

When Policyholders Aren't Entitled To Preward Interest

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Most property insurance policies contain an appraisal clause that provides that if the parties cannot agree on the amount of loss, either party may demand an appraisal. An appraisal panel consisting of two party-appointed appraisers and a disinterested umpire then determines the amount of a loss. In most instances, an appraisal award is issued several months, perhaps even years, after the loss.[1] Therefore, an issue can arise as to whether a policyholder is entitled to recover preaward interest on an appraisal award.



Scott G. Johnson

That issue was before the Minnesota Court of Appeals in the recent case of *Poehler v. Cincinnati Insurance Co.*, No. A15-0958, 2016 Minn. App. LEXIS 7 (Minn. Ct. App. Jan. 25, 2016). There, the court held that a policyholder was not entitled to recover preaward interest on an appraisal award absent an underlying breach of contract or actionable wrongdoing.

Underlying Facts

Cincinnati insured James Poehler under a homeowner's insurance policy, which provided replacement-cost coverage for Poehler's home and personal property. The policy included the statutorily-required appraisal clause. The policy also provided that the loss became payable within five working days after the filing of an appraisal award.

On Oct. 4, 2013, a fire damaged Poehler's property. Cincinnati made its first payment on the claim a week later. Cincinnati continued making payments and eventually paid the full amount of its measurement of the loss, a total of \$175,663.83. Poehler disagreed with Cincinnati's loss measurement and demanded an appraisal. At the appraisal hearing, Poehler argued that he was owed an additional \$170,442.55. Cincinnati claimed that it owned only an additional \$57,965.90. On June 23, 2014, the appraisal panel determined that Poehler's loss was \$263,144.04 and awarded Poehler an additional \$88,480.21. Cincinnati paid the appraisal award in full about two weeks later.

Four months later, Poehler filed suit seeking, among other things, confirmation of the appraisal award and preaward interest under Minnesota's prejudgment interest statute. Minnesota's prejudgment interest statute allowed preverdict, preaward or prejudgment interest "on pecuniary damages" from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first. Minn. Stat. § 549.09, subd. 1(b).[2] Cincinnati opposed Poehler's motion for interest, arguing that the prejudgment interest statute did not apply to appraisal awards unless they

were coupled with a lawsuit predicated on an underlying breach of contract or actionable wrongdoing.

The trial court found that the prejudgment interest statute applied to appraisal awards even without an underlying breach of contract or actionable wrongdoing. Accordingly, the trial court granted Poehler's motion for preaward interest.

The Court's Rationale

On appeal, the Minnesota Court of Appeals reversed. The court rejected Poehler's argument that the payments Cincinnati owed him under the policy were compensatory damages and therefore eligible for preaward interest under the prejudgment interest statute. The appellate court concluded that payments made pursuant to a written contract, such as an insurance policy, were not compensatory damages and therefore not covered by the prejudgment interest statute. The court reasoned that appraisal was a contractually-required, procedural mechanism for evaluating and determining the amount of loss, and because Cincinnati complied with the statutory and contractual requirements, the appraisal award represented only the amount of the insured loss, not compensation for a breach of contract or actionable wrongdoing.

The court of appeals also concluded that allowing preaward interest was inconsistent with the purpose of the prejudgment interest statute. The court noted that prejudgment interest served two functions: (1) It compensates the prevailing party for the true cost of money damages incurred; and (2) it promotes settlements when liability and damage amounts are fairly certain.

The Poehler court found that the compensatory purpose of the statute was not served by applying preaward interest to appraisal awards under insurance policies because Cincinnati did not wrongfully withhold funds to which Poehler was entitled under the policy. The court rejected Poehler's argument that insurance proceeds were wrongfully withheld because Cincinnati should have valued the loss accurately and paid it immediately. The court reasoned that the policy determined when Poehler was entitled to payment, which was five days after the filing of the appraisal award. It noted that because Cincinnati promptly paid the award in full as soon as it became payable under the policy, Poehler did not suffer a loss of use of money to which he was entitled.

Regarding the second purpose of the prejudgment interest statute, the court said that the appraisal process itself was the method whereby the parties determined the "liability and damage amounts" when they are uncertain. The court noted that neither party initially valued the loss accurately. At the time of appraisal, Cincinnati estimated the loss at \$232,599.73, and Poehler valued it at \$345,086.38. While the court agreed with Poehler that the prospect of preaward interest would incentivize insurance companies to dispose of claims as quickly as possible, it also agreed with Cincinnati's argument that the incentive to take an unreasonable valuation went "both ways." In particular, Cincinnati argued that it would have been pressured to accept Poehler's valuation, which was significantly greater than the valuation made by the appraisal panel, or face owing additional interest. But the Poehler court concluded that even if allowing preaward interest served the second purpose of the prejudgment interest statute, it would not be enough to overcome the fact that payments made pursuant to a written contract are not damages under Minnesota case law.

Finally, the court rejected Poehler's argument that the court should interpret the prejudgment interest statute to allow preaward interest on insurance appraisal awards as a matter of public policy. Poehler argued that without the prospect of paying preaward interest, insurance companies have incentive to drag out the process as long as possible within the bounds of the policy. The court acknowledged that

“Poehler’s public policy arguments are strong,” but concluded that it was not in a position to choose between public policy choices when the law unambiguously addressed the question before it, specifically, that the prejudgment interest statute unambiguously referred to “damages” and the appraisal award could not be characterized as compensatory damages.

Therefore, the court of appeal found that the district court erred in finding that the prejudgment interest statute applies to appraisal awards made pursuant to an insurance policy without an underlying breach of contract or actionable wrongdoing.

Analysis

Poehler represents the prevailing rule on the issue of whether a policyholder is entitled to preaward interest on an appraisal award. A number of other courts also have considered the same issue. Like Poehler, these other courts have found that a policyholder is not entitled to preaward interest and that the right to recover interest on an appraisal award begins to run only after the date that the policy requires payment of the appraisal award. [3] These courts generally have reasoned that policyholders are not entitled to preaward or prejudgment interest prior to receiving an appraisal award which determined their actual loss.

The Poehler court identified the one exception to the rule that a policyholder is not entitled to preaward interest on an appraisal award, noting that if there was an underlying breach of contract or actionable wrongdoing, preaward interest could be recovered on an appraisal award. This would include those instances where an insurer wrongfully denied coverage for the claimed loss.

But there is no breach of contract where the insurer acknowledges coverage and the sole dispute turns on quantifying the covered loss, not the existence of coverage. In other words, where the insurer acknowledges that there is a covered loss, the invocation of the appraisal process where there is a disagreement over the measurement of a loss is not a breach of contract. Indeed, the appraisal provision — a statutorily required provision in most policies — specifically provides a mechanism for the parties to resolve measurement disputes.

As Poehler illustrates, a policyholder is not entitled to preaward interest and the right to recover interest on an appraisal award begins to run only after the date that the policy requires payment of the appraisal award. Thus, preaward or prejudgment interest is awarded from the date that that the policy requires payment of an appraisal award rather than from the date of loss.

—By Scott G. Johnson, Robins Kaplan LLP

Scott Johnson is a partner in Robins Kaplan's Minneapolis office and is chairman of the firm's Minneapolis insurance and catastrophic loss group.

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[1] See, e.g., Hous. & Redevelopment Auth. of Redwood Falls v. Hous. Auth. Prop. Ins., No. 14-cv-4741 (PAM/HB), 2015 U.S. Dist. LEXIS 90877, at *8-9 (D. Minn. July 14, 2015) (appraisal award issued on June 2, 2014 for a loss that occurred on January 25, 2013); Jugo v. Am. Sec. Ins. Co., 56 So. 3d 94, 96 (Fla. Dist. Ct. App. 2011) (appraisal award issued in 2009 for loss that occurred in November 2006); Sunshine State

Ins. Co. v. Davide, 15 So. 3d 749, 751 (Fla. Dist. Ct. App. 2009) (appraisal award issued on November 2, 2006 for losses that occurred on August 25, 2005 and October 24, 2005); Allstate Ins. Co. v. Blanco, 791 So. 2d 515, 516 (Fla. Dist. Ct. App. 2001) (appraisal award issued on Feb. 26, 1999 for a loss that occurred on August 24, 1992).

[2] The Minnesota prejudgment interest statute provided in part:

Except as otherwise provided by contract or allowed by law, preverdict, preaward or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first, except as provided herein. Minn. Stat. § 549.09, subd. 1(b).

[3] See, e.g., Fidelity-Phenix Fire Ins. Co. of N.Y. v. Benedict Coal Corp., 64 F.2d 347, 355 (4th Cir.), cert. denied, 289 U.S. 762 (1933) (apparently applying federal law); Ne. Fin. Corp. v. Ins. Co. of N. Am., 757 F. Supp. 381, 388 (D. Del. 1991); Precision Auto. v. N. Ins. Co. of N.Y., 61 Cal. Rptr. 200, 204 (Cal. Ct. App. 1967); Jugo v. Am. Sec. Ins. Co., 56 So. 3d 94, 96 (Fla. Dist. Ct. App. 2011); Sunshine State Ins. Co. v. Davide, 15 So. 3d 749, 751 (Fla. Dist. Ct. App. 2009); Krim v. Commercial Union Assurance Co., 288 N.W.2d 463, 464-65 (Mich. Ct. App. 1980); Caiati of Westchester, Inc. v. Glens Falls Ins. Co., 696 N.Y.S.2d 474, 475 (N.Y. App. Div. 1999); Woodward v. Motorists Mut. Ins. Co., No. H-96-016, 1996 Ohio App. LEXIS 4745, at *5 (Ohio Ct. App. Nov. 1, 1996). While not cited by the court in Poehler, a Minnesota federal district court judge reached the same conclusion under Minnesota law just six months earlier. See Hous. & Redevelopment Auth. of Redwood Falls v. Hous. Auth. Prop. Ins., No. 14-cv-4741 (PAM/HB), 2015 U.S. Dist. LEXIS 90877, at *8-9 (D. Minn. July 14, 2015) (holding that policyholder was not entitled to recover preaward interest on appraisal award).
