INSURANCE APPRAISAL & ARBITRATION

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I. INTRODUCTION

Arbitration was established as a national policy by the Federal Arbitration Act as an alternative process for dispute resolution generally used to settle problems related to commercial contracts. Efforts toward this public policy have yielded success incrementing the use of arbitration, as well as trust and reliance in the process it provides. However, when it comes to the use of arbitration in the insurance industry certain concerns have developed regarding consumer protection. For instance, several state legislatures currently have opted to prohibit the use of arbitration when disputes related to insurance policies arise.

The insurance business was classified by the U.S. Supreme Court as an interstate commerce under the Commerce Clause of Article I, Section 8 of the U.S. Constitution, in which Congress responded by enacting the McCarran Ferguson Act, granting the states the authority to regulate the insurance business. Prior to the ratification of this Act[1] and following the ruling of the Supreme Court, defining the insurance business as commerce,[2] any agreement to arbitrate a dispute over an insurance policy would have been enforced as valid and irrevocable, "save upon such grounds as exist at law or in equity for the revocation of any contract."[3] With the McCarran-Ferguson Act, states' insurance regulation would "reverse preempt" federal statutes of general application. Consequently, states have the power to — and enacted — numerous anti-arbitration laws and regulations for the insurance industry, clearly contravening the Federal Arbitration Act, a statute of general applicability, which did not expressly include the insurance industry.

Some states have gone even further, by prohibiting in some property insurance policies the appraisal clauses. This clause provides an alternate dispute resolution designed to solve disputes that deal exclusively with post-loss disagreement on the value of either the property or amount lost payable to the insured.[4] Under this process, a panel of two appraisers and one umpire evaluates the damages sustained by the insured property to determine the value of the

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[1] The National Society of Insurance Commissioners "proposed a bill that was introduced with revisions by Senators Pat McCarran (D-Nev.) and Warren Ferguson (R-Mich.), and signed into law by President Franklin Roosevelt on March 9, 1945." *See* TOM BAKER & KYLE D. LOGUE, INSURANCE LAW AND POLICY: CASES AND MATERIALS (2013); *see also*, McCarran-Ferguson Act, 15 U.S.C. §§ 1011–1015 (1945).

[2] U.S. v. South-Eastern Underwriters Assoc., 322 U.S. 533 (1944).

[3] Federal Arbitration Act section 2, 9 U.S.C. §2 (1947).

[4] Anne D. Ogden, *Appraisal Clauses in Homeowners Insurance Policies: An Overview*, 27 TRIAL ADVOC. Q. 24 (2008).

cost to repair or replace said damages, a decision that is typically binding upon the insurance company and the policyholder.

Interestingly, some states' legislatures and courts are treating the appraisal process as if it were arbitration, while others differentiate between the two. This lack of uniformity has arisen partly because Congress has not defined what arbitration means. Presently, the two major trends in the treatment of appraisal as arbitration vary from: (1) states that distinguish between the two processes; and (2) states that believe both are the same. As Appendix 2 illustrates, almost fifty percent of the states hold that appraisal is arbitration and the remaining half hold that they are different concepts.

Puerto Rico is one of the jurisdictions that considers the appraisal clause an equivalent to arbitration.[5] We will use this jurisdiction for our analysis for various reasons. First, both the McCarran Ferguson Act[6] and the Federal Arbitration Act[7] are applicable in this jurisdiction. Second, said jurisdiction is accredited by the National Association of Insurance Commissioners (NAIC).[8] Once Puerto Rico received the NAIC accreditation, it is in compliance with the same basic standards and model laws of the 50 states. Today, arbitration clauses are statutorily prohibited in insurance policies sold in Puerto Rico, the primary reason being that coverage issues are reserved exclusively for the courts, as a matter of public policy.[9] Since appraisal is treated as arbitration, its inclusion in insurance policy agreements issued in Puerto Rico is also prohibited.

The objective of this article is to provide an analysis of the appraisal clause and the process it provides for dispute resolution vis-à-vis arbitration. Thus, the goal of this analysis is to be able to determine whether these processes should be treated as a single mechanism or as independent procedures.

II. APPRAISAL IN THE INSURANCE BUSINESS

A standard appraisal clause in an insurance policy reads as follows:

> If the insured and the company fail to agree as to the amount of loss either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event, the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The company shall not be held to have waived any of its rights by any act relating to appraisal.[10]

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[5] *See* Berrocales v. Tribunal Superior, 102 DPR 224 (1974).
[6] McCarran-Ferguson Act, 15 U.S.C. §§ 1011–1015 (1945).
[7] Federal Arbitration Act, Section 2, 9 U.S.C. §9 (1947).
[8] *Puerto Rico Receives NAIC Accreditation*, NAIC (March 8, 2012), http://www.naic.org/Releases/2012_docs/puerto_rico_receives_naic_accreditation.htm (for more information on Puerto Rico's NAIC Accreditation).
[9] See Ashley Smith, *Property Insurance Appraisal: Is Determining Causation Essential to Evaluating the Amount of Loss*, 2012 J. DISP. RESOL. 591, 610 (2012) for a discussion on how courts across the country agree that coverage determinations are reserved only to courts.
[10] *Berrocales*, 102 DPR 224.

Appraisal provisions similar to this one are present in "nearly all property insurance policies"[11] and have been used in this industry for decades.[12] Although the terms agreed upon for an appraisal process can vary,[13] the main aim is to provide a method to resolve disputes over the amount of a loss without having to embark on a judicial proceeding.[14] As shown in the appraisal clause above, the parties have a 60-day period to demand appraisal. However, some insurance agreements have clauses that establish shorter periods of time or even none.[15] Depending on the state where the policy is issued, these clauses may include matters related to the scope of the appraisal — principally in terms of causation — and the binding nature of the appraisal award.

Usually, these variations respond to discrepancies among states regarding the proper scope of an appraiser's authority and the protection of the policyholder's right of access to courts. In fact, the protection of a policyholder's access to courts is a matter of utmost importance, primarily due to the nature of insurance policies as adhesion contracts; an insured's feeble position to contest an insurer's determinations after sustaining a loss to his property, and an insurer's privileged position in determining whether to accept liability or not. Courts recognize the possibility of moral damages when an insurer is evaluating the loss, given that refusal to pay a claim economically benefits the insurer.[16]

As displayed in Appendix 2, a vast majority of states permitted the use of appraisal in property insurance policies, even when agreeing on the importance to reserve decisions over coverage matters to courts.[17] There are various states that even require the inclusion of an appraisal clause in every property insurance policy agreement issued in the state, which demonstrates that the appraisal process has benefits to offer to both the insurer and the policyholder that outweigh any disadvantage. Allowing its use does not act as a bar to policyholders from accessing courts to decide coverage matters. In order to protect the policyholders' right of access to courts, states usually enact laws and regulations limiting the power of an appraiser, while amplifying the scope of judicial review of appraisal awards, requiring that the insured be the party to request appraisal, among other measures that do not entail an outright prohibition of appraisal.

States that prohibit the use of arbitration in insurance do so on grounds of public policy, given the amount of public interest involved in insurance coverage matters and the interpretation of insurance policies.[18] Appraisal, on the other hand, does not contemplate any question of coverage. As every appraisal clause examined specifies, appraisal can only take place

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[11] Smith, *supra* note 9, at 593.
[12] *Id.* at 593.
[13] Ogden, *supra* note 4.
[14] *Id.* (defining appraisal clause as "an alternative dispute resolution process that will resolve issues over the loss amount.").
[15] See e.g. Johnson v. Nationwide Mutual Ins. Co., 828 So.2d 1021 (Fla. 2002), where a clause that did not specify a timeframe for demanding appraisal.
[16] *See* Oliver Wyman, *Funding the Future: Insurer's Role as Institutional Investors*, INSURANCE EUROPE http://www.oliverwyman.com/content/dam/oliver-wyman/global/en/files/archive/2013/Oliver_Wyman_-_Funding_the_Future_12.06.2013.pdf (2013) (for a discussion of the important role that investing plays for insurance companies in Europe).
[17] *See* Insurance Co. of North America v. Baker, 268. P. 585 (Colo. 1928) ("In the United States an overwhelming majority of the courts have held that the absolute and unconditional denial by an insurance company of any liability whatever to pay anything upon the policy renders inoperative and nugatory the customary provisions for an arbitration to determine the amount of loss and an award as a condition precedent to an action to recover it.").
[18] *See Berrocales*, 102 DPR 224 (where the P.R. Supreme Court asserts that the insurance business is one that carries high public interest).

after the insurer has agreed to cover a reported loss. Consequently, an appraiser cannot provide any opinion regarding coverage since it will be considered outside the scope of authority vested to him by the appraisal clause, and any such decision can be appealed and overturned by any court of law with appropriate jurisdiction. Nevertheless, as can be appreciated from the chart in Appendix 2, approximately twenty-two states interpret appraisal as analogous to arbitration. In any jurisdiction where arbitration is prohibited we can then deduce prohibition of the use of appraisal clauses, such is the case with Puerto Rico. There are only three states other than Puerto Rico, that prohibit the use of appraisal in the insurance business.[19] The controversy concerning the nature of appraisal clauses and its similarity to arbitration primarily arises in cases where one of the parties has an interest in applying the same laws and regulations that apply to arbitration processes in each state to the appraisal clause.

III. APPRAISAL AS ARBITRATION

At first glance, appraisal and arbitrations proceedings are very similar. The language used in clauses and agreements can be very similar, the process to appoint appraisers and arbitrators is usually the same, and both type of agreements arise contractually. In arbitration agreements there can be up to three arbitrators, and the process for selecting them typically follows a similar method to the one used for appraisal. Furthermore, the processes of selecting the arbitrators consists of each party choosing one arbitrator, and these designated arbitrators in turn name the third one. In the event that the arbitrators cannot decide on an umpire, they can request a court of law to appoint one.

While the type dispute resolution process that most resembles the appraisal process is arbitration, the main difference between the two processes lies in their scope, and the range of disputes covered by each clause. As previously mentioned, an arbitration clause can be either very broad, encompassing every dispute related to the contractual relationship in its application or very limited, concerning only one or two types of disputes. The appraisal clause, on the other hand, is used exclusively for disputes related to value. Usually courts rest in this difference when deciding and arguing whether the two processes are analogous.

Despite the U.S. Supreme Court's decision in *City of Omaha v. Omaha*[20] on whether an appraisal should be considered as arbitration or not, states and federal courts have historically declined to follow this decision and the controversy continues today.

The facts of this case involved an ordinance approved by the city of Omaha, Nebraska, in 1880 to allow for the construction of waterworks, eventually built by the Omaha Water Company. The ordinance created an option agreement that read as follows:

> The city of Omaha shall have the right at any time after the expiration of twenty years to purchase the said waterworks at an appraised valuation, which shall be ascertained by the estimate of three engineers, one to be selected by the city council, one by the waterworks company, and these two to select the third . . . .[22]

After the 20-year period expired a bill was passed to allow the City of Omaha to purchase the waterworks from Omaha Water Company. The appraisers were selected according to the option agreement and a valuation was rendered for $6.9 million. The appraiser appointed by the city did not concur with the amount and the city appealed the valuation alleging: (1) that

[19] That is, in roughly 94% of jurisdictions within the U.S. appraisal clauses are used, while there are approximately 58% of jurisdictions that hold that appraisal is a form of arbitration.
[20] City of Omaha v. Omaha, 218 U.S. 180 (1910)
[22] *Id.* at 191.

it was not agreed by all; (2) that the appraisers heard certain evidence without providing proper notice or giving the city an opportunity to hear or rebut; and (3) that the value included a distributing system that the city had not included in the contract or in any subsequent contract thereof.

The second allegation is the most relevant to this article. The Court determined that a dispute did not exist between the parties, *i.e.*, where there is only an agreement to set the purchase value of a property by way of appraisal, it could not be considered arbitration. In order for it to be considered there must be a dispute or disagreement to be settled. Following this reasoning, an appraisal clause in an insurance policy by which the parties agree to appraise the value of the property *when* the insured disagrees with the amount offered by the insurance company will constitute arbitration.

The Court's ruling ultimately would affect the validity of the evidentiary process used by the appraisers and thus, the validity of the valuation if due process was not served. The Court explained that, since it was not arbitration, the appraisers were not required to confine to the evidence formally submitted by the parties or to matters within their knowledge, they could reject evidence submitted to them and inform themselves from any other source. Therefore, the valuation was valid even though the appraiser failed to notify the City of Omaha of some of the evidence examined.

As previously mentioned, many states have not followed this ruling while evaluating a dispute regarding appraisal versus arbitration. Although a highly interesting and intelligent decision, it lacks analysis as to the appraisals that settle a dispute, like the ones used in insurance policies. It will be very cumbersome to subject an appraisal process to all the notices, evidentiary, and procedural elements claimed by the plaintiff in this case. Appraisers should be able to reject evidence submitted to them and use any source to obtain information, as to not being confined to solely using the evidence submitted by the parties, at least when there is no question of fact. As the Eighth Circuit Court of Appeals explained, when the appraiser does not need to take testimony in order to measure what was lost, the process should not be bound by the same rules as arbitration.[23] As an example, if a car drives through the wall of a house, damaging the wall and all the property within, of the house remains and appraisers can evaluate the direct damage. On the other hand, if as a consequence of the car crash the house burns down completely, facts similar to those in *Phoenix Ins. Co. v. Everfresh Food Co.*,[24] appraisers will probably need to obtain testimonies in order to ascertain the "kind, character and value"[25] of the property and the damage. At least in the first scenario it would be appropriate to provide appraisers with more flexibility, and to rely on their expertise as well as on the evidence obtained without taking testimonies or requiring production of any other sort of evidence from either parties. After all, appraisers are generally experts on valuation of the type of good involved, and are usually required to obtain a license to be able to act as such,[26] contrasted with arbitration where "there is no public certification of arbitrators."[27]

A. Presumption in Favor of Arbitration

[23] Phoenix Ins. Co. v. Everfresh Food Co., 294 F. 51 (8th Cir. 1923)
[24] *Id.*
[25] *Id.* at 55.
[26] Appraisal Institute, *Understanding the Appraisal*, (2013), http://www.appraisalinstitute.org/assets/1/7/understand_appraisal_1109_(1).pdf.
[27] THOMAS E. CARBONNEAU, ARBITRATION LAW AND Practice 14 (2007).

As Thomas Carbonneau explains in his commentary to Section 2 of the Act,[28] [“t]he public support for arbitration permits a great deal of latitude in the definition of contract validity.”[29] In *Moses v. Mercury*,[30] the Supreme Court explains the extent of the preference of the use of arbitration in public policy. The Court clearly states that “as a matter of federal law, any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration, whether the problem at hand is one of construction of the contract language itself or an allegation of waiver, delay, or like defense to arbitrability.”[31] Also, the court established that a dispute resolution agreement does not need to be binding to be arbitration.

Given its broad scope, and the liberal interpretation the Supreme Court has established as to what constitutes arbitration, the need for a specific definition remains. Thus, depending on the interpretation each court (state or federal) provides for arbitration, appraisal can be either included or excluded, and accordingly governed by either the Federal Arbitration Act or by a state’s insurance law.

Following *Moses*,[32] in 1985 the U.S. District Court for the Eastern District of New York, in *AMF Inc. v. Brunswick Corp.*,[33] held that an agreement for a non-binding advisory opinion by the National Advertising Division (“NAD”) was an agreement to arbitrate. The state of New York is one of the states that has insurance statutes forbidding the use of arbitration while allowing the use of appraisal.[34] According to this court’s ruling, the essence of arbitration is to have third parties resolve disputes, hence “no magic words such as ‘arbitrate’, ’binding arbitration’ or ‘final dispute resolution’ are needed to obtain the benefits of the Act.”[35]

In the more recent case *Amerex Group Inc. v. Lexington Ins. Co.*,[37] the Court of Appeals for the Second Circuit distinguished insurance appraisal from arbitration, stating that appraisal follows a more informal and entirely different process from the one used in arbitration. The court held that an appraisal clause in an insurance policy “did not grant Amerex the procedural rights usually associated with arbitrations — principally extensive discovery relating to the Excess Insurers’ own investigation of Amerex’s claim — [and] the Panel [did not] violated its due process rights.”[38] Finally, the court held that it “cannot be the rule that appraisals must furnish insured parties the right to extensive discovery from the insurers, as such a rule would turn appraisals into precisely the kind of quasi-judicial proceedings that New York law forbids.”[39]

On the other hand, we have another case from the Second Circuit related to New York law, holding that an appraisal clause constituted arbitration. However, the clause in this case, *Bakoss v. Certain Underwriters*,[40] was very different from the typical insurance appraisal clause. In this case the clause was called a “Third-Physician Clause” and provided for a process to determine whether an insured was totally disabled or not in order to receive the provided

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[28] *Id.* at 55; Federal Arbitration Act, 9 U.S.C. §2 (1947).
[29] CARBONNEAU, *supra* note 24.
[30] Moses v. Mercury, 460 U.S. 1 (1983).
[31] *Id.* at 24–25.
[32] *Id.*
[33] AMF Inc. v. Brunswick Corp., 621 F.Supp. 456 (E.D.N.Y. 1985).
[34] N.Y. INS. LAWS § 3408(c) (2014) (“An appraisal, if ordered, shall proceed pursuant to the terms of the applicable appraisal clause of the insurance policy and is not an arbitration.”).
[35] *Id.* at 460.
[37] Amerex Group Inc. v. Lexington Ins. Co., 678 F.3d 193 (2d Cir. 2012).
[38] *Id* at 207.
[39] *Id.*
[40] Bakoss v. Certain Underwritters at Lloyds of London Issuing Certificate No. 0510135, 707 F.3d 140 (2d Cir. 2013).

benefits of the policy. Each party had a right to have the insured examined by a physician of their own choice and, if the physicians disagreed, then a third physician was appointed to make a final and binding decision. The court's ruling stating that the clause constituted arbitration was based primarily on the *AMF*[41] case previously discussed.

The U.S. Supreme Court was clear in *Omaha* that appraisal clauses that aim to settle a dispute constitute arbitration. As discussed in both cases from the Second Circuit where dispute resolution clauses: on *Amerex*[42] was a typical insurance appraisal clause settling a dispute over value, while in *Bakoss*[43] the issue was to determine if the insured was totally disabled or not, in order to receive the coverage benefits of disability insurance.

The use of arbitration for determining coverage under an insurance policy is a very distinctive process versus the typical insurance appraisal clause, which is only activated once the insure has accepted liability. An insurance appraisal will affect only the value of the loss sustained by the insured; it will not corroborate the decision to provide coverage, nor will it provide for a quasi-judicial forum where an insured's rights under the policy will be interpreted. The Insurance Code of Puerto Rico[44] expressly prohibits the use of clauses that stipulates a forum other than the traditional judicial system to determine questions of coverage under an insurance policy.

In *Berrocales*,[45] the Supreme Court of Puerto Rico interpreted this section of the Insurance Code as prohibiting all forms of arbitration clauses in insurance policies issued in P.R. In this case, a policyholder sued its property insurer in a court of law and the insurer responded with a request that the "arbitration" proceeding specified in the policy be given effect. The Supreme Court of Puerto Rico found the arbitration clause was void, would be treated as non-existent, and ordered that the proceedings continue in the judicial venue. Interestingly, the clause at issue was for an appraisal clause treated as an arbitration clause, prohibited without further considerations. Since this holding, both appraisal and arbitration clauses are prohibited in the insurance policies issued in Puerto Rico.

The Puerto Rico Insurance Code, however, merely inhibits any clause "depriving the insured of its right of access to courts for *determination of his rights under the policy* in the event of a dispute", *i.e.*, a clause such as the one used in *Bakoss*.[46] This language seems to prohibit only the use of regular arbitration clauses in which a private party will interpret the insurance policy, an agreement that is highly regulated by the state due to the amount of public interest involved.[47] An appraisal process, on the other hand, is a contractual right to have a technical issue decided outside of courts, only when the insurer has acknowledged its liability for the loss sustained.

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[41] *AMF Inc.*, 621 F. Supp. 456.
[42] *See id.*
[43] *See Bakoss*, 707 F.3d 140.
[44] Insurance Code of Puerto Rico, 26 LPRA §1119: "(1) No policy delivered or issued for delivery in Puerto Rico and covering a subject of insurance resident, located, or to be performed in Puerto Rico, shall contain any condition, stipulation, or agreement: (a) Depriving the insured of right of access to the courts for determination of his rights under the policy in event of dispute. (b) Depriving the courts of Puerto Rico of jurisdiction of action against the insurer...(d) Requiring that the policy be governed by the laws of any other jurisdiction...(2) Any condition, stipulation, or agreement in violation of this section shall be void, but such voidance shall not affect the validity of the other provisions of the policy."
[45] *Berrocales*, 102 D.P.R. 224.
[46] *See Bakoss*, 707 F.3d 140.
[47] Smith, *supra* note 9.

IV. CONCLUSION

An insurance appraisal is not a process where a third party makes determinations of an insured's rights under a policy but a tool to further the liability already accepted by the insurance company. It should not be prohibited based on the language of section 1119 of Puerto Rico's Insurance Code[48] as currently written.

While the concept of arbitration is generally interpreted broadly, appraisal clauses can be seen as a narrowly scoped form of arbitration, exclusively regarding the value of the loss of property. This goes hand-in-hand with the Supreme Court's ruling in *City of Omaha*,[49] in which a dispute exists and it is a third party who resolves — as opposed to the judicial system — that resolution process will constitute arbitration.

However, unlike regular arbitration, an appraisal clause does not necessarily deprive an insured from access to courts for determination of its rights under a policy. On the contrary, appraisal can be a very helpful and low-cost tool available to policyholders, providing a mechanism to challenge the proceeds offered by an insurer without having to recourse to a costly judicial proceeding. Allowing its use, however, can bring new threats and challenges to the regulatory framework, primarily in terms of defining the scope of an appraiser's decision-making power and the scope of judicial review. For example, the main debate existing among states that permit the use of appraisal is to decide whether causation analysis should be within an appraiser's scope of authority or an issue that should be decided by the courts. The state of Florida, for example, decided that the "determination of causation is appropriate for appraisers under some circumstances and appropriate to judges in others."[50] When an insurance company has acknowledged its liability, in part or in whole, of the loss sustained then an appraiser can decide causation issues. However, when an insurer has not afforded coverage for such loss and the parties nonetheless seek to determine the value of the loss through appraisal, courts are in charge of analyzing causation and coverage.[51]

States and the federal government share a policy of encouraging the use of alternate dispute resolution procedures. Due to the absence of a formal definition of arbitration from Congress, contributes to the unrelated treatment of appraisal as a form of arbitration. As discussed above, treating appraisal as arbitration can have significant consequences, oftentimes resulting in an outright prohibition of both in the insurance industry. More analysis should be afforded to the benefits of allowing the use of appraisal in insurance, as a tool for policyholders to challenge their insurer's determinations as to the amount payable for a loss in an agreed upon procedure in which both parties are ensured equal participation. There are many ways in which a state can assume an active role in regulating limitations to an insurance appraisal process while allowing it, to protect the essence of the process and the policyholder's right to access courts for coverage determinations.

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[48] Insurance Code of Puerto Rico, 26 LPRA § 1119.
[49] *See City of Omaha*, 218 U.S. 180.
[50] Smith, *supra* note 9.
[51] *See* State Farm v. Licea, 685 So.2d 1285 (Fla. 1996).

V. APPENDIX 1: TIMELINE

1869: ***Paul v. Virginia*** (Insurance is not interstate commerce)

1910: ***City of Omaha,*** 218 U.S. 180 (If dispute exists – arbitration)

1925: **Federal Arbitration Act**

1944: ***US v. South-Eastern,*** 322 U.S. 533 (Insurance is interstate commerce)

1945: **McCarran Ferguson Act** (State reverse preemption)

1974: ***Berrocales v. Tribunal Superior***, 102 DPR 224 (Case prohibiting the use of arbitration and/or appraisal clauses in insurance policies issued in PR.)

1982: ***Union Labor v. Pireno,*** 458 U.S. 119 (Claims adjustment is not "business of insurance")

1983: ***Moses v. Mercury,*** 460 U.S. 1 (Any doubt will be resolved in favor of arbitration)

VI. APPENDIX 2: STATES

State	Use of Appraisal in Insurance	Appraisal = Arbitration	Cases
Alabama	Yes	No	*Casualty Indemnity Exchange v. Yother*, 439 So.2d 77 (1983) and *Southeast Nursing Home v. St. Paul*, 750 F.2d 1531 (7th Cir. 1985)
Alaska	Yes	No	*McDonnell v. State Farm*, 299 P.3d 175 (2013) + Required by statute: §21.96.035
Arkansas	No	It's not clear, but they are both prohibited in insurance policies.	*Firemen's Ins. Co. of Newark, N.J. v. Davis*, 130 Ark. 576 (1917)
Arizona	Yes	Yes	*Meineke v. Twin City Fire Ins. Co.*, 181 Ariz. 576 (1994)
California	Yes	Yes	*Doan v. State Farm General Ins. Co.*, 195 Cal.App. 4th 1082 (2011)
Colorado	Yes	Yes	8A Colo. Prac., Personal Injury Torts and Insurance § 59:28. Restrictions on the right to sue – ADR clauses
Connecticut	Yes	Yes	*Covenant Ins. Co. v. Banks*, 177 Conn. 273 (1979) + Required by CGSA §38-307
Delaware	Yes	Yes	*AIU Ins. Co. v. Lexes*, 815 A.2d 312 (2003)
Florida	Yes	No	*Allstate Insurance Co. v. Suarez*, 833 So.2d 762 (2002)
Georgia	Yes	No	Arbitration prohibited in insurance: *McGowan v. Progressive*, 281 Ga. 169 (2006) + Ga.Code Ann. §9-9-2(c)
Hawaii	Yes	Yes	*Christiansen v. First Ins. Co.*,

			967 P.2d 639 (1998)
Idaho	Yes	Yes	*Martin v. State Farm*, 138 Idaho 244 (2002)
Illinois	Yes	No	*FTI Intern, Inc. v. Cincinnati Ins. Co.*, 339 III.App.3d 258 (2003)
Indiana	Yes	No	*Atlas Const. Co., Inc. v. Indiana Ins. Co.*, 160 Ind.App.33 (1974)
Iowa	Yes	Yes	*Central Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 466 N.W.2d 257 (1991)
Kansas	No	Yes	Both prohibited: *Friday v. Trinity Universal of Kansas*, 262 Kan.347 (1997)
Kentucky	Yes	No	Arbitration clauses not enforceable: KRS 417.050(2); *Scott v. Louisville Bedding Co.*, 404 S.W.3d 870 (2013)
Louisiana	Yes	No	*St. Charles Parish Hosp. v. United*, 681 F.Supp.2d 748 (2010) and *Housing Authority v. Henry*, 2 So.2d 195 (1941)
Maine	Yes	Not yet decided – *Maine v. Watson*, 532 A.2d 686 (1987)	Appraisal clause required by 24-A M.R.S.A. §3002
Maryland	Yes	Yes	*Brethren v. Filsinger*, 458 A.2d 880 (1983)
Massachusetts	Yes	Yes	Required by statute: MGLA 175 §100
Michigan	Yes	Yes	*ACME Roll Forming Co. v. Home Ins. Co.*, 110 F.Supp.2d 567 (2000)
Minnesota	Yes	No	*Sanitary Farm v. Gammel*, 195 F.2d 106 (8th Cir. 1952)
Mississippi	Yes	No	*Hartford Fire Ins. Co. v. Jones*,

			235 Miss. 37 (1959)
Missouri	Yes	No	If used to decide coverage issues = arbitration: *American Family Mutual v. Dixon*, 450 S.W.3d 831 (2014)
Montana	Yes	No	And arbitration is prohibited in insurance: *Dunn v. Way*, 241 Mont. 208 (1990)
Nebraska	No	Yes	*Rawlings v. Amco Ins. Co.*, 438 N.W.2d 769 (1989)
Nevada	Yes	No	*St. Paul Fire & Marine Ins. Co. v. Wright*, 97 Nev. 308 (1981)
New Hampshire	No	Not clear	NH ADC Ins. 1002.15
New Jersey	Yes	No	*Rastelli Bros., Inc. v. Netherlands Ins. Co.*, 68 F.Supp.2d 440 (1999)
New Mexico	Yes	Yes	*McMillan v. Allstate*, 135 N.M.17 (2003)
New York	Yes	No	*In Re Delmar*, 309 NY 60 (1955)
North Carolina	Yes	No – but analogous	State's Arbitration Law applies to appraisal in some circumstances: *Harleysville Mut. Ins. Co. v Narron*, 155 N.C.App. 362 (2002) and *PHC, Inc. v. North Carolina Farm*, 129 N.C.App. 801 (1998)
North Dakota	Yes	No	*Minot Town v. Fireman's Fund*, 587 N.W.2d 189 (1998)
Ohio	Yes	Yes	*Cousino v. Stewart*, 2005 WL 3120245 (6th Circuit, 2005)
Oklahoma	Yes	No	*Massey v. Farmers*, 1992 OK 80 (1992) + required by 36 Okl.St.Ann. §4803
Oregon	Yes	No	*Budget Rent-A-Car v. Todd*, 43 Or.App. 519 (1979) and *Shepard v. Collins*, 198 Or. 290 (1953)

Pennsylvania	Yes	Yes	*Riley v. Farmers*, 735 A.2d 124 (1999)
Rhode Island	Yes	Yes	*Waradzin v. Aetna*, 570 A.2d 649 (1990)
South Carolina	Yes	Yes – but "appraisal is not governed by the strict rules" of arbitration	*Miller v. British America*, 238 S.C. 94 (1961) and *Hendricks v. American*, 247 S.C. 479 (1966)
South Dakota	Yes	Yes	*Mason v. Fire Ass'n*, 23 S.D. 431 (1909)
Tennessee	Yes	No	*Merrimack v. Batts*, 59 S.W.3d 142 (2001)
Texas	Yes	No	*Hartford Lloyd's Ins. Co. v. Teachworth*, 898 F.2d 1058 (5th Circuit, 1990)
Utah	Yes	No	*Miller v. USAA*, 44 P.3d 663 (2002); *Phoenix Ins. Co. v. Everfresh*, 294 F.51 (8th Circuit, 1923)
Vermont	Not found	Not found	Not found
Virginia	Yes	Yes	*Equitable Fire & Marine Ins. Co. v. Stieffens*, 154 Va. 281 (1930)
Washington	Yes	Yes	*Price v. Farmers*, 133 Wash.2d 490 (1997)
West Virginia	Yes	No	*Smithson v. US Fidelity*, 186 W.Va. 195 (1991)
Wisconsin	Yes	No	*Farmers v. Union*, 319 Wis.2d 52 (2009)
Wyoming	Yes	Yes	Terms interchanged: *Kahn v. Trader's*, 4 Wyo. 419 (1893)