

Not Our Territory: 11th Circuit Dismisses Hurricane Damage Appraisal Order for Lack of Jurisdiction

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The hurdles policyholders have faced with the appraisal process in Florida are far from over. In the past, many Florida courts have limited the scope for appraisal, strictly construing the policy provision against the policyholder. Yet, recently, in [Positano Place at Naples I Condominium Association, Inc., et al. v. Empire Indemnity Insurance Company](#), the Eleventh Circuit dismissed an insurer's appeal of the district court's ruling compelling appraisal and a stay of a pending litigation.

In *Positano Place at Naples I Condominium Association, Inc., et al. v. Empire Indemnity Insurance Company*, the policyholder Positano filed a claim for property insurance benefits under the policy as a result of damage to the property from Hurricane Irma in 2017. After investigating the claim, Empire found that there was damage to only three of the five properties covered under the policy and disputed the amount of loss.

Positano sought to invoke the appraisal provision of the policy. The policy's appraisal provision allowed the parties "to request an appraisal of the loss, in writing" if the parties disagreed on the value of the property. However, when Empire failed to respond to the appraisal request, Positano filed suit in Florida state court. Empire removed the case to federal court based on diversity jurisdiction.

Positano then moved to compel appraisal and stay the court proceeding until the disputed value in property was resolved. The magistrate recommended that the district court grant Positano's motion, and the district court ordered appraisal and stayed the proceedings pending appraisal. Empire appealed the district court's order to the Eleventh Circuit. The Eleventh Circuit dismissed insurer's appeal on the premise that it lacked appellate jurisdiction. Specifically, the Eleventh Circuit found that (i) the district court's order was not a final order appealable under 28 U.S.C. § 1291; (ii) the "district court's order compelling appraisal and staying the proceedings pending appraisal is an interlocutory order that is not immediately appealable under 28 U.S.C. § 1292(a)(1);" and (iii) the order compelling appraisal and staying action was also "not immediately appealable under the Federal Arbitration Act[("FAA")], which governs the appealability of an order compelling arbitration, having considered Empire's argument equating an order compelling appraisal to an order compelling arbitration under the FAA.

There are several takeaways from this case that policyholders, with first-party property claims involving loss valuation, should keep in mind when dealing with recalcitrant insurance companies. First, policyholders, as was the case here, should retain coverage counsel early in the claim-handling process and aggressively seek coverage. Second, policyholders should carefully protect themselves both through litigation (i.e., filing of suit here), as well as use of policy provisions in litigation that inure to their benefit (i.e., motion to compel appraisal), which could streamline and resolve the dispute in a cost-effective manner. Last but not least, policyholders should be mindful of insurers' procedural gamesmanship, both at the trial and appellate court level to prevent insurers from using the rules of procedures as roadblocks to avoid meeting their policy-based coverage obligations.

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