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Wisconsin Federal Court Addresses Scope Of Appraisal Provision In Rental Dwelling Policy

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In *Higgins v. State Farm Fire & Cas. Co.*, No. 22-C-198, 2022 U.S. Dist. LEXIS 117477 (E.D. Wis. July 5, 2022), the Court addressed the often disputed question of whether an appraisal provision in an insurance policy is limited to disputes over valuation or extends beyond valuation to causation and/or coverage. The underlying loss in the Higgins case involved a fire at a rental dwelling owned by the Plaintiff and insured by State Farm under a Rental Dwelling policy for, among other things, fire losses. Subsequent to being notified of the fire, State Farm investigated and provided the Plaintiff with its estimated cost of repair. Plaintiff disputed the estimate, including the repairs necessary, and also sought additional sums for debris removal and lost rent.

The insurance policy at issue in Higgins included an appraisal provision which provided: "If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal." Pursuant to this provision, Plaintiff demanded that State Farm submit to an appraisal to resolve the parties' disagreements. State Farm responded by indicating that it would enter into appraisal over the areas where there were "pricing differences" but not areas where there were "scope differences." According to State Farm, there were a number of issues regarding the scope of repairs necessary to restore the dwelling to its pre-loss condition. Plaintiff disagreed with State Farm's position and did not seek to move forward with the appraisal process on only the items State Farm identified as appropriate for appraisal.

In light of the dispute, Plaintiff initiated a declaratory judgment action against State Farm seeking a declarations that State Farm must participate in the appraisal process set forth in the insurance policy. The Higgins Court succinctly summarizes the parties positions as follows:

Plaintiffs assert that the term "amount of loss" in the appraisal provision includes determinations on the scope or extent of damage and the method of repair and that the matter should be sent to appraisal to resolve the parties' disputes regarding the scope of the damage. State Farm, on the other hand, contends that an appraiser does not have the authority to decide the scope or cause of the damage because, under the plain language of the policy, a claim can only be sent to appraisal when the parties have disagreements about the pricing or valuation of an item.

In denying the Plaintiff's request, the Court held that under the plain language of the policy at issue, the appraisal process is limited to circumstances where the insurer and insured disagree as to the "amount of loss," or the valuation of loss, not the scope or extent of damage and the method of repair. According to the Court, allowing an appraiser to determine issues of causation and the scope of damages would impermissibly result in the appraiser deciding whether certain damage is covered under the policy. Correspondingly, the Court concluded that the appraisal provision was limited to disputes over valuation, not causation or coverage, and refused to compel State Farm's participation in appraisal.

It is sometimes difficult to cleanly differentiate between valuation and scope issues when considering whether appraisal is appropriate. Nevertheless, the Higgins case is a reminder that consideration of such issues is an important step in assessing appraisal demands.