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Federal District Court Declines Invitation to Set Scope of Appraisal

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In *Mt. Hawley Ins. Co. v. Harrods Eastbelt, Ltd.*, No. CV H-20-2405, 2020 WL 7632250 (S.D. Tex. Dec. 22, 2020), the United States District Court for the Southern District of Texas addressed a request to set the scope of an appraisal by requiring the appraisers to use a specific format for the appraisal. At issue was a claim for damages to three insured buildings allegedly damaged during Tropical Storm Imelda. The insurer had denied coverage based on the asserted lack of wind-created openings as required for coverage under the policy. Rather, the insurer took the position that the interior leaks were caused by a number of excluded causes including long-term weathering, wear and tear, age-related deterioration, ponding, and long-term leaks.

In response to the denial of coverage, the insured invoked the appraisal provision of the policy which provided, among other things, that the "appraisers will state separately the value of the property and amount of loss." Despite the language of the appraisal provision, the Insurer sought an order requiring the appraisers to state the amount of loss separately for each portion of the property in dispute and for each major building component including separate amounts of loss for roofs, exterior walls, windows, and interior water damage.

Referencing the Texas Supreme Court's prior stated emphasis on the propriety of avoiding judicial involvement pre-appraisal, the Court declined the Insurer's invitation to set the scope of the appraisal and held that the request was beyond the policy requirement that the appraisers "state separately the value of the property and amount of loss." While the Court did not forbid the appraisers from using any form which enabled them to "state separately the value of the property and the amount of loss", the Court refused to require any particular approach.

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