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Middle District of Georgia dismisses putative class action against State Farm for failure to comply with "appraisal" condition precedent of insurance policy

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We have written about class actions filed against State Farm and other carriers alleging systematic undervaluation of damaged vehicles. *See, e.g., Eleventh Circuit emphasizes the abuse of discretion standard in affirming the denial of certification of a "diminution in value" class against State Farm* (August 31, 2022). In a recent such case, *Cudd v. State Farm Mut. Auto. Ins. Co.*, No. 4:21-CV-217 (CDL), 2022 WL 16541166 (M.D. Ga. Oct. 28, 2022), Judge Clay Land of the Middle District of Georgia dismissed putative class claims against State Farm based on the class representative's failure to comply with an "appraisal" process required by the policy if the insured disputed State Farm's initial calculation of the "actual cash value" of the covered vehicle.

State Farm insured Jarrett Cudd under a standard automobile insurance policy that provided for the payment of a vehicle's "actual cash value" where an insured vehicle had been totaled. The policy provided that the insured and State Farm "'must agree upon the actual cash value'" and that "'[i]f there is disagreement as to the actual cash value . . . , then the disagreement will be resolved by appraisal upon written request' by either party." 2022 WL 16541166, at *1 (citation omitted). The appraisal process involved each side choosing an appraiser who would then select a third appraiser. *Id*. A written appraisal "'signed by any two appraisers'" that contains an "explanation of how they arrived at their appraisal'" would be binding on both the insured and State Farm. *Id*. (citation omitted). Finally, the policy provided that legal action "'may not be brought against" State Farm until after "there has been full compliance with all provisions of this policy." *Id*. (citations omitted).

After State Farm declared Cudd's vehicle a total loss, State Farm's vendor provided an initial assessment of the vehicle's "actual cash value." Cudd then filed a class action "without notifying State Farm that he disagreed with State Farm's calculation of the actual cash value of his vehicle, without any attempt to reach an agreement as to the actual cash value, and without providing State Farm with an opportunity to request an appraisal." *Id*. at *2. State Farm even asked Cudd after he filed suit to "pursue the appraisal process provided in the policy, but Cudd refused." *Id*.

Judge Land framed the issue as "whether providing State Farm with a meaningful opportunity to invoke the appraisal process before filing suit is a condition precedent to filing this action." *Id*. Reviewing Georgia statutes and authorities governing contractual conditions precedent, the *Cudd* court easily concluded that compliance with the appraisal process constituted a condition precedent to bringing any legal action. *See id*. at *2-3. Thus, the district court dismissed the class action complaint without prejudice to re-filing, after Cudd complied with the appraisal process. *See id*. at *3 ("Because the appraisal provision clearly applies and because Cudd never gave State Farm an opportunity to invoke

those provisions, his action is premature and must be dismissed.").