

NO. A10-714

---

State of Minnesota  
*In Court of Appeals*

---

David and Melynda Quade,

*Appellants,*

vs.

Secura Insurance,

*Respondent.*

---

**RESPONDENT'S BRIEF AND APPENDIX**

---

COUSINEAU McGUIRE CHARTERED  
Susan D. Thurmer (#122543)  
Dawn L. Gagne (#158550)  
Robyn K. Johnson (#0309734)  
1550 Utica Avenue South, Suite 600  
Minneapolis, Minnesota 55416-5318  
(952) 546-8400

*Attorneys for Respondent Secura Insurance*

FREDRIKSON & BYRON, P.A.  
Richard D. Snyder (#191292)  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota 55402-1425  
(612) 492-7145

*Attorney for Appellants David and  
Melynda Quade*

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).

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES .....	iii
STATEMENT OF LEGAL ISSUES .....	1
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS .....	5
STANDARD OF REVIEW .....	8
ARGUMENT .....	8
I.    THE DISTRICT COURT CORRECTLY DISMISSED APPELLANTS’ COMPLAINT AND ORDERED THE PARTIES TO ENGAGE IN THE APPRAISAL PROCESS TO DETERMINE THE AMOUNT OF DAMAGE CAUSED BY THE STORM. ....	8
A.    There is No Dispute That Applicable Law Requires Liability Determinations, When Necessary, To Be Made By the Courts.....	8
B.    The District Court Properly Determined That Because Secura Admitted Liability to Pay for Storm-Related Damage, the Amount of the Storm-Related Damage Should Be Determined Through the Appraisal Process.....	9
II.   AS APPELLANTS FAILED TO RAISE THE ISSUE OF WHETHER THE COMPLAINT SHOULD HAVE BEEN DISMISSED WITH OR WITHOUT PREJUDICE IN THE DISTRICT COURT, THE ISSUE SHOULD NOT BE CONSIDERED BY THIS COURT.....	13
III.  THE DISTRICT COURT PROPERLY FOLLOWED A CENTURY OF PRECEDENT IN ORDERING THAT THE ENFORCEMENT OF THE APPRAISAL AWARD WAS GOVERNED BY MINNESOTA STATUTES APPLICABLE TO ARBITRATION PROCEEDINGS.....	14
CONCLUSION.....	15
APPENDIX.....	17

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b>Cases</b>	
<i>American Central Ins. Co. v. District Court of Ramsey County</i> , 125 Minn. 374, 147 N.W. 242 (1914).....	15
<i>David A. Brooks Enters., Inc. v. First Sys. Agencies</i> , 370 N.W.2d 434 (Minn. Ct. App. 1985).....	2, 14
<i>DLH, Inc. v. Russ</i> , 566 N.W.2d 60 (Minn. 1997) .....	8
<i>Glidden Co. v. Retail Hardware Mut. Fire Ins. Co.</i> , 233 N.W.2d 310 (1930) .....	1, 10
<i>Itasca Paper Co. v. Niagra Fire Ins. Co.</i> , 220 N.W.2d 425 (1928).....	1, 10
<i>Kavli v. Eagle Star Ins. Co.</i> , 288 N.W.2d 723 (1939) .....	12
<i>QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n</i> , 778 N.W.2d 393 (Minn. Ct. App. 2004) .....	2; 9, 14
<i>River City Mortgage Corp. v. Baldus</i> , 695 N.W.2d 375, 379 (Minn. App. 2005) .....	1, 13
<i>Sampson v. Horace Mann Ins. Co.</i> , 2003 WL 22234692 (Minn. Ct. App. September 30, 2003) .....	1, 9, 10
<i>STAR Centers, Inc. v. Faegre &amp; Benson, LLP</i> , 644 N.W.2d 72 (Minn. 2002).....	8
<i>Thiele v. Stich</i> , 425 N.W.2d 580, 582 (Minn.1988) .....	1, 13
<b>Extrajurisdictional Cases</b>	
<i>Cigna Insurance Co. v. Didimoi Property Holdings</i> , 110 F.Supp.2d 259 (D.Del 2000).....	1, 11, 12
<i>Gonzales v. State Farm Fire &amp; Casualty Co.</i> , 805 So.2d 814 (Fla.3d DCA 2000).....	11
<i>Johnson v. Nationwide Mutual Ins. Co.</i> , 828 So.2d 1021 (Fla. 2002) .....	11
<i>Kendall Lakes Townhomes Developers, Inc. v. Agricultural Excess &amp; Surplus Lines Insurance Co.</i> , 916 So.2d 12, 16 (Fla. Ct. App. 2005).....	11
<i>State Farm Fire &amp; Casualty Co. v. Licea</i> , 685 So.2d 1285 (Fla. 1996) .....	11

## STATEMENT OF LEGAL ISSUES

- I. Whether the trial court properly determined as a matter of law that the parties are required by the terms of their insurance contract to have disputes regarding the amount of the loss or damage determined by the appraisal process set forth in the contract.**

On Respondent's motion for summary judgment, the district court held that, because Respondent admitted liability to pay Appellants' storm damage claim but disputed that damage to some of Appellants' property was storm-related, the parties were required to engage in the appraisal process set forth in the insurance contract.

*Itasca Paper Co. v. Niagra Fire Ins. Co.*, 220 N.W.2d 425 (1928)

*Glidden Co. v. Retail Hardware Mut. Fire Ins. Co.*, 233 N.W.2d 310 (1930)

*Sampson v. Horace Mann Ins. Co.*, 2003 WL 22234692 (Minn. Ct. App. September 30, 2003)

*Cigna Insurance Co. v. Didimoi Property Holdings*, 110 F.Supp.2d 259 (D.Del. 2000)

- II. Whether this Court should consider Appellants' assertion that the trial court improperly dismissed Appellants' Complaint with prejudice when Appellants failed to raise this argument to the trial court.**

The district court dismissed Respondents' breach of contract claim seeking to have the court determine the amount of the storm damage loss with prejudice, specifically noting that if coverage issues arose after completion of the appraisal process, Appellants are free to pursue a declaratory relief action. Appellants did not raise the issue of whether the complaint should be dismissed with or without prejudice in the court below.

*Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988)

*River City Mortgage Corp. v. Baldus*, 695 N.W.2d 375, 379 (Minn. App. 2005)

**III. Whether the trial court properly followed over 95 years of Minnesota precedent in determining that enforcement of the appraisal award would be governed by the statutes applicable to arbitration proceedings.**

The district court held that the appraisal award could be confirmed as a judgment or vacated in accordance with Minnesota statutes applicable to enforcement of arbitration awards.

*QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393 (Minn. Ct. App. 2004)

*David A. Brooks Enters., Inc. v. First Sys. Agencies*, 370 N.W.2d 434 (Minn. Ct. App. 1985)

## STATEMENT OF THE CASE

This appeal is taken from a judgment entered on February 23, 2010, dismissing Appellants' complaint. Appellants' complaint asserted a claim for damages for breach of contract against Respondent Secura Insurance Company ("Secura"). Appellants alleged that Secura had breached the policy of insurance issued to Appellants by failing to pay all of the amounts claimed due by Appellants for property damages caused by a wind storm on July 10, 2008. Secura admitted its liability under the policy to pay for storm-related damage, and paid for the damage to Appellants' dwelling, barn, cattle barn and auger which Secura determined was caused by the storm. Appellants disputed the amount of those payments and disagreed with Secura's assessment that claimed roof damage on other buildings was caused by wear and tear and lack of maintenance rather than the storm.

When the parties could not agree on the amount of storm-related damage, Secura requested that the dispute be resolved under the mandatory appraisal process set forth in the policy of insurance. In the appraisal process, the insured and the insurer each choose an appraiser, the two selected appraisers pick a neutral umpire, and a decision by two of the appraisers sets the amount of the loss. Appellants refused to participate in the appraisal process, instead claiming Secura's agreement to pay for only storm-related damage was a denial of coverage and instituting this breach of contract action. Appellants' position below, and on this appeal, is premised upon their deliberate disregard of the fact that Secura admitted liability for storm-related damage and paid

Appellants the amounts that Secura's adjuster calculated were due for storm-related damage.

The complaint filed in this district court by Appellants sought damages for breach of contract. Appellants did not allege a claim for declaratory relief as to the rights and obligations under the policy or to determine the scope and extent of coverage. The scope and extent of coverage is undisputed – Appellants and Secura are in agreement that the policy obligates Secura to pay for damages caused by the July, 2008, wind storm. What is in dispute is the amount of the storm-related damage, a factual inquiry that is to be determined in the appraisal process.

Secura filed a motion for summary judgment, seeking dismissal of the Complaint on the grounds that the policy terms and applicable law required the parties to submit their dispute as to the amount of storm-related damage to the appraisal process. The trial court agreed that the issue of the amount of storm-related damage to Appellants' property and structures was appropriately reserved for the appraisal process. Secura's motion was granted by the trial court, which dismissed Appellants' complaint with prejudice and referred the parties to the appraisal process. The trial court specifically reserved Appellants' right to file a subsequent action should actual coverage issues arise in the future. This appeal followed.

## STATEMENT OF FACTS

On July 10, 2008, a wind storm occurred in and around Hastings, Minnesota, and during the course of the storm some buildings and property owned by Appellants were damaged. (Appellants' Appendix ("A.") 12-13) Appellants submitted a claim for the damage to Secura under the Farmowners Protector Policy (the "Policy") issued to them by Secura. (A. 13) The Policy provides that Secura will pay for direct physical loss caused by windstorms. (A.105-6) The Policy also provides that Secura will not pay for damage caused by faulty or inadequate maintenance of all or part of the insured's property. (A. 112-3)

In response to Appellants' claim, Secura admitted its liability under the Policy to pay for storm-related property damage to Appellants' property. Secura paid for storm damage occurring to Appellants' dwelling, barn, cattle barn and auger.<sup>1</sup> (Respondent's Appendix ("R.A.") 15) Secura also agreed to pay additional amounts if Appellants repaired their feeder building. (*Id.*) As to the damage for which Secura has paid, Appellants assert that a greater amount of storm damage occurred than as determined by Secura. (R.A. 18, 20-25, 38-41). In addition, Appellants contended that the roofs of three other structures were damaged by the storm and needed to be replaced. (*Id.*) On two occasions, Secura evaluated the roofs, once by an independent engineer. (R.A. 17) The engineer determined that the roofs had not been damaged by the storm but rather

---

<sup>1</sup> Contrary to Appellants' suggestion, there are not separate "claims" for each structure or item of property damaged by the storm; rather, one single claim was made for damages to all covered property resulting from the storm incident. Portions of the one claim made by Appellants were paid by Secura and portions were not.

were leaking due to inadequate maintenance. (*Id.*) A dispute therefore existed between Appellants and Secura as to the amount of the storm-related damage.

Secura wrote to Appellants on May 11, 2009, and told them that an engineer had determined that damages to the roofs of the three buildings were not caused by the wind storm. The letter states in pertinent part:

At our request we had an engineer inspect the buildings and offer his opinion as to the cause of the roof leakage. Based on his verbal conclusions it's our understanding that the grommets that seal between the nail head and the roof metal have deteriorated over time. The grommets dry out and crack over time and this allows the water to enter around the nail heads. This is the result of continual deterioration over a period of time rather than a specific storm occurrence. Your farm policy excludes "loss to property caused by any of the following ... (4) Maintenance". This is stated in your policy on page 14 (copy enclosed). I am sorry but we are unable to honor you claim for damage to the roof of the buildings.

(R.A. 17)

Notably, Secura did not deny coverage for the claim. Indeed, Secura had previously admitted coverage and liability when it paid Appellants for damages caused by the storm. (R.A. 15) Rather, Secura informed Appellants that it would not pay for damages that had not occurred because of the storm, and that if Appellants did not agree with this determination, the parties should start the appraisal process as provided in the Policy. (R.A. 19)

The appraisal process set forth in the Policy states that:

8. Appraisal. If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, your or we may request that the choice be made by a judge or court of record in the state where the residence premises

is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of any agreement to us, the amount agreed upon will be the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss. Each party will: a. pay its own appraiser; and b. bear the other expenses of the appraisal and umpire equally.

(A. 115)

Appellants did not agree that the roof damage was not storm-related and, accordingly, a dispute then existed between the parties as to the amount of damage and loss caused by the storm that needed to be resolved by the appraisal process. Appellants' response was to institute this action. Secura answered, but at the same time identified its appraiser and requested that Appellants engage in the appraisal process. (R.A. 26-31) Thereafter, Secura continued to seek Appellants' agreement to engage in the appraisal process, but they refused. (R.A. 26-31, 33, 47)

Secura filed a motion for summary judgment in the district court, seeking dismissal of the complaint and an order directing Appellants to participate in the appraisal proceeding to determine the amount of *admittedly covered* storm damage. (R.A. 3-67) Appellants opposed the motion, arguing that Secura had denied coverage and that coverage disputes were the province of the courts, not the appraisal process.

The district court granted Secura's motion for summary judgment, dismissed the complaint with prejudice and ordered the parties to participate in the appraisal process as set forth in the Policy such that the appraisers could determine the amount of damage and loss caused by the subject storm. (A. 2) The district court specifically ordered that nothing would prevent a future action by either party if a coverage dispute existed after

the appraisal process was completed. (*Id.*) In addition, the district court held that the appraisal award could be confirmed or vacated in accordance with the Minnesota statutes governing arbitrations. (A. 3)

### **STANDARD OF REVIEW**

On appeal from summary judgment, the court reviews *de novo* “whether there are any genuine issues of material fact and whether the district court erred in its application of the law.” *STAR Centers, Inc. v. Faegre & Benson, LLP*, 644 N.W.2d 72, 76-77 (Minn. 2002). “There is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

### **ARGUMENT**

#### **I. THE DISTRICT COURT CORRECTLY DISMISSED APPELLANTS’ COMPLAINT AND ORDERED THE PARTIES TO ENGAGE IN THE APPRAISAL PROCESS TO DETERMINE THE AMOUNT OF DAMAGE CAUSED BY THE STORM.**

##### **A. There is No Dispute That Applicable Law Requires Liability Determinations, When Necessary, To Be Made By the Courts.**

Appellants argue at length, citing numerous treatises, law review articles, and cases decided in this and foreign jurisdictions, that liability and coverage determinations are the exclusive province of the courts. This proposition is well-settled, and not disputed by Secura. There is no liability or coverage dispute present in this case – Secura admits its obligation to pay for storm damage losses, within the terms of its policy with

Appellants, and Appellants do not contend that Secura is liable to provide coverage for losses occasioned by wear and tear or lack of adequate maintenance. Both sides agree that Secura must pay for storm-related damages and that such storm-related damages are a loss under the Policy. Rather, the parties disagree as to the amount of storm-related damage to Appellants' property, and that determination is, as set forth below, the exclusive province of the appraisers.

**B. The District Court Properly Determined That Because Secura Admitted Liability to Pay for Storm-Related Damage, the Amount of the Storm-Related Damage Should Be Determined Through the Appraisal Process.**

This Court has recently recognized the decisions of other jurisdictions which hold that the appraisal process may include considerations of underlying causation so long as it does not include a determination of coverage. *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 399 (Minn. Ct. App. 2004). In *QBE*, this Court held that, where the insurer concedes that causation exists for purposes of coverage, but questions the valuation of the loss, the appraisal panel is authorized to decide the valuation questions. *Id.*

In *Sampson v. Horace Mann Ins. Co.*, 2003 WL 22234692 (Minn. Ct. App. September 30, 2003) (R.A. 48-50), a strikingly similar case to the case at bar, this Court affirmed the district court's dismissal of the appellant's claim against his insurer. This

Court held that where the parties agreed that a covered loss had occurred, their dispute as to the amount of the loss was subject to the mandatory appraisal process.<sup>2</sup>

Appellants argue *Sampson*, and others in accord as discussed below, are not applicable because Secura has not admitted liability or the existence of a covered loss. Appellants repeatedly falsely assert that Secura has denied all liability to pay for damages as a result of the windstorm. *This misstatement of fact is the premise for Appellants' entire argument concerning the impropriety of the appraisal process.* Appellants simply ignore the fact that Secura admitted liability – and paid Appellants – for the damages to Appellants' property which Secura determined to be caused by the storm. Appellants attempt to skirt this reality by parsing out their claim on a building by building basis, that somehow their claim for damages to the roofs of the pole buildings is separate and distinct from their claim for damages to the rest of their property. The fact of the matter is that Appellants have one claim for all of the property damage resulting from the July 10, 2008, wind storm. Secura agreed it was liable for storm-related damage and paid Appellants for storm-related damage. Secura just did not agree with Appellants that all of the damage claimed was storm-related.

In cases such as this where the insurer has admitted liability and the existence of a covered loss, but is in disagreement with the insured as to the amount of the loss, courts

---

<sup>2</sup> Older Minnesota cases also recognize that a denial of liability does not preclude an appraisal prior to coverage determinations where the parties dispute the amount of damage or loss. *Itasca Paper Co. v. Niagra Fire Ins. Co.*, 175 Minn. 73, 220 N.W.2d 425 (1928). *See also, Glidden Co. v. Retail Hardware Mut. Fire Ins. Co.*, 233 N.W. 310 (1930)(holding that the appraisal process is intended to set the amount of liability as long as the general liability question remains with the court).

in other jurisdictions have reached the same conclusion that this Court reached in *Sampson*. In *Johnson v. Nationwide Mutual Ins. Co.*, 828 So.2d 1021 (Fla. 2002), the Florida Supreme Court adopted an earlier holding in *Gonzales v. State Farm Fire & Casualty Co.*, 805 So.2d 814 (Fla.3d DCA 2000). In its decision, that court stated:

Very simply, the *Licea* court was saying that when the insurer admits there is a covered loss, but there is a disagreement on the amount of the loss, it is for the appraisers to arrive at the amount to be paid. In that circumstance, the appraisers are to inspect the property and sort out how much is to be paid on account of a covered peril. In doing so, they are to exclude payment for “a cause not covered such as normal wear and tear, dry rot, or various other designated, excluded causes.”

Thus, in the *Licea* situation, if the homeowners’ insurance policy provides coverage for wind storm damage to the roof, but does not provide coverage for dry rot, the appraisers are to inspect the roof and arrive at a fair value for the wind storm damage, while excluding payment for the repairs required by preexisting dry rot.

*Id.* at 1025, citing *State Farm Fire & Casualty Co. v. Licea*, 685 So.2d 1285 (Fla. 1996) (holding that causation is an amount of loss issue for the appraisal panel). The Florida Court of Appeals has more recently reiterated the rule that when causation is not a coverage question, but rather an amount of loss question, the appraisal panel is to decide causation issues. *Kendall Lakes Townhomes Developers, Inc. v. Agricultural Excess & Surplus Lines Insurance Co.*, 916 So.2d 12, 16 (Fla. Ct. App. 2005).

Similarly, in *CIGNA Insurance Co. v. Didimoi Property Holdings, N.V.*, 110 F. Supp. 2d 259 (D. Del. 2000), the court set forth the following analysis in determining the appraisers’ authority to determine the amount of the loss:

However, the Court believes that whether a particular item was damaged as a result of fire or firefighting efforts is appropriately reserved for the appraisal process.

Indeed, under the circumstances of this case, the Court cannot reconcile any other approach. Carried to its logical conclusion, [the property owner and mortgagee's] position would be nonsensical. If the appraisers were required to accept the insured's claimed damages regardless of their cause and assign only dollar value assessments to the cost to repair or replace the items of claimed damage, the appraisers could be examining damage entirely unrelated to this case. For example, the insured could claim damage that resulted from an office party months ago and the appraisers would be required to assess a repair or replacement cost for that damage, when clearly such damage was not caused by the fire and would not be remotely relevant to this dispute....

If the Court were to curtail the appraisers authority to include only dollar value assessments without regard for whether the property was damaged as a result of fire, the Court would be reserving a plethora of detailed damage assessments for judicial review, thereby debunking the purpose of the appraisal which is to minimize the need for judicial intervention...

*Id.*, at 268-269.

CIGNA recognizes the inherent problem with taking the approach urged by Appellants to its logical conclusion. The purpose of the appraisal process is to provide a plain, speedy, inexpensive and just determination of the extent of the loss and to discourage costly litigation. *See, Kavli v. Eagle Star Ins. Co.*, 288 N.W.2d 723 (1939). If the parties are required to submit causation determinations to the court, as opposed to the appraisal panel, the court will be forced to fill the role of umpire every time an insurer disputes the amount of the insured's claimed damages occasioned by an admittedly covered cause. This is exactly what the appraisal process is intended to avoid.

Finally, Appellants argue that there is no dispute as to the amount of the loss because Secura has never taken a position that the roofs could be repaired or replaced in a less costly manner. However, Secura does not have to take a position on Appellants'

repair estimate in order to dispute the amount of storm-related damage. Whether or not the roofs need repair or replacement as a result of storm damage is precisely the dispute that needs to be resolved in the appraisal process.

Because Secura has admitted liability to pay for storm-related damage, the district court correctly determined that the amount of storm-related damage needs to be determined by the mandatory appraisal process set forth in the Policy. Accordingly, this Court should affirm the district court's dismissal of Appellants' complaint and referral of the parties to the appraisal process.

**II. AS APPELLANTS FAILED TO RAISE THE ISSUE OF WHETHER THE COMPLAINT SHOULD HAVE BEEN DISMISSED WITH OR WITHOUT PREJUDICE IN THE DISTRICT COURT, THE ISSUE SHOULD NOT BE CONSIDERED BY THIS COURT.**

Appellants did not contend in their written opposition to the motion for summary judgment or at oral argument that the Court should not dismiss the Complaint with prejudice or that it should not dismiss the complaint at all upon reference to the appraisal process. Accordingly, this Court is prevented from considering these issues on appeal. *See, River City Mortgage Corp. v. Baldus*, 695 N.W.2d 375, 379 (Minn. App. 2005) and *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

Even if these issues are considered, this court should affirm because Appellants have not been denied any rights or remedies by the decision of the district court. The district court correctly dismissed Appellants' claim for damages as a result of the wind storm with prejudice, thereby establishing that Appellants would not have the future right to seek court determination of the amount of that damage because that amount would be

conclusively set by the appraisal and subsequent confirmation process. Moreover, the order and judgment expressly reserves for future litigation any coverage disputes that arise during or after the appraisal process. Appellants are free to attempt to pursue a declaration of rights under the Policy if, after the appraisal process, a bona fide coverage dispute arises.

**III. THE DISTRICT COURT PROPERLY FOLLOWED A CENTURY OF PRECEDENT IN ORDERING THAT THE ENFORCEMENT OF THE APPRAISAL AWARD WAS GOVERNED BY MINNESOTA STATUTES APPLICABLE TO ARBITRATION PROCEEDINGS.**

As recently as February 23, 2010, this Court reaffirmed over 95 years of Minnesota law holding that arbitration laws govern the appraisal process. *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. Ct. App. 2004). In addressing the appellant's contention that the appraisal panel's decision exceeded their authority, this Court reiterated that appraisal decisions are subject to Minn. Stat. § 572.08-572.30, the arbitration statute. *Id.* This Court held that the arbitration statutes provided the procedures and grounds upon which appraisal awards could be confirmed, modified, corrected or vacated by a court upon application following completion of the appraisal process. Contrary to Appellants' argument, the Court's discussion of the applicability of the arbitration act was not dicta, but rather central to the Court's analysis of when an appraisal award could be vacated because the appraisal panel exceeded its power to determine the amount of the loss. *See also, David A. Brooks Enterprises, Inc. v. First Systems Agencies*, 370 N.W.2d 434 (Minn. App. 1985) (affirming trial court's confirmation of the appraisal umpire's award); *American Central*

*Ins. Co. v. District Court of Ramsey County*, 125 Minn. 374, 147 N.W. 242, 243 (1914) (rules governing arbitrations apply to proceedings for determining the amount of loss under insurance policies).

Appellants contend the district court erred in determining that appraisal process was to be an arbitration of all of the disputes between the parties and that the arbitration act governed the procedure of the appraisal process and enforcement of the appraisal award. The district court's judgment expressly does not refer all existing or potential disputes to the appraisal process, but rather only the dispute as to "the amount of the loss to Plaintiffs' property caused by the July 10, 2008 storm." Thereafter, in accordance with longstanding Minnesota precedent, the district court's judgment provides that the appraisal determination as to the amount of the storm-related damage could be confirmed or vacated under the statutes governing confirmation or vacation of an arbitration award. Moreover, the judgment reserves the parties' rights to go to court to pursue coverage determinations should such issues arise in the future. Because the district court correctly applied Minnesota precedent and the arbitration act provisions, its judgment should be affirmed.

### CONCLUSION

Secura has admitted its liability to pay Appellants for property damage caused by the July 20, 2008, windstorm, but disputes Appellants' contention that three roofs suffered storm-related damage. Secura also disputes the amount of damages claimed on other portions of Appellants' property which were damaged by the storm. The district

court correctly determined that such disputes are the province of the mandatory appraisal process and dismissed Appellants' complaint.

The district court also correctly dismissed the dispute as to the amount of claimed loss with prejudice, determining that such amount should be conclusively determined in the appraisal process while reserving the parties' right to file a future court action should actual coverage disputes arise. Finally, the district court correctly followed long-standing Minnesota law in holding that the arbitration statutes apply to confirmation, modification or vacation of the appraisal award.

Secura, therefore, respectfully requests that this Court affirm the judgment of the district court in all respects.

Respectfully submitted,

**COUSINEAU McGUIRE CHARTERED**

Dated: 7/29/10

By:   
**SUSAN D. THURMER #122543**  
**DAWN L. GAGNE #158550**  
**ROBYN K. JOHNSON #0309734**

Attorneys for Defendant Secura Insurance  
Companies  
1550 Utica Avenue South, Suite 600  
Minneapolis, Minnesota 55416-5318  
(952) 546-8400

1325677