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IN THIS ISSUE

Ask the Attorney
Page 2

A Starbucks Coffee
Offer
Page 3

Cases Of Interest
Page 3

A Secret Family Recipe
For Pecan Pie
Page 4

Durrett Law Firm

Holding Insurance Companies Accountable For Their Promises to Policyholders Since 1989.

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Appraisal—Risky Business for Homeowners

Buried deep within most property insurance policies is the appraisal clause. *It is designed to resolve one and only one question. That question is: "What is the amount of the loss?"* Procedurally, the appraisal process begins with a written demand by either the insurer or insured requesting appraisal.

Next, each side selects an appraiser that is required to be independent and competent. Thereafter, the appraisers typically select an umpire to resolve any disputes between their respective determinations. After selecting an umpire, the appraisers inspect the loss and prepare their estimates stating the actual cash value for each item. If the appraisers fail to agree, they submit their differences to the umpire. At this point, the umpire is empowered to make a final determination. In most policies, the final determination is required to be itemized and agreed to by any two of the three members the appraisal panel. The award is then filed with the insurance company and becomes binding upon the insured and the insurer.

ORIGIN OF CLAUSE

Historically, the insurance companies lobbied state regulators to include the appraisal clause in all property insurance policies. Carriers believed that appraisal would expedite the claims resolution process and reduce their overall claims resolution costs by avoid litigation to resolve the simple question: "What is the amount of the loss?" For that reason, courts typically recognize that the appraisal clause was inserted into property insurance policies for the insurer's benefit.

In practice, there are great risks to the insured in agreeing to appraisal. In most cases, as a lawyer for the insured, I strongly advise against the use of the appraisal process. However, there are advantages and disadvantages to the process. In this article, I will try to assess the risks and provide you with tips to level the playing field in the appraisal process.

ADVANTAGES

The advantages of the appraisal process are: (1) avoidance of litigation; (2) the speed of resolution; (3) lower cost; and (4) expertise of a sophisticated decision maker. In the narrow situation of fairly determining the amount of the loss, the appraisal process can be employed to achieve these results. However, in practice, your results may vary.

DISADVANTAGES

The disadvantages of the appraisal process are its: (1) limited use, (i.e. the amount of loss only); (2) unpredictable outcome; and (3) binding nature.

In my opinion, the success of the appraisal process depends mainly upon the sophistication of the people involved in the process and establishing agreed upon procedures with the insurance company

prior to participation in the process. Appraisers and umpires come in all shapes and sizes from engineers, contractors, adjusters to attorneys. They are required to be independent and competent. The appraisers and umpire should be impartial and not under the control of the appointing party. They are not to be simply advocates for the person responsible for appointing them. In this regard, the courts have found that a contractor appointed over 1800 times as an appraiser for insurance companies was not independent. Similarly it has been held that where an appraiser derived more than 25% of his income from work performed for an insurance company, he lacked the necessary independence. Appraisers



Appraisal can be a trap for the Unwary

Continued on Page 2

For more articles, reports, studies, news, and commentary on these and other legal matters...

Contact Brant Durrett - bdurrett@sbcglobal.net

Ask the Attorney ...



Brant Durrett
Attorney at Law

Q: *I have a replacement cost policy, but my insurance carrier only paid me the actual cash value of my loss. Do I have to actually make the repairs before I can receive the full replacement cost?*

A: Yes. Most homeowners wisely purchase replacement cost insurance. This type of coverage protects you by providing coverage for the full cost to repair or replace damaged property following a loss. But unfortunately, for a variety of historical reasons, most modern replacement cost policies require the insured to repair or replace the damaged property prior to recovering its full replacement cost. However, as strange as it may seem, most insurance policies do not define the term "actual cash value". Thus, what constitutes actual cash value has traditionally been left to state regulatory authorities and caselaw. As recently as September 28, 2008, the Texas Commissioner of Insurance issued Bulletin No. #B-0068-08 that defined the standard method for determining the actual cash value of a structure under a replacement cost policy to be the reasonable and necessary expenses to repair or replace the damaged property, less proper deduction for depreciation. These expenses include the services of a prospective contractor without deduction for overhead, profit and taxes.

If you have a question you would like Mr. Durrett to answer, please email it to bdurrett@sbcglobal.net

Appraisal-Risky Business for Homeowners cont.

and umpires must also be competent. They must be someone who understands insurance issues and has first hand knowledge of construction and replacement costs or can secure this information from reputable sources. Usually this entails an enormous amount of research to accurately determine: the cost of thoroughly repairing a structure to its pre-claim condition with like kind and quality materials, the cost of complete debris removal costs in the case of fire or major contamination, the cost to repair and replace contents with like kind and quality and in some cases, the cost of additional living expenses if home becomes untenable.

Aside from being independent and competent, the appraisers and umpire must be knowledgeable about the appraisal process and its proper function to resolve valuation questions only. In this regard, I have found that an appraiser's experience in the appraisal process is not always a good indicator of quality. Since an appraisal award is final and binding, in order to overturn the award, the law requires you to prove that the process was flawed as of fraud, accident or mistake or that the appraisers or umpire were not

independent or competent. In most cases, if you win this battle you will have to do so at the court of appeals level because trial courts seem to give the same amount of deference to the award as the give a jury's verdict.

Accordingly, for your success in the appraisal process and to best cover your back end if the process goes south, it is paramount to establish ground rules at that outset to govern the appraisal process. I recommend the following:

HELPFUL APPRAISAL TIPS

1. Do not agree to submit issues involving coverage, causation or liability to appraisal.
2. Obtain a written memorandum of appraisal setting forth the basis for the appraisal as well as procedures governing the process including requirements governing notice of the time and place of all inspections and hearings, evidentiary considerations (such as the swearing of witnesses), standards to be applied to determine value, and deadlines for rendering the appraisal award.
3. Confirm the independence and

competency of the appraisers and umpire by requiring that any previous relationship between or among the appraisers, the umpire and the parties be disclosed prior to selection.

4. Require the appraisers and the umpire to execute an oath that they will carry out their duties fairly and impartially and in accordance with their duties.

5. Require that all hearings be transcribed or recorded.

6. Ensure that the record reflect any disagreement between the appraisers so the umpire's involvement is warranted.

7. Require that the appraisal award be itemized and signed by two members of the appraisal panel.

8. If your appraiser disagrees with the award, instruct him not to sign it.

The foregoing tips will not guarantee a successful outcome, but will help minimize your risk that the appraisal process will veer dangerously off course.



A Starbucks Coffee Offer



As this year draws to a close, I want to wish all family, friends and clients Merry Christmas and a Happy New Year. I may not have seen all of you this year, but I want to correct that next year. To that end, I have an offer and a story to tell.

First, the story. As many of you know, I am literally addicted to Starbucks Pike's Place coffee in the morning. I simply can not function without it. Just last week, I went to my neighborhood Starbucks (and being half asleep) I ordered my regular Pike's Place coffee. While my order was being filled, the attendant offered me a new Starbucks GOLD card for \$25.00 that provides a 10%



discount on all purchases for a year. Still being half asleep and thinking I never saw a discount that I did not like, I bought it. However, it was not until I did the math (half way through that first morning cup) that I realized at my current rate of consumption, I would have to order 125 cups of coffee this year to simply break even on the purchase of the discount card!

Now to my offer. Since I have a lot of coffee to drink this year, I need someone to share my good fortune.

So, if you have the time and are so inclined, give me a call at any time next year and I will meet you at the nearest Starbucks for a cup of premium Starbucks coffee on me.



Cases Of Interest

Some Cases We Are Handling Now or Have Recently Resolved

A homeowner without insurance because the title company failed to forward the insurance premium to the insurer after closing.

A homeowner whose home was damaged from a fire loss, but the carrier has failed to pay the loss for over 6 months.

Hotel owners with property damage from Hurricane Rita, but their carrier has failed to completely pay for the loss for over 3 years.

A business owner that suffered a substantial business income loss after a power failure caused by a lighting strike.

An apartment owner who suffered a vandalism loss, but the carrier denied coverage. (Case settled for \$175,000.00)

An apartment owner who suffered a foundation loss, but the carrier wrongfully refused to pay for the loss. (Case settled for \$120,000.00)

An hotel owner who suffered a fire loss, but the carrier delayed payment of his business income loss. (Case settled for \$250,000.00)

An apartment owner who suffered a fire loss that was denied by the carrier. (Case settled for \$190,000.00)



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Unlike other firms that send clients, associates, and friends an impersonal newsletter that has been created by a service, our newsletter is **100% home-grown**. It is written and designed in-house—by us!



A Secret Family Recipe for Pecan Pie

For years, my mother (affectionately referred to as “Honey”) has made pecan pies to celebrate the holidays. At Thanksgiving, I asked her if I could publish her recipe in this newsletter so that you could enjoy what I have enjoyed my whole life. She graciously agreed. I hope you enjoy this dessert as much as I do—Merry Christmas!

HONEY’S PIE PASTRY

For (2) 9” pie shells:

Mix : 1 1/2 cups flour
1/2 tsp salt
1/2 tsp baking powder
Add: 1/2 cup of shortening

Mix with a pastry cutter until like course cornmeal.

Add about 6 Tbl cold water—use fork—add 1 Tbl at a time following fork through the flour mixture. Roll very thin and place into pie plate. Prick pastry with fork a thoroughly and place in a hot oven. Start at 450° F and reduce temperature after about 5 minutes to about 350° F . It takes about 15-20 minutes to cook. Watch closely.

HONEY’S PECAN PIE

For a 9” pie beat together well:

3 large eggs
1/2 cup sugar
1/4 tsp. salt
1/3 cup melted butter
1 cup dark corn syrup

Arrange on top:
1 cup pecan halves

COOKING DIRECTIONS

Pour as rapidly as possible into unbaked pie pastry and place in 375° F oven immediately. Cook 40-50 minutes. Be careful not to burn pecans.

