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## California Court Holds That Scope of Repair Is Appraisable

By Samuel H. Ruby

For the first time in a published decision, a California Court of Appeal has squarely held that insurance appraisers must resolve disagreements over the scope of repair and cannot merely price the competing scopes submitted by the policyholder and the insurer. While reaffirming the principle that appraisers cannot resolve coverage issues, the decision provides welcome clarification that the extent of damage and the necessary scope of repair are simply aspects of the valuation issue that appraisers are charged with deciding.

Property insurance policies typically provide for appraisal as a means of resolving disagreements over the "amount of loss." California case law has long-recognized that appraisers can only provide valuations and may not resolve questions of coverage. *See, e.g., Jefferson Ins. Co. v. Superior Court*, 3 Cal. 3d 398 (1970). Thus, if the parties disagree over whether damage to an item was caused by an insured peril or an excluded peril, the panel must value the damage, leaving the question of causation for litigation. *Kacha v. Allstate Ins. Co.*, 140 Cal. App. 4th 1222 (2006).

Implicitly, *Jefferson* and *Kacha* hold that appraisers can and must decide whether an item was damaged at all—and if so, what would be the necessary scope and method of repair. Such was the ruling in *Pajaro Wall Street Inn, LLC v. CIBA Ins. Services*, 2009 WL 297001. However, because *Pajaro* is unpublished, policyholders and insurers have continued to disagree on the question of whether scope issues are appraisable.

In *Lee*, the trial court sided with the policyholder. Granting a motion to compel appraisal, the court ordered the appraisal panel to value each side's proposed scope of repair, without deciding which scope was actually necessary. In compliance with the order, the panel returned two valuations, which were more than \$600,000 apart. Objecting that the panel had improperly issued "two vastly different valuations of the same fire loss" including "items that were not damaged or that never existed," the insurer moved to modify the award. The trial court denied the motion and instead confirmed the award and entered a corresponding declaratory judgment.

However, the appellate court reversed the judgment. "It was error," the court held, "to compel the appraisal panel to assign loss values to items simply because they were listed in the insured's scope of loss and regardless of whether inspection revealed they were undamaged or never existed." "An assessment of whether an item is damaged or existed," the court explained, "is fundamental to a valuation of the amount of the loss." Thus, "[i]f inspection reveals an item is undamaged or never existed, it is appropriate for the panel to award nothing for loss or damage to that item." An appraisal award that does not provide "a single valuation of the loss" is "fundamentally deficient."

The court reconfirmed that when parties agree that an item is damaged, the appraisers must value it, even if coverage for the item is disputed. However, the court held, it is appropriate for the award form to segregate items over which coverage is disputed, so that once the coverage issues are resolved, the insurer's liability can be calculated without returning to the appraisers. The court's ruling on the authority of appraisers to resolve scope disagreements, coupled with its guidance on how appraisal awards may be structured, should be of great assistance to parties entering into future appraisals.