

IN THE SUPREME COURT OF FLORIDA

ALLSTATE INSURANCE COMPANY

CASE NO. SC01-1459

Petitioner,

Third District

CASE NO. 3D00-843

vs.

LUIS SUAREZ and LILIA SUAREZ,

Respondents

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**REPLY BRIEF OF PETITIONER**

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## ARGUMENT

### THE TRIAL COURT ERRED IN FAILING TO VACATE THE ARBITRATION AWARD SINCE THE ARBITRATION HEARING WAS CONDUCTED IN A MANNER CONTRARY TO THE PROVISIONS OF THE FLORIDA ARBITRATION CODE WITH THE RESULT THAT ALLSTATE'S RIGHTS WERE SUBSTANTIALLY PREJUDICED

In their Answer Brief, Respondents miss the point. Notwithstanding the language in the ALLSTATE policy which appears to limit the issues submitted to the appraisers/arbitrators to the amount of loss, this Court's decision in *State Farm Fire & Casualty Co. v. Licea*, 685 So.2d 1285 (Fla. 1996) indicates that the appraisers/arbitrators determine not only the amount of loss but whether the loss was caused by a covered peril or a cause not covered.

As such, the traditional distinction between appraisal (adjudging the amount of loss only) and arbitration (adjudging causation and amount of loss) have been eradicated, and the most reasonable interpretation of the appraisal/arbitration clause is that it provides for arbitration. Accordingly, we submit that *Hoenstine v. State Farm Fire & Casualty Company*, 736 So.2d 761 (Fla. 5th DCA 1999) and *Florida Farm Bureau Casualty Ins. Co. v. Sheaffer*, 687 So.2d 1331 (Fla. 1st DCA 1997), in applying the **Arbitration Code**, reach the proper result.

The Third District's decision in this case, *Allstate Insurance Co. v. Suarez*, 786 So.2d 745 (Fla. 3rd DCA 2001) is an anomaly. Prior to *Allstate v. Suarez*, Florida courts, including the Third District, uniformly treated appraisal provisions as arbitration clauses. *E.g., Preferred Mutual Ins. Co. v. Martinez*, 643 So.2d 1101, 1102 (Fla. 3rd DCA 1994) (citing *U.S. Fire Insurance Co. v. Franko*, 443 So.2d 170

(Fla. 1st DCA 1983) and *Intercostal Ventures Corp. v. Safeco Ins. Company of America*, 540 So.2d 162 (Fla. 4th DCA 1989). *See also*, *Fields v. State Farm Fire & Casualty Co.*, 899 F. Supp. 613 (S.D. Fla. 1995) *aff'd Childs v. State Farm Fire & Casualty Co.*, 158 F.3d 588 (11th Cir. 1998) (under Florida law, appraisal clause in property and business interruption insurance policy was enforceable arbitration provision and subject to **Florida Arbitration Code**).

The decisions of Florida courts interpreting the appraisal provision as an arbitration provision subject to the **Arbitration Code** are hardly unique. Other jurisdictions have held at least some statutory provisions relating to arbitration apply to appraisal agreements. *Wailua Associates v. Aetna Casualty & Surety Co.*, 904 F. Supp.1142 (D. Ha. 1995); *Meineke v. Twins City Fire Ins. Co.*, 181 Ariz. 576, 892 P. 2d. 1365 (Ct. App. Div. 1 1994); *Middlesex Mutual Assur. Co. v. Clinton*, 38 Conn. App. 555, 662 A.2d 19 (1995). It is also interesting to note that **Couch On Insurance, Third Edition, Section 209:16**, entitled “Applicability Of Arbitration Statute Policy Provisions For Appraisals” n.4, lists two Third District decisions for the proposition that courts have applied arbitration code provisions to appraisal clauses. *See, American Reliance Ins. Co. v. Village Homes at Country Walk*, 632 So.2d 106 (Fla. 3rd DCA 1994), overruled on other grounds by *Paradise Plaza Condominium Ass’n, Inc. v. Reinsurance Corp. of New York*, 685 So.2d 937 (Fla. 3rd DCA 1996).

Indeed, the Third District’s recent decision in *Suarez*, appears to conflict with the court’s earlier *en banc* decision in *United States Fidelity & Guarantee Co. v. Romay*, 744 So.2d 467 (Fla. 3rd DCA 1999). In *Romay* the Third District applied

**Florida Arbitration Code** provisions in determining that insureds were required to comply with all post-loss obligations before compelling appraisal under property insurance policies.

In sum, the most reasonable interpretation of the appraisal provision in question, and the one that has been adopted by the majority of Florida courts that have addressed the issue, is that the appraisal provision is subject to the **Florida Arbitration Code**. As such, and since the **Code** provisions were not adhered to below, the arbitration award and judgment in favor of Respondents should be reversed.

#### CONCLUSION

As set forth above, the Court should quash the Third District's opinion and approve *Hoestine v. State Farm Fire & Casualty Co.*, and *Florida Farm Bureau Casualty Ins. Co. v. Sheaffer*. The case should then be remanded to the trial court with directions that the Final Judgment be vacated and the appraisal/arbitration be conducted in accordance with the **Florida Arbitration Code**.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: Jeanne Hayward, Esq., 25 West Flagler Street, 900 City National Bank Building Miami, Florida 33130 on October \_\_\_\_, 2001.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Reply Brief of appellant was prepared in 14-point Time New Roman font.

BY: \_\_\_\_\_  
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