



Alerts

Florida Appellate Court Addresses Preconditions to Triggering of Insurance Policy's Appraisal Clause

March 10, 2011

Insurance Coverage Alert

In *Citizens Prop. Ins. Corp. v. Mango Hill Condo. Ass'n 12 Inc.*, No. 3D10-2014 (Fla. 3d DCA Feb. 9, 2011), the Florida Third District Court of Appeal was called upon to decide whether an insured can trigger an insurance policy's appraisal provisions, even where the insurer claimed that it had not received the documents and information the insured was required to provide under the policy, and where there was not yet any disagreement as to the value of the loss. Under the policy, if there was a disagreement between the insured and the insurer as to the value of the damage, then each party was to select an appraiser, and the two chosen appraisers were to select a third (an umpire), who was to decide the damages in an appraisal.

The court sustained the insurer's objection to the appraisal. It ruled that a court must first determine if the insured has complied with the post-loss obligation to provide full disclosure to the insurer before the insured may invoke the appraisal provisions of the policy. In reaching this result, the court distinguished its prior holding in *Sunshine State Ins. Co. v. Rawlins*, 34 So. 3d 753 (Fla. 3d DCA 2010). In that case, the court opined that "putting the issue of coverage first before arbitration [or appraisal] in every case might have adverse effects on the expeditious, out of court [sic] disposition of litigation, which is the reason arbitration [or appraisal] is a favored remedy." The *Rawlins* court ultimately granted the lower court discretion to decide "the order in which the issues of damages and coverage are to be determined by arbitration and the court." Hence, the trial court was permitted to decide whether "to move forward on a dual track basis" when a case involved defenses pertaining to both coverage and challenges to the amount of an allegedly covered loss.

More recently, the court had required a preliminary ruling as to the ripeness of an appraisal before a trial court could exercise its discretion to order an appraisal. *Citizens Prop. Ins. Corp. v. Galeria Villas Condo. Ass'n*, 48 So. 3d 188 (Fla. 3d DCA 2010) (requiring an initial determination that appraisal is ripe); *Citizens Prop. Ins. Corp. v. Maytin*, No. 3D10-693, 2010 WL 5348554 (Fla. 3d DCA Dec. 29, 2010) (citing the Florida Fourth District Court of Appeal in *Sunshine State Ins. v. Corridori*, 28 So. 3d 129, 131 (Fla. 4th DCA 2010) (confirming the necessity of an evidentiary hearing when there is a dispute as to whether the insured has satisfied the policy's post-loss requirements).

Following that precedent, the *Mango Hill Condo. Ass'n* court reaffirmed the *Galeria Villas* mandate that the trial court must make an initial preliminary determination "that a demand for appraisal is ripe" before exercising its discretion as to the timing of considering appraisal and coverage issues. The court explained:

[t]he discretion to determine the order in which coverage and loss issues are considered does not, however, override a preliminary determination as to whether an arbitrable issue exists. Before arbitration (or appraisal) under an insurance policy such as the one at issue here [a property insurance policy] may be compelled, a disagreement, or "arbitrable issue," must be demonstrated to exist.

The court continued:

No disagreement or arbitrable issue exists unless "some meaningful exchange of information sufficient for each party to arrive at a conclusion" has taken place. Thus, an "insured must comply with all of the policy's post-loss obligations before



the appraisal clause is triggered.”

Ultimately, the court reversed the lower court’s order submitting the matter to appraisal and remanded with instructions that the trial court conduct an evidentiary hearing on the issue of post-loss compliance.

Practice Note

It is essential that first-party property defense practitioners set forth affirmative defenses describing any post-loss obligations that have not been properly complied with by an insured. Should a trial court find during an evidentiary hearing that an insured has not properly complied with an insurance policy’s post-loss obligations, it would be prudent for defense counsel to seek dismissal of the case in its entirety for failure to comply with conditions precedent to suit.

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.