Conn. Ruling Widens Scope Of Property Insurance Appraisals

By **Peter Kelly Golfman** (March 2, 2022)

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Property insurance policies commonly provide for an appraisal process to resolve disputes over the amount of loss. But as industry professionals know all too well, the meaning of "amount of loss" is often disputed, and courts in various jurisdictions have interpreted that term differently.

In January, the Connecticut Supreme Court weighed in, issuing a long-awaited decision clarifying the scope of appraisers' authority, and holding that appraisers can apply Connecticut's matching statute when determining the amount of loss.[1]

The Decision

The underlying dispute in Klass v. Liberty Mutual Insurance Co. arose after an insured sought to recover the cost of a full roof replacement after a windstorm damaged several shingles on one slope of the property's roof.

The insured contended that replacing only the damaged shingles would result in a mismatched roof, and relied upon Connecticut's matching statute to support its claim for a full replacement.

The insurer determined that the loss was covered; however, it disagreed that a full roof replacement was warranted because a spot repair would create a reasonably uniform appearance. The insurer denied coverage for the undamaged slopes of the roof.

The insured then invoked the policy's standard appraisal provision, which provides for two appraisers and a neutral umpire to determine the amount of loss.

The insurer rejected the insured's appraisal demand on the basis that the dispute was over coverage, not the amount of loss, and that appraisers lack authority to interpret and apply the matching statute.

Following this, the insured filed an application to compel appraisal in the Connecticut Superior Court, Ansonia-Milford Judicial District, framing the conflict as one having to do with the amount of loss under the policy.

The insurer opposed the application, arguing that courts cannot compel appraisal where there remains an unresolved legal issue.

The trial court initially agreed with the insurer, but on a motion for reconsideration, reversed its decision and issued an order compelling appraisal.

The insurer appealed, and the appeal was transferred directly to the Connecticut Supreme Court.

Upon review, the state's highest court affirmed the trial court's decision and held that the trial court properly compelled appraisal.

Although the Connecticut Supreme Court acknowledged that "coverage is a legal question

for the courts," it found that the application of the matching statute "did not pertain to coverage."

The court reasoned that

> [b]y making a "covered loss" the precondition to an insurer's replacement obligation ... the [matching] statute appears to suggest that the replacement obligation is of a different nature than the coverage obligation.

The court added that

> the guideposts for the making [matching] decisions — "adjacent" and "reasonably uniform appearance" — are strongly indicative of factual judgments based on visual inspection rather than legal determinations.[2]

The court concluded that the "fact intensive, case-by-case inquiry inherent in the task of matching" was within the scope of an appraisal panel's authority.

Notably, however, the court elected not to provide further guidance on how the matching statute should be applied, leaving the decision entirely at the decision of appraisers.

Other Courts Have Disagreed With the Holding in Klass

Not all courts agree that matching determinations are within the scope of an appraisal.

For example, in Windridge of Naperville Condominium Association v. Philadelphia Indemnity Insurance Co., the U.S. District Court for the Northern District of Illinois in 2017 applied Illinois law in considering a dispute analogous to the one in Klass, but came to the opposite conclusion.

There, the insurer agreed to cover the cost to repair the section of the roof damaged by a hailstorm, but disagreed that a full roof replacement was warranted on the basis of matching.

The insured moved to compel appraisal, arguing that whether a full roof replacement was required based on the need to match was within the purview of an appraisal.

Taking the opposite stance from Klass, the Windridge court denied the insured's motion, finding that "whether the policy covers the need to make an aesthetic match when only certain parts of the building sustain physical damage and are repaired while other parts are not ... concerns coverage."

Shortly thereafter in 2017, the Northern District of Illinois, citing Windridge and again applying Illinois law, arrived at the same conclusion in Runaway Bay Condo Association v. Philadelphia Indemnity Insurance Cos.[3]

Notably, the court in Klass did not consider this contrary out-of-state authority.

Impact on Property Insurers Operating in Connecticut

The decision in Klass will have an immediate impact on property insurers operating in Connecticut.

Post-Klass, once an insurer acknowledges a covered loss, it may not avoid appraisal on the sole basis that there is a coverage dispute with respect to the application of Connecticut's matching statute.

Appraisers are now authorized to interpret the statute, including determining whether repair of damaged property will match undamaged property, as well as the meaning of the terms "adjacent" and "reasonably uniform appearance."

Due to the absence of guidance from the Connecticut Supreme Court on the meaning of these statutory terms, an assortment of inconsistent outcomes is to be expected.

Insurers can also expect policyholders to rely on Klass to attempt to further expand the scope of appraisers' authority, such as determining the cause of loss.

Critically, however, the court was clear that its decision in Klass did not decide the question of whether causation is a matter of coverage.[4] For now, this remains an open question in Connecticut.

Therefore, insurers in Connecticut retain the right to reject appraisal where the parties dispute causation, which inherently involves coverage determinations. But when it comes to matching, however, Klass is now the law.

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[1] Connecticut's "matching statute" provides that "[w]hen a covered loss for real property requires the replacement of an item or items and the replacement item or items do not match adjacent items in quality, color or size, the insurer shall replace all such items with material of like kind and quality so as to conform to a reasonably uniform appearance." Conn. Gen. Stat. § 38a-316e.

[2] The Court also considered the statute's legislative history and the approach of other jurisdictions. As to legislative history, the Court identified remarks by legislators indicating that the matching statute was intended to codify the existing industry practice related to "the appraisal process."

[3] Runaway Bay Condo. Ass'n v. Philadelphia Indem. Ins. Companies, 262 F. Supp. 3d 599, 603 (N.D. Ill. 2017) (Explaining that "the question of whether the Policy requires replacement of undamaged property to achieve matching is not appropriate for appraisal.") While Illinois does not have a "matching statute," the reasoning of the courts in Windridge and Runaway Bay remains applicable.

[4] The Court acknowledged that there is a split of authority on that issue in other jurisdictions, contrasting Quade v. Secura Ins., 814 N.W.2d 703, 706 (Minn. 2012) (holding that appraisers' evaluation of "amount of loss" requires consideration of causation), with Rogers v. State Farm Fire & Casualty Co., 984 So. 2d 382, 391–92 (Ala. 2007)

(limiting appraisers' duty to determining monetary value of property damage and, accordingly, deciding that appraisers cannot make determinations as to causation).