

Appointing An Umpire

The Law (GS 20-279.21)

(d1) Such motor vehicle liability policy shall provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage for the claim is not in dispute. For a claim for property damage to a motor vehicle against an insurer, the policy shall provide that if:

- (1) The claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and
- (2) The difference in the claimant's and the insurer's estimate of the diminution in fair market value is greater than two thousand dollars (\$2,000) or twenty-five percent (25%) of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book or other publications approved by the Commissioner of Insurance, whichever is less, then on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall then appraise the loss. Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. *If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered or the county where the accident occurred select the umpire.* The appraisers shall then submit their differences to the umpire. The umpire then shall prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers or the report of the umpire, when filed with the insurer and the claimant, shall determine the amount of the damages. In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers. In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted. The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer. Each appraiser shall be paid by the party selecting the appraiser, and the expenses of appraisal and umpire shall be paid by the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a person who as a part of his or her regular employment is in the business of advising relative to the nature and amount of motor vehicle damage and the fair market value of damaged and undamaged motor vehicles.

Excerpt from email from AOC Counsel Matt Osborne to magistrate inquiring about procedure:

This is a civil matter, so I will copy Amy in case she has had cause to weigh in on these issues, but my thoughts are as follows:

1. As I understand the **background**,

- an automobile insurance claimant and an automobile liability insurance carrier cannot agree on the insurance proceeds amount,
- the appraisers selected by each party similarly could not agree on the amount,

- the appraisers further could not agree on an umpire, and therefore
- one or both the parties has requested that a magistrate appoint an umpire under G.S. 20-279.21(d1) and G.S. 7A-292(16).

2. In terms of the **recordkeeping**, Pete previously advised to set this up as an R file, which means we would collect the G.S. 7A-308(a)(11) document indexing fee. As Dona indicated, the filing presumably would contain (i) a certification that the parties have exhausted the other steps outlined in G.S. 20-279.21(d1) and (ii) a formal request for the appointment of an umpire by a magistrate.

3. In terms of the **selection of the umpire**, Shea Denning recently advised as follows:

The method for selecting the umpire is not spelled out by statute. I recommend that you ask your chief district court judge for advice on how to proceed. There are a few options.

* Your district could prepare a list of umpires (who must be adjusters or motor vehicle damage appraisers licensed by the NC Department of Insurance, see G.S. 58-33-10, G.S. 58-33-26) and select from this list on a rotating basis. Perhaps the Chamber of Commerce or some similar entity could help in compiling a list of licensed adjusters, and those persons could elect whether to be included on the list.

* Alternatively, you could select one of the umpires proposed by the parties. (Given, however, that the parties came to you because they could not agree on the umpire, one party likely will be displeased with that selection.)

* Finally, you might select an umpire on your own by seeking a recommendation from the Chamber of Commerce, an insurance agent or agents, or some similar entity.

The first option strikes me as the best procedure to follow.

4. With regard to the **payment of the umpire**, G.S. 20-279.21(d1) provides that the umpire “shall be paid by the parties equally.”

5. In terms of **what happens after the umpire has issued his or her report**, given that the parties have not been able to agree to this point, it certainly is possible that there will be disagreement from one of the parties regarding the umpire’s report. G.S. 20-279.21(d1) provides that the claimant or the insurer has 15 days from the umpire’s filing of the report to reject the report and notify the other party of the rejection. (I would think that the rejecting party also would want to file a copy of the notice of objection with the court for attachment to the umpire request in order to memorialize the timeliness of the objection.) If neither party rejects the report, it becomes binding on the parties after the passage of the 15 days. If one of the parties does reject the report, the next procedural step is not entirely clear. We have advised in the past that it appears to us that at this stage the parties would be in a traditional litigation posture. In other words, there is a civil dispute under an insurance agreement, and one of the parties would need to file a civil action or pursue whatever alternate remedies (e.g., arbitration) may be provided for (or required by) the insurance agreement.