



Alerts

Florida Court Holds That Paid Appraisal Award Cannot Be Confirmed

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Insights for Insurers

Most property insurance policies contain appraisal clauses. These clauses define a process for appraising the value of the insured's damaged property. If no agreement is reached on the value of the loss, either party may invoke appraisal. Each party selects an appraiser, and the appraisers are in turn to choose an umpire. If the appraisers cannot come to an agreement on an umpire, the court will appoint one. Agreement by any two of the three persons sets the value of the loss and is binding on the parties.

In *State Farm Florida Ins. Co. v. Silber*, — So.3d —, 2011 WL 4949815 (Fla. 4th DCA Oct. 19, 2011), the parties were unable to agree on the amount of the loss and the insureds invoked appraisal. The parties' appraisers were unable to agree on an umpire and the insureds filed a petition to the court for selection of a neutral umpire. Agreement was ultimately reached and the court thus did not appoint the umpire. Seven days after the insurer received the appraisal award, it sent the insureds a check for the award, less prior payments and the deductible.

The insureds moved to confirm the appraisal award and sought attorneys' fees under Fla. Stat. § 627.428(1) and statutory interest under Fla. Stat. § 627.70131(5)(a). The statutory interest statute requires a property insurer to pay or deny claims (or portions of claims) within 90 days after the insurer receives notice of a property insurance claim from an insured, unless the failure to pay is "beyond the control of the insurer which reasonably prevents such payment." Untimely payments are subject to statutory interest, which begins to accrue from the date the insurer receives notice of the claim. The statute, however, states that "failure to comply with [Fla. Stat. § 627.70131(5)(a)] shall not form the sole basis for a private cause of action."

Fla. Stat. § 627.428(1) generally provides for reasonable attorneys' fees upon the rendition of a judgment or decree against an insurer and in favor of any insured under the policy.

The trial court confirmed the appraisal award and awarded the insureds statutory interest because the insurer did not make payment until after 90 days from the time it received notice of the claim. The trial court also awarded attorneys' fees.

Florida's Fourth District Court of Appeal reversed. The court found that an appraisal award that has been paid can not be confirmed, and that interest is not recoverable because there was no independent cause of action for such an award. The attorneys' fees claim was also reversed, without discussion. Presumably, fees were not awarded because legal action was not necessary to compel appraisal and was not instrumental in otherwise securing payment.

Practice Note

All efforts should be made to avoid legal action to compel appraisal and to ensure that appraisal awards are timely paid in order to avoid a claim for interest and attorney fees.

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