

HAVING IT BOTH WAYS

by POA

Sometimes, things just work out the way they should. This is one of those times.

The Court of Appeals in Dallas, Texas, could have allowed State Farm to have it both ways but refused.

First, the facts

Every homeowners policy has in it a clause called the "Appraisal Process". Basically, Appraisal is an alternative to litigation and it's not anything like a real estate appraisal.

Either party (homeowner and/or the insurance company) can demand Appraisal if the VALUE or AMOUNT OF THE LOSS (including EXTENT OF THE DAMAGES) is being disputed. The Appraisal option cannot decide if a claim is covered or not – it only addresses AMOUNT OF THE LOSS and/or EXTENT OF THE DAMAGES.

If either party (homeowner and/or insurer) demands the Appraisal, the other must do it. And, whatever value is decided, is binding unless one or more of the following happens during the process: fraud, mistake or the appointment of a biased, not independent appraiser is made. (POA

believes that Oklahoma is the only State that has rejected the Appraisal award as binding.)

Appraisal can only address things within the four corners of the policy like structure, contents and additional living expenses. It does not address things like personal injuries resulting from breach of contract, punitive damages, etc... Appraisal is often less costly and much faster than litigation.

In many cases, POA encourages members to demand the Appraisal Process.

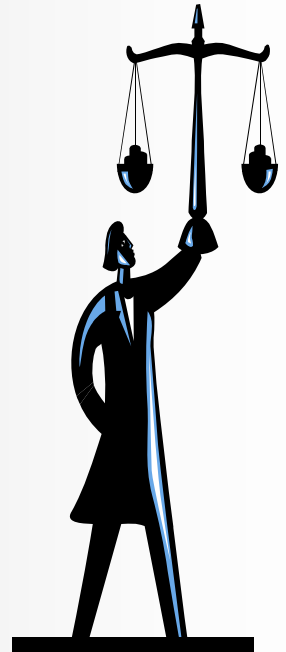
Enter homeowner, Becky Ann Johnson. A hail storm damaged her roof and she filed a claim with State Farm. Becky's deductible was about \$500. State Farm conveniently said that only a few shingles needed to be replaced and estimated the repairs to cost about \$499. Becky's roofing contractor said the repairs would require the entire roof to be replaced and cost thousands more. Becky decides she's had enough of State Farm's lowballing tactics and demands the Appraisal Process.

State Farm refused to participate in Appraisal, even though the homeowner's policy issued by State

Farm to Becky reads as follows:

Appraisal. *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. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.*

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Becky asks a court to issue a ruling as to whether or not State Farm must participate in the Appraisal she demanded. The court sided with State Farm so Becky appealed this ruling and took the matter to the Court of Appeals in Dallas.

Becky kicked butt and sent State Farm off to cry in their beers.

Becky's position

She contends this appraisal clause requires State Farm to submit to the appraisal process because **their dispute concerns the amount of loss sustained as a result of hail damage, not whether the hail damage was covered by the policy.** Johnson argues that "the amount of loss" includes a dispute over the extent of the damage as well as a determination of what it will cost to fix the damage.

State Farm's position

State Farm believes it does not have to submit to the appraisal process unless the parties first agree on causation, coverage, and liability. It contends it is not required to submit to an appraisal in this case because whether the hail damaged only the ridgeline of

the roof, as State Farm contends, or the entire roof, as Johnson contends, is a causation, coverage, and liability issue not an issue concerning the amount of loss. State Farm contends that deciding the extent of the loss involves decisions about causation, coverage, and liability that cannot be made pursuant to the appraisal clause. According to State Farm's interpretation of the appraisal clause, Johnson and State Farm **must first agree on which specific shingles were damaged and then, only if there is a dispute over the cost to repair those specific shingles,** Johnson may compel State Farm to submit to an appraisal. It further contends that appraisal would only be appropriate if Johnson disputed State Farm's estimate for the repair of the ridgeline of the roof. Because Johnson disputed the extent of the loss, not the estimate for repair of the ridgeline, State Farm contends that the dispute is about coverage and she has not shown she is entitled to appraisal. In summary, State Farm argues "amount of loss" cannot be interpreted to include the extent of loss.

Appeals Court sides with Becky

The Appeals Court correctly concluded this dispute over the extent of the damage to the roof from hail is a dispute concerning the amount of loss. As a result, Johnson can compel State Farm to submit to the appraisal process under the policy's appraisal clause. [Framan, 514 S.W.2d at 346](#) (insured has right to rely on plain language of policy providing for appraisal upon written demand by either party). The trial court erred by granting State Farm's motion for summary judgment and denying Becky's motion. Accordingly, we reverse the judgment of the trial court granting summary judgment in favor of State Farm and render judgment granting Johnson's motion to compel State Farm to submit to the appraisal process. We remand the issue of Johnson's attorney's fees to the trial court for consideration.

In many cases when the Appraisal award is woefully low, State Farm argues that the Appraisal must be enforced. Seems that they learned they can't have their cake and eat it too.

This and other opinions are archived on POA's website.

