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† JD Candidate, William Mitchell College of Law, 2016; BA Creative Writing and World History, University of Minnesota, 2005. I would like to thank Professor Daniel S. Kleinberger for providing a wall against which to throw the spaghetti of my thoughts, and for the advice in how to handle the ideas that stuck. Also, I would like to thank my husband, Nathan, for caring about what is important to me, even when it is insurance appraisals.
I. INTRODUCTION

Appraisal as a means to set the amount of loss an insurance company owes its insured has evolved out of common law as a result of provisions in early property insurance policies. While appraisal was treated much like arbitration in early property insurance cases, arbitration is now governed by statute while appraisal has been clearly distinguished and is still largely controlled by common law or with language borrowed from arbitration statutes. One of the important distinctions between the


2. Early cases in Minnesota applied the same standards to appraisal awards as they did to arbitration procedures. For an early example of the interpretation of appraisal clauses in an insurance policy, see Janney, Semple & Co. v. Goehringer, 52 Minn. 428, 430, 54 N.W. 481, 482 (1895). Before the codification of the Uniform Arbitration Act, Minnesota courts used “arbitrator” and “appraiser” interchangeably, necessitating a careful read of the facts in each case to determine whether the holding applies to appraisals or arbitrations. See, e.g., Mork v. Eureka-Sec. Fire & Marine Ins. Co., 230 Minn. 382, 384, 42 N.W.2d 33, 35 (1950); Bahr v. Union Fire Ins. Co., 167 Minn. 479, 480, 209 N.W. 490, 490 (1926); McQuaid Mkt. House Co. v. Home Ins. Co., 147 Minn. 254, 255, 180 N.W. 97, 97 (1920); Produce Refrigerator Co. v. Norwich Union Fire Ins. Soc’y, 91 Minn. 210, 212, 97 N.W. 875, 875 (1904), aff’d sub nom. Produce Refrigerating Co. v. Norwich Union Fire Ins. Soc’y, 91 Minn. 210, 98 N.W. 100 (1904).

3. See Uniform Arbitration Act, Minn. Stat. §§ 572B.01–.31 (2012). After the enactment of the Uniform Arbitration Act in 1952, any contractual arbitration clause in the state was governed by the statute unless specifically stated otherwise. 6A James Reding, Minnesota Practice: Methods Of Practice § 57.1 (3d ed. 2013).

4. See QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n, 778 N.W.2d 393, 398 (Minn. Ct. App. 2010) (applying an arbitration statute to appraisal proceedings). Compare Johnson v. Mut. Serv. Cas. Ins. Co., 732 N.W.2d 340, 346 (Minn. Ct. App. 2007) (“We hold that the statutorily required appraisal provision is not an agreement to arbitrate governed by the Uniform Arbitration Act . . ..”), with Cont’l Ins. Co. of N.Y. v. Titcomb, 7 F.2d 833, 834 (8th Cir. 1925) (“[T]he Supreme Court of Minnesota has uniformly held that these proceedings
two alternative dispute resolution methods is that appraisals are generally limited to setting the amount of loss owed; appraisals may not make final determinations as to liability.\(^5\)

In *Quade v. Secura Insurance*, the Minnesota Supreme Court held that the statutorily mandated appraisal clause in special property insurance contracts\(^6\) requires appraisers to make determinations both as to the value and the cause of a loss.\(^7\) As a part of this decision, the court found that an appraisal is a condition precedent to litigation—even when a partial denial of coverage has been made and liability under the policy is in question.\(^8\) The court’s decision upholds the public policy of providing efficient, cost-effective alternatives to litigation in insurance disputes\(^9\) but, under the specific facts of this case, ironically results in an anti-consumer outcome in an area of law where public policy strongly favors the consumer because of the non-negotiable nature of insurance contracts.\(^10\)

In analyzing the soundness of the reasoning behind naming appraisals as a condition precedent to litigation, the roots of the special fire and wind insurance policy, such as the one owned by the Quades, is traced back to the seventeenth century.\(^11\) Following a brief overview of appraisals, statutory interpretation, and the reasonable consumer expectations doctrine as it applies to insurance policies, this case note discusses how Minnesota courts interpreted the appraisal clause of the standard form fire insurance policy prior to the Quade decision.\(^12\) The rationale of both the

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5. See infra Part II.B.
6. See MINN. STAT. § 65A.01, subdiv. 3.
7. Quade v. Secura Ins., 814 N.W.2d 703, 708 (Minn. 2012).
8. Id.
10. See infra Part II.A.
11. See infra Part II.A.
12. See infra Part II.B–E.
The analysis of this case note argues that because of the difference between the legal interpretation of negotiated contracts, statutes, and insurance policies, the outcome in this case could have been the same even if the court adopted the insured’s interpretation of the appraisal clause, but that the court correctly applied standard mores of contractual interpretation to arrive at its holding.\(^\text{14}\) This case note then discusses the implications of applying this ruling to future insurance litigation.\(^\text{15}\) Finally, this note concludes that the Minnesota Supreme Court made the correct decision in ruling that appraisers must necessarily consider causation in setting the appropriate amount of loss, but to continue protecting the interests of the less-powerful party in insurance litigation appraisals should only be a condition precedent to litigation where coverage has not been totally denied.\(^\text{16}\)

II. HISTORY OF THE RELEVANT LAW

A. The Origins of Fire Insurance Policies

The Great London Fire of 1666 burned down eighty percent of the city\(^\text{17}\) and ignited a new insurance industry.\(^\text{18}\) The removal of flammable material from the path of the flames as an effective means of fire control is a concept that is understood by children,\(^\text{19}\) and was grasped by human ancestors as early as two million years ago.\(^\text{20}\) Although fire control techniques evolved over the centuries,

\(^{13}\) See infra Part III.
\(^{14}\) See infra Part IV.A–B.
\(^{15}\) See infra Part IV.C–D.
\(^{16}\) See infra Part V.
\(^{18}\) Within a few years of the calamitous fire, insurance houses sprung up throughout the British Isles, and continental Europe followed suit by the mid-eighteenth century. Joseph K. Angell, A Treatise on the Law of Fire and Life Insurance 37–39 (2d ed. 1855).
\(^{19}\) See Adver. Council, Inc. et al., Elements of Fire, Smokey Bear, http://www.smokeybear.com/elements-of-fire.asp (last visited Oct. 11, 2013) (”[W]hen the fuel is exhausted, removed, or isolated . . . then . . . the fire will die.”).
a firebreak\textsuperscript{21} was the solution to stopping the spread of the Great London Fire; however, Lord Mayor Thomas Bludworth hesitated to issue the orders to destroy buildings because he was worried about how to finance the rebuilding of the houses.\textsuperscript{22} Property insurance became the answer to Mayor Bludworth’s question.\textsuperscript{23}

By 1755, fire insurance was so affordable that most London merchants opted to buy policies for their own peace of mind.\textsuperscript{24} Meanwhile, with the memory of a catastrophe similar to the Great London Fire burned into their memories,\textsuperscript{25} Benjamin Franklin and his fellow firefighters founded the first successful fire insurance company in the colonies.\textsuperscript{26}

The Philadelphia Contributionship for the Insurance of Houses from Loss by Fire (“the Contributionship”) was established in 1752 on a model of mutual insurance, where each member’s contributions served to insure his peers.\textsuperscript{27} It is likely that the articles of a successful London insurance company, the Amicable Contributionship for Insuring Houses from Loss by Fire, provided a basis for Philadelphia’s first plan.\textsuperscript{28} The Contributionship established a minimum guideline for property the company would insure,\textsuperscript{29} and refused to insure houses that were deemed too great a risk.\textsuperscript{30}

\textsuperscript{21} See Merriam Webster’s Collegiate Dictionary 471 (11th ed. 2003) (defining firebreak as “a barrier of cleared or plowed land intended to check a forest or grass fire”).
\textsuperscript{22} Porter, supra note 17, at 87.
\textsuperscript{23} See Angell, supra note 18, at 38 (stating that the schemes of an office of mutual insurance were suggested within a few years of the Great Fire).
\textsuperscript{24} Id. at 38–39 (“[T]here are few merchants, but choose to be insured for their own quiet . . . [and] this precaution adds to their credit both at home and abroad, when it is known that their great capitals lying in their houses and warehouses are thus secured from the flames.”).
\textsuperscript{25} In early 1730, a late-night fire burned down all the stores on Fishbourn’s wharf and several homes in the surrounding area, for a total loss of five thousand pounds of damage. Nicholas B. Wainwright, A Philadelphia Story: The Philadelphia Contributionship for the Insurance of Houses from Loss by Fire 17–18 (1952).
\textsuperscript{28} Wainwright, supra note 25, at 25.
\textsuperscript{29} Id. at 35–36. Each property insured by the Contributionship was required
This insurance model was first tested in December of 1753, when an early-morning fire destroyed the first floor of a home: “the House being insur’d, the Damage will be immediately repaired, without Cost to the Owner.”31 Through the early twentieth century, the destruction of nearby properties remained the most effective and generally accepted means of stopping the spread of fires in cities.32 Although fire prevention and control techniques have evolved since 1666, firebreaks are still an effective—if expensive—means of stopping the spread of fire.33 Accordingly, fire insurance has become a booming industry, with a net cost34 in the United

to have a trap door guarded by iron handrails to the roof for fighting roof and chimney fires. Id. at 42.
30. Id. When an individual applied for protection under the Contributionship’s policies, a surveyor inspected the property and prepared a written report assessing the potential risk. Id. The first surveyors were master builders, whose expertise was well regarded by the insurance company’s Board. Id. From the survey reports, the Board determined whether the risk of an individual property was acceptable, and set rates accordingly. Id. at 38–39.
31. Id. at 47.
32. See WILLIAM BRONSON, THE EARTH SHOOK, THE SKY BURNED: A PHOTOGRAPHIC RECORD OF THE 1906 SAN FRANCISCO EARTHQUAKE AND FIRE 40 (1959) (crediting the use of dynamite to demolish Van Ness Avenue for stopping the westward advancement of the fire that followed the 1906 earthquake); Henry C. Hall & John H. Wigmore, Compensation for Property Destroyed to Stop the Spread of a Conflagration, 1 U. Ill. L. Rev. 501, 501 (1907). The practice of demolishing private properties to stop the spread of large fires was—and in some jurisdictions still is—protected as upholding sound public policy. See also OR. REV. STAT. ANN. § 476.600 (West, Westlaw through 2013 Reg. Sess.) (“Neither the state nor any county, city or fire district . . . is liable for any injury to person or property resulting from the performance of any duty imposed by the authority of [the Oregon Conflagration Act].”); McDonald v. City of Red Wing, 13 Minn. 38, 42 (1868) (stating that the City of Red Wing could not be held liable for damages to a home torn down to minimize the threat to neighboring properties without an express statute that imposed responsibility).
33. At the time this note was written, a wildfire in California had burned more than three hundred square miles and destroyed more than one hundred structures in eleven days. The fire was only thirty percent contained despite the expenditure of nearly forty million dollars on firefighting techniques such as aerial ignitions to burnout fuel in the fire’s path; structure defense; and using remotely piloted aircraft to monitor the fire’s location, activity, and movements. See Rim Fire Information Update #19, INCIWEB INCIDENT INFO. SYS. (Aug. 28, 2013), http://www.inciweb.org/incident/article/3660/21002/.
34. The net cost of insurance is defined as the amount spent in insurance premiums minus the National Fire Protection Association’s estimated total of reported damage from fire loss. John R. Hall, Jr., The Total Cost of Fire in the United States, NAT’L FIRE PROTECTION ASS’N 8 (Mar. 2013), http://www.nfpa.org/~media/Files/Research/NFPA%20reports/Economic%20impact/ostotalkost.pdf.
States of $19.2 billion dollars per year. The amount of money that stokes the fire insurance industry on an annual basis highlights the public policy reasons that favor alternative dispute resolution over litigation to reduce costs. Due to the nature of insurance policies, appraisals are preferable to arbitration because of the imbalance of resources available to large insurance companies and the less-powerful consumers.

B. A General Assessment of Appraisal Clauses in Insurance Policies

Appraisals are a non-judicial alternative to resolve insurance disputes regarding the amount of loss, and are often considered analogous, but more limited than quasi-judicial arbitration procedures. Like arbitration, appraisal is meant to discourage litigation; however, unlike arbitrators, appraisers may only set the amount of loss—the appraisal process does not displace litigation for resolving liability disputes. Appraisers apply their own skill and knowledge to reach their conclusions instead of acting in a quasi-judicial capacity.

Appraisal provisions have become as important as coverage and exclusion clauses in resolving disputes where the central issue

35. Id. (based on data collected for 2010).
36. See generally 15 RUSS & SEGALLA, supra note 9, §§ 209:17, 209-29 to -30 (arbitration clauses in adhesion contracts are unfair to the less powerful party).
38. See Itasca Paper Co. v. Niagara Fire Ins. Co., 175 Minn. 73, 77-78, 220 N.W. 425, 426-27 (1928) (“The duties of the board of appraisal are in the nature of common-law arbitration.” (citing Am. Cent. Ins. Co. v. Dist. Court, 125 Minn. 374, 147 N.W. 242 (1914))); Johnson, 732 N.W.2d at 342 (“Appraisal is a non-judicial method to resolve disputes over the amount of a loss.”)); Casolaro, supra note 1, at 10. See generally 15 RUSS & SEGALLA, supra note 9, §§ 209:8, 209-16 to -17 (highlighting similarities and differences between appraisal and arbitration).
is the amount owed. 41 Today, nearly every property insurance policy contains a standard clause that identifies appraisal as the method for determining the amount of loss. 42 Special property insurance policies include this clause due to statutory requirements in many states, including Minnesota. 43 Because law mandates the wording of these provisions, 44 there is little variation among appraisal clauses, but ample variation exists in the way courts have interpreted and applied these clauses. 45 While most policies include these appraisal provisions, the insured party’s legal remedies rely on jurisdictional interpretation to determine whether the appraisal process is optional or required prior to filing suit. 46

In the context of insurance disputes, courts tend to interpret ambiguity in favor of coverage rather than evaluating extrinsic evidence as to the parties’ intent because the terms of insurance policies are not usually negotiated. 47 In interpreting the appraisal clause, the Quade court decided the phrase “amount of loss” to be unambiguous, thereby making the question of interpretation one of law, and treated the resulting analysis as an exercise in statutory interpretation rather than a fact-finding inquiry into the intent of the parties. 48

42. 5 Richard J. Cohen et al., Appleman on Insurance Law and Practice § 47.06(2) (2013), available at LEXIS NEWAPI; Law & Starinovich, supra note 39, at 292–93.
43. See, e.g., Mich. Comp. Laws Ann. § 500.2833 (West, Westlaw through 2013 Reg. Sess.) (mandating that all fire insurance policies contain an appraisal clause as worded in the statute); Minn. Stat. § 65A.01 (2012) (providing a standard form for fire insurance policies that include an appraisal clause).
44. See, e.g., Minn. Stat. § 65A.01 (standard form fire policy).
46. 2 Richard C. Bennet, Insuring Real Property § 30.01(1) (2013), available at LEXIS.
48. See Quade v. Secura Ins., 814 N.W.2d 703, 704 (Minn. 2012); see also supra Part II.A–B.
C. A Synopsis of Statutory Interpretation

Statutes and contracts require interpretation because they are composed of words, which achieve at best only an approximate precision of the meaning imparted by the drafters.49

The text of a statute is a medium of communication. Its function is to communicate the will of society, articulated by the legislature as society’s agent for that purpose, to society’s members, telling them how they should or should not behave or what consequences should or might attach to certain actions or events.50

Due to both the imprecise nature of words and the gargantuan task of expressing society’s will, the legislative process may result in laws with either purposeful or accidental imprecision that require further interpretation.51

Accordingly, and by Minnesota law, “[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”52 However, when the wording of a statute is unambiguous, the legislature has decreed that “the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”53 This means that while the words in a statute may be vague in some places and require courts to consider what the legislature meant to accomplish, where the text of a statute is clear courts may not read other meaning into the law.54

The first question of statutory interpretation is whether the plain language of the law is ambiguous.55 Ambiguity is only deemed

50. 2A NORMAN J. SINGER & J.D. SHAMIE SINGER, STATUTES AND STATUTORY CONSTRUCTION § 45:1, at 5 (7th ed. 2007).
51. See Frankfurter, supra note 49, at 528 (“The prohibition contained in the Fifth Amendment refers to infamous crimes—a term obviously inviting interpretation in harmony with conditions and opinions prevailing from time to time.” (quoting United States v. Moreland, 258 U.S. 433, 451 (1922), as an example of purposeful ambiguity in the drafting of statutes)).
52. MINN. STAT. § 645.16 (2012).
53. Id.
54. See Adzick v. UNUM Life Ins. Co. of Am., 351 F.3d 883, 887 (8th Cir. 2003) (applying Minnesota law) (“[C]ourt[s] must fastidiously guard against any invitation to ‘create ambiguities’ where there are none.”); State v. Loge, 608 N.W.2d 152, 155 (Minn. 2000) (citing MINN. STAT. § 645.16).
55. See State v. Peck, 773 N.W.2d 768, 772 (Minn. 2009) (“The threshold issue in any statutory interpretation analysis is whether the statute’s language is
to exist where the language in the statute is open to more than one reasonable interpretation.\(^{56}\) In addition to applying the aforementioned standard methods of contract interpretation, courts must interpret statutes in accordance with the intention of the legislature.\(^{57}\) Where the letter of the law is not definitive, courts should consider

- (1) The occasion and necessity for the law;
- (2) The circumstances under which it was enacted;
- (3) The mischief to be remedied;
- (4) The object to be attained;
- (5) The former law, if any, including other laws upon the same or similar subjects;
- (6) The consequences of a particular interpretation;
- (7) The contemporaneous legislative history; and
- (8) Legislative and administrative interpretations of the statute.\(^{58}\)

Insurance policies occupy a unique space in the realm of judicial interpretation.\(^{59}\) Courts tend to interpret clauses in insurance policies much the same way as they interpret statutes; instead of looking to the evidence about what the parties intended, judges look to the plain meaning of the language and the context and purpose of the clause.\(^{60}\) The question of ambiguity is a prime example of how insurance policies are treated differently from negotiated contracts,\(^{61}\) and will be discussed in more detail in Part IV.\(^{62}\)

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\(^{56}\) State v. Mauer, 741 N.W.2d 107, 111 (Minn. 2007) (citing State v. Stevenson, 656 N.W.2d 235, 238 (Minn. 2003)).

\(^{57}\) Minn. Stat. § 645.16.

\(^{58}\) Id.; see also Vaidyanathan v. Seagate U.S. L.L.C., 691 F.3d 972, 977 (8th Cir. 2012) (citing Brayton v. Pawlenty, 781 N.W.2d 357, 363 (Minn. 2010)).

\(^{59}\) See generally Warner, supra note 47, at 106–09 (offering examples of “traditional” contracts and contrasting these with cases requiring the interpretation of insurance policies).

\(^{60}\) Id. at 110–11.

\(^{61}\) Id. at 111.

\(^{62}\) See infra Part IV.A.
D. Reasonable Consumer Expectations and Insurance Policies in Minnesota

The doctrine of reasonable consumer expectations as applied to insurance policies has its roots in the interpretation of ambiguous provisions, and illustrates another way in which insurance policies are treated differently than negotiated contracts. The idea behind the rule is similar to that of contra proferentem— that the drafter of a policy should bear the risk of writing ambiguous terms. Contrary to standard contract interpretation rules, however, the doctrine of reasonable consumer expectations maintains that even where a standard term may appear unambiguous, the objectively reasonable expectations of the insured party should be honored.

In Atwater Creamery Co. v. Western National Mutual Insurance Co., Minnesota formally adopted the reasonable expectations doctrine when it applied the rule to exclusions hidden in the definitions section of insurance policies—thereby holding the insured only to a “reasonable knowledge of the literal terms and conditions” even where a close examination of the policy would have negated those expectations. The doctrine does not automatically result in the adoption of the insured’s understanding of the policy—the question of reasonability must also be considered under the


64. See 22 Britton D. Weimer ET AL., MINNESOTA PRACTICE: INSURANCE LAW AND PRACTICE § 2.3 (2d ed. 2012) (“[C]ontra proferentem . . . means that an ambiguous contract, especially an adhesion contract, is construed against the drafter.”).

65. See Rahdert, supra note 63, at 115–16.

66. For a thorough discussion of reasonable consumer expectations, see Robert E. Keeton, Insurance Law Rights at Variance with Policy Provisions, 83 HARV. L. REV. 961, 966–75 (1970); see also Rahdert, supra note 63, at 115–16 (“[W]hen a policy term is ambiguous, the court should adopt the interpretation that favors the insured.”).

specific facts of the situation. Not all plausible ambiguities are construed in the insured’s favor. The doctrine takes the following into consideration: “1. [the] unequal bargaining power between the parties; 2. the lay person’s inability to read and understand an insurance policy; [and] 3. [that] the insured relies on the agent or company to provide the appropriate coverage.” As will be shown below, in this case the reasonable expectations of the Quades did not overcome the statutory interpretation of the standard form fire insurance policy.

E. Minnesota Interprets the Statutory Fire Insurance Appraisal Clause

Property insurance policies have included appraisal clauses for well over a century. In 1893, the Minnesota courts treated appraisals much like arbitration procedures, and allowed appraisers to make coverage determinations as to the application of the insurance policy. In 1895, the legislature enacted the Minnesota Standard Fire Insurance Policy, which provided a standard form complete with requisite terms and conditions for fire insurance policies. This standardization also prevented insurers from crafting provisions designed to take unfair advantage of their policyholders—a problem inherent in insurance contracts at the time.

68. See Atwater Creamery, 366 N.W.2d at 278 (stating that the reasonable expectations doctrine does not excuse an insured from reading the policy); see also Hubred v. Control Data Corp., 442 N.W.2d 308, 311 (Minn. 1989) (“In short, the doctrine asks whether the insured’s expectation of coverage is reasonable given all the facts and circumstances.”).

69. See Tomlyanovich v. Tomlyanovich, 239 Minn. 250, 265–66, 58 N.W.2d 855, 864 (1953) (holding that insured’s interpretation of an ambiguous term contradicted the intent of the policy).


71. See infra Part IV.A.

72. See Janney, Semple & Co. v. Goehringer, 52 Minn. 428, 430, 54 N.W. 481, 481–82 (1895) (providing an example of early disputes over the appraisal process in a Minnesota insurance policy); see also Scottish Union & Nat’l Ins. Co. v. Clancy, 8 S.W. 630, 631 (Tex. 1888) (interpreting a similar provision under Texas law).

73. See Goehringer, 52 Minn. at 432, 54 N.W. at 482 (holding that an appraisal completed without a hearing was invalid).

74. See Act approved Apr. 25, 1895, ch. 175, § 53, 1895 Minn. Laws 392, 418 (codified as amended at MINN. STAT. § 65A.01, subd. 3 (2012)).

75. See Dworsky v. Vermes Credit Jewelry, Inc., 244 Minn. 62, 65, 69 N.W.2d 118, 121 (1955) (“The plain intent of the legislature was to nullify offending
The original statute required only that appraisers be three disinterested men chosen by the parties.\textsuperscript{76} The amount of loss agreed upon by these individuals was considered binding.\textsuperscript{77} In 1913 the legislature amended this provision to state that these disinterested men be “competent, disinterested, and impartial.”\textsuperscript{78} This change did not affect the provision that the appraisers’ determination of the award was considered binding.\textsuperscript{79} The Minnesota Supreme Court interpreted the updated appraisal clause of the standard fire insurance policy as confining appraisers’ determinations of causation to include whether the damage resulted from causes covered by the policy or from non-covered causes.\textsuperscript{80}

Today the standard form includes an appraisal clause that states:

In case the insured and [the insurance] company . . . shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. . . . The appraisers shall then appraise the loss, stating separately actual value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual value and loss.\textsuperscript{81}

With this clause, the statute set a consistent appraisal process to support the public policy of ensuring “a plain, speedy, inexpensive and just determination of the extent of the loss.”\textsuperscript{82} In addition to the standard fire insurance policy, this appraisal clause has also

\textsuperscript{76} Act approved Apr. 25, 1895, 1895 Minn. Laws at 421 (“[I]t is mutually agreed that the amount of such loss shall be referred to three disinterested men the company and the insured each choosing one out of three persons . . . and the third being selected by the two so chosen . . . .”).

\textsuperscript{77} Id.

\textsuperscript{78} Act approved Apr. 22, 1913, ch. 421, § 1, 1913 Minn. Laws 619, 619.

\textsuperscript{79} See id.

\textsuperscript{80} Am. Cent. Ins. Co. v. Dist. Court, 125 Minn. 374, 378, 147 N.W. 242, 244 (1914).

\textsuperscript{81} MINN. STAT. § 65A.01, subdiv. 3 (2012) (emphasis added). A similar clause is also included in MINN. STAT. § 65A.26 (hail insurance).

\textsuperscript{82} Kavli v. Eagle Star Ins. Co., 206 Minn. 360, 364, 288 N.W. 723, 725 (1939).
been statutorily mandated in other special property insurance policies in Minnesota.\textsuperscript{85}

The legislature’s intention was that appraisals would “provide for the ascertainment of loss, not liability.”\textsuperscript{84} Despite allowing appraisers to consider causative factors to determine the value of a loss, Minnesota courts generally agree that appraisers are not allowed to construe the meaning or the extent of coverage provided by an insurance policy.\textsuperscript{85} Questions regarding liability have traditionally been reserved for the courts.\textsuperscript{86} However, the distinction between questions of liability and the value of a loss are not always easily drawn—a common cause of confusion between valuation and liability claims is when an insurer pays only part of a claimed loss and disputes the remainder.\textsuperscript{87} The disagreement between the majority and the dissent in \textit{Quade} is summarized in the next section, and highlights the public policy considerations the court has upheld in interpreting the standard form property insurance policy.\textsuperscript{88}

### III. THE \textit{QUADE} DECISION

#### A. The Calm Before the Storm

David and Melinda Quade owned a special farmowners protector policy through Secura Insurance for direct physical property loss caused by fire and wind.\textsuperscript{89} The policy expressly

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\textsuperscript{83.} See \textit{Minn. Stat.} § 65A.26 (providing similar requirement without the standard form for hail insurance policies).

\textsuperscript{84.} Glidden Co. v. Retail Hardware Mut. Fire Ins. Co. of Minn., 181 Minn. 518, 523, 233 N.W. 310, 312 (1930), aff’d \textit{sub nom.} Hardware Dealers’ Mut. Fire Ins. Co. of Wis. v. Glidden Co., 284 U.S. 151 (1931), overruled on other grounds by \textit{Park Constr. Co. v. Indep. Sch. Dist. No. 32}, 209 Minn. 182, 296 N.W. 475 (1941) (noting that a general agreement to arbitrate all differences to arise under a contract is contrary to public policy and therefore void).

\textsuperscript{85.} See, e.g., Monk v. Eureka-Sec. Fire & Marine Ins. Co., 230 Minn. 382, 384, 42 N.W.2d 33, 35 (1950) (stating that a board of arbitrators’ decision that a loss was not covered by the insurance policy was not final); see also \textit{Itasca Paper Co. v. Niagara Fire Ins. Co.}, 175 Minn. 73, 78–79, 220 N.W. 425, 427 (1928); \textit{Johnson v. Mut. Serv. Cas. Ins. Co.}, 732 N.W.2d 340, 346 (Minn. Ct. App. 2007).

\textsuperscript{86.} See, e.g., \textit{Mork}, 230 Minn. at 384, 42 N.W.2d at 35 (explaining that the arbitrators’ findings regarding liability were surplus and outside the arbitrators’ province); \textit{Itasca Paper}, 175 Minn. at 78, 220 N.W. at 427 (stating that appraisers’ findings of law and fact are conclusive, but findings of liability are not).

\textsuperscript{87.} See \textit{Law & Starinovich}, supra note 39, at 309.

\textsuperscript{88.} See \textit{Quade v. Secura Ins.}, 814 N.W.2d 703, 706–07 (Minn. 2012).

\textsuperscript{89.} \textit{Id.} at 704.
excluded damages resulting from deficient maintenance.\textsuperscript{90} Per statutory requirements, the policy also included a provision stating that if “the insured and this company . . . shall fail to agree as to the actual cash value or the \textit{amount of loss},” either party could initiate the appraisal process.\textsuperscript{91} This phrase became a point of contention after a windstorm blew through the Quades’ property, leaving significant destruction in its wake.\textsuperscript{92}

On July 10, 2008, a summer storm damaged several buildings and other property on David and Melinda Quade’s farm in Hastings, Minnesota and surrounding properties.\textsuperscript{93} On the Quades’ property alone, in addition to the contested damage to the roofs of three barns, two structures were pushed off their bases; loaded semi-trailers were overturned, damging the property within; and sections were torn from several buildings.\textsuperscript{94} The Quades submitted a single claim for all of the property losses sustained during the storm to Secura Insurance.\textsuperscript{95} Secura paid for some of the damages, but determined that the damage to the roofs of a warehouse, horse barn, and cow barn resulted from inadequate maintenance rather than the July windstorm and were therefore exempt based on the exclusion for inadequate maintenance.\textsuperscript{96} The Secura letter also advised that if the Quades did not agree with the company’s determination that the roof damage was not caused by the storm, they should initiate the appraisal process as defined in the policy.\textsuperscript{97}

\textsuperscript{90.} Id.
\textsuperscript{91.} See Minn. Stat. § 65A.01, subdiv. 3 (2012) (emphasis added).
\textsuperscript{92.} See Quade, 814 N.W.2d at 705.
\textsuperscript{93.} Respondents’ Brief, Addendum and Appendix at 2–3, Quade, 814 N.W.2d 703 (No. A10-714), 2011 WL 8190755.
\textsuperscript{94.} Id.
\textsuperscript{95.} Quade, 814 N.W.2d at 704.
\textsuperscript{96.} Id. In a letter dated May 11, 2009, Secura told the Quades:

At our request we had an engineer inspect the buildings and offer his opinion as to the cause of the roof leakage. Based on his verbal conclusions it’s our understanding that the grommets that seal between the nail head and the roof metal have deteriorated over time. . . . This is the result of continual deterioration over a period of time rather than a specific storm occurrence. Your farm policy excludes “loss to property caused by any of the following . . . (4) Maintenance.”


\textsuperscript{97.} Quade, 814 N.W.2d at 704–05.
B. The Quades’ Complaint to the Court—Procedural Posture

Rather than pursuing an appraisal, as Secura advised after it denied this portion of the claim, the Quades initiated an action for breach of contract.98 Secura moved for summary judgment because the Quades did not invoke the appraisal clause.99 The Quades argued for a narrow interpretation of “amount of loss,” as they would then not be required to go through the appraisal process prior to pursuing court proceedings.100 This interpretation would deny appraisers the power to determine the cause of a loss when evaluating its value, thereby limiting the appraisal process to determining the value of the loss only.101 Secura countered that this interpretation would confuse “amount of loss” with the question of liability under the policy.102 According to Secura, liability questions apply to whether an event is covered under the policy, and “amount of loss” relates to the damage caused by a covered event.103

The Dakota County District Court ruled in Secura’s favor, stating that the Quades’ suggested interpretation of the “amount of loss” provision confused the valuation of a loss and the question of liability under a policy.104 According to the district court, whether the roofs were damaged by the storm or some other cause was an appropriate question for the appraisal process, and whether the damage was excluded due to events other than the storm would be a legal question for the court at a later date.105 The court therefore granted summary judgment for Secura.106 The decision included an order for the parties to participate in the appraisal process, but noted that the appraisal findings would not preclude either party from bringing a declaratory judgment action on a coverage issue.107

The court of appeals reversed the summary judgment on the grounds that a legal question—the applicability of the exclusion clause—was in controversy.108 Noting that questions of fact (the

98.  Id. at 705.
99.  Id.
100.  Id.
101.  Id.
102.  Id. at 705–06.
103.  Id. at 706.
105.  Id.
106.  Id.
107.  Id.
effects of the storm versus the effects of inadequate maintenance) were entangled with law (the meaning of the contract, the interplay of coverage and exclusions, and causation), the court stated that the legal questions would not be resolved by an appraisal proceeding. The court reversed the judgment and remanded the case.

In the appeal before the Minnesota Supreme Court, the main point of contention between the parties was again characterized as differing interpretations of the “amount of loss” phrase in the appraisal clause. After careful consideration, the Minnesota Supreme Court reversed the court of appeals’ decision, holding that “amount of loss” unambiguously requires an appraiser’s assessment to include a determination of causation. The court also noted that such a determination would not be final as to liability under the policy.

C. Rationale of the Minnesota Supreme Court’s Majority Opinion

The majority opinion agreed appraisers “may not construe the policy or decide whether the insurer should pay,” which is in accordance with the historical interpretation of the appraisal clause. However, the court reasoned that the legal definitions of loss in the context of insurance contracts refer to the damages for which the insurer is responsible. When the standard legal definition was applied, there was only one reasonable interpretation of the phrase possible in the context of the policy. By definition, an

814 N.W.2d 703 (Minn. 2012).
109. Id. at 482.
110. Id. at 483.
111. Quade v. Secura Ins., 814 N.W.2d 703, 705 (Minn. 2012).
112. Id. at 708.
113. Id.
114. Id. at 706.
115. See supra Part II.B.
116. Quade, 814 N.W.2d at 706 (citing BLACK’S LAW DICTIONARY 1030 (9th ed. 2009) (defining insurance loss as “[t]he amount of financial detriment caused by... an insured property’s damage, for which the insurer becomes liable”) and MERRIAM–WEBSTER’S COLLEGIATE DICTIONARY 687 (10th ed. 2001) (defining “loss” in the insurance context as “the amount of an insured’s financial detriment by death or damage that the insurer becomes liable for”)).
117. Id.
118. Id.
appraiser must necessarily consider causation in order to set the amount of loss.\footnote{119}{Id.}

Despite granting appraisers the ability to decide causation, the court reserved the judicial power to make final coverage determinations where an appraisal incorrectly addresses questions of liability.\footnote{120}{Id. at 707–08.} According to the court, the finality of appraisal findings of causation would depend on: (1) the nature of the damage, (2) the possible causes, (3) the parties’ dispute, and (4) the structure of the appraisal award.\footnote{121}{Id.} This reserves a broad interpretation of the events leading to a lawsuit for the courts and characterizes an important distinction between appraisals and arbitration.\footnote{122}{See supra Part II.B.}

The court further stated that adopting the Quades’ view would circumvent the public policy reasons that benefit the consumer in providing efficient and cost-effective alternatives to litigation that have led to the rise of appraisal as the preferred method of resolving disputes over coverage amounts.\footnote{123}{Quade, 814 N.W.2d at 707 (“Adopting the Quades’ interpretation would render appraisal clauses inoperative in most situations, and that result is in direct conflict with the public policy behind the appraisal process and the fact that we have repeatedly encouraged its use in Minnesota.”).} The supreme court’s final decision names appraisal as a condition precedent to filing suit in property insurance claims whenever questions regarding the amount of damages exist—including when questions regarding liability exist.\footnote{124}{See id. at 708.} Although the majority upheld the public policy promoting appraisals as the preferred method of dispute resolution, improper application of the opinion could contradict the public policy that favors the consumer in insurance disputes.

D. The Dissent Cautions Against Broad Application

Justice Page’s dissenting opinion rejects the majority’s ruling on the grounds that the Quade dispute was not over the amount of loss, but over Secura’s liability under the policy.\footnote{125}{Id. (Page, J., dissenting).} Where there is no dispute over the amount of loss there is no need for an appraisal per the statutory language.\footnote{126}{Id. at 709.} Justice Page argued that the
majority sidestepped the issue of coverage under the policy by focusing on the “amount of loss” phrasing. \[127\]

The dissent argued that litigation would be required in addition to the expense of the appraisal, because even a completed appraisal would not resolve the parties’ conflict. \[128\] According to Justice Page, under the present circumstances Secura should not have been allowed to demand an appraisal because (1) the insurance company did not dispute the amount of loss, and (2) judicial economy would benefit from answering the question of coverage first. \[129\] The dissent also warns that the majority decision—despite its assertion to the contrary—would allow an appraiser’s determination of causation to be final, \[130\] which is in direct conflict with the established case law. \[131\]

IV. ANALYSIS

A. Ambiguity – A Prime Example of the Difference Between Interpreting Insurance Policies and Negotiated Contracts

1. After Arriving at Ambiguity

The general use of the English language may properly be decided by a judge as a matter of law instead of as a matter of fact based on extrinsic evidence by a jury. \[132\] In fact, an evaluation of the language of a contract in the context of the written document is the first step in deciding whether an ambiguity exists. \[133\] However, as illustrated below, once a word or phrase has been determined ambiguous, insurance policies are treated differently than negotiated contracts.

\[127.\] Id. at 708.
\[128.\] Id. at 709.
\[129.\] Id.
\[130.\] Id. at 708–09.
\[131.\] See supra Part II.E.
\[132.\] See EEP Workers’ Comp. Fund v. Fun & Sun, Inc., 794 N.W.2d 126, 131 (Minn. Ct. App. 2011) (“The construction and effect of a contract are questions of law for the court, but where there is ambiguity and construction depends upon extrinsic evidence and a writing, there is a question of fact for the jury.” (quoting Turner v. Alpha Phi Sorority House, 276 N.W.2d 63, 66 (Minn. 1979))); see also Columbia Heights Motors, Inc. v. Allstate Ins. Co., 275 N.W.2d 32, 34 (Minn. 1979); RESTATEMENT (SECOND) OF CONTRACTS § 212 cmt. d, at 127 (1981).
\[133.\] See Christensen v. Metro. Life Ins. Co., 542 F. Supp. 2d 935, 940 (D. Minn. 2008) (“If the policy is, by its language alone, susceptible to more than one reasonable interpretation, it is ambiguous.” (emphasis added)).
Under standard contract interpretation principles, the meaning of the agreement is to be determined by the fact-finder if the meaning depends on the credibility of extrinsic evidence or on a choice among reasonable inferences drawn from the evidence. The first task in evaluating a perceived ambiguity is to examine the meaning of the contested phrase within the four corners of the document itself. As discussed in the previous section, the Quade decision followed this approach on the grounds that insurance policies are evaluated under general principles of contract interpretation unless statutory law objects. However, the question of ambiguity presents a three-way fork in the road for the interpretation of negotiated contracts, insurance policies, and statutes.

Once all of the permitted evidence is laid bare, the question over the true meaning of an ambiguous statement is typically for a jury to decide. On the other hand, where there is a dispute over the meaning of a clause in an insurance policy, courts often resolve ambiguity themselves by looking into the language of the policy itself. For statutory interpretation, legislative intent is the...
controlling factor.\textsuperscript{140} The Quade court began its analysis with the assertion that insurance policies should be interpreted under standard contract interpretation principles,\textsuperscript{141} but then only briefly mentioned the parties’ specific circumstances in establishing “amount of loss” as unambiguous;\textsuperscript{142} the bulk of the court’s reasoning concerned the historical scope of appraisal clauses in insurance contracts.\textsuperscript{143} The court could also have found “amount of loss” to be ambiguous and arrived at the same conclusion by applying the rules of statutory interpretation as set out below.

2. Statutory Intent Trumps Reasonable Consumer Expectations

In this case, the court found “amount of loss” unambiguous, but under the theory of reasonable consumer expectations discussed in Part II,\textsuperscript{144} it appears the Quades could have prevailed in their understanding that appraisers were not allowed to determine the cause of the damage to their roofs. Combining Minnesota’s generally prevailing law that questions of liability are a decision for juries and the pro-insured attitude of policy interpretation,\textsuperscript{145} it is reasonable for the Quades to have understood that appraisers were not allowed to determine the cause of damage. However, the policy in question was one mandated by the Standard Fire Insurance Policy—not a company-specific standard form drafted by Secura—and should have been analyzed for the intent of the legislature in drafting the form, not the intent of the bargaining parties.

While the court focused its attention on finding the language unambiguous, it is important to note that the outcome in this case could have been the same even if the phrase was held to be ambiguous. The next step of the process would have been interpreting the statute, and the contra-insurer rule does not apply to passages mandated by statute.\textsuperscript{146} As previously stated, the intent
of the legislature—acting on behalf of society at large—is a controlling factor in the interpretation of enacted laws.\textsuperscript{147}

The Minnesota Legislature intended to enforce standard terms and procedures when it enacted the standard form policy for fire insurance.\textsuperscript{148} Insurance policies “must be consistent with both the letter and the spirit of the statute.”\textsuperscript{149} Since public policy strongly favors arbitration for insurance disputes,\textsuperscript{150} the court’s finding that appraisals are a condition precedent to litigation is in accordance with the legislature’s intent. However, this presents a paradox: the appraisal clause was enacted with the goal of reducing judicial workload, when the prevailing policy in insurance litigation is to protect the interests of the insured.\textsuperscript{151} In this case, where protecting the Quades’ interests would require additional workload without the appraisal process, the paradox does provide the correct solution; the will of society as a whole embodied by the statute\textsuperscript{152} should take precedence over the needs of a few individual litigants,\textsuperscript{153} but this ruling should not be used to contradict the pattern of pro-insured partiality established in Minnesota.

B. Appraisers Correctly Allowed to Consider Causation in Assessing “Amount of Loss”

In order to declare appraisal a condition precedent to litigation under standard means of contract interpretation, the court first had to find the phrase “amount of loss” to be unambiguous to avoid applying the contra-insurer rule.\textsuperscript{154} Because

\textsuperscript{147} See supra Part II.C.
\textsuperscript{149} See supra note 64, § 2:6.
\textsuperscript{151} For a summary of exceptions to the public policy considerations that favor insured parties in Minnesota, see supra note 64, § 2:6.
\textsuperscript{152} See supra Part II.C.
\textsuperscript{153} See SPOCK, STAR TREK II: THE WRATH OF KHAN (Paramount Pictures 1982) (“[L]ogic clearly dictates that the needs of the many outweigh the needs of the few.”). But see Roger J. Marzulla, \textit{Opening Remarks}, 46 SANTA CLARA L. REV. 781, 784–85 (2006) (arguing that the United States government is grounded in the principle that the rights of the individual trump the notion of greater public good and therefore individuals should not be made to unnecessarily give up their rights for the good of the public at large).
\textsuperscript{154} See supra Part II.D.
insurance contracts are adhesion contracts,\textsuperscript{155} any reasonable doubt or ambiguity must usually be resolved in favor of the insured.\textsuperscript{156} The supreme court followed appropriate standards of contract and statutory interpretation in deciding against ambiguity.

Whether policy language is ambiguous is a question for the court.\textsuperscript{157} The interpretation of insurance contracts has a tempestuous history in Minnesota common law—methods of finding and interpreting ambiguity range from the strict application of \textit{contra preferendem}\textsuperscript{158} and the doctrine of reasonable consumer expectations to hybrid approaches.\textsuperscript{159} In the wake of this murky history, Minnesota has established partiality in favor of insureds,\textsuperscript{160} leading one to believe that the majority should have decided in favor of the Quades’ interpretation. The \textit{Quade} decision avoided this potential problem by finding that the phrase “amount of loss” in the appraisal clause lacked the requisite ambiguity to trigger the contra-insurer rule.\textsuperscript{161}

Standard rules of contract interpretation state that “[a] writing is interpreted as a whole.”\textsuperscript{162} Ambiguity only exists where terms are

\textsuperscript{155}. See Samuelson v. Farm Bureau Mut. Ins. Co., 446 N.W.2d 428, 431 (Minn. Ct. App. 1989); see also BLACK’S LAW DICTIONARY 342 (9th ed. 2009) (defining adhesion contract as “[a] standard-form contract prepared by one party, to be signed by another party in a weaker position, usually a consumer, who adheres to the contract with little choice about the terms”).

\textsuperscript{156}. See Cement, Sand & Gravel Co. v. Agric. Ins. Co. of Watertown, N.Y., 225 Minn. 211, 215, 30 N.W.2d 341, 345 (1947) (citing De Graff v. Queen Ins. Co., 38 Minn. 501, 503, 38 N.W. 696, 697 (1888)).


\textsuperscript{158}. A party drafting an agreement is likely to consider his own benefit and is more likely “to have reason to know of uncertainties of meaning.” RESTATEMENT (SECOND) OF CONTRACTS § 206 cmt. a (1981). Interpretation against the drafter “is often invoked in cases of standardized contracts and in cases where the drafting party has the stronger bargaining position.” Id.


\textsuperscript{161}. Quade v. Secura Ins., 814 N.W.2d 703, 706 (Minn. 2012).

\textsuperscript{162}. RESTATEMENT (SECOND) OF CONTRACTS § 202(2), at 86 (1981); see also Art
subject to more than one reasonable interpretation.\textsuperscript{163} Determinations of meaning or ambiguity should only be made based on the specific circumstances surrounding the parties.\textsuperscript{164} However, where language has a “generally prevailing” meaning, it is interpreted in accordance with that meaning.\textsuperscript{165} Additionally, words of art are given their technical meaning when used in a transaction within their technical field.\textsuperscript{166} Because “amount of loss” is an undefined term in the standard fire policy, the \textit{Quade} court applied the term’s generally prevailing meaning,\textsuperscript{167} thereby finding the term unambiguous.\textsuperscript{168} By this line of reasoning, the court correctly found the phrase “amount of loss” allows appraisers to consider causative factors when the phrase is used within the field of insurance appraisals.

C. Cautioning Against the Finality of Appraisal Findings

1. Appealability of Appraisal Awards

While both arbitration and appraisal are alternative dispute resolutions designed to discourage litigation,\textsuperscript{169} the more limited nature of appraisals implies that it should be easier for an aggrieved party to appeal an appraisal award. Arbitration awards may only be set aside if they are conclusively shown to be the result

\textsuperscript{163} See \textit{Goebel}, Inc. v. N. Suburban Agencies, Inc., 567 N.W.2d 511, 515 (Minn. 1997) ("The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." (citing \textit{Emp’rs Liab. Assurance Corp. v. Morse}, 261 Minn. 259, 264, 111 N.W.2d 620, 624 (1961))).

\textsuperscript{164} See \textit{Restatement (Second) of Contracts} § 212 cmt. b (1981) ("Any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements . . . , usages of trade, and the course of dealing between the parties.").

\textsuperscript{165} Id. § 202.3, at 86.

\textsuperscript{166} Id.

\textsuperscript{167} Quade v. Secura Ins., 814 N.W.2d 703, 706 (Minn. 2012).

\textsuperscript{168} See generally \textit{Frankfurter}, supra note 49, at 529–535 (discussing the role of the judiciary in statutory interpretation). Interpreting legislative intent is not an opportunity for a judge to use words as “empty vessels into which he can pour anything he will.” Id. at 529.

\textsuperscript{169} See supra Part II.B.
of fraud, corruption, or misconduct; in agreeing to an arbitration clause, contracting parties agree to assume the risk of an erroneous outcome. Appraisal findings, on the other hand, may be set aside for these reasons and where an award is deemed grossly inadequate or excessive.

As previously discussed, and as counseled by the Quade court, appraisal findings of causation affecting the insured’s coverage are not final and are subject to judicial review. However, under Minnesota law parties may contractually stipulate that an appraisal award be final. This could allow insurance companies to incorporate clauses regarding the finality of appraisal awards into their policies, which would directly challenge the common law trend that favors the insured party. To combat this tactic, an argument could be made based on the language in Minnesota Statutes section 65A.01(1) requiring insurance companies to provide “all the rights and benefits of the Minnesota standard fire insurance policy”; including a provision that appraisal awards are final would deny the insured the right to appeal such an award and contradict the public policy of protecting the interests of the insured. However, applying the same logic exhibited in the Quade decision, if the statutory intent of reducing judicial workload trumps consumer expectations, this is one avenue in which insurance companies could limit their exposure to litigation and

170. MINN. STAT. § 572B.23 (2012).
174. See Augustine v. Arizant Inc., 735 N.W.2d 740, 745 (Minn. Ct. App. 2007), rev’d, 751 N.W.2d 95 (Minn. 2008) (“[U]nder Minnesota law, as well as generally, the result of an appraisal which the parties have thus contracted to have made is . . . conclusive upon them . . . if they have expressly stipulated that it shall be so conclusive, or if the intention to be so bound is fairly inferable from the language which they have used.” (quoting Sanitary Farm Dairies v. Gammel, 195 F.2d 106, 113 (8th Cir. 1952))).
175. MINN. STAT. § 65A.01, subdiv. 1 (stating that coverage against fire and other perils may be issued without using the verbatim language of the standard form fire insurance policy, but must still provide all of the rights afforded to insured under the standard policy). That argument is countered by the assertion that the legislature’s intent in supplying the appraisal clause is to ensure a relatively quick and efficient outcome to disputes. See supra Part II.C.
176. See supra Part IV.B.
make appraisal awards final at the expense of the individual consumer.

The Quade court acknowledged that the finality of appraisal findings should depend on (1) the nature of the damage, (2) the possible causes, (3) the parties’ dispute, and (4) the structure of the appraisal award. 177 This short list of elements is concerning on two fronts: (1) the close interrelation of the first two elements, as exhibited by the dispute in this case; and (2) that it does not acknowledge the limited requirements as to the qualifications of appraisers. The first is concerning simply because the first two elements of the test leave room for the same argument that arose between Secura and the Quades—the scope of the appraisal process. 178 The limited requirements regarding the competence of appraisers is a much more pressing concern because of the imbalance in resources between large insurance companies and their insured consumers. 179

2. Clarifying the Elements of the Finality of Appraisals

Given the disagreements between the parties in this case about the “cause” of and the “amount of loss” of the nature of the damage done to the three contested roofs, the Quade court could have clarified the distinction between the first and second elements of the four-part test stated above. These two elements require a court to consider the nature of the damage sustained and the possible causes of the loss. 180 While the district court, the court of appeals, and the supreme court all characterized the central dispute of Quade as a disagreement over the phrase “amount of loss,” the court of appeals also couched the disagreement in terms of a factual determination over the cause of the damage and Secura’s liability. 181

In this case there was no dispute that the storm brought about extensive damage to the farm. 182 The nature of the damage

177. Quade v. Secura Ins., 814 N.W.2d 703, 707–08 (Minn. 2012).
178. See infra Part IV.C(2).
179. See infra Part IV.C(3).
180. See Quade, 814 N.W.2d at 707.
181. Quade v. Secura Ins., 792 N.W.2d 478, 481 (Minn. Ct. App. 2011), rev’d, 814 N.W.2d 703 (Minn. 2012) (“The insureds contend that . . . whether damage was caused by a covered peril, are inherently questions of coverage . . . . Respondent insurer takes the position that the damage . . . is not covered because . . . the policy excludes ‘loss to property caused by . . . maintenance.’” (emphasis added)).
182. See Quade, 814 N.W.2d at 705.
(physical damage to roofing) could have been caused by either the storm, inadequate maintenance, or—as is most likely—a combination of the two. Given that the nature of the damage and the cause thereof are likely to always be intertwined where the parties disagree over the amount of relief owed, a better way to distinguish the individual elements of the test is to express the first as a question of the risk against which the policy was intended to protect the insured. Incorporating the risk against which the policy was meant to protect (wind and fire-related damages) into the nature of the damage (physical damage to roofing) would better protect the legal rule that appraisers may not make final determinations as to liability and make the four-part test for judicial review more comprehensive.

3. Competence of Appraisers Should Have Been Called into Question

Where the qualifications of the appraisers are concerned, the language of the appraisal clause has not been amended much since the legislature enacted Minnesota Statutes section 65.01. The standard policy only goes so far as to state that each appraiser be “competent and disinterested.” Shortly after the legislature added the vague requirement of competence to the statute, the courts found that appraisers did not need to be experts in order to be considered competent. Additionally, the amount of loss set by the appraisal process is binding. Indeed, even a clerical error on behalf of an appraiser is not enough to set aside an award. Currently, the law holds that the party attacking the competence of an appraiser bears the burden of proof of the appraiser’s incompetence. Because each party bears the cost of

184. Minn. Stat. § 65A.01, subdiv. 3.
185. See Am. Cent. Ins. Co. v. Dist. Court, 125 Minn. 374, 379, 147 N.W. 242, 244 (1914) (“It is undoubtedly desirable that those making an appraisal be familiar with the matters and things which they are called upon to appraise; but, unless so stipulated in the contract, it has never been held . . . that experts only are competent as such arbitrators or appraisers.”).
186. See supra, Part II.B.
187. See Bahr v. Union Fire Ins. Co., 167 Minn. 479, 483, 209 N.W. 490, 492 (1926) (“The error in the findings stating the sound value of the property insured to be $3,000 in the award, instead of $3,500, is so clearly a mere clerical mistake or inadvertence as to merit no attention.”).
188. Am. Cent. Ins., 125 Minn. at 377, 147 N.W. at 243.
the appraiser they select.\textsuperscript{189} this could work against the public policy that favors insured parties in Minnesota. Insurance companies are likely to be in a better position to hire an expert appraiser, and are also in a better position to attack the qualifications of the insured’s appraiser.

If appraisers need not be experts in the property or the type of damage they are asked to evaluate, their determinations of causation should also be suspect, especially as causation relates to the application of the policy. Prior to 2010, there had been no Minnesota case law to determine whether appraisals for valuation may consider the underlying liability of a damage-causing event.\textsuperscript{190}

With the recent rapid increase of property insurance claims due to weather-related causes, courts throughout the country have been asked to address the nature, scope, and purpose of appraisals.\textsuperscript{191}

Several states have addressed the question of whether appraisers should be allowed to determine causation,\textsuperscript{192} but the Quade decision creates a very expansive view of the scope of appraisal. Placing more responsibility in the hands of non-judicial appraisers should be accompanied by guidelines as to the qualifications or competence of these important individuals.

D. Contravening Public Policy by Compelling Appraisal as Condition Precedent

While the majority logically reasoned that appraisers must determine causative factors, the ruling that appraisal is a condition precedent to litigation should be construed narrowly. Given that

\textsuperscript{189} MINN. STAT. § 65A.01, subdiv. 3 (“Each appraiser shall be paid by the selecting party, or the party for whom selected, and the expense of the appraisal and umpire shall be paid by the parties equally.”).

\textsuperscript{190} See QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n, 778 N.W.2d 393, 399 (Minn. Ct. App. 2010).

\textsuperscript{191} Heres, et al., supra note 45, at 5.

disagreements regarding liability may ultimately be decided in favor of the insured party and thereafter the amount owed will be a necessary fact, the presumption that an appraisal to determine the “amount of loss” will be needed in the majority of liability disputes reaching the courtroom is a sound supposition. However, “[a]ppraisal should not be a sideshow in a coverage litigation, but an alternative dispute resolution process designed to quickly and inexpensively determine the amount of loss when that is the dispute among the parties.”

Generally speaking, a court’s review of an appraisal award is grounded in contract interpretation. The judicial scope of review in these cases is limited to fraud, corruption, or misconduct resulting in an unjust result or instances where the appraisers have overstepped their authority. This means that courts would not review the third-party experts’ analysis of the amount or causation of a loss, but whether those experts complied with the terms of their contractual obligation. This would allow an appraisal to stand where appraisers made an honest mistake in judgment; absent a showing of fraud, corruption, or misconduct, a mistake as to the cause of loss could leave an insured party with no legal remedy.

On the other hand, the time and expense of appraisal would be a worthless endeavor for both parties if a court later rules the entire loss to be excluded by the policy. In this case, Secura issued payment for part of the Quades’ single claim and rejected

194. Law & Starinovich, supra note 39, at 306 (emphasis added).
195. See COHEN ET AL., supra note 42, § 47.06(3); Law & Starinovich, supra note 39, at 310.
196. See Mork v. Eureka-Sec. Fire & Marine Ins. Co., 230 Minn. 382, 391, 42 N.W.2d 33, 38 (1950) (“An award in arbitration . . . will not be vacated unless it clearly appears that it was the result of fraud or because of some misfeasance or wrongdoing on the part of the appraisers.”); Baldinger v. Camden Fire Ins. Ass’n, 121 Minn. 160, 162, 141 N.W. 104, 105 (1913) (stating that appraisal awards may not be invalidated for mere inadequacy); QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n, 778 N.W.2d 393, 398 (Minn. Ct. App. 2010) (applying arbitration statute to appraisals to show an appraisal award may be appealed if appraisers exceed their contractual powers); see also Parker, supra note 41, at 946 (“Judicial review of an appraisal award is generally limited in scope to fraud, corruption or misconduct that caused an unjust result. However, courts may also review an appraisal award on the basis of the scope of the appraiser’s authority and whether she has exceeded it.”).
197. Parker, supra note 41, at 946.
198. See Law & Starinovich, supra note 39, at 296-97.
coverage for three structures. The primary dispute between the parties was the extent of the damage for which Secura should pay. While the distinction smacks of technicality, it is sound policy to draw the proverbial line in the sand between a case where the insurer denies a claim in its entirety and where the insurer pays a portion of the claim and rejects the rest in good faith. This division would encourage insurers to admit liability, pay at least a portion of the claim, and initiate the appraisal process.

Enforcing a standard process that upholds the policy goals underlying insurance appraisal is critical to prevent further unnecessary litigation. Public policy favors the interests of the insured party in the context of insurance contracts. If an insured plaintiff attacks an appraisal award for insufficiency, she bears the burden of proof. However, in litigation, the burden of proof is shifted to the insurer to show application of an exclusion clause. Public policy favors the latter—in most cases, the insurance provider is in a better position to prove the cause is excluded than an insured party is to invalidate a third-party expert’s determination of causation. Indeed, even courts are loath to disturb factual findings of appraisers.

199. Quade v. Secura Ins., 814 N.W.2d 703, 704 (Minn. 2012).
200. Id. at 706.
201. Id. at 708 (Page, J., dissenting) (citing judicial economy as enough reason to require a legal determination of coverage prior to appraisal); see also Law & Starinovich, supra note 39, at 309 (“When a dispute is strictly over coverage, appraisal is unnecessary.”).
202. See supra Part IV.A; see also 5 LON A. BERK & MICHAEL S. LEVINE, APPLEMAN ON INSURANCE § 48.03(2) (2013), available at LEXIS NEWAPL (“Consumers have an interest in having their disputes with insurers resolved through judicial proceedings where a jury can resolve issues of fact and where bad faith exposure may operate as a genuine disincentive to insurer misconduct.”).
203. Parker, supra note 41, at 937. Similarly, the insured also bears the burden of proof if they wish to challenge the competency of the insurance company’s appraiser. See supra note 188 and accompanying text.
205. For a brief synopsis of public policy considerations under Minnesota insurance law, see WEIMER ET AL., supra note 64, § 2:6.
206. See supra note 186 and accompanying text; see also Law & Starinovich, supra note 39, at 308 (“[A]ppraisal places great reliance upon expert appraisers who may be best positioned to determine the amount of loss.”).
competency. For the foregoing reasons, appraisals should be considered a condition precedent only under the condition that the insurance provider has not flatly refused liability for an entire claim.

V. CONCLUSION

The Quade court directly addressed the question of whether insurance appraisers are allowed to consider the causation of liability underlying a damage-causing event, finding that appraisers must consider causation, but that final determinations of liability are reserved for the court. The holding that appraisal is a condition precedent to litigation sets a standard expectation for parties involved in disputes as to the amount of loss following property damage. However, while the court correctly interpreted “amount of loss” to unambiguously allow appraisers to consider factors of causation, the precedent the court sets for appraisal as a condition precedent to litigation should not be applied in all disputes.

This case highlights contradictory goals of two public policies concerning insurance appraisals—one that favors judicial expediency for the benefit of society as a whole, and one that favors the interests of the individual insured party. Recognizing that the time and expense of the appraisal process is an unnecessary burden on both parties if a court later invalidates the appraisal award, and litigation is an unnecessary expense to society if court proceedings are initiated and then stalled for an appraisal, the law should provide a clear distinction for when a dispute should proceed to appraisal and when it should go to litigation. Additionally, under the current state of legislation and case law, there are no standard qualifications for the level of expertise expected of appraisers. Given that insurance providers are better situated to identify or attack the qualifications of experts, courts should review appraisers’ credentials when making determinations as to the finality of appraisal awards. In order to achieve an appropriate balance between societal and individual interests, appraisals should be a condition precedent where the insurance provider has admitted liability.

207. See supra note 185 and accompanying text.
208. See supra note 190 and accompanying text.
209. Quade v. Secura Ins., 814 N.W.2d 703, 708 (Minn. 2012).
210. Id.
liability and the dispute between the parties is the amount to be paid, but not where an insurance provider has denied coverage of an entire claim.