State Farm v. Sanders

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Court: Supreme Court of Florida
Case Number: SC20-596

In its brief, UP tackles the issue of appraisal. Insurance companies design and control the insurance policy form and the claim process. Property insurance carriers typically, as an element of exercising that control, place appraisal provisions in their policies to resolve disputes over the amount of loss. More recently, insurers have required that party-appointed appraisers be“independent,” “impartial,” or “disinterested.” Such a provision exists in the instant case. As is typical, the appraisal provision in this case makes no reference to the type of authorized compensation a party- appointed appraiser can be paid. Nor does the appraisal provision disallow use of a public adjuster as an appraiser. The absence of such terms is striking given that Florida has over 25 years of uninterrupted case law allowing public adjusters to serve as the appraiser for the insured who hired him or her. Florida’s historical treatment of this issue is consistent with authorities from across the country. Many, if not most of these authorities, allow an insured’s public adjuster to serve as their party appointed appraiser. The existence of this wide swath of authority is, definitionally, under Florida law, ambiguity that necessarily has to be construed against the insurer as drafter of the policy form.

The policy language in the instant case makes the Insured“responsible” for the payment of their party appraiser and makes noreference to prohibited types of compensation. In contrast to the absence of terms specifying the methods of compensation of the party appraisers, the policy in this case has very specific limitations and specifications on the compensation of the neutral umpire. If State Farm wanted similar limitations to apply to party appraisers, it should have specified those limitations in its policy. The term“disinterested” and other similar analogues found in property policiesshould not be interpreted to disallow the appointment of any appraiser unless there can be no question but that the appraiser can exercise no independent judgment.

State Farm is advancing a self-serving view that policyholders should only be able to appoint a party

appraiser if they can afford to pay one by the hour. Yet, the policy they drafted does not say that. Hourly compensation does not guarantee neutrality. An appraiser hired by the hour by any person, lawyer, or insurance company is definitionally suspectable to having their judgment influenced by the desire to get future work. No one can seriously argue that an appraiser repeatedly hired by an insurer was completely free of some level of interestedness favoring the insurer. This possibility has never been enough to disqualify an appraiser under Florida law unless the appraiser, for some legal reason, in incapable of exercising independent judgment. The primary neutrality element in the appraisal process is the umpire not the appraisers appointed by the parties.

The truth of the matter is that if State Farm wanted a truly neutral dispute resolution process, it could have one: Our judicial system where detailed rules of neutrality exist. But that is not the process State Farm specified in the policy it sold to Mr. and Mrs. Sanders.

This brief was authored pro bono by R. Hugh Lumpkin, Matthew B. Weaver, and Garrett Nemeroff of Reed Smith and Mark A. Boyle, Molly C. Brockmeyer, and E. Alysse Vautier of Boyle, Leonard & Anderson P.A.