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ISSUE

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## ARGUMENT

AN APPRAISAL CLAUSE REMAINS BINDING AND ENFORCEABLE BECAUSE OF MUTUALITY OF OBLIGATION EVEN WHERE THE INSURANCE POLICY RESERVED THE RIGHT TO CONTEST THE EXISTENCE OF COVERAGE. BINDING THE PARTIES ONLY TO THE ISSUE OF LOSS AND LEAVING COVERAGE DISPUTES FOR RESOLUTION BY THE COURTS DOES NOT RENDER AN APPRAISAL PROVISION UNENFORCEABLE.

Robles' position requires this court to ignore the settled law regarding interpretation of contracts and asks this Court to indulge in a convoluted interpretation of the arbitration provision in the Harco policy. Robles takes a single sentence out of context and deliberately ignores the specific terms and conditions of the immediately preceding sentence in the arbitration provision.

When the terms of the arbitration provision are considered in a reasonable and harmonious manner which gives effect to all parts of the provision, there is no doubt that the "insurer may not demand an appraisal while at the same time denying coverage . . . rather, the language is intended merely to ensure that an insurer is not deemed to have waived any coverage defense it might have when it participates in an appraisal requested by the insured. Such a construction is . . . most consistent with the public policy favoring arbitration as a means of dispute resolution; and with the principle that ambiguities regarding the scope of arbitration should be resolved in favor of arbitration." *Scottsdale Insurance Co. v. DiSalvo*, 21 Fla. L. Weekly D129, 130 (Fla. 1st DCA December 28, 1995). As Judge

Cope concluded in the dissenting opinion in the case of *American Reliance Ins. v. Village Homes at Country Walk*, 632 So.2d 106, 108 (Fla. 3d DCA 1994) (which case served as precedent for the Third District's decision in the instant case), the final sentence of the appraisal provision must be read in conjunction with the remainder of the provision in a manner which gives a reasonable and effective meaning. This can only be accomplished if the final sentence is interpreted as merely clarifying that if the insurance carrier participates in an appraisal in response to a demand by the insured that the carrier does not waive any coverage defense it might have. With this interpretation, all parts of the provision are harmonized and the appraisal provision does not lack in mutuality of obligation. *See also, Scottsdale Ins. Co. v. DiSalvo, supra*, and cases cited therein; *Hanover Fire Ins. Co. v. Lewis*, 10 S. 297 (Fla. 1891).

It is respectfully suggested that this court should disapprove the Third District's decision in the instant case and adopt the position stated in the *Scottsdale Ins. Co. v. DiSalvo*, case, *supra*:

We construe the language of the appraisal provision as intended to permit either party to request an appraisal, the results of which will be binding as to the value of the property and the amount of loss. Should the insurer make the request, it thereby waives any coverage defense it might otherwise have had. However, if the insured requests appraisal, the insurer does not, simply by participating in the appraisal, waive coverage defenses it might have -- while the results of the appraisal will be binding on the issues of value of property and amount of loss, the insurer may still litigate the issue of coverage. Based upon this construction of the language, we conclude, further, that the provision is not lacking in mutuality of obligation, but, rather, is valid and enforceable.

CONCLUSION

It is respectfully requested that this Honorable Court should reverse the decision of the Florida Third District Court of Appeal in the instance case, and remand this action with directions to affirm the summary final judgment which was entered by the trial court.

Respectfully submitted,



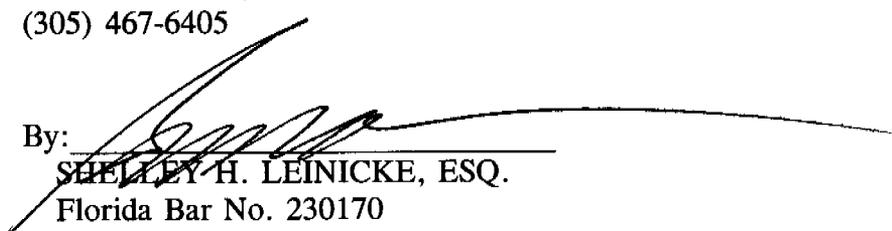
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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 3rd day of April, 1996, to: Carlos Lidsky, Esq., Carlos Lidsky, P.A., 145 E. 49th Street, Hialeah, FL 33013, Attorneys for Appellant; Leo Bueno, Esq., Leo Bueno, Attorney, P.A., Post Office Box 440545, Miami, FL 33144-0545, Attorneys for Appellant; Manuel Morales, Jr., Esq., Manuel R. Morales, Jr., P.A., Biscayne Building, Ste. 711, 19 West Flagler St., Miami, Florida 33130, Attorney for Alejandro Robles; Diane H. Tutt, Esq., Diane H. Tutt, P.A., 7900 Peters Road, Suite B-100, Plantation, Florida 333324, Co-Counsel for Respondent.

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