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FLORIDA SUPREME COURT WATCH: SANDERS V. STATE FARM

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By: Samuel Gilot

On Thursday, September 2, 2021, the Florida Supreme Court heard oral arguments on the Sanders vs. State Farm case, which may decide whether a public adjuster entitled to a contingency fee from an appraisal award qualifies as a "disinterested" appraiser as a matter of law.

At the heart of the dispute is an order issued by the Miami-Dade County trial court allowing the insureds' agent/public adjuster to act as their "disinterested" appraiser. Following an appeal by State Farm, Florida's Third District Court of Appeal ("DCA") reversed the trial court. It ruled that a public adjuster in a contractual agent-principal relationship with the insureds cannot be a disinterested appraiser as a matter of law.

The insureds after that moved for a rehearing and, on April 2020, the Third DCA withdrew their original opinion and denied State Farm's request to preclude the public adjuster from serving as an appraiser. This meant the trial court's order stood, and a public adjuster entitled to a contingency fee would be permitted to act as the insureds' "disinterested" appraiser. Given the conflict with this opinion and those issued by the Fourth and Fifth Districts, the Third DCA elevated the issue to the Florida Supreme Court.

In brief to the Court, the insureds' counsel argued that their clients, like many insureds, cannot afford to retain a separate appraiser on an hourly or flat fee basis. At oral arguments, the insureds' counsel focused on the idea that no appraiser can be disinterested since appraisers have a financial incentive to get the best financial outcome for their client, no matter the fee structure. Counsel argued that appraisers are incentivized on both sides to maximize returns to continue to get work. This argument sparked a lively debate with the Justices and the insureds' counsel on the idea of bias and the definition of "disinterested." State Farm's counsel argued that any financial burden an insured may bear could be resolved by their attorney, who can advance the cost of litigation, just as attorneys do for filing fees. State Farm's counsel also argued that if there is a financial burden on an insured that prevents them from retaining an appraiser, particularly before retaining an attorney, the Legislature should address that issue. The Court would have to, in essence, rewrite the insurance contract and remove the word "disinterested" for the insureds to win. State Farm's counsel argued that the agreement is unambiguous; furthermore, it is appropriate for both appraisers to come to the appraisal process without a vested financial stake in the outcome.

The Justices questioned whether they should be addressing this issue since the underlying case has since been resolved. Also, the Justices asked if this appeal process is the appropriate vehicle to address the issue at hand since the Third DCA was bound by the Writ of Certiorari standard, which led to the Third DCA reversing their original decision. The Justices stated that their role might only be to review the correctness of the decision made by the Third DCA. If that's the case, the Court may ultimately side with the Third DCA's decision to uphold the lower Court's order, even though they may have ruled differently if this case was raised under a different standard of review.

Should you have any questions or concerns about your policy or the appraisal process, please do not hesitate to contact Michael J. Higer of Berger Singerman's Insurance Team.

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