

PLRB/LIRB Claims Conference

SAMPLE TIMED OUTLINE

Appraisal Demand? Now What?

Learning Objectives: Appraisal of the "amount of loss" is supposed to be a simple, inexpensive means of resolving disputes over the amount of covered loss or damage only. In practice, however, the insured's representatives often utilize the appraisal process to avoid application of policy conditions, decide coverage issues and expand the appraisal award beyond the compensable "amount of loss." This presentation will identify current problem areas and will offer strategies and techniques to assist the insurer in confining the appraisal award to the "amount of loss." At the end of the session, attendees will be equipped to:

- A. Determine when a dispute is ripe for appraisal;
- B. Identify and address coverage and policy condition issues which are outside the scope of appraisal; and
- C. Manage the appraisal process.

CONTENT:

- I. **Introduction** **10 minutes**
 - A. **Appraisal Requirement**
 1. What is purpose of Appraisal?
 - a. Efficient and inexpensive method of determining amount of loss to property
 - b. Not to decide legal or coverage issues
 - B. **Statutory Requirements v. Policy forms**
 1. Examples of differences between statutory language and policy forms
 - a. 165 lines
 - b. Modified state statute
 - c. ISO policy form
 2. Which prevail?
- II. **Participants in Appraisal** **15 minutes**
 - A. **Qualifications of Appraisers and Umpire**
 1. Dependent on statutory and policy language
 2. Who is competent?
 3. Independent?

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4. Disinterested?
5. Impartial?

B. The Policyholder's Appraiser

1. Public adjusters
2. Contractors
3. Objections to policyholder's choice
 - a. Interest in proceeds or appraisal result

C. The Insurer's Appraiser

1. Selection of the Company appraiser
 - a. Criteria for consideration
 - b. Independent Adjuster
 - c. Building Consultants
 - d. Accountants
 - e. Attorneys

D. The Umpire

1. Interview and selection of an umpire
2. Who should conduct the interview?
 - a. Qualifications
 - b. Relationship to parties
 - c. Petition to court for appointment of Umpire
 - i. Risks of petition to court
 - ii. Requests for scheduling orders
 - iii. Judicial oversight of appraisal process

E. Role of Consultants

1. Forensic experts and consultants
2. Attorneys and submission of legal memorandum by counsel during the appraisal process

III. Appraisal Process

25 minutes

A. Timing of Appraisal

1. When is the claim ready for appraisal?
2. Does policy typically mandate appraisal at any particular time in the claim process?
3. Satisfaction of the policy conditions and resolution of coverage issues prior to appraisal

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- a. Production of documents
- b. Presentment of claim, including Proof of Loss
- c. Use of Examinations Under Oath before and during the appraisal process
4. Premature demand for appraisal by policyholder
 - a) Reasons for premature demand
 - b) Strategies for response to premature demand

B. Pre-Appraisal Coverage Issues

1. Defining the scope of appraisal
 - a. Method of repair and amount of loss
 - b. Rejection by policyholder's appraiser of a proposed memorandum of appraisal
2. Reservation of Rights letters
 - a. Unilaterally defining scope of appraisal
 - b. Identification of potential coverage issues
 - c. Right to deny claim after appraisal

C. Appraisal Determination

1. What disputes are submitted to appraisal?
2. Differences in amount of loss
3. Actual cash value
4. Amount of loss
5. Value of property
6. Itemization of Damages

D. Form of Award

1. Draft award form to specify issues to be addressed
 - a. Guide for appraisers
 - b. Evidential guideline for court if appraisal award is contested
 - c. Preservation of coverage issues
 - d. Application of deductibles
 - e. Consideration of prior payments
 - f. Subject to terms and conditions of policy

IV. Common Coverage Issues Which Arise During The Appraisal Process – 35 minutes

A. Application of Policy Provisions

1. Ordinance and Law

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- a. Part of replacement cost itemization
2. Period of Restoration – is this a coverage issue? Amount of loss? Or both?
 - a. Examine the measure of period of restoration
3. Circumstances where coverage issues or non-covered events impact period of restoration
 - a. Policyholder's modifications to building during replacement which extend time of construction
4. Causation
 - a. Determination of direct physical loss or damage from Covered Cause of Loss
 - i. Who determines "scope" of damage? Court or Appraisal Panel?
 - ii. Matching or "appearance" issues
 - iii. Case Study – *State Farm Lloyds v. Johnson*, 52 Tex. Sup. Ct. J. 1042, 290 S.W.3d 886 (2009)

B. Unanticipated Coverage Issues that Arise During Appraisal

1. Strategies for addressing coverage issues that arise during the course of appraisal
2. Use of Declaratory Relief actions
 - a. Timing
 - b. Substance
 - c. Requests to court for instructions to appraisal panel

V. Conclusion

5 minutes

Total session scheduled time -

90 minutes