

# WHAT CONSTITUTES A “DISINTERESTED APPRAISER” UNDER FLORIDA HOMEOWNERS INSURANCE POLICIES?

The appraisal provision of a Florida homeowners insurance policy offers a form of alternate dispute resolution that can be used to resolve an insurance claims dispute. During the appraisal process, the typical homeowners insurance policy will permit each party to select a “disinterested appraiser”. The question becomes what qualifies as disinterested. This issue often comes up in the context of insurance companies attempting to use an appraiser that gets the vast majority of his or her work from insurance carriers. However, a recent case addresses the definition of “disinterested” in the context of an appraiser used by a policyholder.

In the recent case of FIGA v. Branco, the Fifth District Court of Appeal for Florida provided criteria for evaluating whether a party to the appraisal process selected a “competent and disinterested appraiser” under the terms of the appraisal provision of an



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insurance policy. The homeowners suffered damage to their home that they alleged was caused by a sinkhole. The insured reported the loss to their insurer HomeWise Preferred Insurance Company. The insurer retained an engineering company to conduct a structural assessment. The carrier eventually denied the claim based on the opinion of the engineering firm that the damage was not caused by sinkhole activity.

The homeowners filed a lawsuit alleging breach of contract, and the insurance company responded by denying a breach based on the contention that the damage did not fall within coverage of the policy. FIGA succeeded the original insurance carrier after HomeWise declared insolvency. FIGA was joined to the lawsuit and determined that sinkhole activity was a factor in causing the damage after conducting an investigation. After determining the loss

was partially attributable to sinkhole activity, FIGA conceded that the policyholders were entitled to the actual repair of the loss within policy limits.

Once the insurer admitted liability for the loss, the homeowners requested the court compel participation by the insurer in the appraisal process. The relevant appraisal provision provided that if the parties disagreed on the amount of the loss, either party could demand an appraisal of the loss with each party choosing a “competent and disinterested appraiser”. The policyholders selected their own attorney as its appraiser, but the insurer objected that the selection of the insured’s legal counsel did not constitute a disinterested party.

The court noted that disinterested is defined as “[f]ree from bias, prejudice or partiality; not having a pecuniary interest; a disinterested witness” along with other similar definitions. The court reasoned that the policy language clearly contemplates appraisers who are in fact not partial to either party. The court reasoned that a party’s attorney cannot be disinterested given the fiduciary duty of loyalty owed by attorneys toward their clients’ interest.

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## VALENTINE’S DAY

The idea of Valentine’s Day seems to have originated during the Middle Ages, somewhere around the 14th or 15th century. The holiday is named after Saint Valentine who was martyred. Other historians attribute the holiday as a celebration of the life of Saint Valentine. Valentine’s Day is celebrated on February 14 as a festival of romantic love. Every February 14, across the United States and in other places around the world, candy, flowers, and gifts are exchanged between loved ones, all in the name of St. Valentine.



## PRESIDENTS DAY

President’s Day, or Washington’s Birthday, as it is still legally known, was originally designed as a celebration of George Washington’s birthdate. In 1880, Congress voted to make this the first national holiday which honored an individual. In 1968, Congress enacted the Uniform Monday Bill, to give workers as many long weekends as possible. This moved, as many holidays, to a standard Monday each year. Many states were already honoring Abraham Lincoln’s birthday, February 12th, and this celebration was combined with George Washington’s birthday, for one federal holiday. It is observed on the third Monday in February each year.



*Don’t quit on your claim just because your insurance company quit on you!*