguous statement was clarified by an authorized
20 representative of the very insurance company that had retained the Respondents. Mr. Craig
21 Caswell, Field Representative for GEICO Insurance Company provided his statement to the OIC
22 at the request of the OIC's investigator who questioned the work Mr. Marinelli was authorized to
23 perform. Mr. Caswell stated that Mr. Marinelli was to "attempt to get an agreement with Mr.
24 Harber on the scope of necessary repairs." (See, Exhibit A to Declaration of Brian Kreger).
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1 Mr. (Mike) Harber was the independent public adjuster who had been hired by the owner
2 of the damaged vehicle to represent him and his financial interests in his auto damage claim. As
3 Mr. Caswell clearly states, "Mr. Marinelli was not instructed or retained to adjust the loss, that
4 responsibility resides with the Auto Damage adjusters and the Auto Damage Supervisors for
5 GEICO." (Id, Ex. A to Kreger Declaration). Despite this clear and unambiguous statement by
6 the GEICO claims Field Representative regarding the Respondents' scope of authority which
7 was limited to only the inspection and appraisal of the damaged vehicle, the OIC nevertheless
8 chose to disregard these facts and issued its Order against the Respondents, claiming that the
9 Respondents' actions of inspecting and appraising a damaged vehicle violate the Insurance Code.
10

11 Not only do the OIC and the Insurance Commissioner not understand the very distinct
12 and different functions of an insurance claims adjuster (such as Mr. Caswell), and an auto
13 damage appraiser (such as Mr. Marinelli), they have absolutely no evidence to support their
14 claim that the Respondents have violated any provision of the insurance code. In fact, the OIC
15 cites no evidence of anything Respondents did that would support the Order. Rather, the OIC
16 makes an improbable leap of logic and directs the Respondents to "cease and desist from: Acting
17 or holding out as an adjuster in Washington without an adjuster license." (See, Order at page 2).
18 Respondents do not conduct business as adjusters.

19 Respondents conduct business *only* as auto damage appraisers. (See, Declaration of
20 Michael Marinelli, attached hereto as Exhibit 2). The two professions, and the scope of services
21 and work performed by each, are separate and distinct. And, whereas independent or public
22 adjusters are licensed under the Insurance Code, independent auto damage appraisers are not.
23 There is no violation of the Insurance Code to be found in any of the auto damage appraiser
24 activities performed by the Respondents.
25

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1 The OIC's Order should be rescinded and this case must be dismissed.
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DISCUSSION AND LEGAL AUTHORITY

4 Title 48 of the Revised Code of Washington (the Insurance Code) does not contain a
5 definition of "appraiser" or "appraisal." However, Chapter 18.140 RCW, the Certified Real
6 Estate Appraiser Act, does contain definitions of "appraisal" and "appraisal assignment" that
7 provide very helpful guidance in understanding the critical issues in this current matter.
8

9 RCW 18.140.010. Definitions.

10 (1) "Appraisal" means the act or process of estimating value; an estimate of value;
11 or of or pertaining to appraising and related functions.

12 (2) "Appraisal assignment" means an engagement for which an appraiser is
13 employed or retained to act, or would be perceived by third parties or the public
14 as acting, as a disinterested third party in rendering an unbiased analysis, opinion,
15 or conclusion relating to the value of specified interests in, or aspects of,
16 identified real estate. The term "appraisal assignment" may apply to valuation
17 work and analysis work. (Emphasis added).

18 An appraiser's work of estimating value, whether related to the appraisal of real estate or
19 of any other type of property must be "disinterested" and must be rendered in an "unbiased
20 analysis, opinion, or conclusion." This is key to understanding the distinction between the work
21 an appraiser performs for his or her client and the work an insurance adjuster performs for his or
22 her client or principal.

23 While Chapter 18.140 RCW, and these definitions cited above, relate to the certification,
24 licensing, or registration of real estate appraisers, the definition of an "appraisal" here matches
25 exactly the description of the work and service the Respondents provide for their clients (See,
26 Declaration of Michael Marinelli), and also the description of the work other auto damage
27

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1 appraisers perform for their clients in the area of motor vehicle appraisals, whether insurance-
2 related or not. (See, Declaration of Stephanie Bennett, attached hereto as Exhibit 3).
3

4 Likewise, the statutory definition of "appraisal assignment" closely parallels the
5 description of work and the scope of authority an appraiser's clients, including insurance
6 companies, demand of independent appraisers they retain. Like many appraisers and damage
7 estimators, Mr. Marinelli and IAS are retained by insurers to appraise and estimate damage to an
8 insured vehicle. In those cases, the insurance company will detail the scope of work and limit of
9 authority expected of the appraiser in an Appraisal Assignment. Mr. Marinelli has provided an
10 example of such an Appraisal Assignment. (See, Exhibit A to Declaration of Michael Marinelli).
11 This Appraisal Assignment dovetails with the definition of "appraisal assignment" in RCW
12 18.140.010.

13 Although some states certify or license independent appraisers, Washington does not, as
14 the OIC's licensing and compliance expert, Cheryl Penn, confirms. In light of the fact, therefore,
15 that Washington does not license independent auto damage appraisers, and since there is no
16 corresponding term in the Insurance Code to describe the role or responsibility of an auto
17 damage appraiser, the definitions of "appraisal" and "appraisal assignment" cited above offer
18 very valuable instruction in the pending matter, as discussed further below.
19

20 The Insurance Code does not contain a definition of "appraiser." It does, however, have
21 a definition of "adjuster." RCW 48.17.010(1) reads, in part:
22

23 (1) "Adjuster" means any person who, for compensation as an independent
24 contractor or as an employee of an independent contractor, or for fee or
commission, investigates or reports to the adjuster's principal relative to claims
arising under insurance contracts, on behalf solely of either the insurer or the
insured. (Emphasis added).

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1 The Insurance Commissioner and the OIC give Washington consumers additional advice
2 about what an adjuster does. In the OIC's "A Consumer's Insurance Glossary" the OIC notes:
3

4 **Adjuster** — Someone who is paid by the insurance company or the insured
5 person to investigate or negotiate insurance claims on their behalf.¹

6 The Insurance Commissioner further advises Washington consumers that they have a
7 right to hire a licensed public adjuster "who works on your behalf to appraise and negotiate your
8 property-insurance claim." (See, OIC's "Your homeowner claim responsibilities and rights",
9 attached hereto as Exhibit 4).²

10 As the law states and the OIC advises, an adjuster engages in an investigation and
11 negotiation of matters relative to claims arising under an insurance contract "on behalf solely of
12 either the insurer or the insured." These words in this legal definition of "adjuster", as well as
13 the OIC's further explanation to Washington consumers, are important to an understanding of the
14 difference between the work and responsibilities of an appraiser compared to the work and
15 responsibilities of an insurance adjuster. The Insurance Code and the OIC confirm that the
16 actual work of an insurance claims adjuster is to represent the financial interests of the insured or
17 the insurer by acting solely on behalf of either the insurer or the insured. In other words, the
18 adjuster has the legal authority to negotiate and settle claims arising under an insurance contract.
19 An appraiser does not. An appraiser must be disinterested and unbiased. And, that is precisely

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24 ¹ The OIC's Consumer's Insurance Glossary can be accessed on the OIC's website at:
25 <https://www.insurance.wa.gov/your-insurance/tips/glossary-insurance-terms/>.

26 ² This OIC advice document can be accessed on the OIC's website at:
27 <https://www.insurance.wa.gov/your-insurance/home-insurance/understanding-home-insurance/your-rights/>.

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1 what Mr. Marinelli and Ms. Bennett say about the work they do. They do not investigate or
2 negotiate insurance claims. They only appraise and estimate damage to automobiles.
3

4 While the Insurance Code may not provide a comprehensive explanation of the separate
5 functions of an insurance adjuster and an independent appraiser, the regulations promulgated by
6 the Insurance Commissioner do provide additional guidance. Title 284 of the Washington
7 Administrative Code (WAC) contains the regulations adopted by the Insurance Commissioner to
8 help explain and provide additional instruction for understanding provision of the Insurance
9 Code.

10 For example, Chapter 284-30 WAC was adopted to explain, define, and describe certain
11 minimum standards of conduct in the business of insurance based on Chapter 48.30 RCW.
12 Included in a comprehensive list of unfair business practices found in WAC 284-30-330 is the
13 following:

14 (17) Delaying appraisals or adding to their cost under insurance policy appraisal
15 provisions through the use of appraisers from outside of the loss area. The use of
16 appraisers from outside the loss area is appropriate only where the unique nature
of the loss or a lack of competent local appraisers make the use of out-of-area
appraisers necessary. (Emphasis added).

17 The reference in WAC 284-30-330(17) to “appraisal provisions” is the “Appraisal Clause” that is
18 found in all standard personal lines auto insurance policies. A copy of a standard Appraisal
19 Clause (ISO standard form, approved by the OIC) is attached hereto as Exhibit 5.³
20

21 The Appraisal Clause sets out procedures to be followed if an insured and the insurer
22 cannot agree on the value of the loss or damage claimed and, therefore, cannot settle the claim.
23

24

25 ³ This page containing the “Appraisal Clause” is taken from the Respondents’ attorney’s personal
automobile policy.

1 The procedure involves the engagement of appraisers, and, if necessary, a third or “umpire”
2 appraiser to determine the final and binding evaluation of the amount of loss. Here too, the
3 Insurance Commissioner advises Washington consumers: “If you and your insurer can’t agree on
4 your car’s value you have the right to hire an appraiser via the appraisal provision in your auto
5 policy. This provision allows you and the company to each hire appraisers.” (See, OIC’s “What
6 happens after your car gets totaled”, attached hereto as Exhibit 6).⁴
7

8 Furthermore, by approving the “appraisal clause” in insurance contracts, and by
9 recognizing the procedure in a regulation, and by advising Washington consumers of their right
10 to hire an independent appraiser, the Insurance Commissioner and the OIC verify the function
11 and engagement of independent appraisers as a critical part of the fair and unbiased assessment
12 of loss and resolution of disputes.

13 Washington courts have also weighed in on the subject of the work of independent
14 appraisers, the rights of Washington consumers to retain the services of an appraiser, and the
15 interaction of appraisers and adjusters. In fact, the “appraisal clause” provision, and the
16 procedures, employed under it, were the subject of detailed discussion about the various
17 functions of adjusters and appraisers in the appraisal process, and provided the backdrop for the
18 Court’s opinion, in *Lloyd v. Allstate Ins. Co.*, 176 Wn. App. 490, 275 P.3d 323 (2012).

19 The facts in *Lloyd* are not complicated and probably not all that unusual. Mr. Lloyd’s
20 automobile was damaged in an accident. At the time of the accident, Mr. Lloyd was insured by
21 Deerbrook Insurance Company, an affiliate of Allstate Insurance Company which assumed
22

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24 ⁴ This OIC advice document can be accessed on the OIC’s website at:
25 <https://www.insurance.wa.gov/your-insurance/auto-insurance/totaled-car-rights/>.

1 responsibility for adjusting the loss claim. Allstate asked Mr. Lloyd to take his car to an auto
2 shop for an appraisal (See, *Lloyd, supra*, at p. 492). The repair shop determined the car was a
3 "total loss." Eventually, Mr. Lloyd took the car to two other repair shops for appraisals, and they
4 gave the same evaluation. After a period of time during which additional appraisal work was
5 performed to account for certain condition items of Mr. Lloyd's car (such as mileage, interior
6 condition, and so forth), the Allstate claims adjuster, Steven Graham, made an offer to Mr. Lloyd
7 to settle the claim for actual cash value. Mr. Lloyd refused the offer to settle. Mr. Graham made
8 a second offer which was also refused.

9
10 Approximately a month later, Allstate received a letter from Mr. Lloyd's attorney stating
11 that Mr. Lloyd wished to invoke the Appraisal Clause of his policy and that he had selected an
12 independent appraiser. Allstate also retained an independent appraiser, Mr. Mark Olson.⁵ The
13 two appraisers met and agreed on an "Award of Loss" and each appraiser so advised their
14 respective clients. Shortly thereafter, Allstate's claims adjuster tendered the total amount of the
15 "Award of Loss" to Mr. Lloyd to settle his claim. Eventually, Mr. Lloyd cashed the claim
16 settlement check, but later changed his mind and brought his action against Allstate alleging bad
17 faith and unfair and deceptive trade practices by offering low settlement amounts. The Court of
18 Appeals affirmed the trial court's summary judgment in favor of Allstate. But it is the Court's
19 discussion of the various activities of the adjusters and appraisers involved in the process of
20 settling the claim that is of most importance to the current matter pending before this tribunal.

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25 ⁵ Mr. Olson owns and operates an independent auto damage appraisal business in Seattle.
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At several points in the written opinion, the Court discussed the work of adjusters and appraisers and further observed the separate functions of each. For example:

“Graham’s [the Allstate claims adjuster] two settlement offers were both reasonable and based on “adequate information.” *Werlinger*, 129 Wn. App. At 808. Allstate promptly and thoroughly investigated Lloyd’s loss by sending a field representative to view the car and having the car examined by a private auto body shop. The two offers Graham extended were based on Autosource’s⁶ market research, Both offers tendered 100 percent of the actual cash value accorded to the car by Autosource appraisals. There is no evidence that Graham made any attempt to reduce the appraisals arbitrarily.” (*Lloyd, supra*, at p. 496; footnote added).

“Graham testified that in his role as a claims adjuster, he routinely subtracted deductibles from “any claim that we settle for a policy-holding insured customer,” without regard to whether the settlement occurred via the appraisal clause or by ordinary negotiation.” (*Lloyd, supra*, at p. 499; quotes in original).

Although the legal issues before the Court in *Lloyd* may have focused on whether or not Allstate may have committed bad faith or engaged in unfair practices, the more important element of the *Lloyd* decision, for purposes of this current matter, is the Court's recognition and discussion of how appraisers and adjusters work independently and how their work may intersect. Without fanfare, the Court observed what everyone in the insurance business knows as a matter of common practice, namely, that insurance adjusters and independent appraisers have different and distinct functions. And, whereas insurance claims adjusters may also assess damage in an effort to adjust and settle claims, it is *only* the adjuster who negotiates, compromises, adjusts, and ultimately extends the offer to settle the claim. Appraisers, however,

⁶ Autosource is a nationwide automobile appraisal and value estimator service and auto broker.

1 only assess the extent of damage and evaluate the value or the cost to repair that damage, and
2 then report their disinterested and unbiased appraisal to the client.
3

4 *Lloyd v. Allstate, supra*, is not the only Washington appellate decision to acknowledge
5 and discuss the operation of and procedures involved in settling an insurance-related claim under
6 the “appraisal clause” provision in an insurance contract. *Buchanan v. Switzerland Gen. Ins.*
7 *Co.*, 76 Wn. 2d 100, 455 P.2d 344 (1969) involved damage to a building and a resolution of the
8 claim under the appraisal clause of the property insurance policy in effect at the time of the loss.
9 The trial court had dismissed the insured’s action to recover damages resulting from a fire to the
10 structure based on the insured’s failure to follow certain proof-of-loss steps outlined in the
11 policy. The Supreme Court reversed and remanded for a new trial after reviewing the several
12 steps that were undertaken by both parties in an effort to resolve the disputed claim. The Court
13 noted that its decision was based, at least in part, on the evidence offered by the appellant-
14 insured that,

15 “the adjuster was authorized by respondent [Switzerland Gen. Ins. Co.] to engage
16 the services of an appraiser, submit proofs of loss on behalf of insureds, negotiate
17 with insureds, and to compromise and settle claims.” (*Buchanan, supra*, at p.
18 105; emphasis added).

19 As in *Lloyd v. Allstate, supra*, the point here with respect to the *Buchanan* case is the
20 Supreme Court’s recognition of the distinct functions of the adjuster, who not only had authority
21 to retain an outside appraiser (Why? To provide an independent, unbiased opinion regarding the
22 value of the damage and loss), but also had the authority that is owned only by claims adjusters,
23 and that is to negotiate, compromise, and settle the claim. As we see again in *Buchanan* and
24 *Lloyd*, the Washington courts are quick to recognize and accept – without the need for any
25 intricate legal analysis – the unique and distinct authority and separate functions of an insurance
26 adjuster versus those of an independent appraiser.

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1 Other appellate decisions, spanning nearly a century of insurance-related claims cases,
2 follow a similar pattern of judicial notice and acceptance of customary business practices in the
3 insurance industry. See, for example, *Gouin v. Northwestern National Ins. Co.*, 145 Wash. 199,
4 259 P. 387 (1927), where the Supreme Court observed:

5 “The evidence does not disclose that anything unusual occurred between himself
6 [Gouin] and the insurance company after the fire loss was suffered. On the
7 contrary, it appears that the ordinary course was pursued. The appellant [Gouin]
8 made proofs of his loss, claiming a total destruction of the property and a loss in
9 excess of the amount of the insurance. The company disputed the claims,
10 contending that there was but a partial loss, and sought to adjust the differences in
11 an amicable manner. Failing in this, they caused the loss to be appraised by their
12 adjuster, and offered to pay to the appellant the amount the adjuster determined
13 the amount to be. On the refusal of the appellant to take this sum, they demanded
14 an appraisal by appraisers under the terms of the policy. There is nothing tending
15 to show that the company in any way interfered with, or sought to control, the
16 action of the appraisers; and nothing to show that the appraisers did not act
17 independently, impartially, and in accordance with their honest judgment.”
18 (*Gouin, supra*, at p. 205-206).

19 In each of these cases, *Lloyd*, *Buchanan*, and *Gouin*, we have a situation that involved
20 both an adjuster and an appraiser, both of whom have conducted their activities separately and
21 independently of the other. And, in each case, the Court has simply accepted those facts as
22 evidence of the customary and ordinary business practices of the two professions. More reported
23 decisions could be cited. But, that is not necessary since the Courts in *Lloyd*, *Buchanan*, and
24 *Gouin* support the thesis of this Motion that the Respondents conduct their business as
25 independent auto damage appraisers in a disinterested and unbiased manner, and that their work
26 does not, in any way, match the claims inspection and negotiation work of an insurance adjuster.

27 Just as is pointed out in the decisions discussed above, an adjuster alone has the
28 responsibility to negotiate, compromise, offer and settle claims. The Respondents conduct

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business exclusively as independent appraisers who provide their clients an independent, impartial, unbiased, and honest assessment of damage to vehicles and an estimated cost to repair that damage. They do not, they never have, and they will not negotiate, adjust, or settle any claims or represent the financial interests of those who retain them.

THE INSURANCE COMMISSIONER'S ACTION IS INCONSISTENT, ARBITRARY, AND UNFAIR

The Insurance Commissioner's and the OIC's action in issuing their Order against the Respondents is inconsistent and arbitrary in light of other similar investigations undertaken by the OIC. Therefore, the OIC's action in this matter is unfair and patently discriminatory as to Respondents Marinelli and LAS and their business.

In April 2015, the OIC initiated an investigation against Young & Associates, allegedly based on a complaint that Young & Associates was “acting as an unlicensed insurance adjuster.” The OIC’s case is a matter of public record filed under OIC Case No. 1246616 (R.L. Young, Inc., d/b/a YOUNG & Associates).

Respondent's counsel represented Young & Associates. Pertinent documents from the file of that investigation are attached hereto as Exhibit 7 (a list of those documents is noted on the face page of Exhibit 7).

During its investigation, the OIC suggested in strong terms the OIC's belief that Young & Associates was acting as an independent adjuster representing the interests of an insurer and as a public adjuster representing the financial interests of the insured named in an insurance policy without being licensed as an adjuster, which would be a violation of Washington Insurance Code, specifically, RCW 48.17.010. (See, Exhibit 7, April 3, 2015 Letter from Debbie Calhoun

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1 to Young & Associates). Through counsel, Young & Associates explained to the OIC, in writing
2 and in direct in-person meetings, that Young & Associates is a building consulting company that
3 inspects buildings damaged by fire, storm, or other disasters, and prepares estimates of the cost
4 to reconstruct the damaged building. Young & Associates also advised the OIC that the
5 company does not adjust or investigate insurance claims, but explained, rather, that the
6 company's activities are limited to preparing estimates of cost to repair damage based on their
7 review of the extent of damage. (See, Exhibit 7, April 28, 2015 Letter from Jenkins & Kling to
8 Debbie Calhoun, and August 11, 2015 letter from Brian Kreger to Debbie Calhoun).

10 After a series of meetings and discussions between counsel for Young & Associates and
11 OIC counsel and investigators, the OIC concluded its investigation with a finding that Young &
12 Associates was not acting as an independent or public insurance adjuster, that Young &
13 Associates was conducting business only as a property damage appraiser and estimator, and that
14 the allegations against Young & Associates – that they were acting as an unlicensed adjuster –
15 were **unsubstantiated**. Accordingly, the OIC rightly closed its investigation with no further
16 action. (See, Exhibit 7, February 3, 2016 Letter from Mark Durphy to Brian Kreger).

17 The exact same issues investigated and examined by the OIC in the Young & Associates
18 matter are present in the current matter against Respondents Marinelli and IAS. Just like Young
19 & Associates, the Respondents in this matter act only as appraisers and estimators of auto
20 damage. And, just as Young & Associates, they do not represent the interests of an insurer or the
21 financial interests of an insured named in an insurance policy. In other words, just as Young &
22 Associates did not conduct business as either an independent insurance adjuster or as a public
23 insurance adjuster, so also Respondents Michael Marinelli and Insurance Appraisal Services do
24 not conduct business as an insurance adjuster.

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1 A court, and this tribunal, can reverse an agency order if the order is arbitrary and
2 capricious. RCW 34.05.570(3)(i). Arbitrary and capricious action has been defined as willful
3 and unreasoning action, without consideration and in disregard of facts and circumstances.
4

5 *Friends of Columbia Gorge v. Forest Practices Appeal Bd.*, 129 Wn. App. 35, 57, 118 P.3d 354
6 (2005).

7 In this case, the OIC has totally disregarded the facts establishing that the Respondents do
8 not represent the interests of an insurer or any insured in their work as auto damage appraisers.
9 The OIC chose to completely ignore the verification of these facts presented to the OIC in the
10 statement of Craig Caswell, the insurance company claims adjuster who retained the
11 Respondents to perform only an inspection and damage appraisal of an automobile. The OIC's
12 Order is arbitrary and discriminatory and cannot be sustained.

13 Furthermore, this matter pending before this tribunal presents the exact same issues
14 regarding alleged violation of the adjuster licensing laws that the OIC and the Insurance
15 Commissioner deliberated and studied less than a year ago, and ultimately made findings and
16 conclusions of no violation in the OIC's investigation of Young & Associates. But now, by
17 issuing their Order against the Respondents in this matter, the OIC and the Insurance
18 Commissioner are treating the same professional activities in completely opposite ways, to the
19 detriment of the Respondents. Respondents are auto damage appraisers, not adjusters.
20 Appraisers are not licensed by the OIC and are not regulated under the Insurance Code. The
21 Respondents are not in violation of any provision of the Insurance Code and certainly are not in
22 violation of any licensing requirements in the Insurance Code.

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The inconsistent, arbitrary, discriminatory, and unfair Order and regulatory action taken by the OIC and the Insurance Commissioner against the Respondents is not justifiable, cannot be tolerated, and cannot be allowed to stand.

The OIC's Order To Cease And Desist And Notice Of Intent To Impose A Fine issued against the Respondents in this above-captioned matter must rescinded and the case against the Respondents must be dismissed.

RESPECTFULLY SUBMITTED this 9th day of January, 2017

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Brian F. Kreger,
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Attorney for Respondents

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CERTIFICATE OF SERVICE

I, Brian F. Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I served and caused to be delivered by United States Postal Delivery and by Electronic Mail Delivery the foregoing **Motion For Summary Judgment Of Dismissal (with Exhibits)** on the following parties or persons at the last known addresses given below:

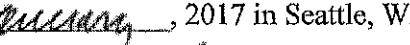
TO:

Marta DeLeon
Assistant Attorney General
Office of the Attorney General
1125 Washington Street, SE
P.O. Box 40100
Olympia, WA 98504-0100
and to: MartaD@ATG.WA.GOV

TO:

Hearings Unit
William Pardee, Presiding Officer
ATTN: Dorothy Seabourne-Taylor
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
and to: DorothyS@oic.wa.gov

Executed on this 9th day of January, 2017 in Seattle, WA.

of January, 2017 in Seattle, WA.

Brian F. Kreger

CERTIFICATE OF SERVICE - 1

— KREGER BEEGHLY PLLC —

999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

EXHIBIT 1

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of
Michael R. Marinelli
And
Insurance Appraisal Services,
Respondents,

ORDER NO. 16-0155
Declaration of Brian Kreger
(DRAFT)

I, Brian Kreger, under penalty of perjury under the laws of the State of Washington, do hereby make this Declaration as my own statement freely given as follows:

1. I am the attorney representing the Respondents, Michael R. Marinelli and Insurance Appraisal Services, in the above-captioned matter.
2. As part of my preparation of this matter, I submitted a Public Records Request to the Office of the Insurance Commissioner. I also served Interrogatories and Requests for Production of Documents on Drew Stillman and the Office of the Insurance Commissioner. In response to both of my discovery requests, the Office of the Insurance Commissioner (OIC) provided a large number of documents, including several documents that relate to the origin of this current matter, namely a complaint filed by a Darrell M. (Mike) Harber alleging that the Respondents are acting as insurance claims adjusters without a license.
3. Among those documents that relate to this matter, and the incident that precipitated the current OIC action against the Respondents, are the following:
 - A. Statement by Craig Caswell, Field Representative in the Seattle Metro Claims Office of Geico Insurance Company. Mr. Caswell's comments relate to the Geico claim ("Handwerk Nissan Versa") that precipitated the current OIC action against the Respondents. Mr. Caswell clearly states that Mr. Marinelli and Insurance Appraisal Services were retained to inspect the damaged vehicle. Mr. Caswell also clearly states that Mr. Marinelli and Insurance Appraisal Services were not retained to adjust the subject loss.

A true and exact copy of this document is attached to this Declaration as Exhibit A.

B. E-mail exchange between Mr. Craig Caswell and Mr. Bobby Frye, Senior Investigator with the OIC. Mr. Frye acknowledges the OIC's receipt of Mr. Caswell's description of Geico's

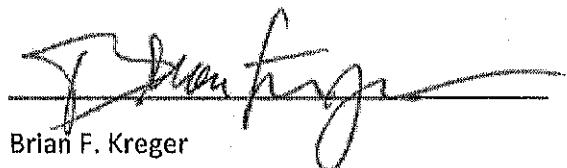
relationship with Mr. Marinelli and Insurance Appraisal Services, and Mr. Caswell notes that Geico has hired independent auto damage appraisers ten to fifteen times over the last two years.

A true and exact copy of this document is attached to this Declaration as Exhibit B.

C. E-mail exchange between Cheryl Penn, Producer Licensing & Oversight Compliance Manager with the OIC, and Mr. Harber in which Ms. Penn advises Mr. Harber that the OIC does not license appraisers.

A true and exact copy of that document is attached to this Declaration as Exhibit C.

This Declaration, consisting of two pages, and containing three Exhibits A, B, and C, is dated and signed this 9th day of January 2017.



Brian F. Kreger

EXHIBIT A

----- Original message -----

From: "Caswell, Craig" <CCaswell@geico.com>
Date: 02/12/2016 4:50 PM (GMT-08:00)
To: IASBellevue@aol.com
Subject: Rob Marinelli, IASBellevue RE: Handwerk Nissan Versa

To whom it may concern,

Rob Marinelli is not now or never has been an employee of GEICO. He is not now or never has been under contract with GEICO for appraisal services. He is an experienced auto damage appraiser that was asked to inspect a vehicle post repair in order to: 1) confirm if there were indeed any defects and 2) if defects were found, prepare a damage estimate and attempt to get an agreement with Mr. Harber on the scope of necessary repairs.

Mr. Marinelli was not instructed or retained to adjust the loss, that responsibility resides with the Auto Damage adjusters and the Auto Damage Supervisors for GEICO.

With respect to this claim no post loss inspection ever conducted as Haury's refused Mr. Marinelli access to the vehicle for inspection. The only thing that did transpire was a series of email communications between IAS and Harber Appraisal which abruptly ended when the owner's own insurance carrier took over and settled the claim.

Thanks,

v/r Craig

Craig Caswell

Field Supervisor

Seattle Metro
Ph # 253-312-6023 Fax # 855-731-1157

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EXHIBIT B

Frye, Bobby (OIC)

From: Caswell, Craig <CCaswell@geico.com>
Sent: Tuesday, February 23, 2016 11:21 AM
To: Frye, Bobby (OIC)
Cc: Wheeler, Daniel (AD)
Subject: RE: OIC Investigation/Insurance Appraisal Services

Hello Mr. Frye,

Over the last two years in Washington state, GEICO has hired an independent auto damage appraiser approximately 10-15 times.

Please let me know if there is anything else you need.

Respectfully,

Craig Caswell

Field Supervisor

Seattle Metro

Ph # 253-312-6023 Fax # 855-731-1157



From: Frye, Bobby (OIC) [mailto:BobbyF@oic.wa.gov]
Sent: Tuesday, February 23, 2016 10:52 AM
To: Caswell, Craig
Subject: OIC Investigation/Insurance Appraisal Services

Good morning Mr. Caswell,

I'm in receipt of your email addressing GEICO's description of your relationship with Rob Marinelli at Insurance Appraisal Services. As part of this ongoing investigation, please provide an approximate number of times GEICO has used an auto damage appraiser such as Mr. Marinelli, in Washington state over the past two years.

Your assistance in this matter is appreciated.

Best regards,



Bobby Frye

Senior Investigator

Legal Affairs

Washington State Office of the Insurance Commissioner

(360) 725-7259 (office)

BobbyF@oic.wa.gov

Protecting Insurance Consumers

www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

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EXHIBIT C

Bullington, Jessica (OIC)

From: Penn, Cheryl (OIC) <CherylP@OIC.WA.GOV>
Sent: Monday, December 28, 2015 12:04 PM
To: 'Mike Harber'
Subject: RE: license requirements

Go to the following link and file a complaint. If the Investigations unit doesn't feel an investigation is warranted, they will let you know. <http://www.insurance.wa.gov/complaints-and-fraud/file-a-complaint/insurance-agent/index.html>

From: Mike Harber [mailto:mike@harberappraisal.com]
Sent: Monday, December 28, 2015 12:00 PM
To: Penn, Cheryl (OIC) <CherylP@OIC.WA.GOV>
Subject: RE: license requirements

Cheryl

Will you provide the name and email address for the person in the Investigations unit, or would you like we to run it through you first?

Mike Harber, AIC
Licensed Public Adjuster
Harber Appraisal

(253) 474-0967 / fax (888) 473-3101
3822 S Union Ave, Suite C
Tacoma, WA 98409
mike@harberappraisal.com

None of the information provided by Darrell M. Harber and/or Harber Appraisal is intended to be, nor should it be, construed as legal advice or an interpretation of the law. Consumers with questions on matters of law should consult with a licensed attorney. All information and law references contained within documents produced by Darrell M. Harber and/or Harber Appraisal are a product of research and are intended solely as a convenience for the consumer and/or his or her legal counsel. All such information should be verified by a licensed, practicing attorney.

From: Penn, Cheryl (OIC) [mailto:CherylP@OIC.WA.GOV]
Sent: Monday, December 28, 2015 11:41 AM
To: 'Mike Harber' <mike@harberappraisal.com>
Subject: RE: license requirements

Mr. Harber:

We do not license appraisers. If what an individual is doing meets the definition of an adjuster, we would require them to be licensed as such. If they are operating as an adjuster without a license, that would be another case to be investigated by our Investigations unit.



Cheryl Penn, ACP
Producer Licensing & Oversight Compliance Supervisor
Associate Compliance Professional
Washington State Office of the Insurance Commissioner
360-725-7153 (direct line)
360-586-2019 (fax)
cherylP@oic.wa.gov (email)

EXHIBIT 2

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of
Michael R. Marinelli
And
Insurance Appraisal Services,
Respondents,

ORDER NO. 16-0155
Declaration of Michael R. Marinelli

I, Michael R. Marinelli, under penalty of perjury under the laws of the State of Washington, do hereby make this Declaration as my own statement freely given as follows:

1. I am the owner of Cal-Mar Enterprises, Inc., doing business under the name Insurance Appraisal Services (IAS) in Bellevue, King County, Washington. I have owned and operated my business as Insurance Appraisal Services in the State of Washington for twenty-two years.
2. IAS conducts business in the State of Washington only as an automotive damage appraiser. The business of IAS, and my work as a motor vehicle damage appraiser entails exclusively the visual inspection of damage to motor vehicles, preparing a report of the extent of damage, and, when requested and needed, preparing an estimate of the cost to repair the damage or determining the value of the property.
3. IAS is retained to perform damage appraisals by a variety of businesses, entities, and individuals, including: insurance companies; individual automobile owners (who may or may not be insureds); local and state governmental agencies, including the State of Washington Department of Transportation; King County Risk Management; attorneys representing a party in a contested claim or in litigation that includes a claim for damage to a vehicle; claims management companies; nationwide appraisal service providers; and other business entities.
4. In all cases where IAS has been retained to perform damage appraisal services, the work consists entirely of the following tasks: inspecting the damaged vehicle; preparing a report of damage; when requested, preparing an estimate of the cost to repair the damage; determining the value of the damaged property; and submitting a report to the business, government agency, or individual who had retained IAS. IAS does not perform any other services for its clients.

5. The clients who retain IAS to perform damage appraisal services specify the scope of work they require from IAS. Two examples of these scope of work standards are attached to this Declaration as Exhibits A and B.

Exhibit A is an Appraisal Assignment (redacted) from an insurance company that retained IAS to perform a damage appraisal of a vehicle. The company makes it clear that all field appraisals and evaluation work will be subject to review by the insurance company's personnel or external reviewers. The company also clearly states that they, the insurance company, will contact the vehicle owner and resolve their loss with them directly. This Appraisal Assignment is consistent with appraisal assignments of other IAS clients. IAS does not participate in the discussion, resolution, or final adjustment of claims; and, IAS never will.

Exhibit B is a true and exact copy of a statement prepared by IAnet, a national insurance claims management company. IAnet has retained IAS on multiple occasions to perform damage appraisal estimates. In this statement, previously provided to the Office of the Insurance Commissioner, the IAnet representative explains that IAnet retains IAS to perform only damage appraisal services and provide a report of the damage estimate. IAnet confirms that IAS was not retained to adjust any claim. In fact, IAS did not, and does not, participate in claims settlement or adjustment for IAnet, or any other client.

6. I am aware that, as I engage in my profession as a property damage appraiser, I may occasionally encounter a licensed public or independent claims adjuster. However, unlike my limited role in these cases, which is to determine the extent of damage, the value of property, or the cost of the damage, the licensed public or independent claims adjuster not only may appraise damage, but will also engage in a determination of liability, an interpretation of a policy, claims settlement activities, and first party representation under an insurance contract. It is also my understanding that those licensed adjusters typically require a written agreement signed by their clients that the adjuster will represent the financial interests of the client regarding the loss or damage claim. Neither I nor IAS have ever represented the financial interests of any IAS client and I do not participate in any of the activities related to the negotiation, settlement, adjustment, or final resolution of a damage claim.

7. Throughout my twenty-two years as an independent auto damage appraiser, and for the entire time I have owned and operated IAS, I have never negotiated, settled, or participated in the financial outcome of an insurance contract, or represented the financial interests of any insurance company or insured person.

This Declaration, consisting of two pages, and containing two Exhibits, A and B, is dated and signed this 9th day of January 2017.

Michael R. Marinelli

Michael R. Marinelli

EXHIBIT A

CAL-MAR ENTERPRISES INC
PO BOX 2033
BELLEVUE, WA 98009

Appraisal Assignment

Loss Number:

Named Insured:

Date of Loss:

Location of Loss:

Loss Description: Insured backed vehicle into parked vehicle at the BMW dealership

Claimant Is stating hatch will not close

This letter is a new Appraisal Assignment. Please follow all instructions, including the Special Instructions.

Type of Loss Collision Collision Deductible _____ Comprehensive Deductible _____

Insured Owned? Yes No Owner _____ Owner Contact _____

Work Phone _____ Home Phone _____ Vehicle Location _____

Address _____ Drivable? Yes No

Damaged Area: L Front Front R Front Engine Compartment
 L Side Top R Side Underside Rollover
 L Rear Rear R Rear Passenger Compartment

Year 2001 Make BMW Model X5 Body Style _____

License _____ V.I.N. _____ Color _____ Mileage _____

Repair Shop _____ Address _____ Phone _____

Special Instructions:

Please provide estimate and photos. Please note any prior damages.

Please review and comply with the attached Guidelines for Independent Appraisers – in particular those regarding contact expectations with our insured, any third-party claimants, and subsequent reporting back to us. We reserves the right to refuse payment on all or part of your billings for failure to follow these guidelines.

Obtain an agreed scope of damages with the repair facility, if one is selected, but only provide a copy of your estimate to us.

Should you have any questions, or wish to discuss this matter, feel free to contact me. Please include our Loss Number on any correspondence sent to us.

Sincerely,

Claims Representative

Guidelines for Independent Appraisers

Please review the guidelines and examples listed below. If you have any questions or concerns, please let us know so we can work together on these issues.

Documents should be sent to us via e-mail to _____ or via fax to _____. Please include our loss number on any correspondence sent to us.

Contact Guidelines

1. Prompt service in compliance with all applicable state Unfair Claims Practices Acts
2. Attempt to make direct contact with the vehicle owner by the end of the next business day following receipt of the assignment
3. Attempt to inspect the assigned vehicle(s) by the end of two business days following receipt of the assignment
4. Attempt to complete assignment/appraisal within three business days following receipt of the assignment

Photo Guidelines

Appraisal must include quality photos:

5. Take Photographs from straight on side views (not corners)
 - o Allows us to look at the bodylines and gaps to better assess the damage
 - o Would also allow a reconstruction expert better information for impact compression measurements
 - o If a corner photo is needed to show specific damage, this should be taken in addition to the straight on views
6. For trucks or trailers, include photographs of the top of the tank, inside the rear and side cabinets, and all attached equipment
7. If the vehicle is a total loss, then take a photo of the engine compartment and the interior to show the condition
8. All photographs should be digitally stored in a JPEG format, contain a description and be sent to us via e-mail.
 - o Preferred resolution is 1600 x 1200, but no lower than 640 x 480
 - o Photos should not be imbedded into photo sheets for comments, unless individual JPEG photos are also submitted
9. Color photos taken with a 35 mm camera are acceptable when no digital camera is available
 - o These should be mailed within 24 hours of inspection
10. Photographs should be e-mailed to us at _____ at the same time you are sending the estimate

Estimate Guidelines

All estimates must be legible and include the following:

11. Be in compliance with all state and local laws and requirements
12. All field appraisals and evaluation work will be subject to review by personnel or an external estimate reviewer
 - o Work with the shop to obtain a tentative agreement as to how the repairs will be performed; however, they should be aware that this is subject to approval
 - o Depending on the changes required, you may be asked to make adjustments, or the shop may be contacted by us or a reviewer directly to obtain a final agreement on the estimate
13. Vehicle Identification Number (VIN), year, make, model, mileage, and options
 - o Note if vehicle registration and/or safety inspections are current
14. Clearly define the parts being replaced (e.g. part type and whether it is OEM, aftermarket, quality recycled part, etc.), the part prices, labor times (separated for each operation performed), and labor rate
15. Parts should be repaired whenever feasible

16. Utilize remanufactured or OEM surplus bumper covers and reinforcement (except on current model year plus one or low mileage vehicles)
 - o Determine if bumper requires painting, as some come pre-painted
17. Utilize remanufactured and some aftermarket mechanical components, as well as other non-sheet metal parts, when practical and feasible (except on current model year plus one or low mileage vehicles)
18. If agreed upon by the owner and repair shop, utilize CAPA certified aftermarket sheet metal parts (except on current model year plus one or low mileage vehicles)
 - o This must be shown on the estimate in 10 point print and clearly marked
 - o The vehicle owner and repair shop must receive a copy of the estimate
 - o Aftermarket parts will not be used if it voids the OEM warranty
 - o Aftermarket parts are not utilized in AR, HI, NY, RI or WV
 - o Written permission is required of the vehicle owner in IN, ME, MN, and TX
 - o If the aftermarket parts are altered, they may not be used
19. Like kind and quality (LKQ)/salvage parts are used when available and feasible (except on current model year plus one or low mileage vehicles)
20. Utilize recored or aftermarket radiators and aftermarket condensers when appropriate
21. Standard glass discounts must be included, which should be equal to or near the discount given by major glass suppliers
 - o OEM should be compared to NAGS less discount, to obtain the best price
22. Depreciation taken on items subject to wear or that increase the overall value of the vehicle, where allowable by law
 - o All prior damage or condition issues must be documented with photos and a separate estimate
23. Utilize proper painting techniques, as not all vehicles require tint, blend, and color sand and buff to match
24. Overlap removed from labor times
25. Agreed to scope of repairs with the body shop of the insured or claimant's choice
 - o Obtain only an agreed scope of repairs (not an agreed repair figure), as estimate is subject to review by _____ or another estimate reviewer
 - o Repair time determined to evaluate length time for rental vehicle, when applicable
26. Repairs are to only be authorized by the vehicle owner
27. Provide any additional items required for the file

Total Loss Vehicle Guidelines

In addition to the Contact Guidelines and Photo Guidelines:

28. Complete a Mitchell Vehicle Description Report on all private passenger vehicles
 - o If you do not have a copy of the Mitchell Vehicle Description Report, promptly contact us and one will be provided
 - o Accurately rate every line and category for each vehicle
 - o Not all vehicles are a 3 – Good
 - o Do not complete your own market or book evaluation on any private passenger vehicles, unless it is requested by us
 - o Do not discuss any evaluations with the vehicle owner unless instructed by
29. Complete estimates are required on total loss vehicles, as we need a complete damage assessment for salvage purposes
 - o The only exceptions are for vehicles that are totally burned or otherwise totally destroyed
 - o The estimate does not need to include every minor damaged item, however we do need a complete assessment of damage
30. Please do not stamp or print across the estimate "Total Loss", as we want to make the determination that a vehicle is a total loss
31. List any prior damage separately

Heavy Truck/Trailer and Mobile Equipment Guidelines

In addition to the Contact Guidelines and Photo Guidelines, the following guidelines exist for Heavy Truck/Trailer and Mobile Equipment losses. The expectation to attempt to complete assignment/appraisal within three business days following the receipt of the assignment is replaced with the expectation to attempt the following within this timeframe:

32. Complete a preliminary report, including the following:
 - o Vehicle details, type of damage, recommended reserves
 - o Actions to be taken and approximate timetable to complete these actions
 - o Indication of parts discounts obtained on OEM parts, as [REDACTED] has several discount agreements (often 20% or more)
33. Complete a preliminary estimate, including the following:
 - o List of damage, labor and sublet items
 - o Indication whether OEM, aftermarket, rebuilt or LKQ parts will be used (parts prices do not need to be filled in, unless known)
 - o Indication of agreements with shop on labor times
 - Inform the shop that it is subject to the review and adjustment by
34. Thoroughly complete the Heavy Truck/Tractor Identification & Equipment Report [REDACTED], for all heavy truck/tractors (excludes private passenger trucks)
35. Thoroughly complete the Trailer Identification & Equipment Report [REDACTED] for all trailers, straight truck bodies and petroleum tanker equipment
36. Thoroughly complete the Heavy Equipment Inspection Report [REDACTED] for all large mobile equipment (e.g. loaders/backhoes, forestry equipment, dozers, excavators, etc.)
37. Once we receive the preliminary information from you:
 - o Continue to complete your estimate, market evaluation, and obtaining salvage bids as needed
 - This should be completed and submitted to us within five business days, unless you have provided us a status report explaining any additional delays
 - o If we notice any changes that we would like to see implemented, we will contact you to discuss
 - o We will be reviewing the estimate for the best repair options and labor times
 - o We will conduct our own market evaluations
 - o We may shop the salvage to additional buyers
 - o We will help make decisions on constructive and/or partial total losses
38. Do not discuss your market or salvage evaluations with the vehicle owner unless you have received prior approval from
 - o This is "confidential" claim file information
 - o We do not allow a vehicle owner to retain salvage, unless it is mandated by state law or it is approved by [REDACTED] Home Office Claims - Material Damage
39. We will contact the vehicle owner and resolve their loss with them directly
40. If you have any questions during the process, feel free to contact the individual who made the assignment to you or contact [REDACTED] Home Office Claims - Material Damage at [REDACTED]

EXHIBIT B



22044 North 44th Street
Suite 200
Phoenix, AZ 85050
O: 480.596.1105
F: 480.596.1140

August 4, 2016

To whom it may concern,

IAnet is a nationwide claims management company. We have been conducting business for 17 years and for 16 of those years we have utilized the services of Rob and Candy Marinelli of IAS of Bellevue Washington. We engaged them as auto damage appraisers and during this time they provided us with damage estimates only. IA net has never required or requested them to adjust claims on behalf of us or of our clients. Per our requirements, they are contracted to inspect vehicles and write impartial estimates. The estimates, photos and any attendant invoices are delivered to the individual insurance company, TPA or self-insured entity and it is up to them to make any determinations of policy and any final adjustments. Never at any time have they misrepresented themselves as public adjusters or adjusters of any kind to IA net.

Thank you for your consideration,

A handwritten signature in cursive ink that reads "Lynn Jackson".

Lynn Jackson
Vendor Partner Services Coordinator

EXHIBIT 3

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Michael R. Marinelli

And

Insurance Appraisal Services,

Respondents,

ORDER NO. 16-0155

Declaration of Stephanie Bennett

I, Stephanie Bennett, under penalty of perjury under the laws of the State of Washington, do hereby make this Declaration as my own statement freely given as follows:

1. I am the owner of J & E Appraisal Services, a Washington-domiciled damage appraisal business located in King County, Washington and conducting business in Washington State.
2. J & E Appraisal Services has been in business for over forty years and performs appraisals of damage to motor vehicles, including personal passenger automobiles, trucks and light trucks, recreational vehicles, as well as boats and various types of water craft. J & E Appraisal Services is often retained by insurance companies, and other businesses, to inspect damage to vehicles and provide an appraisal and assessment of the extent of damage and cost to repair or replace the damaged property. Among the insurance companies that engage the services of J & E Appraisal Services to perform damage estimates and appraisals relating to insured losses are the following: Western National Insurance Company; Omni Insurance Company; Alaska National Insurance Company; and, Liberty Mutual Insurance Company.
3. J & E Appraisal Services currently employs ten appraisers who perform appraisals and damage estimates for and at the request of these insurance companies, as well as insured businesses and individuals, and attorneys representing parties in litigation or other legal proceedings that involve property damage claims.
4. The appraisers employed by J & E Appraisal Services are trained in examining damage to motor vehicles and water craft and estimating the cost to repair or replace the damaged parts. They are also trained and experienced in assessing the extent of damage to motor vehicles and water craft in order to make a determination whether a damaged motor vehicle or water craft is a total loss, and, if it is, to establish the value to be placed on a total loss.

5. The appraisers employed by J & E Appraisal Services are not given the authority to engage in the negotiation or settlement of an insurance claim on behalf of either an insurance company or an insured. In fact, in accordance with the written directives of the insurance companies that retain J & E Appraisal Services to perform damage appraisals and estimates, the appraisers specifically are not authorized to engage in any claims settlement activities, or negotiate claims on behalf of either the insurance company or its insured.
6. The appraisers employed by J & E Appraisal Services do not negotiate the settlement of an insurance claim and do not recommend an amount to be offered or paid in settlement of an insurance claim. In short, J & E Appraisal Services appraisers only assess and provide a documented estimate of the damage to property; they do not act in the capacity of a claims adjuster to settle a claim between an insured and insurer.
7. In addition to owning and operating J & E Appraisal Services, my professional career includes practicing law as a licensed attorney in the State of Idaho. As part of my legal practice during my career as an attorney, I have been engaged by insurance companies to litigate insurance claims matters, including subrogation cases on behalf of insurance companies.
8. For several years, I was engaged by Great West Casualty Company to represent the company in subrogation actions to recover settlement amounts paid to Great West insureds from other insurance companies that insured parties who were determined to be at fault in accidents that caused the property damage that is the subject of the subrogation action.
9. As a subrogation attorney, I was required to study, understand, and rely on damage appraisal reports prepared by independent appraisers, repair estimates prepared by qualified automotive repair facilities, and the settlement offers and final settlement reports prepared by insurance companies' claims adjusters or provided by public adjusters hired by insurers or insureds.
10. Because of my legal practice and experience as a subrogation attorney, I am very familiar with the differences between the responsibilities and duties of damage appraisers, including repair estimators, and insurance claims adjusters. Although each of these professional activities may be involved in the resolution of a property damage claim, the responsibilities and functions of each of these professions is distinct and different, as I describe in this Declaration. To be precise, a damage appraiser, such as the damage appraisers employed by J & E Appraisal Services, does not have authority to negotiate or settle an insurance claim, and does not negotiate, recommend, or settle an insurance claim for either the insurance company or an insured.
11. As well as practicing law as a licensed attorney, I have also engaged in the business of a licensed insurance adjuster under the laws of the State of Idaho. I was employed as an insurance adjuster by Great West Casualty Company to investigate, negotiate and settle property claims arising under the insurance policies GWCC issued to its insureds. In carrying out the many functions of my job and responsibilities as an insurance claims adjuster, I would

often retain the services of an independent damage appraiser to assess and evaluate vehicle property damage and estimate the cost to repair the damage. None of the independent damage appraisers I engaged were ever authorized to negotiate, evaluate, or recommend the amount my insurance company should pay to settle the insurance claim. The only function of the damage appraisers I retained and the only authority I gave to the damage appraisers I retained, was to appraise and estimate the extent of damage to a vehicle or other property. It was my responsibility, and only mine, to determine the amount to offer in settlement. Damage appraisers never settled claims for me or my Company. This is customary claims management in the insurance industry.

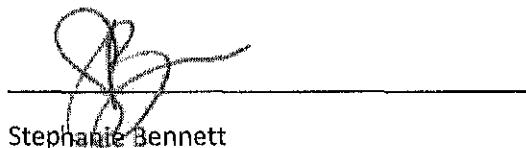
12. Because of my experience and the scope of work I performed in my dual professions as both an insurance adjuster and an attorney, I am very familiar with the differences between the activities of an insurance adjuster and a damage appraiser. The separate and distinct authority and role of a damage appraiser and an insurance adjuster are a long-standing and generally accepted business practice throughout the insurance industry with respect to the investigation and settlement of insurance claims. Damage appraisers provide valuable information to the insurance adjuster; but, it is the insurance adjuster, and not the appraiser, who uses that information provided by the appraiser to recommend, negotiate, and settle claims.

13. I am familiar with Insurance Appraisal Services and Michael ("Rob") Marinelli and their work as independent automobile and vehicle damage appraisers. Because both Insurance Appraisal Services and J & E Appraisal Services perform the same damage assessment and appraisal work for our clients, it is very likely that both of our companies have mutual insurance company clients that we both would be retained to do work for from time to time by these mutual clients. Even though Insurance Appraisal Services and Mr. Marinelli are engaged in the same business and are competitors of J & E Appraisal Services, I respect Mr. Marinelli and his business operation and the work he and Insurance Appraisal Services perform for their clients, many of whom are also clients of J & E Appraisal Services.

14. Based on my experience and training as an attorney and insurance adjuster, as described above, and based on my knowledge and understanding of the damage appraisal business, from my work as an adjuster, attorney, and business owner, and based on my personal knowledge and understanding of the work performed by Mr. Marinelli and Insurance Appraisal Services, it is my firm belief and opinion that Mr. Marinelli and Insurance Appraisal Services do not negotiate claims settlements, recommend settlements or amounts of settlement, or make offers of settlement of any claims, whether related to claims arising under insurance policies or with respect to any claim for reimbursement for damage to property. In other words, it is my belief and opinion that Mr. Marinelli and Insurance Appraisal Services, just like J & E Appraisal Services, do not settle claims, do not have authority to settle claims, and do not conduct business as claims adjusters. Rather, Mr. Marinelli and Insurance Appraisal Services, like J & E Appraisal Services and our appraisers, conduct business and operate only as damage appraisers

and estimators of amount of damage, including, total loss assessments., and do not conduct business as insurance adjusters.

This Declaration, consisting of four pages including this signature page, is dated and signed this
28th day of December, 2016.



Stephanie Bennett

Owner, J & E Appraisal Services

EXHIBIT 4

Your homeowner claim responsibilities and rights

Insurance is something you hope you never have to use, but if you should ever need to file a claim after experiencing a loss, it's important to understand your rights and responsibilities for the claims process.

Your responsibilities

- | Cooperate with the investigation.
- | Be ready to prove the loss - show your receipts.
- | If you don't have receipts, show photos of the damaged or missing items.
- | Submit the information your company requests in a timely manner.
- | Keep complete copies for your reference.

Your rights

You're entitled to:

- | A clear explanation of what's covered.
- | An itemized statement outlining how the company will pay your claim.
- | A prompt response from the company.
- | Timely payments and a claim decision.
- | An appraisal if you disagree with the amount of your loss.
- | You can work with the adjuster your insurance company sends or you can hire a public adjuster (a licensed person who works on your behalf to appraise and negotiate your property-insurance claim).

NOTE: Before you hire a public adjuster, make sure they are licensed in Washington state.

SEE ALSO

- | Filing a homeowner insurance claim

NEED MORE HELP?

Call us at 800-562-6900, 8 a.m. to 5 p.m., Monday - Friday

Live chat, 10 a.m. to 12 p.m and 2 p.m. to 4 p.m., Monday - Friday

Email us

EXHIBIT 5

Your Policy

contaminants or spores - including but not limited to mold or fungus.

13. **Property damage** intended by, or reasonably expected to result from, the intentional or criminal acts, or omissions of a **covered person**. This exclusion applies even if:
- a **covered person** lacks the mental capacity to control or govern his or her conduct;
 - such property damage is of a different kind or degree than intended or reasonably expected; or
 - such property damage is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether a **covered person** is actually charged with, or convicted of, a crime.

This exclusion precludes coverage for any **covered person** under the Segment and Policy Introduction regardless of whether the person seeking coverage participated in any way in the intentional or criminal acts or omissions.

14. Loss to, or loss of use of, a **non-owned automobile** rented by:

- You; or
- Any family member;

If the rental vehicle company is precluded from recovering such loss or loss of use, from you or that **family member**, pursuant to the provisions of any applicable rental agreement or state law.

HOW WE SETTLE PHYSICAL DAMAGE CLAIMS AND WHAT YOU MUST DO

1. How We Pay Claims.

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to you.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed upon or appraised value.

If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

2. Appraisal.

If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event each party will select a *competent appraiser* within 20 days after receiving a written request from the other. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where you live. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- Pay its own appraiser; and
- Bear the other expenses of the appraisal and umpire equally.

We do not waive any of our rights under this Segment by agreeing to an appraisal.

Your Duties After Loss.

You agree to see that the following things are done after a loss. We have no duty to provide coverage under this Segment unless there has been full compliance with these duties:

- Give prompt notice to us or our agent.
- Notify the police in case of loss by theft.
- Protect the **motor vehicle** and its equipment from further damage. We will pay reasonable expenses incurred to do this.
- As often as we reasonably require:
 - Permit us to inspect and appraise the damaged property before its repair or disposal;
 - Provide us with records and documents we request and permit us to make copies; and
 - Submit to examination under oath, while not in the presence of any other **covered person** and sign the same.

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EXHIBIT 6

What happens after your car gets totaled

What does "totaled" mean?

If you've been in an auto accident and your car is totaled (also called total loss), it means your car isn't repairable, or it costs more to repair than what it's worth.

What the insurer owes you for your totaled car

The insurer owes you the actual cash value (retail market value) of your totaled car. If you and the insurer can't agree on the method to come up with the retail market value, the insurer must follow the total loss rules outlined in state regulations (leg.wa.gov). These rules allow the insurer to choose one or more of the following methods to determine the value of your car:

1. Offer to replace your car with an available and comparable car (leg.wa.gov) in your local area.
2. Offer you a cash settlement based on the actual cash value of comparable cars in your local area.
3. If you and the insurer agree, the insurer may use other appraisal methods, such as independent auto-value guides (Kelley Blue Book, NADA, etc.).

If your insurer can't find comparable cars in the area where you normally park your car, it may expand the search in 25-mile increments until it finds two or more comparable cars. With your permission, it may extend the search beyond 150 miles.

The insurer must add to the actual cash value any applicable taxes, license fees and other fees required to transfer ownership.

To find out if the amount the insurer offers you is a reasonable estimate of the retail market value, ask the insurer for a "total loss valuation report." This report shows the comparable auto data the insurer used to calculate your vehicle's value. Insurers aren't required to provide it without being asked, so be sure you request a copy.

When you and the insurer disagree on your car's value

You and your insurer

If you and your insurer can't agree on your car's value you have the right to hire an appraiser via the appraisal provision in your auto policy. This provision allows you and the company to each hire appraisers.

You and the other person's insurer

- If the other person's at fault and you can't agree with his or her insurer on the value of your car, and you have your own collision coverage, you can use it to file a claim with your own insurer. Your insurer will then pay you for the loss of your totaled car.
- Your insurer is then free to pursue the at-fault driver for reimbursement, including any deductible you paid.
- If you don't have collision coverage, you have the right to seek legal advice.

What happens if you keep your totaled car

- If you keep your car after the actual cash value, sales tax and applicable prorated taxes and fees are added together, the insurer deducts the salvage value from the total amount of the settlement.
- The insurer must report your totaled auto to the Washington state Department of Licensing (www.dol.wa.gov).

If you have questions about what happens next with your totaled car, contact the:

Washington state Department of Licensing (www.dol.wa.gov)
Title and Registration Services
Customer Service Unit
360-902-3770

SEE ALSO

- How insurers calculate taxes and fees when your car's totaled
- Gap insurance

NEED MORE HELP?

Call us at 800-562-6900, 8 a.m. to 5 p.m., Monday - Friday

Live chat, 10 a.m. to 12 p.m. and 2 p.m. to 4 p.m., Monday - Friday

Email us

EXHIBIT 7

LIST OF DOCUMENTS FROM OIC INVESTIGATION OF YOUNG & ASSOCIATES:

- April 3, 2015 letter from Debbie Calhoun, OIC Senior Investigator to Young & Associates
- April 28, 2015 letter from Jenkins & Kling to Debbie Calhoun
- August 11, 2015 letter from Kreger Beeghly, PLLC to Debbie Calhoun
- October 27, 2015 e-mail from Brian Kreger to Chuck Brown, OIC Senior Counsel
- February 3, 2016 letter from Mark Durphy to Brian Kreger closing OIC's investigation with the OIC's Conclusion that the allegation the Young & Associates had violated Washington's Insurance Code is **unsubstantiated**.

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone: (360) 725-7000
www.insurance.wa.gov

April 3, 2015

Young & Associates
949 207th Ave NE
Seattle, WA 98074

OIC Case #: 1246616

Dear Young & Associates:

This letter is to advise you that the Office of the Insurance Commissioner has received a complaint against you. The complaint alleges that you may be acting as an unlicensed insurance adjuster.

I have been assigned to investigate this matter. As part of the investigative process, I am requesting that you provide this office with a written response to the allegation. Specifically, please address the following issues:

1. Does your business receive compensation for investigating or report claims arising under an insurance contract, on behalf of either an insured or insurer?
2. If you do, under what authority do you perform these business functions in WA State?
3. Do you act as an independent adjuster representing the interests of an insurer?
4. Do you act as public adjuster representing the financial interests of the insured named in an insurance policy?
5. Do your employees review bills and cut services on behalf of insurance carriers?
6. If so, under what authority are you acting on behalf of the insurance carrier?

Also, please provide this office with copies of the following documents:

1. Please provide a list of your employees that have produced reports or findings to an insurance carrier or a WA State resident, where an insurance claim was involved.
2. Provide a list of all WA State residents, for who you have provided information related to an insurance claim, from April 1, 2013 to April 1, 2015. The list should include contact information for the WA State consumers.
3. Provide a list of all insurance carriers, for who you have provided information related to an insurance claim, from April 1, 2013 to April 1, 2015.
4. Provide copies of any business related documents such as job descriptions, policies, or procedure that exempt you from being a licensed independent or public adjuster as described in RCW 48.17.010(1)(a)(b).

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

Please provide your written response and copies of the above listed documents by April 29. I appreciate your cooperation in this matter. I may be reached directly at (360) 725-7264 for further information.

Sincerely,



Debbie Caihoun, CFE
Senior Investigator
Legal Affairs Division
WA State Office of the Insurance Commissioner
(360) 725-7264
debc@oic.wa.gov



Michael P. Stephens
Email mstephens@jenkinskling.com

Admitted to Practice In
Missouri

April 28, 2015

Office of Insurance Commissioner
Attn: Ms. Debbie Calhoun, Senior Investigator
P.O. Box 40255
Olympia, WA 98504-0255

RE: R.L. Young, Inc., d/b/a YOUNG & Associates

Dear Ms. Calhoun:

This firm and the undersigned represent R.L. Young, Inc., d/b/a YOUNG & Associates ("YA")¹. As we discussed on the phone this afternoon, I received a copy of your letter of April 3, 2015 regarding a complaint your office received alleging that YA may be acting as an unlicensed insurance adjuster in the State of Washington. Please consider this letter YA's formal response.

As you know, Washington law defines an insurance adjuster as any person who for compensation, fee, or commission, "investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured." RCW § 48.17.010(1). YA's activities do not fall within the scope of this definition.

YA is a professional building consulting company. Its activities, conducted through independent consultants, include preparing estimates on behalf of insurance carriers for building damage reconstruction costs following storms, fires, and other disasters. YA does not sell or service any policies of insurance, does not make recommendations or representations regarding coverage under insurance policies, and does not adjust or investigate insurance claims. YA does not make any decisions regarding coverage or payment under insurance policies and it does not receive a commission on policies written or sold. YA's activities are limited to preparing cost estimates for reconstruction. Moreover, it does not hold itself out to be an insurance adjuster; and for estimate jobs on properties with a pending insurance claim, there are third parties unrelated to YA performing the adjustment services for the claim. Therefore, YA is not required to hold a license as an insurance adjuster in the State of Washington.

¹ The letter incorrectly referenced the entity as Young & Associates.

Office of Insurance Commissioner
April 28, 2015
Page 2

Given YA's business activities as described above, YA's answers to the questions raised in your letter are negative. Regarding the documents you requested, the estimates for reconstruction costs that YA has provided to its clients are confidential and we are unable to provide them to you or identify the clients or independent contractors working for YA. If you could provide us with the specific job giving rise to your letter, we can direct you to the appropriate insurance carrier or adjuster.

We hope this response is sufficient to answer any questions you may have as it appears your inquiry may have been based on a complaint from someone unfamiliar with YA's operations. After you have had a chance to review this letter, please contact me if you wish to discuss this matter further.

Sincerely,
JENKINS & KLING, P.C.

By: _____
Michael P. Stephens

MPS/eae

cc: R.L. Young, Inc., d/b/a YOUNG & Associates

KREGER BEEGHLY, PLLC

ATTORNEYS

Brian F. Kreger
Direct Dial: 206-829-2757
E-Mail: bk@kregerbeeghly.com

August 11, 2015

FILE COPY

Ms. Debbie Calhoun
Senior Investigator
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

RE: YOUNG & Associates
OIC Case # 1246616

Dear Ms. Calhoun:

Please be advised that our firm has been retained by YOUNG & Associates with respect to the above-referenced matter. All future communications of any type and by any means, including telephone, electronic transmission, or U.S. postal delivery, should be sent to my attention at the address below or to the contact information I provided in an earlier e-mail message to you regarding this matter.

I have received copies of your letters directed to YOUNG & Associates and also to Mr. Michael Stephens, the attorney in St. Louis, MO who also represents YOUNG & Associates. I also have Mr. Stephens' letters to you in response to your letters. I want you and the Office of the Insurance Commissioner (OIC) to know that we take this matter very seriously, that we intend to make every effort to cooperate with the OIC, and that we will attempt to resolve this matter promptly.

To assist in my understanding of the exact nature of the OIC's investigation of YOUNG & Associates and to enable me to better evaluate what is being alleged in this matter, I request that you provide me the following documents and information as soon as possible:

- The name and contact information of the person, individual, or entity that submitted the complaint to the OIC alleging that YOUNG & Associates may be acting as an unlicensed insurance adjuster. (Refer to your letter of April 3, 2015 to YOUNG & Associates). If the complainant was a company or other business entity, please provide the name and contact information of the individual who acted on behalf of the complainant.
- A true and exact copy of the complaint that the Office of the Insurance Commissioner received, as noted in your letter of April 3. Please provide also any and all documents, papers, or other materials of any kind that were enclosed with the complaint or that were later received by the OIC that relate to the complaint.
- Copies of all written communications between you or anyone else in the OIC and the person, individual, and/or entity that submitted the complaint.

- The names and contact information of any persons, individuals, or entities that you or anyone else in the OIC contacted or with whom you or anyone else in the OIC communicated regarding the complaint, and copies of all notes you or anyone else in the OIC made during or following any such contact or communication.

Based on the information I have at this time, I concur with the information Mr. Stephens has already provided to you in his letters of April 28, 2015 and June 24, 2015 regarding the nature and extent of the professional building consulting services that YOUNG & Associates provides to its clients. To summarize that information, the consulting work provided by YOUNG & Associates includes preparing estimates of building damage reconstruction costs following the event that caused the damage. YOUNG & Associates limits its services to preparing cost estimates for reconstruction of the damaged building. But, as Mr. Stephens stated, YOUNG & Associates does not adjust or investigate insurance claims.

If you and the OIC have documents or other information regarding the business of YOUNG & Associates that directly counters the information Mr. Stephens (and now, I) have given to you, please provide it along with the other information requested above and we will give all due consideration to that information.

My client and I believe it will be in the best interests of both YOUNG & Associates and the OIC if we meet in person to discuss this matter and attempt to resolve it as expeditiously as possible. To that end, I request that you contact me with available dates and times when you are available to meet with me. I am very willing to come to your offices in the OIC at a mutually convenient time.

If you have any questions about any part of this letter, please feel free to contact me. I look forward to hearing from you.

Sincerely,



Brian F. Kregen

C: Michael Stephens

Brian Kreger

From: Brian Kreger <bk@kregerbeeghly.com>
Sent: Tuesday, October 27, 2015 10:54 AM
To: 'Brown, Charles (OIC)'
Subject: Property Appraiser ads

Chuck,

I was reading the latest edition of the WSBA's Northwest Lawyer, and, quite inadvertently, happened across two classified advertisements for property appraisers: The Sophisticated Swine (yes, really!); and, James Kemp-Slaughter. Both ads include "insurance" in the services they offer. Out of curiosity, I looked at their websites and they both do, indeed, provide appraisals for insurance purposes.

Here are the links to:

- The Sophisticated Swine: <http://www.sophisticatedswine.com/>. Under "Services" it reads: "The Sophisticated Swine offers an array of services to individuals, law firms, businesses and insurance companies in the area of personal property valuation and assessment."
- James Kemp-Slaughter: <http://www.jameskempslaughter.com/index.html>. The types of services he offers include: "INSURANCE. Will come to your business or residence to make the appraisal and mail you two copies of the typed inventory of replacement values. One for you and a second for your insurance agent."

This is just FYI for you and Deb and anyone else in the OIC who is interested, and I am simply referring to what is advertised on page 63 of the WSBA publication. I AM NOT LODGING A COMPLAINT! These folks are NOT acting as insurance adjusters; they are just appraising property values for whatever purpose their client needs that service. Anyway, I reckon you get my point.

Thanks, Chuck.

Best regards,

bk

Brian F. Kreger
Kreger Beeghly, PLLC
Attorneys
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

Ofc: 206-829-2757
Cell: 206-931-5594
E-Mail: bk@kregerbeeghly.com
Fax: 206-340-8856

FORC Member



MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

Phone: (360) 725-7000
www.insurance.wa.gov

February 3, 2016

DECEIVED
FEB 08 2016
KREGER BEEGHLY
PLLC

Mr. Brian Kreger
999 Third Ave, Suite 3000
Seattle, WA 98104

Re: OIC Case No: 1246616
Re: R.L. Young, Inc., d/b/a YOUNG & Associates

Dear Mr. Kreger:

The Office of the Insurance Commissioner (OIC) has concluded its investigation regarding the complaint filed against R.L. Young, Inc., d/b/a YOUNG & Associates. Based on a review of the facts and evidence obtained during this investigation, the OIC has concluded that the allegation that R.L. Young, Inc., d/b/a YOUNG & Associates violated Washington's insurance code is unsubstantiated.

Thank you for your cooperation in this investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark W. Durphy".

Mark W. Durphy, CFE, CIG, CIGI
Investigations Program Manager
Legal Affairs Division

MWD/jjb

cc R.L. Young, Inc., d/b/a YOUNG & Associates
949 207th Ave NE
Seattle, WA 98074

Mr. Michael P. Stephens
150 N Meramec Ave, Suite 400
St. Louis, MO 63105

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

