

# Problem 1

After accepting the appointment as the umpire, you arrange to inspect the risk with both appraisers. Once the initial inspection is complete, you all agree that there are differences in both scope and unit costs that each wish to address on his/her own time.

You agree to meet at your office in one week to allow adjustments to be made by both appraisers on certain aspects upon which you were all able to agree.

When you meet again, the carrier's appraiser advises that he was instructed by counsel to submit a segregated award which, upon review, delineates each trade, tax, overhead & profit and depreciation. The insured's appraiser refuses to agree and demands a lump sum award, separated only by lines of coverage.

## ISSUES:

- (a) What are your options as umpire?
- (b) Upon what are you basing your ruling?
- (c) What options do the appraisers have?

## Problem 2

The subject property is a shopping center located in Orlando that suffered damage during the storms of 2004. There were two storms that hit the area. After the first storm, the insurance company adjuster made an inspection, took some photos, but did not do a take off before the second storm hit.

The parties were not able to agree on the amount of loss for both storms relating to the building damage and the loss of rents. Thus, the insured demanded appraisal. The appraisers were named and you were nominated and agreed to serve as the umpire.

Meanwhile, the attorney for the insurance company presented a memorandum of appraisal to the insured's attorney for review and signature. This memorandum of appraisal is the document that dictates the appraisal process. It details what is to be appraised and how the award should look. The insured's attorney and appraiser refuse to acknowledge the memorandum. The appraiser for the insurance company insists on the memorandum being signed before starting the appraisal process.

Since they are at an impasse on this issue, they elect to bring the disagreement to you on whether to proceed with or without the memorandum of appraisal.

### ISSUES:

- (a) Why is the insured refusing to sign the memorandum?
- (b) How would a memorandum help in this case?
- (c) What position do you take?

## Problem 3

A Hurricane Wilma claim was presented by Heidi Front Condominium Association located in Fort Lauderdale, Florida. The claim was thoroughly investigated by a team of experts retained by the coordinating independent adjuster for Mutual Insurance. Engineers from ABC reported to the insurer who retained it that only one roof on the central tower needed to be replaced due to wind damages. The other surrounding six buildings had minor repair issues on their mansard tile frontages, but the flat membrane roofs were not damaged by the storm. These buildings that surrounded the central tower were only three and four stories each, as opposed to the 20-story tower. In addition to the engineers who inspected the roofs, a construction consultant estimated the damages to the different buildings. The damages were categorized as pre-existing (due to wear and tear or lack of maintenance) versus wind damages from Hurricane Wilma. A substantial issue involves sliding glass doors with glass scratches on both the interior and exterior of the glass.

The insurer believed that any related damages to the sliding glass doors were within the windstorm deductible of \$1 million. The roof damages for replacement of the tower, and the repairs to the sliders, together with other miscellaneous building damages due to flying debris, totaled \$985,633.00.

Mutual Insurance informed its policyholder that the Hurricane Wilma damages were within the deductible and closed its claim file.

## Problem 3 (continued)

The condominium association retained a public adjuster, John Jones. The public adjuster brought his team of engineers and construction consultants to inspect each and every unit within the complex. When the inspection was completed, the public adjuster submitted an estimate to the adjuster for the insurer in the amount of \$10,252,175.00. In his estimate, he believed that all of the roofs had to be replaced in light of code requirements in South Florida and the extent of the damages from the windstorm. In addition, he claimed all of the sliding glass doors needed replacement due to matching issues in addition to the actual damages to the doorframes. His position on the sliding glass doors was that the deflection caused by the wind, although temporary, was damage to the frame and the sliders did not work as well as they had prior to the storm.

The insurer took multiple examinations under oath of the members of the board of directors, the public adjuster, and his consultants. Ultimately, the question became whether the matter should go to appraisal. All parties agreed to proceed with an appraisal of the issues, on the condition that a segregated award would be required from the appraisal panel. The segregation was to preserve the coverage issues with respect to the roof damages and the sliding glass doors.

## Problem 3 (continued)

The parties refused to enter into a memorandum of appraisal. As umpire, you were presented with these issues and asked to resolve the format of the award as well as the amount and cause of the damages. The appraiser for the policyholder wants a lump sum award. The appraiser for the insurer argues that the roof issues are coverage, not appropriate for appraisal, and if you are going to proceed with an appraisal award for each of the roofs, the award must be segregated.

Finally, an issue arises as to whether the award must include both actual cash value and replacement cost amounts. The insurer's appraiser argues that the policy is only an actual cash value policy and therefore replacement cost is inappropriate.

### ISSUES:

- (a) As umpire, how do you handle the issues to be determined by the appraisal panel?
- (b) Can you as umpire do anything to require a memorandum of appraisal?
- (c) How do you address the lump sum v. segregated award issue?
- (d) How do you address the ACV v. RCV request?

## Problem 4

The umpire and both appraisers arrive at a site/dwelling inspection and begin to review the submittals by both appraisers before beginning the actual inspection. During the submittals review, the insured walks up to the group, introduces herself and does not leave. The umpire politely advises her that the appraisal process is limited to participation by the appraisers and the umpire. The insured tells all present that no one is invited onto her property, let alone inside her dwelling to inspect damage, unless she is present for the entire discussion and inspection. She states further that unless the carrier pays everything she is asking for, together with her public adjuster fees in full, she will never allow anyone on her property, short of a court order because of all the delay, hardship and suffering she and her family have had to endure as a result of the untimely, unfair and bad faith handling of her hurricane claim.

After the site/dwelling “inspection” (such as it was), the insured calls and e-mails the umpire directly, demanding relief in her favor and sends a continuous stream of information and threats that if the umpire does not find in her favor, she will sue the umpire personally.

## Problem 4 (continued)

Finally, to make matters worse, you receive a call directly from the insurance adjuster and the lawyer for the carrier demanding that you simply “make the call” and dispense with any further contact with either appraiser, even though you have scheduled a final meeting where you have required both appraisers to provide their respective final estimates and all supporting documents for same. The final meeting was requested by the appraisers who asked to supplement their initial submittals after the site inspection and both have told you they are still interested in “working it out”

### ISSUES:

- (a) How do you handle the site inspection?
- (b) What can you do regarding direct contact from the parties?
- (c) As an appraiser, should you be reporting on the progress of the appraisal, and if so, how detailed and by what method should the reports be?
- (d) What do you do about the final meeting?

## Problem 4 (continued)

At the initial appraisal meeting, one of the appraisers brings his/her own contractor

- (a) Is this okay with you?
- (b) Should they have notified his counterpart that he was doing so?
- (c) Should you adjourn to allow the other appraiser to bring his contractor to the appraisal meeting?
- (d) How does the foregoing issue present a “due process” question for you as the umpire?

## Problem 5

You are the agreed upon umpire. The insured has shown the appraisers and you around the property and pointed out the damages. The appraisers and you are ready to sit down at the dining room table when the insured sits down with you

### ISSUES:

- (a) Can the insured stay at your appraisal conference?
- (b) Can he/she ask you questions about coverage?
- (c) Questions about values?
- (d) Any questions?

## Problem 6

Appraisers agree on an umpire.

Umpire and appraisers meet at loss site to discuss differences.

Based on the umpire's inspection and conversations, the two appraisers agree to try to agree on the issues and then the panel will return to the loss site if there are any items that they cannot agree on.

The appraisers contact the umpire and inform the umpire that they cannot agree on one issue and a second site inspection is set up.

At the site inspection, both sides present their positions to the umpire. The appraiser for the insured claims that the insurer's appraiser agreed on a specific quantity of material to be replaced. The insurer's appraiser denies making such agreement.

The umpire starts to opine on the issue and wants to measure the material that he feels needs to be replaced. The insured's appraiser states that he (Umpire) is exceeding his authority and insists that he resign as umpire. The insured's appraiser subsequently throws the umpire and the insurer's appraiser off the property.

## Problem 6 (continued)

The insured's appraiser calls the umpire stating that he has retained an attorney.

The umpire has over 11 hours on the file.

### DISCUSSION:

1. Do you do nothing until you hear from the insured's appraiser's attorney?
2. Would you resign as the umpire?
3. As the umpire, would you prepare an award based on the agreed numbers plus your number on the disputed item, send it to the panel and see if anyone will sign?
4. If the award is signed by the insurer's appraiser, do you sign and risk being sued?
5. How do you protect yourself for payment of fees?

# Problem 7

You are the umpire on a large condominium property appraisal. The condominium association also has a facility for events (Weddings, Bar Mitzvahs, Parties, etc.)

The following issues are in disagreement:

## **Building Damages**

1. Roof replacement vs. repair
2. Window and door replacement
3. HVAC replacement vs. repair
4. Code issues

## **Contents**

1. Replacement vs. Restoration
2. Salvage

## **Business Interruption**

1. Restoration timeline.
2. Amount of loss due to existing cancellations
3. Amount of loss due to future affairs that will not be booked

## Problem 7 (continued)

### ISSUES:

- (a) The issues have been handed to you to decide, what do you do?
- (b) What experts do you hire?
- (c) Who decides which experts to use?
- (d) Who retains the experts?
- (e) How are the reports written?
- (f) Who pays for the expert?

## Problem 8

You have agreed to serve as the umpire on a residential house fire. You meet at the loss location with both named appraisers, each appraiser hands you an assessment of the damages and informs you they cannot agree on anything and therefore wish for you to set the amount of the loss for all line items of coverage.

Upon your assignment, you pull the county tax records and learn the insured purchased the home in July 2009 for \$42,000.00. You also learn the house was built in 1946 in Miami-Dade County. Information within your file tells you the house is insured for \$167,000.00 at the time of the loss.

You agree to perform an inspection of the loss and, as you approach the property, you find all the windows and/or doors covered with plywood eliminating any access to the property.

Both appraisers agree to have you review their reports to determine the amount of the loss without accessing the property.

### ISSUES:

- (1) Do you proceed to write your own assessment of the loss from each appraisers report?
- (2) Do you insist on gaining access to the property before preparing any damages reports?

## Problem 9

Various awkward moments - i.e. what do you do when....

- (a) Insured stops you as you are leaving the risk after the panel has met and tells you that he overheard the discussion and he informs you his appraiser has submitted false documentation to support the claim.
- (b) Insured's appraiser fails to appear at the risk at the appointed time, but the insured is there and decides it has waited long enough and it does not wish to incur the cost of a second meeting to inspect the risk so it asks you to inspect the site despite its appraiser telling you he does not wish for you to proceed in his absence.
- (c) You are inspecting the risk as a panel and you seem to be familiar with the risk. You all leave, and en route home, you remember you had a loss at this same risk years ago while in a different capacity and you seem to be familiar with some of the same damage. You have access to that file but only because of your relationship with your prior company.

## Problem 10

A fire loss caused extensive damage to the insured home. Following months of back and forth between the company adjuster, the insured, and a public adjuster, settlement talks break down. The parties then agree to the appraisal forum and mutually agree on an umpire. Subsequently all parties sign an appraisal award form, and the insured is paid a sum they are satisfied with.

The carrier pays its half of the umpire bill, but the policyholder did not make their timely payment. The umpire called the law firm that received the money and was told all payments were made from their trust account and their file is closed. The umpire then calls the P. A. firm and asks for help getting his money. The umpire believed that, given the excellent reputation of the P.A. firm, it would have looked out for the umpire and collected money along with their fee to pay the umpire.

### ISSUES:

- (a) What obligation does a P.A. have to protect and if necessary pay the part of an umpire bill that was not paid by the policyholder after professional umpire services have been rendered?
- (b) Should the umpire have insisted that ALL parties to the appraisal forum sign a contract memorializing the umpires professional service agreement, its terms, etc including who pays the umpire, when he or she is to be paid, and confirm and acknowledge his hourly rate etc.?

## Problem 10 (continued)

- (d) If the P.A. pays the umpire, what standing does the P.A. have to go after the insured to get the money back? What if the umpire did not have a contract and this issue of the umpire fees was not disclosed or was not addressed in the P.A. contract with the insured?

## Problem 11

A loss occurred when a device malfunctioned and allowed steam to be released throughout the building. All surfaces, walls, and personal property were exposed to very high heat. Condensation occurred as the steam cooled, resulting in every item (structural or contents) becoming wet.

While some damage was obvious immediately, other damage took time to manifest itself. Electrical items such as motors and switches in appliances sometimes worked and other times not. Then there was the smell in all the soft goods. This was a nightmare loss for the policyholder and the carrier. Adjusting losses with a lot of discretionary damages is problematic and then there are the issues of repair or replacement.

The one piece of good news for the policyholder was that its policy was issued before the statutes were changed back to an ACV payment. Thus items to be replaced were to be paid full replacement cost at the time of the settlement.

As time passed, no one seemed to have a clear understanding of what to do. Various "experts" were brought in by the carrier who opined initially that the loss items were cleanable and repairable.

A public adjusting company was hired and then fired because of a dispute with the insured over claim filing procedures. Another PA firm was retained based on a recommendation.

## Problem 11 (continued)

With this backdrop, the adjustment process began anew. A detailed loss and damage claim was prepared and filed on the insured's behalf. A new set of experts were sent out with some movement but not for the value the insured and its PA felt was justified. Mediation took place, which resulted in an impasse.

The insurer then demanded appraisal, and, after the parties appointed their appraisers, an umpire was agreed to. The insured's public adjuster was appointed as the insured's appraiser. The appraiser appointed by the insurer had an underling to actually perform all of the loss assessment work. This employee was unknown to the insured, the umpire or the lawyers and public adjuster. The employee performed all the work, prepared an estimate of the damages, attended meetings and in fact did everything the appointed appraiser was supposed to have done.

The appointed appraiser appeared at the final meeting with no work product and simply went down the list of items, and as each one came up, said yes or no.

As the umpire, what are your feelings about this? Is an appraiser supposed to do the actual work or is it acceptable to have someone else do all the work and give it to his boss to make the final decision?

## Problem 12

Both appraisers agree to an umpire on a large commercial loss. After much work, meetings, discussions, and presentations by experts to the appraisal panel, an award amount is finally reached; the appraisal award is signed by all three members of the panel; and as to the panel's understanding, their work is complete. Files are closed and presumably all records of the appraisal panel work are destroyed as years now have passed.

Unbeknownst to the panel, there were other parts of this commercial loss that were not settled and discussions were ongoing for several years between the insured and the insurer. The settlement talks were discontinued and the parties agreed to submit the remaining difference to yet another appraisal panel. One of the parties then contacted the prior umpire, having been impressed with the umpire's professionalism and how this person conducted the prior appraisal, and asks the umpire to be their appraiser in the final appraisal forum. The outstanding items now in dispute were not part of deliberations in the prior appraisal but the outcome of the former appraisal may, in some part, play a role in how the umpire and new appraiser views the issues and ultimately the outcome of the new and final appraisal.

### ISSUES:

- (a) Can the former umpire now accept an appointment as the appraiser for one of the parties in this final matter of the same loss?

## Problem 13

The insureds had a major fire loss in the central Florida home. The many issues dealing with the fire as well as trying to put their lives back together quickly overwhelmed this family. They retained a public adjusting firm and thus began the process of figuring out the loss to the home and the personal property. Given the nature of the loss size and questions on values etc., the matter ended up in appraisal. The insureds and their P.A. agreed with the carrier's appraiser on a very experienced and highly regarded umpire. Following a number of meetings, all three parties signed an appraisal award.

Part of the agreement between all three of the appraisal panel was that any and all of the salvage was to be left with the insured. Further, they agreed that there was to be no deduction for any value the salvage may have from the award amounts agreed to by all three members of the appraisal panel. The insurance company subsequently retained legal counsel, who then opined that as the appraisal panel was not a party to the contract, they did not have authority to make any binding decisions about salvage, and in fact the legal counsel for the first time after the appraisal award was issued said the insurer would be willing to sell the salvage to the policyholder.

### ISSUES:

- (a) Is making a decision about salvage and who gets it appropriate and thus binding on the insured and insurer?

## Problem 14

A firm who handles both work as public adjusters, contractors and as appraisers/umpires in insurance appraisal proceedings issued a blast email solicitation for its services. The content of the email explains the right to appraisal and the concept of a neutral umpire. It then speaks to the extensive experience of the firm's principals in handling appraisal assignments as appraisers and/or umpires, noting that over 5,000 appraisals have been handled and successfully resolved by this firm in the past 5 years.

The firm also utilizes advertisements in written publications such as grocery store type newspapers or direct mailers through the postal service. In this material, the firm describes its services and promises that if hired, the results will include a new look by the insurer and a better outcome for the insured than either the previous payment or the denial of the claim.

Does such a solicitation comply with the provisions of the WINDSTORM INSURANCE NETWORK'S ETHICAL RULES FOR UMPIRES/APPRAISERS IN INSURANCE DISPUTES? What constraints or changes, if any, would you suggest or what other information would you want to know in order to decide whether this firm should be reported for any violation of the pertinent code of ethics?