BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

CLIENT ALERT - IT'S COMPLICATED: WELCOME TO WILD WORLD OF APPRAISALS

March 8, 2022

By: Samuel Gilot

In theory, the appraisal process is designed to be a quicker and more cost-effective alternative to litigation in which the insured and the insurance company get down to the crux of most insurance disputes: the amount of loss. When money is involved, things are never so simple. Two recent decisions highlight the continuing appraisal quagmire.

First, a Florida appellate court recently analyzed whether the insurer's denial of coverage as a whole for a "supplemental claim" precludes an insured from invoking appraisal. In *Heritage Property & Casualty Ins. Co. vs. Veranda I at Heritage Links Ass'n*, the insurance company argued that because it had fully adjusted the insured's initial roof claim and wholly denied the insured's supplemental window and door claim, the insured could not invoke appraisal. The appeals court opined that the insurance company could consider coverage for the insured's supplemental claim separate from the initial claim. This decision allowed the insurance company to avoid appraisal when it previously acknowledged coverage for the loss. *Heritage Prop. & Cas. Ins. Co. v. Veranda I at Heritage Links Ass'n*, 2022 WL 568317 (Fla. 2d DCA Feb. 25, 2022). This court's decision appears to be a departure from the Supreme Court of Florida's landmark decision in *Johnson v. Nationwide Mutual Ins. Co.*, 828 So. 2d 1021 (Fla. 2002) ("causation is a coverage question for the court when an insurer wholly denies that there is a covered loss and an amount-of-loss question for the appraisal panel when an insurer admits that there is covered loss, the amount of which is disputed.") and other courts applying the analysis in *Johnson* by treating a supplemental claim differently than an initial claim.

On the other end of the spectrum, a federal court sitting in Miami rejected an insurer's attempt to vacate an appraisal award. In *Biscayne Beach Club Condo. Ass'n*, v. *Westchester Surplus Lines Ins. Co*., the district court denied the insurance company's renewed motion to vacate the appraisal award. In a decision which discussed at length the limited basis for challenging an appraisal award, the court rejected the insurance company's belated challenge to the impartiality of the insured's appraiser **after** the appraisal panel issued its award. The court found the insurance company's silence on this issue during the entirety of the appraisal process to be deafening. Also notably, this court recognized confirmation of an appraisal award to be the acceptable procedure even though many courts have required an insured to pursue a breach of contract claim when an insurance company refuses to pay an otherwise valid appraisal award.

These decisions illustrate that the road to appraisal and even after an award is issued remains a rocky proposition that requires knowledge, experience, and expertise to navigate successfully.

If you have any questions about these decisions or the appraisal process, please contact Michael J. Higer of Berger Singerman's Insurance Team.

Related Practices

Insurance

Related Practice Teams

Dispute Resolution

Related Team Member(s)

Samuel Gilot

Topics

Insurance Appraisals

Appraisals