THE APPRAISAL CLAUSE IN PROPERTY POLICIES:

A SURVEY OF THE INTERPLAY BETWEEN THE APPRAISAL CLAUSE AND ARBITRATION AS A MEANS OF ALTERNATIVE DISPUTE RESOLUTION IN PROPERTY INSURANCE DISPUTES

By:

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I. INTRODUCTION

To appraise or not to appraise – that is the question insurance practitioners face when their clients are involved in a dispute about the amount of loss to insured property. Virtually every property insurance policy contains an "appraisal clause" that enables the parties to engage in an appraisal process to resolve disagreements as to the amount of a covered loss. Despite its common prevalence, appraisal clauses continue to puzzle litigants and courts alike. For instance, in some jurisdictions, an appraisal clause may constitute, and have the same effect as, an arbitration agreement. In other states, courts refuse to equate appraisement with arbitration for several procedural and substantive reasons. This Article identifies inconsistencies between the courts' interpretations of the appraisal clause in insurance coverage disputes and provides a brief fifty-state survey discussing whether or not appraisal clauses constitute agreements to arbitrate.

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II. ANALYSIS

A. The Blurred Line Between Appraisal and Arbitration

Because the appraisal process and the arbitration process both act as forms of alternative dispute resolution, litigants and courts often conflate the two terms.[1] However, the two processes serve two distinct purposes.[2]

An appraisal is "[t]he determination of what constitutes a fair price for something or how its condition can be fairly stated; the act of assessing the worth, value, or condition of something."[3] Generally, an appraisal clause[4] serves as an auxiliary feature of the property insurance policy, meant to provide an agreed-upon method for ascertaining the value or amount

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[1] Johnny C. Parker, *Understanding the Insurance Policy Appraisal Clause: A Four-Step Program*, 37 U. TOL. L. REV. 931, 932 (2006) (providing in depth summary of the two forms of alternative dispute resolution and cautioning that "insureds must be aware of the theoretical and practical differences between appraisement and arbitration.").

[2] *Id.* (providing an in-depth scholarly discussion regarding appraisal clause and its legal effect).

[3] BLACK'S LAW DICTIONARY (10th ed. 2014).

[4] Despite subtle differences in various policies, a typical appraisal clause reads as follows:

> If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire.
>
> A decision agreed to by any two will set the amount of loss. Each party will:
>
> 1. Pay its own appraiser; and
> 2. Bear the other expenses of the appraisal and umpire equally.
>
> In no event will an appraisal be used for the purpose of interpreting any policy provision, determining causation or determining whether any item of loss is covered under this policy. If there is an appraisal, we still retain the right to deny the claim.

of loss.[5] How an appraisal clause operates practically will vary depending on the language used and the nature of the insurance contract.[6] However, when the parties to an insurance contract disagree regarding the amount of a covered loss, appraisal clauses commonly require each party to appoint an appraiser within a specified time period.[7] After an informal, independent investigation into the relevant facts, each party's appraiser values the loss based on his or her expertise in the field.[8] If the appointed appraisers fail to agree on the amount of loss, many appraisal clauses will require the appraisers to appoint a third appraiser (an "umpire") to resolve the disagreement.[9] Generally, the appraiser conducts the appraisal without hearing or judicial inquiry, and an appraisal "is not necessarily binding and enforceable in court."[10] Many courts claim appraisal is intended to resolve only a specific issue – the value or amount of covered loss[11] and is not used to fix liability or resolve entire controversies.[12]

Arbitration, conversely, is "[a] dispute-resolution process in which the disputing parties choose one or more neutral third parties to make a final and binding decision resolving the

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[5] *Hartford Fire Ins. Co. v. Jones*, 108 S.2d 571, 572 (Miss. 1959).

[6] *See* 15 COUCH ON INSURANCE § 209:16 (3d ed. 2014) (citing *Waradzin v. Aetna Cas. and Sur. Co*., 570 A.2d 649 (R. I. 1990)):

> The equation of appraisal with arbitration may depend upon the wording of the policy provision more than the name ascribed to it. . . . For example, where a policy's appraisal procedure required two appraisers and an umpire, it was deemed to be an arbitration provision, thus allowing arbitration confirmation proceedings to be brought.

[7] *See supra* n. 4.

[8] *Hartford Lloyd's Ins. Co. v. Teachworth*, 898 F.2d 1058, 1062 (5th Cir.1990).

[9] Timothy P. Law and Jillian L. Starinovich, *What Is It Worth? A Critical Analysis of Insurance Appraisal*, 13 CONN. INS. L.J. 291, 294 (2006-2007).

[10] *Miller v. USAA Cas. Ins. Co.*, 44 P.3d 663, 673 (Utah 2002).

[11] *St. Paul Fire & Marine Ins. Co. v. Wright*, 629 P.2d 1202, 1203 (Nev. 1981).

[12] *Jones*, 108 So.2d at 572.

dispute."[13] Unlike appraisals, which mainly rely on informal investigations, "an arbitration is a quasi-judicial proceeding, complete with formal hearings, notice to parties, and testimony of witnesses."[14] Moreover, arbitration agreements can (and, often do) resolve issues regarding the ultimate liability for claims,[15] whereas appraisals are utilized primarily to ascertain the *amount* of a loss to a property, rather than issues of causation or coverage.[16]

Based on these substantive and procedural differences, numerous jurisdictions have determined that appraisal clauses included in insurance contracts are distinct from agreements to arbitrate.[17] To date, this continues to be the majority rule in American jurisprudence.[18] However,

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[13] BLACK'S LAW DICTIONARY (10th ed. 2014).

[14] *Teachworth*, 898 F.2d at 106; *see also Preferred Ins. Co.v. Richard Parks Trucking Co.*, 158 So.2d 817, 820 (Fla. Ct. App. 1963).

> An agreement for arbitration ordinarily encompasses disposition of the entire controversy between the parties upon which award a judgment may be entered, whereas an agreement for appraisal extends merely to the resolution of the specific issues of actual cash value and the amount of loss, all other issues being reserved for determination in a plenary action before the court.

The *Parks Trucking* court pointedly recognized the distinctions between the traditional appraisal and arbitration processes are most obvious in the role of and procedures used by the decision-makers. 158 So.2d 817, 820.

[15] *Johnson v. Mutual Serv. Cas. Ins. Co.*, 732 N.W.2d 340 (Minn. Ct. App. 2007), *review denied*; *McGowan v. Progressive Preferred Ins. Co.*, 618 S.E.2d 139 (Ga. Ct. App. 2005), *rev'd on other grounds*, 637 S.E.2d 27 (Ga. 2006) (internal citations omitted)); *see e.g. Jones*, 108 So.2d at 572; *In re Delmar Box Co.*, 127 N.E.2d 808, 810-12 (N.Y. 1955); *Miller*, 44 P.3d at 672-73.

[16] 15 COUCH ON INSURANCE 3d at § 209:4. According to this view, an appraisal clause in an insurance policy "does not divest the courts of jurisdiction, but only binds the parties to have the extent or amount of the loss determined in a particular way, leaving the question of liability for such loss to be determined, if necessary, by the courts. *Johnson,* 290 S.W.3d at 889.

[17] Alabama, Alaska, Arkansas, Colorado, Florida, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin. For a more detailed discussion of each particular state, please refer to the Reference Table.

an emerging trend in several jurisdictions has shifted this long-standing, traditional view. For instance, courts have explicitly held that appraisal is a species of arbitration[19] in Arizona,[20] California,[21] Connecticut,[22] Delaware,[23] Hawaii,[24] Idaho,[25] Kansas,[26] Maryland,[27] Michigan,[28] Nebraska,[29] Pennsylvania,[30] Rhode Island,[31] and Washington D.C.[32]

Whether an appraisal clause constitutes an agreement to appraise or an agreement to arbitrate can impact the course of the litigation both procedurally and substantively. In states that interpret appraisal clauses as arbitration clauses, the state's arbitration act – often resembling the Federal Arbitration Act ("FAA")[33] – may govern the entire dispute.[34] Procedurally, this

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[18] Notably, Illinois, Minnesota, and Ohio case precedent supports both sides of the issue. For a more detailed discussion of each particular state, please refer to the Reference Table.

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[20] *Chapman v. The Westerner*, 202 P.3d 517, 519 (Ariz. Ct. App. 2008); *Meineke v. Twin City Fire Ins. Co.,* 892 P.2d 1365 (Ariz. Ct. App. 1994).

[21] *Doan v. State Farm Gen. Ins. Co.*, 195 Cal.App.4th 1082, 1093 (2011).

[22] *Giulietti v. Connecticut Ins. Placement Facility*, 534 A.2d 213, 217 (Conn. 1987).

[23] *Closser v. Penn Mut. Fire Ins. Co.,* 457 A.2d 1081, 1087 (Del. 1983).

[24] *Christiansen v. First Ins. Co. of Hawaii, Ltd.*, 967 P.2d 639, 649 (Haw. Ct. App. 1998), *aff'd in part, rev'd in part on other grounds*, 88 Haw. 136, 963 P.2d 345 (Haw. 1998).

[25] *Botai v. Safeco Ins. Co. of Ill.*, 2015 WL 4507486 at *4 (D. Idaho July 24, 2015).

[26] *Friday v. Trinity Universal of Kansas*, 924 P.2d 1284, 1285 (Kan. App. 1996) (rendering appraisals invalid under Kansas anti-arbitration statutes).

[27] *Aetna Cas. & Sur. Co. v. Ins. Com'r,* 445 A.2d 14 (Md.1982).

[28] *Davis v. Nat'l Am. Ins. Co*., 259 N.W.2d 433, 437 (Mich. Ct. App. 1977).

[29] *Rawlings v. Amco Ins. Co.,* 438 N.W.2d 769 (Neb.1989).

[30] *Philadelphia Cablevision,* 664 A.2d 587 (Pa. Super. Ct.1995).

[31] *Waradzin v. Aetna Cas. and Sur. Co.*, 570 A.2d 649 (R.I. 1990).

[32] *Wash. Automotive Co. v. 1828 L Street Assoc.,* 906 A.2d 869 (D.C. 2006).

[33] Notably, federal courts disagree whether state or federal law governs the issue of the FAA's applicability to appraisal clauses. *Compare Evanston Ins. Co. v. Cogswell Props., LLC*, 683 F.3d 684, 693 (6th Cir. 2012) (applying federal law and holding FAA inapplicable to appraisals); *Salt*

determination is relevant because arbitration acts generally impose strict procedural rules on litigants.[35] For instance, most of the states' arbitration acts afford litigants the right to a jury trial only under certain, limited circumstances.[36] Thus, in jurisdictions where the courts equate appraisal clauses with arbitration clauses, the statutory framework may deny the litigants the opportunity to have their case heard before a jury.[37] Similarly, an arbitrator's decision is presumed valid and subject to only limited judicial review.[38] Oftentimes, a court may only vacate or modify an arbitrator's decision under those limited circumstances explicitly

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Lake Tribune Publ'g Co., LLC v. Mgmt. Planning, Inc., 390 F.3d 684 (10th Cir. 2004) (same); *with Teachworth,* 898 F.2d 1058 (applying Texas law and holding that FAA is not applicable to appraisal clauses).

[34] *See e.g.*, *Friday*, 924 P.2d at 1285; *McGourty,* 704 A.2d 663 (Pa. Super. Ct. 1997); *Devonwood Condo. Owners Ass'n v. Farmers Ins. Exch.*, 77 Cal. Rptr. 3d 88, 92-93 (Cal. App. 2008) (internal citation omitted); *Waliua Assoc. v. Aetna Cas. & Sur. Co.*, 904 F. Supp. 1142, 1148 (D. Haw. 1995); *Aetna Cas. & Sur. Co. v. Ins. Com'r*, 445 A.2d 14, 20 (Md. 1982); *Wash. Auto. Co. v. 1828 L St. Assoc.*, 906 A.2d 869, 875 (D.C. 2006).

See contra Garretson v. Mountain West Farm Bureau Mut. Ins. Co., 761 P.2d 1288, 1289-90 (Mont. 1988) (differentiating between appraisal and arbitration and holding that Montana's anti-arbitration statute relating to insurance disputes did not apply to the mandatory appraisal process). *Dworkin v. Caledonian Ins. Co.*, 226 S.W. 846, 847-49 (Mo. 1920) (same under Missouri anti-arbitration statute); *TAMKO Bldg. Prods., Inc. v. Factory Mut. Ins. Co.*, No. 4:09CV1401 CDP, 2009 WL 5216999, at *2 (E.D. Mo. Dec. 30, 2009) (same); *Elberon Bathing Co., Inc. v. Ambassador Ins. Co., Inc.*, 389 A.2d 439, 446 (N.J. 1978) (appraisals are excluded from New Jersey's Arbitration Act); *Minot Town & Country v. Fireman's Fund Ins. Co.*, 587 N.W.2d 189, 190-91(N.D. 1998) (appraisals do not fall within the ambit of Uniform Arbitration Act under North Dakota law); *Massey v. Farmers Ins. Grp.*, 837 P.2d 880, 884, n.1 (Okla. 1992); *Budget Rent-A-Car of Washington-Oregon, Inc. v. Todd Inv. Co.*, 603 P.2d 1199, 1201 (Or. App. 1979) (appraisals are not governed by Oregon's arbitration statute).

[35] *Parker*, *supra* n. 1, at 935.

[36] 15 COUCH ON INSURANCE § 209:10; *see also* 9 U.S.C. § 4.

[37] *Teachworth*, 898 F.2d at 1062.

[38] *See Carpenter v. Brooks*, 534 S.E.2d 641, 646 (N.C. Ct. App. 2000) (internal citations omitted); 9 U.S.C. §§ 10-11.

enumerated in the statutes[39] or upon showing of misconduct. When the state's arbitration act does not apply,[40] however, a court may vacate or modify the appraisal award under broader circumstances.[41] Finally, whether the appraisal clause constitutes an agreement to arbitrate can substantively affect the outcome of the case and the court's jurisdiction.[42] Indeed, some courts have expressly expanded the traditional scope of the appraisal clause, enabling appraisers to determine issues of causation, not only the mere calculation of the loss.[43] This follows if appraisal is considered a form of arbitration.

B. The Reference Table

State courts across the United States may use the terms arbitration and appraisal interchangeably. To illustrate the differences between various jurisdictions, the Reference Table below briefly summarizes the courts' treatment of these two forms of alternative dispute resolution across the state lines. The Reference Table provides a brief outline of the case

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[39] *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584 (2008) ("We now hold that §§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification.").

[40] *Garretson v. Mountain West Farm Bureau Mut. Ins. Co.*, 761 P.2d 1288, 1289-90 (Mont. 1988) (differentiating between appraisal and arbitration and holding that Montana's anti-arbitration statute relating to insurance disputes did not apply to the mandatory appraisal process). *Dworkin v. Caledonian Ins. Co.*, 226 S.W. 846, 847-49 (Mo. 1920) (same under Missouri anti-arbitration statute); *TAMKO Bldg. Prods., Inc. v. Factory Mut. Ins. Co.*, No. 4:09CV1401 CDP, 2009 WL 5216999, at *2 (E.D. Mo. Dec. 30, 2009) (same); *Elberon Bathing Co., Inc. v. Ambassador Ins. Co., Inc.*, 389 A.2d 439, 446 (N.J. 1978) (appraisals are excluded from New Jersey's Arbitration Act); *Minot Town & Country v. Fireman's Fund Ins. Co.*, 587 N.W.2d 189, 190-91(N.D. 1998) (appraisals do not fall within the ambit of Uniform Arbitration Act under North Dakota law); *Massey v. Farmers Ins. Grp.*, 837 P.2d 880, 884, n.1 (Okla. 1992); *Budget Rent-A-Car of Washington-Oregon, Inc. v. Todd Inv. Co.*, 603 P.2d 1199, 1201 (Or. App. 1979) (appraisals are not governed by Oregon's arbitration statute).

[41] *See e.g. Teachworth*, 898 F.2d at 1062; *see also TAMKO*, 2009 WL 5216999, at *2.

[42] *Id.*; *see also* 15 COUCH ON INSURANCE § 209:9.

[43] *N. Glenn Homeowners Assn. v. State Farm Fire & Cas. Co.*, 854 N.W.2d 67, 70 (Iowa Ct. App. 2014).

precedent that may prove relevant to a practitioner's review of the narrow issue presented in this Article. However, given the rapidly changing law in this area and each state's intricate approach, the Reference Table is intended to serve solely as a research guide, and each practitioner should independently and carefully analyze the law in each jurisdiction.

Jurisdiction	**Precedent** (internal citations are omitted for brevity purposes)
Alabama	*Rogers v. State Farm Fire & Cas. Co.*, 984 So. 2d 382 (Ala. 2007) ("In reviewing whether an insurer has waived the right to invoke an appraisal clause in a policy, the Supreme Court applies the same standard used to determine waiver of an arbitration clause."); *see also S. United Fire Ins. Co. v. Knight*, 736 So. 2d 582, 585 (Ala. 1999) (while not the same, should be read together).
Alaska	*McDonnell v. State Farm Mut. Auto. Ins. Co.*, 299 P.3d 715, 723 (Alaska 2013) (recognizing, in a personal injury case, the differences between arbitration clauses and appraisal clauses, and holding that policy considerations and rules of interpretation applicable to arbitration clauses do not apply when the provision at issue constitutes a statutorily mandated appraisal clause.).
Arizona	*Chapman v. The Westerner*, 202 P.3d 517, 519 (Ariz. Ct. App. 2008) (explaining that upon determination of the amount of loss by appraisal, judicial review of the appraisal is the same as that of an arbitration award); *see also Meineke v. Twin City Fire Ins. Co.*, 892 P.2d 1365, 1369 (Az. Ct. App. 1994) ("[A]ppraisal is analogous to arbitration. . . . Therefore, we apply principles of arbitration law to this dispute regarding an insurance policy appraisal clause.").
Arkansas	*See generally Miller v. Am. Ins. Co. of Newark, N.J.*, 124 F. Supp. 160, 164, n. 1 (W.D. Ark. 1954) (seemingly equating appraisal clause with arbitration provisions, but not definitively ruling on the issue).
California	*Doan v. State Farm Gen. Ins. Co.*, 195 Cal.App.4th 1082, 1093 (2011) ("An appraisal provision in an insurance policy constitutes an agreement for contractual arbitration." The court noted, however, that "there are significant differences between the powers of an arbitrator and those of an appraiser."); *see also Louise Gardens of Encino Homeowners' Assn., Inc. v. Truck Ins. Exch., Inc.*, 82 Cal.App.4th 648, 658 (2000) ["An agreement to conduct an appraisal contained in a policy of insurance… is considered to be an arbitration agreement subject to the statutory contractual arbitration law"].).

Colorado	*Auto-Owners Ins. Co. v. Summit Park Townhome Ass'n*, No. 14-CV-03417-LTB, 2015 WL 5284704, at *3 (D. Colo. Sept. 10, 2015) (holding that appraisal process set forth in property insurance policy was not an arbitration governed by the Colorado Uniform Arbitration Act); *see also Wagner v. Phoenix Ins. Co.*, 348 P. 2d 150 (affirming that the appraisal clause *was not* a required precedent to a plaintiff's right for cause of action).
Connecticut	*Giulietti v. Connecticut Ins. Placement Facility*, 534 A.2d 213, 217 (Conn. 1987) (holding that plaintiffs waived their rights under the appraisal clause when they elected a jury determination of issues for which appraisal procedure was available and explaining that an appraisal clause "in the standard form of policy set forth in General Statutes § 38–98 constitutes an agreement to arbitrate and falls within the ambit of our arbitration statutes . . . .").
Delaware	*Closser v. Penn Mut. Fire Ins. Co.,* 457 A.2d 1081, 1087 (Del. 1983) (construing an appraisal provision, when invoked, as "mandatory form of arbitration, precluding recourse to the courts."); *see also New Castle Cty. v. Atl. Aviation Corp.,* 1980 WL 273619, at *1 (Del.Ch. June 19, 1980) (finding an appraisal process is "similar to arbitration.").
District of Columbia	*Adkins Ltd. P'ship v. O St. Mgmt., LLC*, 56 A.3d 1159, 1166 (D.C. 2012) ("The rules governing review of agreements to determine property values through an appraisal process are the same as those governing review of arbitration agreements."); *see also Wash. Auto. Co. v. 1828 L St. Assoc.*, 906 A.2d 869, 875 (D.C. 2006) ("[W]e hold that a written agreement to settle an existing or future dispute regarding the value of land or other property via an appraisal process is, for purposes of the [District of Columbia Arbitration Agreement], an arbitration agreement enforceable as provided in the Act and Superior Court Civil Rule 70–I.").
Florida	Traditionally, Florida courts have treated appraisal clauses as binding arbitration provisions. *United States Fidelity & Guaranty Co. v. Romay,* 744 So.2d 467, 469 (Fla. 3d DCA 1999); *Farm Bureau Casualty Ins. Co. v Sheaffer*, 687 So.2d 1331 (Fla 1st DCA 1997) (equating an appraisal clause to agreement to arbitrate) (collecting cases). However, in recent years, the Florida Supreme Court held that the appraisal clause was not an agreement to arbitrate, and, thus, the formal procedures of the Arbitration Code were inapplicable, disapproving a line of previous authority. *See Allstate Ins. Co. v. Suarez*, 833 So. 2d 762 (Fla. 2002); *see also Johnson v. Nationwide Mut. Ins. Co.*, 828 So.2d 1021 (Fla. 2002) (holding that causation is a coverage question for the court, not the appraisal panel, when the insurer denies that there is a covered loss); *Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass'n, Inc.*, 117 So. 3d 1226 (Fla. Ct. App. 2013) (holding that Florida Arbitration Code does not apply to insurance appraisals).
Georgia	*McGowan v. Progressive Preferred Ins. Co.*, 637 S.E.2d 27, 29 (Ga. 2006) (explaining that arbitration is prohibited in insurance contracts, but holding

	that appraisal provisions are distinct from arbitration). "It would be tantamount to converting the appraisal clause into an arbitration clause, which is the type of clause that would be invoked to address such broader issues." *Id.; see also* _____.
Hawaii	*Christiansen v. First Ins. Co. of Hawaii, Ltd.*, 967 P.2d 639, 649 (Haw. Ct. App. 1998), *aff'd in part, rev'd in part on other grounds*, 88 Haw. 136, 963 P.2d 345 (Haw. 1998) ("[A] clause in an insurance policy providing for a formal appraisal process may, under certain circumstances, be tantamount to an agreement to arbitrate . . . . Consequently, this appraisal process has 'the binding effect of a judgment of a court of law' and is governed by the rules of arbitration."); *see also Waliua Assoc. v. Aetna Cas. and Sur. Co.*, 904 F. Supp. 1142, 1148 (D. Haw. 1995) (applying Hawaii state law and holding that an appraisal clause within an insurance contract constitutes an agreement to arbitrate, falling within the scope of the Federal Arbitration Act.).
Idaho	*Botai v. Safeco Ins. Co. of Ill.*, 2015 WL 4507486 at *4 (D. Idaho July 24, 2015) (after compelling appraisal and staying the case, the district court noted that the appraisal clause was "sufficiently similar to arbitration" under Idaho law).
Illinois	*Compare Travis v. Am. Mfrs. Mut. Ins. Co.*, 782 N.E.2d 322 (Ill. App. Ct. 2002) (holding that "an appraisal clause is analogous to an arbitration clause and is enforceable in a court of law in the same manner as an arbitration clause."); and *Beard v. Mount Carroll Mut. Fire Ins. Co.*, 561 N.E.2d 116, 118 (1990) ("[A]ppraisal clause in the insurance policy is analogous to an arbitration clause, which is enforceable in a court of law, and with which a court may compel compliance.") with *Lundy v. Farmers Grp., Inc.* 750 N.E.2d 314, 318 (Ill. App. 2001) (finding no support for notion that the Federal Arbitration Act and Uniform Arbitration Act apply to appraisal clauses).
Indiana	Appraisal procedure does not constitute arbitration. *Atlas Const. Co. v. Indiana Ins. Co.*, 309 N.E.2d 810, 812-13 (Ind. App. 1974) (the Indiana Court of Appeals distinguished appraisal from arbitration and held that the procedural protections of the Uniform Arbitration Act are not binding on appraisers because the appraisal process lacks the judicial qualities of an arbitration). *Compare Philadelphia Indem. Ins. Co. v. WE Pebble Point*, 44 F. Supp. 3d 813, 817 (S.D. Ind. 2014) (collecting cases and discussing various procedural issues associated with appraisement under Indiana law); *see also Sketo v. Allstate Ins. Co.,* 1981 U.S. Dist. LEXIS 13338 (S.D. Ind. July 6, 1981) (analogizing an appraisal provision to Indiana law governing arbitration agreements).

Iowa	In *Mapleton Processing, Inc. v. Soc'y Ins. Co.,* 2013 WL 3467190 (N.D. Iowa 2013), the court held that the scope of appraisal may include issues of causation. While acknowledging that "the courts, and not appraisers, must resolve coverage defenses and causation disputes," the *Mapleton* court reasoned that "a well-constructed appraisal ... can resolve 'dollar amount' issues while reserving liability questions for the judge." 2013 WL 3467190, at *23.
Kansas	Equating appraisal clauses arbitration agreements and confirming that both are invalid in insurance contracts under Kansas law. *Friday v. Trinity Universal of Kansas*, 924 P.2d 1284, 1285 (Kan. App. 1996).
Kentucky	While not directly on point, in *Royal Ins. Co. v. Santamoro*, 56 S.W.2d 359, 360 (1932), the court explained: > It has been held that a provision for an appraisal in a fire insurance policy similar to the one here in question must be complied with by the insured before he can maintain an action on the policy when an appraisal is properly demanded by the insurer and the failure of the insured, without good excuse, to submit the adjustment of the loss to appraisers, is a good defense to an action on the policy. However, a clause in a fire policy providing for an arbitration or appraisement of loss or damage as a condition precedent to suit by the insured is inserted wholly for the protection of the insurer, and may be waived by it. *See also Upington v. Commonwealth Ins. Co.*, 182 S.W.2d 648, 651-52 (Ky. Ct. App. 1944) (holding that appraisers and umpire may determine the amount of loss and damages, but not the issues of coverage).
Louisiana	*Prien Props., LLC v. Allstate Ins. Co.*, No. 07 CV 845, 2008 WL 1733591, at *2 (W.D. La. Apr. 14, 2008) (under Louisiana law, "appraisals are not to be confused with arbitration," meaning "the appraisal process does not fall under the requirements of the [Federal Arbitration Act] or the [Louisiana Arbitration Law] because appraisal is separate and distinct from arbitration."). However, Louisiana courts may expand the scope of the appraisal beyond mere determination of the scope of the covered loss. *See St. Charles Parish Hosp. Serv. Dist. No. 1 v. United Fire & Cas. Co.,* 681 F. Supp. 2d 748, 757 (E.D. La. 2010) (applying Louisiana law); *Dufrene v. Certain Interested Underwriters at Lloyd's of London Subscribing to Certificate No. 3051393*, 91 So. 3d 397 (La. Ct. App. 2012) (holding that appraisal clauses do not deprive the court of jurisdiction).

Maine	*Hutchins v. Merrill*, 84 A. 412, 414 (Me. 1912): > It is not necessary to follow the different courts in their ingenious efforts to trace, for all cases, a line of distinction between a mere appraisement and an ordinary submission to arbitration. The result may be that such appraisers are properly considered arbitrators for some purposes, but not in all respects. All are invested with quasi judicial functions, which must be discharged with absolute impartiality, without the improper interference of either party, or undue influence from any source. But appraisers may be said to act in the twofold capacity of arbitrators and experts.
Maryland	*Aetna Cas. & Sur. Co. v. Ins. Com'r*, 445 A.2d 14, 20 (Md. 1982) ("In Maryland, [courts] ha[ve] long recognized that, notwithstanding the distinctions between an appraisal under an insurance policy appraisal clause and arbitration, appraisal is analogous to arbitration. Consequently, this Court has applied arbitration law to appraisal clauses in insurance policies.").
Massachusetts	*State Room, Inc. v. MA-60 State Assocs., L.L.C.*, 995 N.E.2d 807, 811-12 (Mass. App. 2013) (analogizing appraisals and arbitrations, but explaining: "An appraisal results from an agreement. By contrast, an arbitration is an agreed reference to a decision maker for resolution of a claim or conflict. It results from a dispute . . . 'But just as an arbitrator may exceed his authority by granting relief which is beyond the scope of the arbitration agreement, ... so too an appraiser can exceed his authority by making an award which is not within the limits of the submission to him. *The issue turns on the agreement of the parties.*'") (emphasis in original) (citations omitted). *See also Sun Microsystems, Inc. v. Elec. Servs., Inc.*, No. CIVASUCV2005-2841BLS, 2009 WL 987336, at *4 (Mass. Super. Apr. 13, 2009) (differentiating between arbitration and appraisal and concluding that the appraisal provision at issue did not constitute "arbitration" within the meaning of Uniform Arbitration Act for Commercial Disputes).
Michigan	The Michigan Supreme Court has held that certain appraisal clauses constitute common law (but not statutory) arbitration agreements. *Davis v. Nat'l Am. Ins. Co.*, 259 N.W.2d 433, 437 (Mich. Ct. App. 1977) (citing *Manausa v. St. Paul Fire and Marine Ins. Co.*, 97 N.W.2d 708 (Mich. 1959)).
Minnesota	*Compare QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. Ct. App. 2010) (holding appraisal decisions are subject to the Minnesota arbitration statute, but do not encompass questions of liability) and *David A. Brooks Enters., Inc. v. First Sys. Agencies*, 370 N.W.2d 434, 435 (Minn. Ct. App. 1985) (holding that Minnesota's arbitration statutes govern appraiser decisions and appraisal awards are to be treated as arbitration awards) *with Johnson v. Mutual Serv. Cas. Ins. Co.*, 732 N.W.2d 340 (Minn. Ct. App. 2007) (the statutorily

	required "appraisal" provision in a Standard Fire Insurance Policy is not an "agreement to arbitrate" governed by the Uniform Arbitration Act.).
Mississippi	*Munn v. Nat'l Fire Ins. Co. of Hartford*, 115 So. 2d 54, 56 (Miss. 1959) ("The appraisers are not arbiters. They have no power to arbitrate disputes between the property owner and the insurance company other than to value the property damage."); *Hartford Fire Ins. Co. v. Jones*, 108 So. 2d 571, 572 (Miss. 1959) ("It seems that all of the lawyers and the court completely overlooked the fact that the report of the appraisers is not an arbitration award.").
Missouri	*Dworkin v. Caledonian Ins. Co.*, 226 S.W. 846, 847-49 (Mo. 1920) (in depth discussion of the differences between appraisal and arbitration). Ultimately, the court explained that appraisals and arbitrations are not the same and, thus, that the "anti-arbitration" statute did not invalidate an appraisal clause in an insurance policy. *Id.; see also Sholz v. Mills,* 158 S.W. 696, 702 (Mo.Ct.App.1913) ("[A]n appraisement under the terms of this lease is technically not an arbitration [and not] governed by the rules applicable to arbitrations."); *TAMKO Bldg. Prods., Inc. v. Factory Mut. Ins. Co.*, No. 4:09CV1401 CDP, 2009 WL 5216999, at *2 (E.D. Mo. Dec. 30, 2009) (holding that "the appraisal provision . . . is not subject to Missouri's Arbitration Act and so the Act does not bar enforcement of the appraisal provision.").
Montana	*Garretson v. Mountain West Farm Bureau Mut. Ins. Co*., 761 P.2d 1288, 1289-90 (Mont. 1988) (differentiating between appraisal and arbitration and holding that Montana's anti-arbitration statute relating to insurance disputes did not apply to the mandatory appraisal process).
Nebraska	The Supreme Court of Nebraska equated an appraisal clause in an insurance contract to an arbitration clause, as both serve to "oust" courts of their jurisdiction and are therefore unenforceable. *Rawlings v. Amco Ins. Co.*, 438 N.W.2d 769, 771 (Neb. 1989).
Nevada	The Supreme Court of Nevada has held that arbitrators and appraisers possess different powers. Arbitrators enjoy broad powers and may, in some cases, dispose of the entire controversy between the parties. Appraisers, conversely, enjoy only narrow powers limited to the resolution of specific valuation and amount of loss issues. *St. Paul Fire & Marine Ins. Co. v. Wright*, 629 P.2d 1202, 1203 (Nev. 1981).
New Hampshire	The research of New Hampshire law did not identify any authority directly on point, but a 1844 case, *Town of Rochester v. Whitehouse*, 15 N.H. 468, 472 (1844) did hold that the appointment of appraisers might be revoked the same as that of arbitrators.
New Jersey	*Elberon Bathing Co., Inc. v. Ambassador Ins. Co., Inc*., 389 A.2d 439, 446 (N.J. 1978) (concluding that appraisals are excluded from New Jersey's Arbitration Act); *see also Rastelli Bros. v. Netherlands Ins. Co.*, 68 F.Supp.2d 440, 446 (D. N.J. 1999) (holding that New Jersey agrees

	with the majority rule and recognizes "a great distinction between arbitration and appraisal[.]" Thus, appraisals are not governed by New Jersey arbitration statutes.).
New Mexico	The research of New Mexico law did not identify any authority directly on point.
New York	*In re Delmar Box Co.*, 127 N.E.2d 808, 810-12 (N.Y. 1955) (acknowledging "[a] number of basic distinctions" separating appraisal under a standard fire policy and statutory arbitration, and refusing to recognize appraisals as arbitrations given the significant differences).
North Carolina	*Patel v. Scottsdale Ins. Co.*, 728 S.E.2d 394, 400 (N.C. App. 2012) ("[A]rbitration provides a useful analogy for purposes of determining what steps should be taken in the event that a plaintiff initiates civil litigation without having first complied with the appraisal procedures mandated by N.C. Gen. Stat. § 58–44–16(f)(14)"). However, appraisal procedure is not the same as arbitration under North Carolina law. *PHC, Inc. v. N. Carolina Farm Bureau Mut. Ins. Co.*, 501 S.E.2d 701, 703 (N.C. 1998) ("[T]he instant case is not one involving the Uniform Arbitration Act. The policy provision quoted above provides for an 'appraisal' procedure if the parties cannot agree on the amount of physical damage loss. None of the persons determining the amount of the loss are referred to as arbitrators, nor are the provisions of the Uniform Arbitration Act even obliquely mentioned.").
North Dakota	In *Minot Town & Country v. Fireman's Fund Ins. Co.*, 587 N.W.2d 189, 190-91 (N.D. 1998), the Supreme Court of North Dakota has noted the "significant differences" between appraisal and arbitration, and held that where the only issue before the court concerns the value of the alleged loss, the correct proceeding is an appraisal and the Uniform Arbitration Act does not apply.
Ohio	Whether the provision in the contract constitutes an appraisal clause or an arbitration clause depends on the language of the provision. *Compare Saba v. Homeland Ins. Co. of Am.*, 112 N.E.2d 1, 5 (Ohio 1953) (holding that the appraisal provisions in the policies did not constitute arbitration clauses when the provisions did not call for the determination of the liabilities of the parties) with *Cousino v. Stewart*, No. F-05-011, F-05-004, 2005 WL 3120245, at *5 (Ohio Ct. App. Nov. 23, 2005) (holding that all documents, together with the language in the appraisal clause, brought the policy within the state's arbitration statutes.). Typically, Ohio courts hold that appraisals and arbitration are not the same. *Smith v. Shelby Ins. Grp.*, No. 96-T-5547, 1997 WL 799512, at *4 (Ohio Ct. App. Dec. 26, 1997).

Oklahoma	*See e.g.*, *Massey v. Farmers Ins. Grp.*, 837 P.2d 880, 884, n.1 (Okla. 1992) ("Arbitration differs from the subject appraisal process in that arbitration is not forced upon the parties by statute. This Court noted in *Voss v. City of Oklahoma City,* 618 P.2d 925, 927 (Okla.1980), that arbitration is 'the referral of a dispute by the *voluntary agreement* of the parties to one or more impartial arbitrators for a final and binding decision as a determination of their dispute.' . . . The appraisal provision in the case at bar was not agreed to voluntarily, but rather, was required by statute.") (emphasis in original); *Wilson v. Gregg*, 255 P.2d 517, 522 (Okla. 1952) ("The law governing arbitration and the law governing contracts for appraisal is a very different thing.").
Oregon	*Budget Rent-A-Car of Washington-Oregon, Inc. v. Todd Inv. Co*., 603 P.2d 1199, 1201 (Or. App. 1979) (appraisal agreements, unlike arbitration agreements, held valid "because they required only the submission of isolated issues to an appraiser, and did not attempt to usurp the judiciary's power to resolve the case as a whole"); *see also Portland Gen. Elec. Co. v. U.S. Bank Trust Nat. Ass'n as Trustee for Trust No. 1*, 218 F.3d 1085, 1090 (9th Cir. 2000) ("Oregon courts have distinguished appraisals from arbitrations and have expressly held that appraisals are not governed by Oregon's arbitration statute.").
Pennsylvania	*Hozlock v. Donegal Cos./Donegal Mut. Ins. Co.*, 745 A.2d 1261, 1263 (Pa. Super. Ct. 2000) ("For purposes of judicial review, appraisal is analogous to common law arbitration[,]" not statutory arbitration.); *see also McGourty v. Penn. Millers Mut. Ins. Co.*, 704 A.2d 663, 664 (Pa. Super. Ct. 1997) ("The only distinction between arbitration and appraisal is the *scope of the issues* encompassed by each proceeding...For purposes of enforceability, there is no distinction between arbitration and appraisal").
Rhode Island	*Waradzin v. Aetna Cas. and Sur. Co.*, 570 A.2d 649 (R.I. 1990) (where a policy's appraisal procedure required two appraisers and an umpire, it was deemed to be an "arbitration" provision, thus allowing arbitration confirmation proceeding to be brought).
South Carolina	*Childs v. Allstate Ins. Co.*, 117 S.E.2d 867, 870 (S.C. 1961) (differentiating, in *dicta*, between enforceable appraisals and unenforceable arbitration); *see also Goldberg v. C.B. Richard Ellis, Inc.*, No. 4:11-CV-02237-RBH, 2012 WL 6522741, at *1 (D.S.C. Dec. 14, 2012).
South Dakota	In South Dakota, the state's Division of Insurance issued a Bulletin 98-05 stating, "Policies which have provisions labeled as arbitration, appraisal or any other term whereby a claim dispute resolution process can be demanded or required by either party are likewise prohibited as such provisions constitute arbitration." *See* Darla L. Lyon, S.D. DIV. OF INS., *Bulletin 98-05: Arbitration Clauses*, *available at* https://dlr.sd.gov/insurance/bulletins/bulletin_98_05_arbiration_clauses.pdf (May 27, 1998).

Tennessee	Rejecting defendant's argument that the appraisal clause in her insurance policy constituted an arbitration agreement and holding that "arbitration proceedings and appraisal proceedings are not the same thing." *Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d 142, 149 (Tenn. Ct. App. 2001); *but see generally J. Wise Smith & Associates, Inc. v. Nationwide Mut. Ins. Co.*, 925 F. Supp. 528, 531 (W.D. Tenn. 1995)("Courts apply the same law to appraisal clauses and arbitration clauses.)
Texas	*Hodge v. Kraft*, No. 04-15-00056-CV, 2015 WL 6735291, at *4-5 (Tex. App. Nov. 4, 2015) ("[A]ppraisal provisions are different from arbitration clauses and cannot be construed to be one and the same.") (citing *Vanguard Underwriters Ins. Co. v. Smith*, 999 S.W.2d 448, 450 (Tex. App. 1999); *see also Hartford Lloyd's Ins. Co. v. Teachworth,* 898 F.2d 1058, 1062 (5th Cir. 1990) ("Under Texas law it is clear that an insurance appraisal which only determines the value of a loss is not an arbitration.").
Utah	*Miller v. USAA Cas. Ins. Co.,* 44 P.3d 663, 673 (Utah 2002) (recognizing the "intrinsic differences between arbitration and appraisal," and holding that the Utah Arbitration Act and Utah case law addressing arbitration agreements do not directly apply to appraisal clauses).
Vermont	The research of Vermont law did not identify any authority directly on point. *See generally Howard v. Edgell*, 17 Vt. 9, 23 (1842) ("The appraisers were not arbitrators, but appraisers merely,--the sole matter submitted to them being to determine the value of the Charleston lands.").
Virginia	In Virginia, the state's Bureau of Insurance issued an Administrative Letter 1998-12 clarifying, "The State Corporation Commission Bureau of Insurance has recently reviewed its position with regard to binding arbitration provisions and binding appraisal conditions in insurance contracts. Companies are advised that arbitration clauses or appraisal conditions that attempt to deprive a court of jurisdiction are not permitted in insurance contracts." *See* Alfred W. Gross, Bureau of Ins., Admin. Letter 1998-12, a*vailable at* https://www.scc.virginia.gov/boi/adminlets/al98-12.pdf (Sept. 24, 1998).
Washington	*Hegeberg v. New England Fish Co.*, 110 P.2d 182, 186 (Wash. 1941) (recognizing a distinction between "appraisals" and "arbitration," and holding that provisions within contracts addressing price or value fixing provide for appraisals not arbitration.).
West Virginia	*See e.g, Smithson v. U.S. Fid. & Guar. Co.*, 411 S.E.2d 850, 857 (W. Va. 1991) (explaining that the parties' agreement to appoint an umpire does not convert appraisal into arbitration. "[W]e are reluctant to apply our arbitration law to an insurance policy appraisal provision that is neither mandatory nor the exclusive remedy for settling casualty losses.") The court further explained: "Under an ordinary appraisal clause, the only issue is the

	amount of the loss. Questions concerning policy defenses or coverage are not addressed in appraisals. The narrow purpose of an appraisal and the lack of an evidentiary hearing make it a much different procedure from arbitration." *Id.*
Wisconsin	*Lynch v. Am. Family Mut. Ins. Co.*, 473 N.W.2d 515, 519 (Wis. Ct. App. 1991)("Although the words 'appraisal' and 'arbitration' are occasionally used interchangeably, there is a distinction between the two terms.")
Wyoming	The research of Wyoming law did not identify any authority directly on point.

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