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**Re: Recent Decision on Appraisal**

Gentlemen/Mesdames:

I am writing this letter in order to advise you of a recent decision obtained by this office that is beneficial to policyholders as it relates to demands for an appraisal.

In a case of first impression under Connecticut law, the Honorable Shira A. Scheindlin of the United States District Court for the Southern District of New York, held, in the case of *Marilyn Secord and Dean Secord v. Chartis Inc.*, that there exists certain limitations as to when an insurance carrier can demand an appraisal. In *Secord*, the policyholders gave notice to their carrier, AIU Insurance Company, in November 2006 alleging that their home suffered damage as a result of construction and blasting activities on an adjacent property. As a direct result of these activities, the Secord's residence sustained severe damage to the structural components of the dwelling, including noticeable interior and foundation cracks which were evidenced by various sinking points in the floors throughout the residence. After the policyholders submitted an estimate to the carrier in excess of

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one million (\$1,000,000.00) dollars, the carrier's adjuster performed an inspection of the premises and prepared his own estimate in the amount of one hundred and thirteen (\$113,000.00) dollars and sent a check in this amount to the insureds. The insureds immediately rejected the check and returned it the adjuster. Comparing the two estimates, it was obvious that there existed large discrepancies in the scope of damage claimed by the policyholder and found by the carrier's adjuster. These discrepancies led to the failure of the claim being adjusted. As a result, the insureds retained *Weg and Myers, P.C.* to commence suit against Chartis. Three and one half years after receiving notice of the loss and within weeks after receiving the summons and complaint, Chartis, for the first time sent a written demand for an appraisal. Upon receipt of the demand, *Weg and Myers, P.C.* rejected it and informed the carrier that an appraisal was only appropriate when the sole issue was the determination of the amount of loss, i.e. monetary valuation.

The subject insurance policy contained a standard boilerplate appraisal provision which provided, in relevant part, that either the insured or the insurance carrier may make a written demand for an appraisal if the parties cannot agree on "the amount of loss." As in most policies, the term "amount of loss" is not defined. *Weg and Myers, P.C.* argued that since there were disputed issues in the claim relating to scope and causation an appraisal was inappropriate. The insurance carrier subsequently made a motion to dismiss the insured's action and to compel the parties to submit to an appraisal under the terms and conditions of the insurance policy. In her decision, Judge Scheindlin held that while the parties could have expressly agreed to have an appraiser's determination include scope and coverage issues, absent such an agreement, the demand for appraisal was inappropriate due to questions of scope and causation that must first be resolved by the Court. This decision is significant in that the Court agreed with the policyholder that an insurance carrier cannot use the appraisal process as a shield to avoid litigation for establishing liability, but can only demand an appraisal when there is no dispute as to scope but only to the "amount of loss".

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In the past several years the volume of appraisals being demanded by insurance carriers has increased. While appraisals are frequently the preferred method of resolving damage disputes, it is apparent that appraisals are becoming the method carriers use to prevent policyholder(s) the right to have a judge and jury determine the outcome of their claims. This decision is very informative and sets forth significant parameters and limitations that insurance carriers are bound by in claims that involve appraisal.

The case was handled by *Weg and Myers, P.C.* partner William H. Parash, Esq.

For over forty years, *Weg and Myers, P.C.* has been engaged in the practice of insurance litigation representing policyholders from homeowners to Fortune 500 companies in suits against insurance companies on questions involving insurance coverage. In addition to insurance coverage litigation, our practice has expanded to include the representation of commercial property owners against third parties who are responsible for causing damage to its real property and the representation of public adjusters and insurance brokers. If you have any questions regarding this decision or otherwise, please feel free to call us concerning the appraisal process, the procedures utilized in an appraisal, or any other questions regarding insurance coverage and/or claims. We would welcome the opportunity to speak with you.

Very truly yours,

WEG AND MYERS, P.C.

By: *Dennis T. D'Antonio*

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