

**IN THE SUPREME COURT OF OHIO
CASE NO. 2024-1329**

ONE CHURCH,	)	
	)	
Plaintiff-Appellee,	)	
	)	On Appeal from the
vs.	)	Tenth District Court of Appeals
	)	Court of Appeals Case No. 23AP-457
BROTHERHOOD MUTUAL INS. CO.,	)	
	)	
Defendant-Appellant.	)	
	)	

**BRIEF OF *AMICUS CURIAE* ACUITY, A MUTUAL INSURANCE COMPANY,
IN SUPPORT OF BROTHERHOOD MUTUAL INS., CO.**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS	1
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW.....	1
 <u>Proposition of Law No. 1:</u>	
Binding appraisal in property insurance cases is intended to: (a) require each party to fully investigate and determine the amount of the loss; and (b) have the practical effect of claim and issue preclusion with respect to the amount of the appraised loss.	1
 <u>Proposition of Law No. 2:</u>	
As a matter of law, an insured's unilateral assertion of the finding of additional "hidden damages" after the insured's acceptance of the insurer's payment of a binding appraisal award does not constitute a mistake that permits the appraisal to be set aside	9
CONCLUSION.....	16
CERTIFICATE OF SERVICE	18

TABLE OF AUTHORITIES

Cases

<i>Auto-Owners Ins. Co. v. Summit Park Townhome Ass’n</i> , 129 F. Supp. 3d 1150 (D. Colo. 2015).	6
<i>Baltimore & Ohio RR v. Stankard</i> , 56 Ohio St. 224, 46 N.E. 577 (1897).....	12
<i>Barnes</i> , 844 S.W.2d at 268	12
<i>Bates v. Pennsylvania RR</i> , Ohio App., 33 N.E.2d 678, 26 Ohio L. Abst. 144 (App.1937).....	13
<i>Bertisen v. Travelers Home & Marine Ins. Co.</i> , 2023 WL 5822504 (D. Colo.).....	6
<i>Blum’s Furniture Co. v. Certain Underwriters at Lloyds London</i> , 459 F. App’x 366 (5th Cir. 2012).....	6
<i>Burchell v. Marsh et al.</i> , 58 U. S., 344	14
<i>City & Cnty. of Denver v. Dist. Ct.</i> , 939 P.2d 1353 (Colo. 1997)	7
<i>Concept Rests., Inc. v. Travelers Indem. Co.</i> , No. 16-cv-00450-DME-NYW, 2016 WL 8737773	6
<i>Continental Ins. Co. of N.Y. v. Guerson</i> , 93 S.W.2d 591(Tex. Civ. App.–San Antonio 1936, writ dism’d.....	11
<i>Csuhran v. Merrimack Mut. Fire Ins. Co.</i> , 1994 WL 102248 (11th Dist.)(same	13
<i>Franco v. Slavonic Mut. Fire Ins. Ass’n</i> , 154 S.W.3d 777 (Tex. App.–Houston [14th Dist.] 2004, no pet.	5
<i>Grava v. Parkman Twp.</i> (1995), 73 Ohio St.3d 379	8
<i>JN Walker LLC v. Acadia Ins. Co.</i> , 356 Fed. Appx. 744 (5th Cir. 2009).....	11
<i>Knox v. Symmonds</i> , 1 Vesey Jr., 369	14
<i>Lakewood Mfg. Co. v. Home Ins. Co.</i> , 422 F.2d 796 (6th Cir.1970).....	12
<i>Lundstrom v. United Services Auto Assn.</i> , 192 S.W.3d 78 (Tex. App. 2006)	5
<i>MLCSV10 v. Stateside Enter., Inc.</i> , 866 F.Supp.2d 691, 702 (S.D. Tex. 2012)	11
<i>Natl. Amusements, Inc. v. Springdale</i> (1990), 53 Ohio St.3d 60	9
<i>Pfleger v. Renner</i> , 13 Ohio App. 96 (1920).....	13
<i>Providence Lloyds Ins. Co. v. Crystal City Indep. Sch. Dist.</i> , 877 S.W.2d 872 (Tex. App.–San Antonio 1994, no writ)	5
<i>Providence Washington Ins. Co. v. Farmers Elevator Co.</i> , 141 S.W.2d 1024 (Tex. Civ. App.–Amarillo 1940, no writ)	11
<i>Rooftop Restoration & Exteriors, Inc. v. Nautilus Ins. Co.</i> , 2022 WL 4536236 (D. Colo.).....	7
<i>Smith v. Shelby Ins. Group</i> , 1997 WL 799 512 (11th Dist.).....	15
<i>Steiner v. Appalachian Exploration, Inc.</i> (1986), 31 Ohio App.3d 177, 509 N.E.2d 1271	15
<i>Stromberg v. Bratenahl Bd. of Edn.</i> (1980), 64 Ohio St.2d 98.....	9
<i>Stuckman v. Westfield Ins. Co.</i> , 2011-Ohio-2338 (3d Dist.)(same).....	13
<i>Tae Hyung Lim v. Am. Econ. Ins. Co.</i> , No. 13-cv-02063-CMA-KLM, 2014 WL 1464400 (D. Colo. Apr. 14, 2014).....	6
<i>TransCapital Bank v. Merchants Mut. Ins. Co.</i> , 2013 WL 322156(N.D. Ohio)	13
<i>Wagner v. Phoenix Ins. Co.</i> , 348 P.2d 150 (Colo. 1960).....	5
<i>Whitehead v. Gen. Tel. Co.</i> (1969), 20 Ohio St.2d 108	9

Other Authorities

44 Am.Jur.2d Insurance § 1719 (1969)	11
46A C.J.S. Insurance §1900.....	1
63 O. Jur. 3d <i>Judgments</i> §355 (2025).....	8
C.J.S. Insurance § 1929 (2024).....	9

STATEMENT OF FACTS

Amicus Acuity, A Mutual Insurance Company (“Acuity”) incorporates by reference the Statement of Facts contained in the merit brief of Defendant-Appellant Brotherhood Mutual Insurance Company that is being filed and served contemporaneously herewith.

ARGUMENT

Proposition of Law No. 1:

Binding appraisal in property insurance cases is intended to: (a) require each party to fully investigate and determine the amount of the loss; and (b) have the practical effect of claim and issue preclusion with respect to the amount of the appraised loss.

It has long been recognized that binding appraisals are a way for the parties to an insurance contract to resolve disputes about the value of damaged property in an inexpensive and expeditious manner. For that reason, they are favored in the law as a substitute for expensive and protracted litigation to determine the amount of the loss. These principles are recognized throughout the United States. As stated in 46A C.J.S. Insurance §1900

In some jurisdictions there is a strong public policy favoring insurance appraisals. Appraisal clauses in insurance policies are preferred, as they provide a mechanism for prompt resolution of claims and discourage the filing of needless lawsuits. *The purpose of an appraisal process is to provide the plain, speedy, inexpensive and just determination of the extent of the loss.*

* * *

The mandated appraisal process is regarded as a substitute for a judicial determination of a dispute concerning the amount of a loss. [Emphasis added].

Binding appraisal provisions appear in most types of policies that provide first party coverage to policyholders. In first party claims, there is no need for a determination of liability (as there would be in third party cases). Instead, in the vast majority of cases, the only real

question is the value of the property that was damaged or destroyed. Consequently, deciding that one-and-only disputed issue by means of an appraisal results in a prompt resolution of the claim, thereby allowing the claimant to be paid and the claim to be closed without the burden, delay, and expense of litigation.

The Insurance Services Office (an organization that promulgates model insurance policies for use by member organizations in the realm of property and casualty insurance¹) has adopted the following appraisal provision that appears in many of its policies:

The appraisers will state separately the value of the property and the amount of the loss. If they fail to agree, they will submit their differences to the umpire.

A decision agreed to by any two will be binding.

This language appears in a tremendous variety of first-party coverages in a wide array of policies,² including the following:

- Railroad Protective Liability Coverage for (2013) [Form Number CG 00 35 04 13].
- Inland Marine Common Policy Conditions (2004) [CM 00 01 09 04]
- Leasehold Interest Coverage Form (1995) [Form CP 00 60 06 95]
- Builders Risk Coverage Form (2012) [Form CP 00 20 10 12]
- Business Auto Coverage Form (2020) [Form CA 00 01 11 20]
- Motor Carrier Coverage Form (2020) [Form CA 00 20 11 20]
- Equipment Breakdown Protection Coverage Form (2013) [Form EB 00 20 01 13]
- Personal Auto Policy (2018) [Form PP 00 01 09 18]
- Auto Dealers Coverage Form (2010 and 2020) [Forms CA 00 25 11 20 and CA 00 05 03 10]
- Building and Personal Property Coverage Form (2012) [Forms CP 00 10 10 12 and CP 00 99 10 12]
- Watercraft Policy (2010) [Form WT 00 01 01 10]
- Business Owners Coverage Form (2013) [Form BP 00 03 07 13]

¹ <https://www.verisk.com/products/forms-rules-and-loss-costs/>

² Specimen copies of these ISO policies can be found in *Millers Standard Insurance Policies Annotated* (7th ed.), which is accessible via Westlaw.

Further, the ISO standard Homeowner's Policy form contains the virtually identical provision, except that it states that the appraisal will "set the amount of the loss":

If you and we fail to agree on the amount of the loss, either a demand in appraisal of the loss:

* * *

A decision agreed to by any two will set the amount of the loss.

See, Homeowners Form (2011) [Forms HO 00 03 05 11 and HO 00 02 05 11].

In this case, Appellee One Church would turn the recognized purpose of the appraisal provision on its head. Rather than make the process more expeditious and less costly, One Church would have this Court subvert the process by allowing a party who is not satisfied with the appraisal award (whether that party be the insurer or the policyholder) to claim that the binding appraisal award was "mistakenly" inadequate or excessive, thereby forcing the issue of the amount of the loss to be redetermined by litigation in a court of law. This would result in *greater* expense and delay (by inserting an extra step into the process of resolving the dispute as to value), rather than allowing for the efficient, prompt, and inexpensive ascertainment of the amount of a loss via appraisal.

Just as in ordinary civil litigation, it is incumbent upon any party to a binding appraisal (in conjunction with their hand-picked appraiser) to investigate and determine the elements of damage so that a complete determination of the valuation process can be accomplished. Ohio courts have recognized that each party to an appraisal has the burden of working with its chosen appraiser to identify all of the elements of damage to be considered by the two appraisers and the umpire. As the court stated in *Stuckman v. Westfield Ins. Co.*, 2011-Ohio-2338 (3d Dist.):

Further, each party had the ability to, and did, in fact, appoint its own appraiser. Accordingly, *we assume that each party instructed its appraiser as to what needed to be considered* and that the umpire appointed by the trial court would address any conflicts.

Id. at ¶ 18 (emphasis added).

In order to promote the goals of prompt, efficient, and inexpensive resolution of the question of amount of damages, courts across the land have held that it is essential that the parties be bound by the outcome the appraisal, regardless of whether they agree with the ultimate decision. This necessarily means that once the parties have submitted the issue of valuation to the two appraisers (and, if needed, the umpire), they cannot later assert that the award was inadequate or excessive.

Across the United States, it is well established that appraisals are also intended to have a preclusive and binding effect, barring the parties from re-litigating issues that were addressed in the appraisal. The general principles are laid out in 46A C.J.S. *Insurance* § 1925 (2024), wherein the authors state the rules that generally apply to binding appraisal provisions in insurance contracts:

Appraisal awards made pursuant to the provisions of an insurance contract are binding and enforceable. ***Where the parties to a policy have submitted a difference as to the amount of the loss to arbitration or appraisal, they are mutually bound as to the amount of the loss by the award of the arbitrators or appraisers***, if valid.

* * *

Also, ***a party may be collaterally estopped from litigating a question which has been submitted and decided at an arbitration proceeding.***

* * *

Also, ***an arbitration award should be conclusive as to the issue submitted to arbitration...***

Court decisions from other jurisdictions elaborate on this issue. For example, in *Garcia v. State Farm Lloyds*, 514 S.W.3d 257 (Tex. App. 2016), *review denied*, the court explained that

once the parties have submitted the issue of valuation of damages to the appraisal process, they are estopped from contesting the issue at a later time:

Appraisal awards made pursuant to the provisions of an insurance contract are binding and enforceable. *Providence Lloyds Ins. Co. v. Crystal City Indep. Sch. Dist.*, 877 S.W.2d 872, 875 (Tex. App.—San Antonio 1994, no writ). ***The effect of an appraisal provision is to estop one party from contesting the issue of damages in a suit on the insurance contract***, leaving only the question of liability for the court. *Franco v. Slavonic Mut. Fire Ins. Ass’n*, 154 S.W.3d 777, 786 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

Id. at 264 (emphasis added).

Again, in *Lundstrom v. United Services Auto Assn.*, 192 S.W.3d 78 (Tex. App. 2006), the court reiterated that:

The effect of an appraisal provision is to estop one party from contesting the issue of damages in a suit on the insurance contract...

Id. 87.

A series of court decisions from Colorado cases also illustrate this principle. In 1960, in *Wagner v. Phoenix Ins. Co.*, 348 P.2d 150 (Colo. 1960), the Colorado Supreme Court held that when claimants demand binding appraisal under an insurance policy to determine the amount of loss, they “irrevocably exercise their option to determine that question as provided by the appraisal clause of the policy.” *Id.* at 152.

Subsequent decisions applying Colorado law make clear that binding appraisals have a preclusive effect that prohibits a party from re-litigating issues already determined by the appraisers. These principles were recently summarized by the federal district court in *Bertisen v. Travelers Home & Marine Ins. Co.*, 2023 WL 5822504 (D. Colo.), wherein the court summarized the applicable in the following terms:

Similarly, the Colorado Supreme Court “has held that ***appraisal awards can be binding on the parties as to the amount of loss.***” *Lindgren*, 2021 WL 5957418, at *4 (citing *Wagner v. Phoenix Ins. Co.*, 348 P.2d 150, 152 (Colo. 1960)). For

instance, in *Wagner*, the Colorado Supreme Court agreed with the insurer that ***an appraisal provision “amounted to an option offered to plaintiffs, and plaintiffs, having chosen to exercise that option, [were therefore] precluded from any suit upon the policy and [were] bound by the award of the umpire.”*** 348 P.2d at 152 (emphasis added). The court explained that ***when the plaintiffs demanded appraisal “to determine the amount of loss,” they “irrevocably exercised their option to determine that question as provided by the appraisal clause of the policy.”*** *Id.* ***“In other words, the party is ‘estopped by the appraisal award.’ ”*** *Concept Rests., Inc. v. Travelers Indem. Co.*, No. 16-cv-00450-DME-NYW, 2016 WL 8737773, at *2 (D. Colo. Dec. 2, 2016) (quoting *Blum’s Furniture Co. v. Certain Underwriters at Lloyds London*, 459 F. App’x 366, 367 (5th Cir. 2012)); see also *Auto-Owners Ins. Co. v. Summit Park Townhome Ass’n*, 129 F. Supp. 3d 1150, 1154 (D. Colo. 2015) (finding that an ***appraisal results in a “binding factual determination”*** as to the amount of loss); *Tae Hyung Lim v. Am. Econ. Ins. Co.*, No. 13-cv-02063-CMA-KLM, 2014 WL 1464400, at *3 (D. Colo. Apr. 14, 2014) (***“Neither party is permitted to dispute the amount of loss once it has been determined.”***).

Id. at *12 (emphasis added in part).

Colorado courts have held that binding appraisal and arbitration provisions both serve the same function and purpose, which is to provide economy for both the parties and for judicial efficiency. The court in *Rooftop Restoration & Exteriors, Inc. v. Nautilus Ins. Co.*, 2022 WL 4536236 (D. Colo.) held that binding appraisal and arbitration were also fundamentally similar in terms of the preclusive effect that should be given to each:

[T]he crux of the parties’ dispute, more specifically, is the extent to which determinations made during the appraisal process are subject to subsequent court challenge.

* * *

Colorado possesses a tradition of supporting alternative dispute resolution mechanisms when agreed to by the parties.” *City & Cnty. of Denver v. Dist. Ct.*, 939 P.2d 1353, 1361 (Colo. 1997). ***“Although an appraisal process is not on all fours with arbitration, both are ‘rooted in similar policies of economy for the parties and judicial efficiency.’ ”*** *Laredo Landing Owners*, 2015 WL 3619205, at *2 (quoting *City & Cnty. of Denver*, 939 P.2d at 1363)); see *Summit Park Townhome I*, 100 F. Supp. 3d at 1103 (“A purpose of appraisal provisions is to avoid litigation and encourage settlement.”). ... Therefore, similar to an arbitration agreement, the Court “must accord the parties a presumption in favor of appraisal and must resolve all doubts about the scope of the appraisal clause in

favor of the appraisal mechanism.” *Laredo Landing Owners*, 2015 WL 3619205, at *2 (D. Colo. June 10, 2015) (quoting *City & Cnty. of Denver*, 939 P.2d at 1364).

Id. at *4 (emphasis added).

Ohio law is in accord with these decisions. The general principles supporting the prohibition against successive relitigation of previously-adjudicated issues (such as the amount of damages) are succinctly summarized in 63 O. Jur. 3d *Judgments* §355 (2025):

Res judicata is the rule that a final judgment rendered by a court of competent jurisdiction on the merits, without fraud or collusion, is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action.

* * *

Under Ohio law, res judicata provides that an existing, final judgment or decree, rendered upon the merits and without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties or their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.

Under the doctrine, a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action...

* * *

The doctrine of res judicata is a principle of universal jurisprudence, forming a part of the legal systems of all civilized nations, firmly entrenched in the law as to those situations to which it is applicable. The doctrine is required by the purpose for which civil courts have been established, and its enforcement is essential to the maintenance of social order. ***It is founded on the conclusiveness accorded to judgments and is based on the principles that parties ought not to be permitted to litigate the same issues more than once, that litigation must not be interminable, that the judgment ought to be the end of the litigation, and that circuity of actions should yield to the repose of litigation.*** In other words, the doctrine of res judicata promotes the principles of finality and judicial economy by preventing endless relitigation of an issue on which a defendant has already received a full and fair opportunity to be heard.

The doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time, but is, rather, a rule of fundamental and substantial justice or public policy and of private peace.

Id. (Footnotes omitted and emphasis added).

In *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, this Court adopted the modern application of the doctrine of res judicata as stated in 1 Restatement of the Law (Second), *Judgments* (1982), Sections 24–25, and held “that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Id.* at 382.

Res judicata, also known as “claim preclusion,” is the doctrine under which a final judgment on the merits bars a party from bringing another lawsuit based on the same claim. *Whitehead v. Gen. Tel. Co.* (1969), 20 Ohio St.2d 108, ¶1 of the syllabus. Res judicata extends to bar not only claims which actually were litigated, but “every question which might properly have been litigated.” *Stromberg v. Bratenahl Bd. of Edn.* (1980), 64 Ohio St.2d 98, 100. Res judicata promotes the principle of finality of judgments by requiring plaintiffs to present every possible ground for relief in the first action. *Natl. Amusements, Inc. v. Springdale* (1990), 53 Ohio St.3d 60, 62.

Just as there must be an end to litigation after a final judgment has been rendered, so too must there be an end to the appraisal process for the same loss once an appraisal award has been rendered. To hold otherwise would mean that there would literally be no limit on the number of times a policyholder could demand successive appraisals for losses claimed to have resulted from the very same event.

One Church’s endless successive requests for reappraisal of its damages by asserting discovery of hitherto-undiscovered damages should not be countenanced in the appraisal setting

any more than it would in a judicial setting. As noted above, the appraisal process is intended to be an inexpensive and expeditious substitute for the judicial determination of damage amounts. Any limitation on successive claims that would apply in a judicial setting should therefore apply in the appraisal setting as well.

This case presents the opportunity for this Court to adopt and apply principles similar to res judicata and claim preclusion in the setting of binding appraisals. These principles foster fast and efficient claims processing and relieve the courts from the burden of rehashing questions concerning the amount of loss at the behest of dissatisfied claimants or insurers, which have already been determined through the mutually agreed-upon binding appraisal process.

Proposition of Law No. 2:

As a matter of law, an insured's unilateral assertion of the finding of additional "hidden damages" after the insured's acceptance of the insurer's payment of a binding appraisal award does not constitute a mistake that permits the appraisal to be set aside.

One Church argues that it is entitled to avoid the preclusive effect of binding appraisal on the grounds that the appraisers were “mistaken” as to the extent of the damage. But One Church misapprehends the meaning of the word “mistake” as used by the courts, when they say that an appraisal may be set aside for fraud, mistake, or malfeasance by the appraisers.

Instead, in this context, the word “mistake” refers strictly to those occasions where for some reason, the award does not reflect the actual intention of the appraisers. As stated in 46A C.J.S. *Insurance* §1929 (2024):

An actionable mistake that would cause a court to set aside an insurance appraisal award for damaged property is one that caused an award to operate in a way the appraisers did not intend. A mere mistake of judgment, or error of law, or an honest error in applying the rules of evidence does not constitute a valid reason for setting aside an award. [Emphasis added].

The proper application of the exception “mistake” is reflected in the decision of the Fifth Circuit Court of Appeals in *JN Walker LLC v. Acadia Ins. Co.*, 356 Fed. Appx. 744 (5th Cir. 2009), wherein the court held as follows:

Under Texas law, “appraisal awards made pursuant to the provisions of an insurance contract are binding and enforceable, and every reasonable presumption will be indulged to sustain an appraisal award.” The results of an otherwise binding appraisal may be disregarded in three situations: “(1) when the award was made without authority; (2) when the award was made as a result of fraud, accident, or mistake; or (3) when the award was not in compliance with the requirements of the policy.” Walker argues that the second exception applies here.

...

A court may set aside an award on the ground of mistake only “upon a showing that the award does not speak the intention of the appraisers.” Here, Walker has provided no evidence that the award did not speak to LaFleur’s intent. An umpire often must choose between two competing values, and LaFleur’s decision to go with Gillespie’s measurement, rather than Austin’s, does not mean his award was premised on a mistake.

Id. at 746-747 (emphasis added).

Again, in *Garcia v. State Farm Lloyds*, *supra*, the court acknowledged that:

“A court may set aside an award on the ground of mistake [or accident] only ‘upon a showing that the award does not speak the intention of the appraisers.’ ” *MLCSV10 v. Stateside Enter., Inc.*, 866 F.Supp.2d 691, 702 (S.D. Tex. 2012) (quoting *Providence Washington Ins. Co. v. Farmers Elevator Co.*, 141 S.W.2d 1024, 1026 (Tex. Civ. App.—Amarillo 1940, no writ)). ***“Mistake” in this context has a narrowly defined meaning: an actionable “mistake” is one that caused an award to operate in a way the appraisers did not intend. Providence Washington Ins., 141 S.W.2d at 1026–27 (trial court’s judgment setting aside an award by two appraisers and an umpire reversed and rendered because there was no mistake—the award was the intended result); see also Continental Ins. Co. of N.Y. v. Guerson, 93 S.W.2d 591, 594 (Tex. Civ. App.—San Antonio 1936, writ dism’d) (“Any errors of judgment, honestly and fairly exercised, on the part of the [appraisers] in making the award, are matters with which the courts cannot concern themselves; but if the award returned does not embody their real judgment on the matters as submitted for their determination and award, the courts, under proper pleading and proof, can and should grant relief.”). The Fort Worth Court of Appeals has defined “mistake” as:***

a situation where the appraisers and umpire were laboring under a mistake of fact by which their appraisal award was made to operate in a

way they did not intend, such that the award does not speak the intention of the appraisers and umpire, or where the error resulting in the award is so great as to be indicative of gross partiality, undue influence, or corruption.

Barnes, 844 S.W.2d at 268 (quoting district court's jury instruction).

Id. at 269-270 (emphasis added).

The Sixth Circuit Court of Appeals recognized more than half a century ago that Ohio law is consistent with the general rules of res judicata in the appraisal context that are recognized in other jurisdictions across the land. In *Lakewood Mfg. Co. v. Home Ins. Co.*, 422 F.2d 796 (6th Cir.1970), the Sixth Circuit held that the trial court erred in setting aside the appraisal award on the grounds that it was inadequate:

Generally, a court will not interfere with an appraisal award but, to the contrary, will indulge in every reasonable presumption to sustain it in the absence of fraud, mistake, or misfeasance. ***A court will not substitute its judgment for that of the appraisers or set aside an award for inadequacy or excessiveness unless it is so palpably wrong as to indicate corruption or bias on the part of the appraisers.*** 44 Am.Jur.2d Insurance § 1719 (1969).

The law of Ohio, applicable here, is essentially in line with the general rule. In Ohio fraud or manifest mistake is a proper legal basis upon which to set aside an appraisal award. *Baltimore & Ohio RR v. Stankard*, 56 Ohio St. 224, 46 N.E. 577 (1897). To constitute manifest mistake, the mistake must be of such character that the arbitrator or appraiser would have corrected it had it been called to his attention; a mistake of judgment is not manifest mistake. *Pfleger v. Renner*, 13 Ohio App. 96 (1920). See *Bates v. Pennsylvania RR*, Ohio App., 33 N.E.2d 678, 26 Ohio L. Abst. 144 (App.1937).

Id. at 798. See also, *TransCapital Bank v. Merchants Mut. Ins. Co.*, 2013 WL 322156 at *2 (N.D. Ohio)(citing and quoting *Lakewood*); *Stuckman v. Westfield Ins. Co.*, 2011-Ohio-2338 at ¶24 (3d Dist.)(same); *Csuhren v. Merrimack Mut. Fire Ins. Co.*, 1994 WL 102248 at *1 (11th Dist.)(same).

The *Lakewood Mfg.* opinion was premised upon an Ohio state court decision rendered more than a century ago in *Pfleger v. Renner*, 13 Ohio App. 96 (1st Dist.1920), wherein the court

(in the context of reviewing an arbitration award) noted the very limited meaning of the term “mistake,” and emphasized that if the arbitrators have “given there honest, incorrupt judgment on the subject-matter submitted to them,” then the award must stand:

A mere error of judgment on the part of an arbitrator is not “manifest mistake.” If such were the case, an agreement to arbitrate could always be subject to attack by the party who asserted the claim in good faith, and which the arbitrator did not sustain. To such a person there is always a mistake on the part of an arbitrator. To warrant a court in setting aside an award on the ground of manifest mistake it must appear that there is a mistake of such character that the arbitrator, had it been called to his attention, would have corrected it himself.

* * *

In *Burchell v. Marsh et al.*, 58 U. S., 344, the Supreme Court, in speaking of the effect of an award by arbitrators, quotes from *Knox v. Symmonds*, 1 Vesey Jr., 369, as follows:

“To induce the court to interfere, there must be something more than error of judgment, such as corruption in the arbitrator, or gross mistake, either apparent on the face of the award, or to be made out by evidence; but in case of mistake, it must be made out to the satisfaction of the arbitrator, and that if it had not happened, he should have made a different award.”

And then the court says:

“Courts should be careful to avoid a wrong use of the word ‘mistake,’ and, by making it synonymous with mere error of judgment, assume to themselves an arbitrary power over awards.”

Again, in conclusion, the court says:

“If they [the arbitrators] have given their honest, incorrupt judgment on the subject-matters submitted to them, after a full and fair hearing of the parties, they are bound by it.”

* * *

It is not the duty of this court to examine anew each of the contentions of law and fact which the arbitrator was called upon to determine. The parties by their agreement have seen fit to choose their own forum to contest these questions. *When parties submit a matter to arbitration, they incur the risk of honest mistakes that their chosen umpire may commit. To the mind of every person against whom a decision by an arbitrator is rendered the award necessarily*

works an injustice. That does not, of itself, constitute sufficient grounds to impeach the determination.

Id. at 103-105.

Even more the point, Ohio courts have held that where the only basis upon which the appraisal award is challenged is its alleged excessiveness or inadequacy, then mere “mistake” of any kind is not a sufficient basis for setting aside the award. Instead, an appraisal award may be set aside on the grounds inadequacy or excessiveness ***only*** if it is so patently wrong “as to indicate corruption or bias on the part of the appraisers.” In *Smith v. Shelby Ins. Group*, 1997 WL 799 512 (11th Dist.), the court held that:

A court’s review of an appraisal is extremely limited. In *Lakewood Mfg. Co. v. Home Ins. Co. of New York* (C.A.6, 1970), 24 Ohio Misc. 244, 422 F.2d 796, 798, construing Ohio law, the court stated:

“Generally, a court will not interfere with an appraisal award but, to the contrary, will indulge in every reasonable presumption to sustain it in the absence of fraud, mistake, or misfeasance. ***A court will not substitute its judgment for that of the appraisers or set aside an award for inadequacy or excessiveness unless it is so palpably wrong as to indicate corruption or bias on the part of the appraisers.***” See, also, *Csuhran v. Merrimack Mut. Fire Ins. Co.* (Mar. 18, 1994), Lake App. No. 93-L-143, unreported, at 3; *Steiner v. Appalachian Exploration, Inc.* (1986), 31 Ohio App.3d 177, 179, 509 N.E.2d 1271.

Id. at *4.

As the foregoing amply illustrates, it is well established in Ohio that binding appraisal awards may only be challenged for fraud, manifest injustice, or mistake. But a party’s dissatisfaction with the amount of the award does not constitute the type of “mistake” necessary to set aside a binding appraisal award that was determined by independent appraisers, including at least one appraiser that was hand-picked by the complaining party.

Whenever two parties submit a dispute to a third party for resolution—whether it be to an appraiser, an arbitrator, or a court of law—it is almost inevitable that at least one (if not both) of

the parties will be dissatisfied with the result. But the dissatisfaction of one or both of the parties is not sufficient to set aside an appraisal award and resort to litigation over the amount of damages, which the parties agreed by solemn contract to resolve once and for all through the appraisal process.

CONCLUSION

It is wasteful and inefficient to force claimants or insurers to engage in endless relitigation of the amount of damages resulting from a single covered event through an unlimited series of appraisals, each of which claims to be based on newly-discovered damages. The same principles of res judicata, claim preclusion, and estoppel by judgment that would apply if a court had determined the amount of damages should apply if the decisionmaker is a panel of appraisers (at least one of which was personally hand-picked by the claimant).

Further, the claimant's allegation that a second appraisal is warranted because of "newly-discovered" damages (which did not arise after the initial appraisal but had instead been extant all along) does not furnish grounds for setting aside the original appraisal award on the grounds of "mistake." It stands decided in Ohio and elsewhere that the type of "mistake" that justifies setting aside an appraisal award is limited to where the award does not reflect the actual intention of the appraisers. That is not the claimant's argument in the case now before this Court.

In view of the foregoing, amicus Acuity, A Mutual Insurance Company, respectfully requests that this Court reverse the decision of the court below and adopt the propositions of law espoused by the Appellant, Brotherhood Mutual Insurance Company.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing *Brief of Amicus Curiae Acuity, A Mutual Insurance Company, in Support of Brotherhood Mutual Insurance Company* has been served by electronic mail on this 17th day of March, 2025, upon the following:

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