

## Little Left Unsaid, Unexplained In Book Covering The Valuable, But Challenging, Appraisal Clause

By Emanuel Levy, *Editor*

Jonathan Wilkofsky, prominent plaintiffs' attorney based in New York, writes in the preface to his book, "The Law and Procedure of Insurance Appraisal," that his goal was to present a text "as accurate, balanced and complete as possible." He has achieved that goal.

The book, which soon will be available for purchase, is as complete an exposition of the subject that seems possible. And, while it appears aimed at the legal community, it is not above the ken of the reasonably informed layman, and, of course, industry insurance professionals. Wilkofsky has left nothing out in explaining the subject of appraisal, citing case law now on the books throughout the United States. He points out in introducing the 340 page book, over 50 of which offer an alphabetical table of nearly 600 cases referred to in the text, that they were culled from extensive and painstaking research. His research for a body of case law that "would make for a meaningful and efficient process but one which was not subject to abuse or inappropriate use." This is like a cache of gold for lawyers, adjusters and claims people, on both sides of the appraisal debate, to pinpoint precedent to bolster their arguments. It will certainly make it easier for appraisal process to move forward with a clear understanding of the legal principles and precedents.

Mr. Wilkofsky notes early on in his text, that the appraisal agreement is part of the historic and enduring 165 Line Standard New York Fire Insurance Policy almost universally adopted in the country. He says in the preface, that the first introduction he had to this agreement came from his mentor in 1981, when he joined the law firm headed by the late Frank Weg, a genuine expert on the policy and litigation surrounding the policy. Weg, also a prominent public adjuster, told Wilkofsky not to pay too much heed to the Appraisal Clause because it did not get into adjusting disputes. That was because it was used only at the option of the insurance companies, that usually avoided it, as they had the right to do under the doctrine established in 1956 in the *Happy Hank Auction Co.* case against the American Eagle Fire. But in 1991, the New York Legislature overturned that the doctrine opening appraisal to the claimant. This released the floodgates to demands for appraisal and to subsequent litigation. As he explains, appraisal may have similarities

compared with arbitration, but it is distinctly different, because it deals exclusively with the value of the loss, and not liability.

Wilkofsky cautions readers, and if underwriters, adjusters, lawyers brokers/agents, claimants and appraisers are wise (there will be scads of the them), that the application of the doctrine varies from state to state. His book leaves no doubt about that because he carefully reports with supporting annotations, how the various states deal with the Appraisal Clause even the distinction between arbitration and appraisal.

The book is divided into 11 chapters that discuss everything related to the clause, such as whether or not to demand appraisal by the claimant; the scope of issues covered by the clause; the issue of waiver and estoppel; the appraisal; timing and mechanics; appraisers and umpires; the appraisal itself, including procedures to determine value; the appraisal award and mortgages and lien-holders. There are five appendix items, including significant forms and documents.

### Simple Clause/Stormy Life

As simple as the Appraisal Clause appears, it has had a stormy life since insureds have made use of it to reach agreement on the determination of the value of a claim. But there appears to be many instances where the question of valuation is not simple. For example, Mr. Wilkofsky cites a case where the resolution of a fire loss value depended not on the value of fire-damaged beams, but on which could be saved, repaired or deodorized. Wilkofsky points out that similar issues arise on almost every claim and become the focus of appraisers' attention. He points out that this has become the focus of the appraisers' attention. A number of insurance companies in New York and other states, the author points out, have asserted that this is "an issue of scope" and not subject to appraisal. This is but one of the manifold aspects of the whole appraisal subject discussed in the book, making it the most valuable resource on the subject available anywhere. And Mr. Wilkofsky's articulate explanations and state-by-state supporting annotations, makes the book indispensable to anyone involved in fire insurance coverage on any level.

### Publisher

Published by Ditmas Park Legal Publishing Ltd., "The Law and Procedure of Insurance Appraisal" sells for \$198 per copy plus applicable sales tax and \$8.50 for shipping and handling. The publisher is located

at P.O. Box 1020, Peck Slip Station, New York, NY 10271-1020. The telephone number is 888-791-7781

Mr. Wilkofsky is the founding and managing partner in the law firm of Wilkofsky, Friedman, Karel and Cummins of New York City and has been litigating insurance and property damage claims for more than 20 years as a plaintiffs' attorney. His practice has taken him all over the world including the "Monrovia Fires" in West Africa. He participated in the pipeline explosion "Hellgate" case, which led to a million dollar settlement during the course of trial. He has been executive director and general counsel for the New York Public Adjusters Association since 1994. He was instrumental in the enactment of the law in New York that requires insurers to share their experts' reports upon the demand by an insured. He has drafted, and followed to passage, the law requiring minimum standards and mandatory continuing education for public adjusters.