MARCH 29, 2024

Eleventh Circuit reverses dismissal of class action disputing State Farm's calculation of "actual cash value," holding required appraisal process not a condition precedent to suit

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We have written about class actions filed against State Farm and other carriers alleging systematic undervaluation of damaged vehicles. One of our articles focused on a decision by the Middle District of Georgia dismissing putative class claims against State Farm based on the class representative's failure to comply with an "appraisal" process – a process required by the policy in the event the insured disputed State Farm's initial calculation of the "actual cash value" of the covered vehicle. *See* Middle District of Georgia dismisses putative class action against State Farm for failure to (ktslaw.com). But the Eleventh Circuit recently reversed that decision, finding that the policy did not require the policyholder to provide notice of its disagreement with State Farm regarding the vehicle's valuation before filing suit. *Cudd v. State Farm Mut. Auto. Ins. Co.*, No. 22-13916, 2024 WL 65998 (11th Cir. Jan. 5, 2024).

The district court's decision focused on language in the policy stating "' *[i]f* there is disagreement [between State Farm and the insured] as to the actual cash value of the covered vehicle, *then* the disagreement will be resolved by appraisal upon written request' of either party." *Cudd v. State Farm Mut. Auto. Ins. Co.*, 637 F. Supp. 3d 1336, 1340 (M.D. Ga. 2022) (emphasis in original, citation omitted). In the district court's view, the insured " simply chose to ignore the appraisal provision in the policy as if it was superfluous." *Id.* Because the policy mandated that "'[l]egal action may not be brought against [State Farm] until there has been full compliance with all the provisions of this policy,'" the insured's "failure to notify State Farm of the disagreement and to comply with the appraisal provision makes this action premature." *Id.* (citation omitted).

On appeal, the Eleventh Circuit agreed "that the Policy's appraisal provision is valid and enforceable." 2024 WL 65998, at *3. The Court of Appeals further rejected the insured's argument that the appraisal is "unenforceable" under Georgia law." *Id.* (citing *McGowan v. Progressive Preferred Ins. Co.*, 637 S.E.2d 27, 29 (Ga. 2006)).

But the Eleventh Circuit disagreed with the district court's conclusion the appraisal process constituted a "condition precedent" to suit. *Id.* at *4. In the appellate court's view, "[n]othing in the Policy's appraisal provision language requires the policyholder to notify State Farm if he or she disagrees with its initial valuation of a totaled vehicle's actual cash value before filing suit." *Id.* Because the policy was "silent on when and how a policyholder is to notify State Farm of an actual-cash-value dispute," the insured "did not violate the Policy simply because he did not notify State Farm of an actual-cash-value dispute before commencing suit." *Id.*

According to the Eleventh Circuit, compliance with the appraisal process to resolve an actual value

dispute only becomes "mandatory" after being "requested in writing by either party." *Id.* Because State Farm had "requested appraisal in writing" after filing of the suit, "the parties must still participate in the Policy's appraisal process now that State Farm has invoked that provision." *Id.* But that did not mean the suit should have been dismissed, because "appraisal is not a condition precedent to suit." *Id.* Presumably, the results of the appraisal would constitute relevant evidence in the litigation that the Court of Appeals had ordered to proceed.

The Eleventh Circuit did, however, affirm dismissal of the insured's unjust enrichment claim, because a written contract covered the subject matter of the parties' dispute. *Id.*