



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES  
LANSING

PATRICK M. MCPHARLIN  
DIRECTOR

# Memorandum

**DATE:** December 20, 2017  
**TO:** Interested Persons  
**FROM:** Patrick M. McPharlin, Director   
**SUBJECT:** Rescission of Bulletin 2006-07-INS

This Memorandum supersedes a previous memorandum regarding the rescission of Bulletin 2006-07-INS (issued June 7, 2017).

The Department of Insurance and Financial Services (DIFS) rescinded Bulletin 2006-07-INS effective June 7, 2017. Since that time, concerns have arisen regarding the effect of the rescission, and the Director has received reports of insurers refusing to submit to appraisal even when coverage is not in dispute. This Memorandum clarifies the intent of the Director in rescinding Bulletin 2006-07-INS.

Michigan law provides that: "Matters of an insurance policy's coverage are generally for a court and not for appraisers." *Auto-Owners Ins Co v Kwaiser*, 476 NW2d 467 at 469 (Mich App 1991). "Once an insurer admits that a loss is covered under its policy, a court is statutorily mandated to order the parties to participate in Michigan's statutory appraisal process, as the parties do not dispute liability and only are at odds about the amount of loss ... However, if liability is not admitted by an insurer, the trial court must first determine the issue of 'coverage' before ordering appraisal." *The D Boys LLC v Mid-Century Ins Co*, 644 Fed Appx 574 at 578 (CA6 2016).

There appears to be uncertainty among some insurers and policyholders as to the proper forum for claim resolution in circumstances where an insurer acknowledges that there is liability under the policy for some damages claimed by a policyholder, but there is disagreement concerning the amount of loss because the insurer believes that some of the damages claimed by the policyholder are not covered by the policy of insurance.

Under these circumstances, Michigan courts have held:

Under Michigan law, the court is to determine what is covered and what is not covered under the policy, and the appraisers then determine whether a particular item meets the definition provided by the Court. As the Michigan Court of Appeals explained, the appraisers are to decide "what particular articles or items of property are embraced within the general

description of the property they are to appraise for damages. The Court in *Kwaiser* further noted that the determination by appraisers of whether a particular item falls within the general description of the property they are to appraise “reflects the method of determining the loss rather than a matter of coverage.”

*Smith v State Farm*, 737 F Supp 2d 702 at 710 (ED Mich 2010) (internal citation omitted).

In rescinding Bulletin 2006-07-INS, the Director was not opining that insurers may refuse to submit to appraisal when liability under the insurance policy is not in dispute. On the contrary, the Director continues to consider participation in the appraisal process under Section 2833(1)(m) to be mandatory in those situations.

This Memorandum, therefore, serves as clarification that, when coverage is not in dispute, the issue of “actual cash value or amount of the loss” can be determined via the appraisal process as described in Section 2833(1)(m). Further, when a party demands an appraisal in accordance with Section 2833(1)(m), an insurer’s participation in the appraisal process is mandatory.

The Director will continue to enforce Section 2833(1)(m). Insurers that refuse to submit to the appraisal process could be subject to enforcement action.

Any questions regarding this memorandum should be directed to:

Department of Insurance and Financial Services  
Office of General Counsel  
517-284-8721  
[wohlfords@michigan.gov](mailto:wohlfords@michigan.gov)