

APPELLATE COURT CASE NO. A11-1145

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**State of Minnesota
In Supreme Court**

AUTO-OWNERS INSURANCE COMPANY,

Appellant,

vs.

SECOND CHANCE INVESTMENTS, LLC,

Respondent.

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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ISSUE PRESENTED

Do the parties to a fire insurance policy have a statutory and contractual right to have an appraisal panel decide a dispute regarding whether a claim involves a total loss?

Yes. Whether a total loss has occurred is subject to resolution by appraisal because it involves the determination of facts regarding the nature, extent, and amount of loss.

However, upon Appellant's Motion to Compel Appraisal of this issue, the district court ruled, and the Court of Appeals affirmed, that the determination of total loss must be made by a finder of fact in district court.
(Add-1-15.)

This Court granted review of the decision by the Court of Appeals denying the right to have the total loss issue decided by an appraisal panel.
(App – 4.)

Apposite Cases:

Gouin v. Northwestern Nat. Ins. Co. of Milwaukee, 259 P. 387 (Wash. 1927).

Lee v. Hamilton Fire Ins. Co., 251 N.Y. 230 (1929)

Quade v. Secura Ins., --- N.W.2d ----, 2012 WL 2121235 (Minn. 2012)

Williamson v. Liverpool & London & Globe Ins. Co., 122 F. 59 (8th Cir. 1903)

Apposite Statutes:

Minn. Stat. § 65A.01, subd. 3

STATEMENT OF THE CASE

Auto-Owners (“Appellant”) commenced an action in Hennepin County district court to compel Second Chance (“Respondent”) to submit all issues regarding the amount of the loss to the appraisal panel which would include the disputed claim that the structure was a total loss.

Appellant moved the district court, the Honorable Robert A. Blaeser, for an order compelling Respondent to submit all issues regarding the amount of the loss, including the issue of the claimed total loss, to the appraisal panel for determination. The district court denied the motion of Appellant and entered judgment in favor of Respondent dismissing Appellant’s Complaint.

The Court of Appeals affirmed the district court’s decision and held that the total loss determination is beyond the scope of an appraisal panel’s authority and further held that the district court is the appropriate forum to resolve the issue.

STATEMENT OF THE FACTS

The facts of this case are very simple and straight-forward. Respondent sustained a fire loss in November of 2008. The loss was covered by the policy of insurance issued by Auto-Owners, and payment was made for the undisputed amount. There was never any denial of coverage, nor any disputed issue relative to coverage. Auto-Owners fully admits that it is liable to pay proceeds under the policy for the fair and reasonable cost to repair the premises.

The only dispute involves the determination of the fair and reasonable amount of loss, including whether the loss is a total loss as claimed by Respondent.

When it became clear that Respondent and Appellant could not agree on the amount of loss, Appellant demanded appraisal pursuant to the terms and conditions of the policy. (*App-1.*) Respondent agreed to appraisal but did not agree to submit the issue of whether the building had sustained a total loss to the appraisal panel. (*App-2-3.*) Even though it is well-established that an appraisal panel decides factual questions to determine the amount of loss under the policy, Respondent claimed that the total loss issue should be decided in the district courts. *Id.*

SCOPE OF REVIEW

Appellant seeks review of the decision of the Court of Appeals, which affirmed the trial court's order denying Appellant's motion to compel Respondent to submit to appraisal the issue of whether the building sustained a total loss.

STANDARD OF REVIEW

The interpretation of an insurance policy and application of the facts are questions of law subject to *de novo* review. *QBE Insurance Corp. v. Twin Homes of French Ridge Homeowners Assn.*, 778 N.W.2d. 393, 397 (Minn. App. 2010). The interpretation of a statute is also a question of law subject to *de novo* review. *Hibbing Educ. Ass'n v. Pub. Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985).

ARGUMENT

- I. THE APPRAISAL PROVISION OF THE MINNESOTA STANDARD FIRE INSURANCE POLICY MANDATES THAT AN APPRAISAL PANEL DETERMINES WHETHER THERE HAS BEEN A TOTAL LOSS TO A STRUCTURE UPON DEMAND OF EITHER PARTY.

The appraisal provision of the Minnesota standard fire insurance policy states as follows:

In case the insured and this company, except in case of total loss on buildings, shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser The appraisers shall then appraise the loss, stating separately actual value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual value and loss.

Minn. Stat. § 65A.01, subd. 3; (*See also Relevant Policy Provisions, Add-23-25.*) We submit that the appraisal provision and the policy of insurance issued by Auto-Owners clearly and unambiguously provide that unless the loss to a building has been determined to be total, the amount of loss is to be determined by appraisal upon demand of either party. Contrary to the Court of Appeals' holding, the statutory language contained in the Minnesota standard fire insurance policy does not prohibit an appraisal panel from determining whether a total loss has occurred.

Instead, the appraisal provision prohibits an appraisal panel from determining the amount of loss when the loss has been determined to be

total. If the loss has been determined to be total, the valued policy law fixes the amount of loss at the entire amount of insurance written on the building—i.e., the policy limits. Minn. Stat. § 65A.08, subd. 2(a) (“ . . . the insurer shall pay the whole amount mentioned in the policy or renewal upon which it receives a premium, in case of total loss, and in case of partial loss, the full amount thereof”).

The touchstone for statutory interpretation is the plain meaning of a statute’s language. *ILHC of Eagan v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005). When interpreting a statute, a court must first determine whether the statute’s language, on its face, is ambiguous. *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). A statute is only ambiguous when its language is subject to more than one reasonable interpretation. *Id.* Where the legislature’s intent is clearly discernible from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute’s plain meaning. *Id.*

The language of the appraisal provision plainly states that appraisal determines the “amount of loss” upon demand of either party except “in case of total loss.” Minn. Stat. § 65A.01, subd. 3. The words “in case” are synonymous with the words “if” and “in the event.” BLACK’S LAW DICTIONARY 685 (5th ed. 1979)(reproduced at *Add-41*.) As explained above, appraisal does not determine the amount of loss in the event a total loss has occurred because the insurer’s liability is fixed by statute to be the entire amount of

insurance written on the building. Minn. Stat. § 65A.08, subd. 2(a). But when there has been no determination that a total loss occurred, the statute provides for appraisal, upon demand of either party, to determine the amount of loss, including whether the loss is total or partial.

With respect to insurance, the “amount of loss” means

the diminution, destruction, or defeat of the value of, or of the charge upon, the insured subject to the assured, by the direct consequence of the operation of the risk insured against, according to its value in the policy, or in contribution for loss, so far as its value is covered by the insurance.

BLACK’S LAW DICTIONARY 77 (5th ed. 1979)(reproduced at *Add-38*.) In *Quade v. Secura Insurance*, this Court recently held that “an appraiser’s assessment of the ‘amount of loss’ necessarily includes a determination of the cause of the loss, and the amount it would cost to repair that loss.” --- N.W. ----, 2012 WL 2121235, *3 (Minn. 2012). Certainly, an appraiser’s assessment of the “amount of loss” also necessarily includes determining whether the loss is total or partial, which involves nothing more than determining the degree of destruction and deciding the extent and scope of the loss.

Whether a loss is total or partial is a factual question with respect to the amount of loss because it involves the determination of the nature, extent and scope of the loss. See *Poppitz v. German Ins. Co.*, 85 Minn. 118, 118, 88 N.W. 438, 439 (Minn. 1901) (defining total loss as when the insured building has been “so far destroyed by the fire that no substantial portion or part thereof above the foundation remained in place capable of being utilized in

restoring the building to the condition in which it was before the fire”); *Northwestern Life Ins. Co. v. Rochester German Ins. Co.*, 85 Minn. 48, 62, 88 N.W. 265, 270-71 (Minn. 1901) (noting that “[w]here the line is to be drawn between [a partial and total loss] is, in each particular case, a question of fact”). This Court has long held, and recently affirmed, that an appraisal board has broad authority to determine factual questions regarding the scope or extent of the loss. *Itasca Paper Co. v. Niagra Fire Ins. Co.*, 175 Minn. 73, 77-78, 220 N.W. 425, 427 (Minn. 1928) (noting that “appraisers must determine many matters other than the mere value of specific property produced before them for examination and appraisal. They must determine the quantity of property covered [sic] by the policy and on hand at the time of the fire, the quantity destroyed”); *Quade*, 2012 WL 2121235 at *4.

The Court of Appeals’ holding that the total loss issue is outside the scope of an appraisal panel’s authority is contrary to the well-established rule that appraisers are granted broad authority to decide the extent and scope of the loss. See *Itasca Paper Co.*, 175 Minn. at 77-78, 220 N.W. at 427; See *Quade*, 2012 WL 2121235 at *4. Moreover, the Court of Appeals’ holding requiring that district courts decide whether a total loss has occurred nullifies the statute’s plain mandate that appraisers determine factual questions regarding the amount of loss. Such an interpretation of the statute is contrary to the statute’s plain meaning. See *American Tower*, 636 N.W.2d at 313 (an

interpretation that nullifies a provision of the statute is contrary to the statute's plain meaning).

The language of the appraisal provision does not say that appraisal is unavailable "except where one party alleges that there has been a total loss." Nor does the provision say that appraisal is unavailable "except where there is a dispute as to whether a total loss has occurred." Instead, the language mandates that appraisal is available to either party "except in case of total loss." Thus, appraisal is available unless the loss has been determined to be total.

When there has been no determination that a total loss to the building occurred, as in this case, the parties to a fire insurance policy are entitled to an appraisal proceeding to determine whether there has been a total or partial loss. The legislature's intent that an appraisal panel determines whether a total loss has occurred is easily discernible from the plain and unambiguous language of the statute. Thus, the decision of the Court of Appeals must be reversed.

II. THE PURPOSE OF THE MINNESOTA STANDARD FIRE INSURANCE POLICY AND ITS APPRAISAL PROVISION MANDATE THAT AN APPRAISAL PANEL DETERMINES WHETHER THERE HAS BEEN A TOTAL LOSS UPON DEMAND OF EITHER PARTY.

If the Court determines that the appraisal provision is reasonably subject to more than one interpretation, the rules of statutory construction compel the conclusion that an appraisal panel determines whether a total loss

has occurred upon demand of either party.

If the meaning of statutory language is not plain, courts resolve the ambiguity by reference to legislative intent and principles of continuity which include consistency with laws on the same or similar subjects. *Occhino v. Grover*, 640 N.W.2d 357, 360 (Minn. App. 2002). In addition, although plain meaning is the governing principle in applying all statutory language, Minnesota courts will not give effect to plain meaning if it produces an absurd result that is plainly at variance with the policy of the legislation as a whole. *Id.*

The appraisal provision is remedial in nature and entitled to a liberal construction in favor of the remedy it provides, which is a quick, just, and inexpensive appraisal proceeding. See *Minnesota Farmers Mut. Ins. Co. v. Smart*, 204 Minn. 101, 106, 282 N.W. 658, 661 (Minn. 1938); See also *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 232 (Minn. 2010) (noting that remedial statutes are generally entitled to liberal construction in favor of the remedy they provide). As this Court recently recognized, “Minnesota has mandated appraisal clauses in fire insurance policies since 1885,” and “[l]ike provisions have been included in property casualty policies for over 100 years to provide ‘the plain, speedy, inexpensive and just determination of the extent of the loss.’” *Quade*, 2012 WL 2121235 at *4 (quoting *Kavli v. Eagle Star Ins. Co.*, 206 Minn. 360, 364, 288 N.W. 723, 725 (1939)).

The appraisal proceeding and the broad authority delegated to

appraisers provides parties with a plain, speedy, inexpensive and just determination of factual questions related to the nature, extent, and scope of the loss. See *Kavli*, 206 Minn. at 364, 288 N.W. at 723; See *Itasca Paper Co.*, 175 Minn. at 77-78, 220 N.W. at 427; See *Northwestern Life Ins. Co.*, 85 Minn. at 62, 88 N.W. at 270-71. Understood in this context, once the appraisal process is invoked by either party and there is a dispute as to whether a total loss has occurred, the appraisal panel necessarily proceeds to determine the disputed factual question of whether there has been a total or partial loss.

If the Court concludes that the language of the appraisal provision is reasonably subject to further interpretation, the Court must “construe the statute in accordance with the probable intent of the legislature.” *Glen Paul Court Neighborhood Ass'n v. Paster*, 437 N.W.2d 52, 56 (Minn. 1989) (noting that where the language is ambiguous and two interpretations are possible, the court’s role is to construe the statute according to the probable intent of the legislature). Moreover, “[s]ections of the statute should be construed together, giving the words their plain meaning.” *Id.*

An analysis of the same language contained in Minnesota Statute Section 65A.01, subdivision 5 and Minnesota Statute Section 65A.08, subdivision 2(a) illustrates that Respondent’s interpretation of the provision violates the legislature’s intent.

Section 1, subdivision 5 provides as follows:

Subd. 5. Provision prohibited, total loss; limiting amount to be paid. No provision shall be attached to or included in such policy limiting the amount to be paid *in case of total loss* on buildings by fire, lightning or other hazard to less than the amount of insurance on the same.

Minn. Stat. § 65A.01, subd. 5 (italicized emphasis supplied). Section 8, subdivision 2(a) likewise provides as follows:

Subd. 2. Amount collectible. (a) In the absence of any change increasing the risk, without the consent of the insurer, of which the burden of proof shall be upon it, and in the absence of intentional fraud on the part of the insured, the insurer shall pay the whole amount mentioned in the policy or renewal upon which it receives a premium, *in case of total loss*, and in case of partial loss, the full amount thereof.

Minn. Stat. § 65A.08, subd. 2(a) (italicized emphasis supplied).

If the words “where one party alleges that there has been a total loss” or “where there is a dispute as to whether a total loss has occurred” are substituted in place of “in case of total loss,” these statutes mandate that fire insurers pay the policy limits where the insured alleges that there has been a total loss or where the parties dispute whether there has been a total loss.

However, total loss must be established before these statutes apply. This is a case involving an allegation of total loss, which is in dispute. Clearly, an insurer is not required to pay the policy limits upon the mere allegation that a total loss occurred. Nor is an insurer required to pay the policy limits where there is a dispute regarding whether a total loss occurred. Such a result is

absurd and unreasonable, and Minnesota courts will not give effect to the meaning of a statute which produces an absurd or unreasonable result and is plainly at variance with the policy of the legislation as whole. *Occhino*, 640 N.W.2d at 360. Therefore, the language “except in case of total loss” must mean—and can only mean—that the loss has been determined to be a total loss.

III. APPRAISAL PANELS ARE AUTHORIZED TO DETERMINE WHETHER A TOTAL LOSS HAS OCCURRED.

The Court of Appeals held that the determination of whether a total loss occurred “is beyond the scope of an appraisal . . . [b]ecause the determination of whether a total loss occurred requires interpretation and application of common-law legal standards that are broader than loss valuation.” *Auto-Owners Insurance Company v. Second Chance Investments, LLC*, 812 N.W.2d 194, 200-01 (Minn. App. 2012) *rev. granted* (Minn. May 30, 2012). The Court of Appeals also held that total loss may not be submitted to an appraisal panel for determination because “[t]he statutory appraisal procedure and the appraisers’ authority to compute damages are inconsistent with the common-law total-loss standard.” *Id.* at 200.

The reasoning behind these holdings cannot withstand scrutiny. First, as explained above, nothing in the language or purpose of the appraisal provision of the Minnesota standard fire insurance policy prohibits an appraisal panel from determining whether a total loss occurred. See Sections

I and II.

Second, there is no valid reason for the conclusion that appraisers are without the authority to consider and apply the common law standard for determining whether a total loss has occurred. At every appraisal there exists a framework by which appraisers determine the issues presented by the parties in arriving at the amount of loss. These issues often require that appraisers interpret the policy and apply the law to the facts. As recently noted by this Court, appraisers are given broad authority to decide disputes regarding the amount of loss and do much more than simply compute damages:

[T]he appraisers must determine many matters other than the mere value of specific property produced before them for examination and appraisal. They must determine the quantity of property covered by the policy ..., the quantity destroyed, the quantity damaged, whether the damage resulted from causes covered by the policy or from other causes not covered thereby, and various other questions, both of law and fact, upon which the parties may differ.

Quade, 2012 WL at *4 (citing *Am. Cent. Ins. Co. v. Dist. Court*, 125 Minn. 374, 378, 147 N.W. 242, 244 (1914)). Merely because “total loss” has a specialized definition in the law and the insurance industry does not render an appraisal panel without authority to determine whether a total loss has occurred. Certainly “actual cash value” has a specialized definition, and it is undisputed appraisers have the authority to decide factual questions with respect to that issue. (See Relevant Policy Provisions, *Add-21*); *Auto-*

Owners, 812 N.W.2d at 201.

Finally, there is no valid justification for the conclusion that whether a total loss has occurred should be decided only by a jury in district court. This Court recognized as early as 1901 that the Minnesota standard fire insurance policy “contemplate[s] and provide[s] for” an appraisal panel “to be made up of disinterested and impartial men chosen for their ability and fairness,” which serves as a “quasi-court” to decide “disagreements between the insurer and insured as to the loss and damage sustained at a fire.” *Christianson v. Norwich Union Fire Ins. Co.*, 84 Minn. 526, 526, 530 88 N.W. 16, 16 (1901).

The determination that a loss is total is routinely made in the claims adjustment process. Insurance industry professionals retained by the insured and the insurer often analyze whether a total loss occurred. An appraisal panel is often made up of contractors, attorneys specializing in the field, retired judges, and claims adjusters who are carefully selected by both parties. Certainly, such an experienced and qualified appraisal panel has the ability to make a just determination of whether a total loss occurred. The fact that “total loss” is defined by courts should be of no consequence under these circumstances. Appellant does not suggest that the appraisal panel define “total loss,” merely that they apply the well-known and longstanding definition to the facts of this case, as any fact-finder would.

IV. CASE LAW SUPPORTS THE PUBLIC POLICY AND THE LEGISLATURE'S INTENT OF HAVING AN APPRAISAL PANEL DETERMINE WHETHER A TOTAL LOSS HAS OCCURRED.

There is no authority in Minnesota directly on point with the issue presented to this Court. However, cases from other jurisdictions have decided the issue. In *Gouin v. Northwestern Nat. Ins. Co. of Milwaukee Wis.*, 259 P. 387 (Wash. 1927), the parties disagreed whether a fire loss to the insured's home was total or partial. The dispute was submitted to appraisal, and the panel found that the loss was partial and awarded less than the entire amount of insurance on the home. The insured sought to vacate the award on the basis that appraisal was inappropriate due to the Washington valued policy law. The Washington Supreme Court disagreed and held as follows:

The next contention is, if we understand the appellant, that because he at all times claimed a total loss, and his evidence tended to show a total loss, there was no room for an appraisal, since the statute in such cases fixes the amount of the insurance as the measure of the loss. But the contention is not tenable. The insurance company was as much entitled to dispute his claim of total loss as it would have been entitled to dispute his claim had he claimed less than a total loss. The company could therefore plead as a defense to his action the plea it did interpose; namely, that the question as to the amount of the loss had been submitted to a tribunal agreed upon between them to determine the question, and that the tribunal agreed upon had made such an award. In other words, the appellant cannot in this action plead and offer evidence to prove a total loss and thereby deprive the company of its defense that the differences between them have been determined in the manner agreed upon in the contract of insurance.

Id. at 390.

In *Williamson v. Liverpool & London & Globe Ins. Co.*, 122 F. 59 (1903),

the Eighth Circuit Court of Appeals reversed the trial court's ruling that the appraisal panel lacked the authority to determine whether a total loss occurred. The Court reasoned as follows:

But the policy grants the power and determines the extent of the authority of the appraisers. It provides that in the event of disagreement as to the amount of the loss the appraisers shall estimate and appraise the loss. If the insured claimed that the loss was total, and the insurer insisted that it was but 90 per cent. of the value of the property insured, there would be a disagreement between them as to the amount of the loss. If appraisers were then appointed, it would be their duty to estimate and appraise the loss. If the appraisers were of the opinion that the loss was 100 per cent., it would be their duty to so find and award. . . . There is no limitation of the authority of the appraisers to a determination of 50 per cent. or 90 per cent. or 99 per cent. or any other part of the loss. The policy authorizes them to determine the entire loss, and, if that loss was equal to the entire value of the property insured at the time of the fire, it necessarily authorized them to find that the loss was total.

Id. at 61. The Eighth Circuit Court of Appeals held as follows:

Our conclusion is that an insurance policy which authorizes the appraisers, in case of a disagreement as to the amount of loss, to estimate and appraise the loss, empowers them to determine whether or not the loss is total, as well as to determine what the amount of the loss is in case they find it to be partial.

Id.

Finally, Chief Justice Cardozo joined a dissenting opinion in *Lee v. Hamilton Fire Ins. Co.*, 251 N.Y. 230 (1929), which disagreed with the majority's ruling that appraisal was inoperative where one party alleges there has been a total loss. The dissent concluded that appraisal could properly resolve the issue of whether a loss was total or partial and reasoned as

follows:

Assume that the policy is a valued one and that, in the event of total loss, the full value as therein stated is recoverable. Assume also that when property insured under a valued policy is conceded to have been completely destroyed and to have passed out of existence, appraisal may not be enforced. When, however, the parties to an insurance contract disagree respecting the fact whether damage is partial or loss is total that rule does not apply. In such circumstances an appraisal provision in a policy controls. . . . If a total loss is concluded by the appraisers, the amount payable is the sum at which the property is valued in the policy; if a partial damage is decided, then the amount is 'the actual cost of repairing or, if necessary, replacing the parts damaged or destroyed.'

Id. at 235-36.

The reasoning of these opinions is consistent with the accepted idea that appraisers generally decide factual questions with respect to the amount of loss, and courts decide legal questions with respect to coverage or liability. See *Quade*, 2012 WL 2121235 at *3. The issue of what is appropriate to submit to appraisal only becomes difficult when the line between liability and damages is unclear. See *id.* (noting that under the particular facts presented, the determination of the amount of loss necessarily includes analysis of whether the damage was caused by a covered peril). But even when factual and legal issues are intertwined in the appraisers' determination of the amount of loss, this Court recently affirmed that appraisal must proceed prior to litigation and emphasized that "appraisal is a process that is generally intended to take place before suit is filed." *Id.* at *5.

In this case, the line between liability and damages is perfectly clear.

Auto-Owners fully admits it is liable under the policy of insurance issued to Respondent and that all of the damage was caused by fire, a covered peril. The only question involves the amount of loss, which includes whether the loss is total or partial. Thus, the Court of Appeals decision should be reversed, and the case should be remanded to the district court with instructions that Appellant's Motion to Compel Appraisal be granted.

V. BECAUSE THERE IS A STRONG PUBLIC POLICY FAVORING APPRAISAL IN MINNESOTA AND OTHER JURISDICTIONS, APPRAISERS MUST BE ALLOWED TO DECIDE WHETHER A TOTAL LOSS HAS OCCURRED UPON DEMAND OF EITHER PARTY.

The Court of Appeals held that disputes regarding whether a loss is total or partial must first proceed in district court, and if the fact finder determines the loss to be partial, then the parties may proceed to appraisal. *See Auto-Owners*, 812 N.W.2d at 201 (noting that the right to an appraisal is vindicated because “if the jury concludes that the damage to Second Chance’s property does not constitute a total loss, the parties may submit any dispute as to the actual cash value of the loss to appraisal . . .”). If the Court of Appeals’ interpretation of the appraisal provision were adopted, disputes regarding whether a loss is total or partial could potentially take several years to resolve.

The holding of the Court of Appeals is contrary to the strong public policy favoring the appraisal process, which is designed to provide a plain, speedy, and just determination of the amount of the loss. *See Kavli*, 206 Minn.

at 364, 288 N.W. at 723; *See Quade*, 2012 WL 2121235 at *4 (noting the strong public policy in Minnesota and other jurisdictions favoring the appraisal process and affirming the broad authority historically delegated to appraisers to determine the amount of loss). Appellant submits that the quick and fair resolution of the amount of loss by an appraisal panel—including whether the loss is total or partial—benefits both parties to the insurance contract and is consistent with the strong public policy favoring appraisal and the intent of the legislature.

Public policy also supports an appraisal panel's determination of whether a total loss has occurred because the appraisal process is fair. Appraisals are quasi-judicial proceedings, the validity of which has been widely accepted by Minnesota courts. *See Quade*, 2012 WL 2121235 at *4. As early as 1901 this Court noted that:

[The appraisal board] provided for under the standard fire policy is a quasi court, subject to the principles governing common-law arbitration. Such board should sit in a body, and receive evidence offered by the respective parties, submitting the same to the usual tests of cross-examination. . . . The [appraisal board] must constitute a body of disinterested men, whose business it is to proceed in a judicial and impartial manner to ascertain the facts in controversy.

See Christianson, 84 Minn. at 530, 88 N.W. at 18. Accordingly, the three-person appraisal panel, carefully selected by both parties, is qualified to preside over the formal appraisal proceeding and given broad authority to decide the factual questions necessary to determine whether a particular loss

is total or partial. See *Poppitz*, 85 Minn. at 118, 88 N.W. at 439; See *Northwestern Life Ins. Co.*, 85 Minn. at 62, 88 N.W. at 270-71; See *Itasca Paper Co.*, 175 Minn. at 77-78, 220 N.W. at 427; See *Quade*, 2012 WL 2121235 at *4.

Finally, for over a century, Minnesota and other jurisdictions have endorsed appraisal as the preferred venue for resolving disputes regarding the amount of loss. The legislature relieved the courts of this burden and instead mandated a system by which qualified professionals, trained in assessing these types of disputes, may perform an expedited, efficient, and just determination of the amount of loss upon demand by either party. This long-standing policy applies with equal force to an appraisal panel's determination of whether there has been a total or partial loss.

CONCLUSION

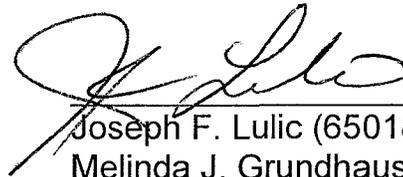
The Minnesota standard fire insurance policy's appraisal provision unambiguously mandates that appraisal determines whether a total loss has occurred upon demand of either party. But even if the provision is less than clear, the legislature's intent as embodied in the purpose of the appraisal provision resolves any ambiguity and compels the conclusion that appraisal is designed to resolve disputes regarding whether a total loss has occurred when the parties to a fire insurance policy dispute the issue. Finally, case law and public policy favor appraisal as a just and expeditious forum for the resolution of the amount of loss. In sum, Appellant respectfully requests that

the decision of the Court of Appeals be reversed because there is simply no valid reason to prohibit an appraisal panel from determining whether a total loss has occurred.

Respectfully submitted,

HANSON, LULIC & KRALL, LLC

June 29, 2012.



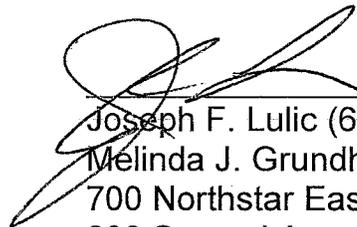
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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record, pursuant to Rule 132.01, subd. 3(a) of the Rules of Civil Appellate Procedure, hereby certifies that the attached brief has been prepared using Microsoft Word 2010, Arial, with a font size of 13 pt. and a word count of 5246.

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