ENFORCING THE APPRAISAL CLAUSE IN FIRST PARTY PROPERTY CLAIMS

1. Introduction.

In many first party property claims, a fundamental issue, if not the only issue, is the amount of the loss. Most property policies contain an appraisal clause, which provides an efficient and cost-effective means of resolving this core dispute. However, the appraisal clause and its process often come under attack. Those attacks manifest themselves in many forms including: challenges to the validity of the appraisal clause as a matter of law; challenges to the enforceability of the appraisal award made pursuant to the clause; waiver of the right to an appraisal; and questions as to the competency or fairness of the appraisers and umpires. Whether or not an insurer can enforce its appraisal clause or the subsequent award may turn on how these challenges are presented and defended.

2. The Appraisal Clause.

Most property policies contain an appraisal clause. The ISO Building and Personal Property Coverage Form contains the following provision:

> **Appraisal.**
> If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

If there is an appraisal, we will still retain our right to deny the claim.

3. In Most States, the Appraisal Clause Has Been Held to Be Valid and Binding.

With few exceptions, most courts hold that the appraisal clause is valid and binding. For example, in *Eberhardt v. Georgia Farm Bureau Mutual Insurance Company*, 223 Ga. App. 478, 477 S.E. 2d 907 (1996), the plaintiffs-insureds suffered damage to their home as a result of a tornado. They submitted their claim to their insurer, Georgia Farm Bureau Mutual Insurance Company. When the insureds and insurer were unable to agree as to the amount of the loss, the insurer invoked the appraisal process. Each side selected an appraiser; and, they in turn selected an umpire. Eventually, the appraisers agreed on the amount of the loss, which was only $5,000 more than what the insurer had previously tendered. Plaintiffs refused the tendered check for the $5,000 balance, opting instead to file suit. In their suit, the insureds argued that the appraisal clause of the policy was not binding. The Georgia courts disagreed, granting and then affirming summary judgment in favor of the insurer on the issue of the enforceability of the appraisal clause.

Likewise, in *McMillan v. State Farm Fire & Casualty Company*, 93 N.C. App. 748, 379 S.E. 2d 88 (1989), the insured participated in the appraisal process. However, after receiving a less than satisfactory award, he filed suit, arguing that the appraisal clause did not establish a final and binding determination of the amount of the loss. Rather, the insured argued that the appraisal provisions were not binding, but instead revocable at will. The North Carolina court disagreed, finding that the appraisal clause was valid and binding.

In *State Farm Fire & Casualty Company v. Middleton*, 648 So.2d 1200 (Fla. App. 1995), the court found that the appraisal clause was binding even though all parties expected the amount of loss to exceed the face amount of the policy. In *Middleton*, the insureds' home was substantially damaged by Hurricane Andrew. The face

amount of State Farm's policy was $93,300. State Farm estimated the loss to be approximately $93,016, only $300 below the face value of the policy. The insureds estimated the amount of damage to be far in excess of the face amount of the policy. The insureds filed suit against State Farm, alleging that it was guilty of fraud or negligence in failing to inform them of the availability of an alternative policy, which would have paid actual replacement cost. The insureds wanted their policy reformed to provide for replacement cost. State Farm responded to the suit by invoking appraisal and arguing that the case should not proceed until the process had been completed. The trial judge denied State Farm's motion. However, the appellate court reversed, noting that the actual extent of the loss "is *the*, or at least *a*, key issue in the case". 648 So.2d at 1201 (emphasis in original). The appellate court also relied upon Florida's strong preference for alternative dispute resolution and its history of enforcing appraisal provisions. "Indeed, it has been specifically held that binding appraisal provisions are enforceable even if the amount involved may exceed the value of the policy". *Id*. at 1202.

4. <u>The Appraisal Process Should Not Be Confused With Arbitration</u>.

Occasionally, a party who opposes the appraisal process has argued that the appraisal clause is in essence an attempt at binding arbitration. That party will then suggest that the appraisal clause is not valid because it conflicts with the Federal Arbitration Act or a state counterpart. Fortunately, most courts recognize that there are significant differences between the appraisal process and arbitration. In *Hartford Lloyd's Insurance Company v. Teachworth*, 898 F.2d 1058 (5th Cir. 1990), the Fifth Circuit held that an appraisal conducted pursuant to the terms of the property insurance policy did not constitute an "arbitration" within the coverage of the Federal Arbitration Act. Insurance appraisals are generally distinguishable from arbitration. "While both procedures aim to submit a dispute to a third party for speedy and efficient resolution without recourse to the courts, there are significant differences between them". *Id*. at 1061. For example, an arbitration agreement may encompass the entire controversy or may be tailored to a particular legal or factual dispute. In contrast, the appraisal determines only the amount of the loss, without resolving issues such as whether the insurer is liable under the policy. "Additionally, an arbitration is a quasi-judicial proceeding, complete with formal hearings, notice to

parties, and testimony of witnesses. Appraisals are informal. Appraisers typically conduct independent investigations and base their decisions on their own knowledge, without holding formal hearings". *Id*. at 1062. The Fifth Circuit held that an insurance appraisal, which only determines the value of the loss, is not an arbitration. Hence, the appraisal process was not governed by the Federal Arbitration Act.

Likewise, the Supreme Court of North Dakota recognized the difference between an arbitration and an appraisal, finding that the latter was not controlled or governed by the Uniform Arbitration Act. See *Minot Town & Country v. Fireman's Fund Insurance Company*, 1998 N.D. 215, 587 N.W. 2d 189 (1998).

In *Merrimack Mutual Fire Insurance Company v. Batts*, 59 S.W. 3d 142 (Tenn. App. 2001), the insureds' home was damaged by a tornado in 1998. When the insureds and the insurer could not agree on the amount of the loss, both parties invoked the insurance policy's appraisal provision. The insureds' appraiser calculated the amount of the damages in excess of $120,000. The insurer's appraiser calculated the damage at slightly over $11,000. The significant gap in their appraisals was attributable to their "differing views regarding the repairs that were traceable to the windstorm and tornado". *Id*. at 146. When the two appraisers were not able to reach an agreement, they appointed a third appraiser to act as an umpire.

The insured's appraiser and the umpire attempted to decide whether or not the policy would cover certain items of damage and whether or not the insured's claims might exceed the limits of her policy. The insurer's appraiser objected because he believed that their sole function was to place a dollar amount on the property damage. He suggested that it was the insurer's prerogative to determine which items of damage were covered under the policy. In response, the insured's appraiser argued that they could not make an intelligent determination of the amount of the damage without also determining whether the damage had been caused by the tornado.

The umpire agreed with the insured's appraiser; and, together, they agreed on an amount of approximately $45,000. Thereafter, the insurer paid approximately $21,000 and rejected the rest of the claim, saying that it was not covered. The insured filed suit to enforce the entire amount of the award, arguing that the appraisal

clause in the policy constituted a binding arbitration agreement.

The trial and appellate courts rejected the insured's arguments. The appraisal clause in the policy was not an agreement to arbitrate. The court noted significant differences between arbitration and appraisal. Arbitration is a consensual proceeding in which the parties voluntarily submit their disagreements for resolution to independent decision-makers. In contrast, an appraisal is simply an act of estimating or evaluating the extent of damages. That is, the purpose of the appraisal is simply to quantify the monetary value of the property loss, not to decide questions of liability or coverage.

After concluding that the appraisal clause was not an agreement to arbitrate the entire dispute, the Tennessee appellate court explained the limits of the appraisers' and umpire's authority. Their authority was limited to that which was granted by the insurance policy or by some other express agreement of the parties. In this instance, the appraisal clause simply instructed the appraisers and umpire to determine the amount of the loss. They did not have the authority to decide questions of coverage or liability. They "did not have the prerogative to determine whether any particular loss claimed by [the insured] was caused by the tornado or whether [the insurer] was ultimately liable under its policy for the loss. The final responsibility for resolving disputes over those issues, assuming the parties cannot reach an agreement on their own, rests with the courts". *Id*. at 153.

Unfortunately, some courts have failed to recognize the difference between arbitration and appraisal. For instance, in a case of first impression for its state, the Kansas Supreme Court concluded that the appraisal clause was, in effect, an arbitration agreement. The court then refused to enforce the appraisal clause because it conflicted with the Kansas arbitration statute. See *Friday v. Trinity Universal of Kansas*, 262 Kan. 347, 939 P.2d 869 (1997).

5. <u>The Right to Appraisal Can be Waived.</u>

While courts will generally enforce the appraisal clause, they will not do so if the requesting party has taken steps which are inconsistent with the appraisal process and which are prejudicial to the adverse party. A leading case on the subject of waiver is

J. Wise Smith & Associates v. Nationwide Mutual Insurance Company, 925 F.Supp. 528 (W.D. Tenn. 1995). In February, 1994, the plaintiff, an architectural firm, sustained damage to its building as a result of an ice storm. The insured submitted its claim to the defendant insurer for $260,000. In November, 1994, the insured paid approximately $52,000 and rejected the balance of the claim. After the architectural firm filed suit in February, 1995, the insurer removed the suit to federal court and filed responsive pleadings. Through its counsel, the insurer later attended the court's scheduling conference and agreed to a December, 1995 trial date. In October, 1995, the insurer wrote a letter to the insured, demanding an appraisal. Then, on November 13, 1995 (which happened to be the deadline under the scheduling order for filing motions), the insurer filed a motion to compel appraisal. The insured responded to the motion by arguing that the insurer had waived its right to demand an appraisal under the policy.

The district court determined that the appraisal process was applicable to the loss in question and that the appraisal clause was valid as a matter of Tennessee law. The court then turned to the issue of whether or not the insurer had waived its right to an appraisal. In deciding this issue, the district court not only reviewed the law of Tennessee but also took guidance from the law of other states, including Texas, Florida, California, Illinois, Oklahoma, and Arizona. According to the district court, the party, who seeks to prove waiver, has the burden of proof. And, while there is a presumption against waiver, the right to an appraisal under the policy can be waived "by delay in demanding appraisal causing prejudice to the opposing party". *Id*. at 530. The appraisal may also be waived by insurer's absolute denial of liability.

The court held that, in this instance, the insurer waived its right to an appraisal. Prior to the insurer's written demand for an appraisal, the following events had occurred:

1) The insurer paid part of the plaintiff's claims;
2) The plaintiff initiated suit;
3) The defendant removed the suit to federal court;
4) The defendant filed an answer;
5) The court held a scheduling conference; and
6) Both parties made their Rule 26 disclosures.

Furthermore, the insurer did not file its motion until the

deadline to file pretrial motions, after the close of discovery, and only five weeks before the scheduled start of the trial. "Such conduct ... is so inconsistent with the right to appraisal set [forth in the policy] as to constitute a waiver of that right. Clearly, defendant was aware of the appraisal clause and could have sought to invoke it well before it did, avoiding unnecessary delay and expense for both parties". *Id.* at 532.

In Louisiana, the insurer's right to appraisal is waived if not invoked within sixty days after receipt of the insured's proof of loss. See *W.P. Sevier v. United Stated Fidelity & Guaranty Company*, 497 So.2d 1380 (La. 1986). In *Sevier*, the insured's home was damaged by fire in February, 1984. The insured notified USF&G, which retained an adjuster and began assessing the damage. Approximately seventy days later, the insurer demanded an appraisal. The insured refused to participate in the appraisal process and filed his lawsuit. USF&G objected to the suit on grounds that it was premature. The Louisiana Supreme Court held that the lawsuit was not premature because the insurer had waived its right to request the appraisal. In addition to the appraisal clause, the policy also provided:

> **When loss payable.** The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Furthermore, La. R.S. 22:658 required the insurer to tender the undisputed amount of the claim within sixty days after receipt of the insured's satisfactory proof of loss. In light of these policy and statutory provisions, the court concluded that the right to an appraisal is waived if not invoked within sixty days of receipt of the proof of loss. The court also found that the proof of loss was submitted on or before February 24, 1984, making the April 25, 1984, demand for appraisal untimely.

6. The Appraisal Award Will be Enforced in the Absence of Fraud, Bad Faith, Mistake, Duress, or Other Vice.

In *McMillan*, supra., the court enforced the appraisal award, finding there to be no evidence of fraud, mistake, duress, or other impeaching circumstances in either the appraisal process or its award. Likewise, in *Bainter v. United Pacific Insurance Company*, 50 Wash. App. 242, 748 P.2d 260 (1988), the court enforced the appraisal award. In *Bainter*, a large tree fell on the insureds' home. The insureds submitted an estimate in excess of $73,000. The insurer's appraiser issued an estimate of less than $12,000. The insurer invoked the appraisal process; and, each side selected their respective appraiser. The appraisers could not agree on an umpire; thus, the court appointed a local attorney as umpire. The umpire and the insurer's appraiser agreed on an amount of approximately $15,000. The insureds moved to vacate the appraisal award, arguing that it was grossly disproportionate to the actual damage. They also alleged unfairness, bias, lack of impartiality, and unethical conduct on the part of the insurer's appraiser and the umpire. In response, the insurer filed a motion to confirm the appraisal award.

The trial court allowed the Bainters ninety days to take depositions and gather evidence supporting their allegations of unfairness and bias. At the expiration of the ninety days, the court reviewed the evidence and concluded that the appraisal award was objective, professional, and fair. Thus, the trial court confirmed the appraisal award. The appellate court affirmed, finding no evidence of unfairness, bias, impartiality, or unethical conduct.

In *Emmons v. Lake States Insurance Company*, 193 Mich. App. 460, 484 N.W. 2d 712 (1992), the plaintiff's home was partially destroyed by fire. The parties invoked the appraisal process pursuant to the insurance policy. After receiving her disappointing award, the insured filed a motion to vacate it. She argued that the appraisal proceedings were grossly unfair due to misconduct on the part of the umpire. She claimed that the umpire informed the plaintiff's appraiser that, if her attorney appeared at the appraisal meeting, then the appraiser should not bother to come. She also argued that the umpire refused to allow a court reporter to make a record of the proceedings. She also complained that the umpire wrote down his own private estimate of the loss without identifying the disputed items between the appraisers. Finally, she argued that the insurer's appraiser submitted documents to the umpire without furnishing those same documents to the plaintiff's appraiser.

The trial and appellate courts rejected the plaintiff's arguments and enforced the appraisal award. Since the plaintiff's attorney attended the appraisal meeting, no error resulted from the umpire telling the plaintiff's appraiser not to come. Furthermore, there was no legal requirement for the umpire to allow a court reporter at the proceedings. Moreover, the insured offered no evidence to substantiate her claim that the insurer's appraiser submitted documents *ex parte* to the umpire. And, Michigan law simply did not require the umpire to identify the disputed areas in writing. Having found no misconduct which would have constituted gross unfairness, the courts confirmed the award.

In *Savan Corporation v. Interstate Fire & Casualty Company*, 1998 WL 826904 (N.D. Texas 1998), an unpublished opinion, the insured filed a motion for partial summary judgment to enforce the appraisal award for the storm damage to its buildings. The insurer opposed the motion, arguing that there were questions of fact concerning the validity of the award. The district court recognized that the appraisal award could only be set aside if it was the result of fraud, accident, or mistake. In this instance, there was a question as to whether or not the appraisers and umpire were operating under the assumption that the building was in a better condition prior to the storm than it actually was. If they were operating under this erroneous assumption, then the appraisal award could have been the result of a mistake. Thus, there were still genuine issues of material fact regarding whether or not the appraisers and umpire had been provided with accurate information about the building's condition before the storm. The court denied the insured's motion.

7. **The Appraisal Clause Requires Competent and Impartial Appraisers.**

Several courts have ruled on the issue of whether or not an appraisal award should be invalidated or vacated because of the alleged incompetence or partiality of the appraisers and umpire. For instance, in *Emmons*, supra., the insured invoked the appraisal process and asked the court to appoint an umpire. By consent order, the court appointed Mr. Robert Van Hoesen. The plaintiff filed a motion to disqualify Mr. Van Hoesen after discovering that he had worked for insurance companies for the previous thirty years. She believed that he could not remain impartial. The trial court denied the motion, finding no evidence of prejudice. The

appraisal process went forward, resulting in an award which was disappointing to the plaintiff. She filed an appeal, seeking to vacate the award for, among other reasons, the bias of the umpire. She argued that his long-standing business ties to the insurance industry disqualified him from being "impartial". However, despite her conclusory allegations, plaintiff presented no evidence to show that the umpire or the proceedings were tainted. Therefore, the Michigan trial and appellate courts confirmed the appraisal award.

In *Hemingway v. State Farm Fire & Casualty Company*, 187 A.D. 2d 814, 589 N.Y.S. 2d 956 (1992), the plaintiffs' home was damaged by fire. Given the wide discrepancy between the insureds' and the insurer's cost estimates, they invoked the appraisal process. Each party retained separate appraisers, who in turn selected Mr. Timothy Connolly to serve as the umpire. After the appraisal award was rendered, the plaintiffs-insureds objected to it, arguing that Mr. Connolly was not an impartial umpire. In support of their position, the plaintiffs pointed out that Mr. Connolly reduced the original award "to reflect the potential tax savings that 'might be available on the purchase of materials'". *Id*. at 957. However, the insurer offered proof that such a reduction was generally accepted in the construction industry. The plaintiffs offered no evidence to show that such a reduction was not a generally accepted practice. The court held that the plaintiffs' conclusory allegations of partiality and sinister motives were not sufficient to withstand the insurer's motion for summary judgment. Accordingly, the appraisal award was confirmed.

In *Pirsig v. Pleasant Mound Mutual Fire Insurance Company*, 512 N.W. 2d 342 (Minn. App. 1994), the insured attempted to vacate the appraisal award due to the alleged bias and lack of impartiality of the umpire. The insured had submitted a claim for stolen tools to his insurer. When they could not agree on the value of the tools, they invoked the appraisal process. Both parties selected their own appraisers. The insurer's appraiser sent to the insured's appraiser a list of potential neutral umpires. From that list, the insured's appraiser selected three names. He asked the insurer's appraiser to contact them and inquire as to whether or not they would serve as umpire. As requested, the insurer's appraiser contacted one of the three potential candidates, who agreed to serve as the umpire. However, he explained that he had no prior experience as an umpire. The insurer's appraiser sent the umpire a pamphlet entitled "Settlement by Appraisal". He also sent the umpire the *insured's* list of stolen tools. When the appraisal

award was less than what the insured desired, he sought to disqualify or vacate the award for “evident partiality”. The trial court rejected the insured’s arguments and confirmed the award.

The Minnesota appellate court recognized the principle that an appraisal award should be vacated if it is the result of “evident partiality”. The court distinguished “evident partiality” from actual bias. Whether or not there was actual bias is a fact question. In contrast, whether or not there was “evident partiality” is a legal question. If there is any appearance of impropriety or bias, then the award must be vacated. Inappropriate contacts between the umpire and an appraiser or a party, which might create an impression of possible bias, can lead to a finding of “evident partiality”. However, in this instance, the contacts between the insurer’s appraiser and the umpire did not constitute “evident partiality”. The contacts were disclosed; and, they did not involve the merits of the dispute. Furthermore, there was no longstanding business relationship between the insurer’s appraiser and the umpire. Thus, the Minnesota appellate court affirmed the trial court’s ruling to enforce the award.

One court found no error in allowing an adjuster, who had previously worked on the claim, to serve as one of the appraisers. See *Auto-Owners Insurance Company v. Allied Adjusters & Appraisers, Inc.*, 238 Mich. App. 394, 605 N.W. 2d 685 (1999). Here, the insureds suffered fire losses to their respective homes. Both of them were insured by Auto-Owners Insurance Company. The insureds retained Allied Adjusters & Appraisers, Inc., which was owned by Gary Lappin, to adjust their claims. Yet, when the insurer and the insureds were unable to agree on the amounts of the losses, the appraisal clause was invoked. The insureds named Mr. Lappin to serve as their independent appraiser. The insurer objected and filed a declaratory judgment action, seeking to have Mr. Lappin disqualified as an appraiser. The insurer argued that Mr. Lappin could not serve as an independent appraiser due to his previous association on the claim. However, the insurer had to concede that Mr. Lappin had not engaged in any misconduct. Thus, according to the court, there was no factual or legal basis to disqualify him. The mere fact that he had previously computed the losses as an adjuster did not disqualify him from service as an appraiser.

The umpire should be “disinterested, unprejudiced, honest, and competent”. See 6 Appleman, *Insurance Law & Practice*, §3928 at 554 (1972). However, neither the umpire nor the appraisers have to be

"licensed real estate appraisers". See *Brothers v. Branch*, 1997 WL 578681 (N.D. Ga. 1997) (an unpublished opinion). Moreover, the policy's requirements of an impartial and competent appraiser do not limit the selection of appraisers to contractors or architects. Indeed, an attorney, who was neither an architect nor a contractor, was allowed to serve as an appraiser. See *Glens Falls Insurance Company of New York v. Garner*, 229 Ala. 39, 155 So. 533 (1934).

8. **The Court Has the Discretion to Require the Appraisal Process to Proceed in Advance of, or Subsequent to, a Determination of Liability and Coverage.**

In *Paradise Plaza Condominium Association, Inc. v. The Reinsurance Corporation of New York*, 685 So.2d 937 (Fla. App. 1996), the insured complained that the trial court erroneously ordered the appraisal to proceed before it determined any of the coverage issues. The insured argued that it was unfair for it to have to bear its share of the cost of the appraisal if there was going to be a later determination of no coverage. However, the court disagreed. A blanket rule, which would require resolution of the coverage and liability questions in advance of the appraisal process, would undercut the very purpose of the appraisal, namely the expeditious and efficient resolution of the dispute. "Moreover, the 'coverage first' rule might inefficiently require insurers to litigate even tenuous coverage defenses because of an unavoidable uncertainty as to their ultimate exposure. Such a waste of economic and judicial resources should not be encouraged". *Id*. at 941. Thus, the Florida appellate court believed that the order of issue resolution should be left within the discretion of the trial judge.

Although the procedure is left to the discretion of the trial judge, that fact should not prevent or deter the insurer from invoking the appraisal process as soon as reasonably possible. Even if the court later determines that the coverage and liability questions should be resolved first, the insurer's early request for an appraisal will minimize any risk of a later finding that it waived the right.

9. **Invoking the Appraisal Clause May Act as a Waiver of any Coverage Defenses.**

One trap for the unwary is the risk that the insurer may waive its other coverage or liability defenses if it invokes the appraisal clause. In *Scottsdale Insurance Company v. Desalvo*, 666 So.2d 944 (Fla. App. 1995), the First District Court of Appeal for the state of Florida concluded that if an *insured* requests the appraisal, then "the insurer does not, simply by participating in the appraisal, waive coverage defenses it might have ...". *Id*. at 947. That is, if the *insured* requests the appraisal, then the insurer may still litigate the issue of coverage. However, if the insurer makes the request, then it waives any coverage defenses it might otherwise have had.

The First District Court of Appeal's decision in *Scottsdale* was rendered in December, 1995. One year later, in December, 1996, the Third District Court of Appeal reached the opposite result, expressly disagreeing with *Scottsdale*. In *Paradise Plaza Condominium Association, Inc*., supra., the Third District held that insurer's invocation of the appraisal clause did <u>not</u> constitute a waiver of any coverage defenses. The court certified that its decision was in direct conflict with *Scottsdale*.

The state of Texas appears to follow the rule that invocation of the appraisal process will not constitute a waiver of any liability or coverage defenses. See the unpublished opinion in *Savan Corporation*, supra.

10. <u>Conclusion.</u>

The appraisal process can result in the timely and efficient resolution of a substantial issue, namely the amount of the loss, in many first party property insurance claims. Most courts will treat the appraisal clause as a valid and binding part of the insurance policy. Moreover, most courts will require the appraisal process if properly invoked.

Insurers and attorneys who want to invoke the appraisal process should do so in a timely manner and not take any steps in litigation which would be inconsistent with that desire. They should be careful not to waive their right to the appraisal process by waiting until the eleventh hour of litigation.

Once the appraisal award has been rendered, it can only be attacked on grounds of bias, bad faith, mistake, fraud, evident

partiality, or other similar vice. A review of the jurisprudence suggests that the courts are reluctant to vacate these awards in the absence of clear evidence that the appraisers, umpire, or process have been tainted. Mere conclusory allegations and disappointment with the result are not sufficient.

Finally, before any appraisal is requested, the insurer or its attorney should carefully check the applicable state law to make sure that the appraisal process will not result in a waiver of other coverage or liability defenses.

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