IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC21-172
DCA CASE NO.: 2D19-130
LT CASE NO.: 11-2018-CA-001198-0001-XX

JON PARRISH,

Petitioner,

vs.

STATE FARM FLORIDA INSURANCE COMPANY,

Respondent.
_____/

On Discretionary Review of a Decision of the Second District Court of Appeal

---

RESPONDENT'S ANSWER BRIEF

Kara Rockenbach Link
Daniel M. Schwarz
Link & Rockenbach, PA
1555 Palm Beach Lakes Blvd.
Suite 930
West Palm Beach, FL 33401
Tel.: (561) 847-4408
Fax: (561) 855-2891
kara@linkrocklaw.com
daniel@linkrocklaw.com

Robert A. Kingsford, Esq.
Lynn S. Alfano, Esq.
Alfano Kingsford, P.A.
1060 Maitland Center
Commons Blvd., Suite 180
Maitland, FL 32751
Tel.: (321) 280-4707
Fax: (321) 280-4710
rkingsford@alfanokingsford.com
lalfano@alfanokingsford.com

TABLE OF CONTENTS

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

TABLE OF AUTHORITIES

Cases

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Other Authorities

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

INTRODUCTION

Words have meaning. In the context of an insurance policy, courts may not "rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *Intervest Const. of Jax, Inc. v. Gen. Fid. Ins. Co.*, 133 So. 3d 494, 497 (Fla. 2014). This longstanding principle governs this appeal and compels this Court's approval of the Second District's decision. In this appeal, Petitioner requests that this Court give no meaning to the parties' insurance contract provision that requires both parties to select qualified and *disinterested* appraisers.

If the term "disinterested" is rendered meaningless and not applied to each party's choice of appraiser, then the word is redacted, and insurers may no longer seek the alternative dispute resolution path of appraisal. Because the Second District's decision properly gave meaning and application to the word "disinterested," it should be approved. At the same time, the Third District's decisions in *Rios v. Tri-State Insurance Co.*, 714 So. 2d 547 (Fla. 3d DCA 1998), *Galvis v. Allstate Insurance Co.*, 721 So. 2d 421 (Fla. 3d

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

DCA 1998), *Brickell Harbour Condominium Association, Inc. v. Hamilton Specialty Insurance Company*, 256 So. 3d 245 (Fla. 3d DCA 2018), and *State Farm Florida Insurance Company v. Sanders*, 327 So. 3d 342 (Fla. 3d DCA 2020), are premised on obsolete law and failed to apply the contract term's plain meaning. These cases should be disapproved.

PREFACE

In this Answer Brief, citations to Record on Appeal before the Second District are denoted as "R. [page number]." Citations to the Certified Copies of Appeal Papers submitted to this Court by the Second District are denoted as "SC R. [page number]."

STATEMENT OF THE CASE AND FACTS

A. Statement of the Case

State Farm issued a Homeowners Insurance Policy to Parrish which provided coverage for his Hurricane Irma property damage. (R. 19). This insurance contract provides for an alternative dispute resolution process—appraisal—to set a disputed amount of loss and

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

sets forth the procedure. The contractually specified procedure is for both parties to select a qualified, *disinterested* appraiser. (R. 40).

In this claim, State Farm acknowledged coverage for the loss and issued an actual cash value ("ACV") payment to Parrish. (R. 10, 49-51). During the adjustment process, both parties invoked the policy's appraisal clause based on disagreement with the other's estimate. (R. 29, 51).

The question for this Court is a purely legal one—who is a "disinterested" appraiser under the insurance contract and Florida law? Parrish selected George Keys of Keys Claims Consultants ("Keys Claims") as his appraiser. (R. 29). State Farm objected to Mr. Keys because he was not "disinterested" as required by the policy. (R. 31). It is undisputed that Mr. Keys was President of Keys Claims Consultants, Inc. in 2018.[1] Significantly, Keys Claims is entitled to a 10% contingency fee of any insurance proceeds recovered. (R. 25). Additionally, Keys Claims previously inspected the loss, formed

[1] (R. 25, 60).

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

opinions on the scope and extent of the damages, and prepared a written estimate—all before appraisal was invoked. (R. 8, 29-31).

As Parrish's public adjusting firm, obligated by law and contract to promote Parrish's interests, Keys Claims had acted as Parrish's advocate and negotiated with State Farm. Indeed, Keys Claims' damages estimate (which differs from State Farm's estimate) is what gave rise to an "amount of loss" dispute, triggering appraisal. For Mr. Keys to serve as Parrish's appraiser would defeat the entire purpose and plain words of the contract's appraisal provision—for three new, disinterested persons to evaluate the loss without preconceived biases.

The trial court disagreed with State Farm and, citing the Third District's *Brickell Harbour* decision, found no legal or contractual impediment to Mr. Keys serving as Parrish's "disinterested" appraiser. (R. 112-16).

The Second District reversed. (SC R. 364-74). Applying the plain meaning of "disinterested," the Court held that Keys Claims' contingent fee interest in the appraisal award necessarily made Mr.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Keys "interested" in the outcome of the appraisal process. (SC R. 371). Additionally, the Court also held that because Keys Claims represented Parrish in the underlying dispute and its adjusters were contractually bound to negotiate with State Farm for Parrish's benefit, Mr. Keys could not serve as Parrish's "disinterested" appraiser in any meaningful sense of the term. (SC R. 372-73). As such, the Court held "that a public adjuster that has a contingency interest in an insured's appraisal award or represents an insured in an appraisal process is not a 'disinterested appraiser' under [the] insurance policy's appraisal provision." (SC R. 374).

B. Factual Background: The Insured Hires Keys Claims to Inspect and Adjust his Loss, Negotiate with State Farm, and Advocate on his Behalf.

1. *The Insurance Contract's Appraisal Provision*

State Farm and Parrish entered into a contract to insure Parrish's property at 5780 Spanish Oaks Lane, Naples, FL 34119 with effective dates of coverage from September 17, 2016 through September 17, 2017. (R. 19). The insurance policy contains a

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

standard provision for appraisal as a method of alternative dispute resolution where the parties disagree as to the amount of a loss:

> 4. **Appraisal**. If you and we fail to agree on the amount of loss, either party can demand that the amount of the loss be set by appraisal. A demand for appraisal must be in writing. You must comply with **Your Duties After Loss** before making a demand.
>
> *Each party will select a qualified, disinterested appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand*. Each party shall be responsible for the compensation of their selected appraiser. The two appraisers shall then select a qualified, disinterested umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge a court of record in the state where the **residence premises** is located to select an umpire. Reasonable expenses of the appraisal and the reasonable compensation of the umpire shall be paid equally by you and us.
>
> The appraisers shall then set the amount of the loss. . . . If a dispute exists regarding the extent of the damages or whether any part of the loss is covered by the policy, the appraisers will itemize the damages according to the scope of the loss specified by each party. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within 30 days, unless the time is extended by mutual agreement, they shall submit their differences to the umpire. Written

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

> agreement signed by any two of these three shall set the amount of the loss.

(R. 40) (italicized emphasis supplied).

2. *Parrish Incurs a Covered Loss*

Hurricane Irma impacted Florida on September 10, 2017, and damaged Parrish's property. (R. 7). Parrish made a claim for property damage with State Farm. (R. 7). State Farm has accepted coverage for the hurricane claim.

3. *Parrish Hires a Public Adjuster, Invokes Appraisal, and Names his Public Adjuster as his "Disinterested" Appraiser.*

On October 23, 2017, Parrish, in connection with his insurance claim, entered into a contract for public adjusting services ("All Risk Agreement") with Keys Claims. (R. 25). The All Risk Agreement describes Keys Claims' public adjusting duties as:

> Keys Claims Consultants, Inc. (Keys Claims) will prepare a detailed accounting of the damages and present them to the insurance company. Keys Claims will negotiate the damages with the insurance company representative(s). Should the claim not be settled promptly, the Owner authorizes Keys Claims to demand and invoke the Appraisal provision of the policy and is naming Keys Claims as Owner's Appraiser.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

(R. 25).

The All Risk Agreement further entitles Keys Claims to a contingency fee of 10% of any insurance proceeds recovered on behalf of Parrish:

> 1. Owner agrees to pay to KCC in consideration thereof, and hereby assign to KCC, a contingency fee of 10 % of all insurance funds, contractual and extra contractual, received after the date of this agreement. The fee will be based on the gross amount of the insurance proceeds after the application of the deductible(s) and in conformance with Florida Statutes.

(R. 25). To effectuate its fee entitlement, Parrish directed State Farm to add Keys Claims as a joint payee on any claim payments and gave separate notice to State Farm of Keys Claims' "legal and equitable right to be named as a joint payee" on any such payments. (R. 25, 28).

On October 31, 2017, Bobby Sims with Keys Claims sent State Farm a letter of representation, advising that Keys Claims "has been asked to represent [Parrish] for damages sustained" in the loss. (R. 23). There, Keys Claims requested documentation from State Farm to assist it in its "valuation and presentation" of Parrish's claim and advised State Farm of Parrish's "intent to make claim for all

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

coverage provided by the Replacement Cost Provision of the policy." (R. 23).

In December 2017, Key Claims' Mr. Sims inspected the loss and prepared a written estimate of the damages in the amount of $495,079.25. (R. 8, 29-30). Days later, State Farm's field adjuster inspected the loss (with Mr. Sims present) and received a copy of Mr. Sims' estimate. (R. 8).

On January 8, 2018, State Farm contacted Mr. Sims to schedule a second inspection to reconcile the differences between State Farm's adjustment and Keys Claims' estimate. (R. 8). That day, Mr. Sims sent Parrish's Sworn Proof of Loss, mirroring Keys Claims' estimate, to State Farm. (R. 29-30). Mr. Sims also advised State Farm that Parrish was invoking the policy's appraisal provision and has "employed George Keys to serve as [his] appraiser." (R. 29). The January 8, 2018, correspondence indicated that Mr. Keys is affiliated with Keys Claims, shares the same address as Keys Claims, and his email address is GeorgeKeys@KeysClaims.com. (R. 29). In fact—as State Farm

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

demonstrated with public records—Mr. Keys was *president* of Keys Claims. (R. 306, 311, 340, 345, 355, 360).

On January 15, 2018, State Farm replied to Mr. Sims. (R. 31). While State Farm advised Mr. Sims that appraisal was premature because it continued to investigate, it objected to Mr. Keys serving as Parrish's appraiser. (R. 31). State Farm informed Mr. Sims that Mr. Keys, as "the assigned public adjuster who is representing Mr. Parrish in this claim" is not "disinterested." (R. 31). On January 26, Parrish, through counsel, insisted that Mr. Keys could serve as Parrish's appraiser. (R. 46-47).

On January 29, State Farm re-inspected the loss (again with Mr. Sims present) and agreed to prepare a revised estimate for necessary repairs. (R. 10). In February, State Farm issued a supplemental ACV payment to Parrish based on its revised estimate. (R. 10, 49-51). Mr. Sims advised State Farm that he would review State Farm's revised estimate and contact it. (R. 10, 50).

In correspondence of April 2, 2018, State Farm memorialized a March 23, 2018 telephone conversation with Mr. Sims regarding

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

disputes concerning the type of roof underlayment at the property and the cost of roofing materials. (R. 51). This time, State Farm invoked the policy's appraisal provision due to the remaining amount of loss disputes. (R. 51). State Farm selected Bob Davis with Davis Claim Management (who had never, before appraisal was invoked, been involved in this claim)[2] as its appraiser, and requested Parrish to select a qualified, disinterested appraiser within twenty days. (R. 52).

Neither Parrish, Mr. Sims, nor anyone else with Keys Claims contacted State Farm to name an alternate, disinterested appraiser. (R. 11).

C. Procedural Background

1. The Trial Court Incorrectly Relied on Brickell Harbour to *Deny State Farm's Petition*

State Farm sought judicial intervention to resolve the impasse and expeditiously pursue appraisal. On May 5, 2018, State Farm

[2] Despite Parrish's dedication of six (6) pages of his Brief to complaining about insurance companies' appraisers (Pet. Br., at 25-30), nothing about State Farm's appointed appraiser in this case has any relevance to the certified conflict before this Court.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

filed its Petition to Compel Appraisal with a Disinterested Appraiser. (R. 7-61). Its Petition included comprehensive legal argument supporting that "neither George Keys nor any person affiliated with [Keys Claims] is disinterested under the terms of the subject insurance policy." (R. 11). State Farm requested an order compelling Parrish to participate in appraisal with a disinterested appraiser. (R. 17). Parrish responded. (R. 72-89).

The trial court held a hearing to decide the narrow question of whether Mr. Keys and/or Keys Claims could "operate as [Parrish's] appraiser" pursuant to the parties' insurance contract. (R. 126-79, 134). There, State Farm urged the trial court to apply the rationale of *Florida Insurance Guaranty Association v. Branco*, 148 So. 3d 488 (Fla. 5th DCA 2014), and to conclude that earlier decisions from the Third District, *Rios*, 714 So. 2d 547, and *Galvis*, 721 So. 2d 421, did not control. (R. 135-42).

At the hearing's conclusion, the trial court orally denied State Farm's Petition, relying exclusively on *Brickell Harbour*, 256 So. 3d 245. (R. 168). The trial court ruled that the *Brickell Harbour* court

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

"discuss[ed] the problem, there is a contingency arrangement. And they said in *Brickell* that that requires disclosure rather than disqualification, which is what we have here." (R. 169). Based on *Brickell Harbour*, the trial court denied the Petition. (R. 169).

The trial court's written Order on State Farm's Petition echoed its reliance on *Brickell Harbour*:

> 2. In Brickell Harbour the Court, in considering the holdings pronounced in Rios v. Tri-State Insurance Company, 714 So. 2d 547 (Fla. 3d DCA 1998), and Galvis v. Allstate Insurance Company, 721 So. 2d 421 (Fla. 3d DCA 1998), determined that resolution of questions concerning the "partiality" or "interest" of a nominated appraiser in the context of a property insurance policy's appraisal provision was principally one of disclosure, finding that disclosure of an agreement militated against later disqualification.
>
> 3. Brickell Harbour, in line with the Rios and Galvis decisions, holds very clearly that disclosure of the financial arrangement between an insured and his or her designated appraiser satisfies the requirements of the insurance policy's "appraisal provision", and thus, upon such notice disqualification is not appropriate. Parrish, through Keys Claims, disclosed to State Farm the very nature of the existing arrangement between Parrish and Keys Claims. Consequently, the Court finds that because Parrish's prior

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

> engagement was fully disclosed, George Keys is disinterested and can serve as Parrish's qualified and disinterested appraiser with respect to the appraisal of the instant claim.
>
> 4. This Court finds that State Farm's arguments against Parrish's nominated appraiser, who is qualified and disinterested under Rios and Galvis to be unpersuasive and inconsistent with the holding in Brickell Harbour finding that such argument is vitiated by the appointment of an umpire pursuant to the terms of the Policy.

(R. 114-15).

The order both denied and dismissed State Farm's Petition, and further directed that the appraisal process proceed "with Mr. George Keys of [Keys Claims]" serving as Parrish's appraiser. (R. 115-116).

2. *Reversal on Appeal: The Second District Applies the Contract's Plain Meaning and Disallows the Contingent Fee Public Adjuster from Serving as Parrish's "Disinterested" Appraiser.*

State Farm appealed. (SC R. 5-6, 22-63). After oral argument (and ordering supplemental briefing on jurisdictional concerns, later resolved), the Second District reversed. (SC R. 364-74).

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Initially, the Second District appropriately defined the word "disinterested" by first identifying the meaning of its opposite—"interested"—as "describing an appraiser who holds an interest—that is, a stake of some sort, whether pecuniary, proprietary, or personal—in the outcome of the appraisal process." (SC R. 370). As such, it determined that "disinterested" "means an appraiser who does *not* hold an interest in the outcome of the policy's appraisal provision." (SC R. 370).

The Second District next turned to whether Keys Claims' undisputed, contractual right to a 10% contingent fee interest in insurance proceeds recovered rendered Mr. Keys "interested," and concluded that it did:

> As is clear from the policy provision, the conclusion of the appraisal process results in a recommended monetary award of some amount. Indeed, that is the point of the endeavor. And a contingency stake in a potential monetary award—such as this one—constitutes a pecuniary "interest." *Cf.* *Landmark Am. Ins. Co. v. H. Anton Richardt, DDS, PA*, No. 2:18-cv-600 FtM-29UAM, 2019 WL 2462865, at *2, *3 (M.D. Fla. June 13, 2019) (disqualifying insured's selected appraiser who had "a direct financial interest in the outcome of the appraisal" because "[a]

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

pecuniary interest in the outcome is by definition a personal interest that favors one side over the other"); *Shores at Coco Plum Condo. Ass'n v. Westchester Surplus Lines Ins. Co.*, No. 18-23910-Civ-COOKE/GOODMAN, 2019 WL 2223172, at *2 (S.D. Fla. Apr. 29, 2019) (holding that insured's selected appraiser, who was to "be compensated on a contingency fee basis" could not serve as an impartial appraiser). An interest in the appraisal award, then, is part and parcel of an interest in the process' outcome.

Mr. Keys, as the president of Parrish's public adjusting firm, "has a vested interest in obtaining the highest possible recovery because [his] compensation will be a percentage of it." *See Verneus v. Axis Surplus Ins. Co.*, No. 16-21863-CIV-MARTINEZ/GOODMAN, 2018 WL 3417905, at *6 (S.D. Fla. July 13, 2018). Keys Claims' ten percent interest in the amount awarded in the appraisal process necessarily makes its president interested in the outcome of the process. For that reason alone, he is not a "disinterested appraiser." We are not the first to reach that conclusion. *See State Farm Fla. Ins. Co. v. Crispin*, 290 So. 3d 150, 153 (Fla. 5th DCA 2020) ("[A]ny ordinary meaning of the term 'disinterested' precludes a financial stake in the outcome."); *Landmark Am. Ins. Co.*, 2019 WL 2462865, at *3; *Shores at Coco Plum Condo. Ass'n*, 2019 WL 2223172, at *2, *Verneus*, 2018 WL 3417905, at *6-7; *see also State Farm Fla. Ins. Co. v. Sanders*, 45 Fla. L. Weekly D870, D873 (Fla. 3d DCA Apr. 15, 2020) (Fernandez, J., concurring) ("[T]he plain and ordinary meaning of disinterested includes free of self-interest or

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

> pecuniary interest. When an appraiser has a direct financial interest in the outcome of the appraisal, the appraiser is not disinterested." (quoting *State Farm Fla. Ins. Co. v. Valenti*, 285 So. 3d 958, 960-61 (Fla. 4th DCA 2019) (Kuntz, J., concurring))).

(SC R. 370-71). The Second District rejected Parrish's argument that because the appraisal provision required the appraisers to be paid but did not prohibit a particular method of compensation, it should reach a different conclusion. (SC R. 371-71). "All that means . . . is that the policy's requirement of 'disinterested appraiser' does not foreclose financial remuneration for the appraiser's services and that the parties and their appraisers are free to negotiate a mutually agreed upon payment, so long as the form of payment does not give rise to an interest in the outcome of the appraisal process." (SC R. 372). Applying a common-sense approach, the Second District found an appraiser's receipt of a contingent fee "uniquely problematic" under a policy requiring "disinterested" appraisers, because "[t]he bigger the award, the bigger the payment." (SC R. 372).

Next, the Second District addressed whether Keys Claims' representation of Parrish in his underlying claim against State Farm

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

created a disqualifying "interest" in the appraisal process by Mr. Keys. Again, the Second District concluded that it did:

> [T]here is also the separate, broader, and glaringly apparent interest they have in the appraisal process by virtue of the fact that *Keys Claims is representing Mr. Parrish in the underlying dispute*. Even if Keys Claims is not, as Mr. Parrish stresses, his "fiduciary" or his "agent" (which we need not decide), Keys Claims is contractually bound to negotiate with State Farm on Mr. Parrish's behalf. And as Mr. Parrish's public adjuster, Keys Claims' adjusters are professionally bound to handle Mr. Parrish's claim "with dispatch and due diligence" and not "approach investigations, adjustments, and settlements in a manner prejudicial to the insured." *See* Fla. Admin. Code 69B-220-201; *see also* § 626.878, Fla. Stat. (2018) (requiring adjusters to subscribe to the Department of Insurance's code of ethics).
>
> Other than nominating Mr. Parrish himself (or a member of his family), it would be difficult to imagine a more self-evidently interested person in an appraisal process than the person or firm that represents Mr. Parrish in that very process, especially since the policy's "disinterested appraiser" is essentially acting as an independent adjudicator of a dispute. *Cf. Branco*, 148 So. 3d at 496 ("The policy provision, which requires a 'disinterested appraiser,' expresses the parties' clear intention to restrict appraisers to people who are, in fact, disinterested. Given the duty of loyalty owed by an attorney to a client, we

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

> conclude that attorneys may not serve as their clients' arbitrators or appraisers when 'disinterested' arbitrators or appraisers are bargained for."). Mr. Keys cannot serve as a disinterested appraiser (in any meaningful sense of that term) in an appraisal process of his client's dispute.

(SC R. 372-73).

Thus, the Second District held "that a public adjuster that has a contingency interest in an insured's appraisal process or represents an insured in an appraisal process is not a "disinterested appraiser" under this insurance policy's appraisal provision." (SC R. 374). Finally, the Court rejected the Third District's analysis in *Brickell Harbour* as unpersuasive, and certified conflict with that case. (SC R. 374).

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

SUMMARY OF THE ARGUMENT

This Court should approve the Second District's decision which gave plain meaning to the contract's term—"disinterested." The words in an insurance contract must be upheld if clear and a court has no authority to rewrite the contract, add meaning not present, or otherwise reach a result contrary to the intentions of the parties.

A plain reading of the unambiguous term "disinterested," in conjunction with Parrish's public adjusting contract, requires the inescapable conclusion that Mr. Keys cannot serve as Parrish's "disinterested" appraiser because he has a 10%, contingent financial interest in the outcome of the appraisal process. Additionally, Mr. Keys holds a bias in favor of his company's estimate prepared in the course of his company's presentation of Parrish's claim with State Farm. In that capacity, Keys Claims was contractually and legally obligated to inspect the loss, prepare a written estimate and present it to State Farm, and negotiate the amount of loss with State Farm on Parrish's behalf. (R. 8, 25, 29-

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

30). Thus, Keys Claims' conduct itself triggered the amount-of-loss dispute that rendered the claim ripe for appraisal. Rather than being "disinterested," Keys Claims and its principals are biased actors, and their role in the adjustment process is fundamentally inconsistent with the contract's requirement for "disinterested" appraisers.

With almost identical facts, the Fourth and Fifth District Courts of Appeal, in alignment with the Second District, have correctly held as a matter of law that a public adjuster assigned to that claim cannot act as a "disinterested" appraiser of that same claim. *State Farm Fla. Ins. Co. v. Cadet*, 290 So. 3d 1090 (Fla. 5th DCA 2020); *State Farm Fla. Ins. Co. v. Crispin*, 290 So. 3d 150 (Fla. 5th DCA 2020); *State Farm Fla. Ins. Co. v. Valenti*, 285 So. 3d 958 (Fla. 4th DCA 2019).

The Third District, as the outlier, conflicts with the Second, Fourth and Fifth Districts based on outdated decisions. In its 1998 decisions in *Rios* and *Galvis*, and its 2018 *Brickell Harbour* decision that did not involve public adjusters at all, the Third District heavily

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

relied on the now-obsolete Code of Ethics for Arbitrators and failed to give meaning to the contract term "disinterested." In addition, this case presents this Court with the opportunity to quash the Third District's decision in *Sanders*, 327 So. 3d 342, in which the Third District expressed misgivings about *Rios*, *Galvis*, and *Brickell Harbour*, but determined it was procedurally bound to follow *Rios* and *Galvis*. The antiquated "disclosure" approach adopted in *Rios* and *Galvis* was undercut by later changes in the law. Approving the Second District's decision here which is aligned with the Fourth and Fifth Districts' decisions in *Valenti*, *Crispin*, and *Cadet*, while quashing the Third District's decisions in *Sanders, Rios, Galvis*, and *Brickell Harbour,* would maintain consistency in the law and give meaning to a plain contract term.

As a corollary result, such a holding would also reduce litigation by preserving appraisal as a viable alternative to protracted first-party insurance litigation. Appraisals are quicker than lawsuits and indisputably yield a more expeditious payment to insureds. Simply, appraisal benefits insureds with a swifter

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

payment and claim resolution. Equally, appraisal also benefits insurers with the avoidance of protracted litigation and associated attorneys' fees and costs.

On a larger scale, maintaining the appraisal process saves Florida's taxpayers because the alternative dispute process preserves judicial resources and the administrative costs of lawsuits. A rule against contingency fee appraisers would streamline the appraisal process by increasing the likelihood that the parties' appraisers are able to reach agreement on the amount of loss without even requiring an umpire. This further saves the cost of the umpire and expedites the appraisal process.

Because the undisputed facts mandate that Mr. Keys does not qualify as a "disinterested" appraiser, State Farm respectfully requests that this Court approve the Second District's decision in this case and disapprove the outlier law from the Third District.

STANDARD OF REVIEW

The trial court and the Second District adjudicated whether Parrish's public adjuster, who stood to earn a contingency fee of the

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

appraisal award, could serve as his "disinterested" appraiser as a question of law based on undisputed facts. Therefore, the standard of review is *de novo*. *See generally* *Morris v. Muniz*, 252 So. 3d 1143, 1155 (Fla. 2018) (approving statement that "questions of law 'arising from undisputed facts' are reviewed de novo"); *Volusia Cnty v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); *State Farm Fla. Ins. Co. v. Crispin*, 290 So. 3d 150, 152 (Fla. 5th DCA 2020) (reviewing *de novo* whether, on undisputed facts, an appraiser was "disinterested" as required by policy); *Fla. Ins. Guar. Ass'n v. Branco*, 148 So. 3d 488, 495 (Fla. 5th DCA 2014).

ARGUMENT

I. AN INSURED'S PUBLIC ADJUSTER RETAINED WITH A FEE CONTINGENT ON THE CLAIM'S PAYOUT CANNOT SERVE AS THE INSURED'S "DISINTERESTED" APPRAISER AS A MATTER OF LAW

The Second District correctly held that Mr. Keys does not qualify as a "disinterested" appraiser as required by the clear terms of the insurance contract between State Farm and Parrish.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Beyond the Second District, the Fourth and Fifth Districts have held that a public adjuster's contingency fee in the appraisal award is fundamentally incompatible with the insurance contract's plain requirement that both appraisers be disinterested. *See State Farm Fla. Ins. Co. v. Crispin*, 290 So. 3d 150, 153 (Fla. 5th DCA 2020) ("we conclude that 'disinterested' is unambiguous, and its plain meaning excludes those with a pecuniary interest in the outcome"); *State Farm Fla. Ins. Co. v. Valenti*, 285 So. 3d 958, 960 (Fla. 4th DCA 2019) ("Here, the insured signed a contract with the public adjuster entitling the public adjuster to a portion of any recovery from the insurer and assigning a portion of the claim to the public adjuster. Next, the public adjuster inspected the property and submitted the claim to the insurance company. Later, the public adjuster sent a letter appointing himself the appraiser. On the facts of this case, we easily conclude the public adjuster was not 'disinterested' and reverse the circuit court's judgment."); *see also State Farm Fla. Ins. Co. v. Thompson*, 291 So. 3d 203 (Fla. 5th

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

DCA 2020) (following *Crispin*); *State Farm Fla. Ins. Co. v. Cadet*, 290 So. 3d 1090 (Fla. 5th DCA 2020) (same).

The insurance contract's crystal-clear requirement that the parties' appraisers be "disinterested" contemplates that no persons with an interest (either financial interest in the award or prior involvement) will represent a party in the appraisal process. Here, Mr. Keys' company, Keys Claims, contracted to adjust this loss on behalf of Parrish and is duty-bound to act in his interests. Mr. Keys' company inspected and evaluated the loss, prepared a written estimate, and is entitled to a percentage of any insurance proceeds recovered in the appraisal award. As such, Keys Claims and its principals are incentivized to work for Parrish to receive as much money as possible and biased in favor of their prior work product. The more money Keys Claims recovers for Parrish, the more Keys Claims is paid. *See Valenti*, 285 So. 3d at 963 (Kuntz, J. concurring specially) ("It is simple: A person with a direct financial interest in the outcome is not disinterested.").

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

A. This Court's Insurance Contract Principles

This Court has consistently emphasized that interpretation of an insurance policy is a question of law, using generally accepted rules of contract construction. *See U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 877 (Fla. 2007). It is well-established that "insurance contracts must be construed in accordance with the plain language of the policy." *Swire Pac. Holdings, Inc. v. Zurich Ins. Co.*, 845 So. 2d 161, 165 (Fla. 2003); *accord Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005). Courts may not "rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *Id.* (citation omitted). Courts should read policies as a whole and undertake to give every provision its full meaning and effect. *See Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000).

Parrish fails to identify any genuine ambiguity in the word "disinterested." Rather, he circularly argues that the term must be ambiguous because the Third District has permitted persons with a contingent fee interest to serve as "disinterested" appraisers. (Pet.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Br., at 6, 22). As discussed further *infra*, the legal error in the Third District's path in this area requires this Court's correction but does not make the plain meaning of "disinterested" ambiguous.

B. Parties are Free to Contract for Disinterested Appraisers

Florida law makes it clear that State Farm and Parrish, the parties to the insurance policy, were free to contract for the qualifications of the decision makers in their preferred form of alternative dispute resolution. *Fla. Ins. Guar. Ass'n v. Branco*, 148 So. 3d 488, 495 (Fla. 5th DCA 2014). "Appraisals are creatures of contract and the subject or scope of appraisal depends on the contract provisions." *Id.* at 491.

Here, upon either party's invocation of appraisal, the parties contracted for the other's appraiser to be "disinterested." (R. 40). This provision "expresses the parties' clear intention to restrict appraisers to people who are, in fact, disinterested." *Id.* at 496.

C. Meaning of "Disinterested"

The Second District appropriately defined "disinterested" as the opposite of "interested"—meaning *not* having "a stake of some

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

sort, whether pecuniary, proprietary, or personal—in the outcome of the appraisal process." (SC R. 370). This accords with the term's plain meaning in any legal dictionary.

As Judge Kuntz noted in his special concurrence, both legal and non-legal dictionaries are clear that the plain and ordinary meaning of "disinterested" includes "free of self-interest or pecuniary interest." *Valenti*, 285 So. 3d at 961. Turning to these sources, Judge Kuntz wrote:

> …[T]he term disinterested is defined as 'not having the mind or feelings engaged,' 'no longer interested,' and "free from selfish motive or interest.' *Disinterested*, *Merriam-Webster's Collegiate Dictionary* 358 (11th ed. 2003). The American Heritage Dictionary of the English Language defines disinterested as '[f]ree of bias and self-interest; impartial,' and, in a usage note, elaborates that '[t]raditionally, disinterested can only mean 'having no stake in an outcome[.]' …' *Disinterested*, *The American Heritage Dictionary of the English Language* 518 (5th ed. 2016) (emphasis removed).
>
> Similarly, Garner's Modern English Usage explains that '[a] disinterested observer is not merely 'impartial' but has nothing to gain from taking a stand on the issue in question.' Bryan A. Garner, *Garner's Modern English Usage* 290 (4th ed. 2016). That matches the meaning in legal dictionaries, which define disinterested as 'not having a pecuniary interest in the matter at

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

> hand.' *Disinterested*, *Black's Law Dictionary* (11th ed. 2019).

Id.

The Fifth District has likewise deemed "disinterested" to mean an unbiased and objective individual without an interest or stake in the matter, especially a pecuniary or financial interest. *Branco*, 148 So. 3d at 496 n.9 (defining "disinterested" as "[f]ree from bias, prejudice, or partiality; not having a pecuniary interest . . . not having the mind or feelings engaged: not interested . . . free from selfish motive or interest: unbiased . . . the quality of being objective or impartial."); *accord Smith v. DeParry*, 86 So. 3d 1228, 1235 (Fla. 2d DCA 2012) (applying the same definition of "disinterested").[3]

---

[3] Other states define "disinterested" similarly. *See, e.g.*, *Tiger Fibers, LLC v. Aspen Specialty Ins. Co.*, 571 F. Supp. 2d 712, 716 (E.D. Va. 2008) (defining "disinterested" as "lacking or revealing lack of interest," "not influenced by regard to personal advantage," "free from selfish motive," or "not biased or prejudiced"); *Cent. Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 466 N.W.2d 257, 261 (Iowa 1991) ("[W]e have defined a disinterested person to be one without a pecuniary interest."); *Phoenix Assur. Co., Ltd. of London v. Davis*, 67 F.2d 824, 825 (5th Cir. 1933) ("But the agreement in the policy was to submit the matter to 'competent and disinterested appraisers' which . . . excludes not merely pecuniary interest but also bias and prejudice, and is designed to secure a tribunal acting in a quasi-

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Also turning to dictionaries, in *Crispin*, 290 So. 3d 150, cited by the Second District, the Fifth District discussed the plain and ordinary meaning of "disinterested" as applied to an appraiser:

> Nevertheless, we can discern a clear meaning by interpreting the term "disinterested" according to its plain and ordinary meaning. And any ordinary meaning of the term "disinterested" precludes a financial stake in the outcome. *See Merriam-Webster's Collegiate Dictionary* 358 (11th ed. 2003) (defining "disinterested" as "not having the mind or feelings engaged," "no longer interested," and "free from selfish motive or interest"); *The American Heritage Dictionary of the English Language* 518 (5th ed. 2016) (defining "disinterested" as "[f]ree of bias and self-interest; impartial," and, in usage note, elaborating that "[t]raditionally, disinterested can only mean 'having no stake in an outcome' ") (emphasis removed); Bryan A. Garner, *Garner's Modern English Usage* 290 (4th ed. 2016) (noting that "[a] disinterested observer is not merely 'impartial' but has nothing to gain from taking a stand on the issue in question").

Id. at 153.

---

judicial capacity free from partisanship and seeking to do equal justice . . . ."); *N. Assur. Co., Ltd. of London v. Melinsky*, 213 N.W. 70, 71 (Mich. 1927) ("The [appraisers] selected to act should be indifferent between the parties.").

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Contrary to Parrish's contention, the policy's provision that requires "the reasonable compensation of the umpire [to] be paid equally by you and us" does not create an ambiguity that would affect the meaning or neutrality requirement for a "disinterested" appraiser. *Cf.* Pet. Br., at 6, 9; (R. 40); *see State Farm Mut. Auto. Ins. Co. v. Fischer*, 16 So. 3d 1028, 1032 (Fla. 2d DCA 2009); *see also Fisher v. Certain Interested Underwriters at Lloyds Subscribing to Contract No. 242/99*, 930 So. 2d 756, 758 (Fla. 4th DCA 2006) ("[C]ourts should give effect to each provision of a written instrument . . . to ascertain the true meaning of the instrument. When the contract is susceptible to an interpretation that gives effect to all of its provisions, the court should select that interpretation over an alternative interpretation that relies on negation of some of the contractual provisions."). Rather, the provision ensures neutrality of the lone tiebreaker with neither side having more influence over him or her. Furthermore, the umpire's fair payment is not at issue; it is the contingency-linked fee of the insured's appraiser in the face of the policy's "disinterested"

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

requirement that causes the process to be non-compliant with the insurance contract.

D. The Weight of Authority Supports the Second District's Opinion.

Reported decisions from the Fourth and Fifth Districts are in alignment with the Second District's decision below regarding the ability of a contingent fee public adjuster to act as a "disinterested" appraiser.

In the similar case of *Cadet*, 290 So. 3d 1090, the Fifth District granted certiorari relief to quash a trial court's order permitting a contingency fee public adjuster to act as "disinterested" appraiser:

> State Farm Florida Insurance Company asks this Court to quash the trial court's order, which authorized its insured's public adjuster, who is entitled to a contingency fee from any recovered insurance proceeds, to serve as a "disinterested appraiser" under the insurance contract's alternative dispute resolution provision. We recently addressed this identical issue, determining that an insured's public adjuster could not act as a disinterested appraiser in these circumstances. As such, we quash the trial court's order.

Cadet, 290 So. 3d at 1090-91 (internal citation omitted).

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Cadet followed *Crispin* which also held that a public adjuster with a contingency fee interest in the appraisal award cannot act as a "disinterested" appraiser:

> In sum, we conclude that "disinterested" is unambiguous, and its plain meaning excludes those with a pecuniary interest in the outcome. Consequently, Crispin's selected appraiser, who was entitled to a ten percent contingency fee of any proceeds received in the disputed claim, cannot serve as her appraiser pursuant to the parties' bargained-for agreement.

Crispin, 290 So. 3d at 153.

The Fourth District reached the same conclusion in *Valenti*, 285 So. 3d 958, holding that a public adjuster could not be a "disinterested" appraiser because he had a financial interest in the appraisal award and, like Keys Claims, was directly involved in the adjustment of the insured's claim:

> Here, the insured signed a contract with the public adjuster entitling the public adjuster to a portion of any recovery from the insurer and assigning a portion of the claim to the public adjuster. Next, the public adjuster inspected the property and submitted the claim to the insurance company. Later, the public adjuster sent a letter appointing himself the appraiser. On the facts of this case, we easily conclude the public adjuster was not

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

> 'disinterested' and reverse the circuit court's judgment.

Id. at 960.

Cadet, *Crispin*, and *Valenti* firmly support approval of the Second District's decision because Keys Claims contracted with Parrish to prepare an "accounting of the damages and present them to" State Farm and to "negotiate the damages with" State Farm. (R. 25). Keys Claims' agents, in fact, inspected the loss on two occasions, negotiated and corresponded with State Farm, prepared an estimate in the amount of $495,079.25 that triggered the amount-of-loss dispute as to which both parties invoked appraisal, and Keys Claims ***will receive 10% of the appraisal award*** pursuant to its All Risk Agreement with Parrish. (R. 25).

In many analogous legal situations requiring an arbiter to be impartial, a financial interest in the outcome is disqualifying. *See Weinger v. State Farm Fire & Cas. Co.*, 620 So. 2d 1298, 1298 (Fla. 4th DCA 1993) (agreeing that "[a] 'neutral' umpire could hardly be neutral when he had a continuing financial relationship with the appellee"); *State v. Chillingworth*, 116 So. 633, 634-35 (Fla. 1928)

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

("The interest which disqualifies a judge is a direct pecuniary or a direct property interest . . . in the subject-matter of the litigation . . . . [T]he degree of the interest is immaterial . . . the court will not inquire into the effect it will have upon his ruling."); *see also Cent Life Ins. Co.*, 466 N.W.2d at 261 ("Due to the contingent fee arrangement, Central's appraiser was interested because he had a direct financial interest in the dispute.").

As the Second District held, "[t]he bigger the award, the bigger the payment. It is that link between payment and award that makes the contingency-paid appraiser prohibitively interested in the outcome of the appraisal process, which is a condition the policy expressly prohibits." (SC R., 372). As Keys Claims' president, it is in Mr. Keys' financial interest for State Farm to pay Parrish as much as possible. This contractual, financial interest between Keys Claims and Parrish incentivizes an appraiser in Mr. Keys' position to inflate the price and scope of claimed repairs and disincentivizes him to agree to an amount of loss before submission of the dispute to the umpire, contrary to the plain meaning of "disinterested."

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Moreover, Keys Claims' adjusters—Mr. Keys' colleagues who report to him—had extensive pre-appraisal involvement in the claim, culminating most saliently in their quantification of the amount of loss as $495,079.25. State Farm's disagreement with this amount is what triggers appraisal as an appropriate dispute resolution vehicle in the first place. In addition, Parrish relied on Keys Claims' assessment of the damages in submitting a Sworn Statement in Proof of Loss (a policy requirement binding Parrish). *Id.* (R. 29-30).

As such, there is no logic in expecting that Mr. Keys will repudiate his business' existing work product and approach the appraisal process with a fresh perspective, as being a "disinterested" appraiser contemplates. *See Verneus v. Axis Surplus Ins. Co.*, No. 16-21863-CIV-MARTINEZ/GOODMAN, 2018 WL 3417905, at *5 (S.D. Fla. July 13, 2018) ("As a professional who presumably values his reputation, Boaziz is unlikely to reach a conclusion as an appraiser that is significantly different from the work product he already produced.").

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

E. Comparison of Public Adjuster to Attorney

By footnote, the Second District observed that the decision reached by another Fifth District case—*Branco*—"concerning an insured's attorney applies perforce to an insured's public adjuster. Although the means and methods of their work may differ, an insured hires a public adjuster or a lawyer for much the same purpose in these disputes: to maximize the insured's financial recovery on the policy." (SC R. 373, n.4). The Second District's astute comparison should likewise be approved.

Although Mr. Keys is not an attorney, the "disinterested" analysis yields no difference between Mr. Keys and the attorney-appraiser in *Branco*. As it relates to a contracting party's obligation to select an appraiser that is "disinterested," there is no reason to treat the public adjuster-insured relationship differently from an attorney-client relationship.[4]

[4] Parrish argues that "*Branco* did not disagree with the policy interpretation analysis," or "undermine the true rationale" of the Third District law. (Pet. Br., at 15). This is meritless on its face. Although *Branco*'s involvement of an attorney gave rise to myriad reasons that the attorney could not serve as a "disinterested"

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

In *Branco*, the insureds nominated one of their own attorneys as an appraiser in a sinkhole loss claim. *Id.* at 494. The Fifth District held that an appraiser who owes his or her nominating party a "fiduciary duty of loyalty" creates a disqualifying likelihood that the appraiser "will be incapable of rendering a fair judgment." *Branco*, 148 So. 3d at 495. The nature of the relationship between a public adjuster and insured falls squarely within this rationale.

Public adjusters fill a unique role in Florida law. A public adjuster is a person who, for money, commission, or other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or who, for such pecuniary compensation, aids an insured in negotiating for or effecting the settlement of a claim for a covered loss. § 626.854(1), Fla. Stat.

Public adjusters are regulated by Florida law and owe their clients a duty to act in their best interest. *See* § 626.854, Fla. Stat.; Fla. Admin. Code R. 69B-220.201(3) (2015) ("The work of adjusting insurance claims engages the public trust. An adjuster shall put the

---

appraiser, at bottom *Branco* applied the word's plain meaning, while the Third District has not.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

honest treatment of the claimant above the adjuster's own interests in every instance."); *Id.* 69B-220.201(3)(c) ("An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.").[5]

Further, Keys Claims must perform tasks during its representation (such as prepare an estimate, pursuant to the contract and section 626.854(11), Florida Statutes, and communicate with State Farm), to meet a minimal standard of professional competence, and keep Parrish reasonably informed of the progress of his claim. Thus, the rules that public adjusters are bound to follow create a duty of loyalty flowing from public adjuster to represented insured. *See generally Prescott v. Kreher*, 123 So. 2d 721, 727 (Fla. 2d DCA 1960) (characterizing a fiduciary relationship as trust and confidence being reposed in one party that is accepted by the other). These rules plainly distinguish Keys Claims and its public adjusters from the independent insurance adjuster analyzed

[5] Therefore, Parrish's suggestion that Mr. Keys' "only obligations were to evaluate the claim fairly and honestly"—e.g., not necessarily with due regard for Parrish's best interests—is simply wrong. (Pet. Br., at 25).

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

by the Fourth District in Parrish's cited case of *Home Ins. Co. v. Crawford & Co.*, 890 So. 2d 1186 (Fla. 4th DCA 2005). (Pet. Br., at 31-33).

A public adjuster represents a client in a matter requiring the exercise of ethical duties in favor of the client, and the public adjuster's expertise. *See Panama City Beach Condos, Ltd. P'ship v. Adjusters Int'l Colo., Inc.*, No. 4:080cv369-RH-WCS, 2009 WL 10674033 (N.D. Fla. July 28, 2009). It is this very relationship of trust and confidence, and an insured's need to rely on a public adjuster's expertise, that has caused the legislature to find it necessary to regulate the relationship between public adjusters and the public. *Id.*

In addition, a public adjuster such as Keys Claims "shall not accept a settlement of a claim unless the terms and conditions of the settlement are approved by the insured or claimant." Fla. Admin. Code. R. 69B-220.051(7). It is the appraisers' job to "set the amount of loss." (R. 40). Fundamentally, a public adjuster subject to this rule cannot do so in a "disinterested" manner when he or

she is ethically obligated to consult with the insured, and his opinion on the amount of loss is subject to the insured's veto power.

Simply, as president of Keys Claims which contracted with Parrish to inspect the loss, prepare an estimate of the damages, and negotiate them with State Farm, Mr. Keys is a partisan advocate who is ethically and contractually barred from taking actions that would harm Parrish's interests.

Moreover, while the Second District determined it did not need to reach whether Keys Claims was Parrish's "fiduciary" or "agent" (SC R., 372), there is an undeniable agency relationship between public adjuster and insured—meaning that all actions of Keys Claims are cloaked with Parrish's direction. *See, e.g.*, *Maxwell First United Bank*, 782 So. 2d 931, 933 (Fla. 4th DCA 2001) (noting that a fiduciary, principal/agent relationship may be created by contract); *Johnson v. Estate of Fraedrich*, 472 So. 2d 1266, 1268 (Fla. 1st DCA 1985) ("An act done by an agent on behalf of the principal within the scope of the agency is not the act of the agent but of the person by whose direction it is done."). As such,

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

disqualification of an insured's public adjuster, here Mr. Keys, from serving as his appraiser when the insured is contractually bound to select a "disinterested" appraiser falls squarely within *Branco*'s rationale.

F. The Third District's Rios, Galvis and Brickell Harbour are Inapplicable, Outdated and No Longer Good Law.

The Third District's decisions in *Rios*, *Galvis*, and *Brickell Harbour* were wrongly decided.[6] From the reported facts of these decisions, they do not appear to have involved "public adjusters" and incorrectly overlaid arbitration concepts upon the appraisal process. *Rios,* 714 So.2d at 548 (no mention of "public adjuster" in context of appraiser compensated on a contingency percentage of the insureds' recovery); *Galvis,* 721 So.2d at 421 (relied on *Rios* and never referenced "public adjuster"); *Brickell Harbour,* 256 So.2d at 247 (although adjusters and consultants are referenced, the issue was the appointment of Ison, who was the employee of the insurer's consultant, as the party-appraiser).

[6] As such, Parrish's identification of foreign jurisdictions that may have found *Rios* persuasive are based on flawed logic and legal reasoning. *See* Pet. Br., at 18-19.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Importantly, the rationale of these decisions has been indisputably undermined by changes in the legal source relied on in *Rios* and *Galvis*. The Third District itself has now—at least implicitly—recognized this and is primed to recede from those cases in the appropriate procedural posture. *See Sanders*, 327 So. 3d at 345 ("[W]e must deny State Farm's petition for writ of certiorari . . . . This is true even if, as the concurring opinion discusses, this panel (or the en banc court) is of the present belief that *Rios* and *Galvis* have been undermined by subsequent developments in the law, or that *Rios* and *Galvis* and its progeny are no longer viable, or that we should recede from those decisions. . . ."); *id.* (Fernandez, J., concurring) ("I write further to explain that, had this case been presented to this Court in a different procedural posture, the result would likely have been different because *Rios* and *Galvis* have been undermined by subsequent developments in the law.").[7]

[7] This Court accepted review in *Sanders* but discharged jurisdiction after oral argument because of mootness concerns and the unique certiorari posture of the case. *State Farm Florida Insurance Co. v. Sanders*, No. SC20-596, 2021 WL 4824155 (Fla. Oct. 18, 2021).

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

In *Rios*, an insurance policy required appraisers to be "competent" and "independent" and the insureds selected "East Coast Appraisers, Inc." as their appraiser, whose compensation was based on a contingency percentage of the insureds' recovery. *Rios*, 714 So. 2d at 548-49. (*Rios*, importantly, did not involve a public adjuster-insured relationship at all). The trial court compelled the insureds to produce discovery of their compensation arrangement with the appraisal company, and the insureds sought review by certiorari. *Id.* at 549.

On review, the Third District first held that the policy's use of the word "independent" did not limit the type of compensation that the insured could pay the appraisal company. Next, the *Rios* court relied substantially on the model Code of Ethics for Arbitrators in Commercial Disputes ("Code of Ethics") to conclude that the discovery order should be quashed for "the parties [to] make the disclosures required by the Code of Ethics." *Id.* at 550.

These concerns are not present with respect to the certified conflict in this case.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

The Third District observed that under that Code of Ethics, "persons who are requested to serve as arbitrators should, before accepting, disclose (1) any direct or indirect financial or personal interest in the outcome of the arbitration . . . ." *Id.* In turn, the Court held the "more workable approach" to this issue was "voluntary disclosure" to minimize a need for court rulings and ensure that opposing arbitrators are aware of financial or personal interest "before they proceed with their work." *Id.*

The Third District applied the same reasoning in *Galvis*, which arose in the same procedural posture, with the only difference that the insurance policy required appraisers to be "disinterested." *Galvis*, 721 So. 2d 421.

Rios and *Galvis* do not control because neither case involved a public adjuster or related concepts of the appraiser's duties owed to the insured at issue here (and recognized in *Branco*). There is no indication in either *Rios* or *Galvis* that the insured's appraiser was a public adjuster bound to advocate on the insured's behalf and subject to the ethical constraints of section 626.854 and Florida

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Administrative Code rules cited *supra*. And there is no indication that the selected appraisers in *Rios* or *Galvis* had any pre-appraisal involvement in assessing the loss, like Keys Claims' adjusters here.

Even on the discrete contingency-fee issue, *Rios* and *Galvis* are based on misplaced premises. *Rios* and *Galvis* not only failed to give effect to the policy's "independent" and "disinterested" requirements, but incorrectly placed substantial reliance on the Code of Ethics. There are important differences between *arbitration* and *appraisal* that the courts' analogy overlooked. *See Branco*, 148 So. 3d at 494 ("*Unlike arbitration*, '[a]ppraisal exists for a limited purpose—the determination of 'the amount of the loss.") (emphasis added). Elsewhere, the Third District has explored these differences in detail. *Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass'n, Inc.*, 117 So. 3d 1226, 1229 (Fla. 3d DCA 2013) (stating "[t]he differences between arbitration and appraisal are well defined in this state" and holding that the Florida Arbitration Code did not apply to appraisals). Thus, from the very outset, it is far from clear that the Code of Ethics has any threshold relevance to this issue.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Certainly, the *Rios* court's rationale for seeking guidance from the Code of Ethics remains a mystery

Additionally, neither *Rios* nor *Galvis* control because, as pointed out by the Fifth District in *Branco*, and Judge Fernandez in his 2020 concurring opinion in *Sanders*, *Rios* (upon which *Galvis* was based) relied largely on the *then-existing* version of the Code of Ethics, which was promulgated jointly by the American Arbitration Association ("AAA") and the American Bar Association ("ABA"). *Branco,* 148 So. 3d at 495. "That version of the Code of Ethics did not explicitly address the neutrality of arbitrators, but simply required disclosure of any direct or indirect financial interest in the outcome of the proceeding." *Id.*

The revised Code of Ethics adopted by the AAA and ABA, effective March 1, 2004, post-*Rios* and *Galvis*, drastically changed the landscape for party-appointed arbitrators' neutrality, independence, and impartiality. *Id.* As of that date, and as it remains today, the Code of Ethics establishes a *presumption of neutrality* for all arbitrators:

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

> [I]t is preferable for all arbitrators including party-appointed arbitrators to be neutral, that is, independent and impartial, and to comply with the same ethical standards. . . .
>
> This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise.

Branco, 148 So. 3d at 495 (quoting Am. Arb. Ass'n, *The Code of Ethics for Arbitrators in Commercial Disputes*, https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf (effective Mar. 1, 2004) (last visited April 5, 2022). Further, the Code of Ethics provides that it "expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process." Code of Ethics, *supra*.

These tenets of integrity, fairness, and "neutrality" (as distinguished from the Code existing at the time *Rios* and *Galvis* were decided) are significant. Without these basic concepts, the appraisal process will fail to serve a legitimate dispute resolution

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

purpose, and the contractual provision requiring "disinterested" appraisers will be rendered meaningless. Clearly, as recognized by the *Branco* court and the Third District's own Judge Fernandez in *Sanders*, this fundamental change undermines the core *Rios* holding when, as here, the contract requires the appointment of "disinterested" appraisers." 148 So. 3d at 495. *Branco* and Judge Fernandez are correct. It would be wholly illogical and backwards for this Court to adopt or approve the now-undermined, outdated reasoning of *Rios* and *Galvis*.

So too, in the certified conflict case, *Brickell Harbour*, the Third District continued its endorsement of the "disclosure approach" of *Rios* and *Galvis,* in a slightly different context. *See Brickell Harbour*, 256 So. 3d at 249 (concluding that *Rios*' direction to the appraisers to make financial disclosures to each other "remains a 'workable approach to this issue'").

In *Brickell Harbour*, the insurance policy required the parties' appraisers to be "impartial." *Id.* at 246. The insurer had appointed one Randy Ison as its appraiser. Mr. Ison was "an employee of J.S.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Held, a building consultant hired by the Insurer." *Id.* at 248. The record did not indicate whether Mr. Ison was directly paid by the insurer, or whether any part of Mr. Ison's or J.S. Held's compensation involved a contingency fee. *Id.*

On appeal of an order granting the insurance company's motion to compel appraisal, the insured contended that Mr. Ison should be disqualified because he was the "boss" of a J.S. Held employee who was considering the insured's claim, and the "boss" was the subject of a fraud inquiry with the Department of Financial Services. *Id.* The Third District rejected this argument because the insured's public adjuster had launched this fraud inquiry, making its contention "transparently circular" as its own actions should not be deemed to defeat Mr. Ison's impartiality. *Id.*

The Third District, based on *Rios*, concluded that "impartiality" does not mean what the dictionary says it means on the topic of appraisers, held that disclosure "remains a 'workable approach to this issue,'" encouraged the parties to make disclosures that concerned financial interest, and on the record before it,

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

determined that the insurer's appointment of Mr. Ison did not warrant his disqualification. *Id.* at 249.

Brickell Harbour merely followed the errant path of *Rios* and *Galvis*. Not only did *Brickell Harbour* ignore the 2004 change to the Code of Ethics, but from the outset, the notion that "disclosure" of an arbiter's "interest" satisfies contracting parties' agreement that their arbiters be neutral, disinterested, or impartial is unsound. The insurance contract simply does not say "disinterested, but if interested then disclose."

Rather, a disqualifying "interest"—whether disclosed or not—destroys, not satisfies, the parties' agreement for "disinterested" appraisers. And again, even if citing to the Code of Ethics in the first instance was appropriate, that Code has now materially changed to render neutrality (not bias plus disclosure) as a default setting. *Branco*, 148 So. 3d at 495. The first step is disclosure, then determination of whether the interest would disqualify the individual from serving. Additionally, *Brickell Harbour* did not

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

concern the uniquely disqualifying public adjuster-insured relationship, or a contingent-fee interest in the outcome.

It is worth noting that *Brickell Harbour*'s reliance on the "safeguard[ing]" powers of the umpire to mediate disagreements between the appraisers—as a reason to reject insistence on compliance with contractual *appraiser* requirements—is flawed. The fact that the umpire exists to be a tiebreaker (or leveler) of disagreement between the appraisers does not support a complete disregard for contractual requirements the parties bargained for. Here, in fact, State Farm's insurance policy uses the same phrase—"qualified, disinterested"—in relation to *both* appraisers *and* the umpire. The courts' role is to enforce the language of the parties' contract, and reliance on the umpire as a reason to disregard contractual language governing appraisers places the cart before the horse and renders the parties' choice of the word "disinterested" *as it relates to appraisers* meaningless.

Thus, this Court should disapprove *Rios*, *Galvis*, *Brickell Harbour*, and *Sanders* which will align the Third District with the

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

reasoning of the Second District's decision below, and the Fourth and Fifth Districts, providing uniformity throughout Florida.

II. A HOLDING THAT A "DISINTERESTED" APPRAISER CANNOT RECEIVE A CONTINGENCY FEE FROM THE APPRAISAL AWARD WOULD BENEFIT JUDICIAL ECONOMY, INSUREDS, AND THE STATE OF FLORIDA.

Approving the Second District's decision below, the Fourth and Fifth Districts' decisions in *Valenti*, *Crispin*, and *Cadet*, and quashing the Third District's decisions in *Sanders, Rios, Galvis*, and *Brickell Harbour* would not only maintain consistency in the law and give meaning to a plain contract term, but also reduce litigation by keeping appraisal as a viable alternative to protracted litigation.

As a corollary, the decrease in litigation would preserve limited judicial resources and substantially reduce the costs associated with resolving amount-of-loss disputes. This benefits everyone: insureds, insurers, judges, court staff and personnel, and Florida taxpayers.

Appraisals are far quicker than lawsuits and indisputably yield a more expeditious payment to insureds. Simply, appraisal

benefits insureds. On a larger scale, maintaining the appraisal process saves Florida's taxpayers because it preserves judicial resources and the administrative costs of lawsuits.

Additionally, insureds would benefit from the continued availability of appraisal by avoiding the risks inherent in litigation, including the risk of owing the insurer's attorney's fees and costs pursuant to an unaccepted Proposal for Settlement. Insureds would also avoid the significant time commitment required for litigation, including attending depositions, expert inspections of the property, and a lengthy trial.

Overall, an insured's costs and risks are significantly reduced by resolving amount-of-loss disputes solely through the appraisal process, without needless litigation. A holding by this Court that a "disinterested" appraiser cannot be one who receives a contingency fee from the appraisal award would facilitate this cost savings and risk reduction. *See First Protective Ins. Co. v. Hess*, 81 So. 3d 482, 485 (Fla. 1st DCA 2011) ("'Appraisal clauses are preferred, as they provide a mechanism for prompt resolution of claims and

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

discourage the filing of needless lawsuits.'") (quoting *Fla. Ins. Guar. Ass'n, Inc. v. Olympus Ass'n, Inc.*, 34 So. 3d 791, 794 (Fla. 4th DCA 2010)); *First Floridian Auto & Home Ins. Co. v. Myrick*, 969 So. 2d 1121, 1125 (Fla. 2d DCA 2007) ("[T]he appraisal process provides a mechanism to resolve claims promptly and discourages insureds from racing to the courthouse to file needless lawsuits").

Similarly, a rule against contingency fee "disinterested" appraisers would streamline the appraisal process by increasing the likelihood that the parties' appraisers are able to reach agreement on the amount of loss without needing to involve the umpire. This not only saves the cost of the umpire but also speeds up the appraisal process significantly.

An agreement between the two appraisers on the amount of loss avoids numerous delays, including umpire selection (which may require court intervention), an inspection with the umpire, and the time needed for the umpire to reach a conclusion and prepare supporting documents. The appraisal provision in the policy in this case specifically contemplates a threshold effort between the two

appraisers to agree, without an umpire. (R. 40) ("*If the appraisers fail to agree* within 30 days, unless the time is extended by mutual agreement, they shall submit their differences to the umpire.") (emphasis added).

While retention of a "disinterested" appraiser may involve payment of a fee not outcome-contingent (i.e. hourly or flat fee), there are vast global savings and the benefit of expediency for the insured when the swift appraisal process is compared to the alternative—years of protracted litigation to resolve a simple amount-of-loss dispute.

The "cost" of hiring an appraiser can be fronted by a law firm (if involved) as often occurs as a cost that is then subtracted from the recovery. The difference is that the appraiser is not incentivized to pad the award with his 10% recovery in mind. His hourly rate is his hourly rate—regardless of the outcome. This is the meaning of "disinterested."

On the other hand, if the insurance contract's term "disinterested" is not given meaning and applied to each party's

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

choice of appraiser, then insurers may no longer seek the alternative dispute resolution path of appraisal. Without the appraisal process as a viable alternative to litigation, Florida courts would likely see a significant increase in breach of insurance contract lawsuits.

This could also cause insurers to stop offering property insurance in Florida or seek premium increases to offset the increased cost of resolving amount-of-loss disputes via litigation. Such an outcome would be a significant problem given the volume of property insurance claims submitted after hurricanes hit Florida (the present case, *Sanders*, *Cadet*, and *Crispin* were all Hurricane Irma claims).

Conversely, not using appraisal would likely have an adverse impact on the overburdened court system and increase the time and expense of resolving insurance claim disputes. Compared to litigation which can take years to resolve and places a large burden on the parties and judicial resources, appraisal is intended to be a streamlined, efficient process.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

CONCLUSION

State Farm urges this Court to promote consistency in the law, give meaning to the contract term "disinterested," and maintain the appraisal process by approving the Second District's decision, the Fourth and Fifth Districts' decisions in *Valenti*, *Crispin*, and *Cadet*, and disapproving the Third District's decisions in *Rios*, *Galvis*, *Brickell Harbour*, and *Sanders*. This Court should specifically approve the Second District's conclusion, and equally hold, that a "disinterested" appraiser cannot be one who receives a contingency fee from the appraisal award.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via email this 21st day of April, 2022 to: **Gregory L. Evans, Esq.**, and **Mark A. Boyle, Esq.**, Boyle & Leonard, P.A. 9111 W. College Pointe Drive, Fort Myers, FL 33919 (eservice@insurance-counsel.com; gevans@insurance-counsel.com; mboyle@insurance-counsel.com), *Counsel for Petitioner*; **L. Michael Billmeier, Jr., Esq.**, Colodny Fass, 119 E. Park Avenue, Tallahassee, FL 32301 (mbillmeier@colodnyfass.com), *Counsel for Amici Curiae FPCA and PIFF*; **Kansas R. Gooden, Esq.,** Boyd & Jenerette, P.A., 11767 S.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: (561) 847-4408 – Fax: (561) 855-2891 – www. linkrocklaw.com

Dixie Hwy., #274, Miami, FL 33156 (kgooden@boydjen.com), *Counsel for Amicus Curiae FDLA*.

LINK & ROCKENBACH, PA
Appellate Counsel for State Farm
1555 Palm Beach Lakes Blvd., Suite 930
West Palm Beach, FL 33401
Telephone: (561) 847-4408
Fax: (561) 855-2891
Email: kara@linkrocklaw.com
daniel@linkrocklaw.com
troy@linkrocklaw.com

BY: /s/ Kara Rockenbach Link
Kara Rockenbach Link, Esq.
Florida Bar No. 0044903
Daniel M. Schwarz, Esq., B.C.S.
Florida Bar No. 92537

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Bookman Old Style 14-point font and, excluding the parts of the Brief exempted by Florida Rule of Appellate Procedure 9.045(e), complies with the word count limit of Florida Rule of Appellate Procedure 9.210.

/s/ Kara Rockenbach Link
Kara Rockenbach Link, Esq.
Florida Bar No. 0044903