

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN**

Boguslaw Bosak and Barbara Bosak,

Plaintiffs

v.

West Bend Mutual Insurance Company,

Defendant.

Case No. 2:25-cv-02030

**PLAINTIFFS' RESPONSE TO WEST BEND MUTUAL INSURANCE COMPANY'S
MOTION TO HAVE THE COURT APPOINT AN UMPIRE**

Plaintiffs, Boguslaw Bosak and Barbara Bosak ("Plaintiffs"), by counsel, hereby submit their Response to WEST BEND MUTUAL INSURANCE COMPANY'S MOTION TO HAVE THE COURT APPOINT AN UMPIRE, and respectfully state as follows:

I. INTRODUCTION

Defendant West Bend Mutual Insurance Company ("West Bend") asks the Court to appoint an umpire from a list of three individuals proposed by West Bend. While Plaintiffs do not oppose the appointment of an umpire, they object to the appointment of any of West Bend's proposed candidates because none are neutral or impartial as required by the policy. Instead, Plaintiffs respectfully request that the Court appoint a neutral umpire of the Court's own choosing or, alternatively, direct the parties to request that the American Arbitration Association ("AAA"), an established and widely recognized neutral administering organization, choose a neutral umpire.

II. ARGUMENT

The insurance policy at issue provides that, if the parties' appraisers cannot agree on an umpire, either party may request that a court appoint one. Critically, the appraisal provision

contemplates a fair and neutral process, requiring impartial decision-makers to resolve disputes regarding the amount of loss. An umpire who has significant and ongoing professional relationships with insurance companies undermines both the letter and the spirit of this provision.

West Bend proposes three individuals, Charles Gasser, Arlo Gough, Jr., and Kurt Ehlers to serve as umpire. But all three of these individuals work primarily for insurance carriers and earn a significant majority of their income by working and consulting for insurance companies. (Exhibit A – Declaration of Ben Smith). Moreover, as clearly evidenced by the resume attached to Defendant’s motion, Mr. Gough is currently employed by Nederveld, the company hired by West Bend to appraise the loss – *the very appraisal that Plaintiffs are challenging by way of this action*. In short, the propose umpires’ consistent pattern of work on behalf of insurers raises a serious and reasonable concern regarding impartiality, where all three nominees come from the same side of the industry. Appointing any of these individuals would create the appearance of bias and would undermine confidence in the appraisal process.

In contrast, Plaintiffs do not seek appointment of any specific individual they believe might be helpful to their cause and, as a result, do not present the Court with a list of three preferred candidates. Instead, Plaintiffs request that the Court either (a) appoint its own chosen umpire, or (b) direct the parties to request the AAA to appoint a neutral umpire. The American Arbitration Association is an independent, nationally recognized organization that specializes in administering neutral dispute resolution processes. AAA maintains established procedures to ensure neutrality, including conflict disclosures and vetting of arbitrators and umpires.

Accordingly, the Court’s appointment of its own chosen umpire, or an umpire selected by the AAA, would:

1. Help ensure the selection of a neutral and impartial umpire;

2. Avoid the appearance of bias or favoritism toward one side; and
3. Align with the policy's intent that appraisal disputes be resolved by impartial decision-makers.

Courts routinely look to neutral administering organizations, such as AAA, when impartiality is at issue. Plaintiffs' request is reasonable, practical, and consistent with the policy's appraisal framework.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny West Bend's request to appoint one of its proposed umpires and, instead, enter an order appointing an umpire chosen by the Court or directing the parties to request the appointment of a neutral umpire through the American Arbitration Association.

Dated: February 25, 2026

Respectfully Submitted,

/s/ Martin W. Jaszczuk

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically using the Court's CM/ECF system and has been served on all parties via email through CM/ECF on this 25 day of February 2026.

/s/ Martin W. Jaszczuk