

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. 19HA-CV-18-1734

Susan L. Lukan,

Plaintiff,

v.

American Family Mutual Insurance Company,

Defendant.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER AND  
MEMORANDUM

**AND JUDGMENT**

The above-entitled matter came before the Honorable Thomas W. Pugh, Judge of District Court, on May 29, 2018, at Dakota County Judicial Center, Hastings, Minnesota upon Plaintiff's motion to confirm the appraisal award, for preaward interest and for costs and disbursements.

Attorney Jeffrey J. Woltjen appeared on behalf of the Plaintiff.

Attorney Mark K. Hellie appeared on behalf of the Defendant.

Based upon the proceedings, this Court makes the following:

**FINDINGS OF FACT**

1. Plaintiff was insured by an insurance policy issued by Defendant, covering property damage caused by wind and hail.
2. On August 6, 2013, a severe storm caused damage to Plaintiff's property.
3. Plaintiff had a \$1,000 deductible.
4. Plaintiff notified Defendant of her loss, and Defendant sent correspondence to Plaintiff on August 15, 2013. This is not a written notice of claim pursuant to Minnesota Statutes §549.09. There is no evidence as to how Plaintiff notified

- Defendant. No written notice from Plaintiff to Defendant was provided.
5. Defendant made payments of \$4,811.79 prior to the demand for appraisal.
  6. Plaintiff demanded appraisal in writing to Defendant on April 28, 2014.
  7. The appraisal was held on October 6, 2015.
  8. On August 6, 2016, the appraisal panel issued an award of \$267,468 in replacement cost and determined actual cash value of \$181,878.
  9. Defendant made several payments to Plaintiff on the two consolidated claims, totaling \$79,202.83, by October 7, 2016.
  10. On October 12, 2014, Defendant paid \$96,863.38 in Actual Cash Value (ACV).
  11. On August 16, 2016, Defendant paid the Replacement Cost Value (RCV) of \$84,590.00.
  12. All the repairs to the property have been made.
  13. Defendant has paid the principal amount of the appraisal award but disputes the amount of preaward interest owing.
  14. The parties agree that the deductible should not be included in the interest calculation.
  15. The parties dispute when interest begins to accrue. Plaintiff argues that when Defendant sent a notice to Plaintiff on August 15, 2013, that this constitutes notice as required under Minn.Stat. §549.09. Defendant disagrees as that was not a notice or demand made by Plaintiff. This notice does not meet the standard for a written notice pursuant to statute.
  16. The parties dispute whether Defendant should be given credit for payments made prior to the appraisal.
  17. The parties also dispute whether interest should be allowed on the Replacement

Cost Value or on the Actual Cost Value amount of the award. Defendant claims the RCV is a "future damage" because it is contingent on future repair or replacement and should not be allowed interest.

#### CONCLUSIONS OF LAW

1. Plaintiff is not entitled to interest on the \$1000 deductible.
2. Plaintiff is entitled to preaward interest on the Replacement Cost Value (\$267,468).
3. Plaintiff is entitled to preaward interest on the entire award, including the Replacement Cost Value, beginning on April 28, 2014.
4. The interest is calculated at 10% interest per year on \$267,468 from April 28, 2014 through August 16, 2016 or 842 days. Interest is calculated as follows: 842 days divided by 365 days X 10% of \$267,468 = \$61,785.11.
5. Plaintiff is entitled to \$61,785.11 in preaward interest.

#### ORDER

1. Plaintiff's motion to confirm the appraisal award is GRANTED.
2. Preaward interest shall accrue as of April 28, 2014 through the date of the appraisal, August 16, 2016.
3. Plaintiff is entitled to have preaward interest accrue on the replacement cost value awarded (RCV) of \$267,468.
4. Plaintiff is awarded \$61,785.11 in preaward interest.
5. The attached memorandum is incorporated in this Order as further Findings of Fact and legal rationale for the Court's decision.

## JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER  
CONSTITUTES THE JUDGMENT OF THE COURT.

DAKOTA COUNTY COURT ADMINISTRATOR

BY: 

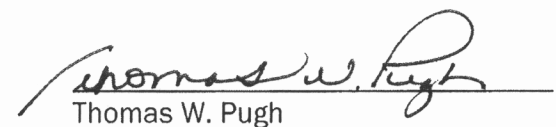
DATED: 6-19-18

DEPUTY  
(SEAL)

BY THE COURT:

FILED FIRST JUDICIAL DISTRICT  
DAKOTA COUNTY, Court Administrator

JUN 19 2018

  
Thomas W. Pugh  
Judge of District Court

## MEMORANDUM

An insured may recover preaward interest on an insurance appraisal award regardless of the existence of wrongdoing. *Poehler v. Cincinnati Insurance Co.*, 889 N.W.2d 135, 141 (Minn. 2017).

Minnesota Statutes §549.09, Subd. 1(b) 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.

The phrase "written notice of claim" is not defined in the statute. Minnesota courts have described the required notice under Minn.Stat. §549.09 as a demand for payment. See *Trapp v. Haunch*, 586 N.W.2d 61, 63 (Minn. Ct. App. 1998); *Metalmasters of Minneapolis, Inc. v. Liberty Mut. Ins. Co.*, 461 N.W.2d 496, 502 (Minn. Ct. App. 1990); *Higgins ex rel Higgins v. J.C. Penney Cas. Ins. Co.*, 413 N.W. 2d 189, 191-92 (Minn. Ct. App. 1987). The purpose of the statute is to put the other party on notice that there is a potential claim being pursued and to provide incentive for the potential judgment debtor to settle or expedite resolution of cases. See *Flint Hills Res. LP v. Lovegreen Turbine Servs., Inc.*, Civ. No. 04-4699 2088 WL 4527816, \*9 (D. Minn. Sept. 29, 2008).

This Court is required to give words in the statute their plain meaning. *Shire v. Rosemount Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). Determination of plain meaning often involves using dictionary definitions. *Id.* “We also interpret statutes so as to give effect to each word and phrase. *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015) (stating that statutes should be interpreted such that “no word, phrase, or sentence [is] superfluous, void, or insignificant”) (quoting *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000)); accord Minn.Stat. §645.16 (2014). When a word or phrase has a plain meaning, we presume that the plain meaning is consistent with legislative intent and engage in no further statutory construction. *State v. Struzyk*, 869 N.W.2d 280, 284-85 (Minn. 2015); see also *Allan*, 869 N.W.2d at 33 (“When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect.”) (quoting *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001)).

“Although the phrase ‘written notice of claim’ is not defined in Section 549.09, it is both clear and unambiguous.” *General Mills Operations, LLC v. Five Star Custom Foods, Ltd.*, 845 F.Supp.2d 975, 978 (D.Minn. 2012), *aff’d* 703 F.3e 1104 (8<sup>th</sup> Cir. 2013) “Claim” means ‘[t]o demand as one’s own or as one’s right; to assert; to urge; to insist.’ Black’s Law Dictionary 247 (6<sup>th</sup> ed. 1990; accord, e.g., The American Heritage Dictionary 277 (2d coll. ed. 1985) (defining “claim” as “[t]o demand or ask for as one’s own or one’s due; assert one’s right to”). “The phrase ‘written notice of claim’ therefore, simply means a demand for payment (or other similar assertion) contained in a writing.” *General Mills Operations, LLC v. Five Star Custom Foods, Ltd.*, 845 F.Supp.2d 975, 978 (D.Minn. 2012), *aff’d* 703 F.3e 1104 (8<sup>th</sup> Cir. 2013) citations omitted.

Black’s Law Dictionary defines “notice” as “Information; ...knowledge of the existence of a fact or state of affairs;....” A person has notice of a fact or condition if that person (1) has

actual knowledge of it; (2) has received information about it; (3) has reason to know about it; (4) knows about a related fact; or (5) is considered as having been able to ascertain it by checking an official filing or recording. *Black's Law Dictionary* (10<sup>th</sup> ed. 2014).

A "claim" is defined as a demand for something due or believed to be due. *Merriam-Webster Dictionary*. A "demand" is defined as an act of demanding or asking especially with authority. *Merriam-Webster Dictionary*.

Plaintiff argues that the August 15, 2013 letter from Defendant to Plaintiff is a notice of claim. The letter does refer to a claim and demonstrates Defendant's knowledge of a claim. However, the statute does not require a written acknowledgment of a claim, but a "written notice" of a claim, therefore it must be from the party pursuing the claim. The plain language of the statute leads this Court to conclude that the first written notice of claim from Plaintiff to Defendant is April 28, 2014. No other evidence has been provided that demonstrates a writing from Plaintiff to Defendant that meets the statutory standard for a written notice of a claim. The April 28, 2014 appraisal demand is a written notice of a claim or potential claim to Defendant. That writing put Defendant on notice and made Defendant aware of the potential monetary claim, which is what is required by the statute. At that point, Defendant had a duty to settle the disputed claim in good faith, which triggered the prejudgment interest calculation.

The second disputed issue is whether pre-award interest is determined based upon the total award, or the total award less payments made by Defendant to Plaintiff. Defendant argues that interest should be calculated only on the reduced amount of the award, after an offset of the prior payments. Plaintiff asserts that the statute is silent as to that issue and the interest should be on the entire award.

The plain language of the statute provides for preaward interest on "the judgment or

award". Minn.Stat. §549.09, subd. 1(b) (2016). The statute does not include any provision for offsets for prior payments. However, in contrast, the statute relating to *post-award* interest allows for interest to accrue only "on the unpaid balance of the judgment or award." Minn. Stat. §549.09 subd. 1(b) and subd. 2 (2016). This difference demonstrates the intent of the legislature to include prior payments when calculating preaward interest. Section 549.09 unambiguously provides for preaward interest on all awards of pecuniary damages that are not specifically excluded by the statute. *Poehler*, 899 N.W.2d at 141. There is no binding case law that provides interpretation of this issue. Therefore, the Court looks to the clear and unambiguous language of the statute. There is no basis for the Court to look beyond the statute for further analysis and the Court concludes that the pre-award interest shall be calculated on the award made by the appraiser on October 6, 2015 without reduction for any amounts paid to Plaintiff prior to that date.

The parties also dispute whether pre-award interest should be calculated based on the replacement cost value (RCV) or only the actual cash value (ACV). Defendant argues that RCV constitutes "future damages" that should not be collected. Plaintiff argues that RCV is not a "future damage", and it represents a form of loss payment under the Policy for a fixed amount of covered loss that occurred in the past. The statute is also silent as to this issue, and only states that pre-award interest be calculated "on any...award". "Future damages" is defined as "money awarded to an injured party for an injury's residual or projected effects, such as those that reduce the person's ability to function." *Black's Law Dictionary* 446 (10<sup>th</sup> ed. 2014). This is typically seen in personal injury cases and would include things like future loss of earnings. "Future damages mean damages for future loss." *Children's Broad. Corp. v. Walt Disney Co.*, 357 F.3d 860 (8<sup>th</sup> Cir. 2004). The RCV was awarded by the appraiser and it is a specific amount of damages. Defendant has not cited any binding case law that

interprets the statute to support its position. Plaintiff's argument is persuasive. The RCV amount is damages that were awarded by the appraiser. The plain language of the statute requires that interest be calculated as to the entire appraisal award, including the replacement cost value.

T.W.P.