

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. **19HA-CV-15-2781**

Richard Billion,
Plaintiff,

ORDER

v.

Selective Insurance Company of America,
Selective Insurance Company of South
Carolina, and ABC Insurance Company,

Defendant.

The above-entitled matter came before the Honorable Kathryn D. Messerich, Judge of District Court, on February 14, 2017, at Dakota County Judicial Center, Hastings, Minnesota, upon Defendant's motion to lift stay and for dismissal with prejudice.

Timothy D. Johnson, Esq. appeared on behalf of the Plaintiff.

Kristi K. Brownson, Esq. appeared on behalf of the Defendant.

Based upon the proceedings, this Court makes the following:

FINDINGS OF FACT

1. On October 12, 2012, Selective Insurance Company (Selective) issued a homeowner's policy, Policy H-2086044, to Richard Billion (Plaintiff) for his property located on 14133 Flagstone Trail, Apple Valley, Minnesota 55124 (Insured Property). The policy term was for one year. The policy limit for the dwelling was \$529,500 with a \$1,500 deductible for all perils.
2. On October 12, 2013, Plaintiff renewed Policy H-2086044 with a term of October

12, 2013 to October 12, 2014. The policy limit under the renewed policy was \$540,000 with a \$1,500 deductible for all perils.

3. Both policies included an appraisal clause pursuant to Minn. Stat. §65A.01, Subd. 3.
4. Plaintiff made claims under both the 2012 and 2013 policies claiming that on August 6, 2013 and July 7, 2014 the property sustained hail, wind and water damage, including damage to the roof, siding and other building materials, to the dwelling.
5. Selective assigned a claim number to each of the claims and conducted inspections.
6. Selective's inspection valued the August 6, 2013 claim at \$741.52. A loss report was completed on October 10, 2013.
7. Selective's inspection of the July 7, 2014 claim alleged that the claim damage was due to defective shingles rather than storm damage. Further, Selective asserted that any new damage was within the policyholder's deductible. A loss report was completed on November 18, 2014.
8. Plaintiff was notified of the results of each inspection.
9. On August 5, 2015, Plaintiff filed a "Complaint and Petition for Appraisal." Plaintiff alleged that there was a "bona fide dispute between Plaintiff and Selective regarding the necessary scope and price for repair arising from the Losses, and that dispute can be resolved via the policy's appraisal provision and the appraisal process set forth in Minn. Stat. § 65A.01". (Complaint ¶10) The Complaint sought appraisal pursuant to Minn. Stat. §65A.01, Subd. 3.

10. The parties finalized their choice of appraisers by August 18, 2015, as required by Minn. Stat. §65A.01 and the terms of the policy. The appraisal was completed on November 13, 2015.
11. The appraisers unanimously awarded two separate amounts --\$37,473.60 in actual cash value and \$25,892.40 in replacement costs on November 13, 2015. Selective tendered a check to Plaintiff on December 8, 2015 for the actual cash value and the second check was tendered when the repairs were made for replacement value. There is no dispute Selective paid these amounts and the repairs were eventually completed. The parties stipulated to stay the lawsuit to pending completion of the repairs. A joint stipulation was filed with this Court on March 14, 2016 and the litigation was stayed.
12. Notwithstanding the final payment of the claims, Plaintiff declined to dismiss the present lawsuit.
13. Plaintiff subsequently asserted a right to seek prejudgment interest on the appraisal award in the amount of \$8,791.00 under Minn. Stat. § 549.09 and pursuant to the Minnesota Supreme Court's grant of review of *Poehler v. Cincinnati Ins. Co.*, 874 N.W.2d 806 (Minn. Ct. App. 2016) *rev. granted*, March 29, 2016).
14. The Minnesota Supreme Court heard oral arguments in *Poehler* on October 4, 2016.
15. On December 9, 2016, Selective notified Plaintiff of its intent to request that this Court lift stipulated stay and to move for dismissal. The motion was heard on February 14, 2017.
16. To date, the Minnesota Supreme Court has not issued an opinion in *Poehler*.

17. Plaintiff's claim for prejudgment interest on the appraisal award is an issue of law and the only unresolved issue asserted.
18. Plaintiff's lawsuit does not assert any claims of wrongdoing on the part of Defendant but rather seeks to compel the appraisal process pursuant to the policy. The appraisal occurred in a timely manner, pursuant to the demand and was paid in full.
19. This Court declines to expand the definition of prejudgment interest to appraisal awards as the legislature did not do so and it is not within the province of this Court to add an award of prejudgment interest to a procedure undertaken by contract and statute for the valuation of an insured loss absent other actionable wrongdoing.

CONCLUSIONS OF LAW

1. Minn. Stat. §65A.01, Subd. 3 applies to the appraisal clause utilized in the present case through Plaintiff's Homeowner Policy.
2. The amount of loss shall be payable 60 days after a written agreement as to the amount or upon the filing of an award obtained through the appraisal process. *Id.* Interest accrues at the time the loss becomes payable. *Id.*
3. An appraisal award does not constitute compensatory damages – an appraisal award is a payment pursuant to a contract and governed by Minn. Stat. § 65A.01, Subd. 3.
4. Minn. Stat. § 549.09, subd. 1(b) (3) specifically excludes “noncompensatory damages.”
5. Plaintiff's claim, under the contract of insurance, was completely resolved by

payment of the appraisal award and no other interest is owed.

ORDER

1. The motion to lift the stay is **GRANTED**.
2. Defendant's Motion to Dismiss is hereby **GRANTED**.
3. Plaintiff's case is hereby **DISMISSED** with prejudice.
4. Given the unique procedural posture of this case, either party may submit request for reconsideration pursuant to Minn. Gen. R. Prac. 115.11 after the Minnesota Supreme Court issues its opinion in *Poehler v. Cincinnati Ins. Co.*
5. Entry of Judgment shall be stayed for 60 days from the date of this Order.

BY THE COURT:

Kathryn D. Messerich
Judge of District Court