STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Staring Lake Clubhome Association Inc.,

Plaintiff,

vs.

American Family Mutual Insurance Company,

Defendant.

Case File No. 27-CV-15-21515
Case Type: Contract
Judge: Karen A. Janisch

ORDER ON MOTION FOR PREAWARD INTEREST

This matter came before Judge Karen A. Janisch on October 4, 2017 for a hearing on the Plaintiff's motion for Prejudgment Interest Award.

Curtis E. Roeder, Esq. appeared on behalf of Plaintiff Staring Lake Clubhome Association, Inc.

Michael Stephen Rowley, Esq. appeared on behalf of Defendant American Family Mutual Insurance Company.

Based on the arguments, exhibits, affidavits, and memoranda of counsel and record before the Court, together with the applicable law, the Court makes the following:

ORDER

1. Plaintiff's motion to confirm the appraisal award pursuant to Minn. Stat. § 572B.22 of September 14, 2015 is GRANTED.

2. Plaintiff's request for preaward interest pursuant to Minn. Stat. § 549.09 is GRANTED, in part. Plaintiff is entitled to prejudgment interest in the amount of $83,040.96.

3. Plaintiff's request for costs and disbursements pursuant to Minn. Stat. §§ 549.02 and 549.04 is granted in an amount to be determined upon Plaintiff's filing of an Affidavit of Costs and Disbursements.

4. The attached memorandum is incorporated by referenced.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Janisch, Karen
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December 29, 2017

Karen A. Janisch
Judge of District Court

MEMORANDUM

This case involves Plaintiff Staring Lake Clubhome Association, Inc.'s ("Staring Lake") claim against its insurer, Defendant American Family Mutual Insurance Company ("AFMIC"), for storm damage to the associations' property. The matter was submitted for an appraisal. The primary issue in the case related to the availability of preaward interest on the appraisal award. On May 6, 2016, the Court issued its Order for Stay staying the proceedings in this case pending the Minnesota Supreme Court's consideration and decision in *Poehler v. Cincinnati,* 874 N.W.2d 806 (Minn. Ct. App. 2016) *cert granted* (Minn. March 29, 2016) or further order of this Court. The *Poehler* case presented the primary disputed issue in this case as to the availability of an award of prejudgment interest to this type of an arbitration award. On July 17, 2017, the Minnesota Supreme Court issued its decision in *Poehler v. Cincinnati*, 899 N.W.2d 135 (Minn. 2017). The *Poehler* Court determined that Minn. Stat. § 549.09 "unambiguously provide[s] for preaward interest on insurance appraisal award."

The Court lifted its stay on August 10, 2017. On September 20, 2017, Plaintiff filed its Amended Notice of Motion and Renewed Motion for Preaward Interest Pursuant to Minn. Stat

§ 549.09. The parties do not dispute the legitimacy of the arbitration award or the application of prejudgment interest as determined in *Poehler*. The parties disagree as to how the Court should apply the statute and how to calculate preaward interest in this case. After a hearing on Plaintiff's motion on October 4, 2017, the matter was taken under advisement.

FINDINGS OF FACTS

1. Staring Lake is a common interest community comprised of several residential single family homes located in Eden Prairie, Minnesota.
2. The property of Staring Lake has been, at all relevant times, insured by AFMIC pursuant to the parties' contract insurance policy.
3. On August 6, 2013, severe weather caused damage throughout Staring Lake's property.
4. On August 8, 2013, Staring Lake reported the damage to AFMIC. There is no writing by Staring Lake of this communication with AMMIC. At some point after Staring Lake's communication, an agent of AFMIC sent an email to an agent of Staring Lake that contained a claim number and a phone number for a named adjustor with a direction that Staring Lake contact that adjustor.
5. The contract for insurance policy between the parties provided for a deductible of $10,000.00.
6. Each party conducted inspections and produced repair estimates for the resulting storm damage.
7. Staring Lake's estimate of repair was $3,038,036.42. Staring Lake submitted this estimate to AFMIC by written correspondence dated August 21, 2014.
8. AFMIC made claim payments under the parties' policy starting on September 4, 2013 through December 6, 2014, totaling $933,369.91.

9. The parties disputed the total repair costs. In a letter dated April 28, 2015, Staring Lake "requested that the disputed claims on the 26 townhomes… be submitted to insurance appraisal[.]"

10. The appraisal took place on September 14, 2015. The appraisal panel heard evidence and testimony from both parties, and issued an appraisal award for Staring Lack in the amount of $2,175,000.00 for Replacement Cost Value and $2,001,000.00 for Loss of Actual Cash Value.

CONCLUSIONS OF LAW

The parties have vastly different interpretations of how preaward interest should be calculated in this case. Staring Lake's proposed method for calculating preaward interest results in a total of $454,946.58. In contrast, the calculation method urged by AFMIC for calculating the interest results in a total of $40,566.67. Although each party makes its arguments based upon application of Minn. Stat. § 549.09, the parties have differing interpretations of the statute and its application to the facts of this case. The parties do not dispute that the preaward interest rate is calculated at the rate of 10% per annum as the appraisal award is greater than $50,000.00 pursuant to Minn. Stat. §540.09, subd. 1(c)(2). At its core, the parties' dispute raises three issues for resolution by the Court. First, which triggering event cited by the parties properly starts the clock for calculating preaward interest? Second, is prejudgment interest calculated based on the total appraisal award or on the appraisal award less amounts paid by AFMIC to Staring Lake before the date of the award? Third, is prejudgment interest calculated based on the replacement cost value or the actual cost value of the award? The Court examines each of these issues in turn.

I. Under Minn. Stat. § 549.09, Preaward Interest Begins on April 28, 2015.

The parties dispute the date upon which preaward interest begins. Staring Lake contends that written notice of the claim occurred on August 8, 2013 when their agent first brought storm damage at their property to the attention of AFMIC and AFMIC in an email issued a claim number. AFMIC argues that Staring Lake is only entitled to pre-award interest from April 28, 2015, the date it received Staring Lake's written demand for appraisal.

Pursuant to *Poehler v. Cincinnati Insur. Co.*, preaward interest is properly granted to a prevailing party on an insurance appraisal award. 899 N.W.2d 135, 141 (Minn. 2017). In light of this precedent, the parties agree this issue depends on interpretation and application of Minn. Stat. § 549.09, subd. 1(b), which provides in relevant part:

> Except as otherwise provided by contract or allowed by law… preaward… 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). When an appraisal award exceeds $50,000.00, the rate of preaward interest is calculated at 10% per year. *Id.* at subd. 1(c)(2).

The plain language provides preaward interest from whichever occurs first: (1) a written notice of claim; or (2) a demand for an appraisal. The demand for an appraisal was made on April 28, 2015, and preaward interest is at least due from that date until the appraisal award on September 14, 2015. The parties' disagreement hinges on whether the prior email from the AFMIC agent assigning a claim number is a "written notice of claim" under the statutory language.

The phrase "written notice of claim" is not defined in the statute, and while the parties have identified Minnesota appellate court decisions interpreting this language which are

described below, the cases do not provide a decisive answer to the Court's present question. In analyzing statutory provisions, Courts are directed to ascertain the intention of the legislature. *Shire v. Rosemount Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). Words in a statute or to be given their plain meaning. *Id.* Determination of plain meaning often involves consideration of dictionary definitions. *Id.* Courts should endeavor to give effect to each word and phrase in the statute. *Id.* If a word or phrase has a plain meaning, then the presumption is that said meaning is consistent with legislative intent and the inquiry ends. *Id.*

The plain meaning of "written" is clear and uncontested as the triggering language starts with a document presented in writing. But looking to "notice" and "claim," it is helpful to start with further analysis of the plain meaning of those words, and for that the Court turns to dictionary definitions. Black's Law Dictionary (4th ed. 1968) provides that "notice" means "[i]nformation… knowledge of the existence of a fact or state of affairs; the means of knowledge." Webster's Dictionary provides in relevant part that "notice" means "warning or intimation of something –announcement" or "the condition of being warned or notified—usually used in the phrase *on notice*". "notice" www.merriam-webster.com, accessed December 28, 2017As to "claim", Blacks Law Dictionary defines it as "[t]o demand as one's own; to assert… [t]o state; to urge to insist." (4th ed. 1968). Webster's Dictionary defines the noun "claim" to mean "a demand for something due or believed to be due – an insurance *claim*[.]" "claim" www.merriam-webster.com, accessed December 28, 2017. Taking these definitions together, the Court concludes that the statutory language of "written notice of claim" is unambiguous and it means that a party with a dispute provides a writing to the other party it claims is responsible in relation to the dispute identifying the dispute and potential amount in dispute.

AFMIC urges the Court to read "written notice of claim" as synonymous with a "demand for payment." "Minnesota Courts have frequently described the required noticed under Minn. Stat. §549.09 as a demand for payment." *Flint Hills Res. LP v. Lovegreen Turbine Servs., Inc.*, Civ. No. 04-4699, 2008 WL 4527816, *9 (D. Minn. Sept. 29, 2008) *Flint Hills* cited three Minnesota Court of Appeals cases in support of its definition that the required notice is a written demand for payment. *Id.* at *9 (citing *Trapp v. Hancuh,* 587 N.W.2d 61 (Minn. Ct. App. 1998); *Metalmasters of Minneapolis, Inc. v. Liberty Mut. Ins. Co.*, 461 N.W.2d 496 (Minn. Ct. App. 1990); and *Higgins ex rel. Higgins v. J.C. Penney Cas. Ins. Co.*, 413 N.W.2d 189 (Minn. Ct. App. 1987)).

Although *Flint Hills* is not binding on this Court, it is helpful in analyzing at least some of the questions presented in this case. In the *Flint Hills* case, the court was confronted with an incident where defendant had worked on an oil compressor at plaintiff's refinery and the compressor failed due to alleged faulty workmanship resulting in a costly shutdown. *Id.* at *1. The court was tasked with deciding between three potential start dates for the calculation of prejudgment interest. *Id.* at *8-*9. The first was when plaintiff sent defendant a letter describing the incident at issue and the resulting shutdown at plaintiff's facility "we are forwarding you the summary of our incident analysis to use for improving your own systems, to further reduce risk." *Id.* The second was when plaintiff sent defendant's insurer a damage report detailing loss from the shutdown. *Id.* The third was the commencement of the lawsuit. *Id.* The Court determined that the second letter from plaintiff to the defendant's insurer which included a "comprehensive assessment of its damages" was sufficient written notice of a claim to trigger prejudgment interest accumulation under Minn. Stat. § 549.09. *Id.* at *10. At that point, the defendant's insurer had a duty to settled disputed claims in good faith which triggered the prejudgment

interest calculation. *Id.* The *Flint Hills* court noted the purpose of the prejudgment interest statute is "to give potential judgment debtors a greater incentive to settle or expedite cases." *Id.* (citing "*Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 391 (Minn. Ct. App. 2004)). In *Flint Hills*, the federal court found that the claimant had not made the party aware that it had a claim that it was seeking to pursue until it sent a written claim detailing its claim for money damages to the defendants' insurer. The *Flint Hill*s court rejected the earlier letter from the plaintiff to the defendant regarding the incident causing the damages as a starting date because it was not sufficient to provide notice of a claim bas the plaintiff phrased it in a way that did not make it clear there was claim it was pursuing. The *Flint Hills* determination that a "written notice of claim" is essentially a "demand for payment" is an understanding that a "written notice of claim" must involve communication to a party that makes them aware of a potential monetary claim the party seeks to pursue. This is consistent with this Court's reading of the plain meaning of Minn. Stat. § 549.09's "written notice of claim" as set forth, above.

The Minnesota Court of Appeals cases relied upon by *Flint Hills* also support an understanding that the "written notice of claim" must, at its core, mean a writing was provided to the other party making them aware that the claimant believes money may be owed. In *Trapp v. Hancuh*, the Court reviewed the law on prejudgment interest and determined that Minn. Stat. §549.09 supplemented but did not displace common law rules on prejudgment interest.[1] 587

[1] The *Trapp* Court also noted that that statutory provision of Minn. Stat. §549.09 only applies where the money damages in the matter are not readily ascertainable. *Id.* (*see also Hogenson v. Hogenson*, 852 N.W.2d 266, 273-74 (Minn. Ct. App. 2014). The later *Hogenson* case provided further clarification that whether damages are ascertainable rests on "contingencies or jury discretion." 852 N.W.2d at 274. The parties in this matter did not address the issue of whether the parties claim was ascertainable, and this was most likely because the parties' reasonably assumed that the damages at issue between the parties were not readily ascertainable. That said, the issues in this case involved the assessment of damages to real property. The damages were not readily ascertainable and Minn. Stat. § 549.09, subd. 1(b)

N.W.2d 61, 63 (Minn. Ct. App. 1998). It also stated without analysis that "prejudgment interest does not begin to run until an action is brought or when a written demand is made" which is what *Flint Hills* apparently relied upon in its understanding of the meaning of "written notice of claim". *Id.* Beyond this cursory statement which is a rephrasing of the Minn. Stat. § 549.09 language, *Trapp* did not engage in any apparent statutory interpretation. In *Metalmasters of Minneapolis, Inc. v. Liberty Mut. Ins. Co.*, the Court of Appeals read Minn. Stat. § 549.09 to provide that "preverdict interest [is allowed] from the commencement of the action when no written settlement demand precedes the commencement." 461 N.W.2d 496, 502 (Minn. Ct. App. 1990) (*citing Solid Gold Realty, Inc. v. Mondry*, 399 N.W.2d 681, 685 (Minn. Ct. App. 1987)). Again, this was a cursory restatement of "written notice of claim" as a "written settlement demand" without any specific statutory interpretation. Finally, in *Higgins ex rel. Higgins v. J.C. Penney Cas. Ins. Co.*, the Court stated prejudgment interest under Minn. Stat. § 549.09 began to run after the insurance company had received a letter from the plaintiff's attorney seeking information on their position related to the underinsured motorist coverage at issue and demanded payment.[2] 413 N.W.2d 189, 191-2 (Minn. Ct. App. 1987). The Court's analysis, while noting that there was a written demand for payment, did not condition its understanding of "written notice of claim" as requiring a demand for payment nor did the provision provide any further statutory analysis.

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governs pre-award interest.

[2] The Court notes that although the letter at issue was dated March or 1984, the prejudgment interest under Minn. Stat. § 549.09 was only calculated from the effective date of the amended Minn. Stat. §549.09, which was July 1, 1984. There was a separate issue addressed in the case for calculation of prejudgment interest at the time the claim arose prior to the amendment of Minn. Stat §549.09.

The *Flint Hills* case and the trio of Minnesota Court of Appeals cases it is based upon do not stand for a limitation on the term "written notice of claim" as requiring a strictly defined "demand for payment."[3] To the extent they meaningfully analyzed the statutory provision, they are better understood as requiring the "written notice of claim" to be in writing and to have the effect of making the other party aware of potential amounts claimed as due.

Staring Lake contends that the "written notice of claim" occurred on August 8, 2013 when AFMIC created a writing documenting that Staring Lake reported storm damage and it assigned a claim number and adjuster. Staring Lake asserts that the statutory language does not require that the writing come from the claimant. The August 8th email sent to Staring Lake by AFMIC acknowledges that AFMIC had notice of report of damage under an insurance policy and that this reflects AFMIC had the Black's Law definition of notice, "knowledge of the existence of a fact or state of affairs." Here AFMIC's own written document reflects it possessed knowledge of an event that may result proceeds under an insurance policy. However, the Court cannot ignore the context of the entire phrase "written notice of claim." The statute does not require written acknowledgment of a claim, but "notice" of a "claim." Although the language of Minn. Stat. § 549.09 does not state who has to make a written notice of a claim, the plain language of the statute requires it must be the party pursuing the claim. This is implicit in the Webster's definition of "notice" (a "warning or intimation of something –announcement" or "the condition of being warned or notified—usually used in the phrase *on notice*") that there is a relationship between the person giving the warning and the recipient of the warning.

[3] The *Trapp* case and *Higgins* cases also provide examples of interpretation of another aspect of Minn. Stat. § 549.09 as they involve questions as to whether offers of settlement were made. The parties did not contend that the language of Minn. Stat. § 549.09, which changes its calculation of prejudgment interest from the dates of offers or competing offers of settlement was applicable.

Here, AFMIC was the party at risk from Staring Lake's warning, as they were potentially on the hook for any damage determined to be covered by the parties' insurance policy. As such, they are entitled to written notice of the claim from the party making the claim before prejudgment interest begins to be calculated. A writing by the insurer evidencing the insurer was informed of an event from which a disputed claim may arise does not meet the statutory requirement for written notice of claim such that prejudgment interest begins to be calculated.

AFMIC urges the Court to instead determine that prejudgment interest should run only from the date the appraisal was demanded, April 28, 2015.[4] The Court agrees. Where there has been no written notice of claim provided, then the Minn. Stat. § 549.09, subd. 1(b) provides that the date for calculation of the prejudgment interest should run from the date the appraisal was demanded. Preaward interest should therefore be calculated as starting from April 28, 2015 and run until the date of the award September 14, 2015.

II. Under Minn. Stat. § 549.09, Preaward Interest is Based on the Total Appraisal Award Without Offsets for Prior Payments.

The next disputed issue is whether pre-award interest is determined based upon the total award, or the total award less prior payments made by AFMIC to Staring Lake. Between September 4, 2013 and December 6, 2014 AFMIC made payments to Staring Lake related to the storm damage totaling $933,369.91. Staring Lake asserts prejudgment interest is calculated upon

[4] The Court notes that on August 21, 2014, Staring Lake's attorney James Pierce sent a letter that set forth an estimate for repair was $3,038,036.42 and requested settlement of the claim. Staring Lake did not submit this letter into the record (it was submitted by AFMIC). Neither party identified or briefed whether this letter could trigger pre-award interest in their briefing to the Court. As this matter was not directly raised or briefed for the Court, the Court does not address it in the context of the pre-award interest issues. *See* Minn. R. Civ. P. 7.02 (motions must be in writing and state the particularity of the grounds thereof and relief sought).

the entire award. AFMIC argues that the award should be reduced by the amount of its prior payments and preaward interest determined based upon the net amount remaining.

Staring Lake raises two arguments in support of its contention that the interest is calculated on the total award. First, Staring Lake argues the *Poehler* decision left untouched a district court ruling to award preaward interest on the entire appraisal award implicitly blessing that aspect of the award. Second, Staring Lake contends that the unambiguous language of Minn. Stat. § 549.09, subd. 1(b) determines the matter in language provides interest accrues "on the judgment or award." AFMIC argues the *Poehler* Court did not analyze or explicitly affirm the district court on this particular issue and asserts public policy and the understood purpose of the prejudgment interest statute favor accounting for the offsets prior to determining preaward interest.

The *Poehler* decision does not directly address this issue. In *Poehler*, the Supreme Court summarized the facts as including that there was a house fire in October 2013; that the plaintiff promptly notified his insurer, and that at the time the plaintiff had made a demand for appraisal, his insurer had paid out $105,394. 899 N.W.2d at 139. By the time of the appraisal hearing, the plaintiff had received payments totaling $175,663, and ultimately, was given an appraisal award for an additional $170,442 over and above what his insurer had already paid. *Id.* The district court granted the plaintiff preaward interest on the total award without providing for offsets for prior payments. *Id.* In reviewing the rest of the decision, the *Poehler* Court makes several determinations regarding arguments as to whether preaward interest is available to the plaintiff, but it does not address the basis for calculating that award or any issue of prior payments. *See generally Id.* It is unclear from the decision whether this issue was raised or argued in the trial

court or on appeal. The Supreme Court's *Poehler* decision simply does not directly address this issue.

Without binding interpretation in case law, the Court returns to the statutory language of Minn. Stat. § 549.09, subd. 1(b), which provides preaward interest accrues "on the judgment or award." "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16. In interpreting a statute, the Court first looks to whether the statute's language is clear and unambiguous. *See Am. Family Insur. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Id.* Statutes are to be construed to give effect to all of their provisions. Minn. Stat. § 645.16.

The language of Minn. Stat. § 549.09, subd. 1(b) expressly provides for calculation of preaward interest based on the "award." The award is not defined as including offsets or prior payments. There is no language in the statute that provides for the Court to grant interest on the award only after subtracting prior payments. The legislature knows how to provide for offsets because in the very same statute, the legislature provides that *post-award* interest accrues "on the unpaid balance of the…award." Minn. Stat. § 549.09, subd. 2. The Court cannot introduce additional limitations into the statute or involve itself in analyzing the purpose of the statute when there is no ambiguity in the statutory language. The basis for calculation of preaward interest in this matter is plainly the award made by the appraiser on September 14, 2015, without reduction for any amounts paid to AFMIC prior to this date.

The Court understands AFMIC's position that this outcome seems unfair, and that it may result in increased demands for appraisals. AFMIC may also be correct in that public policy considerations may be better served by an allowance for reduction of the award by amounts

previously paid in order to encourage mutual resolution of these claims. However, the Court cannot ignore unambiguous statutory language in order to pursue public policy goals. Such public policy decisions are for the legislative branch, not the courts.

Accordingly, the basis for calculation of interest in this matter is the award made by the appraiser on September 14, 2015 without reduction for any amounts paid to AFMIC prior to that date.

III. Under Minn. Stat. § 549.09, the Award is the Replacement Cost Value.

The parties' final dispute involves the question of whether the Court's grant of preaward interest should be calculated based on the replacement cost value or the actual cost value. The September 14, 2015 appraisal award provides for an Actual Cash Value ("ACV") award of $2,001,000.00 and a Replacement Cost Value ("RCV") award of $2,175,000. Staring Lake argues that it is entitled to recover preaward interest on the RCV value. AFMIC argues preaward interest should be based on the smaller ACV value.

The Court first turns to the language of Minn. Stat. § 549.09, which provides that "[e]xcept as otherwise provided by contract or allowed by law… preaward…interest on pecuniary damages shall be computed as provided…" Minn. Stat. § 549.09, Subd. 1(b). The parties failed to provide the Court copies of the underlying insurance contract (or at least the relevant language), and neither party argued that the matter was addressed by reference to terms within the insurance contract.[5] Without further provision from the parties' contract, the Court is left to determine this issue based solely on an interpretation of the statute, which on its face,

[5] Typically ACV means the "actual market value at the time of destruction." *Brooks Realty, Inc. v. Aetna Ins. Co.*, 149 N.W.2d 494, 500 (Minn. 1967). RCV by contrast means the cost to replace or repair the damage and is typically higher total. *See e.g. Northern Nat. Bank v. North Star Mut. Ins. Co.*, 2012 WL 4052835 (Minn. Ct. App. Nov. 27, 2012) (unpublished).

provides no meaningful guidance. Minn. Stat. § 549.09 merely states the prevailing party shall provide preaward interest "on any… award." *Id.* As the matter is at best ambiguous, the Court must turn to the purpose of the underlying statute to resolve the issue.

The public policy underlying statutory provisions for preaward interest is to serve two purposes: (1) compensation for the loss of use of money, and (2) to promote settlement. *See Burniece v. Illinois Farmers Insur. Co.*, 398 N.W.2d 542, 544 (Minn. 1987) (*citing Stroh Container Co. v. Delphi Indust.*, 783 F.2d 743, 752 (8th Cir. 1986)). In light of this analysis, Staring Lake contends that it was equally deprived of the use of RCV and ACV payments and should be compensated for that loss. Second, Staring Lake contends that the incentive of the insurance company to settle is preserved by enforcing the RCV payment. Third, Staring Lake notes it actually made repairs as contemplated (although whether those repairs were reimbursed up to or under the RCV limit is left unaddressed).

AFMIC argues first that Staring Lake initially overvalued the claim significantly and since its initial estimate was much higher than the award it could not be deprived of that award. Second, AFMIC argues that the ACV is the only value known with sufficient definiteness to meet the definition of an award in the statute as the RCV is speculative. This is because AFMIC only has to pay actual repair costs as they are actually incurred up to the RCV total and may never reach it. Finally, AFMIC contends that RCV amounts are "future damage" which are excluded from the calculation of preaward interest by Minn. Stat. § 549.09, subd. 1(b) ("preaward…interest shall not be awarded on…awards for future damages;").

The Court finds Staring Lake's contentions are more persuasive. It is possible that the RCV total award may never be fully paid out as repairs or replacement may come in under expected costs. However, this replacement cost to the insured fully provides for the understood

purposes of the statute. First, Staring Lake was denied the RCV award until the appraisal award was issued, and it should be compensated for the time value of that money in line with the statute's purpose. Staring Lake was equally denied the RCV and ACV totals, and the Court is persuaded that Staring Lake could not meaningfully begin making full repairs and choices about what it could or could not afford to repair without the correct total value of the RCV having been established. Even though Staring Lake overvalued the potential award itself, it was still deprived of those funds as determined by the appraisal award. Second, providing for calculation of prejudgment interest on the usually bigger RCV award plainly provides a greater incentive to the insurer to settle the matter.

AFMIC's contention that the RCV award is speculative is also not persuasive. While the ultimate total of an RCV award, by its nature, may never be paid out, the RCV amount is not speculative as it was determined by the appraisal. The amount of preaward interest is fixed in time and it relates to a set amount in the award. Second, to the extent RCV's are speculative by their very nature, AFMIC is also protected by the speculative nature of the RCV and gets the benefit of certainty as to their total liability. While AFMIC may not ever have to pay the full RCV amount, it is probably at least as likely that repair and replacement costs will come in above the appraisal award costs as below, and AFMIC is not on the hook for those additional costs.

AFMIC also quotes Minn. Stat. § 549.09's exclusion of future damages from calculation of preaward interest and notes that whether RCV awards are "future damages" has not been addressed. This argument is made without citation to case law and without further argument. It's not persuasive. The Court notes that the *Poehler* Court upheld an award of RCV, but as with the question of whether the award should or should not include offsets, it was noted and not further

analyzed. Staring Lake states that several Minnesota district court cases, none controlling, have already rejected this argument citing *Cottage Heights Ass'n v. Am. Fam. Mut. Ins. Co.*, No. 73-CV-14-1150, *7 (Minn. D. Ct. April 29, 2014). In the Court's own review of case law, few cases have specifically addressed the issue of future damages and preaward interest under Minn. Stat. § 549.09. *See e.g. Johnson v. Washington County*, 506 N.W.2d 632, 640 (Minn. Ct. App. 1993) (The matter was remanded to district court to recalculate pre-verdict interest on the wrongful death judgment after first excluding future damages for loss of future relationships of family members); *Muehlhauser v. Erickson*, 621 N.W.2d 24, 31 (Minn. Ct. App. 2000) ("The co-trustees conceded at oral argument that the trial court erred in allowing interest on the entire amount of damages. The interest award is reversed, and the issue is remanded for recalculation"); and *Adams v. Toyota Motor Corporation*, 867 F.3d 903, 922 (8th Cir. 2017) ("[W]e predict that the Minnesota Supreme Court would conclude that prejudgment interest is not available for judgments that encompass multiple types of damages—some of which are subject to interest under § 549.09 and some of which are not—when it is impossible to differentiate between the types of damages included in the judgment.")

The Court could not find case law or statutes which classified RCV awards as a type of "future damage." The Court ultimately agrees with Staring Lake that RCV awards represent a form of loss payment which are set at a fixed amount for a covered past loss, and they are not future damages. The question of whether some or all contemplated repairs are ultimately provided, while undetermined, does not make them "future damages." As the estimated costs of repair and replacement are fixed and known in the RCV award made by the appraiser, AFMIC is liable on preaward interest for the RCV award amount of $2,175,000 minus the $10,000.00 deductible.

CONCLUSION

Staring Lake is entitled to preaward interest pursuant to Minn. Stat. § 549.09 pursuant to the following calculations:

(140/365 days) x 10% x $2,165,000 = $83,040.96

K.A.J.