DOLDEN WALLACE FOLICK LLP

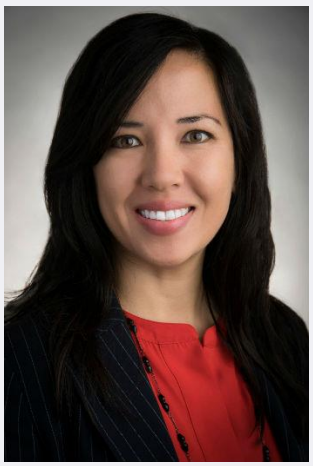
October 11, 2018

INSURE UPDATES

IN THIS ISSUE

Contents

Mandatory Appraisals in Property Loss Claims



18th FLOOR – 609 GRANVILLE ST
VANCOUVER, BC V7Y 1G5
Tel: 604.689.3222
Fax: 604.689.3777
E-mail: info@dolden.com

302-590 KLO RD,
KELOWNA, BC V1Y 7S2
Tel: 1.855.980.5580
Fax: 1.250.800.8761
E-mail: info@dolden.com

850 – 355 4th AVE SW
CALGARY, AB T2P 0H9
Tel: 1.587.480.4000
Fax: 1.587.475.2083
E-mail: info@dolden.com

14th FLOOR – 20 ADELAIDE ST E
TORONTO, ON M5C 2T6
Tel: 1.416.360.8331
Fax: 1.416.360.0146
Toll Free:1.855.360.8331
E-mail: info@dolden.com

Mandatory Appraisals in Property Loss Claims

By Christine Galea, DWF Toronto,
Email: cgalea@dolden.com

When parties to a property loss claim cannot agree on the value of the insured property or the amount of loss, the *Insurance Act* in Ontario provides that these questions shall be determined by appraisal.

Gerry Gill, of DWF's Toronto office, successfully argued in *S.H.W. Investment Inc. et al. v. Lloyd's Underwriters*,[1] ("*S.H.W. Investment*"), that the appraisal process is mandatory where parties are in disagreement.

In S.H.W. Investment, the court held that the right to an appraisal arises upon the specific demand in writing and only after the proof of loss has been delivered. This is pursuant to Statutory Condition 11, which must be contained in each insurance contract in accordance with section 148 of the *Insurance Act*.

In S*.H.W. Investment,* three residential properties owned by the plaintiffs were destroyed by fire. The insurer informed the plaintiffs that only two of those properties had coverage under the commercial insurance policy. The plaintiff disputed the value of the two properties determined by the insurer and refused to resolve those claims separately from the third property.

[1] 2018 ONSC 5697

The plaintiffs subsequently commenced an action against the insurer for their property loss claims for all three properties. The insurer elected to resolve the dispute through the mandated appraisal process. However, the plaintiffs refused to appoint an appraiser on their behalf, resulting in the subject application.

Once the appraisal process is invoked by the insurer or insured, section 128 of the *Insurance Act* provides that each party shall appoint an appraiser, and the two appointed appraisers shall appoint an umpire. If the appraisers are unable to determine the matters in disagreement and fail to agree, their differences are submitted to the umpire for determination.

The court also has jurisdiction to appoint an appraiser and/or an umpire where a party refuses to do so or where the appraisers fail to agree, respectively. The appraisal process is intended to be a "*final and binding determination of the loss*" and there is no right to recover without an appraisal.

In rejecting the plaintiffs' arguments in opposition of the appraisal process, the court confirmed that neither the *Insurance Act*, nor the policy in this case, provides for any time limit within which an election for the appraisal process must be made. Unless prejudice can be proved, delay in invoking the appraisal is not a factor. Furthermore, the coverage dispute for the third property had no impact on the mandatory appraisal process for the two properties that were covered under the policy.

The plaintiffs were ultimately ordered to appoint an appraiser within a specified timeline. As the insurer was successful in the application, it was awarded costs.

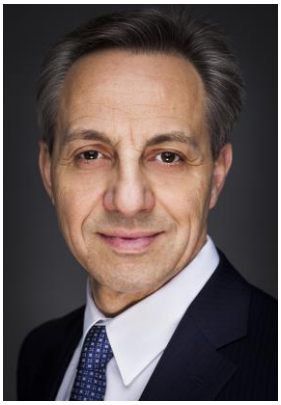
Take Away

Insurers can rest assured that once they have elected to invoke the appraisal process in a property loss dispute, the court will likely uphold that decision. An exception may be made where actual prejudice to the insured can be proved.

CONTRIBUTING AUTHOR

Christine Galea
Tel: 647.798.0614
Email: cgalea@dolden.com

EDITOR



Chris Stribopoulos
Tel: 647.798.0605
Email: cstribopoulos@dolden.com

Please contact the editor if you would like others in your organization to receive this publication.