

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1264**

Shardlow Townhomes Association,
Respondent,

vs.

Midwest Family Mutual Insurance Company,
Appellant.

**Filed April 10, 2023
Affirmed
Bryan, Judge**

Olmsted County District Court
File No. 55-CV-22-967

Justice Ericson Lindell, Greenstein Sellers PLLC, Minneapolis, Minnesota (for respondent)

Mark R. Bradford, Mark D. Covin, James C. Kovacs, Bassford Remele P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Segal, Chief Judge; and Bryan, Judge.

SYLLABUS

A property loss notice generated by a third-party insurance agent at the insured's direction and on the insured's behalf constitutes a "written notice of claim" sufficient to start the accrual of preaward interest under Minnesota Statutes section 549.09, subdivision 1(b) (2022).

OPINION

BRYAN, Judge

In this insurance-coverage appeal, appellant-insurer argues that the district court erred in granting summary judgment to respondent-insured when it concluded that a property loss notice generated by a third-party insurance agency was a “written notice of claim” for purposes of computing preaward interest under Minnesota Statutes section 549.09, subdivision 1(b). Because the property loss notice was sent to the insurer by a third-party insurance agency at the insured’s direction and on the insured’s behalf, we affirm.

FACTS

The parties do not dispute the following relevant facts. Respondent Shardlow Townhomes Association (Shardlow) obtained an insurance policy from appellant Midwest Family Mutual Insurance Company (Midwest Family) through the WA Group, an independent agency that sells insurance for various insurance companies. In June 2019, Shardlow’s properties suffered hail and wind damage from a storm. Shardlow reported the damage to the WA Group. On July 26, 2019, S.E., a claim specialist with the WA Group, generated a “property loss notice” regarding Shardlow’s claim and submitted it to Midwest Family. The property loss notice contained Shardlow’s policy number and contact information for both S.E. and Shardlow’s property manager. It also contained a brief “description of loss & damage”: “Hail and wind damaged building roofs, fascia, siding. Damage to ALL BUILDINGS in association. Insured had a contractor inspect for damage after storm. Contractor cited damage to roofing, siding, fascia, [indiscernible].” The notice

also indicated that Shardlow's property manager had reported the damage to S.E. In a subsequent email, S.E. informed Shardlow's property manager the property loss notice was submitted to Midwest Family, and S.E. offered to "call the insurance company on [Shardlow's] behalf" if Shardlow did not hear back from an adjuster promptly.

On July 29, 2019, a senior claim representative from Midwest Family sent Shardlow a letter "acknowledg[ing] receipt of a notice of claim" and providing a claim number. Midwest Family then retained an engineer to evaluate the damage. Based on the engineer's report, Midwest Family generated a repair estimate and paid Shardlow \$108,498.70. Shardlow engaged an adjuster and disputed the amount of the loss, claiming \$820,901.18 in a "sworn statement in proof of loss" sent to Midwest Family on October 7, 2020. The parties eventually participated in an appraisal, and in 2021, Midwest Family paid Shardlow \$620,128—the replacement cost value of the loss as determined by the appraisal panel.

The parties disagreed on the amount of preaward interest due. In February 2022, Shardlow initiated this lawsuit, seeking a declaratory judgment that it was entitled to preaward interest beginning July 26, 2019—the date that S.E. submitted the property loss notice to Midwest Family. Midwest Family agreed that Shardlow was entitled to preaward interest but argued that the interest accrued beginning October 7, 2020—the date that Shardlow sent Midwest Family its sworn proof of loss. Thus, Shardlow sought \$100,199.19 in preaward interest, while Midwest Family believed the proper amount was \$34,313.24. The parties brought cross motions for summary judgment, and the district court granted summary judgment in favor of Shardlow. Midwest Family appeals.

ISSUE

Does a property loss notice sent to the insurer by a third-party insurance agency at the insured's direction constitute a "written notice of claim" under Minnesota Statutes section 549.09, subdivision 1(b)?

ANALYSIS

The issue presented requires this court to apply section 549.09 in light of a recent precedential decision, *Elm Creek Courthome Ass'n, Inc. v. State Farm Fire & Cas. Co.*, 971 N.W.2d 731 (Minn. App. 2022), *rev. denied* (Minn. May 17, 2022). Midwest Family argues that under the holding in *Elm Creek*, only the claimant can submit a written notice of claim within the meaning of section 549.09. Applying that interpretation of *Elm Creek* to this case, Midwest Family urges us to conclude that the correct date for purposes of determining preaward interest is October 7, 2020, because the July 26, 2019 property loss notice was sent by a third-party insurance agency, not Shardlow. We conclude that this argument overstates the holding in *Elm Creek* and affirm the district court.¹

¹ To the extent that portions of Midwest Family's brief can be construed as a separate challenge to the sufficiency of the notice provided in the July 26, 2019 property loss notice, we remain unpersuaded to reverse. The July 26, 2019 property loss notice satisfies the sufficiency requirements established in *Blehr v. Anderson*, 955 N.W.2d 613, 618-22 (Minn. App. 2021), and applied in *Elm Creek*. Although the July 26, 2019 property loss notice did not contain a formal demand for a specific amount of money, the notice need not do so to satisfy section 549.09. *Blehr*, 955 N.W.2d at 622. The July 26, 2019 notice notified Midwest Family that Shardlow had suffered a loss and would be making a claim, permitting Midwest Family "to determine its potential liability from a generally recognized objective standard of measurement." *Blehr*, 955 N.W.2d at 622 (quotation omitted).

Subdivision 1(b) of section 549.09 provides that preaward interest “shall be computed . . . from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first.” Under this section, the party requesting preaward interest bears the burden of proving it is entitled to that interest. *Elm Creek*, 971 N.W.2d at 741 n.7. We apply a de novo standard of review to a decision on summary judgment when the facts are undisputed. *E.g.*, *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012); *see also Elm Creek*, 971 N.W.2d at 739 (“Preaward interest decisions are reviewed de novo.” (quotation omitted)).

In *Elm Creek*, this court addressed the issue of who may send an effective written notice of claim under the preaward interest statute. 971 N.W.2d at 739-41. In that case, upon learning of the insured’s loss, the insurer internally generated a “notice-of-loss report” and sent it to the insured. *Id.* at 735. The insured argued that this report was a written notice of claim sufficient to commence the accrual of preaward interest. *Id.* at 740. Our opinion addressed “whether a notice-of-loss report generated solely by an insurer constitutes a written notice of claim by the insured.” *Id.* This court held that it does not, reasoning that “a party responsible for issuing payment cannot announce a demand for payment to the party making the claim,” and that the insurer’s report was “simply acknowledging the initiation of a claim under its own insurance policy.” *Id.* at 740-41.

Midwest Family’s argument relies on a portion of the *Elm Creek* opinion in which this court stated that “only the claimant may demand payment from the noticed party under the plain meaning of written notice of claim. [Section 539.09] requires a written notice be sent from the claimant to the party from whom the claimant is demanding payment.” *Id.*

at 740 (quotation marks omitted). Midwest Family maintains that this statement means that only Shardlow may send a valid written notice of claim. However, this does not accurately capture the reasoning in the *Elm Creek* decision. As noted above, this court identified the specific issue in *Elm Creek* as whether a form generated solely by an insurer can constitute a written notice of claim to an insurer. 971 N.W.2d at 740. We did not identify the question presented in terms that focused on the claimant, and the holding in *Elm Creek* is properly limited by the facts of that case. More substantively, the *Elm Creek* holding relied on a discussion of the purpose of a written notice of claim: to put the insurer “reasonably on notice that the injured party was making a claim.” *Id.* at 740 (quotation omitted). Based on that discussion, this court concluded that a self-generated form cannot constitute notice because a party cannot notify itself of a claim. *Elm Creek*, 971 N.W.2d at 740-41.

We decline to extend *Elm Creek* in the manner requested by Midwest Family. Given the narrow issue presented, the particular facts, and the reasoning undertaken, the holding in *Elm Creek* is properly construed as concerning a self-generated statement of loss and is limited to those circumstances. It does not contemplate a notice generated by a third party or an insurance agency, as in this case.² Importantly, S.E. explained to Shardlow’s property manager that S.E. submitted the property loss notice to Midwest Family and offered to

² We note that Midwest Family does not dispute that the WA Group was not acting as a representative of Midwest Family when S.E. submitted the property loss notice. The parties, however, do dispute whether under agency law, S.E. was an “agent” of Shardlow. We need not address this issue because under the *Elm Creek* holding, it is sufficient to conclude that neither S.E. nor the WA Group was acting as an agent of Midwest Family.

contact Midwest Family on Shardlow's behalf to discuss the claimed loss. We also observe that, after receiving the property loss notice from the WA Group, Midwest Family responded directly to Shardlow,³ acknowledging "receipt of a notice of claim" and providing a claim number. For these reasons, *Elm Creek* does not compel reversal, and the July 26, 2019 property loss notice constitutes a written notice of claim under section 549.09, subdivision 1(b).

DECISION

The property loss notice in this case was not self-generated by Midwest Family, was sent to Midwest Family at Shardlow's direction, and was sufficient to apprise Midwest Family of its liability. Thus, the July 26, 2019 notice sent by the WA Group to Midwest Family was a written notice of claim for purposes of starting accrual of preaward interest.

Affirmed.

³ How an insurer responds to a purported notice is not necessarily dispositive of whether a written notice of claim was provided, and such a holding could "discourage insurers from communicating with their insureds." *See Elm Creek*, 971 N.W.2d at 741. However, the undisputed fact that Midwest Family responded by contacting the claimant directly and acknowledging "receipt of notice of claim" supports our conclusion that the July 26, 2019 notice was submitted on Shardlow's behalf.