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Property Insurance Appraisal: Is Determining Causation Essential to Evaluating the Amount of Loss

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I. INTRODUCTION

A. How an Appraisal Operates within a Property Insurance Claim

Timothy Jones is a board member of a condominium association.[1] The condominium sustained damage in a recent hurricane. Although the condominium was not destroyed, it did receive severe damage. Mr. Jones, on behalf of the condominium association, reported a claim to his insurance company. Upon receipt of the claim, the insurance company sent out an independent adjuster[2] to inspect the loss. The adjuster determined that the damages were repairable and estimated total damages to be $900,000, which fall below the insurance policy deductible of $1,000,000.[3] Mr. Jones did not agree with the estimation of damages and felt that he needed assistance in representing the condominium association's claim to the insurance company. In order to receive the insurance benefits above those determined by the insurance company's adjuster, Mr. Jones had the option of hiring an attorney or a public adjuster[4] to represent the condominium association's claim. He decided to hire both an attorney and a public adjuster. The attorney agreed to take the case on a contingency fee basis, which would require paying the attorney 30% of the recovery. The public adjuster was hired at an additional 10% contingency fee.

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1. This is an example of how appraisal functions within the property insurance context. This hypothetical is adapted from a relatively common fact pattern seen in Florida first-party property insurance claims.

2. An independent adjuster is paid to adjust claims for the insurance company and is not a neutral professional. An independent adjuster is "an individual who estimates losses on behalf of an insurance company, but is not an employee of that company." *Terms Glossary*, WINKLER INSURANCE, http://www.winkler-insurance.com/glossary.html#i (last visited Sept. 14, 2012).

3. An insurance deductible is the portion of a claim the insured pays out of pocket. *Terms Glossary*, WINKLER INSURANCE, http://www.winkler-insurance.com/glossary.html#d (last visited Oct. 9, 2012).

4. A public adjuster represents insureds against insurance companies, usually for a contingency fee based on the total amount recovered on behalf of the insured. The NAIC Public Adjusters Licensing Model Act defines a public adjuster as

> any person who, for compensation or any other thing of value on behalf of the insured: (1) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract; . . . (3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

PUB. ADJUSTERS LICENSING MODEL ACT: MODEL 228 § 2(h) (2005).

Mr. Jones and the condominium association billed an assessment to the individual condominium owners, requiring payment for the damages to the property that necessitated immediate repair or replacement. Mr. Jones faced pressure from the condominium owners to collect insurance benefits from the insurance company in order to pay for all repairs and reimburse them the assessment. Both the attorney and public adjuster have vested interests in recovering the most for Mr. Jones and the condominium association because they are paid based on a percentage of the recovery. On the contrary, the insurance company is motivated to reduce its payments to the condominium association. The company wants to honor the insurance contract, but does not want to pay out insurance benefits for damages it believes the condominium association is liable for, under the deductible.

The public adjuster estimates that the condominium cannot be repaired for less than $4,000,000. Thus, there is a $3,100,000 discrepancy in the amount of loss between the insurance company's estimate and the public adjuster's estimate of damages. In this case, the discrepancy in the two amounts of loss primarily arises from the cost of replacing the roof, windows, and sliding glass doors. The insurance company agrees that the roof was damaged by wind, but does not believe that the roof is damaged to an extent requiring complete replacement. In addition, the insurance company contends that general wear and tear caused the damage to the windows and sliding glass doors, not the hurricane-force winds.

The condominium association's attorney and public adjuster advise that it has the right to invoke an appraisal procedure under the insurance contract. The terms of the contract require each party to appoint an appraiser. In addition, a third party umpire will decide the amount of loss and what insurance benefits the condominium association is entitled to receive.[5]

B. The Appraisal Process in Property Insurance Claims

While the appraisal procedure is commonly used in property insurance claims, the scope of an appraisal is contested.[6] Courts are divided on whether to allow the determination of causation within an appraisal process.[7] Whether or not to allow the determination of causation in appraisal and the reasoning behind each position can be influential for the majority of state and federal courts who have yet to confront this issue. Outlined below is an overview of the appraisal process within the property insurance context, a distinction of causation from coverage, and courts' reasoning for allowing or forbidding the determination of causation in the appraisal process.

When the devastating hurricanes swept through the southeastern quarter of the United States in 2004 and 2005, the damages were widely publicized.[8] The

5. For further discussion of this hypothetical *see infra* Part IV.

6. *See* State Farm Lloyds v. Johnson, 290 S.W.3d 886, 887 (Tex. 2009); Kendall Lakes Townhomes Developers, Inc. v. Agric. Excess and Surplus Lines Ins. Co., 916 So.2d 12, 14 (Fla. Dist. Ct. App. 2005).

7. CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F. Supp. 2d 259, 265 (D. Del. 2000).

8. In 2004, four hurricanes (Charley, Frances, Ivan, and Jeanne) damaged the Florida coastal communities. The 2005 hurricanes were the costliest in U.S. history, with twenty-eight named storms. Total insured losses from all 2005 hurricanes are estimated to have been more than $60 billion. The 2004 and 2005 hurricane seasons contained seven of the ten costliest insured losses ever in the United States. These seven hurricanes caused $79.3 billion in insured losses. *See* Jeffrey J. Pompe & James R.

less well-known effects of these damages were the struggles individual and commercial insureds confronted in reaching an agreement with their respective insurance companies regarding the value of damaged or destroyed property.[9] This process too often continues over months or even years, placing the insured in a financial dilemma, unable to pay for the repairs. If claims are unresolved after years of claim investigation, the insured is forced to file suit before being permanently precluded by the statute of limitations.[10] In an attempt to determine the amount of loss, many claims are relegated to a process called "appraisal."[11]

In the context of a property insurance dispute, the term "appraisal" is defined as "a tool used for determining the value of a home repair dispute that arises from a covered insurance loss."[12] Appraisal is a nonjudicial method of determining the amount of loss under a property insurance policy.[13] The purpose of an appraisal provision is to avoid litigation when the insurer admits coverage and the dispute concerns only the amount of value of the loss.[14] The court in *State Farm Lloyds v. Johnson* points out that "appraisals require no attorneys, no lawsuits, no pleadings, no subpoenas, and no hearings."[15] The appraisal process can offer a swifter, less expensive determination of the extent of the damages.[16] Appraisal may also assist the parties in narrowing and identifying the disputed issues, thereby encouraging the parties to attempt a resolution of those matters before seeking judicial intervention.[17]

An "appraisal" provision—one that specifies appraisal as the agreed upon method for resolving disputes over the amount of loss when there is a covered claim—is common in nearly all property insurance policies.[18] Many states even require insurance policies to contain an appraisal clause.[19] The terms of an appraisal vary among insurance policies and the policy language is interpreted in accordance with contract law.[20] The appraisal provision found in the insurance policy in *Johnson* is representative of a typical appraisal provision:

Rinehart, *Property Insurance for Coastal Residents: Governments' "Ill Wind"*, 13 INDEP. REV. 189, 190 (2008).

9. Timothy P. Law & Jillian L. Starinovich, *What is it Worth? A Critical Analysis of Insurance Appraisal*, 13 CONN. INS. L.J. 291, 292 (2006-2007).

10. *See, e.g.*, FLA. STAT. § 95.11(2)(e) (2012).

11. Law & Starinovich, *supra* note 9, at 292-93.

12. Ann D. Ogden, *Appraisal Clauses in Homeowners Insurance Policies: An Overview*, 27 TRIAL ADVOC. Q. 24, 25 (2008).

13. Andrew B. Downs, *Property Insurance Differs from Liability Insurance*, *in* PROPERTY INSURANCE LITIGATOR'S HANDBOOK 10, 13 (Leonard E. Murphy, Andrew B. Downs & Jay M. Levin, eds., 2007).

14. LEE R. RUSS & THOMAS F. SEGALLA, COUCH ON INSURANCE, § 209:8 (3d ed. 2011).

15. State Farm Lloyds v. Johnson, 290 S.W.3d 886, 894 (Tex. 2009).

16. *See* Kavli v. Eagle Star Ins. Co., 288 N.W. 723 (Minn. 1939).

17. CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F. Supp. 2d 259, 269 (D.Del. 2000).

18. Law & Starinovich, *supra* note 9, at 292-93.

19. *See, e.g.*, VA. CODE ANN. § 38.2-2105 (2011) (requiring that all insurance policies include an appraisal clause which requires that either party, upon written demand, submit a dispute concerning "amount of loss" to the appraisal process).

20. Ogden, *supra* note 12; *see, e.g.*, Citizens Prop. Ins. Corp. v. M.A. & F.H. Props., Ltd., 948 So.2d 1017 (Fla. Dist. Ct. App. 2007) (giving term in insurance policy the plain and ordinary meaning as ascertained by reference to a dictionary).

> **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 . . . . 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.[21]

Under a typical appraisal provision, either party can demand an appraisal when the parties disagree on the amount of damages to the property in question.[22] The appraisal provision usually instructs each party to choose a competent and impartial appraiser to represent them during the appraisal.[23] Appraisers determine the amount of loss; they do not determine issues of law or policy interpretation.[24] If the two appraisers are unable to reach an agreement, they select an umpire to which they each submit their respective loss determinations.[25] The two appraisers and the umpire then work collectively to appraise the loss.[26] After determining a final appraisal amount, the umpire enters an award that binds all parties.[27]

If a party refuses to enter appraisal, then the other party may use the courts to compel appraisal.[28] In order to compel appraisal, the demand for appraisal must be ripe, meaning that the parties must have complied with the insurance policy's post-loss requirements.[29] Generally, insurance policies impose the following post-loss obligations on the insured: (1) provide immediate notice to the insurer; (2) protect the property from further damage; (3) exhibit the damaged property for inspection; (4) submit to an examination under oath; and (5) provide records and documents as requested by the insurer.[30]

The determination of causation and coverage are issues of contention within the property insurance appraisal procedure. Courts across the country agree that coverage determinations are reserved only to the courts.[31] However, whether or

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21. State Farm Lloyds v. Johnson, 290 S.W.3d 886, 887-88 (Tex. 2009).

22. Douglas G. Houser & Linda M. Bolduan, *Special Causation Problems in First-Party Property Insurance*, THE FEDERATION (Feb. 19, 2012), http://www.thefederation.org/documents/Houser-W02.htm#edn108.

23. *Id.*; *see also* Patrick J. O'Conner, Jr., *Insurance Law Update*, *in* Drafting and Negotiating Tomorrow's Construction Contracts Today, at 245, 347-49 (PLI Real Estate Law Practice, Course Handbook Ser. No. 567, 2009).

24. John K. DiMugno & Paul E.B. Glad, CALIFORNIA INSURANCE LAW HANDBOOK § 65:3 (2012); *see also* Jefferson Ins. Co. v. Superior Court, 474 P.2d 880 (Cal. 1970); Hughes v. Potomac Ins. Co. of D.C., 18 Cal. Rptr. 650, 658 (Cal. Ct. App. 1962).

25. Houser & Bolduan, *supra* note 22; *see also* O'Conner, *supra* note 23, at 347-49.

26. O'Conner, *supra* note 23, at 347-49.

27. Houser & Bolduan, *supra* note 22. Not all awards are binding on the parties. *See infra* section III(E) for further discussion relating to judicial review of appraisal awards.

28. Downs, *supra* note 13.

29. Citizens Prop. Ins. Corp. v. Mango Hill Condo. Ass'n 12 Inc., 54 So.3d 578, 581-82 (Fla. Dist. Ct. App. 2011).

30. JOHN BOURDEAU ET AL., FLORIDA JURISPRUDENCE § 3294 (2d ed. 2012).

31. *See* Johnson v. Nationwide Mut. Ins. Co., 828 So.2d 1021, 1025 (Fla. 2002).

not the appraisal process can determine the cause of the loss is disputed and courts are not in agreement.[32] The first step in this analysis of whether to include a causation determination in the appraisal process is distinguishing "causation" from "coverage."

II. CAUSATION VERSUS COVERAGE

Several courts combine the terms "coverage" and "causation" together as one basic term, forbidding appraisal to determine "coverage and causation."[33] However, the two terms do represent two separate concepts and should be distinguished. Distinguishing the concept of causation from coverage is difficult because whether or not something is *covered* may be based upon the *cause* of the loss.[34]

A. Defining "Coverage" and "Causation"

A Delaware court framed the question of "coverage" as whether an event is covered under an insurance policy.[35] Courts have repeatedly stated that the meaning of the term "coverage" is "narrow and precise."[36] Coverage is "the assumption of the risk of occurrence of the event insured against before its occurrence."[37] Questions in a coverage determination may include "who is insured, what type of risk is insured against, and whether an insurance contract exists".[38]

The question of "causation" pertains to what event caused the insured's loss. The ultimate question is whether the loss was caused by a covered peril or a peril excluded from the insurance policy.[39] Examples of covered losses generally include fire, wind, or water damage.[40] Excluded losses generally include wear and tear, dry rot, or lack of maintenance.[41] Causation is important when determining whether a loss is a result of a covered loss or an excluded loss under the insurance policy.

32. *Compare* Rogers v. State Farm Fire & Cas. Co., 984 So.2d 382, 392 (Ala. 2007) (citation omitted) (holding that causation is not a question for the appraisal process), *with* CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F. Supp. 2d 259, 265-69 (D. Del. 2000) (holding that causation is a determination for the appraisal process to the extent it is relevant in determining replacement cost).

33. LeBlanc v. Travelers Home & Marine Ins. Co., No. CIV-10-00503-HE, 2011 WL 1107126, at *4-5 (W.D. Okla. Mar. 23, 2011) (citation omitted).

34. Ogden, *supra* note 12, at 26 (emphasis added).

35. *See CIGNA*, 110 F. Supp. 2d at 263.

36. *Id.* at 265; *see also* RUSS & SEGALLA, *supra* note 14, § 212:12.

37. *CIGNA*, 110 F. Supp. 2d at 265; *see also* RUSS & SEGALLA, *supra* note 14, § 212:12.

38. *Id.*

39. Alex R. Thomas & Co. v. Mut. Serv. Cas. Ins. Co., 98 Cal.App.4th 66, 72 (Cal. Ct. App. 2002).

40. *See generally* Michelle L. Evans, *Loss by Storm Damage Under Property Insurance*, 49 AM. JUR. 3D *Proof of Facts* 501 (1998).

41. State Farm Fire & Cas. Co. v. Licea, 685 So.2d 1285, 1288 (Fla. 1996); *see also* Ogden, *supra* note 12, at 24

B. Distinguishing Causation from Coverage

Although many courts combine "coverage" and "causation" together into one category,[42] the court in *Kindall Lakes Townhomes Developers, Inc. v. Agricultural Excess & Surplus Lines Ins. Co.* distinguished the two by holding that "causation is 'an amount-of-loss question for the appraisal panel,' not a coverage question that can only be decided by the trial court."[43] Here, the court explicitly differentiated between "causation" and "coverage" as two different concepts that should not be used to represent one idea.

The determination of whether the loss is covered by the insurance policy is strictly a question for the courts.[44] Generally, when there is an issue as to whether there is any coverage under the policy for the damage to the insured property, an insured's demand for appraisal is premature, because the court must first determine whether the loss was covered under the policy.[45] Similarly, questions involving the application of policy exclusions are legal questions concerning liability and coverage, and they are not within the appraiser's authority.[46] In sum, the ultimate question of whether the insurance company is responsible to offer insurance benefits for the damage or whether the damage is excluded under the policy is a coverage question that is solely for the courts to decide.[47]

In contrast, the determination of what caused the loss is delegated to the appraisal process in some jurisdictions, but retained to the courts in other jurisdictions.[48] In jurisdictions that do not recognize the authority of appraisers to determine causation, a party will often raise an objection to the scope of the appraisal, claiming that it determines causation questions, in order to avoid the appraisal process.[49] However, in jurisdictions that do allow appraisers to determine causation, the appraisal process can determine the cause of the loss, the amount of the loss from each covered peril, and the extent of the loss.[50]

III. IS CAUSATION A QUESTION RESERVED TO THE COURTS?

Courts generally agree that valuation is a task for appraisal, and coverage determinations are reserved to the courts.[51] However, courts across the country are inconsistent as to whether the *scope of damage* falls under "valuation" or "cover-

42. *See* Rogers v. State Farm Fire & Cas. Co., 984 So.2d 382, 392 (Ala. 2007); LeBlanc v. Travelers Home & Marine Ins. Co., No. CIV-10-00503-HE, 2011 WL 1107126, at *5 (W.D. Okla. Mar. 23, 2011).

43. Kendall Lakes Townhomes Developers, Inc. v. Agric. Excess and Surplus Lines Ins. Co., 916 So.2d 12, 16 (Fla. Dist. Ct. App. 2005).

44. Ogden, *supra* note 12, at 24.

45. Jay Steven Levine, *Insurance Issues*, CONDO FL-CLE § 15.1 (2011).

46. Auto-Owners Ins. Co. v. Kwaiser, 476 N.W.2d 467, 469-70 (Mich. Ct. App. 1991).

47. CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F. Supp. 2d 259, 268-69 (D. Del. 2000).

48. *Compare* Rogers v. State Farm Fire & Cas. Co., 984 So.2d 382, 392 (Ala. 2007) (holding that causation is not a question for the appraisal process), *with CIGNA*, 110 F. Supp. 2d at 268 (holding that causation is a determination for the appraisal process' "amount of loss").

49. *See* State Farm Lloyds v. Johnson, 290 S.W.3d 886, 893 (Tex. 2009); Carbonneau v. Am. Family Mut. Ins. Co., No. 06-1853-PHX-DGC, 2006 WL 3257724, at *1 (D. Ariz. Nov. 9, 2006).

50. *See* State Farm Fire & Cas. Co. v. Licea, 685 So.2d 1285, 1288 (Fla. 1996); *see als*o Ogden, *supra* note 12, at 24.

51. *See* Johnson v. Nationwide Mut. Ins. Co., 828 So.2d 1021, 1025 (Fla. 2002).

age determination."[52] Some courts hold that appraisers may not consider causation, while other courts hold that appraisers may consider causation.[53] The scope of appraisal is generally to determine damages owed under the policy rather than the liability of the insurance company.[54]

Determining the amount of damage and resolving issues of coverage are difficult decisions.[55] Often, the matters to be resolved are complex and might involve multiple types of damage and/or the possibility that multiple causes were involved in the damage to the property.[56] These complicated cases have compelled courts to consider the scope of appraisal.[57]

A. Reasons Not to Allow Causation to Be Determined in an Appraisal

Most courts that prohibit the appraisal process from determining causation focus on the language of the appraisal provision in the insurance policy.[58] These courts analyze whether the language of the policy is ambiguous as to whether causation should be considered by the appraisal panel in the evaluation of the "amount of loss."[59] One court also examined the usual and ordinary meaning of "amount of loss," and determined that it excluded a determination of causation.[60] Another court excluded the determination of causation from a property appraisal process because the policy did not expressly authorize such an evaluation.[61] Beyond examining the appraisal provision in the insurance policy, courts also consider the limited purpose and scope of appraisal in deciding to prohibit the determination of causation.[62]

1. Policy Language Is Unambiguous and Excludes a Determination of Causation

The courts that prohibit appraisers from determining causation generally rely on the argument that the definition of the phrase "amount of loss" is confined to the monetary value of the property damage, and does not by itself permit an ap-

52. *See, e.g.*, *Rogers*, 984 So.2d at 392; *CIGNA*, 110 F. Supp. 2d at 265-69.
53. Houser & Bolduan, *supra* note 22; *see also CIGNA*, 110 F. Supp. 2d at 265.
54. *State Farm Lloyds*, 290 S.W.3d at 890.
55. Kristin Suga Heres et al., *Appraisal Fundamentals in Modern Property Insurance Practice*, at 12-13 (Jan. 9, 2012), http://www.jdsupra.com/post/documentViewer.aspx?fid=c58a9251-ea4c-4ef9-8c00-f27082adaac0.
56. *Id.*
57. *Id.*
58. *See* Rogers v. State Farm Fire & Cas. Co., 984 So.2d 382, 392 (Ala. 2007). For further discussion, *see infra* Part III(B)(i).
59. *Rogers*, 984 So.2d at 392.
60. *See* Caribbean I Owners' Ass'n, Inc. v. Great Am. Ins. Co. of N.Y., 619 F.Supp.2d 1178, 1187 (S.D. Ala. 2008). For further discussion, *see infra* Part III(B)(i).
61. *See* Wells v. Am. States Preferred Ins. Co., 919 S.W.2d 679, 685-86 (Tex. App. 1996). For further discussion, *see infra* Part III(B)(i).
62. *See* Rastelli Bros., Inc. v. Netherlands Ins. Co., 68 F.Supp.2d 440, 446 (D. N.J. 1999); Munn v. National Fire Ins. Co. of Hartford, 115 So.2d 54, 55 (Miss. 1959); *LeBlanc*, 2011 WL 1107126, at *5. For further discussion, *see infra* Part III(B)(ii).

praiser to determine a question of liability.[63] The Alabama Supreme Court in *Rogers v. State Farm Fire & Cas. Co.* found that the term "amount of loss" found in the policy language was not ambiguous.[64] The court held that the appraiser's duty was limited to determining the "amount of loss"–the monetary value of the property damage.[65] Therefore, the policy did not permit appraisal to include questions of causation.[66] The Alabama court reasoned that this was consistent with the principle that "[t]he court must enforce the insurance policy as written if the terms are unambiguous."[67] The court found no ambiguity in the term "amount of loss" as it was used in the appraisal clause of the insurance policy that would permit an appraisal panel to determine issues of coverage and liability.[68] Further, the court's holding was consistent with *contra preferentem*, meaning that "[t]he contract shall be construed liberally in favor of the insured and strictly against the insurer."[69] However, this principle could not be relied upon if the insurance company had been the party contesting the appraisal of causation rather than the homeowner.[70]

Furthermore, a federal district court in *Caribbean I Owners' Ass'n., Inc. v. Great American Ins. Co. of NY*, applying Alabama law, concluded that the phrase "amount of loss" as used in the appraisal provision of the policy, could not be interpreted by a person of usual and ordinary understanding to mean that the appraisers could decide causation issues.[71] The court found that the ordinary meaning of "amount of loss" was "the monetary value of property damage, irrespective of insurance coverage or source of damage."[72]

Another argument courts rely upon to exclude causation determinations in appraisal is that "causation" was not specifically granted in the policy provision.[73] The court in *Wells v. Am. States Preferred Ins. Co.*, found that the appraisal panel did not have the authority to determine causation because such authority was not granted in the policy provision.[74]

2. Uphold the Limited Purpose and Scope of Appraisal

Mississippi courts take the position that "the purpose of an appraisal is not to determine the cause of loss or coverage under an insurance policy; rather, it is 'limited to the function of determining the money value of the property at is-

63. *See Rastelli Bros.*, 68 F.Supp.2d at 446; *Munn*, 115 So.2d at 55; *LeBlanc*, 2011 WL 1107126, at *5; *see also* Merrimack Mut. Fire Ins. Co. v. Batts, 59 S.W. 3d 142 (Tenn. Ct. App. 2001); *Rogers*, 984 So.2d at 392; Kacha v. Allstate Ins. Co., 140 Cal. App. 4th 1023 (Ct. App. 2006); for further discussion, *see infra* Part III(B)(ii).

64. *Rogers*, 984 So.2d at 392.

65. *Id*. (quoting *Merrimack*, 59 S.W.3d at 152).

66. *Id.* at 392.

67. *Id*.; *see also* Safeway Ins. Co. of Ala. v. Herrera, 912 So.2d 1140, 1143 (Ala. 2005).

68. *Rogers*, 984 So.2d at 392.

69. *Id*. (quoting Allstate Ins. Co. v. Skelton, 375 So.2d 377, 379 (Ala. 1996)).

70. *Id.* at 393. The dissent in this opinion reasoned that the appraisal process should include a determination of causation. *Id*.

71. Caribbean I Owners' Ass'n., Inc. v. Great Am. Ins. Co. of N.Y., 619 F.Supp.2d 1178, 1187 (S.D. Ala. 2008).

72. *Id*.

73. *See* Wells v. Am. States Preferred Ins. Co., 919 S.W.2d 679, 685-86 (Tex. App. 1996).

74. *Id*.

sue.'"[75] These courts have gone so far to suggest that a determination of coverage issues is a prerequisite to appraisal in Mississippi.[76] The New Jersey court in *Rastelli Bros., Inc. v. Neth. Ins. Co.* came to the same conclusion, stating that appraisal is limited to the narrow issue of determining the amount of loss.[77] The court reasoned that appraisals covered the resolution of specific issues of cash value and the amount of loss, while other issues were reserved to negotiation or litigation.[78]

Similarly, the Mississippi court in *Munn v. Nat'l Fire Ins. Co. of Hartford* held that because appraisers were not arbiters, they had no power to arbitrate disputes between the insured and insurer other than the value of the property damage.[79] Thus, the appraisal panel had no right to refuse to estimate damages to the property it believed were not caused by the covered peril.[80] The Oklahoma court in *LeBlanc v. Travelers Home & Marine Ins. Co.* also recognized an umpire's narrow role of only determining the amount of damage to the property, and not of determining what caused the loss.[81]

B. Reasons to Allow Appraisal to Determine Causation

Over the past several years, courts have tended to favor allowing the determination of causation in the appraisal process.[82] Courts have developed numerous justifications for permitting the causation determination in appraisal, as described below.[83] Some courts have done a similar analysis of the policy language as described above, specifically regarding the term "amount of loss," and concluded that causation is a necessary part of the appraisal process.[84] Similarly, courts have reasoned that excluding causation makes the appraisal clause in the policy inoperative.[85] Other courts have found that causation is "inherent" in the duties of an appraiser because an appraiser must determine what damage was caused by a covered event and what was caused from an excluded event, such as wear and tear or dry rot.[86] Courts also look at the purpose of appraisal and how determining causation furthers that intention.[87] Finally, courts have used "extent of the loss" synonymously with "amount of loss" in appraisal, which infers an appraiser's

75. Heres et al., *supra* note 55.
76. *Id*.
77. Rastelli Bros., Inc. v. Neth. Ins. Co., 68 F.Supp.2d 440, 446 (D. N.J. 1999).
78. *Id*.
79. Munn v. Nat'l Fire Ins. Co. of Hartford, 115 So.2d 54, 55 (Miss. 1959).
80. *Id*. at 57.
81. LeBlanc v. Travelers Home & Marine Ins. Co., No. CIV-10-00503-HE, 2011 WL 1107126, at *4-5 (W.D. Okla. Mar. 23, 2011) (citation omitted).
82. *See, e.g.*, CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F. Supp. 2d 259, 264 (D. Del. 2000); State Farm Lloyds v. Johnson, 290 S.W.3d 886, 892 (Tex. 2009); 201 N. Wells, LLC v. Fidelity & Guar. Ins. Co., No. 1:00-cv-03855 (N.D. Ill. Feb. 2, 2001); Hahn v. Allstate Ins. Co., 15 A.3d 1026, 1030 (R.I. 2011).
83. *See, e.g.*, *CIGNA*, 110 F. Supp. 2d at 264; *State Farm Lloyds*, 290 S.W.3d at 892; *201 N. Wells*, No. 1:00-cv-03855; *Hahn*, 15 A.3d at 1030.
84. *CIGNA*, 110 F. Supp. 2d at 264-65. For further discussion, *see infra* Part III(C).
85. *State Farm Lloyds*, 290 S.W.3d at 892-93. For further discussion, *see infra* Part III(C).
86. *See, e.g.*, *201 N. Wells*, No. 1:00-cv-03855, slip op. at 2. For further discussion, *see infra* Part III(C).
87. *CIGNA*, 110 F. Supp. 2d at 265. For further discussion, *see infra* Part III(C).

ability to determine causation.[88] Most courts reference several of these justifications in their reasoning to allow appraisers to determine causation in the appraisal process.[89]

1. Policy Language Interpretation Permits Determination of Causation

An analysis of the policy language in some cases led courts to permit the determination of causation in the appraisal process.[90] In *CIGNA Insurance Co. v. Didimoi Prop. Holdings, N.V.*, a fire started in a tenant's room of the insured building, causing severe damage to the building and rendering it unusable.[91] The parties disagreed on whether determining the "amount of loss" included determining the cause of the loss.[92] The court found that the phrase "amount of loss" was not ambiguous and concluded that in the insurance context, an appraiser's assessment of the "amount of loss" necessarily included a determination of the cause of the loss, as well as the amount it would cost to repair the damage.[93] The court cited the Black's Law Dictionary definition of the term "amount of loss" as "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."[94] Thus, the definition of "amount of loss" expressly includes a causation element.[95] The court held that causation is a factual issue for the appraisal panel to decide as part of the amount of loss determination.[96]

2. Giving Meaning to All Policy Provisions

Courts also reason that not allowing the appraisal process to determine causation in certain circumstances make the policy's appraisal provision effectively "inoperative."[97] In *State Farm Lloyds v. Johnson*, the Texas Supreme Court found that "when different types of damage occur to different items of property, appraisers may have to decide the damage caused by each before the courts can decide liability."[98] Similarly, when the causation question involves separating loss due to a covered event from a pre-existing condition of the property, it is a question for the appraisal panel.[99] If this were not the case, then appraisers could never assess

88. *Hahn*, 15 A.3d at 1030. For further discussion, *see infra* Part III(C).
89. *See, e.g.*, *CIGNA*, 110 F. Supp. 2d at 267.
90. *Id*. at 268.
91. *Id.* at 261.
92. *Id*. at 264.
93. *Id*.
94. *Id.* at 264-65 (quoting BLACK'S LAW DICTIONARY 83 (6th ed. 1990)) (emphasis in original).
95. *Id.* at 265.
96. *Id*. at 268. *See also* Houser & Bolduan, *supra* note 22.
97. State Farm Lloyds v. Johnson, 290 S.W.3d 886, 892-93 (Tex. 2009).
98. *Id*.
99. *Id*. at 892.

covered damage unless the subject property was brand new.[100] The court stated that this would make appraisal clauses effectively inoperative.[101]

3. Causation Is Inherent in the Appraiser's Duties

Some courts have found that "determining the cause of the damage is inherent in the appraiser's duties."[102] In *201 N. Wells, LLC v. Fidelity & Guaranty Ins. Co.*, the insured's water tank malfunctioned causing a large volume of water to flow throughout the building.[103] The insurance company demanded appraisal and the insured asserted that appraisal was not appropriate because the dispute was not about the amount of loss; rather, the dispute was over what *caused* that loss.[104] The court reasoned that allowing the parties to ignore the demand for appraisal in situations such as this would cause the provision to become meaningless in many cases.[105] The court directed the appraisers to determine the amount of damage to the building, as well as evaluate the amount of loss caused by water damage, asbestos, mold and fungi.[106] After concluding that evaluating causation is an "inherent" duty for appraisers, the court provided the following example: "For example, if a building has damage before a covered event occurred, the appraiser cannot determine the amount of loss without evaluating what damage was caused by the covered event and which damage was caused, for instance, by previous wear and tear."[107] If the appraiser did not distinguish the damage caused by the covered event from other damage, it would require appraisers to evaluate damage unrelated to the covered peril.[108]

4. Uphold Purpose of Appraisal of Promoting Private Dispute Resolution

Another justification for permitting the determination of causation is to uphold the purpose of appraisal.[109] The court in *CIGNA* explained that if the appraisers were required to assign dollar values to all damage, regardless of its cause, then "the appraisers could be examining damage entirely unrelated to the case".[110] Limiting the appraiser's authority to only dollar value assessments without regard to the cause of the damage would result in a "plethora of detailed damage assessments for judicial review," which is contrary to the purpose of appraisal: "minimiz[ing] the need for judicial intervention."[111]

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100. *Id*. at 892-93.
101. *Id*.
102. 201 N. Wells, LLC v. Fidelity & Guaranty Insurance Co., No. 1:00-cv-03855, slip op. at 2 (N.D. Ill. Feb. 2, 2001).
103. *Id*.
104. *Id*.
105. *Id*.
106. *Id*.
107. *Id*.
108. *Id.*
109. CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F. Supp. 2d 259, 265-69 (D. Del. 2000).
110. *Id*. at 268-69.
111. *Id*. at 269.

Other courts take similar approaches regarding the avoidance of unnecessary litigation.[112] In *201 N. Wells, LLC*, an Illinois district court reasoned that allowing the appraisal process to determine the amount of damage for each type of damage would eliminate the need for additional litigation.[113] In *State Farm Lloyds v. Johnson*, the Texas Supreme Court held that appraisers must consider causation as part of their assessment "because setting the 'amount of loss' requires appraisers to decide between damages for which coverage is claimed from damages caused by everything else."[114] The court reasoned that if the parties had to first agree on what specific property was damaged and approach every disagreement on extent of damage as a causation, coverage or liability issue, either party could defeat a demand for appraisal by labeling a disagreement a coverage dispute.[115] Instead, as the appraisal process is designed, once it is determined that there is a covered loss and a dispute about the amount of that loss, the appraisal process determines the amount that should be paid because of loss from a covered peril.[116] Under *Johnson*, appraisers will always be tasked with separating loss due to a covered event from a property's pre-existing condition.[117]

5. "Extent of Loss" as "Amount of Loss"

In recent decisions, courts have used "extent of the loss" in conjunction or as a substitute for "amount of the loss."[118] This necessarily gives appraisers the ability to determine the scope of the damage, because "extent of loss" gives appraisers the ability to distinguish damage caused by the covered loss from other damage.[119] In *Hahn v. Allstate Ins. Co.*,[120] the insured sustained a fire loss to her home, and the insurance company contended that it disputed the scope of coverage, thus requiring resolution through the court rather than the appraisal process.[121] In response to the insurance company's claim, the court found that the insurance policy provided coverage for fire damage and that the insurance company never denied that the insured's home sustained fire damage.[122] Thus, because the dispute involved only the extent of damages and the amount of loss, it could not be characterized as a scope-of-coverage issue.[123] If the insurance company denied the claim in its entirety as a non-covered loss, then a genuine dispute over the scope of coverage would exist and need to be resolved by the court.[124] The court held "that unless the insurer denies coverage for the claimed loss and if the dispute is limited

112. *See 201 N. Wells*, No. 1:00-cv-03855, slip op. at 2; State Farm Lloyds v. Johnson, 290 S.W.3d 886, 893 (Tex. 2009).
113. *201 N. Wells*, No. 1:00-cv-03855, slip op. at 2.
114. *State Farm Lloyds*, 290 S.W.3d at 893.
115. *Id*. at 894.
116. *Id*. at 888-89.
117. *Id.* at 892-94.
118. Hahn v. Allstate Ins. Co., 15 A.3d 1026, 1031 (R.I. 2011).
119. *Id*. at 1029-30.
120. 15 A.3d 1026 (R.I. 2011).
121. *Id*. at 1027.
122. *Id*. at 1030.
123. *Id*.
124. *Id*.

to the amount or extent of the loss, the parties are required to submit to the appraisal process."[125]

Similarly, in *Coates v. Erie Ins. Exchange*, a state circuit court held that "the question of what must be replaced in order to adequately repair the damage caused by the covered event is not a question of coverage. Rather, it is a question of the extent or "amount of loss," and is thus appropriate for appraisal."[126]

C. A Dual-Track Approach

In jurisdictions that do recognize appraisers' authority to determine causation, some courts have developed a dual-track approach to the coverage versus causation analysis in property insurance cases.[127] In Florida courts, the determination of causation is appropriate for appraisers in some situations, and appropriate for judges in others.[128] In *Johnson v. Nationwide Mutual Insurance Co.*, Florida's highest court held that where an insurer contends that there is no covered loss, causation is an issue for the court.[129] On the other hand, an appraisal procedure is appropriate to determine causation issues when an insurer admits that there is at least some covered loss, but the parties disagree as to the amount of the loss.[130] Thus, Florida has adopted a dual track process—allowing appraisal to determine damage and causation and the courts to determine coverage.[131]

The order in which issues of damage and coverage are to be determined by appraisal and the court is left to the discretion of the trial court.[132] The trial court has discretion regarding timing because deciding the issue of coverage before appraisal in every case might have negative effects on the prompt, out-of-court disposition of litigation.[133] In addition, appraisal conserves "judicial resources which might otherwise be required in resolving the factual and legal issues involved in the [coverage issue] . . . by a relatively swift and informal decision by the appraisers as to the amount of the loss."[134]

The court in *State Farm & Casualty Co. v. Licea* stated that when an insurance company admits there is a covered peril, but there is a disagreement on the amount of the loss, it is appropriate for the appraisal panel to determine the amount to be paid.[135] In this circumstance, the appraisal panel is to inspect the property and determine how much the insurance company must pay based on the covered loss, while also excluding payment for excluded causes, such as wear and tear or dry rot.[136] Thus, if the insurance policy provides coverage for wind dam-

125. *Id*.
126. Coates v. Erie Ins. Exch., 79 Va. Cir. 440, 445 (Vir. Cir. Ct. 2009).
127. Johnson v. Nationwide Mut. Ins. Co., 828 So.2d 1021, 1022 (Fla. 2002).
128. Heres et al., *supra* note 55.
129. *Johnson*, 828 So.2d at 1025-26.
130. *Id.*; *see also* Kendall Lakes Townhomes Developers, Inc. v. Agric. Excess & Surplus Lines Ins. Co., 916 So. 2d 12 (Fla. Dist. Ct. App. 2005).
131. Sunshine State Ins. Co. v. Rawlins, 34 So.3d 753, 755 (Fla. Dist. Ct. App. 2010).
132. *Id.*; *see also* Paradise Plaza Condo. Assoc., Inc. v. The Reinsurance Corp. of N.Y., 685 So.2d 937 (Fla. Dist. Ct. App. 1996).
133. *Paradise Plaza*, 685 So.2d at 941.
134. *Id*.
135. State Farm & Casualty Co. v. Licea, 685 So. 2d 1285 (Fla. 1996) (holding that causation is an amount of loss issue for the appraisal panel).
136. *Id*. at 1288.

age to the roof, but does not provide coverage for dry rot, the appraisal panel is to inspect the roof and determine a value for the wind damage, while excluding payment for repairs required by preexisting dry rot.[137]

Similarly, the court in *Kendall Lakes* reasoned that, because the insurance company had not wholly denied that there was a covered loss, causation was "an amount-of-loss question for the appraisal panel," not a coverage question that could only be decided by the court.[138]

D. Judicial Review Following an Appraisal Award

Another twist on the coverage versus causation analysis is judicial review of the appraisal award. Generally, an appraisal award agreed to by two of the three members of the appraisal panel is binding on the parties.[139] However, some courts allow challenges to the scope of coverage after appraisal.[140] An appraisal award is only binding on a party if a court determines that coverage exists for a specific portion of the loss.[141]

Some courts allow judicial review of appraisal awards any time the appraisal panel determines causation.[142] For example, in *St. Charles Parish Hosp. Serv. Dist. No. 1 v. United Fire and Cas. Co.*, the court stated that "any decisions of causation contained in the award may be challenged because neither party nor the court is bound by determinations of causation."[143] Therefore, in jurisdictions that follow this rule, any time an appraisal panel determines causation in calculating the amount of loss, either party may challenge the determination of causation.

Some insurance companies include judicial review of appraisal awards in the insurance policy language.[144] For example, the insurance policy in *North Carolina Farm Bureau Mut. Ins. Co. v. Sadler* stated, "[i]f there is an appraisal, [the insurance company] still retain[s] the right to deny the claim."[145] Here, the insurance company wrote into the policy language that if it participated in appraisal it was not obligated to pay the full amount or any amount of the appraisal award, which may be reduced or denied by policy exclusions and limitations.[146] This is an example of an insurance company using the policy to ensure a nonbinding appraisal award.

137. Johnson v. Nationwide Mut. Ins. Co., 828 So.2d 1021, 1025 (Fla. 2002).
138. Kendall Lakes Townhomes Developers, Inc. v. Agric. Excess & Surplus Lines Ins. Co., 916 So. 2d 12, 16 (Fla. Dist. Ct. App. 2005).
139. *See* Auto-Owners Ins. Co. v. Kwaiser, 476 N.W.2d 467, 469 (Mich. Ct. App. 1991).
140. Ogden, *supra* note 12, at 24.
141. *Id.*; Liberty Am. Ins. Co. v. Kennedy, 890 So.2d 539, 541-42 (Fla. Dist. Ct. App. 2005)
142. St. Charles Parish Hosp. Serv. Dist. No. 1 v. United Fire and Cas. Co., 681 F.Supp. 2d 748 (E.D. La. 2010).
143. *Id.*
144. N.C. Farm Bureau Mut. Ins. Co. v. Sadler, 365 N.C. 178, 182 (N.C. 2011).
145. *Id.*
146. *Id*.

E. Possible Outcomes and Solutions

Excluding causation from the appraisal process limits the utility of appraisal for many issues in dispute.[147] One solution to avoid the limited utility of appraisal is for the parties to an appraisal to prepare and agree on a Memorandum of Appraisal, which contains "questions to be appraised, the procedure of the appraisal and an agreement on any other issues that will facilitate a fair and efficient appraisal process."[148] Another solution is for insurance companies to draft the appraisal clauses more precisely to clarify the scope of appraisal.[149] For example, the policy language in *Sadler* stated, "[i]n no event will an appraisal be used for the purpose of interpreting any policy provision, determining causation or determining whether any item or loss is covered under this policy."[150]

Additionally, attempts to circumvent the appraisal process in favor of litigation delay resolution of insurance claims and defeat the purpose of appraisal.[151] It also forces policyholders to make difficult choices. For instance, an insured might feel inclined to accept a lower settlement offer in order to avoid a costly or lengthy litigation battle.[152]

Another solution to the coverage versus causation issue is to structure the appraisal clause in a way that determines the amount of loss without deciding any liability issues.[153] The *Johnson* court reasoned:

> [W]hen an indivisible injury to property may have several causes, appraisers can assess the amount of damage and leave causation up to the courts. When divisible losses are involved, appraisers can decide the cost to repair each without deciding who must pay for it. When an insurer denies coverage, appraisers can still set out the amount of loss in case the insurer turns out to be wrong. And when the parties disagree whether there has been any loss at all, nothing prevents the appraisers from finding "$0" if that is how much damage they find.[154]

Implementing a few of these solutions could avoid most of the litigation that revolves around the determination of causation in appraisal issue.

IV. RETURNING TO THE PROPERTY INSURANCE HYPOTHETICAL

In the property insurance hypothetical described above, the condominium association claimed that it sustained damage from the hurricane-force winds to its roofs, windows and sliding glass doors. The insurance company admitted some damage to the roofs from the wind, a covered peril, but denied that the windows and sliding glass doors were damaged from the wind. The condominium associa-

147. Downs, *supra* note 13, at 13.
148. *Id*.
149. State Farm Lloyds v. Johnson, 290 S.W.3d 886, 890 (2009).
150. *Sadler*, 365 N.C. at 182.
151. Hahn v. Allstate Ins. Co., 15 A.3d 1026, 1030 (R.I. 2011).
152. *Id*.
153. *State Farm Lloyds*, 290 S.W.3d at 894.
154. *Id*.

tion then invoked the appraisal provision in the insurance policy. Whether the appraisal panel can consider causation in the determination of the amount of loss has a strong impact on the resolution of this claim.

A. Resolution of the Claim without Determination of Causation

States that preclude the appraisal panel from considering causation in determining the amount of loss might take two different approaches in resolving whether or not the windows and sliding glass doors are damaged from the hurricane-force winds. First, the court could rule on the scope of damage before submitting the claim to appraisal. This would narrow the appraisal panel's evaluation to the items specifically listed by the court. In this instance, the court could conclude that the damage to the windows and sliding glass doors was either caused by the wind or by wear and tear, an excluded peril. If the windows and sliding glass doors are included in the covered damage, the appraisal panel will determine the amount of loss. If the windows and sliding glass doors are excluded from covered damage, then the appraisal panel will not consider any damage to them.

In the alternative, the court could elect to have the appraisal panel evaluate the amount of loss for all damage claimed by the condominium association, including the windows and sliding glass doors. Following the appraisal panel's determination of the amount of loss, the court could consider whether or not the damage to the windows and sliding glass doors was caused by the wind, and thus whether they were covered under the insurance policy.

Either of these approaches requires a much larger expenditure of judicial resources and litigation costs compared to jurisdictions that allow appraisal panels to determine causation. The cause of the damage to the windows and sliding glass doors will have to be decided by either a judge or a jury. Most judges and jurors are unfamiliar with the details of property constructions and are not trained structural engineers. Thus, construction experts and engineers will need to be brought before the court to inform a judge or jury on the highly technical issue of what caused the damage to the windows and sliding glass doors. The condominium association will argue that the wind caused the damage, while the insurance company will argue that any damage is from general wear and tear. Asking a judge or jury to make this causation determination will likely require significant judicial time and cost to both parties, resulting in substantial amounts of expert fees.

B. Resolution of Claim with Determination of Causation

In a jurisdiction that allows the appraisal panel to determine causation, the panel would have the authority to determine whether the wind caused the damage to the windows and sliding glass doors, or, in contrast, whether the damage is from wear and tear. If the appraisal panel determines that the windows and sliding glass doors were damaged by the hurricane-force winds, then the panel should include the amount to repair or replace the damaged windows and sliding glass doors in the appraisal award. If the appraisal panel determines that the windows and sliding glass doors were not damaged by the wind, then these items should be excluded from the appraisal award. Depending on the jurisdiction, some courts might allow judicial review of appraisal awards that determine causation, and

either the insurance company or the condominium association could request review of the award.

This approach conserves both the court's time and litigation costs, because the appraisal panel would be generally composed of individuals knowledgeable in property insurance, as it can be presumed that the condominium association and insurance company would select appraisers knowledgeable in the loss sustained. Furthermore, both parties would likely hire construction experts and engineers to provide reports on remediation of the alleged damages as well as their claimed scope of damages. Finally, the umpire will consider all expert reports in his final appraisal award. Although the parties still retain construction experts and engineers, the parties do not have to pay for the experts' time in court, and do not have to fear the effect of a misleading or less compelling expert on the stand.

C. Resolution of Claim under Dual-Track Approach

In a jurisdiction that utilizes the dual-track approach, the appraisal panel would be able to determine causation under these circumstances because the insurance company did not completely deny coverage for any wind damage.[155] If the insurance company denied any damage to the condominium due to hurricane-force winds, then the court would determine causation of the damages.[156] However, in this case, the insurance company admitted damage to the roof caused by the wind, thus the appraisal panel has the authority to determine whether the damage to the windows and sliding glass doors were caused by wind. Once it is established that the appraisal panel can determine causation, the analysis follows as outlined above.

V. CONCLUSION

The appraisal procedure has been utilized in property insurance cases for decades. The issue of whether or not to allow the determination of causation in the appraisal process is a relatively recent dispute in the property insurance context. Allowing the determination of causation in the appraisal process has significant effects on the resolution of property insurance disputes and can conserve both judicial resources and costs to the insured and insurance company.

Only twenty-eight states currently have case law addressing the issue of determining causation in a property appraisal.[157] Of the states that have considered the matter, the states are slightly in favor of the determination of causation.[158] Analyzing the justifications for and against allowing the appraisal panel to determine causation will assist other courts in addressing this issue. The Appendix briefly displays the states' positions on allowing the determination of causation in appraisal.

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155. Johnson v. Nationwide Mut. Ins. Co., 828 So.2d 1021, 1022 (Fla. 2002).
156. *Id.* at 1022-23.
157. For a chart of detailing each state's approach to this issue *see infra* Appendix.
158. *Id.*

Appendix – Determination of Causation in Appraisal by State

State	Causation Determined in Appraisal	Source
Alabama	No	Rogers v. State Farm Fire & Cas. Co., 984 So.2d 382 (Ala. 2007); Caribbean I Owners' Ass'n., Inc. v. Great American Ins. Co. of NY, 619 F.Supp.2d 1178 (S.D. Ala. 2008).
Alaska	*	
Arkansas	*	
Arizona	Yes	Ori v. American Family Mutual Ins. Co., 2005 WL 3079044, at *2 (D. Ariz. Nov. 15, 2005); Harvey Prop. Management Co., Inc. v. The Travelers Indem. Co., 2012 WL 5488898 (D. Ariz. Nov. 6, 2012).
California	No	Kirkwood v. California State Auto. Assn. Inter-Insurance Bureau, 193 Cal.App.4th 49, 59 (Cal. Ct. App. 2011); Kacha v. Allstate Ins. Co., 140 Cal.App.4th 1023, 45 Cal.Rptr.3d 92 (4th Dist. 2006).
Colorado	Yes	Rooftop Roofing, Inc. v. Fire Insurance Exchange, Nov. 16, 2011, Case No. 11-CV-668.
Connecticut	Yes	Middlesex Mut. Assur. Co. v. Komondy, 991 A.2d 587, 598 (App. Conn. 2010).
Delaware	Yes	CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F.Supp.2d 259, 263 (D. Del. 2000).
Florida	Yes	Johnson v. Nationwide Mut. Ins. Co., 828 So.2d 1021, 1022 (Fla. 2002).
Georgia	Yes	Colony Ins. Co. v. 9400 Abercorn, LLC, 2012 WL 3985088 *2 (S.D. Ga. Sept. 12, 2012).
Hawaii	Yes	Wailua Associates v. Aetna Cas. & Sur. Co., 27 F.Supp.2d 1211, 1218 (D. Hawaii 1998).
Idaho	*	
Illinois	No	Spearman Industries Inc. v. St. Paul Fire and Marine Ins. Co., 109 F.Supp.2d 905 (N.D. Ill. 2000).
Indiana	*	
Iowa	*	
Kansas	*	
Kentucky	Yes	Motorists Mut. Ins. Co. v. Post, 2005 WL 2674987 (E.D. Ky. Oct. 20, 2005).

Louisiana	Yes	St. Charles Parish Hosp. Service Dist. No. 1 v. United Fire and Cas. Co., 681 F.Supp.2d 748 (E.D. Louis. 2010).
Maine	*	
Maryland	Yes	Wausau Ins. Co. v. Herbert Halperin Distribution Corp., 664 F.Supp. 987, 989 (D. Mary. 1987).
Massachusetts	Yes	F.C.I. Realty Trust v. Aetna Cas. & Sur. Co., 906 F.Supp. 30, 33 (D. Mass. 1995).
Michigan	*	
Minnesota	Yes	Quade v. Secura Ins., 814 N.W.2d 703 (Minn.. 2012).
Mississippi	No	Munn v. Nat'l Fire Ins. Co. of Hartford, 237 Miss. 641, 115 So.2d 54, 58 (1959); Sunquest Properties, Inc. v. Nationwide Property and Cas. Co., 2009 WL 2567222 *2 (S.D. Miss 2009).
Missouri	Yes	Underwriters at Lloyd's of London v. Tarantino Properties, Inc., 2012 WL 3835385 (W.D. Mo. Sept. 4, 2012).
Montana	*	
Nebraska	*	
Nevada	No	St. Paul Fire & Marine Ins. Co. v. Wright, 97 Nev. 308, 629 P.2d 1202 (1981).
New Hampshire	*	
New Jersey	No	Rastelli Bros. v. Netherlands Ins. Co., 68 F.Supp.2d 440, 446 (D. New Jersey 1999).
New Mexico	*	
New York	No	Secord v. Chartis Inc., 2011 WL 814743 *2 (S.D. New York, March 7, 2011).
North Carolina	No	North Carolina Farm Bureau Mut. Ins. Co. v. Sadler, 365 N.C.178, 182-183 (N.C. 2011); Glendale LLC v. Amco Ins. Co., 2012 WL 1394746 (W.D.N.C. Apr. 23, 2012).
North Dakota	*	
Ohio	Yes	Hull v. Motorists Ins. Group, 2011 WL 2040958 (9th D. App. Ohio May 25, 2011).
Oklahoma	No	LeBlanc v. The Travelers Home and Marine Ins. Co., 2011 WL 1107126 W.D. Okla., *5.
Oregon	*	
Pennsylvania	Yes	Williamson v. Chubb Indem. Ins. Co., 2012 WL 760838 (E.D. Pa. Mar. 8, 2012).

Rhode Island	Yes	Hahn v. Allstate Ins. Co., 15 A.3d 1026, 1030 (R.I. 2011).
South Carolina	*	
South Dakota	*	
Tennessee	No	Merrimack Mut. Fire Ins. Co. v. Batts, 59 S.W.3d 142 (Tenn. App. 2001).
Texas	Yes	State Farm Lloyds v. Johnson, 290 S.W.3d 886 (Tex. 2009).
Utah	*	
Vermont	*	
Virginia	Yes	Coates v. Erie Ins. Exchange, 79 Va. Cir. 440, No. CL-2009-1456. (Cir. Vir. 2009).
Washington	*	
West Virginia	*	
Wisconsin	*	
Wyoming	*	

* No published case law discussing availability of causation determination in appraisal.