



WINDSTORM

2024 CONFERENCE

JAN 29 - FEB 1, 2024 | ORLANDO, FL

RENAISSANCE ORLANDO AT SEAWORLD®

Appraisal Certification Course Overview

- INTRODUCTION/RULES (15 Minutes)
- HISTORY / WHAT CAN BE APPRAISED / ARBITRATION (10 Minutes)
- PARTIES TO APPRAISAL / APPRAISAL PROVISION (40 Minutes)
- APPRAISAL DOCUMENTS (20 Minutes)
- GETTING PAID (10 Minutes)
- YOUR ROLE AS APPRAISER (35 Minutes)
- KNOW YOUR JURISDICTION (10 Minutes)
- CODE OF ETHICS -INTERSPERSED SLIDES (15 Minutes)
- LEGAL UPDATE (55 Minutes)

Certification Requirements

1. Attend the entire class, actively listening and participating.
2. Completion of the class does not guarantee certification. Once you complete the course, you still need to:
 - a) Maintain Annual WIND Membership
 - b) Make a payment of \$250 application fee (Good for three years)
 - c) Complete and submit a security/background check from one of the following: FDLE (Florida Residents), GoodHire, or ClearChecks.

Appraisal Introduction

- What is appraisal?
- Where did appraisal originate?
- What can be appraised?
- Who can appraise?
- Does “where” matter?

History of Appraisal

History Of Appraisal

- In 1873 Massachusetts was the first state to introduce a standard fire insurance policy.
- In 1886 New York passed similar legislation. It was later revised in 1918 and then again in 1943.
- The 1943 New York Model Fire Policy was the one known to define many insurance concepts such as indemnity, insurable interest, actual cash value, pro rata sharing, and **APPRAISAL!**

123 **Appraisal.**

124

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

What Can Be Appraised?

What Can Be Appraised?

- Planes, Trains, and Automobiles.....
- And Buildings, and Contents, and Business Income...
- In reality anything available under 1st party coverage.

Is Appraisal Arbitration?

- Yes and No....
- In Hawaii Appraisal is a species of Arbitration but is not full Arbitration.
- For California Appraisal is Arbitration and you can have a hearing with witnesses and make a presentation much more like court.

Who can Appraise?

Parties To Appraisal

- Insurance Company
- Policy Holder
- Insurance Company Appraiser
- Policy Holder Appraiser
- Umpire
- Attorneys?

Additional Parties To Appraisal?

- Attorneys?
- Public Adjuster?
- Independent Adjuster?
- Court/Judge?

Policy Provisions

Knowing Your Policy Provisions

ISO Policy

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

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

Knowing Your Policy Provisions

1943 New York Standard Fire Policy

123 **Appraisal.** In case the insured and this company shall
124 fail to agree as to the actual cash value or
125 the amount of loss, then, on the written demand of either, each
126 shall select a competent and disinterested appraiser and notify
127 the other of the appraiser selected within twenty days of such
128 demand. The appraisers shall first select a competent and dis-
129 interested umpire; and failing for fifteen days to agree upon
130 such umpire, then on request of the insured or this company,
131 such umpire shall be selected by a judge of a court of record in
132 the state in which the property covered is located. The ap-
133 praisers shall then appraise the loss, stating separately actual
134 cash value and loss to each item; and, failing to agree, shall
135 submit their differences, only, to the umpire. An award in writ-
136 ing, so itemized, of any two when filed with this company shall
137 determine the amount of actual cash value and loss. Each
138 appraiser shall be paid by the party selecting him and the ex-
139 penses of appraisal and umpire shall be paid by the parties
140 equally.

Knowing Your Policy Provisions

State Farm Policy (One Example)

4. Appraisal. If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall set the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the expenses of the umpire shall be paid equally by you and us.

Knowing Your Policy Provisions

National Flood Insurance Program Policy

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the State where the covered property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Knowing Your Policy Provisions: Key Words

☐ “Competent”

☐ “Disinterested”

☐ “Impartial”

Appraisal

If **you** and **we** fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days, **you** or **we** can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire.

Knowing Your Policy Provisions: Key Words

Knowing Your Policy Provisions: Key Words

APPRAISAL

If **we** cannot agree with **you** on the amount of **your loss**, then **you** or **we** may demand an appraisal of the **loss**. Each party shall appoint a competent and disinterested appraiser. If the appraisers agree on the amount of the **loss**, they shall submit a written report to **us** and this shall be deemed to be the amount of the **loss**.

If the appraisers cannot agree on the amount of the **loss** within a reasonable time, they shall then choose a competent, impartial umpire, provided that if they cannot agree on an umpire within 15 days, either **you** or **we** may petition a judge of a court having jurisdiction to choose an umpire. The disagreement of the appraisers shall then be submitted to the umpire. Subject to the provisions of the policy, a written agreement signed by both appraisers or by one appraiser and the umpire will be the amount of the **loss**.

You must pay **your** fees and expenses and those of **your** appraiser. **We** will pay **our** fees and expenses and those of **our** appraiser. All other expenses of the appraisal, including payment of the umpire if one is necessary, will be shared equally by **you** and **us**.

By agreeing to an appraisal, **we** do not waive any of **our** rights under any other part of this policy, including **our** right to deny the claim.

Knowing Your Policy Provisions: Key Words

Appraisal. If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

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

The Appraisal Provision as a Roadmap to the Process

The Appraisal Provision as a Roadmap

Pattern of the appraisal as written in the policy is your guide to how the appraisal should be completed.

Knowing Your Policy Provisions

ISO Policy

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

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

The Appraisal Provision as a Roadmap: Umpire Selection

Does the appraisal clause state you need select an umpire before you determine the value of the loss?

- If so make sure you follow the policy times lines to share potential umpires (or state guidelines in so mandated)

The Appraisal Provision as a Roadmap: Umpire Selection

Take the time to call and vet potential umpires to see if they would be a good fit.

- Knowledge or experience in the type of loss
- Potential costs for umpire services
- Will they have to travel
- Get on the roof?
- See the loss in person?

The Appraisal Provision as a Roadmap: Umpire Selection

- Stay on top of the running clock. Communicate with your OA about whether you are at an impasse on umpire.
- If the time expires notify your client so they can pursue a court appointment. Communicate the same to the OA, don't do it blindly.

The Appraisal Provision as a Roadmap: Stating Value of Loss

- Is a joint inspection required?
- Joint inspections do help get both parties on the same track for seeing the same damages and is always the best method when possible.
- Is an “Estimate” required?

The Appraisal Provision as a Roadmap: Stating Value of Loss

- Who should send their figures first?
- Meeting with the OA to try and work out as much as possible.
- If you can agree complete and award and be done.
- If you cannot agree engage the umpire.

The Appraisal Provision as a Roadmap: Stating Value of Loss

- Some policies require or ask you to also give a value of the property in question (property could be a building or the contents).
- When do you also complete this?
- Can you skip valuing the property if both appraiser agree?

The Appraisal Provision as a Roadmap: Engaging the Umpire

- Should you declare an impasse after just getting the other sides figures?
- All communications should be with the entire panel avoiding ex-parte discussions.
- Is a joint meeting at the loss warranted or required?
- What are you asking the umpire to do?

The Appraisal Provision as a Roadmap: Presenting to the Umpire

- Do not send your opposing appraiser's figures to the umpire with yours asking the umpire to rule.
- Do not just send your figures to the umpire asking him to rule.
 - Do send a thorough explanation of how and why you arrived at your figures.
 - Do explain what or why you believe the other sides is not accurate.
 - Always including documents, invoices, etc. to support how you arrived at your figures.

The Appraisal Documents

1. The Declaration of Appraisal
2. Selection of Umpire
3. Memorandum of Appraisal
4. The Award

No. 1

Declaration of Appraisal

Declaration of Appraisal

- Standard document used wherein both appraisers acknowledge their role as appraiser for each party to the appraisal.
- Often has language affirming they have no interest in the outcome and will act ethically in a collaborative effort to resolve the loss.
- Can you “require” the other appraiser to sign this form?

No. 2

Selection of Umpire

Selection of Umpire

- Often included with the DOA noted above wherein both appraisers state in writing who they agree to act as the umpire on this loss.
- Typically includes a panel for the umpire to also acknowledge their appointment, willingness, and ability to serve

Selection of Umpire

- Is this form required to be signed?
 - Will an email where both appraiser agree suffice?
 - Will a phone call where both appraiser agree be acceptable?

No. 3

Memorandum of Appraisal

Memorandum of Appraisal

- Not seen as prominently used in recent years.
- What is typically included in a MOA.
- Can the appraisers determine and draw up a MOA?
- Only the principal parties (and/or their legal representatives).

No. 4

The Award

The Award

- What should be included?
 - Loss Information such as
 - Insured
 - Carrier
 - Date of Loss
 - Claim/Policy Number

The Award

- Delineating Coverage
 - Should attempt to delineate coverage or “buckets”
 - Could be other than an actual line of coverage. Examples:
 - Protection of property
 - Debris Removal
- Should list RCV, DEP, ACV for each “line of coverage”

The Award

- Do you need any disclaimers?
- Should you use \$0.00, -----, or Not Appraised?
- Signature area with all panel participants and dates.

Getting Paid as an Appraiser

Getting Paid as an Appraiser

The Proper Ways to be compensated:

- Flat Fee
- Hourly (Time and Expense)
- Free / Pro-Bono

Getting Paid as an Appraiser

How NOT to get paid.....

- Percentage / Contingency based on the final award value.
- Sliding Scale (Similar to CAT adjusting).
- Time & Expense with a fee cap based on the value of the award.

Getting Paid as an Appraiser

Contract For Services With The Party Who Hired You:

- Should you have a contract with said party?
- What should it include?
 - Expectations,
 - Roles
 - Payment terms

The Parties' Role in Appraisal

Appraising Without an Umpire

The Appraisers: Without Umpire

- Report any conflicts with any party to the appraisal
- Ask for a copy of the specific appraisal clause language form the policy.

The Appraisers: Without Umpire

- Contacting the other appraiser timely (per policy to try and determine umpire)
- Share your umpire list with names, phone numbers, and email. Don't make your OA's job more difficult but providing limited info.
 - Vetting umpire candidates. What questions should you ask?
 - Letting your client know if a judge is needed to appoint the umpire.

The Appraisers: Without Umpire

- Completing the inspection.
 - Solo?
 - Joint?
 - Who Attends?
 - Is an inspection required?

The Appraisers: Without Umpire

- Complete a value of the damages
- Do you also need to value the property (not damages)?
- Remember we are to determine the damages don't fall into discussing items which may have been denied or have specific limits. Adjudication of coverage(s) will be completed by the carrier post appraisal.
- Do you need a line-item estimate?

The Appraisers: Without Umpire

- Creating a delineated award if the two appraisers agree and executing it.
- Keep your client updated. There is no reason not to communicate with your client about where you are in the process. This is not taking direction.
- Examples of proper communication are:
 - We have chosen an umpire, and it is person X.
 - We cannot choose an umpire and need your assistance going to court.
 - We have completed our inspection.

The Appraisers: Without Umpire

- Examples of proper communication are:
 - I have completed my figures and provided them to the OA.
 - We have a meeting next week to try and resolve this.....ETC.
 - If you are working for a carrier there is no reason you cannot tell them what your new figures are. Carriers have fiduciary responsibilities to keep accurate reserves. This doesn't mean turning in your figures to them or looking for their approval.

Appraising With an Umpire

The Appraisers: With Umpire

EVERYTHING above still applies

The Appraisers: With Umpire

- Do not have ex-parte communications with the umpire on the loss in question.
 - This includes emails to only the umpire instead of the entire panel.
 - Don't have phone calls with just the umpire about the loss.
 - Talking to the umpire while onsite or on a call waiting on the OA about “the weather” or your favorite restaurant is not ex-parte.

The Appraisers: With Umpire

- Umpire Inspection
 - Required?
 - Joint?
 - Solo?

The Appraisers: With Umpire

- Making your Position Statement:
 - Do not just send the umpire your estimate or loss value. This is making their job harder.
 - Do prepare a proper presentation of your figures. Explain in detail the loss and how you arrived at your position. This could include why you did or did not include “ITEM Z” along with your justification. Elaborate on where you agree and disagree with the OA.

What is NOT your role
as an Appraiser?

The Appraisers: Not Your Role

- Not your job to argue with the OA about whether they are qualified to serve.
- Not your job try and have an OA removed if you feel there is a bias or conflict. Report this information to your client and let them handle if they want too.

The Appraisers: Not Your Role

- Not your role to stop the appraisal if:
 - As noted above you believe there is a bias or conflict
 - Your client alone tells you to stop working on the appraisal (should only occur if both parties to the insurance policy, or their legal representatives, both agree to pause or end the appraisal).

The Appraisers: Not Your Role

- Not your role to write your own Memorandum of Appraisal.
- Not your role to dictate timelines to the rest of the panel.

Where is the
Appraisal?

Know Your Jurisdiction

- California- Appraisal Is Arbitration. This means it could be handled with just the parties or a full panel with a hearing including witnesses, discovery, subpoenas, and other factors could be invoked by either party driving up costs.
- Hawaii—Appraisal is a species of Arbitration. Follows HRS 658A for disclosures but then follows normal appraisal (*Christensen v FICOH*, 1994)

Know Your Jurisdiction

- Oregon- For Auto losses if \$1 more is awarded, carrier has to pay appraisal fees for the policy holder.
- Washington- Currently Looking to apply a similar law as Oregon. Unsure if it will be auto only or all appraisals.

Know Your Jurisdiction

- Oklahoma – The party invoking appraisal is bound by the award (*Massey v Farmers*, 1992 OK Supreme Court).
- Texas- Policyholder is entitled to statutory interest on the difference between the original offer and final award (*Barbara Technologies v. State Farm*, 2019 TX Supreme Court).

Know Your Jurisdiction

- Louisiana—To act as an appraiser, you must register with the state. \$50 annual fee. Searchable on the state website for insurance licensure.
- Florida-DFS believes any appraiser must have a professional license.

Appraisal Pitfalls

Pitfalls

- Cannot appoint a company, must be a person.
- Giving direction to the appraiser (Insurer or Policy Holder).
- Who acts if you believe someone is biased or partial?

Pitfalls

- Timelines
- Delineated Awards. Must an “estimate” accompany it?
- Opening the entire claim back up
- One-sided memorandum of appraisal

Legal Update

Topics

- Legal Challenges to Appraisal Awards
- Permitted Discovery
- Case Studies
- Case Law

Legal Challenges to Appraisal Awards

- Misrepresentation of claim facts.
- Failure to comply with post loss obligations.
- Damages appraised are not covered by the policy.
- Ambiguity in the appraisal award.

Legal Update

Recent Trends in Appraisal

Who can appraise a loss?

Supreme Court of Florida

No. SC21-172

JON DOUGLAS PARRISH,
Petitioner,

vs.

STATE FARM FLORIDA INSURANCE COMPANY,
Respondent.

February 9, 2023

Finding no way around the plain meaning of the word “disinterested,” we approve the Second District’s decision below and hold that an appraiser cannot be “disinterested” if he or she, or a firm in which he or she has an interest, is to be compensated for services as a public adjuster with a contingency fee.

Black's Law Dictionary defined “disinterested” as “[f]ree from bias, prejudice, or partiality and therefore able to judge the situation fairly; not having a pecuniary interest in the matter at hand.” *Disinterested*, *Black's Law Dictionary* (10th ed. 2014).

Webster's dictionary defined it as “1: lacking or revealing lack of interest . . . apathetic . . . 2: not influenced by regard to personal advantage: free from selfish motive: not biased or prejudiced.” *Disinterested*, *Webster's Third New International Dictionary* (1986). The Black's definition and the second Webster's definition are self-explanatory and consistent with each other: a “disinterested” person cannot, consistently with the generally understood meaning of that word, have a pecuniary interest in the matter at hand.

“an appraiser is not disinterested in an insurance claim if the appraiser is entitled to a percentage of the recovery from the same insurance claim.” *Id.* (citing *Valenti*, 285 So. 3d at 963 (Kuntz, J., concurring specially)).

Statutory Regulations

The Florida Department of Financial Services, Division of Insurance Agent and Agency Services has recently called into question the ability of a non-licensed adjuster to serve as an appraiser in a property loss. To clarify the Division's position and to comply with all applicable laws and regulations, the Windstorm Insurance Network along with the IAUA and PLAN filed a Petition for Declaratory Statement to seek an opinion as to the applicability of various statutes. Additional information can be found on the Florida Administrative Registry.

Regarding Counts VI and X, much was made at hearing as to whether Respondent was acting as a public adjuster or an appraiser with respect to the two claims related to those counts. Regardless of whether Respondent performed some appraisal duties in connection with the claims addressed in Counts VI and X, the testimony elicited at hearing clearly establishes *that Respondent's specific work on those claims involved conducting an inspection or investigation of the claim and that his work involved effecting a potential settlement or resolution of the claim. His involvement in the two claims fell within the scope of his role as a public adjuster* (emphasis added).

Because the work of an appraiser falls within the statutory definition of “public adjuster,” an appraiser is subject to the requirements of the Florida Insurance Code. This would include the Adjuster’s Code of Ethics. THE DEPARTMENT IS PERMITTED TO PROSECUTE A LICENSEE FOR CONDUCT OCCURRING OUTSIDE THE SCOPE OF LICENSURE. Exhibit A at ¶202. (emphasis added).

626.854(1) A “public adjuster” is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim..

626.855. An “independent adjuster” means a person licensed as an all-lines adjuster who is self-appointed or appointed and employed by an independent adjusting firm or other independent adjuster, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.

So what does that mean for you?

	A	B	C	D	E
1	Date	Activity	Time	Rate	Amount Due
2	12/23/2023	Call insured about loss	0.5	\$350	\$175
3	1/1/2023	Call with OA	0.2	\$350	\$70
4	1/5/2023	Look at file	1.8	\$350	\$630
5	1/7/2023	Inspect property	0.2	\$350	\$70
6	1/8/2023	Call attorney to discuss appraisal amount	0.9	\$350	\$315
7	1/10/2023	Communication with umpire	0.2	\$350	\$70
8	1/12/2023	Challenge proposed award from OA	0.3	\$350	\$105
9	1/15/2023	Execute \$150,000 award	0.2	\$350	\$70
10			4.3		\$1,505
11					
12		Total bill \$30,000			
13					

Umpire?

In Texas, lawyers cannot be umpires under certain provisions.

The Thirteenth District recognized that the policy requires the umpire be either a licensed or certified engineer, an architect, adjuster or public adjuster, or a contractor with experience and training in the construction, repair, and estimating of the type of property damage in dispute. “There is no evidence in the record that Salinas meets the foregoing requirements to serve as an umpire, and the record similarly lacks argument or authority in support of such a proposition,” Contreras wrote.

In Re State Farm Lloyds

During Appraisal

Scope of Appraisal?

Guzy v. QBE Specialty

US District Court of Appeals, 11th Circuit
February 2, 2023

On appeal, Guzy acknowledges that to “measure the amount only of the covered loss required intentional knowledge of and exclusion of the second loss.” Nonetheless, Guzy maintains that the appraisal agreement “prohibited” consideration of the second loss evidence. Guzy’s position appears to be that the appraisal agreement both required the appraisal process to separate out the damage caused by the two losses and prohibited entirely consideration of the second loss.

Guzy v. QBE Specialty

US District Court of Appeals, 11th Circuit
February 2, 2023

We do not agree with this absurd result. The appraisal agreement requires that the “Award of Appraisal” shall not consider damage caused by other events. As a matter of logic, to ensure that the award only covered damage caused by the November 2016 leak, the appraisal process necessarily must consider other possible causes for the damage claimed. As a matter of the amount of a loss” necessarily includes a determination “whether or not the requirement for a repair or replacement was caused by a covered peril or a cause not covered.” *State Farm Fire & Cas. Co. v. Licea*, 685 So. 2d 1285, 1288 (Fla. 1996). Guzy’s reading of the appraisal agreement contravenes this basic principle and is implausible.

Challenges After Appraisal

Can a Court permit discovery following an appraisal award?

Permitted Discovery Following Award

If the insured intends to offer an expert's professional opinion regarding repairability of the roof, the appraisal process must surely be the time to offer that evidence—not as an afterthought on the heels of the appraisal.

Noa v. Florida Ins. Guaranty Ass'n., 215 So. 3d 141 (Fla. 3d DCA 2017).

Case Study: Post-Appraisal Challenge

What happens if the award form is challenged?

Challenges to Appraisal Award Forms

APPRAISAL OF INSURANCE CLAIM – AWARD FORM

TO THE ABOVE-NAMED PARTIES AT INTEREST:

We the undersigned appraiser's, have investigated and considered all the material facts and available information pertaining to this claim, and have decided on an Appraisal Award as described below, and with the attached detailed breakdown.

Coverage	RCV Amount of Loss	ACV Amount of Loss
A-Dwelling		
Roof	\$364,606.68	
Exterior	\$ 98,336.98	
Windows	\$253,075.20	
Incurred Expenses	\$ 17,345.81	
Interior	\$ 22,639.04	
General Conditions	\$432,778.16	
B-APS		
Other Structures	\$ 1,800.00	
Signage	\$ 6,000.00	
C-Personal Property	Not appraised	Not appraised
D-A.L.E	Not appraised	Not appraised
TOTAL	\$1,196,581.87	

APPRAISAL OF INSURANCE CLAIM – AWARD FORM

TO THE ABOVE NAMED PARTIES AT INTEREST:

We, the undersigned appraisers, have investigated and considered all the material facts and available information pertaining to this claim, and have decided on the appraisal award as described below.

<u>Coverage</u>	<u>RC Amount Of Loss</u>	<u>ACV Amount Of Loss</u>
North Tower	\$2,783,294.84	\$2,770,935.29
South Tower	\$2,776,289.75	\$2,765,066.95
Total Award Amount	\$5,559,584.59	\$5,536,002.24

***First Protective Ins. Co. v. Hess, 81 So. 3d 482 - Fla:
Dist. Court of Appeals, 1st Dist. 2011***

Appellant, First Protective Insurance Company, appeals from a final judgment confirming an appraisal award. Specifically, First Protective challenges the trial court's failure to reduce the appraisal award by applying the award limitations enumerated in the insurance policy. We affirm the trial court's confirmation of the original appraisal award.

The appraisal award on its face reflects that no reductions were made for the policy limitations, the deductible or prior payments. While the trial court was able to apply the deductible and prior payments based on the face of the policy, it refused to reduce the award by applying the policy limitations for personal property. It explained that, in order to do so, it would have to hear extrinsic evidence from the individual appraisers, and such is not contemplated by the policy nor permitted by Florida law. After the parties have gone through the appraisal process, the trial court may not consider evidence beyond the face of the appraisal award. First Protective argues that an evidentiary hearing in this case would be very easy, so therefore it should be allowed. First Protective agreed to the judge adopting the figures Hess used in the contents list.

***First Protective Ins. Co. v. Hess, 81 So. 3d 482 - Fla:
Dist. Court of Appeals, 1st Dist. 2011***

Had the court attempted, as requested by First Protective, to apply the limitations using the values set out in Hess' contents list, it would have been determining value of the loss for each category without direct guidance from the appraisal panel. This is prohibited as the appraisers are charged with determining the value of the lost property. The trial court cannot hold a hearing and consider extrinsic evidence to discern the value of each individual item to which the limitations could be applied.

Consequently, given the nature of the appraisal process, analogous arbitration law, and First Protective's failure to request clarification of the award, the trial court is prohibited from holding a hearing to determine the basis of the appraisal award.

Case Law

RCV v. ACV

State Farm Florida Ins. Co. v. Gonzalez

***2** We, the undersigned appraisers, have investigated and considered all the material facts and available information pertaining to this claim, and have decided on an Appraisal Award as described below, and with the attached detailed breakdown.

<i>Description</i>	<i>RCV</i>	<i>ACV</i>
Fungus Related Damages	\$39,260.08	\$37,044.46
Other Structures	\$0.00	\$0.00
Personal Property	\$0.00	\$0.00
Additional Living Expenses	\$4,050.00	(3 mo. at \$1,350.00/mo.)
Ordinance and Law	\$0.00	\$0.00

Minnesota
Fenske v. Integrity Prop. & Cas. Ins. Co.

The Appraisal Award indicates that 7.5% of the roof tiles were damaged. The Lost Replacement Cost (LRC) to repair the damaged 7.5% of the roof is \$20,600.00, and the Lost Actual Cash Value (LACV) is also \$20,600.00.

At the bottom of the Appraisal Award, the Panel handwrote, “If matching is considered the cost of the entire roof is” \$155,000.00 LRC and \$31,000.00 LACV.

What do you think the Insurance Company paid?

Minnesota
Fenske v. Integrity Prop. & Cas. Ins. Co.

The Minnesota Supreme Court, Eighth Circuit, and U.S. Supreme Court precedent tend to show that ambiguous appraisal awards should be returned to the appraisal panel for clarification.

Here, the Court found the award ambiguous as to whether the Appraisal Panel found that no color-matching tiles were available. Accordingly, this matter was remanded to the Appraisal Panel for clarification.

Fenske v. Integrity Prop. & Cas. Ins. Co., 2023 WL 186595 (D. Minn. January 13, 2023)

Minnesota
Condor Corp., v. Axis

“As Condor moved immediately after Axis refused further payment and intends to start work this year when weather permits, Judge Doty said, he can't find that the company didn't meet its responsibility to begin repairs as soon as reasonably possible. He also ruled that the insurer should pay replacement cost determined at the time of appraisal instead of at the time of loss, finding it would be unfair to Condor to use the older estimate in light of "substantial delays" in the case.”

Heritage Prop. & Cas. Ins. Co. v. Veranda I

“Because Veranda’s claim for windows and doors was a supplemental claim for coverage, *Ironwood* instructs that we must consider that claim separately from the initial roof claim that had been fully adjusted. And since Heritage wholly denied coverage for that supplemental claim, *Johnson* and its progeny precluded the trial court from referring it to appraisal.”

Heritage Prop. & Cas. Ins. Co. v. Veranda I, 334 So.3d 373 (Fla. 2nd DCA 2022)

State Farm Florida Ins. Co. v. Gonzalez

Fungus-related damages were not covered under homeowners' insurance policy, in proceeding on insureds' breach of contract action against insurer; endorsement amended policy so that fungus was no longer addressed in "resulting loss" language of policy, and policy, when considered with endorsement, specifically excluded fungus-related damages.

Court held that the insurer's invocation of appraisal process did not waive any coverage defenses.

State Farm Florida Ins. Co. v. Gonzalez, 328 So. 3d 369 (Fla. 2d DCA 2021)

Heritage Prop. & Cas. Ins. Co. v. Fairway Oaks

Fairway Oaks submitted a claim to its insurer, Heritage, due to roof damage sustained from Hurricane Irma. Like in *Veranda*, Fairway Oaks later submitted a supplemental claim for window and door damages it claimed had also been caused by the hurricane. And, like in *Veranda*, Heritage eventually paid the roof claim but denied coverage as to the supplemental claim.

We therefore reverse the order compelling appraisal of Fairway Oaks' supplemental claim and remand for further proceedings

Heritage Prop. & Cas. Ins. Co. v. Fairway Oaks Inc., 341 So. 3d 1164 (Fla. 2nd DCA 2022)

State Farm Florida Ins. Co. v. Roof Pros Storm Division, Inc.

Pursuant to the appraisal clause, State Farm initiated the proceedings by filing a Petition to Appoint Umpire.

Florida Statutes describe many different civil petitions that litigants may avail themselves of, but a petition to compel appraisal with a disinterested appraiser is not (yet) one of them. Nor is there a recognized common law cause of action for this kind of discrete claim.

State Farm Florida Ins. Co. v. Roof Pros Storm Division, Inc., 346 So. 163 (Fla. 5th DCA 2022)

Certain Underwriters at Lloyd's v. Lago Grande 5-D Condo. Ass'n., Inc.

The parties did not engage in a meaningful exchange sufficient to establish a disagreement regarding the value of the property or the amount of loss. We reaffirm that “appraisal is premature when one party has not provided a meaningful exchange of information sufficient to substantiate the existence of a genuine disagreement.

Certain Underwriters at Lloyd's v. Lago Grande 5-D Condo. Ass'n., Inc., 337 So. 3d 1277 (Fla. 3d DCA 2022)

First Call 24/7 Inc. v. Citizens Prop. Ins. Corp.

The Insurance Company acknowledged coverage for the loss, issued undisputed payment to First Call 24/7, Inc., and then invoked appraisal. First Call refused to participate in appraisal and sued for breach of contract.

First Call argued that the appraisal provision applies only to existing property damage not yet repaired and not to incurred costs for work already completed.

The Court rejected this argument and held that this is a disagreement regarding the amount of the covered loss, which is exactly what appraisal is designed to resolve.

First Call 24/7 Inc. v. Citizens Prop. Ins. Corp., 333 So. 3d 1180 (Fla. 1st DCA 2022)

First Call 24/7 Inc. v. Citizens Prop. Ins. Corp.

First Call also argued that the appraisal provision does not apply because the policy distinguishes between physical property damage and mitigation services by placing them in different subsections.

The Court again rejected the argument and found First Call improperly reads the words and clauses in isolation. The appraisal provision is a stand-alone clause that applies whenever the parties disagree about the amount of a covered loss.

First Call 24/7 Inc. v. Citizens Prop. Ins. Corp.

First Call then argues that mitigation services are not subject to appraisal because it is impossible to assign a “replacement cost value and corresponding actual cash value” to such services, reasoning that only “tangible assets” are subject to “depreciation.

The Court rejected this argument as well and found that First Call’s argument that only tangible assets can be depreciated lacks merit.

First Call 24/7 Inc. v. Citizens Prop. Ins. Corp.

Last, First Call argues that mitigation services are not subject to appraisal because it is impossible to reconcile the appraisal provision's requirement that the panel be given a chance to inspect the damaged property with the insured's duty to mitigate damages on an emergency basis. By the time the panel might inspect the damage, the work has already been completed

However, the Court stated that nothing in the policy suggests that the damaged property must remain in its damaged state for an appraisal to take place.

Moreover, the policy states that the damaged property must be retained only "to the degree reasonably possible." Thus, it is not an absolute requirement, the policy contemplates unusual circumstances, and it is not impossible to reconcile the two provisions as argued by First Call.