

State of Minnesota
Dakota County

District Court
First Judicial District

Court File Number: **19HA-CV-17-3815**

Case Type: Civil Other/Misc.

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Notice of:

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|-------------------------------------|------------------------------|
| <input checked="" type="checkbox"/> | Filing of Order |
| <input checked="" type="checkbox"/> | Entry of Judgment |
| <input type="checkbox"/> | Docketing of Judgment |

Niakwa Village Home Owners Association vs American Family Mutual Insurance Company

You are hereby notified that the following occurred regarding the above-entitled matter:

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | An Order was filed on March 15, 2018. |
| <input checked="" type="checkbox"/> | Judgment was entered on March 15, 2018. |
| <input type="checkbox"/> | You are notified that judgment was docketed on
at in the amount of \$. Costs and interest will accrue on this amount from the
date of entry until the judgment is satisfied in full. |

Dated: March 15, 2018

Heidi Carstensen
Court Administrator
Dakota County District Court
1560 Highway 55
Hastings MN 55033
651-438-8100

cc: MARK KIM HELLIE

A true and correct copy of this Notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. **19HACV-17-3815**

Niakwa Village Home Owners Association,

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 Kathryn D. Messerich, Judge of District Court, on January 3, 2018, at the Dakota County Judicial Center, Hastings, Minnesota, pursuant to Plaintiff's motion to confirm the appraisal award and for pre-award interest. Defendant does not dispute the motion to confirm the appraisal award, but disputes the calculation of the pre-award interest.

Alexander M. Jadin, Esq. appeared on behalf of the Plaintiff.

Mark K. Hellie, Esq. appeared on behalf of the Defendant.

Based upon the proceedings, this Court makes the following:

FINDINGS OF FACT

1. Plaintiff Niakwa Village Home Owners Association ("Niakwa") is a multi-unit common interest community located at 14800 Galaxie Avenue, Suite 105, Apple Valley, Minnesota ("Property"). The property was insured under a policy issued by Defendant American Family Mutual Insurance Company ("American Family").

2. On May 7, 2014, the property was damaged by a hail storm. Niakwa submitted a claim for loss to Defendant for reimbursement for the damage caused by the storm under the terms of its policy. The policy provides for replacement cost coverage subject to a \$5,000.00 deductible.
3. This Court does not know how the notice of loss or claim was transmitted to American Family – no information was provided, however, the Court presumes that the hail storm damage was reported to American Family in some fashion.
4. On November 12, 2015, American Family issued its initial estimate of damages. Plaintiff asserts that this is the first written notice of the claim.
5. American Family adjusted the loss and made a partial payment of \$11,467.00 on November 13, 2015 to Niakwa based on its assessment of the Actual Cost Value ("ACV") of the damage.
6. American Family continued to adjust the claim.
7. On May 5, 2016, Niakwa commenced this lawsuit against Defendant to preserve its right to sue and toll the two-year statute of limitations clause. Included with the Summons and Complaint, the Plaintiff sent a letter to Defendant and advised that "it is our intention to allow the adjustment process to be completed, and if there is a dispute to resolve any dispute through appraisal." (Hellie Decl. Dec. 26, 2017, Ex. 3). Plaintiff granted an indefinite extension of the time to answer. This constitutes a written notice of claim within the meaning of Minn. Stat. § 549.09, Subd. 1(b).
8. Niakwa disagreed with Defendant's assessment of the damage and submitted

the matter to appraisal by way of demand made on July 28, 2016. Niakwa also informed American Family that they were requiring an Answer to the Complaint within 20 days of the date of the letter of July 28, 2016.

9. On May 5, 2017, the matter was submitted to the appraisal panel. The panel awarded \$159,604.20 in actual cash value and \$264,904.20 in replacement cost value.
10. On May 12, 2017, Defendant paid \$143,137.20 to Niakwa (\$159,604.20 less the \$5000 deductible and \$11,467.00 in prior payments).
11. In September 2017, Defendant paid Plaintiff the depreciated amount of \$105,299.80.
12. Defendant has not paid any pre-award interest.
13. The parties are in dispute as to the amount of interest that is due, including 1) when the interest began to accrue; 2) credit for prior payments and the deductible; and 3) whether interest should be awarded on depreciation, which is contingent on the repairs being made in the future.
14. The parties do not dispute that the arbitration award should be confirmed.
15. The first written notice of claim was on May 5, 2016, when Niakwa commenced the lawsuit. Defendant was put on notice of a monetary claim at that time and it is the date to be used to calculate pre-award interest.

CONCLUSIONS OF LAW

1. Plaintiff is not entitled to interest on the deductible.
2. Plaintiff is entitled to pre-award interest on the Replacement Cost Value

(\$264,904.20).

- 3. Plaintiff is entitled to pre-award interest on the entire award, including the replacement cost value, beginning on May 5, 2016. The interest is calculated at 10% interest per year on \$264,904.20 from May 5, 2016 through May 5, 2017 or 365 days.
- 4. Plaintiff is entitled to \$26,490.42 in pre-award interest.

ORDER

- 1. Plaintiff's motion to confirm the appraisal award is **GRANTED**.
- 2. Pre-award interest shall accrue as of May 5, 2016 through the date of the appraisal May 5, 2017.
- 3. Plaintiff is entitled to have pre-award interest accrue on the replacement cost value awarded (RCV) (\$264,904.20).
- 4. Plaintiff is awarded \$26,490.42 in pre-award interest.
- 5. The attached memorandum is incorporated in this Order as further Findings of Fact and legal rationale for the Court's decision.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT: Messerich, Kathryn

Kathryn D. Messerich 2018.03.13

12:00:35 -05'00'

Kathryn D. Messerich
Judge of District Court



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

DAKOTA COUNTY COURT ADMINISTRATOR

BY: *Jana Velasco*

DATED: *3-13-18* DEPUTY (SEAL)

MEMORANDUM

An insured may recover pre-award 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)). "

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* (10th 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 November 12, 2015 estimate from Defendant to Plaintiff is a notice of 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 May 5, 2016. Even though the

Plaintiff indicated that it was allowing the adjustment process to proceed, the serving of the Summons and Complaint was the commencement of an action and 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, 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 May 5, 2017 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). The policy includes Replacement Cost Protection for building coverage and includes a \$5,000.00 deductible. (Hellie Decl. Ex. 1, p. 5). It provides that "Replacement Cost Protection coverage applies only to Buildings that are repaired or replaced at the same premises after a covered loss." (Hellie Decl. Ex. 1, p. 6). 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 (10th 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 (8th 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.

K.D.M.