

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

<p>CORCORAN AND ASSOCIATES, INC.,</p> <p>Plaintiff,</p> <p>v.</p> <p>JANET SOLBERG and MITCHELL COUNTY MUTUAL AGENCY, INC., d/b/a TOWN AND COUNTRY INSURANCE AGENCY,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>PETITION AT LAW</p>
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Plaintiff Corcoran and Associates, Inc. (“Corcoran”), for its Petition at Law against Defendants Janet Solberg and Mitchell County Mutual Agency, Inc., d/b/a Town and Country Insurance Agency (“Town and Country”), states as follows:

Parties, Venue, and Jurisdiction

1. Corcoran is an Iowa corporation with its home office located at 18 2nd Street NE, PO Box 709, Mason City, Iowa.
2. Corcoran has multiple offices in Iowa, including an office in Mason City.
3. Solberg is an individual and resident of Cerro Gordo County, Iowa.
4. Mitchell County Mutual Agency, Inc. is an Iowa corporation doing business as Town & Country Insurance Agency, with its home office at 708 Chase Street, PO Box 148, Osage, Iowa.
5. The amount of damages in controversy in this matter exceeds the jurisdictional limits of Small Claims Court in Iowa.
6. Venue is appropriate in the Iowa District Court in and for Cerro Gordo County pursuant to Iowa Code Chapter 616.

Factual Allegations

7. Corcoran is in the business of, among other things, selling personal lines of insurance.

8. Janet Solberg became employed by Corcoran on August 17, 2005.

9. During her employment, Solberg had close contact with Corcoran's customers and received proprietary and confidential information about Corcoran, its insurance programs, affairs, and customers.

10. During her employment, Solberg's responsibilities were, among others, soliciting customers, sales to existing customers, and sales to new customers of Corcoran.

11. During her employment with Corcoran, Solberg sold all lines of insurance, including but not limited to, auto, homeowners, and life insurance. She sold these lines of insurance on behalf of Corcoran as of October 8, 2015.

12. On or about October 8, 2015, Corcoran and Solberg entered into a series of binding and enforceable agreements to separate Solberg from and discontinue her employment with Corcoran.

13. One of the agreements entered on or about October 8, 2015, was a binding and enforceable agreement entitled, "Confidential Separation Agreement and Release" ("Separation Agreement"). Under the Separation Agreement's terms, Solberg's employment with Corcoran ended on October 8, 2015. This date was known as her "Separation Date."

14. Also on or about October 8, 2015, Corcoran and Solberg, as a condition to Solberg's separation from and discontinuation of employment with Corcoran, entered into a binding and enforceable agreement entitled, "Noncompetition Agreement." (Attached as Exhibit 1).

15. Under the Noncompetition Agreement, Solberg agreed that, for a period of

eighteen months after her Separation Date, she would not

- a) Directly or indirectly solicit, sell, market, produce or accept all lines of insurance sold or represented by Solberg or Barbara Jass on behalf of Company as of the date of this Agreement to or from any of the current insurance accounts or customers of the Company;
- b) Directly or indirectly assist any other person, partnership, corporation or other legal entity in soliciting, selling, marketing, producing or accepting any business related to accounts or customers of the Company that would cause a change in the Agent or Broker of Record from a Company representative to any other representative;
- c) Encourage or cause customers of Company to cease doing business with Company.

(Exhibit 1, Paragraph 1(A)(a)–(c)).

16. On information and belief, Solberg began working for Town and Country on or before November 5, 2015.

17. Town and Country is a competitor of Corcoran, selling similar products to a similar pool of customers and prospective customers.

18. According to Town and Country's website, it has two locations, one in Osage, Iowa, and one in Nora Springs, Iowa. (Exhibit 2).

19. Solberg works from the Nora Springs office. (Exhibit 3).

20. Town and Country's Nora Springs office is 10.2 miles from Corcoran's office in Mason City. (Exhibit 4, Google Map). Town and Country's Osage office is 29.4 miles from Corcoran's office in Mason City. (Exhibit 5, Google Map).

21. Since her Separation Date, Solberg has engaged in conduct violating the Noncompetition Agreement with numerous current or former customers of Corcoran, including but not limited to, Donald Kuykendall; Brian Huntley; Robert Schultz; John and Ann Robinson; and Michael Craig.

22. Solberg has solicited Corcoran clients while at City Hall, handing out her business cards, giving directions to her new office, and telling the Corcoran clients she can get them a “better deal” on their insurance than they have through Corcoran.

23. On information and belief, Solberg has also engaged in conduct with other customers of Corcoran in violation of her Noncompetition Agreement.

Donald Kuykendall

24. Donald Kuykendall had been a customer of Corcoran since September 2007 and was a customer of Corcoran on October 8, 2015. (Exhibit B, Aff. of Teresa Corcoran).

25. In February 2016, Corcoran learned that Mr. Kuykendall had received Janet Solberg’s business card from Solberg’s husband. Mr. Kuykendall was also aware that Solberg was working for Town & Country Insurance Agency in Nora Springs, Iowa. (Exhibit B).

26. Mr. Kuykendall was facing rate increases on both his auto and homeowners insurance policies in 2016. (Exhibit B).

27. Solberg informed Mr. Kuykendall that there was no reason his insurance premiums should have gone up. (Exhibit B).

28. After Solberg talked to him, Mr. Kuykendall informed Corcoran that unless Corcoran was able to decrease his premiums, he would switch his business from Corcoran to work with Solberg. (Exhibit B).

29. On February 8, 2016, Corcoran received an agent of record letter for Mr. Kuykendall. On February 11, 2016, Corcoran received a second agent of record letter for Mr. Kuykendall. (Exhibit B). Both letters requested transfer of his insurance policies on February 17, 2016. These agent of record letters are attached as Exhibits 6 & 7.

30. An agent of record letter (“AOR”) is the means by which a client notifies the carrier of a change in brokers. Once an AOR is identified, the insurance carrier will only talk to the broker identified in the AOR. That broker is then entitled to all renewal rights of the insurance policy and the prior broker loses the business. (Exhibit B).

31. Corcoran thus lost the business related to Mr. Kuykendall’s auto and homeowners insurance policies as of February 17, 2016. (Exhibit B).

Brian Huntley

32. Brian Huntley has been a customer of Corcoran since 2007, was a customer of Corcoran on October 8, 2015, and is currently a customer of Corcoran. (Exhibit A, Aff. of Michael Corcoran; Exhibit E, Aff. of Brian Huntley).

33. During her employment with Corcoran, Janet Solberg was Mr. Huntley’s agent for personal lines of insurance. (Exhibit E).

34. On or about December 21, 2016, Solberg hand-delivered a return envelope addressed to “Town & Country Ins.,” Solberg’s Town and Country business card, and AORs to Mr. Huntley. (Attached as Exhibit 3). Solberg had marked on the AORs where she wanted Mr. Huntley and Sara, his wife, to sign. (Exhibit E).

35. Solberg, while working for Town and Country, had previously mailed the same, or a similar, set of documents to Mr. Huntley. (Exhibit A; Exhibit E).

Robert Schultz

36. Robert and Jacqueline Schultz are customers of Corcoran and were on October 8, 2015.

37. In June 2016, Janet Solberg met with Mr. Schultz and his daughter, Roxanne, who is also a customer of Corcoran, at Mr. Schultz’s home. (Exhibit D, Aff. of Robert Schultz).

38. Solberg asked Mr. Schultz to sign papers she had already prepared to switch his family's auto insurance to a new agency. Mr. Schultz gave Solberg his credit card information, leading him to believe that his one-year auto insurance policy had been paid. After meeting with Solberg, Mr. Schultz received a policy renewal for just a six-month term. In the past, Mr. Schultz has always had a one-year auto policy. (Exhibit C, Aff. of Renee Uhlenhopp; Exhibit D).

39. In January 2017, Mr. Schultz met with Renee Uhlenhopp, a Corcoran personal lines agent. Ms. Uhlenhopp contacted Auto Owners Insurance Company and obtained a copy of a change request containing Janet Solberg's handwriting and purportedly signed by Jacqueline Schultz, Mr. Schultz's wife and dated January 1, 2017. (Exhibit D). The document directs Auto Owners to put the Schultzes' auto policy on a six-month term, effective February 11, 2017. A true and correct copy of that document is attached hereto as Exhibit 8.

40. Mr. Schultz does not recall signing any document when he met with Solberg. (Exhibit D). Further, Mr. Schultz informed Ms. Uhlenhopp he did not sign any document on January 1, 2017, did not meet with anyone on January 1, 2017, and his wife does nothing with the family's auto insurance policies. (Exhibit C).

41. The document was not submitted by Corcoran to Auto Owners Insurance Company. (Exhibit A). On information and belief, it was submitted to Auto Owners Insurance by Solberg or Town and Country.

42. Mr. Schultz further informed Ms. Uhlenhopp that he wished to keep his business with Corcoran, had no intention of moving his business elsewhere, and believed false documents were used by Solberg to switch his business. (Exhibit C).

John and Ann Robinson

43. John and Ann Robinson were customers of Corcoran on October 8, 2015. Their home and auto policies were written through Corcoran. (Exhibit B).

44. In January 2017, a review of a daily transmission of records received from Auto Owners Insurance Company revealed that John and Ann Robinson were receiving a credit to their account, even though no request for policy changes had been made through Corcoran. (Exhibit C).

45. After contacting Auto Owners, Corcoran learned that the credit was the result of the Robinsons carrying multiple policies, one for auto insurance, one for homeowners insurance, and one for life insurance. The Robinsons did not have a life insurance policy written with Corcoran. (Exhibit B; Exhibit C).

46. Corcoran also learned that Janet Solberg was listed as the agent on the life insurance policy, effective January 14, 2017. (Exhibit B).

47. To obtain a multiple policy discount for the Robinsons, Solberg would have needed to list the Robinsons' home and auto insurance policies on their life-insurance application. Listing those policies would have required awareness of the agency where the Robinsons had their home and auto insurance coverage. (Exhibit B).

Michael Craig

48. Michael Craig was a customer of Corcoran on October 8, 2015. (Exhibit C).

49. On March 2, 2017, Ms. Uhlenhopp reviewed a daily transmission of records and learned that she had not received a policy renewal for Michael Craig, a customer of Corcoran. (Exhibit C).

50. Upon learning this, Ms. Uhlenhopp called Mr. Craig's insurance company, which informed her that it had received a written statement to cancel Mr. Craig's insurance because he had obtained coverage elsewhere. (Exhibit C).

51. Ms. Uhlenhopp later on March 2, 2017, confirmed that Mr. Craig's homeowners policy is now written by Town & Country. (Exhibit C).

COUNT I

Breach of Contract (Solberg)

52. Corcoran repleads and re-alleges Paragraphs 1–51 of this Petition as if fully set forth herein.

53. Solberg has solicited customers of Corcoran in violation of Paragraph 1(A)(a) of the Noncompetition Agreement.

54. Solberg has assisted another entity in soliciting, selling, marketing, producing, or accepting business related to customers of Corcoran that would cause a change in the Agent or Broker of Record, in violation of Paragraph 1(A)(b) of the Noncompetition Agreement.

55. Solberg has encouraged or caused customers of Corcoran to cease doing business with Corcoran, in violation of Paragraph 1(A)(c) of the Noncompetition Agreement.

56. Corcoran has performed all of its obligations under the Noncompetition Agreement.

57. Solberg's multiple and continuing breaches of the Noncompetition Agreement have caused and continue to cause damages to Corcoran.

58. Section 1.E of the Noncompetition Agreement requires Solberg to reimburse Corcoran for its attorney fees incurred in this lawsuit.

WHEREFORE, Plaintiff Corcoran respectfully requests that the Court enter judgment against Solberg for damages as proven in a trial on the merits, together with interest, costs, attorney fees, and for such other relief as set forth in the Noncompetition Agreement and as deemed appropriate by the Court.

COUNT II

Intentional Interference with Contract (Town and Country)

59. Corcoran repleads and re-alleges Paragraphs 1–58 of this Petition as if fully set forth herein.

60. After Solberg began working for Town and Country, in or around December 2015, Michael Corcoran, President of Corcoran, informed Scott Wilde, Town and Country’s sales manager, that Solberg had signed a non-compete agreement with Corcoran.

61. Mr. Wilde responded that his agency was aware of Solberg’s non-compete agreement.

62. At all material times, Town and Country has been aware of Corcoran’s Noncompetition Agreement with Solberg.

63. Town and Country is intentionally interfering with the Noncompetition Agreement by accepting business from Corcoran customers obtained by Solberg in violation of the Noncompetition Agreement.

64. Corcoran has been damaged by such interference by Town and Country.

WHEREFORE, Plaintiff Corcoran respectfully requests that the Court enter judgment against Town and Country for damages as proven in a trial on the merits, together with interest and costs, and for such other relief as deemed appropriate by the Court.

COUNT III

Intentional Interference with Contract (Solberg)

65. Corcoran repleads and re-alleges Paragraphs 1–64 of this Petition as if fully set forth herein.

66. Corcoran has a contract with Auto Owners Insurance Company under which Corcoran writes Auto Owners Insurance policies for Corcoran customers.

67. Corcoran has customers whose insurance company is Auto Owners Insurance.

68. At all material times, Solberg has been aware of Corcoran’s contract with Auto Owners Insurance and sold customers Auto Owners Insurance policies while she was employed by Corcoran.

69. Solberg is intentionally interfering with Corcoran’s contract with Auto Owners Insurance by soliciting business from and accepting the business of Corcoran customers whose insurance company is Auto Owners Insurance.

70. Corcoran has been or will be damaged by such interference by Solberg.

WHEREFORE, Plaintiff Corcoran respectfully requests that the Court enter judgment against Solberg for damages as proven in a trial on the merits, together with interest and costs, and for such other relief as deemed appropriate by the Court.

COUNT IV

Injunctive Relief (Solberg and Town and Country)

71. Corcoran repleads and re-alleges Paragraphs 1–70 of this Petition as if fully set forth herein.

72. The Noncompetition Agreement, in Paragraph 1(C), provides:

In the event of breach or threatened breach by Solberg of the provisions of this Paragraph 1, it is agreed that the terms of the provisions may be enforced by an

injunction restraining Solberg from the commission of such breach to the full extent hereof, or to such lesser extent as a court of competent jurisdiction may deem just and proper for the reasonable protection of the rights and interests of the Company.

(Exhibit 1).

73. Solberg's breach of Paragraph 1 of the Noncompetition Agreement therefore entitles Corcoran to a permanent injunction as set forth in the Noncompetition Agreement.

WHEREFORE, Plaintiff Corcoran respectfully requests that the Court enter a permanent injunction from the date of the judgment against Solberg, prohibiting Solberg from further violations of the Noncompetition Agreement for an additional 18 months, and against Town and Country, prohibiting Town and Country from accepting business in violation of the Noncompetition Agreement, together with attorney fees, costs, and for such other relief as deemed appropriate by the Court.

Respectfully submitted,

/s/ Bridget R. Penick

BRIDGET R. PENICK, AT0006147
BRANDON R. UNDERWOOD, AT0012005
FREDRIKSON & BYRON, P.A.
505 East Grand Ave., Suite 200
Des Moines, Iowa 50309
Telephone: (515) 242-8900
Email: bpenick@fredlaw.com
bunderwood@fredlaw.com

ATTORNEYS FOR CORCORAN AND
ASSOCIATES, INC.