

THOUGHT LEADERSHIP

News

FOR WANT OF A SWORN PROOF OF LOSS, A \$600,000 APPRAISAL AWARD IS OVERTURNED

Newsbrief

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Last week, a federal judge in Wichita Falls granted summary judgment for an insurer after it challenged a large appraisal award. *Great Lakes Insurance SE v. Horton Family Trust, LLC*, No. 7:19-CV-00138-O, 2021 WL 1117171 (N.D. Tex. Mar. 24, 2021) involved a wind/hail claim which the insurer initially denied after finding no damage caused by the claimed weather event. When the policyholder demanded appraisal six months later, the insurer requested a sworn proof of loss, which the policyholder did not return. After obtaining an *ex parte* umpire appointment, the policyholder's appraiser and the umpire signed an appraisal award of about \$600,000. The insurer filed a declaratory judgment action challenging the appraisal award and the original invocation of appraisal.

The court granted the insurer's motion for summary judgment because the policyholder had not submitted a sworn proof loss when the insurer requested it in response to the appraisal demand. The court rejected arguments the insurer had waived its right to request a sworn proof loss by denying the claim without requesting one, noting multiple courts have held a sworn proof loss is a condition precedent to appraisal. The court also pointed out Texas law does not support the conclusion that denial of a claim waives other rights under the policy, particularly when the policy contains express nonwaiver wording. Because a condition precedent was not satisfied, the court concluded the appraisal award did not comply with the policy terms and was issued without authority. The court granted summary judgment for the insurer, declared the appraisal award void, struck the umpire, and dismissed the policyholder's counterclaims with prejudice.

Editor's Note: This case contains clear lessons for both insurers and policyholders: First, always request a sworn proof of loss. And when one is requested, never fail to provide it.