



## Alerts

### Florida Insureds Relieved From Participating in Appraisal Where Not Notified of Mediation Process

June 16, 2011

*Insurance Coverage Alert*

In *Universal Property and Casualty Insurance Company v. Armando Colosimo and Patty Colosimo*, No. 3D11-180 (Fla. 3rd DCA May 25, 2011), Florida's Third District Court of Appeals was called upon to decide whether first-party claimants might be compelled to participate in an appraisal where the insurer failed to notify them of their right to participate in the mediation program under Fla. Stat. § 627.7015(2).

The insured homeowners' insurance claim arose out of reported water damages to their kitchen. The insurer conceded that the claim was covered under the insurance policy. Subsequently, a dispute as to the amount of loss arose, followed by a demand for appraisal by the insureds. After the insureds formally invoked the appraisal process and named their appraiser, the insurer also named its own appraiser and the claim proceeded to the appraisal stage. Consequently, although months had passed, the appraisers were unable to reach an agreement on the amount of loss and on an umpire as set forth in the policy. The insureds sued the insurer for breach of contract and breach of implied covenant of good faith and fair dealing. The insurer then sought a court-appointed neutral umpire and requested a stay of the litigation so that the matter could proceed in appraisal. The trial court denied those requests on the basis that the insurer had failed to comply with Fla. Stat. § 627.7015 (2009), which provides in pertinent part:

(2) At the time a first-party claim within the scope of this section is filed, the insurer shall notify all first-party claimants of their right to participate in the mediation program under this section.

...

(7) If the insurer fails to comply with subsection (2) by failing to notify a first-party claimant of its right to participate in the mediation program under this section or if the insurer requests the mediation, and the mediation results are rejected by either party, the insured shall not be required to submit to or participate in any contractual loss appraisal process of the property loss damage as a precondition to legal action for breach of contract against the insurer for its failure to pay the policyholder's claims covered by the policy.

On appeal, the appellate court noted that Fla. Admin. Code Ann. r. 69J-166.031 implements and reinforced this requirement.

The insurer contended that: (1) the insureds were already aware of their right to mediation due to a prior claim and/or the language of the policy; (2) notification was provided to the insureds of the right to mediation via written correspondence, albeit not within five days as required by Rule 69J-166.031; (3) because the insureds voluntarily commenced the appraisal process prior to suit, they were bound to participate in the process through its conclusion.

The appellate court rejected the insurer's arguments, noting that no case law was presented to support them. The court cited case law explaining that when a statute that is clear and unambiguous on its face, it requires no construction and should be applied in a manner consistent with its plain meaning. The court further stated:

Here, although the Insureds initiated the appraisal process, they were unsatisfied with the alleged lack of progress, and decided to pursue litigation instead. There is no language in the statute to indicate that an insured's commencement or



exploration of a contractual appraisal process irrevocably binds that party through the conclusion of the appraisal. Likewise, there is nothing either in the statute, or in case law, demonstrating that the commencement of the appraisal process relieves the insurer of its burden of notification. Were we to follow Universal's theory of interpretation, we would be contravening the purpose of the statute as an insurance carrier could, by withholding notification, trap an uninformed insured into the very same potentially lengthy and costly appraisal process the statute was meant to guard against. ...

### **Practice Note**

As a practice note for first-party property defense practitioners involved in any pending lawsuit where the insurer desires to proceed in appraisal rather than in litigation, it is essential to confirm that the insurer provided proper notification of the right to mediate the claim within five days of the time the claim was first reported.

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*