



PERSPECTIVES

The Appraisal Process: An Outline for Making Awards Useful and Final

**Guidelines for Resolving Disputes in
First Party Property Insurance Claims**

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Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

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I. INTRODUCTION

Appraisal is a frequently used and often maligned method to adjudicate disputes in the property insurance world. Typically, appraisal is used for the purposes of evaluation only and will not bring finality to a claim in which coverage, or, in certain jurisdictions, causation is also being disputed. Although the perceived advantages of appraisal versus litigation are that it is considered fast, inexpensive, and relatively final, the appraisal process is often criticized because of unpredictable awards that are not helpful in settling a disputed claim and, in some cases, can lead to further protracted litigation. If, however, an appraisal is conducted with appropriate guidelines, the process can be valuable in bringing finality to valuation disputes.

The following is intended to outline a process which will result in unambiguous appraisal awards. Regardless of the size or complexity of a disputed claim, the appraisal process should always be approached in a thoughtful manner by the policyholder and insurer.

It is imperative that the disputed valuation(s) of loss be clearly and unambiguously communicated to, and understood by, the appraisers and umpire (the appraisal panel) who will decide the issue. It is equally imperative that the appraisal award be reported in such a manner as to ensure that the valuation dispute(s) is final.

Laws or statutes governing appraisal vary by jurisdiction and are not addressed herein. Issues regarding timeliness or enforceability of appraisal, disinterestedness of an appraiser or umpire, procedure for conducting the appraisal, reporting or enforceability of an award, etc., should always be reviewed by counsel when appropriate. The intent of this article is to provide parties to the appraisal process with an outline of issues to consider. The intent of the process is to produce a useful result, one that finalizes a dispute regarding the value of a loss.

II. THE INSURANCE CONTRACT

Insurance policies usually provide for appraisal as a means to settle disputes regarding loss and value following an event. Generally, the appraisal provision of any insurance policy provides that in the event the parties fail to agree on the amount of the loss, either party may make a demand to have the amount of loss determined by appraisal. Insurance policies typically contain appraisal provisions, which provide for the following in the event of a dispute:

- Either party may demand that the loss and value dispute be submitted to appraisal.
- Demands must be made in writing.
- Each party selects its appraiser.
- The appraisers then agree on a third party to act as an umpire.
- If the appraisers fail to agree on the umpire, a court having jurisdiction over the matter will select the umpire.
- The appraisers attempt to agree on the amount of loss and value.

- If the appraisers fail to agree, their differences are submitted to the umpire.
- An award in writing is required and considered final when at least two parties to the appraisal are signatories.
- The parties pay their own appraiser fees and share equally in the cost of the umpire and any other costs of the appraisal.

Little has changed regarding appraisal provisions found in property insurance policies over the years. The following is the appraisal clause found in the 1943 Standard NY Fire Insurance Policy.¹

“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.”

In recent years, the words “competent” and “disinterested” are typically not included in insurance policy appraisal provisions. Some states recognize that the appraiser selected by each of the parties is likely to be an advocate, and some states have even allowed an appraiser to be compensated on the basis of a contingent and/or percentage fee. Other states have a much stricter view of who can act as a party appointed appraiser, and what constitutes “disinterestedness.”

There are some states which have residency requirements for appraisers, and other states have even required appraisers to be a licensed insurance adjuster. Although Washington State recently changed this requirement after the author testified at a hearing of the Washington State legislature, which unanimously passed a bill clarifying the definition of “adjuster” and removing the residency requirement from appraisals in Washington.

While insurance policies recognize that appraisal is a means by which an award of “value” can be finalized, policies contain little or no additional guidance regarding how and what to appraise. Neither do they include instructions by which the disputed value(s) will be reported to the parties. In fact, there is likely no other practical guidance about how to appraise a disputed loss in the policy of insurance. Thus, it is left to the parties, or, in litigated matters, a court, to sort out these issues.

¹ Lines 123 through 140.

III. CHOOSING TO DEMAND APPRAISAL, SELECTING AN APPRAISER, AND REACTING TO AN APPRAISAL DEMAND

Policyholders and insurers considering appraisal are urged to follow the process described here prior to making a final decision to demand appraisal.

First, since it is generally assumed that if the parties have either reached an impasse or are reasonably certain that they will be unable to agree on the amount of loss,² consideration should be given to conducting a third-party review prior to demanding appraisal. In non-complex matters, the appraiser being considered by any party is likely to conduct this review. In larger complex cases, particularly where the appraisal may eventually involve using expert witnesses to present testimony to the appraisal panel, use of an expert witness to conduct a review is a good first step prior to making a demand. This review process, if conducted in an unbiased and objective manner, has the benefit of informing a party of the reasonableness of their position, and often can result in one side or the other becoming motivated to settle the dispute prior to an appraisal demand. On the other hand, this process can also be helpful to confirm a prior position and validate the decision to demand the appraisal.

Second, once an appraisal demand is considered, selection of the party appraiser should be weighed heavily based on the following criteria:

- Familiarity and competency in the evaluation of the disputed loss(es) being appraised.
- Familiarity and competency in navigating the appraisal process.
- Ability to act as appraiser given the likely manner in which the appraisal will be conducted.³

Of the three criteria noted above, perhaps the most important is an appraiser's ability to understand and work effectively through the process.

Third, there must be a clear understanding of what is being appraised. Once a decision has been made to invoke appraisal, a clear and unambiguous demand to appraise value or multiple sets of values must be made in such a way that the party receiving the demand fully understands the scope of the appraisal demand. While this appears obvious, there are countless cases where parties have engaged in an appraisal without properly defining the scope. While more will be made of this issue in the following sections, setting the correct

² Clearly, the issue of whether an appraisal demand is timely can be a concern in many cases. An impasse may simply be nothing more than one party disagreeing with another party's position. Perhaps the most extreme example of this is found in *S.R. International Business Insurance Company vs. World Trade Center Properties* (the consolidated World Trade Center 9/11 Litigation). Here, Allianz Global Risks, one of 24 market insurers who bound coverage at the World Trade Center prior to 9/11, made its own demand for appraisal after litigation had already commenced and after the insured submitted an initial proof of loss but before the insurers had even completed their calculation of the amount of the loss. The insured opposed Allianz's appraisal demand citing (among other things) that the demand was premature. Subsequently, the Federal District Court found in favor of Allianz and ordered the appraisal as both appropriate and timely.

³ For example, if a matter will involve a contested evidentiary hearing in a virtual trial format, the appraiser must be competent to represent a party depending on the chosen appraisal format.

course for a useful and final result must always be made at the time of demand. Thus, a demand for appraisal should contain:⁴

- A statement that there is a disagreement on the amount of loss.
- The appraisal clause contained in the policy of insurance.
- A concise statement about the value or set of disputed values to be appraised, with reasonable specificity.
- The name of the appraiser (or multiple appraisers, depending on the issues being appraised) including all necessary contact information.
- An attached sample proposed appraisal memorandum (also called a protocol).

Example: *A policyholder makes a claim for a fire to his insured grocery store. The insurer issued a policy covering building, contents, stock, and business interruption. The amount of contents and stock loss is agreed upon, but the building loss (including code upgrades and demolition and debris removal which are sub-limited) is disputed. Likewise, there is a dispute over the business interruption loss. The policy valuation for buildings is at Replacement Cost, but in the event not replaced, Actual Cash Value is the measure. In this instance, the party making the demand must clearly state that appraisal is being demanded to determine the replacement cost and actual cash value loss to the building, the amount of code upgrade loss, the amount of demolition and debris removal loss, and the amount of business interruption loss. In so doing, there will be no ambiguity about the valuation issues which are being submitted to the appraisal panel. Making a clear demand will allow the opposing party to understand the demand without ambiguity and will increase the likelihood that a written appraisal protocol can be reached without further disputes.*

Case Study: *In a New Jersey case in the 1990s, an insured demanded an appraisal of a disputed loss to a six-family residential structure. The parties then entered into a memorandum of appraisal, which provided limited information, except for the location, date and type of loss, and the identity of the appraisers. The appraisers promptly agreed on an umpire and set about determining the “amount of loss.” They subsequently rendered an award in a timely fashion. After receiving the “replacement cost” award, the insurance company’s adjuster attempted (on his own) to determine the actual cash value and arrived at his opinion of the “loss payable.” However, the insured did not agree and filed suit against the carrier. Several years later, the court ordered that a “new” appraisal panel⁵ would be formed to determine the replacement cost and actual cash value loss, given the condition of the property as it then existed. Further, the court ordered that the loss would be valued by the panel at the “current” cost rather than at the date and time of loss. The building, which by now had sat for four years in an un-repaired condition, had by then deteriorated to the point where it*

⁴ Sample demand and reply letters are attached hereto.

⁵ The author was a member of the newly formed appraisal panel.

was essentially a total loss. Ultimately, the new panel issued an award that was almost \$500,000 more than the original appraisal.

If nothing else, the preceding example and case study illustrates the importance of demanding appraisal in such a manner as to frame the nature of the disputed items and preserve the record regarding the intention of the party demanding the appraisal. In other words, the demand for and ultimate agreement to appraise the disputed loss should include language that unambiguously describes the necessary valuations sought so that the matter can be concluded post appraisal. This is the very definition of a “useful” award.

Reacting to an appraisal demand, regardless of whether you are the policyholder or insurer, should typically include:

1. An acknowledgement of receipt of the demand.
2. A statement regarding whether the appraisal is an appropriate forum to settle the dispute(s).
3. A definition of the issues to be appraised (or simply an agreement to the issue(s) as outlined in the appraisal demand).
4. The name of the appraiser, if appraisal is agreed to.
5. An invitation to further communication on a written memorandum or protocol to govern the appraisal process.

IV. FINALIZING THE APPRAISAL PANEL – THE UMPIRE SELECTION

Determining who will act as an umpire in an appraisal is among the most important decisions that can ensure any disputed valuation issue can be finalized. An umpire must be disinterested, disclose any potential conflicts,⁶ and should ideally be competent in the valuation issues being contested. In reality, an unfair award is rarely the result of an appraisal in which the umpire was an “expert” in the valuation issues being determined. In many cases, and because of an increasing sense of distrust between policyholders and insurers, umpires are often appointed by a court having jurisdiction over the appraisal, although this can often result in the umpire having neither any expertise in the appraisal process nor any competence in the valuation disputes being decided by the panel.

Regarding timing, it is prudent to first name the umpire prior to proceeding with the appraisal. While there is a belief that the appraisers should first meet to determine their differences prior to selecting an umpire, this can be impractical for several reasons. Typically, the best opportunity for the appraisers to agree on the umpire is at the onset of appraisal. Once appraisers have disagreements on disputed loss values, there may be little likelihood that they can then agree on an umpire.

⁶ If conflicts exist, they must be disclosed and waived by all parties. It is appropriate for the parties to enter into an agreement whereby the conflict alone cannot give rise to a post appraisal action to overturn the award. The author has been selected by parties as an umpire, has disclosed a conflict, and it was not an issue in the successful completion of the appraisal.

In large complex cases, deferring the umpire selection can result in a delay or additional expense to resolving the appraisal decision.

Perhaps the most compelling reason to select an umpire at the onset of appraisal is that an experienced and effective umpire can help the appraisers negotiate the process, steering them (and sometimes the parties) toward consensus on process and other issues. This can sometimes have the benefit of expediting the appraisal process and indeed help to bring finality to claims even when there are coverage disputes. An experienced umpire can also be helpful in assisting the parties in finalizing the protocols in the appraisal agreement as illustrated in the following case study.

Case Study: *In an extremely large and complex matter (excess of \$1 billion) involving building damage, personal property, extra expenses, business interruption, claim preparation costs, etc., the parties were unable to reach an agreement on an appraisal protocol. The umpire, a retired federal circuit court judge who had been nominated by the policyholder and accepted by the insurer's appraiser (the author), was asked to assist in finalizing the appraisal protocol. The disputed protocol issues involved such matters as items to be appraised, order of issues to be heard by the panel, timing, discovery, and others. The umpire assisted in finalizing all issues so that the appraisal could then move forward on an orderly basis.*

UMPIRE SELECTION IN NON-COMPLEX MATTERS

Selection of an umpire in non-complex matters may be as simple as a discussion between two appraisers, who present names to one another, then agree on the identity of the umpire. In those cases, in which the appraisers have familiarity with one another or may have actually been members of the same appraisal panel in the past, the selection of an umpire is usually a simple matter.

In most cases, umpire nominations should be made by the appraisers to one another within a reasonable time after both appraisers' identities are known and disclosed.⁷ It is good practice for an appraiser to offer more than one potential umpire candidate. Contact information and an invitation to discuss a potential umpire's qualifications with the umpire nominee is considered good practice.⁸

An umpire, once nominated, has an obligation to the appraisers and the parties to immediately determine whether any conflicts of interest exist and, if so, to disclose those conflicts to the parties. Failure to do so will clearly provide an unsatisfied party with a simple reason to ask a court to vacate an award based on umpire bias and non-disclosure of a conflict. Several states, like Missouri, Colorado, and Texas have a history of courts overturning appraisal awards for unreported conflicts of interest by either an umpire or an appraiser.

⁷ Suggested umpire nomination letter attached hereto.

⁸ The Parties should never participate in an interview of umpire candidates, and there should be no *ex parte* communication with any nominee for umpire.

UMPIRE SELECTION IN HIGH VALUE AND COMPLEX APPRAISALS

In large complex matters, the selection of the umpire can be a time-consuming and closely scrutinized endeavor. In general, the following guidelines for selecting the umpire should be considered:

- Parties should research umpire candidates to determine their competency to serve on the panel.
- No *ex parte* (one sided) contact should be permitted at any time by a party, an appraiser, or counsel involved in the matter, even to request a resume or determine interest or availability.
- The parties should agree to a simultaneous exchange of candidate names, when practical.
- The parties should agree on the language of a joint introductory letter to be sent by the appraisers to the umpire candidates (the nominating party should not be disclosed to the umpire candidate). The letter should include at least the following:
 1. That the nominee is being considered to act as umpire of a disputed insurance claim (name the matter without specific detail).
 2. That the appraisers desire to meet jointly with the umpire nominee to determine qualifications and willingness to serve.
 3. That the umpire nominee should provide the appraisers with requested information to help determine competency.
 4. That the umpire nominee should review the conflict list⁹ and be prepared to report on any potential conflicts during the initial interview.
 5. Dates and potential times for an interview with the appraisers.

It can also be useful to limit the number of nominees and agree that in the event the appraisers cannot agree on the umpire, the sides will jointly petition a court to name the umpire from the party's nominees (or one finalist for each party). In the experience of the author, this can often lead to the selection of an umpire that serves the parties well in the process.

Case Study: *In valuation disputes arising from the September 11, 2001 terrorist attack, the author was named a party appointed appraiser in four matters in which the disputed values ranged between \$250 million and \$5 billion. In two of the matters, the umpire selection process recommended above resulted in the umpire being selected by a federal district court judge from the names provided by the parties. In both instances, the umpires were widely praised by the parties in their ability to fairly and professionally adjudicate the disputed values. In the other two matters, the process produced candidates nominated by the policyholder that were deemed acceptable to*

⁹ The parties should agree on a comprehensive conflict list to include with any introductory letter.

the author. In these cases, the umpires were competent, fair, and helped bring about settlement of the matters.

V. UNDERSTANDING AND REACHING AN AGREEMENT ON WHAT IS BEING APPRAISED

Understanding what to appraise and how to go about communicating the issues to the appraisers and umpire who will make the award is vital in making the process useful. Failure to clearly and unambiguously define the scope of an appraisal can often serve to compound the problem. Therefore, it is absolutely crucial that the scope of the appraisal be clearly defined in a written agreement that does not leave what will be awarded and how it will be awarded to chance. In non-complex matters, experienced appraisers and umpires can often determine what should be decided in the appraisal process; however, the parties need to understand that the scope of appraisal cannot and should not be determined by the appraisers and umpire.

AGREEMENTS TO APPRAISE DISPUTES IN NON-COMPLEX MATTERS

The importance of making an unambiguous demand for appraisal was noted previously herein. The following is a brief discussion of how to construct an agreement to appraise a loss.

The scope of coverage and appraisal is determined in the first instance by the applicable policy language. Where the policy is silent (and most policies are silent on this issue), the following is a typical, but by no means complete, list of values that can be determined by appraisal:

- Replacement Cost Loss – scope and value.
- Replacement Cost Loss – value only, where scope is agreed.
- Limited Replacement Cost Loss – where a single item or finite set of items needs to be determined.
- Actual Cash Value Loss
- Period of Restoration
- Demolition Cost
- Code Upgrades/Law and Ordinance Loss
- Extra Expense Loss
- Expediting Expense Loss
- Rental Loss
- Business Interruption Loss

After a demand for appraisal has been made, it is recommended that the parties enter into a written agreement to appraise the loss. Ideally this can happen after the parties have named their appraisers, regardless of whether the umpire has already been chosen. If there is any ambiguity in the scope of the appraisal, it is essential to reach an agreement, in writing, on what disputed values will need to be awarded by the appraisal panel, in addition to other issues which are pertinent to the appraisal. As previously noted, neither the insurance policy nor case law is likely to provide guidance in this area. A simple "Agreement for Submission to Appraisers" like the one presented below is often used in non-complex matters.¹⁰

AGREEMENT FOR SUBMISSION TO APPRAISERS

It is hereby agreed, by and between _____ (Insured) and _____ (Insurance Company) that a disagreement exists as to the actual cash value, the amount of loss, or the cost or repair or replacement as a result of a loss on _____ (Peril) loss on _____ (Month Day Year) To the insured item (s): _____ located at _____ (Address of Insured Dwelling) and insured by Policy Number _____ effective _____ (Month Day Year) to _____ (Month Day Year)

"Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

_____ (Insured) _____ (Insurance Company)

Appraisal. If you and we fail to agree on the actual cash value, amount of loss or the cost of repair or replacement, either can make a written demand for appraisal. Each shall select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. 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 district court of a judicial district where the loss occurred. The two appraisers shall then set the amount of loss, stating separately the actual cash value and loss to each item. If you or we request that they do so, the appraisers will also set: (a) the full replacement cost of the dwelling; (b) the full replacement cost of any other building upon which loss is claimed; (c) the full cost of repair or replacement of loss to such building, without deduction for depreciation. If the appraisers fail to agree, they will submit their differences to the umpire. An umpire's decision agreed to by any two of these three and filed with us will set the amount of the loss. Such award shall be binding on you and us. Each party will pay its own appraiser and bear the other expenses of the appraisal and umpire equally.

APPRAISER APPOINTMENTS:

The insured hereby selects _____ (Name) _____ (Phone) as his competent and independent appraiser. _____ (Address)

The Insurance Company hereby selects _____ (Name) _____ (Phone) as his competent and independent appraiser. _____ (Address)

DUTIES OF APPRAISERS

- Appraisers shall first select an umpire. If they fail to agree within 15 days, they shall notify both parties so the provisions can be invoked.
- Appraisers shall then appraise the loss, stating separately actual cash value and loss to each item. If requested by insured or company, the appraisers shall also appraise (1) full replacement cost of the dwelling; (2) full replacement cost of any building upon which loss is claimed; and (c) full cost of repair or replacement of loss (without deduction for depreciation).
- If the appraisers fail to agree, they shall submit their differences to the umpire.

DECLARATION OF APPRAISERS

STATE OF _____ COUNTY OF _____

We, the undersigned, do solemnly swear that we will act with strict impartiality in making an appraisement and estimate of the values and loss upon the property hereinbefore mentioned, in accordance with the foregoing appointment, and that we will make a true, just and conscientious award of the same, according to the best of our knowledge, skill and judgment. We are not related to the insured, either as creditors or otherwise, and are not interested in said property or the insurance thereon.

_____ (Appraiser)
 _____ (Appraiser)
 Subscribed and sworn to before me this _____ day of _____, 20____ (Notary Public)

SELECTION OF UMPIRE

We, the undersigned, hereby select and appoint _____ to act as umpire to settle matters of difference that shall exist between us, if any, by reason of and in compliance with the foregoing agreement and appointment.

Witness our hands this _____ day of _____, A.D., 20____

_____ (Appraiser)
 _____ (Appraiser)

QUALIFICATION OF UMPIRE

STATE OF _____ COUNTY OF _____

I, the undersigned, hereby accept the appointment of umpire, as provided in the foregoing agreement, and solemnly swear that I will act with strict impartiality in all matters of difference that shall be submitted to me in connection with the appointment, and I will make a true, just and conscientious award, according to the best of my knowledge, skill and judgment. I am not related to any of the parties of this agreement, nor interested as a creditor or otherwise in said property or insurance.

_____ (Umpire)

Subscribed and sworn to before me this _____ day of _____, 20____ (Notary Public)

AWARD

<u>Replacement Cost</u>	<u>Actual Cash Value</u>
Dwelling	
Appurtenant Structures	
Additional Living Expenses	

Witness our hands This _____ day of _____, 20____

_____ Appraiser
 _____ Appraiser
 _____ Umpire

Figure 1 - Sample memorandum of appraisal.

The above sample memorandum of appraisal (also called an appraisal protocol) illustrates that no matter how small or large the dispute, a simple agreement with instructions governing the appraisal is necessary to establish clarity and avoid post-appraisal valuation disputes and/or litigation over the meaning of the award.

¹⁰ This agreement is included in the addendum attached hereto.

COMPLEX APPRAISAL PROTOCOLS:

High value, complex matters which require numerous values to be awarded will require a detailed agreement prior to proceeding with the appraisal. In this regard, the parties, whether on their own, with help from the umpire, or as ordered by a court, must enter into a written protocol that has the effect of an “order”. For an appraisal protocol to be useful, an understanding of the nature of the dispute(s) regarding loss and value, as well as clarity about how the values need to be reported by the panel, is required. At a minimum, the appraisal protocol for a complex matter must include the following:¹¹

1. The names of the parties and the date and type of loss.
2. The scope of the appraisal, clearly listing the valuation(s) which are going to be determined by the process.¹²
3. A list of the legal issues that parties have agreed on which the umpires can decide or a statement that the appraisers and umpire cannot decide questions of law or coverage.
4. The identity of the appraisers.
5. The identity of the umpire or a description of the procedure for selecting the umpire.
6. Statement that any disputes regarding the protocol are to be resolved by the panel.
7. The manner in which the disputed loss is to be appraised, which may include:
 - a. Timetable and location of appraisal.
 - b. Method of recording the appraisal proceedings.
 - c. Discovery issues which may also include subpoena power of the panel.
 - d. Use of experts.
 - e. Manner in which the loss will be appraised.
 - f. Sample Award Form or instructions on how award will be reported.
 - g. Definitions of terms and coverage.
8. General Items
 - a. Statement regarding no *ex parte* communication between parties and appraiser.
 - b. Statement regarding no *ex parte* communication between appraisers and umpire.

¹¹ A sample complex appraisal protocol is included in the addendum attached hereto.

¹² In large complex claims where there are multiple insurers with non-concurrent policies, or multiple insureds who have various insurable interests, further itemization of an award may be necessary and should be clearly articulated in the protocol.

- c. Confidentiality issues or agreements.
- d. Hold harmless language protecting the appraisers and umpire.¹³
- e. Other as may be required.

VI. OTHER ISSUES TO CONSIDER

CLARIFYING DISPUTES REGARDING VALUATION DEFINITIONS OR COVERAGE

It should be clear that where there are issues surrounding coverage, sub-limits, division of insurable interest, etc., a detailed protocol setting out the agreement to appraise is advisable. It is imperative that the parties seek to avoid unnecessary post appraisal litigation over an award that is either ambiguous or does not provide enough detail to either finalize the claim or value coverage issues that may be litigated post appraisal. Having an award which is of no practical guidance to the parties and cannot be used as a mechanism to finalize the claim is an improper use of the appraisal process.

The same is often true in cases where there are disputes regarding how to calculate a particular valuation. For this reason, including definitions (if agreed) in the protocol can be helpful to the panel. When the parties cannot agree on disputed methodology and coverage, guidance by a court may be required in order for the panel to determine the amount to be awarded. Because the appraisal panel cannot interpret the meaning of the insurance contract or define valuation terms in an award, the appraisal process essentially bifurcates the damages and liability disputes in those cases where coverage or valuation methods are also disputed.

Coverage or definition disputes can be resolved in three ways:

1. Before the commencement of the appraisal.
2. During the appraisal.
3. Post appraisal.

There is no practical guidance that can be offered regarding the optimal time to resolve these issues, though it must be stressed that in some cases, the coverage or definition disputes may not be identified by the parties prior to the appraisal and thus cannot be resolved until after the appraisal has commenced.

In general, disputes that involve valuation methodology must be resolved by a court either before or during appraisal.¹⁴ In most cases, these specific issues are likely to surface prior to the appraisal since they are generally at the core of the difference which led to the dispute. Unfortunately, parties will sometimes proceed to appraisal without providing clear and unambiguous instructions to the appraisal panel about the definition of values being sought.

¹³ Appraisers and umpires will often seek to be held harmless by the parties in a similar fashion that arbitration or mediation agreements will seek to hold arbitrators and mediators harmless.

¹⁴ The only other alternative is to have the panel award values on each of the disputed methods, providing the court with an “a la carte” menu of awards to be applied once coverage is determined. This is not usually practical in large complex cases since it could create unnecessary hardship and additional unwarranted expenses.

The following is a brief list of the most common definition disputes which cannot be decided by an appraisal panel:

1. Replacement Cost – It is not uncommon for the parties to dispute the definition of replacement cost, particularly as it relates to the valuation date of an award. Sometimes a policyholder or their appraiser will consider the date of the award as the date of valuation. An insurer is likely to define replacement cost as being valued at the date and time of loss. When disputes of this nature arise, they must be settled by a court. If this matter is not decided prior to appraisal, the parties can ask the appraisal panel to provide two separate valuations so that the matter can be finalized once a court decides the legal issue.
2. Actual Cash Value – Disputes regarding the method of calculating actual cash value, which is jurisdiction specific, are not uncommon in appraisal. Setting aside the issue of whether the loss is in a state that follows the broad evidence rule, the market value rule, or the replacement cost minus depreciation rule, there can also be disputes about whether policy definitions of actual cash value change the jurisdiction specific law.

***Case Study:** Perhaps the best example of the need to clearly define terms for the appraisal panel is found in *Elberon Bathing Co., Inc. v. Ambassador Insurance Company*. Here, there was a disagreement on the amount of loss, and the parties elected to settle the valuation dispute by appraisal. The insured's appraiser and court-appointed umpire awarded replacement cost as the actual cash value loss. The insurer's appraiser refused to sign the award. The award was ultimately overturned because New Jersey law requires consideration of a broad spectrum of evidence to determine ACV, and the panel's award was based on a method that did not apply the New Jersey broad evidence rule. This clearly illustrates the problem that even in those cases where clear instructions are given, appropriate definitions or court rulings are required for the panel to properly appraise the loss.*

3. Period of Restoration and Period of Indemnity – The appraisers and umpire cannot make a coverage or legal determination of these terms. It is not uncommon for a policyholder's appraiser to claim that the period of restoration and period of indemnity should include the elapsed time between the date of loss and when/if the property is rebuilt after the appraisal amounts are awarded. Conversely, insurers might take the position that the period begins on the date of loss and ends when the physical damages have been repaired/replaced, assuming the exercise of due diligence and dispatch. Unless these issues are agreed as part of an appraisal protocol, it is the author's experience that the appraisers first award the length of time it will take to make physical damage repairs without a specified construction commencement date, then award a monthly business interruption or rental value award for the claimed period. In such a case, the award should note that

the parties dispute the method of valuation but are providing enough detail for the matter to be concluded once the legal policy interpretations are finalized.

MULTIPLE APPRAISALS

Sometimes parties will demand separate appraisals for each finite coverage dispute that may arise in any given loss. For example, it is common for a disputed claim to involve separate disputes for building, personal property, and business interruption loss, among other things.

Surely, the virtue of having each finite dispute determined by separate panels, each with its own competency to award fair and objective values for each disputed area of coverage, is easily understood. However, one party or the other may decide that this is not practical. Whether for a perceived tactical advantage or to avoid unnecessary expense, in such a case, the parties can either agree to appraise disputed coverage parts separately with a dedicated panel for each or agree to use one umpire and multiple appraisers per party. This allows each party to make its own decision regarding whether to name multiple appraisers.

Case Study: *In a large complex matter involving building loss, extra expenses, business interruption, leasehold interest, personal property, and claim preparation expense, the author was one of three appraisers for the insurers. In the same case, the insured named one appraiser, and the parties reached an agreement on one umpire to hear all disputed issues.*

UMPIRE EXPENSES

In certain instances, umpires will incur expenses for a variety of reasons, but usually to seek guidance from an independent professional who can assist them in making an informed decision. In some cases, one side or the other will object to the umpire's retention expenses to decide a disputed issue.

It is the author's opinion that regardless of any concern or objection, an umpire should not be constrained in their attempt to render a fair and impartial decision. Since the appraisal process is designed to produce fair and impartial valuation awards, there are cases in which an umpire may not possess direct or "on point" expertise to determine which appraiser's (or party's) position is correct. In these cases, an umpire should be permitted to incur reasonable consulting expenses, and the parties must, therefore, share in the cost.

Case Study: *The author was selected as an umpire in a valuation dispute over a total loss fire to an antique log home owned by a well-known actress. At the time of the appraisal the home had already been reconstructed with a similar, but larger home. During the rebuild, the local municipality mandated a series of costly zoning requirements and upgrades that were included in the claim and, in the opinion of the appraiser for the policyholder, should have been included in the award, in which enforcement of local laws and ordinances (code upgrades) was agreed by the parties as a matter to be decided by the appraisal panel. The appraiser for the insurer argued*

that no code upgrades would have been required if the home had been reconstructed exactly as it existed prior to the total loss fire. In order to determine the appropriate valuation, the author first sought to determine if the home could have been replaced “as is” and then retained an expert to determine what code upgrades would have been required if the property had been replaced as close as possible to the existing home that was destroyed. The expert’s fees were shared equally by the parties as it was understood that this information was needed for the umpire to render a fair award of value.

FAILURE OF APPRAISAL

In rare cases, the appraisers and umpire will be unable to render an award on a disputed loss or item.¹⁵ Usually, this can result when there is a question of fraud, misrepresentation, or bad faith in the underlying claim. In such a case, it can be difficult for the panel members to sort out the facts and/or circumstances which will lead to a clear, informed, and unbiased award. In cases where arson or fraud is alleged, the parties are usually well advised not to demand appraisal or agree to an appraisal demand.

VII. SUMMARY

Although the appraisal process is a useful tool to settle disputes regarding loss and value, it is absolutely necessary to approach the process in a thoughtful manner. In order to avoid confusion, post-appraisal litigation, and the possibility of an award that is incomplete or of little practical use to the parties, both policyholders and insurers are urged to clarify the dispute and reach an agreement on the scope of the appraisal process. The use of a clear, concise, and complete protocol to appraise any loss is a key element in ensuring the finality of any claim.

¹⁵ Failure to reach an award is merely the inability to have two members of the appraisal panel sign an award, or in very rare cases, where the appraisal panel unanimously agrees that it cannot decide the issue of causation and value.

MORE ABOUT THE AUTHOR

Jonathon C. Held is President and CEO of J.S. Held, LLC, a consulting company with more than 1,500 professionals on five continents. During his tenure of more than 45 years with the company, Mr. Held has been responsible for the growth of the firm from two employees to a multi-disciplinary consulting firm with global reach. Mr. Held has acted as a consultant and expert on numerous high value, high profile cases during his career, including many of the highest valued property claims in history. He has handled assignments in all 50 U.S. states, in more than 20 countries, and on five continents. He has been an expert witness and dispute resolution panelist on numerous matters throughout the United States. Mr. Held has also authored many published papers and spoken at numerous educational conferences including (among others) the PLRB, LEA, ABA, the Wind Network conference, the Lloyds Market Association, and the Property Insurance Coverage Group Conference at Lloyds.

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I. SAMPLE APPRAISAL DEMAND LETTER

NOTE: THE FOLLOWING IS A SAMPLE DEMAND LETTER FROM AN INSURER TO AN INSURED DEMANDING APPRAISAL ON A BUILDING LOSS.

Date: _____

Re: Insured:

Policy No.:

Date/Occ.:

Location:

Type of Loss:

Dear: _____

This is to inform you that we do not agree with you on the replacement cost building loss and actual cash value building loss.

We direct your attention to the following provision for appraisal in your policy:

INSERT APPRAISAL CLAUSE FROM THE APPLICABLE INSURANCE POLICY HERE.

By this letter and in accord with the foregoing, we hereby demand an appraisal and name **NAME AND CONTACT INFORMATION** as our appraiser. Please notify us of the name of your appraiser.

Attached is a sample agreement for submission to appraisers. Please review and contact the undersigned with regard to any questions or comments regarding completion of this agreement.

Nothing stated in this letter is intended nor should it be construed to be a waiver of any of the terms or conditions of the policy nor of any rights or defenses available to **NAME INSURER** specifically reserves all such rights and defenses now apparent or as may become apparent.

Very truly yours,

II. SAMPLE RESPONSE TO APPRAISAL DEMAND LETTER

NOTE: THE FOLLOWING IS A SAMPLE RESPONSE LETTER FROM AN INSURER TO AN INSURED, RESPONDING TO AN INSURED S' DEMAND, AND CLARIFYING THE ISSUES BEING APPRAISED.

Date: _____

Re: Insured:

Policy No.:

Date of loss:

Location:

Type of Loss:

Dear: _____

We are in receipt of your letter demanding appraisal of the above captioned matter. While we understand that there is a general dispute regarding the amount of the loss, your demand to "appraise the loss" is not specific.

While we will agree to name our appraiser, we insist that the items in dispute be clarified prior to proceeding with the appraisal. In that regard, we are enclosing a sample agreement for submission to appraisal, which specifies that the appraisers will state separately the amount of Replacement Cost Loss to the building, and the Actual Cash Value Building Loss.

For Clarity, we direct your attention to the following provision for appraisal in your policy:

INSERT APPRAISAL CLAUSE FROM THE APPLICABLE INSURANCE POLICY HERE.

By this letter and in accord with the foregoing, we name NAME AND CONTACT INFORMATION as our appraiser.

Nothing stated in this letter is intended nor should it be construed to be a waiver of any of the terms or conditions of the policy nor of any rights or defenses available to NAME INSURER specifically reserves all such rights and defenses now apparent or as may become apparent.

Very truly yours,

III. SAMPLE UMPIRE NOMINEE LETTER IN A SIMPLE MATTER

NOTE: THE FOLLOWING IS A SAMPLE LETTER FROM AN INSURER'S APPRAISER TO AN APPRAISER FOR THE POLICYHOLDER, NOMINATING UMPIRE CANDIDATES

Date: _____

Re: Insured:

Policy No.:

Date of loss:

Location:

Type of Loss:

Dear: _____

As you may be aware, I have been selected by **NAME INSURER HERE** to act as its appraiser pursuant to the terms and conditions of the policy of insurance.

Prior to our proceeding, it will be necessary for us to select a third party to act as umpire. I, therefore, nominate the following individuals, each of whom has experience acting in this capacity:

NAME UMPIRE NOMINEES HERE (USUALLY 2 OR 3) WITH CONTACT INFORMATION.

Because this appraisal will involve the determination of the Replacement Cost Loss and Actual Cash Value loss to the building, I believe that these individuals possess the necessary qualifications to act in the capacity as umpire. I would suggest that we jointly contact them to discuss their qualifications, conflicts, and ability to act in a fair and impartial manner.

Please contact me upon receipt of this letter so that we may further discuss the umpire selection process and move forward with the appraisal process. I look forward to working with you in connection with this matter.

Very truly yours,

IV. SAMPLE UMPIRE INTRODUCTORY LETTER FOR COMPLEX MATTERS

NOTE: THE FOLLOWING SAMPLE INTRODUCTORY LETTER FROM TWO APPRAISERS IN A LARGE COMPLEX MATTER OUTLINES A FICTITIOUS LOSS THAT IS ASSUMED TO BE COMPLEX. FOR THE PURPOSE OF THIS HYPOTHETICAL, THE MATTER IS ASSUMED TO BE IN LITIGATION.

LETTER IS SENT FROM THE PARTY APPRAISERS NO LETTERHEAD IS USED.

Date: _____

ADDRESSEE

RE: TITLE OF CASE OR NAME OF LOSS

Dear Mr. _____

You have been recommended as a candidate who might be willing to serve as the competent and disinterested umpire on a three-person appraisal panel to appraise the amount of the loss resulting from the destruction of the **NAME LOSS HERE**. This appraisal arises from the captioned litigation currently pending before **JUDGE** in the **NAME COURT**. We offer the following submission for your consideration.

By way of background, a dispute exists between the Insurers and Insureds with respect to the amount of the property damage, business personal property, and rental value/business interruption loss or losses sustained by the Insureds at the **LOCATION AND DATE OF LOSS**. The information presented to the appraisal panel may include, among other things, factual evidence adduced during discovery in the action and the reports and testimony of various real estate and construction professionals, economists, accountants, and other experts, who were retained by the Insureds or Insurers. The parties, counsel, and various potential witnesses in the appraisal proceeding, as well as parties and counsel in the underlying litigation, are identified in the attached Schedule ("Schedule").

We will serve on the appraisal panel as the appraisers who have been designated by the Insureds and Insurers. By agreement, both of us must participate in any communications with you. As such, please review the enclosures, and respond to both of us in a single writing or email, if at all possible within 10 days of the date of this letter, letting us know whether: (a) you are potentially interested in serving as the umpire, and (b) you have any known conflicts or relationships with any of the parties, witnesses, or counsel, and if you are aware of any reason that might prevent you from serving as a disinterested and competent umpire if chosen. If 10 days is not sufficient time to respond, or if this submission has reached you while you were out of town, please let us know nevertheless if you are interested and how quickly you anticipate you could respond. The parties will share the costs of your compensation and would appreciate your advising us of what compensation arrangements you would propose.

The appraisal sessions will be held in **LOCATION STATED HERE**. The timeframe and scheduling of these proceedings are subject to a number of variables that we would want to discuss with you. We recognize that you have a busy schedule, and we would welcome your guidance concerning your availability.

To facilitate distribution of information among counsel on both sides, it would be helpful if you could copy your responses to us to the indicated counsel for one of the insureds and one of the insurers, whose name, address, and email information follows at the end of this letter.

We very much appreciate your consideration of this important role, and we are available to jointly answer any additional questions if you are interested in pursuing this potential opportunity. In the meantime, please keep this submission confidential.

Very truly yours,

NAME: Appraiser for the Insureds
CONTACT INFORMATION HERE

With a copy to:

INSURED COUNSEL NAME
CONTACT INFORMATION HERE

NAME: Appraiser for the Insurers
CONTACT INFORMATION HERE

With a copy to:

INSURER COUNSEL NAME
CONTACT INFORMATION HERE

STATE OF _____

COUNTY OF _____

We, the undersigned, do solemnly swear that we will act with strict impartiality in making an appraisal and estimate of the values and loss upon the property hereinbefore mentioned, in accordance with the foregoing appointment, and that we will make a true, just, and conscientious award of the same, according to the best of our knowledge, skill, and judgment. We are not related to the assured, either as creditors or otherwise, and are not interested in said property or the insurance thereon.

(Appraiser)

Subscribed and sworn to before me this _____ day of _____
_____ 20 _____

(Appraiser)

(Notary Public)

SELECTION OF UMPIRE

We, the undersigned, hereby select and appoint _____ to act as umpire to settle matters of difference that shall exist between us, if any, by reason of and in compliance with the foregoing agreement and appointment.

Witness our hands this _____ day of _____ A.D., 20 _____.

(Appraiser)

(Appraiser)

QUALIFICATION OF UMPIRE

STATE OF _____

COUNTY OF _____

I, the undersigned, hereby accept the appointment of umpire, as provided in the foregoing agreement, and solemnly swear that I will act with strict impartiality in all matters of difference that shall be submitted to me in connection with the appointment, and I will make a true, just, and conscientious award, according to the best of my knowledge, skill, and judgment. I am not related to any of the parties of this agreement nor interested as a creditor or otherwise in said property or insurance.

(Umpire)

Subscribed and sworn to before me this _____ day of _____
_____ 20 _____

(Notary Public)

AWARD

ITEMIZED AWARDED VALUES SHOULD BE LISTED HERE.

Witness our hands this _____ day of _____ 20__

(Appraiser)

(Appraiser)

(Umpire)

VI. SAMPLE PROTOCOL FOR A COMPLEX CASE

IN THE MATTER OF THE APPRAISAL

Between

[NAME THE INSURED(S) HERE]

And

[NAME THE INSURER(S) HERE]

STIPULATION AND ORDER REGARDING LOSS APPRAISAL PROTOCOL

It is hereby stipulated and agreed by and between **[NAME INSURER(S)]** (Insurers) and **[NAMEINSURED]** (Insured) that the following Stipulation and Order (the "Protocol") will govern the appraisal proceedings regarding the amount of the loss sustained by the Insured as a result of a **[TYPE OF LOSS]** which occurred **[DATE OF LOSS BEING APPRAISED]** to property described in the following policy **[OR MULTIPLE POLICIES OF INSURANCE]** of insurance issued by the "Insurer(s)" to the "Insured."

[LIST INSURER(S) AND POLICY NUMBER(S) HERE]

All matters pertaining to this appraisal, which are not expressly addressed in this Protocol, are reserved for determination by the appraisers and, failing agreement of the appraisers, then by any one appraiser and the umpire.

I. SCOPE OF APPRAISAL

- A. The appraisers and, failing agreement of the appraisers, then any one appraiser and the umpire who agree, shall determine the following:

[NUMBER AND LIST THE ITEM(S) BEING APPRAISED HERE WITH SUFFICIENT SPECIFICITY TO ENSURE THAT THE APPRAISAL PANEL WILL DELIVER UNAMBIGUOUS AWARDS]

- B. Neither the appraisers nor the umpire shall have authority to decide questions of law. In connection with the appraisal proceeding, neither Insurers' appraiser, Insureds' appraiser, nor the umpire shall attempt to resolve any issue of insurance coverage, policy exclusions, compliance with the policy terms and conditions, or any issue concerning the limits of insurance available under the policy. A court having jurisdiction over this matter shall address all such issues.

II. THE PANEL

- A. The Insurer names **[NAME, ADDRESS, AND PHONE NO.]** to act as its appraiser.
- B. The Insurer names **[NAME, ADDRESS, AND PHONE NO.]** to act as its appraiser.
- C. The appraisers agree to **[NAME, ADDRESS, AND PHONE NO.]** to act as umpire.
- D. The Parties agree and accept without objection or reservation that **[NAME UMPIRE]** is "competent and disinterested" as the term is generally understood in insurance policies providing for appraisal, that he or she has experience with determining values of the nature presented by

the appraisal and has no financial interest in the outcome and has no disqualifying conflicts of interest.

- E. To the maximum extent permitted by law, no party will assert any claims against **[NAME APPRAISERS AND UMPIRE]**, or their respective firms, seeking to hold them or their firms liable for any act or omission in the performance of their duties as umpire or appraiser

III. DISCOVERY (THIS SECTION MAY VARY DEPENDING ON THE SITUATION, ALTHOUGH IN COMPLEX OR LITIGATED MATTERS, THE FOLLOWING LANGUAGE IS PREFERRED.)

- A. The parties agree that the claims previously submitted prior to this Protocol, together with any reports of experts, will be provided to the appraisal panel within 10 days of the execution of this agreement.
- B. Neither the insured nor the insurer can provide any new opinions of value at any point during the appraisal process.
- C. Any discovery disputes regarding issues to be addressed in the appraisal shall be resolved by the panel.

IV. DIRECTION BY THE COURT

- A. Questions of law and coverage issues shall be resolved by motions filed with the Court having jurisdiction over this matter.
- B. The appraisers shall meet to identify any questions of law or coverage issues that are in dispute and require resolution by the Court. Failing to agree on which issues should be presented to the Court for direction, the appraisers shall meet with the umpire, and the panel shall determine the most efficient process for addressing such disputed issues and to evaluate the need for direction from the District Court on specific issues. The panel may consider the argument of counsel if it believes that argument would be beneficial to its decision regarding submission of issues to the District Court.

V. APPRAISAL PROCEEDING

- A. The appraisers shall meet to attempt in good faith to resolve any disputes or differences and to narrow the disputes and differences that must be addressed in the proceedings before the umpire. If they agree, their agreement shall be noted as the result of the appraisal on that issue. By agreement of both appraisers, or at any time either appraiser decides that further discussions between the appraisers concerning their disputes and differences are no longer beneficial, the appraisers, or either appraiser, may demand participation of the umpire.
- B. The appraisers shall keep a complete written record of the disputes and materials submitted to the umpire and shall provide the parties with a copy of such record at the time any dispute is submitted to the umpire.
- C. All communications between the appraisers and the umpire concerning any disputed item shall be recorded in a manner agreed to by the panel. The cost of that recording shall be divided equally between Appraising Insurers and the policyholders.
- D. It shall be for the Panel to decide on the procedures to be used to resolve any item in dispute that the appraisers present to the umpire. The procedures available to the Panel to obtain information and decide an item in dispute shall include, but not be limited to, conducting a contested evidentiary hearing.

E. If there is a contested evidentiary hearing, it shall be a trial format with live testimony or deposition testimony to the extent it would be permissible under the Federal Rules of Civil Procedure.

1. The panel is relieved of all judicial formalities and may abstain from following the strict rules of evidence and civil procedure.
2. The proceeding shall be recorded in a manner agreed to by the parties.
3. Time limits may be set by the panel.
4. The policyholder will present their case first, followed by the Insurer(s). Rebuttal, if any, will be determined by the panel.
5. Each party may present an opening statement.
6. Witness testimony in the event of a contested evidentiary hearing.

Questioning of each witness shall be as follows:

- i. Direct examination.
 - ii. Cross-examination.
 - iii. Re-direct examination.
 - iv. Party appraiser questions.
 - v. Opposing party appraiser questions.
 - vi. Umpire questions.
7. Subpoenas for the attendance of any testifying witness at the proceeding before the umpire shall be issued pursuant to order of the District Court.
 8. Each party may be permitted a closing argument.
 9. Phased proceedings before the umpire **(THIS OBVIOUSLY DEPENDS ON THE FACTS OF THE CASE) EXAMPLE:**
 - i. Replacement Cost Loss.
 - ii. Period of Restoration.
 - iii. Loss Sustained to Personal Property.
 - iv. Business Interruption Loss.
 10. The proceedings before the umpire on each phase will be heard and decided prior to the commencement of the subsequent phase. If the panel determines that it would be advantageous to divide any of the three phases into subphases, it may do so.

VI. COMMUNICATIONS WITH PARTY APPRAISER AND UMPIRE

- A. Neither the Insurer, the Insured, nor their respective counsel shall have any *ex parte* communication with the umpire or with the other party's appraiser. The appraisers shall not have any *ex parte* communications with the umpire. Appraising Insurers and their representatives may communicate *ex parte* with Appraising Insurers' appraiser, and the policyholders and their representatives may communicate *ex parte* with the policyholders' appraiser.

VII. APPRAISAL EXPENSES

- A. One-half of the umpire's compensation shall be paid by the policyholders and one-half paid by the Appraising Insurers.
- B. The policyholders shall pay all the compensation of their appraiser, and the Appraising Insurers shall pay all the compensation of their appraiser.
- C. The expenses of appraisal shall be paid one-half by the policyholders and one-half by the Appraising Insurers.
- D. Each party shall pay its own costs incurred to prepare for or present its case at the proceeding.

VIII. VENUE FOR PROCEEDINGS BEFORE THE UMPIRE

- A. To be determined by the appraisal panel.

IX. DEFINITIONS

- A. Replacement Cost Loss – The cost to replace the building and/or contents as it existed at the date and time of loss, assuming material of like kind and quality.
1. Replacement Cost shall include an appropriate allowance for demolition and debris removal.
- B. Period of Restoration – Assuming due diligence and dispatch, the necessary time, beginning from the date of loss to repair or replace the property as it existed prior to the loss.
1. The Period of Restoration does not include the elapsed time between the date of loss and the appraisal. Disputes regarding any issue of delay caused by the acts of the parties, or adjustment of the claim, shall be left for adjudication by the District Court.

X. COURT ORDER

- A. The parties shall request that this Protocol be entered as an order of the Court, binding on all parties to the litigation.

SIGNATURES

Date: _____, 20

By: _____
Policyholder or Authorized Signatory

Date: _____, 20

By: _____
Insurer Authorized Signatory

Date: _____, 20

By: _____
Policyholders' Appraiser

Date: _____, 20

By: _____
Insurers' Appraiser

Date: _____, 20

By: _____
Umpire

IT IS SO ORDERED:

SIGNED this _____ day of _____, 20__.

JUDGE



This publication is for educational and general information purposes only. It may contain errors and is provided as is. It is not intended as specific advice, legal or otherwise. Opinions and views are not necessarily those of J.S. Held or its affiliates and it should not be presumed that J.S. Held subscribes to any particular method, interpretation or analysis merely because it appears in this publication. We disclaim any representation and/or warranty regarding the accuracy, timeliness, quality, or applicability of any of the contents. You should not act, or fail to act, in reliance on this publication and we disclaim all liability in respect to such actions or failure to act. We assume no responsibility for information contained in this publication and disclaim all liability and damages in respect to such information. This publication is not a substitute for competent legal advice. The content herein may be updated or otherwise modified without notice.