IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PANAMA CITY DIVISION

CYNTHIA WILSON et al.,

Plaintiffs,

v. CASE NO. 5:19cv371-RH/MJF

FEDERAL INSURANCE COMPANY,

Defendant.

_____/

ORDER DETERMINING FLORIDA LAW APPLIES TO APPRAISAL

This case arises from Hurricane Michael. The plaintiffs assert the defendant insurer has failed to pay the full amount due for damage to the insured property at issue. The parties apparently agree that the insurance policy calls for an appraisal proceeding. But they disagree on which state's law governs the scope of the appraisal. Each side has filed a motion addressing the issue.

The insured property is in Florida. The plaintiffs say Florida law governs and that the appraisal process thus will reach issues of coverage and causation as well as the dollar amount attributable to any covered loss. The defendant has asserted that Alabama or Missouri law applies because the last act necessary to

formation of the insurance contract occurred in one of those states. The defendant says those states reserve coverage and causation issues for the court, limiting appraisal to the dollar amount attributable to a covered loss.

In *Shapiro v. Associated International Insurance Co.*, 899 F.2d 1116 (11th Cir. 1990), the Eleventh Circuit addressed an umbrella policy that covered real property in multiple states. The claim at issue related to property in Florida, so the court held Florida law applied. In *LaFarge v. Travelers Indemnity Co.*, 118 F.3d 1511 (11th Cir.1997), the court extended this holding to a dispute over the coverage of property insurance. These cases are controlling.

In asserting the contrary, the defendant makes no attempt to distinguish *Shapiro* or *LaFarge*; the cases are indistinguishable. But the defendant says the decisions do not survive more recent holdings of the Florida Supreme Court. As the defendant correctly notes, the choice-of-law issue is governed by Florida law. If, after the Eleventh Circuit decided *Shapiro* and *LaFarge*, the Florida Supreme Court resolved the same choice-of-law issue differently, the Florida decision, not the prior Eleventh Circuit decisions, would control.

The Florida Supreme Court has not, however, decided this issue differently. The court has strongly embraced lex loci contractus—the rule that the place of contracting governs issues of contract interpretation—as a general principle. And the court has applied the rule to other types of insurance. *See, e.g.*, *State Farm Mut.*

Ins. Co. v. Roach, 945 So. 2d 1160 (Fla. 2006). But the defendant has cited no decision of a Florida court applying that principle to a property-insurance policy covering Florida real property. And despite its reliance on lex loci contractus, the Florida Supreme Court has recognized a public-policy exception that, while applicable only in narrow circumstances, might well be applied to hurricane coverage for Florida real property.

In any event, Florida had embraced lex loci contractus as a principle applicable to other forms of insurance before *LaFarge* was decided. The Eleventh Circuit acknowledged this but held the principle inapplicable to property coverage. The difference was this: insured people and vehicles are transitory; real property is not. An insured should not be able to subject an insurer to the law of any jurisdiction to which a risk might be relocated. But the insurer knows, when it insures real property, where the property is located; there is no risk the property will move.

One could argue both sides of the question whether this distinction should produce a different result. But in *LaFarge*, the Eleventh Circuit answered in the affirmative. The Florida Supreme Court has not held to the contrary. Until the Eleventh Circuit or Florida Supreme Court says otherwise, *LaFarge* is controlling.

This makes it unnecessary to address an additional issue: whether, even if Alabama or Missouri law governs interpretation of this insurance policy, the scope

of appraisal is an issue of performance, not interpretation. Under Florida choice-of-law principles, issues of performance of a contract, as distinguished from issues of formation or interpretation of the contract, are governed by the law of the place of performance. *See, e.g.*, *Gov't Emps. Ins. Co. v. Grounds*, 332 So.2d 13, 14-15 (Fla. 1976); *Nova Cas. Co. v. OneBeacon Am. Ins. Co.*, 603 F. App'x 898, 900 (11th Cir. 2015). The place where any appraisal will be performed is Florida.

Finally, a more general observation. Hurricane Michael came ashore in Florida and damaged the Florida real property at issue. The defendant insurer, knowing the property was in Florida, accepted a premium to insure it. Competent appraisers will be familiar with the governing Florida law, the standards that apply to construction and repair of structures in Florida, and the cost of such construction and repair. The assertion that Missouri law, or even Alabama law, should govern the appraisal makes no sense. Florida law applies.

IT IS ORDERED:

1. The plaintiffs' motion for partial summary judgment, ECF No. 15, is granted.

2. The defendant's motion for a determination of which state's law applies to the anticipated appraisal, ECF No. 23, is granted to the extent it seeks a determination and denied to the extent it asserts the determination should be that Missouri or Alabama law applies.

3. It is determined that the anticipated appraisal proceeding will be governed by Florida law.

SO ORDERED on April 8, 2020.

s/Robert L. Hinkle
United States District Judge