



WINDSTORM

2024 CONFERENCE

JAN 29 - FEB 1, 2024 | ORLANDO, FL

RENAISSANCE ORLANDO AT SEAWORLD®

Umpire Certification Course Overview

- **INTRODUCTION/RULES** (15 Minutes)
- **WHAT IS AN UMPIRE** (05 Minutes)
- **APPRAISAL PROVISION** (10 Minutes)
- **YOUR ROLE AS UMPIRE** (50 Minutes)
- **KNOW YOUR JURISDICTION** (10 Minutes)
- **DOCUMENTATION** (40 Minutes)
- **GETTING PAID** (10 Minutes)
- **ETHICAL RULES -INTERSPERSED SLIDES** (15 Minutes)
- **LEGAL** (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 \$400 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.

What is an Umpire?

Appraisal Provision

Appraisal Provision

- Know the provision that governs.
- Always ask for a copy of the provision.
- Use the appraisal provision as a guide.

Ethical Scenario 1

The umpire must be a _____ party.

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.

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.

Ethical Scenario 2

The umpire must have _____ financial interest in any involved property or in the outcome of appraisal.

Your Role as Umpire

Your Role as Umpire

- Engagement
- Communications
- Inspections
- Position Reports/Estimates
- Experts/Third Parties
- Keeping the Process Moving
- Panel Meeting
- Misconduct

Engagement

Engagement

- Who engages the umpire?
- Disclosures?
- Selection of Umpire
- Contract or Declaration of Services as Umpire

Engagement

- Who engages the umpire?
 - Agreement between the parties?
 - Court appointed?
- Disclosures
 - What information are you as umpire required to disclose?
 - What is the time period for disclosures? (could vary by jurisdiction)
 - How should disclosures be made? Email, phone, writing?
 - What if you have a conflict?
 - What is a valid conflict?

Engagement

- Selection of Umpire (SOU)
 - Document wherein both appraisers state in writing who they agree to act as the umpire on this loss.
 - An SOU typically includes a panel for the umpire to also acknowledge their appointment, willingness, and ability to serve.
 - Is this form required to be signed?
 - Will an email where both appraisers agree suffice?
 - Will a phone call where both appraisers agree on the umpire be acceptable? (not best practice)

Engagement

- Contract or Declaration of Services as Umpire
 - Do you need to produce a service agreement for each side to sign acknowledging your role as umpire?
 - Who signs said agreement?
 - What if one party will not sign?
 - Is this different if you are court appointed? (different then retainer or engagement which comes up later)

Ethical Scenario 3

The umpire must disclose any previous business relationship with any party, appraiser or _____retained by a party.

Communications

Communications

- Do not have ex-parte communications with an appraiser, party to the appraisal process, on the loss in question.
 - This includes emails to only to one appraiser instead of the entire panel.
 - Don't have phone calls with just one party about the loss.
 - Talking to the appraiser while onsite or on a call waiting on the OA about “the weather” or your favorite restaurant is not ex-parte.
- How do you deal with appraisers who continually use ex-parte communications?
- Continuously document
 - What happens when an appraiser refuses to communicate?
 - What action do you take?
 - Who do you contact?

Inspections

Inspections

- Umpire Inspections:
 - Required?
 - Joint?
 - Solo?
 - Refused Access
- Scope of inspection
 - Photographs?
 - Testing?
 - Access to all damages?
- Timing of inspection?
 - When does an inspection take place?

Ethical Scenario 4

The umpire must promptly disclose any potential conflict of interest before accepting an assignment as an umpire, and notify the parties immediately if a conflict or _____ conflict arises during the course of the appraisal proceedings.

Position Reports/Estimates

Experts/Third Parties

Ethical Scenario 5

The umpire must not accept any assignment that he or she is not certain he or she is _____ to handle.

Keeping the Appraisal Process Moving

Panel Meeting

Ethical Scenario 6

The umpire must confirm any fee
arrangement with the parties in

_____.

Misconduct

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.

Ethical Scenario 7

The umpire must confirm the _____ to be addressed in the appraisal in writing with the parties.

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?

Ethical Scenario 8

The umpire must agree to
 if requested to do so
by either appraiser.

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 and email where both appraiser agree suffice?
 - Will a phone call where both appraiser agree be acceptable?

Ethical Scenario 9

Share _____ with all members of the appraisal panel throughout the appraisal proceedings.

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).

Memorandum of Appraisal

1. Parties to the Appraisal. The insurance company and the named insured.
2. Cause, location and date of loss.
3. Names of respective Appraisers.
4. Appraisers are to name an Umpire.
5. Quote of Appraisal provision in the policy.
6. Statement that the signature of any two of the three will constitute and Award.
7. Statement that each party will bear 50% of the expense of the Umpire.
8. Items to be Appraised.
9. Basis of the Appraisal, i.e., Actual Cash Value, Replacement Cost or both.
10. How sublimits within the policy are to be addressed.
11. Statement that the Award is a comprehensive Award and the application of advanced payments, policy provisions is the responsibility of the company.
12. Language to the affect that the deliberations of the Appraisal panel are confidential and exempt from depositions or suit in case the Award is challenged or a bad faith claim is filed.
13. The signatures of the parties.

Ethical Scenario 10

Be responsible to proceed _____ to
conclude the appraisal proceedings.

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 not 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.

Award Form Examples

Ethical Scenario 11

The umpire must retain only
_____, _____ and _____ experts.

Getting Paid as an Umpire

Getting Paid as an Umpire

Do you need a retainer?

- Who signs the retainer documents?
- Do you stop your work as an umpire until you receive your retainer fee?
- Does every case need a retainer?

Getting Paid as an Umpire

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 Umpire

The Proper Ways to be compensated:

- Hourly (Time and Expense)

Getting Paid as an Umpire

- Who is responsible for payment?
- Appraisal provision governs- most often the parties split the cost of the umpire equally
- Should you have a contract with said party?
 - What should it include?
 - Expectations,
 - Roles
 - Payment terms

Getting Paid as an Umpire

- What about reimbursement for any expenses?
 - Mileage
 - Accommodations
 - Food
 - Experts/Consultants

Getting Paid as an Umpire

Should you hold your award findings pending FINAL payment?

Ethical Scenario 12

True or False:

The umpire does not need to
keep records.

False!

- Maintain records in good order during the appraisal process in accordance with any applicable rules or guidelines for preservation once the matter is concluded.
- Keep true and accurate records of time, expense and fee billings.
- Keep an updated list of all properties and parties for which he or she served as an umpire for a period of seven (7) years.

Also....the umpire must:

- Maintain and keep current all applicable professional licenses and continuing education requirements.
- Be truthful and accurate in all marketing or advertising activities.

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).

Reasonableness of Request

When evaluating an insurer's rights to investigation of a claim, the insurer's rights tend to be measured by 'reasonableness,' with the courts attempting to balance the insurer's legitimate interest in ascertaining the validity and extent of the claim against the insured's ... rights to both privacy and prompt payment of sums due under the terms of the contract.

Fla. Gaming Corp. v. Affiliated FM Ins. Co., 502 F. Supp. 2d 1257, 1263–64 (S.D. Fla. 2007)

Can Discovery Occur During Appraisal?

“The court's experience in other insurance-coverage matters with appraisal issues has revealed that parties and appraisers sometimes find that the tools of formal discovery can facilitate the appraisal process. Accordingly, a party may, with the concurrence of at least two members of the appraisal panel, seek leave to conduct discovery concerning the amount-of-loss issues referred to the appraisal panel for resolution.”

Gulfside, Inc. v. Lexington Ins. Co., No. 2:22-cv-47-SPC-NPM, 2023 WL 2743148 (M.D. Fla. Mar. 31, 2023).

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	

Florida Statute §627.7011(3)

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

*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.

State Farm Florida Ins. Co. v. James

The legal issue presented is the meaning of the word “incur” in a so-called tear out clause in a homeowner’s policy. A dispute over the interpretation of the provision occurred following an appraisal award.

The relevant policy language states:

13. Tear Out. If a Loss Insured to Coverage A property is caused by water or steam escaping from a system or appliance, we will also pay the reasonable cost **you incur** to tear out and replace only that particular part of the building or condominium unit owned by you necessary to gain access to the specific point of that system or appliance from which the water or steam escaped.

State Farm Florida Ins. Co. v. James

The parties agree on the facts in this case, including the amount of tear out costs (\$38,834.28) as determined by State Farm's appraisal.

State Farm's primary argument is that the meaning of "incur" in its policy includes an implicit, unwritten requirement that an insured must sign a repair contract that contains no opportunity for cancellation.

No dispute exists that James demonstrated an actual loss and is entitled to tear out costs of \$38,834.28, an amount established by the appraisal; the existence and amount of the loss sustained are clearly established.

The Court held that the Insured does not have to actually expend funds on a loss to be entitled to insurance proceeds.

State Farm Florida Ins. Co. v. James, 2023 WL 8285681 (Fla. 5th DCA 2023)

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.”

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

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)

Case Law

Clockwork PH3, LLC v. Clear Blue Specialty Ins. Co.

Facts

- Clear Blue sent several letters seeking information.
- Over several emails, the Insured supplied documents responsive to these requests.
- Clear Blue sent another request for information.
- Clear Blue then “partially denied” the claim because 7 of the 8 buildings did not sustain damage from a covered loss.
- The Insured responded to the claim denial by suing and demanding appraisal.
- Clear Blue argues appraisal is premature because “Plaintiff did not comply with the post-loss conditions of the policy.”

Clockwork PH3, LLC v. Clear Blue Specialty Ins. Co.

Insurer's Argument: Clear Blue says Plaintiff needed to provide every document it requested. And Plaintiff's failure to disclose even a single paper means appraisal is unavailable.

Court's Ruling: This Court endorsed a substantial compliance standard.

“If absolute compliance is the standard, an insurer could easily elude appraisal by making onerous demands until the insured failed to deliver in some minuscule way.”

Clockwork PH3, LLC v. Clear Blue Specialty Ins. Co.

The Court also addressed an insured's ability to cure any alleged non-compliance during litigation...

“If an insured provides whatever the insurer might have wanted ‘post-loss and pre-suit’ during the suit, such as through discovery, then a trial court commits no error when it orders the insurer to submit to an appraisal.”

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)

Heritage Prop. & Cas. Ins. Co. v. Wellington Place HOA, Inc.

The insured's claim is ripe for appraisal because the insurer admitted coverage for the initial claim, and the claim remained open for adjustment when the insured reported additional damage pursuant to the policy. The parties' disagreement as to whether the insurer is required to pay for the additional damage is an "amount-of-loss" issue for appraisal to resolve, not a coverage issue.

Heritage Prop. & Cas. Ins. Co. v. Wellington Place HOA, 373 So.3d 1 (Fla. 4th DCA 2023)

Monarch Claims Consultants, Inc. v. Fleming

Service agreement between insureds and public adjuster that handled insured's insurance claim for their house damaged in a hurricane violated statutory 10% limit on public adjuster's recovery flowing from events that triggered a declared state of emergency; in exchange for adjuster's services, contract entitled adjuster to 10% of insurance recovery and a promise that insureds would appoint adjuster as their appraiser in the event of an appraisal, which entitled adjuster to another 10% of recovery.

The promise to appoint Monarch as the Insureds' appraiser, on its own, is a "thing of value" that exceeds the ten percent cap.

Monarch Claims Consultants, Inc. v. Fleming, 372 So. 3d 758 (Fla. 1st DCA 2023)

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.