**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

PHILIP BREWER AND LORI BREWER

Respondents

v.

STATE FARM FIRE AND CASUALTY COMPANY

Appellant

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DOCKET NUMBER WD84331

DATE: March 8, 2022

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Appeal From:

Circuit Court of Cass County, MO
The Honorable R. Michael Wagner, Judge

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Appellate Judges:

Division Two
Alok Ahuja, P.J., Edward R. Ardini, Jr. and Janet Sutton, JJ.

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Attorneys:

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| Mark Schaffer, Overland Park, KS | Co-Counsel for Appellant |
| Robert Wasserman, Prairie Village, KS | Co-Counsel for Appellant |

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| Brandon Kinney, Kansas City, MO | Counsel for Respondents |

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**PHILIP BREWER AND LORI BREWER, Respondents,**
**v.**
**STATE FARM FIRE AND CASUALTY COMPANY, Appellant.**

**WD84331** **Cass County**

Before Division Two Judges: Alok Ahuja, P.J., Edward R. Ardini, Jr. and Janet Sutton, JJ.

After a storm damaged a home in Belton, Missouri, the homeowners filed a claim for damage with their insurer, State Farm. State Farm and the homeowners had different contractors inspect the property and prepare estimates detailing the damage and cost to repair. The two estimates differed greatly, both in terms of scope and cost to repair the damage.

State Farm rejected the homeowners' estimate because it believed it contained multiple items outside the scope of the insurance policy's coverage. The parties could not come to an agreement, and the homeowners requested State Farm begin the appraisal process as provided in the insurance policy and appoint an umpire to settle their dispute. State Farm denied their request to invoke the appraisal provision under the policy, telling the homeowners that the dispute was a coverage dispute and not a dispute over the amount of loss, and therefore, the appraisal provision did not yet apply.

The homeowners filed a petition for the appointment of an umpire in Cass County Circuit Court. Over State Farm's objection, the circuit court entered a judgment sustaining the homeowners' request to appoint an umpire and named an individual to serve in that capacity. State Farm appeals.

**VACATING AND ENTERING JUDGMENT.**

**Division Two holds:**

The appraisal provision in the insurance policy can only be invoked when the parties "fail to agree on the amount of the loss." Appraisal provisions in insurance policies apply only if the dispute between the parties relates to the amount of the loss, and not coverage. Appraisers and umpires do not have the legal authority to determine whether a covered loss exists and appraisal provisions cannot be used as a means of arbitration to resolve coverage issues as that process is prohibited by Missouri statute.

Coverage issues, such as defenses and exclusions, must be determined first, and cannot be determined through the appraisal policy. Here, the dispute between the parties relates to the extent of State Farm's liability for damage to the property. This issue must be resolved first, and cannot

be resolved by applying the appraisal provision of the insurance policy. The circuit court's judgment is vacated and, under Rule 84.14, we enter the judgment the circuit court should have entered and dismiss the amended petition for the appointment of an umpire without prejudice, which will allow it to be re-filed, if necessary, at the appropriate time.

**Opinion by: Janet Sutton, Judge** March 8, 2022

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**