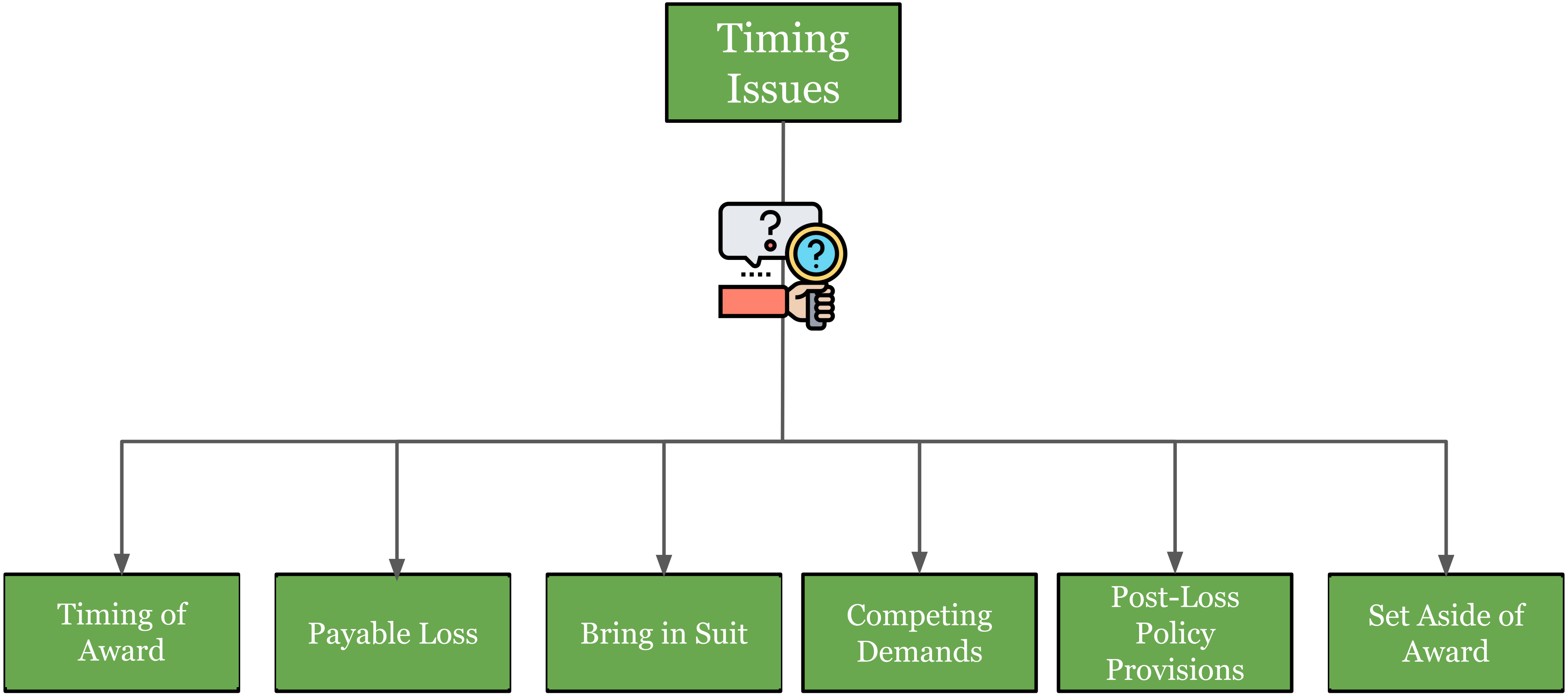
# Timing Issues in Appraisal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# Timing an Award

- Rules of contract construction requires the appraisal team to be held a reasonableness standard requiring the issuance of their award within a **reasonable period of time** from the beginning of the process
- Absence contractual time is an effort to give the participants **flexibility and discretion** in carrying out their appointed duties, not as a license for unnecessary delay or dilatory conduct

- The award should be rendered within a reasonable period of time and as soon as possible under the circumstances.
- To encourage responsible behavior, the parties to the appraisal may include a **planned timeline** for the appraisal's conduct in the appraisal agreement.
- **Allowances** should be made for scheduling difficulties, inclement weather, witness and participant availability, and other practical issues that make activity scheduling difficult.

Although most policies do not specify a time limit for award issuing, several states have set deadlines that must be met, and failure to do so can result in serious **implications** for the appraisal.

CASE STUDY

Rankin v. Allstate Ins. Co., 336 F.3d 8 (1st Circ. Conn. 2003)

In Connecticut, is has been held that an award rendering after 30 days of the **“completion of the hearing”** has no legal effect unless the parties expressly extend the deadline. Though is has been held that this deadline is strictly enforced there is no recorded decision specifically applying this particular statute to an insurance appraisal or defining precisely what constitutes the completion of the hearing as contemplated by the statute.

# Determining Payable Loss

# LOSS IS PAYABLE

- Standard Fire Policy: 60 days after receipt of proof and ascertainment of amount, by agreement or award
- 60 day provision is not absolute. Adjustment and payment must proceed without unnecessary delay based upon the facts of the case. Payment should be made as soon as possible after the award is rendered.
- Some states regulate the period within which payment must be made after an appraisal award

# New York Insurance Regulation §216.6 (f):

“Every insurer shall pay any amount finally agreed upon in settlement of all or part of any claim not later than five business days from the receipt of such agreement by the insurer, or from the date of the performance by the claimant of any condition set by such agreement, whichever is later, except as provided in §331 of the Insurance Law as respects liens by tax districts on fire insurance proceeds.”

It has been held that for the **60-day time period** to apply, there must be a **valid appraisal** and where the insureds rejected the joint appraisal, it was clear that the loss payment provision of the policy which mandated payment:

"60 days after we receive your proofs of loss and;

a) reach an agreement with you;
b) there is an entry of a final judgment; or
c) there is a filing of an appraisal award with us"

# Insurance Policy

- determine the date from which the coverage payment is due as well as when interest is due on the amounts payable
- if an insurer is obligated to pay within thirty days of receiving an appraisal award, the insured is not entitled to pre-judgment interest from the date its property was damaged, as long as the policy language is followed.

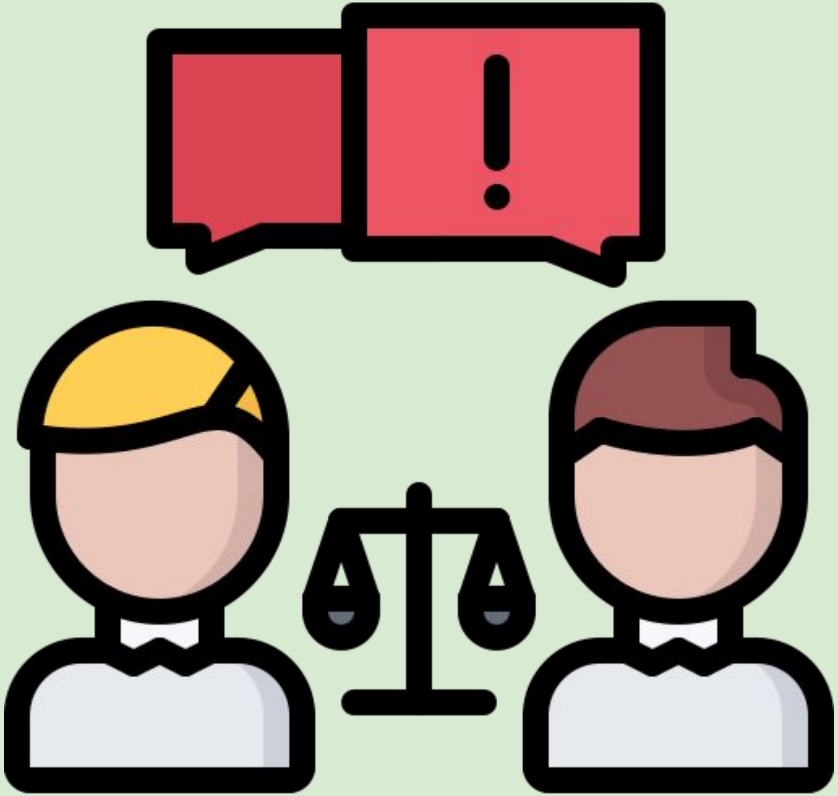
# Jugo v. American Security Ins. Co. 56 So.3d 94 (Fla.3d DCA 2011)

In Jugo, the insured was paid $47,000 toward the amount of loss but more was requested by the insured. After appraisal, the insured was awarded an additional $71,000 and the insured moved for pre-judgment interest from the date of loss. The court denied the insured's request and explained when pre-judgment interest from the date of loss would be appropriate. In cases where the insurer denied coverage for all or any part of the insured's initial claim, an insured would be entitled to pre-judgment interest from the date of the loss. In cases where the insurer admits coverage but disputes the amount of the covered loss, however, the insured is not entitled to pre-judgment interest from the date of the loss, absent some contract provision to the contrary.


## Long v. American Security Ins. Co., 52 So.3d 260, 2010-0026 (La.Ct. App. 1995)

In Louisiana, it has been held that an insurer's failure to pay amounts purportedly undisputed during the appraisal process was not arbitrary or capricious.

# Suit Limitations



# Suit Limitations Provisions:

- limits the amount of time an insured has to commence litigation against the carrier should that become necessary
- issue is also regulated by statute or regulation which mandate a minimum amount of time within which the insured has to bring suit
- contained in the amendatory endorsement mandated in most states

CASE STUDY

## Reed v. Allstate Ins. Co., 2012 WL 527422 (W.D. Wash. 2012)

A Washington court did not find a reasonable excuse for delay for purposes of filing an action where an insurer stopped appraisal pending the production of documents in litigation. The court determined that appraisal could have continued without the documents sought by the insurer and "no reasonable juror could conclude that [the insurer]'s actions prevented [the insureds] from timely filing suit or lured [the insured] into reasonably believing that an additional amount would be paid."

# W.S. Stat. §631.83(5):

Statute of limitations "during the period in which the parties conducted an appraisal or arbitration procedure prescribed by the insurance policy or by law or agreed to by the parties." Care should be taken, however, as an informal effort of obtaining and comparing cost estimates has not been equated with actual appraisal.

# 1953 §31A-21-313(5)

In Utah, tolling of the statute of limitations for purposes of a lawsuit has been examined in the context of Utah Code Ann.

Limitations term is "'tolled during the period in which the parties conduct an appraisal or arbitration...procedure prescribed by the insurance policy.'"

# Vaubel Farms, Inc. v. Shelby Farmers Mut. Ins. Co.

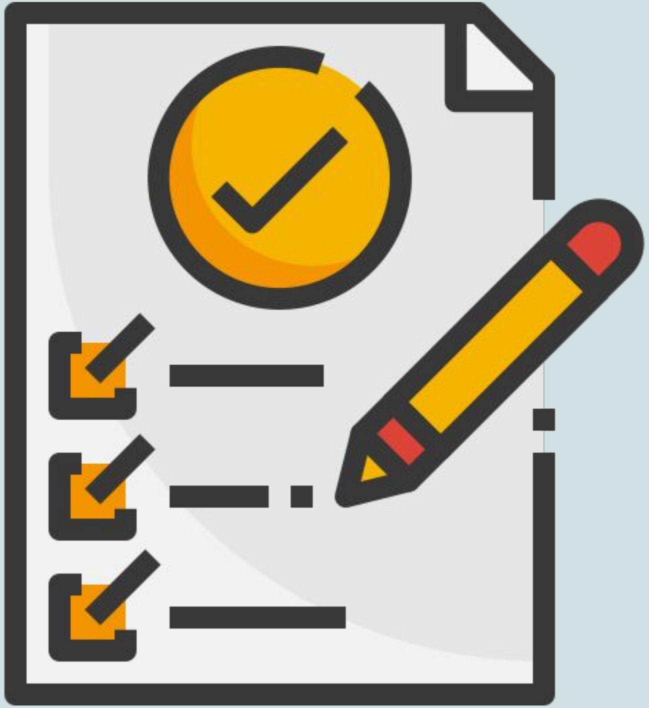
It was held that a contractual two-year period of limitation for the insured to file suit contained within a property policy was inapplicable to an appraisal/arbitration sought by the insured approximately three years after the loss stating that arbitration was not a “suit”. The court explained that such a statutory proceeding is summarily reviewable and enforceable by statute rather than by suit on the award. The court determined that because the insured’s enforcement of the award was not subject to the two-year period of limitations, his demand was subject solely to the general 6-year statute of limitations

# Competing Demands

Procedures such as filing proof of loss, testifying in arbitration hearing, and other aspects of policy are example of policy conditions mandated under the insured's right to demand an appraisal.

Each party to the contract is required to comply with the reasonable demands of his or her counterpart while still implementing their own demands.

Courts have been consistent in their rulings to ensure that the insured follows policy guidelines prior to enforcing the provision of cooperation clause especially when there are demands. The appraisal provision is essential since it is linked to a complete examination by the carrier for the loss amount and actual cash value



## Jyurovat v. Universal Prop. & Cas. Ins. Co, , 84 So.3d 1238, 1239 (Fla.2d DCA 2012)

In Florida, a court found issues of material fact existed as to whether an insured had materially breached policy conditions when his appraiser terminated an umpire. Under those circumstances, the insured's appraiser did so following continuous delays by the umpire in rendering a decision, an action for which the court found a lack of authority and observed other lawful alternatives. In evaluating this matter, the court held that "an insured's refusal to comply with a pre-suit condition may be a willful and material breach of an insurance contract that precludes recovery as a matter of law...however, if the insured cooperates to some degree or explains his failure to comply, whether the insured materially breached the policy remains a question for the fact finder".

## Hayes v. Southern Fidelity Ins. Co., 2013 WL 4012745 (E.D .La. 2013)

In Louisiana, where the insured failed to respond to a demand for an examination under oath but after retaining counsel, offered full cooperation and requested rescheduling the EUO and a joint inspection of the damage, it was held summary dismissal of the case would have been a “draconian measure”

# Post-Loss Policy Provisions

# Neither party should be forced to proceed to appraisal until sufficient information has been exchanged.

The insurance carrier's estimates of loss, value and damage are prepared in the ordinary course of the insurer's business and should be shared upon request to help the parties identify areas of agreement, disagreement, as well as misunderstandings and omissions.

Mold Maintenance Corp. v. General Acc. Fire & Life Assur. Corp., 56 A.D.2d 134, 392 N.Y.S.2d 104 (4th Dept. 1977);


Written questions by the parties bearing on the issues of loss and value may be appropriate to issue to the Appraisers under a given set of circumstances in order to make the appraisal process meaningful.

This can include:

1. presenting and swearing to his claim.
2. the insurer sharing its damage estimates with the insured

## TIMING ISSUES

## United Prop. and Cas. Ins. Co. v. Concepcion, 83 So.3d 908 (Fla. 3d DCA 2012)

In Concepcion, the court found there to exist a fact issue which must be resolved through examination of the evidence in an evidentiary hearing. However, under these circumstances the trial court never reviewed any such evidence, and in support of this holding the court noted that the argument of counsel does not constitute evidence.

## Bankers Ins. Co. v. Macias, 475 So.2d 1216, 10 Fla. L. Weekly 424 (1985)

The court clarified the rules surrounding prejudice in Florida; the law presumes prejudice to the insurer and places the burden of showing its absence on the party seeking to avoid the condition; “by contrast, in cases involving an insured's failure to comply with a condition subsequent, ‘it is proper to place the burden of showing prejudice on the insurer.’”

# Setting Aside An Award

# AWARD

- Pursuant to the Standard Fire Policy, “An award in writing, so itemized, by any two when filed with this company shall determine the amount of actual cash value and loss.”
- It must be **in writing** and sufficiently clear so that a reasonable person could understand its conclusion.
- Award must be **signed by at least two of the three members** of the appraisal team.
- It must be sufficiently **itemized** to meet the policy and any applicable statutes' requirements.
- The award should be responsive to the original submission or appraisal agreement and care should be taken that its scope does not exceed the submission

States that equate appraisal with arbitration, care must be taken in commencing any effort to set aside an appraisal award expeditiously and certainly within the statutory time period provided for challenging an arbitration award.

In Connecticut, where courts have traditionally equated appraisal and arbitration in certain respects, it was held that where procedural objections to the appraisal process are raised, they must be asserted in a timely fashion pursuant to §§52-418 and 420 of the Connecticut General Statutes. It has been determined that such challenges were required to be raised **within 30 days of the award**.

## Travelers Home and Marine Ins. Co. v. Kravitz, 129 Conn.App. 166 (2011)

In Kravitz, the insurer argued that the appearance of impropriety, relating to a conversation between two of the three appraisers after the appraisal had been completed, should compel the court to make an exception under the arbitration statute. The court disagreed, however, and found that despite the appearance of potential impropriety, a judicially-created exception to the 30-day time limit under §52-420(b) was not justified.

**§52-420(b):**

No motion to vacate, modify or correct an award may be made after thirty days from the notice of the award to the party to the arbitration who makes the motion.

# Doctrine of Laches

"[U]nreasonable delay or negligence in pursuing a right or claim - almost always an equitable one - in a way that prejudices the party against whom relief is sought. The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting the claim, when that delay or negligence has prejudiced the party against whom relief is sought."

- *Black's Law Dictionary (7th Ed. 1999)*

## Citizens Prop. Ins. Corp. v. River Manor Condominium Ass’n, Inc., 125 So.3d 846 (Fla 4th DCA 2013)

In Florida, the court did not properly address the insurer’s defense that certain items were duplicative, deciding that “an alleged mistake of that nature raises an issue directly related to the ‘amount of loss’ sustained,” was a matter within the scope of an appraiser’s authority to evaluate and was thus entitled to respect.