

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA - WESTERN DIVISION

RISEN SON CHRISTIAN VILLAGE,

CASE NO: 1:20-CV-00007

Plaintiff,

v.

**REPLY IN SUPPORT OF MOTION
FOR APPOINTMENT OF UMPIRE**

THE CINCINNATI INSURANCE
COMPANY,

Defendant.

COME NOW Plaintiff Risen Son Christian Village (“Risen Son”) and in support of its Motion for an order for appointment of umpire in the above matter, states as follows:

The parties agree there is an impasse regarding the appointment of an umpire. This Court should appoint Justice Mike Streit as the umpire and bring the process of appointing an umpire to a prompt conclusion.

First, Justice Streit is competent, and Cincinnati admits that Justice Streit would be impartial. Having umpired for nearly ten years and serving as a judge for twenty-seven years (including ten years as a Justice on the Iowa’s Supreme Court), Justice Streit is experienced in handling hail losses involving windows and related ancillary costs resulting from damaged windows, the precise issues in this appraisal. (Phalen Declaration, Exhibit A, ¶¶ 5-6; Justice Mike Streit’s CV, Doc. No. 33-1). Before providing Mr. Brueggemann his proposed umpire panel, Mr. Phalen vetted and confirmed each of his proposed umpires were experienced and knowledgeable in handling hail losses involving windows. It is disingenuous to suggest that Mr. Phalen “confirmed” that Justice Streit was not competent to serve as an umpire, yet recommended him as an umpire anyway. (Phalen Declaration, Exhibit A, ¶¶ 5-6).

Further, it is unnecessary for the umpire to be an independent expert as suggested by Cincinnati. Both Cincinnati and Risen Son have designated their appraisers, both of whom are subject experts regarding assessing hail losses and appraisals. An umpire's role in an appraisal, however, is not to prove or disprove any damage or calculate the amount of the damage.

As the Court understands this process, the umpire's primary role is not to undertake a new, third appraisal, but to evaluate the appraisers' completed appraisals, and their differences. This is more akin to adjudicating competing experts' opinions than to preparing a third, independent opinion or appraisal. This role is aptly filled by an arbitrator with experience weighing parties' competing submissions, even when the subject matter is complex or technical. . . . Accordingly, given his extensive experience and unquestioned competency to fill such a role in this case, the Court grants Plaintiff's request to appoint the Honorable John P. Leopold (ret.) as umpire.

*PB Prop. Holdings, LLC v. Auto-Owners Ins. Co., 16-cv-1748-WJM-STV, 2018 WL 10879450, *2 (D. Colo. Jan. 3, 2018) (slip copy)* Thus, Justice Streit's distinguished career makes him an ideal umpire for this appraisal, and this Court should appoint Justice Streit.

Second, David Phalen appropriately determined that Mike Brueggemann's proposed umpires were not acceptable because the methodology used by Mike Brueggemann allows him to identify umpires that might be more favorable to his client and to indirectly learn how an umpire will rule on issues that might arise in the appraisal. (Declaration of David Phalen, Exhibit A, ¶¶ 7-9). Mr. Brueggemann should not be allowed to umpire shop in hopes of securing a more favorable result. Furthermore, Ken Abernathy, one of the two proposed umpires that Cincinnati advocates for appointment by this Court, was noncommittal on personally conducting a site inspection to view the damage to Risen Son's buildings. (Phalen Declaration, Exhibit A, ¶ 4). Cincinnati's bold suggestion that an umpire must be an independent expert in the loss at issue is undermined by its willingness to advocate for appointment of an umpire that was noncommittal about personally inspecting this large loss. Because Justice Streit is a competent and admittedly

impartial, this Court should appoint him as the umpire and reject Cincinnati's request to submit another panel of proposed umpires.¹

WHEREFORE, Risen Son moves the Court, pursuant to the terms of paragraph 5 of the above identified Policy, for the appointment of Justice Mike Streit as umpire in order to resolve the dispute between the parties.

Dated this 13th day of January 2021.

RISEN SON CHRISTIAN VILLAGE,
Plaintiff,

By: /s/ Matthew V. Rusch
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¹ Allowing submission of another panel of proposed umpires using Mr. Brueggemann's inappropriate methodology may unnecessarily drag out appointment of an umpire, particularly when Justice Streit is highly competent and impartial. Should this Court be inclined to allow Cincinnati to submit alternative umpires, Risen Son respectfully requests the same courtesy.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing *Reply in Support of Motion for Appointment of Umpire* was served on the 13th day of January, 2021, upon:

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By:

- U.S. Mail, postage prepaid
- Court's Electronic Filing System
- E-mail
- Facsimile Transmission
- Hand Delivery
- Overnight Courier
- Certified Mail, Return Receipt Requested

/s/ Matthew V. Rusch