

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Appeal by Jeffrey Peterson of Decision of the Board of the Minnesota FAIR Plan

**ORDER DENYING MOTION  
FOR SUMMARY JUDGMENT  
(SUMMARY DISPOSITION)**

This matter came before Administrative Law Judge (ALJ) Richard C. Luis on a Motion for Summary Judgment (Summary Disposition) filed by the Minnesota FAIR Plan. Jeffrey Peterson (Appellant, Claimant) filed a Response to the Motion, and the Administrative Law Judge took the matter under advisement.

The Minnesota FAIR Plan is represented by Robert W. Vaccaro, of Flynn, Gaskins & Bennett. Jeffrey Peterson has represented himself throughout this proceeding.

Based on all the proceedings herein, and for reasons set out in the attached Memorandum, and in the attached Letter/Order issued in this matter on May 12, 2010, the Administrative Law Judge makes the following:

**ORDER**

**IT IS ORDERED** that the Motion for Summary Judgment of the Minnesota FAIR Plan is **DENIED**. As a result, this matter will proceed to Evidentiary Hearing as scheduled, convening at 10:00 a.m. on Wednesday, May 26, 2010 at the Office of Administrative Hearings in St. Paul.

Dated this 24th day of May, 2010.

/s/ Richard C. Luis  
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RICHARD C. LUIS  
Administrative Law Judge

## MEMORANDUM

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.<sup>1</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>2</sup> A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>3</sup>

The moving party, in this case the Minnesota FAIR Plan (Plan), has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.<sup>4</sup> The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.<sup>5</sup> The evidence presented to defeat a summary judgment motion, however need not be in a form that would be admissible at trial.<sup>6</sup>

When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.<sup>7</sup> All doubts and factual inferences must be resolved against the moving party.<sup>8</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>9</sup>

As noted in the Letter/Order issued May 12, 2010, the Administrative Law Judge is persuaded that Mr. Peterson's Response to the Motion established that specific facts remain in dispute, and if those issues are decided in his favor, his claim could exceed \$1,000.00 in value. One-thousand dollars is the amount of the deductible in the policy under which Mr. Peterson filed his claim. Since disputed damages exceed that amount, it is appropriate to proceed to hearing as scheduled.

It is noted that Mr. Peterson filed his insurance claim within one week of reporting his damages to the Blooming Prairie Police Department. The damages alleged by Mr.

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<sup>1</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500K; Minn. R. Civ. P. 56.03.

<sup>2</sup> See Minn. R. 1400.6600.

<sup>3</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

<sup>4</sup> *Thiele v. Stich*, 425 N.W.2d 580, 483 (Minn. 1988); *Hunt v. IBM Mid-America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>5</sup> *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*; 437 N.W.2d 712, 75 (Minn. App. 1988).

<sup>6</sup> *Carlisle*, 437 N.W.2d at 715 (citing, *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

<sup>7</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

<sup>8</sup> See, e.g., *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Campbell*, 845 F. Supp. 665, 672 (D. Minn. 1994).

<sup>9</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986).

Peterson to be covered under the insurance policy were sustained, according to Mr. Peterson's claim, as early as April 7, 2008, so it is arguable that Mr. Peterson waited too long before making his claim. The Administrative Law Judge believes he should be allowed to explain why he delayed his report.

The Plan's inspection determined that the total of damages that could potentially have been the result of vandalism was only \$750.65. The Plan maintains that the amount of damages claimed by Mr. Peterson (several thousand dollars) appears largely to be the result of wear and tear and deterioration and, in the case of the basement drain, the damages had been repaired prior to Mr. Peterson's reporting the claim to the Plan. Counsel maintains that the Plan at all times acted consistently with the terms of Mr. Peterson's policy and made a reasonable claims decision supported by the evidence in the case. As a result, the Plan urges the Administrative Law Judge to support its Motion for Summary Judgment. The Administrative Law Judge cannot agree.

The Administrative Law Judge has examined the evidence available to him, consisting largely of photographs taken by the Plan's inspector and Mr. Peterson, and concludes that reasonable people can disagree as to the cause of the damages shown in that evidence.

What the Plan has interpreted as evidence of ordinary wear and tear or deterioration is claimed by Mr. Peterson to be the result of incident(s) of vandalism committed by people who broke into his house. The Administrative Law Judge, in viewing Mr. Peterson's assertions in a light most favorable to his claim, concludes that it is appropriate for Mr. Peterson to establish at an evidentiary hearing that there was a break-in, or break-ins at his house where the damages were sustained. In addition, the Administrative Law Judge has looked at Mr. Peterson's photographs in a light most favorable to his claim that the damage shown on the pictures was caused by vandalism, and is persuaded that Mr. Peterson's claim that the pictures show that vandalism was the cause of the damage arguably is shown in the photos. It is now appropriate to test Mr. Peterson's contention in an evidentiary hearing setting.

In his Response to the Plan's Motion, Mr. Peterson specified that the burns on his woodwork, cigarette burns on his furniture, cutting the vinyl and carpet on his floors, scratching of his furniture, and damaging his sheetrock walls were all acts of vandalism, not normal wear and tear. Taken together, the damages Mr. Peterson claims to the articles of property specified amounts to several thousand dollars, far in excess of his deductible amount. The Administrative Law Judge concludes he should have the opportunity to prove at a hearing that the damages are in fact, that extensive, and were not from ordinary wear and tear or deterioration.

**R. C. L.**