

DOCKET NO.: MMX-CV-22-6034120-S : **SUPERIOR COURT**
PATRICK MUSSOLINI : **J.D. OF MIDDLESEX**
VS. : **AT MIDDLETOWN**
LIBERTY MUTUAL INSURANCE
COMPANY & LIBERTY INSURANCE
CORPORATION : **SEPTEMBER 14, 2022**

MOTION TO COMPEL APPRAISAL

Pursuant to Connecticut General Statutes § 52-410 and § 38a-307 the Plaintiff, PATRICK MUSSOLINI hereby files this motion to compel appraisal. In support of this motion, the Plaintiff represents the following:

1. The Plaintiff suffered a property damage loss which occurred on or about October 16, 2019.
2. There is a dispute as to the amount of loss.
3. On or about February 24, 2020, the Plaintiff demanded appraisal and named its appraiser.
4. Thereafter, on May 5, 2022, the Defendants named their appraiser.
5. The two appraisers appointed an umpire.

ORAL ARGUMENT REQUESTED
TESTIMONY MAY BE REQUIRED

6. The appraisal clause in the subject policy provides in pertinent part:

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 disinterested appraiser within 20 days after receiving a written request from the other. The two appraisers will choose a competent and disinterested 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:

- a. Pay its own appraiser; and*
- b. Bear the other expenses of the appraisal and umpire equally.*

7. Pursuant to the appraisal clause in the Defendants' policy each of the appraisers are to separately state the amount of loss and present differences to the umpire for resolution.
8. Pursuant to the Affidavit of Appraiser Tancreti, attached hereto as **Exhibit A**, he presented his evaluation of the amount of loss to both the appraiser for Liberty Mutual and the umpire.
9. For reasons that are not known to the Plaintiff, Liberty Mutual, through its counsel, has chosen to communicate directly with the appraisal panel including providing the appraisal panel with Liberty Mutual's interpretation of law, with Liberty Mutual's interpretation of facts and such communications are intended to and do influence the appraisal panel. An example of such a communication is attached hereto as **Exhibit B**.
10. Pursuant to the affidavit of Appraiser Tancreti, Appraiser Kinscherf on behalf of Liberty Mutual has yet to submit any evaluation of damages.

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TESTIMONY MAY BE REQUIRED**

11. Evidencing the interference of Liberty Mutual and its counsel, Appraiser Kinscherf advised Appraiser Tancreti he is not going to prepare his evaluation of the amount of loss until he receives further communication or guidance from counsel for Liberty Mutual.
12. Accordingly, the appraisal is now at a standstill with the Plaintiff's appraiser having prepared and presented his estimate of the amount of loss and with the Defendants' appraiser refusing to do so awaiting certain instructions from Liberty Mutual and/or its counsel.
13. It is improper and inappropriate for either the Defendants or their counsel to communicate directly with the appraisal panel as Defendants appointed their appraiser pursuant to their policy provision and their appraiser is the party who should be providing information or evidence to the Plaintiff's appraiser and to the umpire.
14. Furthermore, this appraisal has been proceeding for months yet the Defendants' appraiser has still not prepared his evaluation of the damage as required by the policy and therefore, the appraisal cannot move forward.
15. The Plaintiff is seeking an order from the Court compelling the appraisal to move forward by requiring Defendants' appraiser to separately set forth the amount of loss as required by the policy. The Plaintiff also seeks an order from the Court that if the Defendants' appraiser fails to do so by a date certain the umpire is permitted to adjudicate any differences between the parties and render a ruling. Finally, the Plaintiff is seeking an order from the Court preventing the Defendants and/or their counsel from interfering with the appraisal process.

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WHEREFORE, the Plaintiff requests the following relief:

1. An order compelling the appraisal to move forward.
2. An order compelling Defendants' appraiser to set forth the amount of loss as required by the appraisal provision in the policy.
3. An order prohibiting Liberty Mutual or its counsel from directly communicating with the appraisal panel.
4. An order that if Liberty Mutual's appraiser shall not submit its evaluation of the amount of loss by a date certain, that the umpire should decide any differences based upon the information currently before him or her.

**THE PLAINTIFF,
PATRICK MUSSOLINI**

BY: _____/s/
Jon D. Biller
Brianna K. Robert
Biller, Sachs & Robert
2750 Whitney Avenue
Hamden, CT 06518
Phone No.: (203) 281-1717
Juris No.: 409077
brobert@billerlawgroup.com
attorneys@billerlawgroup.com

**ORAL ARGUMENT REQUESTED
TESTIMONY MAY BE REQUIRED**

CERTIFICATION

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on the above date to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery, including:

Kathleen Schaub
SLOANE AND WALSH LLP (435734)
148 EASTERN BOULEVARD
SUITE 105
GLASTONBURY, CT 06033
kschaub@sloanewalsh.com

**THE PLAINTIFF,
PATRICK MUSSOLINI**

BY: _____/s/
Jon D. Biller

**ORAL ARGUMENT REQUESTED
TESTIMONY MAY BE REQUIRED**

EXHIBIT A

DOCKET NO.: MMX-CV-22-6034120-S : SUPERIOR COURT
PATRICK MUSSOLINI : J.D. OF MIDDLESEX
VS. : AT MIDDLETOWN
LIBERTY MUTUAL INSURANCE :
COMPANY & LIBERTY INSURANCE :
CORPORATION : SEPTEMBER 13, 2022
STATE OF CONNECTICUT : AFFIDAVIT
ss: Hamden, CT
COUNTY OF NEW HAVEN

The undersigned, **AL TANCRETI**, having been duly sworn deposes and states:

1. I am over the age of eighteen years and believe in the obligation of an oath.
2. I have been a licensed Connecticut adjuster for over 40 years. I have acted as an appraiser and umpire on hundreds of property insurance matters, and I was appointed as Mr. Mussolini's appraiser in connection with his claim for damages which occurred on or about October 16, 2019.
3. In response to Mr. Mussolini's demand for appraisal, Liberty Mutual appointed its appraiser, Keith Kinscherf.
4. Mr. Kinscherf and I agreed upon the appointment of an umpire.
5. Pursuant to the provision in the policy I prepared a building estimate of damages and submitted it to Mr. Kinscherf and the umpire.
6. During the course of the appraisal proceeding the Appraisal Panel received communications from Liberty Mutual's counsel reportedly advising the Appraisal Panel of what Connecticut Law means, of what certain facts are, and providing the Appraisal Panel with instructions.
7. Having been an Appraiser for over 40 years, appraisal in Connecticut is set forth in

the policy and it requires each of the appraisers to separately and independently set forth the amount of loss and then to submit any differences to the umpire for resolutions. Communications to the Appraisal Panel directly from a party or from a party's counsel are generally not permitted and generally do not take place as they can be considered interfering with the appraisal process.

8. Although I submitted my estimate of damages on August 10, 2022, Liberty Mutual's appraiser, Kinscherf has not to date submitted his evaluation of damages.
9. As recently as of last week, Mr. Kinscherf said that he was not going to provide his evaluation of the amount of loss until he received further instruction from counsel for Liberty Mutual.
10. Accordingly, that in the absence of Mr. Kinscherf providing his evaluation of damages, the appraisal process is at a standstill.
11. The undersigned's opinion, Mr. Kinscherf needs to provide his evaluation in the amount of loss and then any differences between the two, need to be submitted to the umpire for resolution of this appraisal.



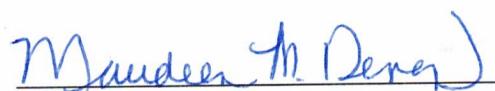
Al Tancreti

STATE OF CONNECTICUT)

) ss: Hamden, CT

COUNTY OF NEW HAVEN)

Subscribed and sworn to before
me on this ___ day of September, 2022.



Notary Public

My Commission Expires:



EXHIBIT B

SLOANE AND WALSH LLP

Attorneys at Law

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Also admitted: NH, CT

Boston, Massachusetts
Lincoln, Rhode Island
Bedford, New Hampshire
Glastonbury, Connecticut

August 15, 2022

VIA EMAIL

Mr. Frank Antonucci, Jr.
Vice President Building
J.S. Held, LLC
Fantonucci.jr@jsheld.com

Mr. Alan Tancreti
Tancreti, Hoffman, Biller & Mendel
2750 Whitney Avenue
Hamden, CT 06518
atancreti@snet.net

Mr. Keith Kinscherf
Prindle Consulting, LLC
77 Twilight Dr.
Madison, CT 06443
prindleconsulting@gmail.com

RE: RE: Liberty Mutual v. Mussolini – Appraisal Hearing

Insured: Patrick Mussolini
Insured Location: 13 S Wangonk Trl. E, East Hampton, CT 06424
Claim No.: 041147605-01
Policy No.: H3721854184640
Date of Loss: October 16, 2019
Our File No.: LB116-2614

Dear Mr. Antonucci, Mr. Tancreti and Mr. Kinscherf,

Kindly be advised that this office continues its representation of Liberty Mutual Insurance Company ("Liberty Mutual") regarding the above-referenced matter.

At this time, we are aware that the panel was able to view the Property on August 11, 2022.

Liberty Mutual respectfully requests that the panel provide dates of availability for Liberty Mutual through counsel to provide additional information and arguments to the panel. As always, Liberty Mutual invites the Insured, through counsel, to present their information to the panel as well.

Should the Insured, or his counsel, present information to the panel, including information specifically provided to Mr. Tancreti, we respectfully request that this be provided to our office so that Liberty Mutual may have a reasonable opportunity to review this information and respond appropriately.

Regarding the hearing, please also notify the parties should the panel wish to do an in person hearing or hold the hearing via Zoom.

Please note, it is Liberty Mutual's continued position that the Connecticut Supreme Court's decision in Kellogg v. Middlesex Mut. Ass. Co., 326 Conn. 638 (2017) affords the parties the opportunity to present evidence to the entire panel through a joint site inspection and/or appraisal hearing.

The Connecticut Supreme Court in Kellogg held that an appraisal award – issued after invocation of a standard provision – functionally equivalent to the appraisal provision found in the policy at issue – is subject to review under Conn. Gen. Stat. Ann. § 52-418, which establishes the grounds for which an arbitration award may be vacated under Connecticut law. See Kellogg, 326 Conn. at 641. The statute provides that an arbitration award may be vacated for the following grounds:

- (1) If the award has been procured by corruption, fraud or undue means;
- (2) If there has been evident partiality or corruption on the part of any arbitrator;
- (3) If the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or

- (4) If the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definitive award upon the subject matter submitted was not made.

See Conn. Gen. Stat. Ann. § 52-418 (emphasis added). Accordingly, appraisals in the State of Connecticut are subject to Connecticut's arbitration laws. See Kellogg. Therefore, a party to appraisal should be afforded the opportunity to present any relevant and material evidence to the entire appraisal panel.

We further note that, as the panel has now viewed the Property, it is clear that a majority of the alleged necessary repairs have occurred at the Property. Pursuant to the Policy's Loss Settlement Provision¹, the Insured is entitled to no more than the actual and necessarily spent to repair or replace the damage. Therefore, the panel should have an opportunity to view evidence of the amount actually and necessarily spent in repairing the Property including, but not limited to, evidence of the cost of labor and materials to complete the work at the Property. At this time, Liberty Mutual has not been provided this information.

Kindly be advised that Liberty Mutual reserves all rights under the Policy and applicable law with respect to this claim. Nothing contained herein, nor any further

¹ **HOMEPROTECTOR PLUS ENDORSEMENT**

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B. REPLACEMENT COST PROVISIONS – DWELLING AND PERSONAL PROPERTY

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3. Loss Settlement. Covered property losses are settled as follows:

a. The applicable limit of liability for Buildings under Coverage A or B is the replacement cost, after application of deductible and without deduction for depreciation, subject to the following:

(1) We will pay the cost of repair or replacement, but not exceeding:

(a) The replacement cost of that part of the building damaged using like kind and quality construction on the same premises and intended for the same occupancy and use;

(b) With respect to Coverage A, an amount not exceeding 40% greater than the limit of liability stated in the declaration, as modified by Inflection Protection Provision of the policy;

(c) With respect to Coverage B, the limit of liability stated in the declaration, as modified by Inflation Protection Provision of the policy;

(d) The amount actually and necessarily spent to repair or replace the damage.

See H37-218-541846-40 9 8.

August 15, 2022

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actions by Liberty Mutual, its agents, representatives, or attorneys, should be construed as a waiver of any rights or defenses, legal or equitable, whether or not stated herein, which Liberty Mutual possesses under the Policy and applicable law nor should Liberty Mutual be deemed estopped from asserting any or all coverage defenses that are currently available under the Policy or any defenses which may become applicable to this matter.

Thank you for your time and attention to this matter.

Very truly yours,

/s/ Anthony J. Antonellis

Anthony J. Antonellis, Esq.

Kathleen C. Schaub, Esq.

AJA/KCS-jtn

cc: VIA EMAIL

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