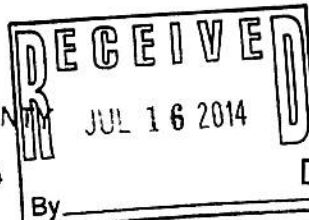


STATE OF MINNESOTA
COUNTY OF ST. LOUIS

FILED IN
ST. LOUIS COUNTY
JUL 11 2014
OFFICE OF
COURT ADMINISTRATION
By _____



DISTRICT COURT

SIXTH JUDICIAL DISTRICT

John A. Stauber, Kelly Leustek,
Plaintiffs,

File No. 69DU-CV-13-2500

v.

COURT'S ORDER

American Family Mutual Insurance Company,
Defendant.

The above-entitled matter came before the undersigned judge of District Court on April 21, 2014, pursuant to Plaintiff's motion to confirm an appraisal award. Plaintiffs were represented by Attorney E. Curtis Roeder. The Defendant was represented Attorney Bjork T. Hill. The Court considered all of the submissions of the parties and the argument of counsel.

Based on that, the Court hereby issues the following:

ORDERS:

1. Plaintiff's motion to confirm the appraisal award is granted.
2. Plaintiff's motion for pre-award interest in the amount of \$38,654.03 is hereby granted.
3. The attached Memorandum of Law is incorporated herein by reference.

JUDGMENT

The forgoing further constitutes the Judgment of the Court,

Witness the Honorable Eric Hylden,

Judge of the District Court, St. Louis County,

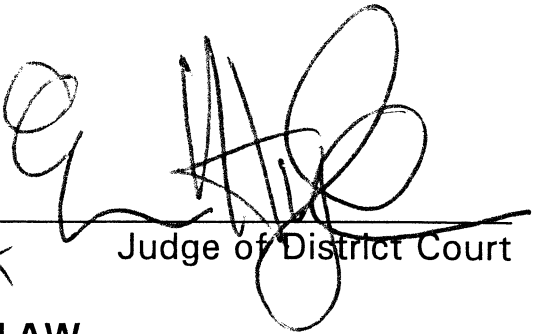
Minnesota this 11 day of July, 2014

Office of the Court Administrator

St. Louis County

By C. Hoyer
Deputy Clerk

BY THE COURT:


7-11-14 Judge of District Court

MEMORANDUM OF LAW

On October 5, 2011, there was a significant plumbing failure at Plaintiffs' home. Plaintiffs' were insured at the time by American Family Mutual Insurance Company and eventually submitted a claim. There was a disagreement between the insureds and the insurer with regard to the value of the damage caused by the plumbing failure. The parties submitted the disagreement to appraisers, who issued an award on March 14, 2014. The award is for \$186,002.67 (replacement cost) on the dwelling, \$35,061.03 (ACV) on the contents and \$18,823.67 (ACV) for additional living expenses (ALE).

Defendant had, before the award, made payments to Plaintiffs in varying amounts, for the dwelling, the contents and ALE, totaling \$148,021.46. Plaintiffs Exhibit 6 breaks down the interest being sought, based on the timing of the payments made. The interest claimed is

\$38,654.83. Defendant's briefing does not dispute the number, just whether Plaintiffs are entitled to interest at all.

Plaintiffs' motion came in three parts: namely, the Court should (1) confirm the appraisal award; (2) grant pre-award interest under Minn. Stat. § 549.09; and (3) award costs and disbursements. At the hearing, the Defendant agreed that the appraisal award should be confirmed, and so the Court's order does that. In addition, the Plaintiffs agreed that costs and disbursements are not properly awarded at this time, and the Court's order reflects that as well.

Thus, the only issue before the Court is whether Plaintiffs should receive pre-award interest. Minn. Stat. § 549.09, Subd. 1(b) states, in pertinent part, as follows:

"Except as otherwise provided by contract or allowed by law,... pre-award... 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 written notice of the claim, whichever occurs first, except as provided herein. ...the prevailing parties shall receive interest on any judgment or award from the time or commencement of the action or demand for arbitration, or the time of a written notice of claim... until the time of...award...only if the amount of its offer is closer to the...award than the amount of the opposing party's offer. ..."

Subdivision 1(c) simply states that for an award over \$50,000, the interest rate is 10 percent per year.

The Court concludes that the interest statute unambiguously provides for pre-award interests in situations like this. Where a statute is clear, the Court's role is simply to apply it. Minn. Stat. § 645.16 (2012). See also, *Occhino v. Grover*, 640 N.W. 2d 357, 359 (Minn. App. 2002).

Defendant argues that Plaintiffs request for interest confuses appraisal with arbitration, applying statutory arbitration standards to the contractual appraisal process. The Court concludes this argument is not well taken. While it is true that there is a distinction between arbitration and appraisal, the Court sees it as a distinction without a difference, insofar as a decision on pre-award interest goes. The parties engaged in appraisal pursuant to Minn. Stat. § 65A.01, but Plaintiffs are seeking interest under § 549.09. As stated above, that statute clearly includes appraisal awards. The Court need not use any part of § 572B or § 65A to make its ruling.

Next, Defendants argue that since the appraisal award has already been made, adding pre-award interest to it would, in effect, modify the award. The Court does not buy this argument either, as the interest

statute clearly allows the Court to make the award of interest, separate and distinct from any award the appraisers make. Nothing in the case law cited by either party suggests that the Court does not have that power.

Next, Defendant argues that pursuant to Minn. Stat. § 60A.0811, interest is only recoverable “based on the insurers breach or repudiation of, or failure to fulfill, a duty to provide services or make payments...” Plaintiffs correctly point out, however, that this statute is directed to commercial policies, rather than the homeowner’s policy at issue here. Even if it did, it provides for 10% if the insurer fails to “make payments.” Of course, that is the exact claim here, that Defendant did not make the payments it should have, coming up some \$90,000+ short of the eventual appraised value. Under the circumstances, Defendant must pay prejudgment interest of \$38,654.83.

ELH