

1 THE STATE OF WASHINGTON  
2 OFFICE OF THE INSURANCE COMMISSIONER

FILED

2017 JAN 23 A 7:49

3 In the Matter of  
4 Michael R. Marinelli  
5 And  
6 Insurance Appraisal Services,  
7 Respondents,

ORDER NO. 16-0155  
HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER  
Respondents  
to Insurance Commissioner's  
Motion for Summary Judgment

8  
9 The Insurance Commissioner has brought his Motion for Summary Judgment,  
10 claiming that there exists no genuine issue of material fact in this matter as to  
11 Respondent's alleged acts that prompted the Office of the Insurance Commissioner  
12 (OIC) to issue its Order to Cease and Desist against Respondents. The Insurance  
13 Commissioner is in error. Respondents, Michael R. Marinelli and Insurance Appraisal  
14 Services, maintain that there are several genuine issues of material fact that preclude  
15 the granting of the Insurance Commissioner's motion. Accordingly, Respondents  
16 request that the Insurance Commissioner's motion be denied.

17 **Genuine Issues of Material Fact Exist**

18  
19 As support for his motion, the Insurance Commissioner has offered the  
20 uncertified, unsworn, and non-notarized statements of two employees of the OIC.  
21 These statements do not comply with Washington law applicable to witness  
22 declarations and statements, and for that reason should not be accepted or considered  
23 by the Presiding Officer or this tribunal.

24 The Court made this abundantly clear in *Young Soo Kim v. Choong-Hyun Lee*,  
174Wn. App. 319, 300 P.3d 431 (2013):

Respondents' Response to OIC's Motion  
for Summary Judgment - 1

— KREGER BEEGHLY, PLLC —

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

1 “CR 56(e) requires that evidence offered in support of or in opposition  
2 to a motion for summary judgment be in the form of sworn affidavits of  
3 declarations made under penalty of perjury.” [Court’s footnote 10, citing  
4 RCW 9A72.085]. “*Wilkerson v. Wagner*, 58 Wn. App. 404, 408, 793  
5 P.2d 983 (1990). Courts do not always demand strict compliance with  
6 the express requirements of CR 56(e), due to the potentially drastic  
7 consequences of a summary judgment motion, particularly with respect  
8 to the nonmoving party. See, *Meadows v Grant’s Auto Brokers, Inc.*, 71  
9 Wn. 2d 874, 879, 431 P.2d 216 (1967). But, we are aware of no case,  
10 nor has any been cited to us, that excuses in whole the requirement that  
11 statements purporting to establish a necessary element of a claim or  
12 defense be in the form of sworn affidavits or declarations made under  
13 penalty of perjury.” *Id.* at 326. (Emphasis added).

14 Notwithstanding that the Insurance Commissioner’s proffered statements do not  
15 comply with Washington law applicable to witness testimony, and are, therefore,  
16 invalid and unreliable, those statements do more to create questions and issues of fact  
17 than they do to establish or determine facts that allegedly favor the Insurance  
18 Commissioner’s motion.

19 The Insurance Commissioner relies on the unsworn statement of Jeff  
20 Baughman, the OIC’s producer licensing manager, who opines about what he considers  
21 to be the differences between an adjuster and an appraiser and the nature of their work.  
22 Nowhere in his statement does Mr. Baughman attempt to provide any requisite  
23 knowledge, nor does he offer any experience other than serving as the OIC’s producer  
24 licensing manager, that would qualify himself as an expert to opine on anything that  
distinguishes or compares the work of an appraiser or of an adjuster.

Mr. Baughman claims to have the responsibility of interpreting the provisions  
of the Insurance Code and ensuring that the Commissioner’s interpretation of RCW  
48.17.010(1), defining the term “adjuster” is consistently applied. As an example of  
his alleged expertise in the area of statutory interpretation, he says that the OIC does

1 not require individuals who are employed by insurance carriers to obtain an adjuster's  
2 license. This is not an interpretation of the law; that is exactly what RCW 48.17.010  
3 says: "A salaried employee of an insurer or of a managing general agent is not deemed  
4 to be an "adjuster" for purposes of this chapter." Mr. Baughman is no expert and he  
5 does nothing more than allege what he thinks an adjuster does and what an appraiser  
6 does.

7 Mr. Baughman makes broad statements and unsupported conclusions about  
8 what adjusters do. For example, he says:

9 "Under RCW 48.17.010(1) and RCW 48.17.410, an insurance adjuster  
10 is someone who investigates or reports on a claim to either the insurer or  
11 the insured. . . . Under these statutes, even when an individual does not  
12 have authority to completely determine the final settlement or value of a  
13 claim, their conduct can fall under this definition of "adjuster." The key  
14 factor in determining whether certain activities must be performed by an  
15 adjuster is whether the investigating and reporting activities are related  
16 to a claim." (Baughman declaration, ¶6).

17 With this, Mr. Baughman has just described what every medical doctor does  
18 when he or she is engaged by an insurer or by an attorney representing a claimant to  
19 perform an independent medical examination (IME) of a person who has been injured  
20 and is making a claim against a person defending against that claim or that person's  
21 insurer. Under Mr. Baughman's alleged expert opinion about what an adjuster is and  
22 does, every physician and medical doctor who performs an IME is, therefore, an  
23 "adjuster" who should be licensed by the OIC under the very sections of the Insurance  
24 Code Mr. Baughman purports to interpret.

Mr. Baughman goes on to state that:

"Examples of activities that constitute adjusting a claim when included  
in an investigation or a report to an insurer, are activities such as  
determining what a vehicle is currently worth, determining which  
damages are reasonably attributable to an occurrence determining what

1                   caused the damages that are the subject of the claim, and determining  
2                   whether certain expenses included in a third party bill are reasonable.”  
3                   (Baughman declaration, ¶7).

4                   Here, Mr. Baughman describes what every auto body shop or mechanic does  
5                   when an insured, upon instructions by his or her insurance company, takes a damaged  
6                   vehicle to such an auto repair shop for an estimate or appraisal. In fact, this is precisely  
7                   what happened in *Lloyd v. Allstate Ins. Co.*, 176 Wn. App. 490, 275 P.3d 323 (2012),  
8                   which was discussed in detail in Respondents’ Motion for Summary Judgment of  
9                   Dismissal filed with this tribunal on January 9, 2017. In that case, the insured, Mr.  
10                  Lloyd, took his damaged car to not just one body shop for an estimate, as the adjuster  
11                  directed, he went to three auto repair shops. And all three shops reported essentially  
12                  the same damage estimate to Mr. Lloyd’s insurance company, Allstate. And later,  
13                  when Mr. Lloyd sued Allstate for alleged bad faith, Mr. Lloyd’s attorney and Allstate  
14                  each hired independent auto damage appraisers who, together, came up with a  
15                  mutually-agreed damage and repair estimate. This is how things are done in the real  
16                  world of insurance claims. Fortunately, the *Lloyd* Court understood what an appraiser  
17                  does and how insurance claims processing works and affirmed the general rule that “an  
18                  appraised award is conclusive as to the amount of loss.” (See, *Lloyd, supra*, at 499).

19                  However, based on Mr. Baughman’s analysis and interpretation of what an  
20                  adjuster does and the nature of activities that constitute acting as an adjuster, those auto  
21                  body shops and independent appraisers that were engaged and hired by the claimant’s  
22                  attorney and his insurance company in the *Lloyd* case should be licensed as adjusters  
23                  under the sections of the Insurance Code Mr. Baughman relies on. Mr. Baughman  
24                  contradicts himself in his own assertion of who should be licensed as an adjuster.

                  Mr. Baughman asserts just the opposite, namely, that auto repair shops such as  
                  those in the *Lloyd* matter, do not have to be licensed by the OIC because “auto shops

1 and third party vendors who prepare estimates of what their services will cost to repair  
2 damages related to an insurance claim, are not considered adjusters, because those  
3 estimates are prepared as part of their business, regardless of whether an insurance  
4 carrier will ultimately pay for the services.” (See, Baughman declaration, ¶18). Mr.  
5 Baughman’s specious argument uses his own unsupported reasoning as proof of the  
6 conclusion he wants. Mr. Baughman’s unsworn declaration is a series of counter  
7 arguments which create unresolved issues of fact. Mr. Baughman does not offer actual,  
8 undisputed facts, and his self-designed conclusions do not establish undisputed facts  
9 that support the Insurance Commissioner’s motion.

10 But, the most obvious material issue of fact that arises from the unsworn  
11 statement relied on by the Insurance Commissioner is this: the two OIC employees who  
12 offer their statements, and particularly Mr. Baughman, either ignore or refuse to  
13 acknowledge the clear and unambiguous description of services provided by Mr. Craig  
14 Caswell, the adjuster who engaged Mr. Marinelli and IAS to inspect the damaged  
15 vehicle in Handwerk damage claim (the situation that started this current matter). And,  
16 compounding this obvious factual oversight, Mr. Baughman then knowingly makes a  
17 false statement about the authority and scope of work given to Mr. Marinelli by Mr.  
18 Caswell himself.

19 Mr. Craig Caswell, the GEICO insurance adjuster who retained Mr. Marinelli  
20 and IAS regarding the Handwerk Nissan Versa claim, stated:

21 “Rob Marinelli is not now or never has been an employee of GEICO.  
22 He is not now or never has been under contract with GEICO for  
23 appraisal services. He is an experienced auto damage appraiser that was  
24 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.”

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

A copy of Mr. Caswell's statement was included in the materials attached to the unsworn declaration of Mr. Bobby Frye, the OIC investigator in this matter.<sup>1</sup> Mr. Frye had received this statement from Mr. Caswell and it is assumed that he shared Mr. Caswell's statement with Mr. Baughman. As Mr. Caswell told the OIC, Mr. Marinelli was to attempt to get an agreement with Mr. Harber on the scope of repairs, just like the appraisers did in *Lloyd v. Allstate, supra*. Mr. Baughman wrongly states that Mr. Marinelli was authorized to "negotiate an agreement." This is a false statement.

After noting that "Also, individuals or companies that are hired and supervised by adjusters on staff with insurance carriers, or by licensed (*sic*) independent and public adjusters are not required to be licensed as adjusters with performing this work."

(Baughman declaration, ¶8), Mr. Baughman opines:

"However, when an individual or company is investigating or reporting on a claim directly for an insurance carrier, without the supervision of a company adjuster or a licensed adjuster, an adjuster's license is required. This is especially crucial when, as was the case with Mr. Marinelli, an individual is also authorized to negotiate an agreement with another party on part of the claim." (Baughman declaration, ¶9, emphasis added).

One can only speculate why Mr. Baughman has ignored or refused to acknowledge Mr. Caswell's clear statement of the scope of Mr. Marinelli's engagement and why Mr. Baughman knowingly made a false statement about Mr. Marinelli's assignment. However, it remains a fact that Mr. Baughman has chosen to not disclose a material fact and to present false information to this tribunal and to the Presiding Officer in this matter.

Following Mr. Baughman's false statement regarding Mr. Marinelli's work in

---

<sup>1</sup> A copy of Mr. Caswell's Statement was also attached to Respondents' Motion for Summary Judgment of Dismissal as an exhibit to the Declaration of Brian Kregar, attached hereto as Exhibit 1.

1 the Handwerk claim and, apparently based on his own false statement, Mr. Baughman  
2 comes to his startling conclusion that Mr. Marinelli and IAS are acting as insurance  
3 adjusters.

4 Mr. Baughman's statement that Mr. Marinelli was "authorized to negotiate an  
5 agreement" on the Handwerk claim is totally false and is proven false by the statement  
6 of Mr. Caswell who clearly states that Mr. Marinelli was engaged to "inspect a vehicle  
7 post repair," to "confirm if there were defects," and to "attempt to get an agreement  
8 with Mr. Harber on the scope of necessary repairs." Mr. Marinelli was not "authorized  
9 to negotiate an agreement" with Mr. Harber, or with "another party," or with anyone  
10 else. Mr. Baughman and the Insurance Commissioner know, or should know, this fact  
11 based on the clear statement of Mr. Caswell, GEICO's adjuster, as to the scope of Mr.  
12 Marinelli's engagement.

13 At the very least, Mr. Caswell's clear and concise statement raises a material  
14 question of fact that Mr. Marinelli was acting under the supervision of Craig Caswell,  
15 the on-staff adjuster for GEICO, which – based on Mr. Baughman's own analysis –  
16 would not require Mr. Marinelli to be licensed as an adjuster.

17 Unfortunately, Mr. Baughman has not truthfully represented the facts in this  
18 matter. Mr. Baughman has not been forthright in his testimony in that he has not  
19 disclosed all the material evidence in this matter – evidence that is within his  
20 knowledge and the records of the OIC – regarding the situation that the Insurance  
21 Commissioner claims establishes the Respondents' unlawful acts.

22 As Respondents have shown, and the OIC's own employees' statements bear  
23 witness, the OIC has records and information that counter the Insurance  
24 Commissioner's argument that no question of fact exists. Courts are not inclined to

1 grant summary judgment when a situation exists like the one currently before this  
2 tribunal. In *Arnold v. Saberhagen Holdings, Inc.*, 157 Wn. App. 649, 240 P.3d 162  
3 (2010), the Court held:

4 “We review summary judgment orders de novo. *Lunsford v.*  
5 *Saberhagen Holdings, Inc.*, 166 Wn. 2d 264, 270, 208 P.3d 1092 (2009).  
6 Summary judgment is appropriate only if the “pleadings, depositions,  
7 answers to interrogatories, and admissions on file, together with the  
8 affidavits, if any, show that there is no genuine issue as to any material  
9 fact and that the moving party is entitled to a judgment as a matter of  
10 law.” CR 56(c). We consider facts and reasonable inferences in the  
11 light most favorable to the nonmoving party. *McNabb v. Dep’t of Corr.*,  
12 163 Wn. 2d 393, 397, 180 P.3d 1257 (2008). We are reluctant to grant  
13 summary judgment when “material facts are particularly within the  
14 knowledge of the moving party.” *Riley v. Andres*, 107 Wn. App. 391,  
15 395, 27 P.3d 618 (2001). In such cases, the matter should proceed to  
16 trial “ ‘ in order that the opponent may be allowed to disprove such facts  
17 by cross-examination and by the demeanor of the moving party while  
18 testifying.’ ” *Mich. Nat’l Bank v. Olson*. 44 Wn. App. 898, 905, 723  
19 P.2d 438 (1986) (quoting *Felsman v. Kessler*, 2 Wn. App. 493, 497, 468  
20 P.2d 691 (1970)).” (*Arnold, Id.* at 661- 662; quotes in original).

21 Mr. Baughman’s own statements and the OIC’s own records create questions of  
22 fact, which the Respondents should be allowed to disprove by cross-examination,  
23 regarding the Respondent’s activities and whether those activities violate any provision  
24 of the Insurance Code. A genuine issue of material fact exists, primarily of the OIC’s  
own making, and it is sufficient to defeat the Insurance Commissioner’s motion.

**Respondents are not adjusters and do not negotiate claims**

21 In the Respondents’ Motion for Summary Judgment of Dismissal, Mr. Marinelli  
22 testified in his sworn declaration that he does not negotiate, settle, or participate in the  
23 financial outcome of an insurance contract or the settlement of a claim, and throughout  
24



1 his career has not done so.<sup>2</sup> Mr. Marinelli has described his extensive experience as an  
2 auto damage appraiser working with claims adjusters for insurers and governmental  
3 agencies to provide damage appraisals and cost estimates. Mr. Marinelli testifies as to  
4 the facts about what an appraiser does and what an appraiser does not do. Mr.  
5 Marinelli does not negotiate agreements or settle claims. Mr. Marinelli's sworn  
6 declaration and testimony is offered here also to rebut the unsubstantiated allegations of  
7 Mr. Baughman and the witness statements relied on by the Insurance Commissioner.

8 Ms. Stephanie Bennett also provides her sworn declaration in support of  
9 Respondents' Motion for Summary Judgment of Dismissal.<sup>3</sup> Ms. Bennett testifies to  
10 her experience as an adjuster, attorney, and now as the owner of an appraisal business.  
11 And, based on this extensive experience, Ms. Bennett is qualified to present and does  
12 present facts as to the duties and responsibilities of both an appraiser and an adjuster.  
13 Ms. Bennett confirms and supports Mr. Marinelli's testimony that he does not negotiate  
14 or settle claims. Based on her own experience as an insurance adjuster, Ms. Bennett  
15 also presents evidence establishing what an adjuster does. She states that while  
16 adjusters have the responsibility to negotiate and settle claims, appraisers do not. Ms.  
17 Bennett's sworn declaration and testimony is offered here also to rebut the  
18 unsubstantiated allegations of Mr. Baughman and the witness statements relied on by  
19 the Insurance Commissioner.

20 Mr. Marinelli and Ms. Bennett present real and actual evidence about what an  
21 appraiser does and what an adjuster does. Furthermore, the sworn declarations of Mr.  
22 Marinelli and Ms. Bennett reinforce and verify the statement of Craig Caswell, the  
23

24 \_\_\_\_\_  
<sup>2</sup> A copy of Mr. Marinelli's sworn declaration is attached hereto as Exhibit 2.

<sup>3</sup> A copy of Ms. Bennett's sworn declaration is attached hereto as Exhibit 3.

1 insurance adjuster who retained Mr. Marinelli, regarding the limitations placed on him  
2 as an appraiser.

3 The sworn testimony of both Mr. Marinelli and Ms. Bennett stands in stark  
4 contrast to the unsupported assumptions, unverified and false allegations, and  
5 speculative conclusions of Mr. Baughman.

6  
7 **Insurance Commissioner's motion must be denied**

8 Mr. Marinelli and Ms. Bennett present sworn testimony that counters the  
9 allegations of Mr. Baughman, the Insurance Commissioner's witness in chief, and  
10 clearly establish that a genuine issue of material fact exists, sufficient to deny the  
11 Insurance Commissioner's motion for summary judgment. Mr. Marinelli and Ms.  
12 Bennett validate the statement of Mr. Caswell that Mr. Marinelli was not authorized to  
13 "negotiate an agreement" (as Mr. Baughman falsely alleges), and that Mr. Marinelli's  
14 scope of work for Mr. Caswell and GEICO was to do only those things that an  
15 appraiser does. These are facts and these facts negate the allegations presented by the  
16 Insurance Commissioner in his motion.

17  
18 "Summary Judgment is appropriate only if the record demonstrates that  
19 there is no genuine issue of material fact and the moving party is entitled  
20 to judgment as a matter of law."  
*Lyons v. U.S. Bank Nat'l Ass'n.*, 181 Wn. 2d 775, 783, 336 P.3d 1142 (2014); (emphasis  
added).

21 "A material fact for purposes of summary judgment is one upon which  
22 the outcome of the litigation depends in whole or in part."  
*United Airlines, Inc. v. King County*, 194 Wn. App. 384, 376 P.3d 471 (2016).

23 "Summary judgment is appropriate only if "there is no genuine issue as  
24 to any material fact" and "the moving party is entitled to a judgment as a  
matter of law." CR 56(c). All facts must be considered in the light most  
favorable to the nonmoving party. *Vallandigham*, 254 Wn. 2d at 26.

1 Summary judgment is granted only if, given the evidence, reasonable  
2 persons could reach only one conclusion. *Id.* The moving party bears  
3 the burden of showing that there is no genuine issue of material fact. *Id.*  
4 If this burden is satisfied, the nonmoving party must present evidence  
demonstrating material fact. *Id.* Summary judgment is appropriate if  
the nonmoving party fails to do so. *Id.*”

5 *Walston v. Boeing Co.*, 181 Wn. 2d 391, 395, 334 P.3d 519 (2014); (internal quotes in  
6 original; emphasis added).

7 “A genuine issue of material fact exists where reasonable minds could  
8 differ on the facts controlling the outcome of the litigation. (Citation  
omitted).”

9 *Realm, Inc. v. City of Olympia*, 168 Wn. App. 1, 4, 277 P.3d 679 (2012).

10 The Washington Administrative Procedures Act (APA) provides that presiding  
11 officers designated by an agency head who are duly-authorized to make a final decision  
12 and enter a final order in a quasi-judicial administrative proceeding shall make his or  
13 her decision “based exclusively on the evidence of record in the adjudicative  
14 proceeding and on matters officially noticed in that proceeding.” (RCW 34.05.461(4)).  
15 That section of the APA further states that, “Findings shall be based on the kind of  
16 evidence on which reasonably prudent persons are accustomed to rely in the conduct of  
their affairs.” (*Id.*).

17 “We presume that judicial hearings and judges are fair. *In re*  
18 *Disciplinary Proceeding Against King*, 168 Wn. 2d 888, 904, 232 P.3d  
19 1093 (2010). “Hearing officers are not judges, but we trust and  
empower them to preside over proceedings, take evidence, make  
findings of fact, and do other duties analogous to the role of a judge.”  
20 *Discipline of Petersen*, 180 Wn. 2d 768, 787, 329 P.3d 853 (2014); (quotes in original).

21 The Respondents have established that the evidence in the record of this current  
22 matter pending before this tribunal presents genuine issues of material fact on which  
23 reasonably prudent persons could differ and which would affect the outcome of this  
24 pending matter.

The Respondents have established, and Washington appellate courts have held,

1 that the unsworn statements of the Insurance Commissioner's witnesses cannot be  
2 accepted or considered in the Insurance Commissioner's motion for summary  
3 judgment. This is no mere technicality. Washington's appellate courts have spoken.

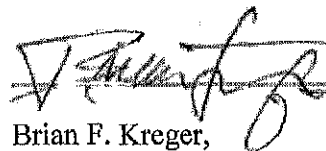
4 The Respondents have demonstrated that, even if the Insurance Commissioner's  
5 unsworn and unverified witness statements were accepted – which is not conceded –  
6 those statements, particularly the statement of Jeff Baughman, are riddled with  
7 speculation and assumption, unsupported and unsupportable opinion, unfortunate  
8 disregard of facts that exist in the OIC's own records, and, regrettably, false and  
9 misleading allegations.

10 Finally, through the sworn declaration testimony of Michael Marinelli and  
11 Stephanie Bennett, as well as the statement of Craig Caswell, the Respondents have  
12 established facts that counter any alleged "fact" presented by the Insurance  
13 Commissioner. There is evidence of genuine issues of material fact sufficient to deny  
14 the Insurance Commissioner's motion for summary judgment.

15 It is only reasonable and fair that the Presiding Officer in this matter should  
16 deny the Insurance Commissioner's motion for summary judgment. Accordingly,  
17 Respondents request that the Insurance Commissioner's motion must be denied.  
18

19 **RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of January, 2017  
20

21 KREGER BEEGHLY, PLLC

22 

23 Brian F. Kreger,  
24 WSBA Number 10670  
Attorney for Respondents

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

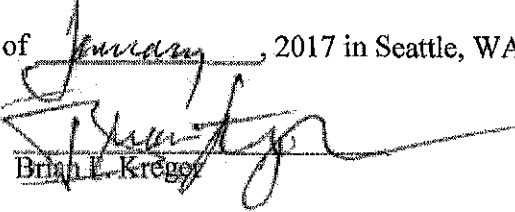
CERTIFICATE OF SERVICE

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 **Response to Insurance Commissioner's Motion for Summary Judgment** 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 23<sup>rd</sup> day of January, 2017 in Seattle, WA.



Brian F. Kreger

**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**

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

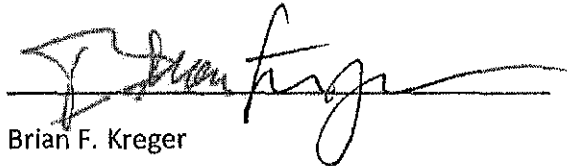
relationship with Mr. Marinelli and Insurance Appraisal Services, and Mr. Caswell notes that Geico has hired independent auto damage appraisers ten to fifteen times over the last two years.

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

This email/fax message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email/fax is prohibited. If you are not the intended recipient, please destroy all paper and electronic copies of the original message.

=====

This email/fax message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email/fax is prohibited. If you are not the intended recipient, please destroy all paper and electronic copies of the original message.

**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,



OFFICE of the  
**INSURANCE**  
**COMMISSIONER**  
WASHINGTON STATE

**Bobby Frye**

*Senior Investigator*

*Legal Affairs*

*Washington State Office of the Insurance Commissioner*

(360) 725-7259 (office)

[BobbyF@oic.wa.gov](mailto:BobbyF@oic.wa.gov)

***Protecting Insurance Consumers***

[www.insurance.wa.gov](http://www.insurance.wa.gov) | [twitter.com/WA\\_OIC](https://twitter.com/WA_OIC) | [wainsurance.blogspot.com](http://wainsurance.blogspot.com) | [email/text alerts](#)

---

This email/fax message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email/fax is prohibited. If you are not the intended recipient, please destroy all paper and electronic copies of the original message.

**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](mailto: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](mailto: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 9<sup>th</sup> 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. 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 \_\_\_\_\_ 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 \_\_\_\_\_, for all heavy truck/tractors (excludes private passenger trucks)
35. Thoroughly complete the Trailer Identification & Equipment Report \_\_\_\_\_ for all trailers, straight truck bodies and petroleum tanker equipment
36. Thoroughly complete the Heavy Equipment Inspection Report \_\_\_\_\_) 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 \_\_\_\_\_ 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 \_\_\_\_\_ Home Office Claims - Material Damage at \_\_\_\_\_

**EXHIBIT B**





22044 North 44<sup>th</sup> 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. IANet 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 IANet.  
Thank you for your consideration,

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 28<sup>th</sup> day of December, 2016.

A handwritten signature in black ink, appearing to read 'Stephanie Bennett', is written over a horizontal line.

Stephanie Bennett

Owner, J & E Appraisal Services